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Report of the Bureau on non-cooperation**I. Introduction**

1. At its tenth session, the Assembly of States Parties (“the Assembly”) adopted the “Assembly Procedures relating to non-cooperation”.¹ Paragraph 14, sub-paragraph (e) of these procedures calls on the Bureau to report on the outcome of any activities it undertook with regard to non-cooperation, including any recommendations for action. The present report is submitted pursuant to this provision.

2. Operative paragraph 10 of resolution ICC-ASP/11/Res.8 entitled “Strengthening the International Criminal Court and the Assembly of States Parties” of 21 November 2012, requested “the President of the Assembly to continue to engage actively and constructively with all relevant stakeholders, in accordance with the Bureau procedures on non-cooperation, both to prevent instances of non-cooperation and to follow up on a matter of non-cooperation referred by the Court of the Assembly”.

3. Two warrants of arrest are outstanding against the President of Sudan, Mr. Omar Al-Bashir. The Court issued them on 4 March 2009 and 12 July 2010, respectively. Additionally, the Court issued a warrant of arrest for the Minister of National Defence of the Sudanese Government, Mr. Abdel Raheem Muhammad Hussein, on 1 March 2012.

4. Mr. Al-Bashir visited Chad on 15 and 16 February 2013, as well as on 11 May 2013. Mr. Al-Bashir also visited Nigeria from 15-16 July 2013. Mr. Hussein is reported to have visited Chad from 24-25 April 2013 and the Central African Republic on 19 August 2013.

5. Pursuant to articles 86 and 89 of the Rome Statute, States Parties are obliged to execute the Court’s pending orders for the arrest and surrender. Chad has been a State Party to the Statute since 1 January 2007; the Central African Republic has been a State Party since 3 October 2001; and Nigeria has been a State Party since 27 September 2001.

II. Court findings

6. Consequently, the Court issued two decisions in 2013.

7. On 26 March 2013, Pre-Trial Chamber II of the Court rendered a decision on Chad’s non-compliance with the Court’s cooperation requests for the arrest and surrender of Mr. Al-Bashir.² The Chamber found that Chad failed to comply with its obligations to consult with the Chamber in accordance with article 97 of the Statute on the problem(s) that have impeded the execution of the requests for Mr. Al-Bashir’s arrest and surrender. The Chamber also found that Chad failed to cooperate with the Court by deliberately refusing to

¹ ICC-ASP/10/Res.5, annex, para. 9.

² “Decision on the Non-compliance of the Republic of Chad with the Cooperation Requests Issued by the Court Regarding the Arrest and Surrender of Omar Hassan Ahmad Al-Bashir”, ICC-02/05-01/09, 26 March 2013.

arrest and surrender Mr. Al-Bashir, thus preventing the Court from exercising its functions and powers under the Statute. This decision was communicated both to the United Nations Security Council and to the Assembly of States Parties.

8. On 5 September 2013, Pre-Trial Chamber II of the Court rendered a decision on Mr. Al-Bashir's visit to Nigeria. The Chamber took note of the Nigerian authorities' explanation for the visit found that the then-present circumstances did not warrant referral of the matter to the Assembly and/or the Security Council. In its decision the Chamber further reminded Nigeria of its obligations to execute the pending arrest warrant against Mr. Al-Bashir, and requested Nigeria to immediately arrest Mr. Al-Bashir and surrender him to the Court should a similar situation arise in the future.

III. Actions undertaken by the President of the Assembly and the Bureau, States Parties and other stakeholders

9. When the office of the President of the Assembly receives information about a planned visit to a State Party of a person whose arrest has been ordered by the Court, her office verifies the information with the State concerned, as well as other stakeholders who may have relevant information. The President then notifies States Parties, Observer States and civil society organizations, and encourages them to join efforts to prevent instances of non-cooperation.

10. In response to the visits of Mr. Al-Bashir and Mr. Hussein described above, the President sent such messages on 13 February, 15 February, 8 April, 24 April, 9 May and 28 August 2013.

11. The President also issued a press release on 20 February 2013, regretting the fact that the visit of Mr. Al-Bashir to Chad had taken place despite ICC orders and widespread calls by the international community for Chad to respect its obligations of cooperation with the Court. The President further issued a press release on 16 July 2013, calling upon the Government of Nigeria to fully comply with its Rome Statute obligations.

12. The President also sent letters addressed to the Foreign Ministers of the Central African Republic, Chad and Nigeria, met with representatives of those States in New York, The Hague and Brussels, as appropriate, and convened several Bureau meetings to address instances of non-cooperation.

13. In light of Mr. Al-Bashir's visit to Chad, the New York Working Group met on 8 March 2013 to informally discuss non-cooperation. The meeting was chaired by the Vice-President, coordinator of the Working Group. Many delegates expressed their concern, and urged Chad to avoid another instance of non-cooperation. Delegates also reflected on the applicability and constraints of the current Assembly non-cooperation procedures.

14. On 8 April 2013, after receiving the Court's decision on Chad's non-compliance, the President sent a message to States Parties informing about the Court's decision. The President further met with the President of the Security Council for the month of May 2013. In that meeting the President underlined that the assistance and support of the Security Council was essential since it had referred the situation in Darfur, Sudan, to the Court.

15. The President kept the Bureau informed of her activities on a regular basis. The agenda item "non-cooperation" was discussed at Bureau meetings on 12 February, 20 March, 26 April, 8 July and 18 September 2013. The Bureau also convened informally to consider its strategy regarding non-cooperation. In discussions over 2013, the Bureau saw merit in continuing with the current strategy, including messages from the President to States Parties to prevent instances of non-cooperation, and to keep discussing any modifications in the Bureau.

16. States Parties and other stakeholders, including civil society actors, also made demarches, issued statements and engaged in bilateral contacts.

IV. Focal points on non-cooperation

17. Paragraph 16 of the Assembly procedures on non-cooperation calls for the appointment of four regional focal points on non-cooperation from among the members of the Bureau; the President serves *ex officio* as focal point for her own region.

18. At its 29 May 2012 meeting, the Bureau appointed Japan as focal point for non-cooperation for the Asia-Pacific Group. As no candidates had come forward from the other regional groups during 2012 the Assembly decided to amend paragraph 16 of the procedures on non-cooperation³ in order to allow the Bureau to appoint four or, if so requested by the President of the Assembly, five focal points from among States Parties, on the basis of equitable geographical representation.

19. Belgium was appointed as focal point for non-cooperation for the Western European and other States group on 1 May 2013 via silence procedure. At its 8 July 2013 meeting, the Bureau appointed Uruguay as focal point for non-cooperation for the Latin American and Caribbean group.

20. To ensure effectiveness, the commitment of these regional focal points should extend beyond the individuals attending meetings, to higher diplomatic and political levels. This is the only way that the regional focal points can engage the good offices in preventing instances of non-cooperation as foreseen in the Assembly procedures on non-cooperation.

V. Conclusions

21. The Assembly procedures on non-cooperation state the following as their goal: “these procedures are aimed at enhancing the implementation of the Court’s decisions.” It is against this background that the effect of the President and the Bureau’s actions must be assessed.

22. Mr. Al-Bashir and Mr. Hussein visited several States Parties in 2013, without the arrest warrants being executed. Pre-Trial Chamber II made a non-cooperation finding with regards to Mr. Al-Bashir’s visit to Chad on 15 and 16 February 2013. In the case of Mr. Al-Bashir’s visit to Nigeria, Pre-Trial Chamber II took note of the Nigerian explanations and did not find it necessary to refer the matter to the Assembly or the Security Council. The purported visits of Mr. Hussein to Chad and to the Central African Republic are still under consideration by the Court.

23. The President undertook considerable efforts to prevent instances of non-cooperation, assisted by the Bureau, several States Parties and other stakeholders. In her letters to the Foreign Ministers of the Central African Republic, Chad and Nigeria the President indicated that States Parties are giving specific and continued attention to the issue of non-execution of requests of the Court, and that the Assembly has repeatedly expressed its concerns regarding the negative consequences that failure to comply with such requests has on the Court’s ability to carry out its mandate.

24. Nigeria reacted promptly to the communications by the President and the Registry. The Chamber has thrice found that Chad did not comply with its obligation to cooperate.⁴ The efforts of the President to engage with the authorities of the Central African Republic and Chad did not lead to any response so far.

³ ICC-ASP/11/Res.8, annex I.

⁴ “Decision informing the United Nations Security Council and the Assembly of States Parties to the Rome Statute about Omar Al-Bashir’s recent visit to the Republic of Chad”, ICC-02/05-01/09-109, 27 August 2010; “Decision pursuant to article 87(7) of the Rome Statute on the refusal of the Republic of Chad to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of Omar Hassan Ahmad Al Bashir”, ICC-02/05-01/09-140, 13 December 2011; “Decision on the Non-compliance of the Republic of Chad with the Cooperation Requests Issued by the Court Regarding the Arrest and Surrender of Omar Hassan Ahmad Al-Bashir”, ICC-02/05-01/09-151, 26 March 2013.

VI. Recommendations

25. The Bureau recommends that the Assembly, in its omnibus resolution, take note of the present report and increase its efforts to identify a non-cooperation focal point from a currently non-represented region.

26. The Bureau recommends that the Assembly, at its twelfth session, hold an informal meeting convened by the non-cooperation focal points to consider new avenues for addressing non-cooperation.

27. The Bureau recommends that the non-cooperation focal points, with the support of the Office of the President of the Assembly and of the Secretariat, organize a retreat with experts from capitals of States Parties represented in the Bureau to exchange views on how States Parties can effectively contribute to generating political support for the timely arrest and surrender of suspects, both in their bilateral contacts and activities in regional and international organizations. The Bureau welcomes in this regard the roadmap and concept paper on arrest strategies prepared by The Hague Working Group⁵ on how to enhance the prospect that the Court's requests for arrest and surrender are expeditiously executed. The Bureau also welcomes the suggestion of the Hague Working Group to prepare a report on lessons learnt and best practices in implementing and executing arrest warrants.

28. The Bureau requests that all stakeholders continue assisting the President of the Assembly, *inter alia* by providing timely information to the President regarding instances of non-cooperation.

⁵ Bureau report on cooperation (ICC-ASP/12/36), annex IV.