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**Fourteenth session**

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**Report of the Court on cooperation**

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## I. Introduction

1. This report on cooperation is submitted by the International Criminal Court (“ICC” or the “the Court”) pursuant to paragraph 27 of resolution ICC-ASP/13/Res.3 (“2014 Resolution on Cooperation”). It covers the period of 1 October 2014 to 1 September 2015.<sup>1</sup>
2. During the reporting period, the cooperation needs of the Court have continued to grow, due notably to the increase in its investigative, prosecutorial and judicial activities, as well as the complexities of the situations and challenges the Court deals with. The Registry transmitted 171 primary requests for cooperation<sup>2</sup> to States and international organizations on behalf of the Chambers, on behalf of the Defence or on its own account<sup>3</sup>. The Office of the Prosecutor (“OTP”) sent out 647 requests for assistance<sup>4</sup> to different partners, including States parties, non-State parties, and international and regional organizations during the reporting period, which represents an increase of nearly 82 per cent compared to the last reporting period.
3. Similar to the Court’s 2014 Cooperation Report<sup>5</sup>, this report is meant to provide an update to ICC States Parties on the different cooperation efforts undertaken by the Court with the support of States and other stakeholders during the reporting period.
4. The Court notes that its most recent analytical reports on cooperation matters, including its 2013 cooperation report<sup>6</sup>, as well as its 2013 “Report on the status of ongoing cooperation between the ICC and the United Nations (“UN”), including in the field”<sup>7</sup>, remain valid and useful sources of information regarding the key cooperation needs of the Court.
5. Furthermore, the Court would like to bring to the attention of the States Parties that it has recently revised the format and contents of its annual report to the UN, following comments received from the UN as well as from several representatives of States Parties based in New York. The revised Report is designed to provide additional information and analysis on specific areas of cooperation between the Court and the UN system, including on the role States can play to further enhance this cooperation.
6. Finally, the Court also notes that the 66 recommendations on cooperation adopted by States Parties in 2007<sup>8</sup> remain highly relevant and continue to form an important basis for cooperation discussions and efforts, including making the assistance to the Court more efficient and effective. The Court welcomes the decision of the Assembly<sup>9</sup> to request the Bureau to review the Recommendations in close cooperation with the Court.
7. In this context, the Court thanks the President of the Assembly of States Parties, Minister Sidiki Kaba, for his strong commitment, as well as the two co-facilitators of The Hague Working Group (HWG) on Cooperation, Ambassadors Diop Sy (Senegal) and Van Hoorn (The Netherlands) for their guidance, in working together with the Court to identify seven cooperation priorities, in line with the Court’s past reports and its twelve years of experience. These seven cooperation priorities were publicized in the flyer that was produced by the co-facilitators in cooperation with the Court in order to promote the 66 recommendations and increase their understanding and implementation.
8. In the Court’s view, these identified areas of priority provide an adequate basic framework to enhance discussions and engage concretely on tangible actions involving the

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<sup>1</sup> Certain information is not provided in this report in order to respect the confidentiality of a number of investigative and prosecutorial activities by the Office of the Prosecutor, as well as decisions and orders by the Chambers.

<sup>2</sup> This figure does not include follow-up requests for cooperation or requests sent as a result of the signature of a framework cooperation agreement with a State.

<sup>3</sup> This number does not reflect notifications of judicial documents, missions and requests concerning the signature of voluntary cooperation agreements.

<sup>4</sup> This number includes notifications of missions of the OTP, as well as bulk monthly notifications concerning multiple missions sent to situation countries in which the OTP has a high volume of investigative activities.

<sup>5</sup> ICC-ASP/13/23.

<sup>6</sup> ICC-ASP/12/35.

<sup>7</sup> ICC-ASP/12/42.

<sup>8</sup> Resolution ICC-ASP/6/Res.2, annex II.

<sup>9</sup> 2014 resolution on cooperation, para. 24.

Court, States and other stakeholders, mindful of specific interests and capacities as well as the cooperation obligations established in Part IX of the Rome Statute.

9. Furthermore, the Court hopes that the identification of these seven priorities and the development of the 66 recommendations flyer will serve as a useful lens that will help the relevant partners to focus their actions towards increasing and strengthening the cooperation between the Court, States and other stakeholders. The Court will continue to actively seek opportunities, and whenever possible take part in activities aimed at contributing to these efforts.

10. This updated report from the Court is thus meant to highlight the recent efforts undertaken by the Court, such as the regional cooperation seminars and the seminars with regional or international organizations, with a view to attaining the strategic objectives set out by the Court to enhance cooperation and find solutions for the specific challenges identified by the seven cooperation priorities. In this context, the Court wishes to recognize in particular the generous contribution of the European Commission for projects for fostering cooperation, which have made it possible to implement many of these activities.

## **II. Cooperation seminars and joint seminars with regional and international organizations**

### **A. Regional cooperation seminars**

11. During the reporting period, the Court organized, thanks to the financial contribution of the European Commission, Norway and the Netherlands, a *seminar on fostering cooperation for Francophone African States Parties and non-States Parties* in Cotonou, Benin, on 29-30 October 2014.

12. Following on the earlier seminars organized in 2013 and 2014, and in line with the Court's strategic goal of becoming a well-recognized and adequately supported institution, these seminars have been tailored to promote cooperative relationships between the ICC and the participating States on key priority areas identified by the Court.

13. Recognizing that the ICC's current situation countries are all located on the African continent, and taking into account concerns and discussions regarding the relationship between Africa and the ICC, regional cooperation seminars taking place on the African continent are also aimed at stimulating candid and in-depth discussions on some of the most relevant issues regarding cooperation between the ICC and African States, notably the protection of witnesses, State cooperation during ICC investigations, voluntary agreements, as well as the connection between national capacity building and cooperation. Furthermore, the seminars are aimed at strengthening the network among States themselves as well as between the ICC and States.

14. The Cotonou seminar brought together government representatives and other high level officials from seven francophone African States (Benin, Cameroon, Republic of the Congo, Mali, Morocco, Senegal and Togo). Discussions focussed mainly on the areas of the Court's investigative and judicial activities and the related cooperation needs, witness protection, implementing legislation for facilitating cooperation with the ICC, framework agreements, and capacity building in the justice sector. As a direct outcome of this seminar, one State undertook to enter into two cooperation agreements.

15. Following the Court's efforts in the past years to enhance its interaction with the Latin American and Caribbean region<sup>10</sup>, and in particular the first regional cooperation seminar organized in May 2014 in the region (Buenos Aires, Argentina), the Court held a *high-level cooperation seminar for Spanish-speaking Central and North American States* in San José, Costa Rica, on 9-10 July 2015. This seminar was organized with the financial support of the European Commission.

16. Participants to this seminar included senior officials from Costa Rica, Guatemala, Mexico, Panama and El Salvador, as well as regional experts. The focus of the discussions was on the national and regional experiences in fighting impunity, the mandate and the

<sup>10</sup> See the 2014 ICC report on cooperation (ICC-ASP/13/23), paras. 20-22.

activities of the Court in the areas of preliminary examinations and investigations, witness protection, voluntary agreements, and regional coordination in order to strengthen national capacities to deal with massive crimes and to cooperate with the Court.

17. The Court used this opportunity to also engage with parliamentarians from Costa Rica and El Salvador, enabling informed discussion on accession to (in the case of El Salvador) and full implementation of the Rome Statute. During the meeting hosted by the Legislative Assembly of Costa Rica and co-organized by Parliamentarians for Global Action (PGA), El Salvadoran parliamentarians expressed their willingness to continue working on the accession to the Rome Statute in order to make it a reality in the near future.

18. The Court would like to thank the host States of the aforementioned seminars, namely Benin and Costa Rica, for their valuable support and assistance; the Court expects that the *cooperation seminar for Southern African States*, which is scheduled to take place on 29-30 October 2015 in Botswana, will be as successful as the previous seminars.

19. The Court foresees that additional seminars in other regions will be organized this and/or next year.

## **B. Seminars and roundtables with international and regional organizations**

20. As part of the priority area of raising awareness and enhancing understanding regarding the Rome Statute and the Court, including at the regional and international levels, the ICC has continued to increase its efforts to engage with international and regional organizations during the reporting period.

21. This is in line with Recommendation 61<sup>11</sup>, as well as with the 2014 resolution on cooperation, which emphasizes “the importance of States Parties enhancing and mainstreaming diplomatic, political and other forms of support for, as well as promoting greater awareness and understanding of the activities of the Court at the international level, and encourages States Parties to use their capacity as members of international and regional organizations to that end”<sup>12</sup>.

22. During the reporting period, the Court participated in the annual *ICC-UN roundtable meeting*, which took place in New York from 15-16 December 2014, in the margins of the thirteenth session of the Assembly of States Parties. Participants in the roundtable included representatives of the three organs of the Court, as well as from various UN offices and departments, both from headquarters in New York, and via video-conference from offices in Geneva, Vienna, Kinshasa, Abidjan, Bamako, Bangui and Addis Ababa. Discussions included an update on the different investigative and judicial activities of the Court, possible complementarity initiatives in situation countries and countries under preliminary examinations, best practices in UN-ICC cooperation, and implementation of the guidelines on non-essential contacts.

23. The Court further continued preparations for the *fourth ICC-African Union (AU) Joint Seminar*, which is scheduled to take place on 23 October 2015 in Addis Ababa. In consultations between the Court and the AU Commission, and in line with the Court’s strategy to continue engaging with the AU, the objectives of this seminar are to continue dialogue and exchange of views between the ICC and the AU, to explore further avenues of engagement, cooperation and coordination in the framework of the complementarity principle enshrined in the Rome Statute, to identify areas of mutual interest and concern and explore possibilities for synergies, including sharing of experiences and lessons learned on issues such as Sexual and Gender-Based Crimes and Protection of Children in Armed Conflict, and to exchange views on the relationship between the ICC and the proposed criminal jurisdiction of the African Court of Justice and Human Rights. The general goal will also be to develop possible strategies or practical actions for ICC-AU cooperation, as well as to discuss possible practical recommendations. The Court is thankful to the AU for co-organizing this seminar, as well as to the Organisation internationale de la Francophonie (“OIF”) and the European Commission for their financial support.

<sup>11</sup> “States Parties should through their membership of international and regional organizations work to promote the mainstreaming of Court issues, horizontally and vertically within the organizations”.

<sup>12</sup> Para. 10.

24. Similarly, the Court continues to engage with other regional organisations, including the European Union and its External Action Service, EEAS. Discussions are underway for convening a second ICC-EU roundtable meeting later this year, as well as on a working session of the Organization of American States on the ICC, with the Court's participation.

### **C. Seminar of Counsel and the Legal Profession and Focal Points Seminar**

25. The Court plans to organize a second Seminar of Counsel and the Legal Profession in January 2016 in an English-speaking African country, building on the experience of the seminar organized in Senegal in 2014. The overall objectives will be to increase the understanding of the mandate of the Court among lawyers of the region, create opportunities for the latter to network with each other, welcome new members to the list of counsel, and strengthen their capacity to swiftly intervene in ICC proceedings when required.

26. The Court organized a *Seminar for the Focal Points of the situation countries and neighbouring countries* from 17 to 21 November 2014 at the seat of the Court with the support of the Netherlands, Finland and France. The purpose of this roundtable was to facilitate a direct exchange of views and experiences between the relevant staff of the Court involved in judicial and general cooperation activities, including the OTP cooperation advisers for each situation, and their primary cooperation interlocutors in the situation countries and other relevant States, as well as between the focal points themselves on cross cutting topics.

27. As recognized by recommendation 7 of the 66 recommendations on cooperation<sup>13</sup>, the role of the focal points is absolutely crucial for the Court, as requests for cooperation are channelled through them. It is therefore essential that they are kept informed of the judicial developments and the evolving needs of the Court, as well as being given an opportunity to voice and share their experiences in order to facilitate effective cooperation.

28. The Court is planning to convene a second Seminar for the focal points at the seat of the Court from 2 to 6 November 2015.

## **III. Topics discussed in the context of the 2015 The Hague Working Group cooperation facilitation**

### **A. Action Plan on Arrest Strategies**

29. The Court participated actively in discussions on the draft Action plan on arrest strategies and is grateful for the efforts of the Rapporteur and others to consolidate proactive measures regarding arrest, based on best practices and lessons learned.

30. The Court continues to underline the importance for States Parties to enhance, through comprehensive strategies and in a holistic manner, the prospect that requests of the ICC for the arrest and surrender of individuals are expeditiously executed.

31. The Court appreciates the efforts of the Assembly of States Parties aimed at creating an Action plan on arrest strategies, with possible measures to be adopted by States Parties and other actors in relation to situation- or case-specific instances, such as conditionality policies, isolation of fugitives and/or collaborative engagement in multilateral fora. Political support is critical to achieving the objective of enhancing prospects for arrests.

### **B. The 66 recommendations review and the identification of seven cooperation priorities**

32. Paragraph 24 of the cooperation resolution ICC-ASP/13/Res.3 adopted at the thirteenth session of the ASP requested "the Bureau, through its Working Groups, to review

<sup>13</sup> Recommendation 7: "States Parties may consider designating a national focal point tasked with the coordination and mainstreaming of Court-issues within and across government institutions".

the 66 recommendations on cooperation adopted by States in 2007, in close cooperation with the Court”.

33. These recommendations have proven to be of great importance, both for States Parties as well as the Court, as they give general guidance and identify the areas of priority and challenges regarding cooperation. They also address possible remedies for overcoming challenges identified for States and the Court, thus reinforcing cooperation.

34. Although the recommendations were adopted eight years ago, most are still valid and of crucial importance for the effective functioning of the Court in terms of cooperation in support of investigations and judicial proceedings, other forms of assistance, support for the Court in the UN context, etc.

35. The Court is therefore appreciative of the decision of States Parties not to reopen the 66 recommendations document, but rather, as highlighted in the draft flyer on the 66 Recommendations produced by the co-facilitators and the Court on 3 June 2015, to agree that the priority should now be the full implementation of these recommendations.

36. In this context, in order to make the discussions more focused and to obtain tangible results, seven cooperation priority areas were identified, in line with the 66 recommendations and the past reports of the Court on cooperation, as well as the recent discussions in the Hague Working Group on the issue.

37. Furthermore, during the informal meeting of The Hague Working Group on cooperation on 25 August 2015, representatives from the three organs of the Court engaged with State Party representatives and civil society regarding three of these priorities (Implementation of procedures and effective structures at the national level regarding cooperation and judicial assistance; Voluntary cooperation; and Public and diplomatic support), allowing the Court to elaborate on specific areas where lack of or limited cooperation has a concrete negative impact on the capacity of the Court to operate, thus decreasing its efficiency. Key points from the Court’s presentations are summarized below.

38. *Implementation of procedures and effective structures at the national level regarding cooperation and judicial assistance:* The OTP noted that, in connection with its investigative and prosecutorial activities, over 60 per cent of the requests for assistance it had sent in 2014 had been successfully executed, which denotes of a positive level of cooperation between States and other stakeholders and the Office.

39. It is however crucial to understand that for international cooperation and judicial assistance to be attainable, it requires first and before all else the existence and enactment of the necessary national legal mechanisms, as well as the setting-up of effective procedures or mechanisms at the national level that will be used by the State to deal with the Court's requests for cooperation.

40. Based on the experiences of the *ad hoc* tribunals, as well as its twelve years of experience, the ICC has identified several factors that contribute to making these cooperation "pre-conditions" effective and efficient. They are flexible, and of course correspond to a final decision taken by each State, but are nonetheless important to strengthen the regime of cooperation under the Rome Statute and to ensure the success of the Rome Statute system. These include, *inter alia*:

- (a) *Implementing legislation of Part IX of the Rome Statute* (article 88 of the Rome Statute, recommendations 1- 4): Adequate implementing legislation at the national level, including through integration of the relevant provisions of Part IX of the Rome Statute into national legislation, greatly assists efficient cooperation. At the same time, the unavailability of domestic procedures for cooperation is not a valid ground for a State’s refusal to execute a cooperation request from the Court. The Court notes the important work by PGA, which has developed model laws of implementing legislation in English, French and Spanish, and has been working with numerous States Parties to facilitate the drafting and adoption of legislation. To date, 53 States Parties have adopted implementing legislation on Part IX of the Rome Statute, i.e. less than half the ICC States Parties.
- (b) *Identification of channels of communication, focal points and national mechanisms of judicial assistance* (article 87 of the Rome Statute, recommendations 7 and 8):

The availability of channels of communication and simplified domestic procedures for dealing with ICC cooperation requests, as well as coordination between national authorities dealing with cooperation requests, are of great importance for the Court. It is important to note here that by "focal points", we are not referring to a person, but rather to the existence of a structure or mechanism that will remain in place and effective even when specific individuals leave their function as ICC focal points. The Court highly values efforts to enhance the coordination and the mainstreaming of its cooperation needs within and across national authorities (as noted above in the context of the organization of a seminar on focal points). In this context, the Court is grateful for the efforts led by Belgium regarding the feasibility of the establishment of a coordinating mechanism of national authorities dealing with cooperation with the ICC.

- (c) *Bilateral cooperation agreements*: The terms and procedures for the transmission of requests may be specified in bilateral judicial cooperation agreements concluded with States by the Court or, in some cases, by the Prosecutor (pursuant to article 54(3)(d)). Such agreements allow the Court and States to agree on simplified procedures for cooperation, and have been concluded with some high frequency cooperation States, as well as States in whose situations the OTP is investigating.
- (d) *The production by the Court of focused requests for cooperation*: The Court will on its part continue to endeavour to submit tailored and focused requests, in order to meet the expectations of States and their (legal) requirements, and also in line with recent Assembly resolutions on cooperation. As a matter of practice, and on the basis of article 96, the OTP has developed a practice to consult, if and when appropriate, with national authorities prior to the submission of a request, to ensure requests and the information contained therein are sufficiently clear and adequate and take into account particular requirements foreseen in national law, as long as this is not contradictory to the mandate of the Court and the provisions of the Rome Statute. This practice will help avoid delays and the need for the submission of successive requests.

41. *Voluntary cooperation*: Concerning witness protection and relocation agreements, the Registry continues to look for alternative solutions in addition to the 15 existing agreements on the relocation of witnesses. It is important to stress that the implementation of *ad hoc* solutions by the Registry to supplement the lack of relocation agreements entails a double cost. The first cost is on the quality of life of the relocated witness and relatives who are unable to resettle in a new environment and live in the constant anxiety inherent to temporary situations. The second cost is financial due to the increased management costs in relation to temporary solutions. By way of example, witnesses cannot reintegrate in the society and find a job thereby making a living; medical costs are extremely high due to the absence of insurance; and children must be placed in international schools until it is clear in which country they will be schooled. In average, the costs associated with temporary solutions are elevated between 45 per cent and 75 per cent.

42. The Court also has an increasingly urgent need for the conclusion of new agreements on the enforcement of sentences in addition to the eight existing ones, in order to better share the responsibility among the States Parties and to have sufficient variety for different kinds of situations that may arise in terms of geographical, legal, social, cultural, linguistic, security and other factors. Despite the Court's intensive efforts as well as negotiations conducted with several States Parties, no new agreements have been signed since January 2012.

43. *Public and diplomatic support*: Finally, the Presidency emphasized that the diplomatic and public support of States – in national, bilateral, regional and international settings – is important for several purposes, such as the promotion of the ratification and full implementation of the Rome Statute, promoting respect for the Court's independence, and supporting the ICC's activities in general as well as in specific situations, including the arrest and surrender of suspects. States have a key role in creating a political atmosphere conducive to full cooperation with the ICC as well as for preventing instances of non-cooperation. The United Nations framework is particularly important in this regard, and States Parties with a seat on the Security Council should take active steps to ensure that the

Court's interests are taken into account in relevant discussions and decisions, especially to follow up on resolutions referring situations to the ICC Prosecutor.

## **IV. Conclusion**

44. The Court looks forward to continuing its active engagement with States Parties, including through The Hague Working Group cooperation facilitation, in order to find creative, tangible and concrete solutions to address the seven cooperation priorities identified. The different activities carried out by the Court during the reporting period should be understood as part of a wider strategy to enhance cooperation and find solutions for the specific challenges identified.

45. The Court would warmly welcome any initiatives by States to engage in dialogue with the Court on the issues addressed this report, to provide feedback, or to discuss proposals for the purpose of enhancing cooperation and for solving any obstacles that may exist.

46. The Court underlines that the timely, consistent and strong support and cooperation from States Parties, as well as other relevant stakeholders, is essential to allow the Court to fulfil its mandate effectively and efficiently, providing meaningful justice to victims and the affected communities, as well as reinforcing the legitimacy and credibility of the Rome Statute system and the commitment of the international community towards it.

47. In line with the ongoing efforts to streamline the working methods of the Bureau and its working groups, the Court would like to respectfully suggest to States Parties the possibility to merge its future reporting on cooperation with its annual report on activities to the Assembly (similar to the revised format of the Court's 2015 report to the UN); this would contribute to reducing the number of reports produced every year by the Court, while ensuring that States Parties can find information regarding the Court's activities in one single document. Should there be a specific cooperation issue that requires in-depth focus, the Court could maintain a certain flexibility to produce a separate cooperation report on that issue.

48. The Court is thankful to the Assembly and the States Parties, as well as many non-States parties and other stakeholders and partners, for their cooperation and support and remains available for further discussion or information on the basis of this as well as past reports.

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