

**Tenth session**

New York, 12-21 December 2011

**Report of the Court on cooperation****I. Introduction**

1. This report is submitted pursuant to resolution ICC-ASP/8/Res.2 as well as pursuant to resolution ICC-ASP/9/Res.3 of 10 December 2010<sup>1</sup>. The reporting period for this report is May 2010 to September 2011.<sup>2</sup>

2. Past experience shows that cooperation with the Court has been generally forthcoming. However, great challenges remain. Arrest warrants are outstanding against 11 suspects and the cooperation of States in arresting them continues to be a missing component for the effective implementation of the Court's mandate.

3. In particular, public and diplomatic support remains a priority for the Court and for galvanizing arrest efforts, as recognized by the ASP in para 7 of resolution ICC-ASP/9/Res.3 of December 2010, ("*further encourages States Parties to express their political and diplomatic support to the Court*"). The Court has further continued to encourage the mainstreaming, coordination and integration of Court issues within and across government institutions (e.g. UN Departments, Africa, Middle East or other departments, and development/capability building units in Ministries) and intergovernmental organisations. In addition, the development of specific thematic and geographic networks to share information are also an important means of generating capacity to respond to concrete requests for cooperation in a timely manner, as well as to ensure better understanding of the operations of the Court and their integration in a comprehensive approach.

4. The Court further encourages States to continue the practice of publicly supporting and promoting the work of the ICC in bilateral and multilateral contacts, such as in statements during the general debate of the UN General Assembly, during UN Security Council debates on situations, conflict resolution, human rights and the rule of law, or in bilateral contacts by reminding relevant States of their duty to cooperate, in particular when it concerns arrest and surrender. The Court also sees the importance of public information and communication activities to support the work of the Court in general, and thanks the ASP for the opportunity to submit a report which addresses these aspects.

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<sup>1</sup> Paragraph 13.2. This report should be read in conjunction with the Report of the Bureau on cooperation (ICC-ASP/6/21) of 19 October 2007 and the 66 recommendations of the ASP annexed to resolution ICC-ASP/6/Res.2, Annex II, as well as the Report of the Court on international cooperation and assistance attached to the Report of the Bureau on cooperation (ICC-ASP/8/44) dated 15 November 2009 ("2009 Report of the Court") and its update (RC/2) dated 11 May 2010.

<sup>2</sup> It must be noted that certain information were not provided in this report in order to respect the confidentiality of a number of decisions and orders by the Chambers.

5. As it did in its 2009 Report, the Court reiterates that lack of cooperation and assistance or delays in executing requests have a cost. They may lead to delays in the investigations activities and other Court proceedings and operations, thereby affecting the Court's efficiency and as a consequence increasing the running costs. The delays may also affect the integrity of the proceedings.

6. The Court urges all States Parties to ensure the availability of national procedures for cooperation as required by article 88, and encourages the adoption of proactive measures to facilitate effective cooperation, such as designating a national focal point for cooperation with the Court. The Court emphasizes that States Parties' failure to implement Rome Statute provisions into national laws does not absolve them from their obligation to fully cooperate with the Court. Additionally, lack of implementing legislation is not an obstacle for the signature of agreements relating to matters of voluntary cooperation.

## II. States Parties and the Court

7. The legal framework underpinning the cooperation and assistance requested from States Parties by the Court during the different phases of its activities is detailed in paragraphs 10 to 14 of the 2009 Report of the Court, and is founded on Parts 9 and 10 of the Rome Statute as well as on article 15(2) of the Rome Statute ("the Statute").

### A. Cooperation in support of preliminary examinations, investigations and prosecutions

#### 1. Cooperation and assistance in the context of preliminary examinations<sup>3</sup>

8. A preliminary examination is the first phase of the activities of the OTP, in order to assess if an investigation should be opened.<sup>4</sup> There are no timelines provided in the Statute for a decision on a preliminary examination. The preliminary examination process provides an early and crucial opportunity to mobilize the efforts of States, international organizations and civil society to support the national jurisdictions in their fight against impunity, thus promoting national proceedings and contributing to the prevention of future crimes in a very cost-effective manner. To facilitate this collective action, the OTP, in accordance with its positive approach to complementarity, carries out activities that often require the cooperation of States. These can in turn be factored in by all relevant actors, in order to promote genuine accountability efforts at the national level and maximize the impact of the Court's work. The importance of timely and effective cooperation from States should be highlighted in this regard<sup>5</sup>; this could include *inter alia* facilitating OTP missions on their territory or providing relevant information to the OTP, based on Article 15 (2).

9. During the reporting period, the OTP has sent 32 requests for information with respect to six situations under preliminary examination, keeping the level of the number of requests at the same high level as the previous reporting period. The great majority of these requests (28) were addressed to States Parties; 3 were sent to a non-State Party. The majority of requests were for additional information under Article 15 (2).

<sup>3</sup> There are currently nine situations under preliminary examination by the OTP, at different phases of analysis: the OTP is analyzing pre-conditions of jurisdiction regarding the situation in Palestine; it is analyzing alleged crimes committed regarding the situations in Honduras, Afghanistan, Nigeria and the Republic of Korea; the OTP is further analyzing national proceedings regarding the situations in Colombia, Guinea and Georgia. Finally, regarding the situation in Côte d'Ivoire, the OTP requested Pre-Trial chamber III on 23 June for the authorization to open an investigation into the situation in Côte d'Ivoire since 28 November 2010.

<sup>4</sup> OTP draft policy paper on preliminary examinations, 4 October 2010.

<sup>5</sup> More information can be found on the OTP activities in the Court report on complementarity.

## 2. Cooperation and assistance in the context of investigations and prosecutions

### (a) Cooperation and assistance from States

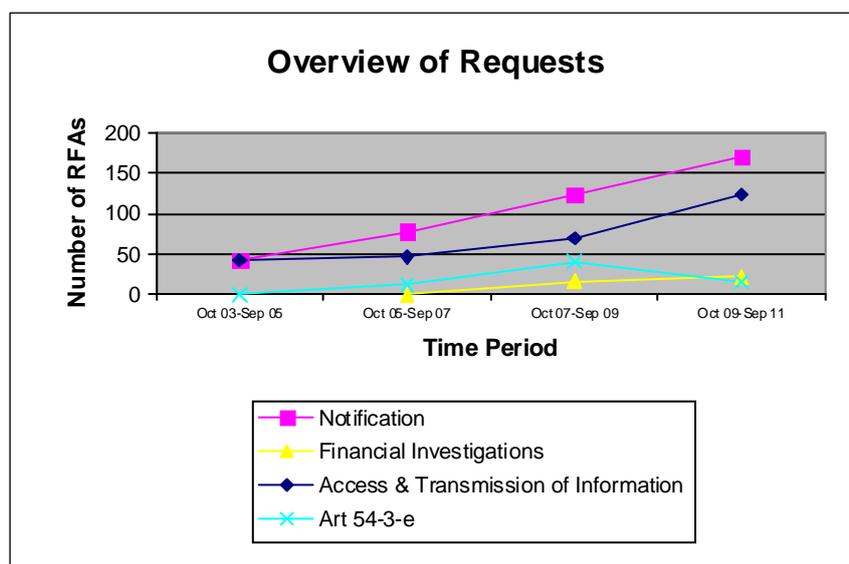
10. 312 requests were addressed to States and intergovernmental organizations by the OTP regarding its investigative and prosecutorial activities during the reporting period. While some of these requests are still pending, in particular the recent ones, the execution rate is already at 70%. The OTP urges States to facilitate smooth and timely consideration and responses of its requests.

11. The OTP's investigations in Libya are a good example of how active States' cooperation can increase its efficiency. The OTP addressed requests in the Libya investigation to three NGOs, two international organizations, one UN organ, and 13 States (including four non-States Parties). 32 notifications have been processed; in addition, the OTP made 25 requests for assistance, of which 19 are pending, five have been executed and one was withdrawn. The five executed requests were answered in a very short time, between two weeks and one month.

12. *Recipients of requests:* 84% were addressed to 33 States Parties; 7% were addressed to 11 non-States Parties; 6% were addressed to eight UN bodies, and 3% were addressed to four other organizations. Geographically, more than 45 % of the requests were addressed to African States, 40 % were addressed to European States and 6% were addressed to other States. The OTP also continued to diversify its interlocutors and approached 13 new States, including six non-States Parties. *Nature of cooperation and assistance requested:* 47% were notifications<sup>6</sup> for the facilitation of investigative activities on the territory of a State; 33% were requests for transmission of information and documents; 5% related to interviews and 3% were requests for lifting of article 54(3) (e) confidentiality restrictions.

13. The OTP continued to give particular attention to the financial aspects of its investigations; the number of related requests addressed to States<sup>7</sup> further increased. In the reporting period, the OTP has issued 21 requests (more than the previous three years combined) to 19 different States, including three non-States Parties.

14. The Chart below illustrates key trends in requests sent from the OTP.



<sup>6</sup> Notifications: correspondences addressed to a State notifying it of the planned presence of OTP staff on their territory for purposes of conducting investigative activities not requiring compulsory measures (e.g. interviews on a voluntary basis), in accordance with article 99(4) of the Statute. Such notifications are subject to consultations with the State concerned.

<sup>7</sup> e.g. access to bank records, interviews of relevant individuals, transmission of financial information, search and seizures, identification and location of properties, etc

**(b) Development of cooperation networks**

15. In the context of increasing efficiencies and savings, the OTP continued to develop and expand its networks of cooperation with relevant partners; in particular, it developed a network of support from national forensic institutions from different countries, including *inter alia* Belgium, France, Germany and The Netherlands, which have provided several forensic services to the OTP free of charge<sup>8</sup>. Not only has the turn around time been shorter compared to that of commercial providers, but the OTP estimates total savings of approximately 36,082 euros for the reporting period, and further estimates that it could save up to 54,880 euros for the last quarter of 2011.

**(c) Cooperation and assistance in the context of article 93.10 of the Rome Statute**

16. The OTP can, in accordance with article 93.10, cooperate with States by sharing information collected by the OTP that could be of assistance to their national proceedings, subject to the existence of a credible local system of protection for judges or witnesses, the integrity of domestic proceedings and other security caveats. This approach not only assists States in fulfilling their primary responsibility for investigation and prosecution of crimes under the Court's jurisdiction, but also allows the OTP to promote considerable cost savings in relation to the overall goal of ending impunity, thereby contributing as well to the efficiency of its own work.

17. In Uganda for instance, in addition to the Office's investigation and prosecution of the top leaders of the Lord's Resistance Army (LRA), the OTP has been providing assistance to Ugandan authorities to investigate and prosecute other potential individuals, based on its positive approach to complementarity.

18. The investigation and prosecution of crimes allegedly committed by the *Forces démocratiques de libération du Rwanda* (FDLR) in the Kivu provinces in DRC represent one of the most successful examples of cooperation between the Court and States, and further demonstrates how the OTP's positive complementarity approach works in practice. The OTP's cooperation with Germany was key in this regard<sup>9</sup>.

19. Complete information on these examples and others can be found in the Court Report on complementarity<sup>10</sup>.

**B. Cooperation in support of judicial proceedings****1. Arrest, surrender and voluntary appearance****(a) Arrest and surrender**

20. The Court has benefited from the cooperation and assistance of several States regarding arrest and surrender during the reporting period. On 30 September 2010, an under seal request for the arrest and surrender of Mr. Callixte Mbarushimana was transmitted to France. The arrest took place expeditiously on 11 October and Mr. Mbarushimana was transferred to the Court on 25 January 2011. The Court thanked the French authorities for their cooperation.

<sup>8</sup> Forensic services provided included the analysis of mobile phones, computer and other digital media, audio and video equipment, crime scene examination, analysis of samples collected and the redaction of written reports.

<sup>9</sup> Since at least June 2009, German and the OTP's investigations into FDLR crimes were conducted in consultation between the OTP and the Federal Public Prosecutor General's office at the Federal Court of Justice in Germany. The OTP received information from Germany, as per usual cooperation mechanisms, and also provided information to support the German investigation. The OTP also facilitated contact between German and national judicial authorities in the region, in particular in the DRC.

<sup>10</sup> ICC-ASP/10/23

21. At the time of submission of this report, 12 arrest warrants were outstanding<sup>11</sup>. The OTP highlights once more its arrest guidelines, published in its Prosecutorial Strategy for 2009-2012, for the consideration of States<sup>12</sup>. The OTP continues to lead efforts with relevant actors in order to galvanize activities leading towards arrest. More information on these efforts can be found in the OTP's report on activities for 2010-2011.

22. Similarly to the situation in the Al Bashir case and in accordance with article 89, the Chamber decided that the requests for arrest and surrender in the situation of the Libyan Arab Jamahiriya should be transmitted to all States Parties. In both cases, the Chamber also ordered the Registry to transmit the requests to the situation countries, to the members of the United Nations Security Council (UNSC) and to neighbouring countries.

23. In the situation of the Libyan Arab Jamahiriya, the Registry notified 125 States including 10 non-States Parties in 22 languages. Only one non-State Party refused the notification. Seven States indicated that the request was sent to the relevant authorities.

24. In the Al Bashir case, after a second arrest warrant was issued by Pre-Trial Chamber I on 12 July 2010, the Registry notified 117 States. Two non-States Parties refused notification.

25. With regard to Ahmed Harun and Ali Kushayb, on 25 May 2010, the Judges issued a decision informing the UNSC of Sudan's failure to cooperate with the Court and referred this to the Council, for it to take appropriate action.

26. The Court emphasizes that States Parties and other States that have a legal obligation to cooperate with the Court under UNSC resolutions 1593 (2005) and 1970 (2011) are required to comply with these requests for arrest and surrender.

27. During the reporting period, Omar Al Bashir visited three States Parties, namely Chad on 21-23 July 2010 and 7-8 August 2011, Kenya on 27 August 2010 and Djibouti on 8 May 2011. The Chamber issued three decisions: on 27 August 2010 informing the UNSC and the ASP about Omar Al Bashir's visits to the Republic of Chad and the Republic of Kenya, and on 12 May 2011, issuing a similar decision concerning Djibouti.

28. In addition, on 18 August, the Chamber issued a decision based on regulation 109(3) of the Regulations of the Court (ROC) inviting Chad to provide its comments on the Registry's report on the reported visit of Omar Al Bashir for the inaugural ceremony of the re-elected President of Chad on 8 August. The Republic of Chad replied on 29 September that it could not comply with the request for arrest and surrender due to its membership to the African Union. The Republic of Chad also indicated that it was entitled to be heard by the Chamber before a finding under Article 87(7) of the Rome Statute could be made.

29. Whereas the Registry's practice is to contact a given State Party if it comes to its attention that a suspect may enter the territory of the said State, reminding the State of its obligation to arrest, the Chamber may always issue direct requests to States in that regard. The Chamber did so on 25 October for Kenya and on 1 December for Central African Republic. In the first case, the venue of the meeting that Omar Al Bashir was to attend was relocated outside of Kenya and in the second case the visit did not take place.

**(b) Summons to appear**

30. On 8 March 2011, on the basis of OTP requests, Pre-Trial Chamber II issued two decisions requesting six persons to appear before the Court for the purpose of the hearing of initial appearance in the situation in Kenya. The summonses were served expeditiously on 16 March 2011. The Court notes the good cooperation of the Kenyan authorities in this respect. The initial appearance hearings were held on 7 and 8 April 2011 and the six

<sup>11</sup> These are: In the situation in Uganda: Mr. Joseph Kony, Mr. Vincent Otti, Mr. Okot Odhiambo, and Mr. Dominic Ongwen. These warrants of arrest have been outstanding since 2005. In the situation in the Democratic Republic of the Congo: Mr. Bosco Ntaganda. This warrant of arrest has been outstanding since 2006. In the situation in Darfur, Sudan: Mr. Omar Al Bashir (2 arrest warrants), Mr. Ahmad Harun and Mr. Ali Kushayb. These warrants of arrest have been outstanding since 2007 in the cases of Mr. Harun and Mr. Ali Kushayb, and since March 2009 and July 2010 in the case of Mr. Al Bashir. In the situation of the Libyan Arab Jamahiriya: Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi. Their warrants of arrest have been outstanding since 27 June 2011.

<sup>12</sup> OTP Prosecutorial Strategy 2009-2012, 1<sup>st</sup> February 2010.

suspects returned to Kenya without incident. The hearing of confirmation of charges took place between 1 and 8 September 2011 in the first case and from 21 September to 5 October 2011 in the second case with the presence of the six suspects. The Registry facilitated the voluntary appearance of the persons for both hearings with the assistance of the Embassy of Kenya in the Netherlands and the host State.

31. In the case *the Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, the two suspects were summoned to attend the hearing of first appearance on 17 June 2010. The Court thanks the States that facilitated the voluntary appearance of the two suspects. With the charges now confirmed, the accused are expected to appear voluntarily before the Court for their trial. The date of the start of the trial has not yet been decided by the Chamber.

## **2. Identification, localization and freezing or seizure of assets**

32. The assets and property of defendants may be frozen and/or seized for various purposes, under articles 75 and 77(2) of the Rome Statute.

33. In the reporting period, 10 requests were transmitted by the Registry at the request of the Chamber, eight to States and two to an international organisation. Of these requests, three have been fully executed, one State indicated that it was unable to execute the request without additional and detailed information and the other requests are pending. The requested international organisation indicated it was unable to assist the Court directly and that such requests should be addressed to its Member States. The Registry sends regular reminders to States that have not replied to requests for assistance.

34. In some instances, the Court is not in possession of such required specific information regarding assets allegedly held by suspects on their territory and urges States parties to complete to the extent possible the information contained in these requests which they may be able to access through national investigations.

35. The identification and localization of property and assets is also undertaken by the Registry where it declares the suspect/accused indigent for purposes of potential payment of legal assistance by the Court. In the reporting period, six requests were sent, of which one was partially executed, two received a positive reply, three received a partial reply and one is still pending. In the course of its research, the Registry faces several challenges such as the unwillingness of the person benefiting from legal aid to cooperate, as well as the administrative and storage costs of the assets seized and their depreciation pending a decision on the guilt of the person. As the Registry is faced with complex situations involving cross-boarder financial transactions and networks, the Registry encourages States to work together to *inter alia* conduct simultaneous seizure operations and to share financial information.

36. With regard to both types of requests, the timely and efficient cooperation of States is crucial in that respect. In order to gather more information, both the Registry and the OTP have relied on information provided in inter-States fora such as CARIN. While safeguarding the independence of the OTP and the neutrality of the Registry, the OTP and the Registry are further coordinating requests for cooperation sent to States in relation to financial investigations, thus facilitating a more efficient and effective assistance by States.

## **3. Other requests**

37. During the reporting period, 881 other requests for assistance or for observations were notified to States, including 135 to non-States Parties. These requests were either based on article 93 of the Statute or on regulation 51 of the ROC and concerned *inter alia* the provision of records and documents, the protection of witnesses, the questioning of witnesses, the transfer of detained persons, the provision of storage space, interim release, the security for staff and the issuance of travel documents ( 764 requests). In the context of the issuance of visas for counsels and staff members, the Court encourages States Parties to ratify the Agreement on Privileges and Immunities of the Court.

38. During the reporting period the field offices continued to be instrumental in notifying the Chambers' requests for judicial cooperation and relevant judicial documents<sup>13</sup>.

#### 4. Witness protection and support

39. All organs of the Court have a duty to ensure protection of victims and witnesses, based on article 68.1 of the Statute.

40. In 2010, the Court entered into one new relocation agreement. During the reporting period no new relocation agreements were signed but the Registry is hoping to finalize four agreements before the end of the year.

41. As announced in the 2009 Court report, the Registry created a Special Fund for relocations. As at 15 September 2011, the amount of contributions to the Special fund is 866,000 euros. Donations were made by the UK, Finland, Denmark, Germany and Ireland. Around 75 % of the amount was earmarked for the Kenyan witnesses.

42. The Registry contacted 11 African States Parties to host witnesses on a cost neutral basis and the Registrar held a meeting in Brussels with representatives of seven key African States in order to discuss the new modalities. As at 1 September 2011, only two of them had indicated that they would be willing to enter into a relocation agreement under the new modalities. One witness was transferred to the territory of an African State on an *ad hoc* and temporary basis. With the Special Fund now being fully operational, the Registry urges States to enter into a relocation agreement.

43. With regard to local protective measures, the Registry also reinforced its initial response capacity in two States Parties<sup>14</sup>.

44. The OTP works with the Registry and States, in the context of Court-wide efforts, to guarantee the safety of all those who are at risk on account of their interaction with the Court. In order to enhance coordination, the OTP and the Registry have recently signed a Joint Protocol for witness protection; this will allow for more efficient requests for cooperation from the Court which will also allow for more timely and effective responses from States.

45. The Court currently faces a critical challenge in terms of witness protection. Faced with an urgent and unforeseen situation at the beginning of 2011, the Court requested States Parties to temporarily accept witnesses on their territory. Out of the nine requests for cooperation sent to that effect, none received a positive reply. The Registry needs to be able to urgently evacuate witnesses to a "safe haven" country when a life threatening situation for the witness materialises. It is paramount that States carefully consider their respective legal parameters with regard to the protection of witnesses.

46. Should the Court not be able to find a State willing to accept witnesses on its territory on very short notice, there is a serious and imminent risk of having a witness in grave danger<sup>15</sup>. A draft "temporary relocation agreement", which provides a legal framework for temporary relocation, is now available and States Parties are invited to enter into such agreements with the Court. It is noted that hosting witnesses pending permanent relocation may be done on a cost neutral basis.

<sup>13</sup> In 2011, for the six situations before the Court, 69 notifications were carried out: 58, in the Democratic Republic of the Congo, seven in the Central African Republic, two in Uganda and two in Chad.

<sup>14</sup> This 24/7 emergency response system was established for persons facing serious threats of imminent harm as a result of their interaction with participants to the proceedings. It includes but is not limited to, the immediate removal of a person at risk from the area of threat whenever feasible, the placing of the person at risk in a temporary safe location, under 24/7 close personal protection if required, and/or implementation of other immediate, temporary local protective measures, in collaboration with local service providers if required.

<sup>15</sup> The Host State indicated that the relocation of witnesses who have to leave their country of origin in an emergency situation is not a Host State obligation under the Headquarters Agreement.

## 5. Defence related issues

47. The cooperation of States regarding Defence requests is crucial to ensure that the defence teams can provide efficient legal representation to their clients<sup>16</sup>. During the reporting period, 12 requests were notified to States by the Registry on behalf of four different defence teams. The requests aimed at facilitating the investigative work of the defence teams by enabling them to interview witnesses, getting access to specific locations or being provided with classified information. Three obtained a positive reply, one was not executed on time and eight are outstanding.

## 6. Agreements on the enforcement of sentences

48. During the reporting period, Belgium, Denmark, Finland, Serbia and Colombia concluded agreements on the enforcement of sentences with the Court. The Court is grateful to these States Parties for extending this valuable form of support.

## 7. Interim release

49. The framework for Chambers granting interim release to suspects in detention is set out in paragraphs 58-60 of the Court's 2009 Report.

50. Where interim release is ordered by the Chamber, and the suspect is not in a position to return to his country of nationality, the Court would need to secure a third State willing to host the suspect whilst on interim release. For this purpose, the Registry has circulated a model exchange of letters on interim release among States Parties in May 2011, and is currently addressing the comments received from States. One State Party indicated that it would be interested in entering into such an exchange of letters. The objective of this framework is to secure a number of States that are willing to accept persons on interim release, under a number of pre-agreed conditions.

51. In parallel, the Registry has also assisted defence teams willing to enter into an agreement on interim release with States. The Registry thus transmitted 21 defence requests to different States Parties.

## 8. Release agreement in case of acquittal

52. The Court is currently in the process of finalizing a model agreement between the ICC and States for the event that a suspect acquitted by the Court would not be able to return to their State of nationality. The Court will consult with States Parties thereon.

## C. Court initiatives to support cooperation with States

53. *Database on cooperation:* In 2011, the Registry improved its archiving system by setting up a database allowing to better monitor the different requests to States notified on behalf of the Chamber, the Registry and the defence.

54. *Focal points training:* In line with part D of the Court's 2009 report, the Registry works with focal points in situation countries that are different from the channels designated under article 87(1) (a) of the Rome Statute. On 13-14 July, focal points from the DRC, Kenya, Uganda, Chad, and CAR were invited for a two-day training at the Court, funded by the European Union.

55. *Database on implementing legislations:* The Court intends to streamline and harmonize the current data on national implementing legislations and will request all States to confirm that the legislations collected by the Court with the assistance of the Nottingham University are accurate and exhaustive. Only the legislations which have been confirmed by the Court will be posted in the public database.

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<sup>16</sup> The framework for such requests is set out in paragraphs 102-104 of the Court's 2009 report.

### **III. Cooperation in the United Nations context**

#### **A. Cooperation between the Court and the United Nations (UN)**

56. The basis for cooperation with the UN is set out in paragraph 107 of the Court's 2009 report. In this context, cooperation with the UN has continued to be strong. In particular, the public support expressed by the UN through the Secretary-General on a number of occasions has been much appreciated by the Court.<sup>17</sup>

57. In Kenya, the United Nations Office in Nairobi (UNON) has agreed to host a small logistical presence of the Court on its grounds, and is providing the Court with a range of administrative and logistical support services. For this purpose, the Court has entered into an MoU with UNON on 13 June 2011.

58. Taking into account the revised mandate of MONUSCO, the Court and the SRSG agreed that the existing MoU between the Court and MONUC would remain in force.

59. In respect of the MoU between the Court and UNDSS, and in view of the new Accountability Framework which was agreed by the UN Inter-Agency Management Network (the "IAMN") and of the new standard MoUs agreed upon by the IAMN, the Court is discussing with the UNDSS whether a new MoU is now necessary.

60. The MoU between the Court and the OIOS was concluded on 21 July 2010, and regulates the support services that the OIOS can provide to the Independent Oversight Mechanism (IOM), as well as the secondment of personnel.

61. During the reporting period, the UN has continued to provide support and assistance to the Court's field operations. From May 2010 to June 2011, the staff members of the Court travelled in 1313 UN flights.

62. As detailed in paragraph 112 of the Court's 2009 report, the UN and the ICC strive to meet regularly in order to foster better understanding of each other's mandates. The OTP held a roundtable in New York on 14-15 June 2011 with the UN Offices, and a Court-wide roundtable is scheduled to take place on 8-9 December 2011.

63. The Court principals have continued to engage with the UN; the President presented the Court's annual report to the UN General Assembly on 28 October 2010. The Prosecutor briefed the UN Security Council on two occasions on the status of the investigation into the situation in Darfur, as well as on one occasion on the status of the investigation into the situation of Libya. The principals also held several high-level meetings with the UN Secretary-General, the Deputy Secretary-General, the Administrator of the United Nations Development Programme, the High Commissioner for Human Rights, the Under-Secretary-General for Political Affairs, the Under-Secretary-General of the Department of Peacekeeping, the Under-Secretary-General for Legal Affairs and UN Legal Counsel, the Special Representative of the Secretary-General on Sexual Violence in Conflict, as well as representatives of OCHA.

64. The Court has continued to rely on the New York Liaison Office to disseminate information to Permanent Missions and UN Departments and to be informed of developments in UN meetings. The briefings and the support provided by NYLO enhance the Court's capability to plan its UN activities.

#### **B. Cooperation by States Parties in the United Nations context**

65. The importance of States Parties supporting the ICC within the United Nations context is highlighted in paragraphs 117-118 of the Court's 2009 report.

66. Court officials and staff members have continued to carry high-level visits to New York in order to brief the relevant actors in the UN and the permanent missions, as well as the New York Working Group, the Friends of the ICC and regional groups, including in the

<sup>17</sup> See Statements of the Secretary General, at the ninth session of the ASP, NY, 6 December 2010, <http://www.un.org/apps/sg/sgstats.asp?nid=4979> and at the Human Rights Council, Geneva, 25 January 2011, <http://www.un.org/apps/sg/sgstats.asp?nid=5051>.

margins of the UNGA opening and the bi-annual UNSC briefings. In particular, it is part of the OTP's commitment to increase its transparency and predictability to reach out further to the permanent missions in New York and the NYWG.

67. During the reporting period, the role of the ICC was further strengthened by the unanimous decision to refer the situation in Libya to the ICC pursuant to UNSC Resolution 1970 (2011). In the future, States Parties in the Council may wish to consider the impact of any referrals on the budgetary requirements of the Court.

68. As mentioned above, Pre-Trial Chamber I notified the UNSC of the visits of Mr. Omar Al Bashir to Kenya, Chad and Djibouti. No action was taken by the Council in this respect. States Parties in the UNSC may wish to lead discussions on non-cooperation matters relating to situations referred by the Council and possible avenues it could explore in order to address them.

69. The Court further emphasizes the important role that States Parties, (permanent and non- permanent) members of the UNSC can play, beyond referrals, regarding issues relevant to the ICC such as conflict resolution, humanitarian missions, children in armed conflict and gender crimes.

#### **IV. Cooperation with regional organisations**

70. Developing a sound network of cooperation with regional organizations is key for the Court, both in terms of diplomatic and political support and in terms of practical support with the Court's operations.

##### **A. African Union (AU)**

71. The Court continued to communicate closely with the AU. On 18 and 19 July, the Court and the AU held a technical level seminar in Addis Ababa with staff from the AU Commission and representatives of African States Parties, sponsored by the International Organisation of La Francophonie, Austria and Ireland. The purpose of the Seminar was for the Court to explain its work with a view to fostering better understanding and enhance cooperation. Participants appreciated explanations given by the Court and stressed the need for continued dialogue between the Court and AU. The AU indicated that a follow-up seminar would be held in 2012.

72. The principals and senior officials of the Court met regularly with representatives of the AU and its member states, including the Chairman of the African Union Commission and on the margins of the January 2011 AU Summit.

##### **B. European Union (EU)**

73. The Court has welcomed the new Common Position of the EU in respect of the ICC [5753/11 dated 15 February 2011], the EU Council Decision on the ICC of 21 March 2011, as well as the EU action plan of 12 July 2011, which are key tools in strengthening the relation between the Court and the EU. The Court also welcomes the report of the EU Parliament on the ICC which is scheduled to be formally adopted in November of this year.

74. The Court also relies on the political and diplomatic support for the ICC of the EU delegations in third countries, especially in the situation countries, and the Court is exploring ways to further strengthen those links.

75. During the reporting period, the principals and Court officials held several meetings in Brussels with EU representatives, including with the President of the European Council, the EU Justice and Home Affairs Commissioners, as well as with senior representatives of the European External Action Service (EEAS), the EU Political and Security Committee (PSC) and the Foreign Committee of the European Parliament and its Subcommittee on Human Rights. In order to promote a better understanding on the mandate and activities of the OTP, and thus ensure a more effective working relation with EU representatives, the Prosecutor participated in an EEAS Training Seminar on Political and Diplomatic Issues.

## C. League of Arab States (“Arab League”)

76. The Court increased its cooperation and engagement with the Arab League during the reporting period. A regional seminar on the ICC was held in Doha, jointly organized by the Arab League, the State of Qatar and the Court, on 24-25 May 2011 with the participation of all the Court principals. It was organized at a crucial time for the region, and most of the panellists expressed their hope that this will usher a new relationship between the ICC and the Arab world. Moreover, State representatives have shown a strong commitment towards the ratification of the Rome Statute. Follow-up technical seminars with the League of Arab States are being planned. The Court is also pursuing the signature of an MoU with the Arab League.

77. The OTP held meetings with representatives of the Arab League, in particular with the Secretary-General, to discuss the situations of Libya, Palestine and Darfur. Arab League support in all three situations has been important. In particular, regarding the preliminary examination on the situation of Palestine, the Arab League has facilitated OTP meetings with the Palestinian National Authority during the reporting period, including with the Palestinian Minister of Justice<sup>18</sup>.

## V. Cooperation with other intergovernmental institutions

### A. Commonwealth

78. On 13 July 2011, a MoU between the Court and the Commonwealth Secretariat was signed by the President of the Court and the Commonwealth Secretary General. Under the Memorandum, the two organisations will enhance their cooperation in promoting the principles and values enshrined in the Rome Statute. An expert from the Court participated in the revision process of the Commonwealth’s “Model Law to implement the Rome Statute of the ICC” during the reporting period.

### B. Francophonie

79. The Francophonie sponsored a series of regional seminars on the ICC, including the seminar with the AU referred above, regional seminars in Cameroon in October 2010 and in Tunisia in September 2011, as well as a training session on the ICC for magistrates’ members of the Francophone Supreme judiciary courts (AHJUCAF) at the Court on 5-7 July. The Court is working with the Francophonie regarding the planning of further seminars in South East Asia and in Latin America.

### C. Organization of American States

80. On 18 April 2011, the President of the Court and the Secretary-General of the Organization of American States (OAS) concluded a Framework Cooperation Arrangement which foresees that the Court and the General Secretariat of the OAS will cooperate in matters of common interest.

81. The OTP and the Inter-American Commission on Human Rights are currently in the process of concluding a MoU, which will allow for strengthening relations and cooperation between the two institutions.

82. The Court continued to actively engage with the OAS during the reporting period. Court officials briefed the Committee on Juridical and Political Affairs of the OAS Permanent Council during a working meeting on the ICC in March 2011.

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<sup>18</sup> The Palestinian National Authority requested the right to be heard on the fulfillment of the statutory requisites for opening an investigation, including on the issue whether the Palestine qualifies as a ‘State’ for the purpose of article 12(3) of the Statute. The Office considered that a fair process required that the Palestinian National Authority as well as other interested parties had the opportunity to be heard. The Office therefore ensured due process to all parties involved.

## D. INTERPOL

83. The OTP continues to receive valuable support from INTERPOL, and most recently in relation to the Libya situation. On 9 September, upon request of the Prosecutor the previous day, INTERPOL issued three red notices for the arrest of ICC suspects Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi.

## E. Financial organizations

84. The President of the Court discussed matters concerning complementarity, national capacity building and the connection between justice and development with the Legal Vice-Presidency of the World Bank, which is spearheading a new initiative titled “Global Forum on Law, Justice Development”.

85. In April 2011, the Prosecutor participated in a High-Level Dialogue on Effective Global Enforcement to Counter Corruption organized by the World Bank. The participants (such as the President of the World Bank, the President of INTERPOL, and the Director-General of the European Anti-Fraud Office (OLAF)), adopted a declaration of principles on the need to work together to combat crime and corruption.

86. In addition, the OTP<sup>19</sup> discussed with the Inter American Development Bank (IDB) how financial institutions could contribute to the prevention of crimes, in particular through financing States’ educational programmes aimed at preventing violence, strengthening civics and conflict management capacities<sup>20</sup>.

## VI. Enhancing public information on, and promote an understanding of, the mandate and operations of the Court

87. The Court presented its Public Information Strategy<sup>21</sup> to the 9<sup>th</sup> Session of the ASP; this strategy forms the backbone of the Court’s efforts and plans on how to increase knowledge and understanding on its mandate and operations<sup>22</sup>.

88. The link between increased understanding and enhanced support for the Court has been regularly emphasized by the Court and its stakeholders and partners, including by the Assembly at the 2010 Review Conference of the Rome Statute.

89. While the Court is responsible for making information available, it must also rely on the support of partners and others in identifying and responding to information needs. States, international organizations, civil society and the media all play a critical role in enhancing awareness of the Court, increasing greater understanding of its work and generating support for its activities. A natural opportunity for this is for States to organize

<sup>19</sup> This is part of the efforts the OTP is developing after having identified education as one of the fundamental means to maximize the contribution of the Court to the prevention of future crimes.

<sup>20</sup> An example is the SREDECC project (Regional system of evaluation and development of citizenship competences), funded by the IADB, which includes Chile, Colombia, Guatemala, Mexico, Paraguay and the Dominican Republic, and which is meant to support the development of effective citizenship education programmes in Latin America.

<sup>21</sup> ICC-ASP/9/29. The Registry’s Public Information and Documentation Section (PIDS) is responsible for implementation of this strategy, in close cooperation with the Public Information Unit of the Office of the Prosecutor (PIU), the Trust Fund for Victims (TFV), Office of Public Counsel for Victims (OPCV), and Office of Public Counsel for the Defence (OPCD) and the Assembly in the development of programmes and activities. While an independent organ of the Court, the OTP relies on PIDS services for a great part of its work, such as dissemination of OTP messages where appropriate, organization of press conferences and administration of the Court website. The OTP PIU prepares OTP-specific messages related to OTP activities and areas that require confidentiality such as OTP preliminary examinations.

<sup>22</sup> The 2011-2013 Strategy noted that in addition to supporting Court wide public information objectives, OTP-specific public information output also reflects and supports inter-related Prosecutorial Strategy objectives, in particular a) Continued enhancement of cooperation with States and relevant actors, in particular for the execution of arrest warrants issued by the Court, b) Communicating on and publicizing the OTP’s preliminary examination work in order to trigger or contribute to efforts to stop violence, enhance national investigations and prosecutions of serious crimes, and make sure that the conducts charged by the ICC (e.g. recruitment and use of children in armed conflict, sexual violence, forcible displacement, infliction of conditions of life aimed at destroying a group, etc.) are known to all parties to conflicts in order to deter perpetrators, and c) Maximising the OTP’s contribution to the fight against impunity and the prevention of crimes.

awareness-raising efforts and visible public events each year around 17 July, which States Parties have declared as the Day of International Criminal Justice. In addition, next year will be the tenth anniversary of the entry into force of the Rome Statute.

90. The suggested guidelines below provide possible examples of how States may enhance the Court's public information and outreach efforts.

#### **Possible guidelines for States Parties on public information regarding the Court**

91. States Parties are well placed in the national, as well as in the international contexts, to use public platforms and media opportunities<sup>23</sup> to:

(a) pre-empt or rebut when possible inaccurate information or growing public misperceptions about the Rome Statute, the Court's mandate or its activities, including by explaining relevant aspects of the ICC mandate and jurisdiction;

(b) express support for the enforcement of the Court's decisions, request cooperation by all States Parties with the Court, and demand that any relevant initiative from the international community specifically take into account the Rome Statute and Court decisions;

(c) contribute to the marginalization of persons subject to outstanding ICC arrest warrants;

(d) facilitate and encourage increased cooperation between national government public information officials and ICC's public information officials, *inter alia* to plan and execute public information events during official missions, exchange and coordinate information, media alerts and actions concerning the ICC, to increase public understanding or address public misperceptions;

(e) generally use their communication networks and national mass media, such as television and radio, as well as other contacts, to increase the visibility of the Court and provide information regarding its role and activities; and

(f) support civil society initiatives aimed at promoting awareness of the ICC and the Rome Statute system, as well as assist with capacity building programmes in this regard.

92. The Presidency and judges can play an important role in advancing the Court's public information objectives through their participation in conferences, seminars, moot courts and media-related events. As the "external face of the Court", the President is naturally-situated to lead discussions on various aspects of the ICC and the Rome Statute system, taking into account the independence of the Prosecutor. The Prosecutor and Deputy Prosecutor lead OTP efforts to "increase the understanding of its work by local, national and international media in a consistent manner"<sup>24</sup>. Similarly, the Registrar explains the mandate of the Court in different fora ensuring that a neutral message is conveyed. Additionally, representatives of the Presidency, Chambers, OTP, Registry, TFV, OPCV, and OPCD are and will be further incorporated into new audiovisual programming explaining the ICC's role and activities before the Court. The OTP also disseminates to key partners accurate and timely information about specific OTP activities, through a variety of tools such as OTP Weekly Briefings<sup>25</sup>.

<sup>23</sup> Such as public events, statements delivered at inter/national bodies, public forums, media events, press conferences, scrums and stakeouts, media contacts, government publications, TV, radio, press interviews, op-eds, open letters, signed articles, etc.

<sup>24</sup> As part of the One Court approach, and as indicated in the OTP Prosecutorial Strategy for 2009-2012

<sup>25</sup> Contains regular updates on cooperation and galvanizing efforts to arrest

## VII. Conclusion

93. The Court generally benefits from strong cooperation and support from States Parties and intergovernmental organizations. During the reporting period, the Court officials and staff have continued to proactively engage with different States and organizations, mainstreaming contacts within the different national and intergovernmental Ministries, departments and offices, in order to provide adequate information and be transparent and predictable, so that the Court's activities can be factored in by all the relevant actors and their impact can be maximized.

94. The organs of the Court engage in systematic inter-organ coordination on cooperation related matters, thereby ensuring efficient use of resources and effective communication with States and other external actors, while safeguarding the integrity of the judicial process, prosecutorial and judicial independence and the distinct roles of each organ.<sup>26</sup>

95. Whilst the cooperation is generally forthcoming, it is crucial that the requests of the Judges are effectively executed at the national level by States Parties. Of particular concern is the fact that arrest warrants remain outstanding against 11 persons, many of them issued several years ago. The Court strongly urges States Parties to use every opportunity to secure execution of the pending arrest warrants. Furthermore, more can be done to ensure that judicial proceedings are not hindered or delayed by cases of lack of or unsatisfactory cooperation. In this sense, the Court highlights the need to conclude witness protection agreements as an urgent priority.

96. The Court would also like to highlight here the importance for States and other actors to consistently and strongly support the work of the Court through public information and communication activities. Following the ASP's request, the Court has proposed possible guidelines to States and looks forward to further engaging with States in this regard.

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<sup>26</sup> See Report of the Court on measures to increase clarity on the responsibilities of the different organs (ICC-ASP/9/34).