



# Assembly of States Parties

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The Hague, 18-26 November 2015

### Report of the Bureau on non-cooperation

#### I. Introduction

1. Article 112(2)(f) of the Rome Statute provides that “the Assembly shall consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation.”
2. At its tenth session, the Assembly of States Parties (“the Assembly”) adopted the “Assembly Procedures relating to non-cooperation.”<sup>1</sup> 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.
3. In operative paragraph 14 of resolution ICC-ASP/13/Res.5, titled “Strengthening the International Criminal Court and the Assembly of States Parties”, the Assembly “[r]ecalls the non-cooperation procedures adopted by the Assembly in ICCASP/10/Res.5, recognizes with concern the negative impact that the non-execution of Court requests has had on the ability of the Court to execute its mandate, takes note of the decisions of the Court conveyed to the Assembly to date and of the report of the Bureau on non-cooperation; welcomes the efforts of the President of the Assembly of States Parties in implementing the procedures on non-cooperation during her tenure and recalls that the President serves ex officio as focal point for his or her region; calls upon all stakeholders, at all levels, to continue assisting the President of the Assembly of States Parties, including when accomplishing his task with the support of the regional focal points for noncooperation.”
4. In operative paragraph 15 of resolution ICC-ASP/13/Res.5, the Assembly, “[a]lso recalls the role of the Assembly of States Parties and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, welcomes the efforts of States Parties to strengthen the relationship between the Court and the Council, calls on States Parties to continue their efforts to ensure that the Security Council addresses the communications received from the Court on noncooperation pursuant to the Rome Statute, welcomes the efforts of the President of the Assembly to consult with the Security Council and encourages both the Assembly and the Security Council to strengthen their mutual engagement on this matter.”
5. At its thirteenth session, the Assembly, “request[ed] 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 to the Assembly;<sup>2</sup> and further requests the Bureau to actively engage throughout the inter-sessional period with all relevant stakeholders to continue to ensure the effective

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<sup>1</sup> ICC-ASP/10/Res.5, para. 9 and annex, amended via ICC-ASP/11/Res.8, para. 10 and annex.

<sup>2</sup> ICC-ASP/13/Res.5, Annex I, para 2(a).

implementation of the non-cooperation procedures and to submit a report on its activities to the Assembly at its fourteenth session with recommendations in light of lessons learned.”<sup>3</sup>

6. In, operative paragraph 7 of resolution ICC-ASP/13/Res.3 entitled “Cooperation”, the Assembly, “[w]elcomes the continued efforts of the President of the Assembly in implementing the non-cooperation procedures” and “encourages the Assembly to keep said procedures and their implementation under review in order to secure their effectiveness, including with regard to ensuring early notification to States Parties of opportunities to work together to avoid non-cooperation”.

7. 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 his own region. In 2012, the Assembly decided to amend paragraph 16 of the procedures on non-cooperation<sup>4</sup> in order to allow the Bureau to appoint four or, if so requested by the President of the Assembly, five focal points from among all States Parties, on the basis of equitable geographical representation.

8. At its 12 March 2015 meeting, the Bureau appointed Belgium and Uruguay as non-cooperation focal points for their respective regional groups, while reiterating that the President serves *ex officio* as focal point of his region. Via a silence procedure ending on 7 April 2015, the Bureau appointed the Czech Republic and Japan as focal points for their respective regional groups. The focal points are appointed on an *ad country* mandate, which implies that the respective countries are engaged at high diplomatic and political levels in New York, The Hague, capitals and where appropriate, in other embassies.

9. Twelve public warrants of arrest remain outstanding against 14 individuals: (a) Côte d’Ivoire: Simone Gbagbo, since 2012; (b) Democratic Republic of the Congo: Sylvestre Mudacumura, since 2012; (c) Kenya: Walter Barasa, since 2013, and Paul Gicheru and Philip Kipkoeh Bett, since 2015; (d) Libya: Saif Al-Islam Gaddafi, since 2011; (e) Darfur (the Sudan): Ahmad Harun and Ali Kushayb, since 2007; Omar Al Bashir, since 2009; Abdel Raheem Muhammad Hussein, since 2012; and Abdallah Banda Abakaer Nourain, since 2014; and (f) Uganda: Joseph Kony, Vincent Otti and Okot Odhiambo, since 2005.

10. During the reporting period, the Court referred to the Security Council two findings of non-cooperation in relation to the situation in Darfur, the Sudan, and one finding in relation to the situation in Libya.

## II. Court proceedings and findings: States Parties

11. Pursuant to article 86 of the Rome Statute, States Parties shall, in accordance with the provisions of the Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court. Pursuant to article 89, States Parties are obliged to execute the Court’s pending orders for the arrest and surrender.

12. In relation to the situation in Darfur, during the period covered by this report, Mr. Al-Bashir visited South Africa on 13 and 14 June to attend the 25<sup>th</sup> session of African Union Summit. South Africa has been a State Party since 27 November 2000.

13. On the basis of a request from the Prosecutor, on 13 June 2015, Judge Cuno Tarfusser, Presiding Judge of Pre-Trial Chamber II, issued “Decision following the Prosecutor’s request for an order further clarifying that the Republic of South Africa is under the obligation to immediately arrest and surrender Omar Al Bashir.”<sup>5</sup> The decision stated that “there exists no ambiguity or uncertainty with respect to the obligation of the Republic of South Africa to immediately arrest and surrender Omar Al Bashir to the Court, and that the competent authorities of the Republic of South Africa are already aware of this obligation.”

<sup>3</sup> ICC-ASP/13/Res.5, Annex I, para 2(g).

<sup>4</sup> ICC-ASP/11/Res.8, annex I.

<sup>5</sup> Decision following the Prosecutor’s request for an order further clarifying that the Republic of South Africa is under the obligation to immediately arrest and surrender Omar Al Bashir, ICC-02/05-01/09-242, 13 June 2015.

14. On 4 September 2015, the Pre-Trial Chamber issued an order requesting submissions from South Africa for purposes of proceedings under article 87(7) of the Rome Statute, granting South Africa the possibility of filing a submission in this respect until 5 October 2015.<sup>6</sup> Pursuant to a request from South Africa to extend the time-limit until the finalization of the domestic judicial process in South Africa in relation to the circumstances surrounding Al Bashir's departure from the African Union summit in South Africa,<sup>7</sup> on 15 October 2015, the Pre-Trial Chamber granted the request and agreed to extend the time-limit and ordered South Africa to promptly inform the Court of any developments in the relevant domestic judicial proceedings as they occur. Should no such development materialize prior to 15 December 2015, the Republic of South Africa is hereby instructed to inform the Court accordingly no later than 31 December 2015. Should the relevant domestic proceedings conclude before this date, the Republic of South Africa is hereby ordered to submit its views on the events surrounding Omar Al Bashir's attendance of the African Union summit in Johannesburg on 13, 14 and 15 June 2015, 15 days after such conclusion.<sup>8</sup>

15. On 29 November 2013, the Prosecution filed an application for a finding of non-compliance pursuant to article 87(7) of the Statute against the Government of Kenya.<sup>9</sup> Following a decision by the Appeals Chamber of 19 August 2015,<sup>10</sup> the Trial Chamber has not decided on the matter.

### **III. Court proceedings and findings: States under an obligation to cooperate with the Court pursuant to a decision of the United Nations Security Council**

16. Pursuant to Security Council resolution 1593 (2005),<sup>11</sup> the Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor. Also, pursuant to Security Council resolution 1970 (2011),<sup>12</sup> the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor.

17. The obligations of Libya towards the Court have been upheld in numerous judicial decisions of the Pre-Trial and Appeals Chambers of the Court.<sup>13</sup> On 10 December 2014, Pre-Trial Chamber I, while acknowledging "that, throughout the proceedings, Libya has demonstrated in several respects its commitment to the Court,"<sup>14</sup> found "that Libya has failed to comply with the request to surrender Saif Al-Islam Gaddafi to the Court and that Libya has failed to comply with the request by the Court to return to the Defence of Saif Al-Islam Gaddafi the originals of the documents that were seized in Zintan by the Libyan authorities from the former Defence counsel for Saif Al-Islam Gaddafi and destroy any copies thereof."<sup>15</sup> The Chamber decided that the matter of Libya's non-compliance with these requests for cooperation by the Court be referred, through the Presidency in

<sup>6</sup> Order requesting submissions from South Africa for purposes of proceedings under article 87(7) of the Rome Statute, ICC-02/05-01/09-247, 4 September 2015.

<sup>7</sup> Registry transmission of the submissions from the Republic of South Africa in response to the Order requesting submissions for the purposes of proceedings under article 87(7) of the Rome Statute (ICC-02/05-01/09-247), dated 4 September 2015, ICC-02/05-01/09-248, 5 October 2015.

<sup>8</sup> Decision on the request of the Republic of South Africa for an extension of the time limit for submitting their views for the purposes of proceedings under article 87(7) of the Rome Statute, ICC-02/05-01/09-249, 15 October 2015.

<sup>9</sup> ICC-01/09-02/11-1032, 19 August 2015.

<sup>10</sup> ICC-01/09-02/11-1032, 19 August 2015.

<sup>11</sup> S/Res/1593 (31 March 2005), paragraph 2.

<sup>12</sup> S/Res/1970 (26 February 2011), paragraph 5.

<sup>13</sup> Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi, ICC-01/11-01/11-72, 7 March 2012, paras 12 and 13; Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute, ICC-01/11-01/11-163, 1 June 2012, paras 27 to 30; Decision on the request for suspensive effect and the request to file a consolidated reply, ICC-01/11-01/11-480, 22 November 2013, para. 18; and Decision requesting Libya to provide submissions on the status of implementation of its outstanding duties to cooperate with the Court, ICC-01/11-01/11-545, 15 May 2014, para. 2.

<sup>14</sup> Decision on the non-compliance by Libya with requests for cooperation by the Court and referring the matter to the United Nations Security Council, ICC-01/11-01/11-577, 10 December 2014, para. 31.

<sup>15</sup> *Ibid.*, p. 16.

accordance with regulation 109(4) of the Regulations, to the United Nations Security Council.

18. With respect to Sudan, on 9 March 2015 and on 26 June 2015, Pre-Trial Chamber II found “that the Republic of Sudan has failed to cooperate with the Court by deliberately refusing to liaise with the relevant organs of the Court and execute the pending requests for the arrest and surrender of Omar Hassan Ahmad Al Bashir and Abdel Raheem Muhammad Hussain, respectively, thus preventing the Court from exercising its functions and powers under the Statute; and that it has failed to consult the Court in accordance with article 97 of the Statute and rule 195(1) of the Rules on any problem(s) which could have impeded the execution of the requests for arrest and surrender of the two suspects, namely to bring to the attention of the Court relevant information which would have assisted it in deciding on any such problem.”<sup>16</sup> Pursuant to the same decision, and in accordance with regulation 109(4) and to article 17(3) of the UN-ICC Relationship Agreement, the President of the Court transmitted to the United Nations Security Council both decisions.

19. On 16 October 2015, the Office of the Prosecutor<sup>17</sup> requested that the Chamber issue a finding of non-compliance by the Republic of the Sudan in the Banda case, pursuant to article 87(7) of the Statute. As regulation 109(3) of the Regulations requires that the Chamber give the requested State an opportunity to be heard before making any article 87(7) finding, the Chamber has ordered the Registry to notify the competent Sudanese authorities of the Prosecution’s request and requested that any observations the Government of Sudan has on this request be filed by 9 November 2015.<sup>18</sup> The Trial Chamber’s request was sent to the Sudanese Embassy in The Hague for their attention; the Registry was notified on 9 November 2015 by the courier service that the Sudanese Embassy had refused delivery of the Note Verbale, which was subsequently returned to the Registry.

#### IV. Court proceedings and findings: States not Parties

20. While States not party to the Rome Statute have no obligation under the Statute, pursuant to Security Council resolutions 1593 (2005) and 1970 (2011), all States and concerned regional and other international organizations are urged to fully cooperate with the Court and the Prosecutor.<sup>19</sup>

21. During the reporting period, the Court, via the Registry, invited the competent authorities of numerous non-States Parties to the Statute to arrest Omar Hassan Ahmad Al-Bashir, in the event he enters their territory, and to surrender him to the Court, reminding them of Security Council resolution 1593 (2005), and invited the said States to cooperate with the Court in Mr. Al-Bashir’s arrest and surrender to the Court. These States included: Egypt in relation to a visit on 18 and 19 October 2014,<sup>20</sup> on 28 and 29 March 2015,<sup>21</sup> and on 15 October 2015;<sup>22</sup> Ethiopia on 5 November 2014,<sup>23</sup> on 8 December 2014,<sup>24</sup> and on 23 January 2015;<sup>25</sup> the United Arab Emirates from 21 to 24 February 2015;<sup>26</sup> Saudi Arabia, from 25 to 26 March 2015,<sup>27</sup> from 20 to 23 May 2015, and from 11 to 15 July 2015;<sup>28</sup> Mauritania, on 26 July 2015;<sup>29</sup> South Sudan, on 26 August 2015;<sup>30</sup> to China on 3 September

<sup>16</sup> Decision on the Prosecutor’s Request for a Finding of Non-Compliance Against the Republic of the Sudan, ICC-02/05-01/09-227, 9 March 2015 and Decision on the Prosecutor’s request for a finding on non-compliance against the Republic of the Sudan, ICC-02/05-01/12-33, 26 June 2015.

<sup>17</sup> Public redacted version of “Prosecution’s request for a finding of non-compliance against the Republic of the Sudan in the case of The Prosecutor v Abdallah Banda Abakaer Nourain pursuant to article 87(7) of the Rome Statute”, ICC-02/05-03/09-636-Red, 16 October 2015.

<sup>18</sup> Decision Requesting Submissions from the Government of Sudan on the Prosecution’s Request for a Finding of Non-Compliance, ICC-02/05-03/09-638, 19 October 2015.

<sup>19</sup> S/Res/1593 (31 March 2005), paragraph 2, and S/Res/1970 (26 February 2011), paragraph 5.

<sup>20</sup> ICC-02/05-01/09-212, 15 October 2014.

<sup>21</sup> ICC-02/05-01/09-232, 24 March 2015.

<sup>22</sup> ICC-02/05-01/09-246, 12 August 2015.

<sup>23</sup> ICC-02/05-01/09-215, 4 November 2014.

<sup>24</sup> ICC-02/05-01/09-218, 8 December 2014.

<sup>25</sup> ICC-02/05-01/09-222, 23 January 2015.

<sup>26</sup> ICC-02/05-01/09-224, 24 February 2015.

<sup>27</sup> ICC-02/05-01/09-232, 24 March 2015.

<sup>28</sup> ICC-02/05-01/09-246, 12 August 2015.

<sup>29</sup> ICC-02/05-01/09-251, 23 October 2015.

<sup>30</sup> *Ibid.*

2015;<sup>31</sup> and to India on 29 October 2015.<sup>32</sup> The Court also took action with respect to travels to Saudi Arabia, Kuwait and Bahrain in February 2015, but the visits from Al-Bashir were not confirmed and seemingly did not take place.<sup>33</sup> The Court was also informed of a visit on 24 May 2015 to Qatar, and at the end of July to Ethiopia.<sup>34</sup> In these cases, no action was taken as it was too late to do so.<sup>35</sup>

22. In no instance was there a response from any of the concerned authorities.

23. Also, a request for arrest and surrender was issued in relation to travel to Indonesia in April 2015.<sup>36</sup> Subsequently, the Registrar informed the Court that the trip of Mr. Al-Bashir had been cancelled, and that “government sources told (...) on condition of anonymity (...) Bashir’s trip was scrapped after several countries denied permission for him to fly over their airspace en route to Jakarta. The names of these nations and reasons behind their decision were not disclosed”.<sup>37</sup>

24. Additionally, the focal points identified that Mr. Al-Bashir had travelled to Egypt on 10 June 2015.

## V. Other Court proceedings

25. On 15 April 2015, in relation to all situations and for certain cases where a corresponding warrant of arrest has not been yet executed, Pre-Trial Chambers I and II issued identical decisions, which clarify the courses of action to be taken by the Registrar depending on whether or not a request for arrest and surrender of the relevant suspect has already been transmitted pursuant to a Chamber’s order to the State affected by that suspect’s travel.<sup>38</sup>

26. Bearing in mind the mandate entrusted to the Registry with respect to the implementation and follow up of the requests for arrest and surrender, these orders harmonize, streamline and optimize the procedure of the Registry’s transmittal of the adequate documentation to the State in question in order to request the arrest and surrender of person sought by the Court, whenever any Court organ receives information relating to travel, whether planned or ongoing, of persons for whom a warrant of arrest, still in effect, has been issued by the Court and who are still at large.

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

27. When the office of the President of the Assembly receives information about a planned visit to a State Party by a person whose arrest has been ordered by the Court, the office, in coordination with the focal points on non-cooperation and with the relevant organs of the Court, 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. The President also engages with the concerned State.

28. With respect to the travel of Mr. Al-Bashir to South Africa, on 13 June 2015, the President of the Assembly of States informed States Parties of this travel and in a press

<sup>31</sup> *Ibid.*

<sup>32</sup> ICC-02/05-01/09-252, 26 October 2015.

<sup>33</sup> ICC-02/05-01/09-230, 19 March 2015.

<sup>34</sup> ICC-02/05-01/09-251, 23 October 2015.

<sup>35</sup> ICC-02/05-01/09-246, 12 August 2015 and ICC-01/05-01/09-251, 23 October 2015.

<sup>36</sup> ICC-02/05-01/09-236, 16 April 2015.

<sup>37</sup> ICC-02/05-01/09-238, 22 May 2015.

<sup>38</sup> “Orders to the Registrar concerning action to be taken in case of information relating to travel of suspects”, ICC-01/04-635 (Situation in the DRC); ICC-02/04-211 (Situation in Uganda); ICC-01/05-83 (Situation in the Central African Republic); ICC-02/05-247 (Situation in Darfur); ICC-01/09-151 (situation in Kenya, PTC-I, ICC-01/11-46 (Situation in Libya); ICC-02/11-47 (Situation in Cote d’Ivoire); ICC-01/12-25 (Situation in Mali); ICC-01/13-16 (Situation regarding the registered vessels of the Comoros, Hellenic Republic and the Kingdom of Cambodia vessels); ICC-01/14-6 (Situation in the Central African Republic II); ICC-02/05-01/09-235-Corr (Al-Bashir case); ICC-02/05-01/07-71 (Harun and Kushayb case); ICC-01/11-01/11-589 (Saif al Islam case); and ICC-02/05-01/12-31 (Hussain case).

release he called on South Africa to spare no effort in ensuring the execution of the arrest warrants if the information received is confirmed.

29. Numerous States Parties, at the Ministerial level, also took public action regretting the failure of South Africa to arrest and surrender Mr. Al-Bashir to the Court, inter alia, Botswana, Canada, Costa Rica, and Liechtenstein. The European Union External Action service also issued a statement.

30. On 17 June 2015, during consultations on non-cooperation, States Parties and the office of the President engaged in dialogue on this matter.

31. Pursuant to the procedures on non-cooperation, at its eighth meeting held in New York on 29 June 2015, the President informed the Bureau of the actions taken with respect to the travel of Mr. Al-Bashir to South Africa.

32. Since December 2014, a page on non-cooperation on the website of the Assembly, which is maintained by the Secretariat, seeks to provide all the relevant information and judicial decisions related to non-cooperation.<sup>39</sup>

33. The focal points kept States Parties continuously informed of travels of persons under warrants of arrest of the Court. States Parties kept the focal points informed of their diplomatic action with respect to these travels.

## VII. The United Nations Security Council

34. The decisions of Court concerning the non-compliance of Sudan and Libya were conveyed to the members of the Security Council.

35. During the reporting period, the Prosecutor, on 15 December 2014 and 29 June 2015, respectively, presented her twentieth and twenty-first reports to the Security Council pursuant to Security Council resolution 1593 (2005). In these reports, the Prosecutor has continued to express concern with respect to the current situation in Darfur. She also denounced that throughout the numerous reports provided to the Council there has never been a follow-up to the information provided by her Office, neither have there been any discussions resulting in concrete solutions for the problems faced in the Darfur situation in terms of ensuring accountability and justice. The Prosecutor also recalled that Sudan has both failed to implement the Court's warrants of arrest and to provide any meaningful measure of justice at the national level. She urged the Council for a dramatic shift in its approach to arresting Darfur suspects and called on all States and the Council to find creative ways to support those amongst them that may be most vulnerable to planned visits by Mr. Omar Al Bashir or other individuals against whom warrants of arrest have been issued.

36. The Prosecutor also clarified that although her office would no longer be conducting fully active investigations on the situation of Darfur – given the current resource constraints – it had not fully suspended investigations into the alleged crimes committed in Darfur. To this end, and during the reporting period, the Office of the Prosecutor has taken various investigative steps in order to obtain documentary and witness evidence pursuant to the Office's article 54(1) investigation mandate and is also monitoring allegations of on-going crimes in Darfur.

37. During the reporting period, on 11 December 2014 and 12 May 2015, respectively, the Prosecutor presented her ninth and tenth reports to the Security Council pursuant to resolution 1970 (2011). In her statements to the Council, the Prosecutor stressed that the continued failure of the Government of Libya to surrender Saif Al-Islam Gaddafi to the custody of the International Criminal Court is a matter of great concern to her Office and the Court. The Prosecutor called on Libya to demonstrate its commitment to justice and accountability for mass crimes by fulfilling its obligations towards the Court and the Council, and requested the Council to once again call on Libya to immediately surrender Saif Al-Islam Gaddafi to the custody of the International Criminal Court.

<sup>39</sup> [https://www.icc-cpi.int/en\\_menus/asp/non-cooperation/Pages/default.aspx](https://www.icc-cpi.int/en_menus/asp/non-cooperation/Pages/default.aspx)

38. On 27 March 2015, the Council adopted resolution 2213 on Libya whereby it noted the decision of the Pre-Trial Chamber dated 10 December 2014, and emphasized strongly the importance of the Libyan Government's full cooperation with the ICC and the Prosecutor. Further, the Council called on the Libyan Government to cooperate fully with and provide any necessary assistance to the ICC and the Prosecutor as required by resolution 1970 (2011). This was further emphasized in resolution 2238 of 10 September 2015 where the Council also recalled the Pre-Trial Chamber decision of 30 July 2015 requesting that Libya immediately surrender Saif Al-Islam Gaddafi to the Court.

39. On 29 April 2015, the Council members discussed the communications from the Court in consultations under "any other business".

## VIII. Consultations on non-cooperation

40. Pursuant to the mandate of the Bureau, the focal points on non-cooperation engaged in consultations to issue recommendations to improve the implementation of the procedures on non-cooperation. Pursuant to the roadmap contained in resolution ICC-ASP/13/Res.5, the focal points presented their work plan at the third meeting of the New York Working Group. Pursuant to this work-plan, on 24 April 2015 they convened the first consultation, which included a presentation on the procedures in order to increase awareness about the procedure on non-cooperation, and the role of the President and the focal points and to determine areas of implementation to be kept under review throughout 2015.

41. The consultation on the review focused on receiving input from States Parties on the challenges and areas of improvement in the monitoring role of States, on possible mechanisms to prevent instances on non-cooperation (informal dimension), as well as on the roles of the Bureau and of the Assembly once a judicial finding on non-cooperation has been issued by the Court (formal dimension).

42. On 17 June 2015, the focal points convened the second consultation where they presented the non-paper of the focal points on an operative toolkit on the informal aspects (urgent measures taken to prevent non-cooperation) of the non-cooperation guidelines, and where they provided a summary of ideas that were raised during the first consultation with respect to the formal dimension (measures taken by the President, the Bureau and the Assembly once a judicial finding on non-cooperation has been issued).

43. The operative toolkit, as proposed by the focal points, would be developed to reinforce the engagement of States Parties in the prevention of instances of non-cooperation, to encourage the execution of the warrants of arrest or surrender orders issued by the Court, to promote understanding by delegates in New York, The Hague, capitals and missions around the world of the decisions of the Court, and of the responsibilities of the Assembly and of States Parties in relation to the Rome Statute, to offer options of diplomatic action to implement the procedures on non-cooperation, and to provide resources to promote information-sharing, and to establish informal or formal channels of communication with the main actors in the non-cooperation procedure.

44. During the consultations, the leadership of the President and the role of the focal points was emphasized. Delegates reiterated their support to the President in the implementation of the procedures.

45. Delegates also welcomed the initiative of practical outcomes that can assist States in supporting the Court in addressing, informally, potential instances of non-cooperation. Delegates reiterated that attention on this matter was crucial, as non-cooperation instances should not become normalized and whenever there is failure to cooperate, business should not remain as usual. Delegates emphasized also the role that both the Security Council and the Assembly have in addressing instances of non-cooperation. Delegations welcomed the inclusive and step-by-step approach followed by the focal points in proposing the toolkit.

46. Concerning the formal aspect of the procedures on non-cooperation, delegations expressed the need to continue the discussions to develop concrete ideas to strengthen this mechanism of the Assembly.

47. On the basis of views expressed by States Parties during the consultations held in 2014 and 2015, as well as comments received from a number of delegations, the focal

points submitted for the consideration of States Parties two non-papers, both dated 28 October 2015. The first one, concerning the informal dimension of the procedures on non-cooperation, on a proposed toolkit to aid States Parties to engage bilaterally and multilaterally in implementing the procedures. The second one, on the formal dimension of the procedures, a non-paper containing two recommendations. Both non-papers are included in annexes II and III, respectively.

48. The non-paper on the toolkit would serve as basis for work to be concluded before the fifteenth session of the Assembly.

## **IX. Recommendations**

49. That the Assembly, in its omnibus resolution, take note of the present report and adopt the proposed language concerning mandates.

50. That the President and the focal points continue to engage in any necessary measures that would ensure knowledge, understanding and implementation of measures by States Parties and the Assembly to prevent instances of non-cooperation.

51. That throughout the inter-sessional period and before the fifteenth session of the Assembly, the focal points, in collaboration with any interested States, and in consultation with the Court, civil society and relevant international and regional organizations finalize the toolkit to improve the implementation of the informal measures of the procedures on non-cooperation (see annex II of this report).

52. With respect to the formal dimension of the procedures on non-cooperation, request the Bureau, including the President and the focal points to apply more consistently the application of the Assembly procedures relating to non-cooperation (see annex III of this report).

53. That the agenda of the future sessions of the Assembly include an item to consider non-cooperation issues arising throughout the inter-sessional period (see annex III of this report).

54. That throughout the inter-sessional period, the focal points continue consultations on means to strengthen the formal dimension of the procedures on non-cooperation.

55. That the focal points, with the assistance of States Parties, continue monitoring judicial developments as well as travels of persons against whom a warrant of arrest has been issued, and promptly inform the Court of any relevant information.

56. That the Court continue to provide up to date information to the Assembly, via the President and the focal points, on judicial developments related to non-cooperation.

57. That States Parties continue to inform the focal points on measures undertaken to prevention or to address instances of non-cooperation.

## Annex I

### Language for the omnibus resolution

14. *Recalls* the non-cooperation procedures adopted by the Assembly in ICC-ASP/10/Res.5, *recognizes with concern* the negative impact that the non-execution of Court requests continues to have on the ability of the Court to execute its mandate, *takes note* of the decisions of the Court conveyed to the Assembly to date and of the report of the Bureau on non-cooperation;<sup>1</sup> *welcomes* the efforts of the President of the Assembly of States Parties in implementing the procedures on non-cooperation during his tenure and *recalls* that the President serves ex officio as focal point for his or her region;<sup>2</sup> *calls upon* all stakeholders, at all levels, to continue assisting the President of the Assembly of States Parties, including when accomplishing his task with the support of the regional focal points for non-cooperation; *encourages* all States Parties to cooperate towards a successful outcome of the review of the non-cooperation procedures;<sup>3</sup>

15. *Also recalls* the role of the Assembly of States Parties and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, *welcomes* the efforts of States Parties to strengthen the relationship between the Court and the Council, *calls on* States Parties to continue their efforts to ensure that the Security Council addresses the communications received from the Court on non-cooperation pursuant to the Rome Statute, *encourages* the President of the Assembly and the Bureau to continue consulting with the Security Council and *encourages* both the Assembly and the Security Council to strengthen their mutual engagement on this matter;

15bis. *Noting* the orders of the Pre-Trial Chamber to the Registrar concerning action to be taken in case of information relating to travel of suspects,<sup>4</sup> *urges* States to share with the focal points on non-cooperation any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued, and *requests* that this information be promptly shared with the Court by these focal points;

15ter. *Further requests* the Bureau to continue to actively engage throughout the inter-sessional period with all relevant stakeholders to continue to ensure effective implementation of the non-cooperation procedures and to submit a report on its activities to the Assembly at its fifteenth session with the outcomes of the review of implementation;

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\*Mandates will only appear in annex I in the final text of the resolution.

<sup>1</sup> ICC-ASP/14/38.

<sup>2</sup> ICC-ASP/11/29, para. 12.

<sup>3</sup> As initiated by the Focal Points on non-cooperation on the basis of the mandate contained in resolution ICC-ASP/13/Res.5, annex I, para. 2(g).

<sup>4</sup> Orders to the Registrar concerning action to be taken in case of information relating to travel of suspects", ICC-01/04-635 (Situation in the DRC); ICC-02/04-211 (Situation in Uganda); ICC-01/05-83 (Situation in the Central African Republic); ICC-02/05-247 (Situation in Darfur); ICC-01/09-151 (situation in Kenya), PTC-I, ICC-01/11-46 (Situation in Libya); ICC-02/11-47 (Situation in Cote d'Ivoire); ICC-01/12-25 (Situation in Mali); ICC-01/13-16 (Situation regarding the registered vessels of the Comoros, Hellenic Republic and the Kingdom of Cambodia vessels); ICC-01/14-6 (Situation in the Central African Republic II); ICC-02/05-01/09-235-Corr (Al-Bashir case); ICC-02/05-01/07-71 (Harun and Kushayb case); ICC-01/11-01/11-589 (Saif al Islam case); and ICC-02/05-01/12-31 (Hussain case).

## Annex II

### List of tools for the Toolkit for the implementation of the non-cooperation procedures: Informal dimension

1. The “toolkit for the implementation of the informal dimension of the non-cooperation procedures is intended as a non compulsory set of actions, ready for use by States Parties wishing to monitor or prevent instances of non-cooperation<sup>1</sup>. The ideas listed hereunder are, at this point, mere themes that still need to be transformed in documents by drafting groups composed of delegates from States Parties.

#### A. Monitoring

2. For all (States Parties, Focal Points, President of the Assembly) :
  - (a) Set up Google Alerts.
  - (b) Circulate and update a listing of different events that persons under warrant arrest might attend. Cooperation with the OTP in this regard. Consider also travels of persons under warrant of arrest to non-States Parties.
  - (c) Ensure the circulation of information among and within the State Parties.
  - (d) Engage with the civil society.
3. For the Focal Points :
  - (a) Circulate, within their regional group, information on possible travels of persons subject warrant of arrest issued by the Court.
  - (b) Draft standardized messages for the use of the Focal Points.
  - (c) Set up a procedure to receive more information from the OTP and circulate it among States Parties

#### B. Preventing instance of non-cooperation

4. For all (States Parties, Focal Points, President of the Assembly) :
  - (a) Draft statements.
  - (b) Draft notes verbales.
  - (c) Draft speaking points to be used with the State Party involved, ahead of the travel, at all levels.
  - (d) Suggestions on how to take advantage of all meetings, bilateral and multilateral to raise non-cooperation issues.
  - (e) Suggestions to help mainstreaming ICC sensitivity among the governmental structure of each State Party.
  - (f) Suggestion of ways to discuss ICC issues in regional gathering.
  - (g) Consider what routes an individual subject to an arrest warrant is likely to take when travelling, and to demarche relevant transit States accordingly. Suggestions in this regard.
  - (h) Suggestions on contacts with the civil society.
  - (i) Draft formulas for contacts with the medias, putting the emphasis on the victims narratives.

<sup>1</sup> For a complete description of the toolkit, see “*ICC-ASP Non-cooperation Paper on Toolkit 15 June15*”, circulated by the Secretariat of the Assembly of States Parties on 22 June 2015. Point “A. Monitoring” and “B. Preventing” correspond to points 6 and 7 of the above mentioned “Paper on Toolkit”.

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- (j) Suggestions in order to maintain the attention of the public on the situations, especially through the victims perspective.
  - (k) In all what precedes, consider also travels of persons under warrant of arrest to non-States Parties.
  - (l) Inclusion of a clause for mandatory cooperation by all States in future referral by the Security Council
  - (m) Suggestions of strategies to find incentive for the States Parties to cooperate with the Court.
5. For the Focal Points:
- (a) Standardized formulas in order to reminding States of obligations pertaining to the Rome Statute and the Charter of the UN.
  - (b) Standardized formulas to invite States Parties of its regional group to take actions.
  - (c) Standardized formulas to ask States Parties for feed-back on their action and reporting to the Bureau.
  - (d) Suggestions of types of assistance to give to the PASP “Missions of good offices”.
  - (e) In all what precedes, consider also travels of persons under warrant of arrest to non-States Parties.

## **Annex III**

### **Summary of recommendations for the review of the implementation of the non-cooperation procedures: Formal dimension**

1. Summary of the recommendations arising from the consultations held by the focal points on the non-cooperation throughout the inter-sessional period in 2015 on the review of the implementation of the formal aspect of the procedures on non-cooperation:

#### **A. More consistent application of the Assembly procedures relating to non-cooperation.**

2. Focus should be put on consistent application of the Assembly procedures relating to non-cooperation. Two examples have been given by States Parties during informal consultations:

- (a) In accordance with paragraph 14(c) of the procedures, it is considered useful to set up practice of requesting the Permanent Representative/Ambassador Extraordinary and Plenipotentiary of a State Party that failed to uphold its obligation to cooperate with the Court to meet with the Bureau in order to discuss the matter and present their views on how the State Party concerned would cooperate with the Court in the future.
- (b) In accordance with paragraph 15 of the Assembly procedures relating to non-cooperation the President of the Assembly is entrusted with good offices. In order to assist him/her, it has been considered useful to organize meetings of the focal points for non-cooperation with the President at the ambassadorial level.

#### **B. Addition in the agenda of the future sessions of the Assembly of a point on non-cooperation issues of the preceding year.**

3. This would allow the Assembly to focus on non-cooperation at its regular session, instead of at the inter-sessional period.

4. In addition, other ideas have been expressed:

- (a) Follow-up, through bilateral and multilateral demarches after an instance of non-cooperation has taken place.
  - (b) Reflect on how to de-polarize discussions on non-cooperation at the Assembly.
  - (c) Mandate the focal points to review and to strengthen the formal part of the Assembly procedures on non-cooperation so that the follow-up mechanism of the Assembly procedures becomes more effective.
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