

**Twentieth session**

The Hague, 6-11 December 2021

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

1. The Report of the Court on Cooperation is submitted by the International Criminal Court (“ICC” or “Court”) pursuant to paragraph 37 of resolution ICC-ASP/19/Res. 2 (“2020 Resolution on Cooperation”). It covers the period of 16 September 2020 to 15 September 2021.<sup>1</sup>

2. Similar to the Court’s previous reports on cooperation,<sup>2</sup> the report provides an update on the different cooperation efforts undertaken by the Court with the support of States and other stakeholders during the reporting period. For this reporting period, the Court will continue providing disaggregated data pertaining to the different types of requests for cooperation following the format adopted for the Report on cooperation submitted in 2020.<sup>3</sup>

3. The report should be read in conjunction with the latest ICC annual report to the United Nations General Assembly (A/75/324), providing, *inter alia*, information on the Court’s recent cooperation with the United Nations (“UN”).

4. The Court also recalls its analytical reports on cooperation matters, notably its 2013 cooperation report<sup>4</sup> and its separate 2013 report focusing specifically on cooperation between the Court and the UN,<sup>5</sup> as useful sources of information regarding the key cooperation needs of the Court which remain valid to date.

5. The Court underlines the continued relevance of the 66 recommendations on cooperation adopted by States Parties in 2007,<sup>6</sup> as well as the flyer that was produced by the co-facilitators of the working group on cooperation in 2015<sup>7</sup> in collaboration with the Court in order to promote the 66 recommendations and increase understanding and implementation of them. Indeed, the Court strongly believes that both documents continue to form an important basis for cooperation discussions and efforts, which can render the assistance to the Court more efficient and effective.

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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> ICC-ASP/13/23, ICC-ASP/14/27, ICC-ASP/15/9, ICC-ASP/16/16, ICC-ASP/17/16 and ICC-ASP/18/16 and Corr. 1, ASP/19/25.

<sup>3</sup> ICC-ASP/19/25.

<sup>4</sup> ICC-ASP/12/35.

<sup>5</sup> ICC-ASP/12/42.

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

<sup>7</sup> “Recommendations on States’ Cooperation with the International Criminal Court (ICC): Experiences and Priorities”, [https://www.icc-cpi.int/news/seminarBooks/66%20Recommendations%20Flyer%20\(ENG\).pdf](https://www.icc-cpi.int/news/seminarBooks/66%20Recommendations%20Flyer%20(ENG).pdf)

6. Finally, the Court notes the final report of the Group of Independent Experts<sup>8</sup> dated 30 September 2020. This report did not focus on cooperation issues but touches upon relevant issues for this report such as the relationship between the Court and the United Nations, cooperation between the Court and international organisations and agencies, as well as the capacity of the Office of the Prosecutor and increased inter-organ coordination in the field of financial investigations and the tracking of suspects. With respect to the latter aspect, several recommendations were also addressed to the ASP. For the purpose of the assessment of the recommendations made by the Group of Independent Experts, the Bureau approved a comprehensive action plan developed by the Review Mechanism, which allocated responsibilities to different ASP mandate holders and timelines.

7. During the reporting period, the Court continued to engage with States Parties on its cooperation priorities and challenges, as well as its ongoing efforts aimed at advancing these priorities, including in the context of the facilitation on cooperation of the Hague Working Group (“HWG”). To amplify its messaging, the Court used the booklets and factsheets it has produced over the years, with the financial support from the European Commission, to disseminate information and promote cooperation in the key areas regarding the implementation of the 66 recommendations (“Recommendations on States’ Cooperation with the International Criminal Court (ICC): Experiences and Priorities”), cooperation agreements, financial investigations and recovery of assets, arrest and surrender (“Arresting ICC suspects at large”), and the Trust Fund for Family Visits.

8. Using their internal databases pertaining to requests for cooperation and assistance, the Office of the Prosecutor (“OTP” or “the Office”) and the Registry have continued their efforts in compiling and analysing information on their cooperation-related activities with States and other partners.

9. In line with the 2019-21 ICC Strategic Plan, as well as complementary OTP and Registry Strategic Plans for the same period, Court’s efforts continued to collect more detailed and qualitative data, to support the monitoring of the implementation of Strategic Plans and the goals set. In particular, Goal 4 of the ICC Strategic Plan, Strategic Goal 2 of the OTP Strategic Plan (paragraph 27) and objective a) of the Division of External Operations (paragraph 22) of the Registry Strategic Plan - are directly linked to increasing cooperation and developing modalities of cooperation and operational support in the context of investigative, prosecutorial and judicial activities. Linked to these objectives, certain Key Performance Indicators (KPIs) were and continue to be identified in particular with a view to the Court’s next Strategic Plan, to further support the refinement of the relevant data collection at the Court.

10. Using as a compass the seven priority areas for cooperation identified in the 66 recommendations flyer, this report will (i) provide data for cooperation priority areas two to five<sup>9</sup>; (ii) provide an update on the efforts undertaken by the Court during the reporting period to strengthen cooperation in those areas; (iii) provide an analysis of the data and highlight the main challenges it reflects; and (iv) identify recommendations for a way forward for each cooperation priority, based on the Court’s experience and lessons learned in the past 18 years of operation, in order to contribute to the 66 recommendations implementation review by the Bureau and the Assembly. Finally, the report will provide a short update and key recommendations on the three other priority areas<sup>10</sup> that are not linked to data collection.

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<sup>8</sup> ICC-ASP/19/16

<sup>9</sup> Area 2: Cooperation in support of preliminary examinations, investigations, prosecutions and judicial proceedings (including with the Defence); area 3: Arrest and surrender; area 4: Identification, seizing and freezing of assets; area 5: Cooperation Agreements.

<sup>10</sup> Area 1: Enacting the legal mechanisms set in the Rome Statute and setting up effective procedures and structures regarding cooperation and judicial assistance; area 6: Diplomatic and public support in national, bilateral, regional and international settings; area 7: Inter-State cooperation in the context of the Rome Statute system.

## II. Presentation of the collected disaggregated data on cooperation, focusing on the four priority areas with detailed data collection (cooperation in support of investigative, prosecutorial and judicial activities; arrest and surrender; financial investigations and asset recovery; and cooperation agreements) – update on ICC efforts, challenges identified, and recommendations on the way forward

### 1. General overview of data collected for requests for cooperation and assistance sent and received by the OTP and the Registry during the reporting period

<i>Office of the Prosecutor</i>	
<b>Total number of Requests for Assistance (“RFAs”) sent during the reporting period (16/09/2020 to 15/09/2021)</b>	387 RFAs (including 130 notifications of missions)
<b>Evolution based on the last reporting period (2<sup>nd</sup> September 2018 to 1<sup>st</sup> September 2019)</b>	- 3,7% (with notifications) and - 22,59% (without notifications)
<b>Average time needed to execute an RFA</b>	61,06 days

<i>Registry</i>	
<b>Total number of Requests for Cooperation (“RFCs”) sent during the reporting period (16/09/2020 to 15/09/2021)</b>	467 RFCs (including 124 RFCs sent by the relevant sections in HQ and 343 operational requests sent by the Country Offices / NYLO) <sup>11</sup>
<b>Evolution based on the last reporting period (16/09/2019 to 15/09/2020)</b>	+ 8.6 %
<b>Average time needed for reply to requests sent by the HQ</b>	82 days
<b>% of positive replies to RFCs sent by the HQ during the reporting period</b>	35, 11 %
<b>Number of notifications of decisions/orders sent during the reporting period</b>	18

### 2. Priority area 2: Cooperation in support of preliminary examinations, investigations, prosecutions and judicial proceedings (including with the Defence)

<i>Office of the Prosecutor</i>	
<b>Total number of RFAs sent during the reporting period</b>	387 RFAs (including 130 notifications of missions) – <i>same as above since all the OTP RFAs relate to investigations, prosecutions and judicial proceedings</i>
<b>Total number of Requests for Information (“RFIs”) concerning the preliminary examinations for the reporting period</b>	8 RFIs
<b>% of replies for the RFAs during the reporting period</b>	53,75 % (a total of 208 RFAs executed out of the 387, between 16/09/2020 and 15/09/2021) <sup>12</sup>
<b>Average time needed to execute an RFA</b>	61,06 days

<sup>11</sup> This number does not reflect notifications of judicial documents, missions and efforts deployed concerning the signature of voluntary cooperation agreements.

<sup>12</sup> It is normal that all RFAs sent during a specific time period are not executed during the same time period, given the time needed to receive, process, consult, execute the requests. In addition, the closer to the end of the period it is sent, the least likely an RFA will be executed within the same time period. *The choice was made here to only include the RFAs that were sent AND recorded as executed during the period of reference, i.e. this excludes all those RFAs executed during the period of reference but sent before it and all those sent during the period of reference but executed after it.*

<b>Registry</b>	
<i>Total number of Requests for Cooperation (“RFCs”) sent during the reporting period for specific requests</i>	
<b>Number of requests for cooperation</b>	124
<b>Defence teams’ requests transmitted by the Registry</b>	15 –of which 5 received positive replies (33% execution rate)
<b>Legal Representatives for Victims teams’ requests transmitted by the Registry</b>	None
<b>Witness protection requests</b>	49
<b>Support to judicial proceedings’ requests</b>	9 ( all executed – 100% execution rate)
<b>Average time needed for reply to request from defence teams</b>	88 days

Update on ICC efforts during the reporting period

11. The Court welcomes the initiative of the cooperation co-facilitators of developing and collecting questionnaires among States Parties regarding their cooperation legislation, procedures and modalities, as well as their experiences so far, as well as of putting together a database compiling this information, and allowing for further information sharing between States, and between States and the Court, including in the area of cooperation linked to financial investigations and asset recovery.

12. Notwithstanding the very high number of requests as well as the variety of the types of support requested by the OTP from States, overall, cooperation has been forthcoming and positive. Nevertheless, the OTP continues to experience challenges in the execution of some of its requests, particularly those that seek to obtain large pools of information, or certain technical or sensitive requests and continues to dedicate much time and efforts to consult with the relevant authorities and identify suitable procedures that would allow for a diligent execution of its requests, pursuant to Part 9 of the Rome Statute and applicable national legislations, for all its various types of requests.

13. Among others, the OTP continues to observe that getting access to information collected by military or law enforcement personnel, information from immigration or asylum offices and agencies, information from social media and telecommunication companies and entities, financial information, and information on the location of suspects remains challenging. The OTP notes with concern that it is also increasingly experiencing difficulties in the execution of simpler requests aimed at interviewing witnesses in secure environments, which creates delays to its investigative activities and diverts disproportionately its resources and time to identify suitable locations and ensure conditions for these to take place.

14. In line with paragraph 16 of the 2020 Resolution on Cooperation, and in accordance with its mandate, the Registry has continued its efforts to encourage States to enhance their cooperation with requests from Defence teams, in order to ensure the fairness of the proceedings before the Court, as well as to contribute to the expeditiousness of proceedings.

15. The Registry continues to deal with challenges it experiences regarding cooperation with the Defence teams, and most specifically linked to privileges and immunities; indeed, an important element of the assistance provided by the Registry to the Defence teams is to ensure that, whenever possible, the members of the teams enjoy privileges and immunities, which are fundamental for the performance of their duties in the territory of States where they operate. This assistance is however not always possible given the lack of internal mechanisms, including but not limited to appropriate legislation and procedures, in the relevant States to provide such privileges and immunities. The Court recalls here the importance of States that haven’t done so yet to ratify the Agreement on Privileges and immunities (“APIC”), as also mentioned in paragraph 17 of the 2020 ASP Resolution on Cooperation.

16. The Registry supports Defence teams in their efforts to obtain cooperation from States and other stakeholders in the conduct of their investigations and undertakings, notably regarding requests for interviews (for example, with a state official, or a representative of an

intergovernmental organization), or requests for documents and information. It has been the Registry's experience that cooperation with Defence teams is not easily forthcoming, even though they do not often involve complex requests. This is reflected in the data provided above. As in the past, the Registry continues to call for States and other stakeholders to cooperate fully with the requests from the Defence, as this is fundamental to ensuring the rights of the accused and the fairness of the proceedings before the Court.

17. Another area that has called for increased efforts of the Registry in recent years in the area of voluntary cooperation pertains to States' support to the Trust Fund for Family Visits ("TFFV"). As family visits to indigent detainees are subsidized entirely through voluntary contributions by States, non-governmental organizations and individuals to the TFFV, the full and timely implementation of these essential rights is intrinsically linked to the availability of adequate funding. Since its establishment in 2010, the Fund has received a total of 304,000 Euros from States, for which the Court expresses its appreciation. The Court is grateful for the pledge donation of 20 000 euros made by Avocats Sans Frontières (ASF) thanks to the support of the European Union to finance family visits at the detention centre. It remains necessary to stress the importance of sustainable and adequate funding for this activity, so as to avoid potential negative outfalls on the integrity of the proceedings and the legitimacy of the ICC.

18. During the reporting period, the Court also continued to receive crucial support and cooperation from the UN. The Court is grateful for the important role OLA plays in coordinating its requests for assistance to various departments of the UN Secretariat, to the UN funds, programmes and offices, as well as to Specialized Agencies and to the UN missions deployed in various parts of the world where the Court is involved, and relies on its Liaising Office based in New York to engage strategically with the UN and States. To maintain and strengthen this crucial relationship, a joint roundtable of the United Nations and the Court was held virtually on 19, 20, 25, 26 and 27 May 2021.

19. The Court continued to maintain Country Offices in the DRC, the CAR, Mali, Côte d'Ivoire, Uganda and Georgia. The Country Offices provide in-country security, administrative and logistical support to the activities of the parties and participants to the proceedings before the Court, notably the OTP, defence teams, legal representatives for victims and the Trust Fund for Victims ("TFV"). The Country Offices also handle a number of Registry functions in relation to witness protection, victim participation, outreach and cooperation. Engagement and cooperation with national and local authorities, international organisations and the diplomatic community are among the key aspects in the work of the Country Offices, without which the Court could not maintain sustainable operations in the situation countries.

#### Recommendations on the way forward

20. Based on the analysis of the main challenges regarding cooperation, the Court has identified the following recommendations, which remain relevant:

- Recommendation 1: States should strive to maintain a high level of cooperation for all requests coming from the Court, including requests that might be perceived as sensitive or technically complicated at first glance.

- Recommendation 2: In particular, States could consider: requesting or offering consultations and facilitating meetings between the Court organs formulating the requests and the competent national authorities ultimately in charge of executing them with a view to finding solutions together; suggesting potential alternative ways to assist or transmit the information sought; or organising regular bilateral meetings to follow up on the execution of such requests to exchange on the most efficient way forward.

- Recommendation 3: In addition, it has been the Court's experience that the availability of channels of communication and simplified domestic procedures for dealing with ICC cooperation requests, as well as coordination and information sharing between national authorities dealing with Court cooperation requests, all contribute to a smoother, more efficient cooperation.

- *Recommendation 4:* States could consider informing the Registry on whether they would prefer to receive requests for cooperation from the Defence teams through the Registry or directly from the teams.

- *Recommendation 5:* States could consider mainstreaming information within national judiciary and law enforcement on the legal framework of the Court and cooperation obligations with the Court as a whole, including Defence teams.

- *Recommendation 6:* States could consider specific discussion among States and the ICC on the challenges and impediments (whether legal, technical, logistical or financial) faced by States to answer Defence requests for cooperation.

- *Recommendation 7:* Compliance by the Defence teams of the requirements established by the ICC jurisprudence regarding the cooperation requests, i.e. specificity, relevance and necessity.

- *Recommendation 8:* Regular meetings of Defence Teams with the ICC Focal Points from the relevant international organizations.

- *Recommendation 9:* Ratification of the Agreement on Privileges and Immunities of the ICC by all States Parties.

- *Recommendation 10:* States could consider having clear and agreed procedures at the domestic level regarding privileges and immunities; not only for ICC staff but also for Defence teams.

- *Recommendation 11:* States could consider signing the framework agreements on interim release, release and enforcement of sentences.

21. Besides cooperation in support of the Court's activities, the Court wishes to recall also the challenges related to non-cooperation. In this regard, the Court welcomes the ASP's request for the Bureau to address the issues of cooperation and non-cooperation with the International Criminal Court "as a matter of priority in 2020 through its working groups and facilitations, in a fully inclusive manner [and] in line with their mandates."<sup>13</sup> In this context, the Court welcomes the positive development regarding the first joint event organized by the co-facilitators on cooperation and the regional focal points on non-cooperation, which took place on 5 October 2020 in a virtual platform. In furtherance of prerogatives and obligations under the Statute, it is hoped that the ASP will continue to consider opportunities to increase its efforts with a view to preventing non-compliance, especially in the critical matter of the arrest of persons subject to warrants issued by the Court. The Court hopes that further consultations will take place with a view to reviewing and strengthening the ASP procedures relating to non-cooperation, as well as to developing guidelines regarding the formal dimension of the ASP procedures regarding non-cooperation.

22. The Court would also like to highlight again that the capacity of the UN Security Council to refer a situation to the Court is a crucial tool to promote accountability and avoid an impunity gap, but active follow-up to referrals by the Council in terms of ensuring cooperation from all relevant stakeholders and for as long as the warrants have not all been executed, remains necessary to ensure that effective justice can be delivered when peace, security and well-being of the world are threatened. The need for follow-up also extends to a need to step up efforts to prevent non-compliance with requests for cooperation for arresting ICC suspects, and to react to instances of non-compliance.

23. The Court has transmitted a total of 16 communications on non-cooperation to the Council regarding the situations in Darfur and Libya. On 1 March 2016, the Secretary-General transmitted to the President of the Court a copy of a letter, dated 21 December 2015, from the then President of the Council, indicating that the decisions of the Pre-Trial Chambers concerning non-cooperation in the situations in Darfur and Libya had been brought to the attention of the members of the Council. Since then there has been no formal reaction from the Council to the communications on non-cooperation. The Court looks forward to engaging with interested parties to develop methods of structured dialogue between the Court and the Council to discuss how to improve the implementation of obligations created by the Council, including the execution of arrest warrants, and to seek more constructive strategies

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<sup>13</sup> ICC-ASP/18/Res/7, para. 18.

for attaining the mutual goals of preventing and ending impunity for atrocity crimes. Following the Arria-formula meeting on the ICC and the Council, organised on 6 July 2018, and the subsequent debrief to the Hague Working Group, both with participation of the Prosecutor, the Court continues to highlight and make efforts, where appropriate, to follow-up on concrete areas and ideas that can contribute to enhancing the interaction between both bodies. States Parties – in particular through their Permanent Missions in New York – play a lead role in this regard and as such are encouraged to devise strategies to follow up and make progress in a sustained manner.

### 3. Priority area 3: Arrest and surrender

<i>Registry</i>	
<b>Total number of RFCs sent during the reporting period for arrest and surrender</b>	4 (including support in surrender)
<b>Average time needed for reply</b>	47 days
<b>% of positive replies to RFCs during the reporting period</b>	75%

#### *Update on ICC efforts during the reporting period*

24. On 2 November 2020, Paul Gicheru surrendered to the authorities of the Netherlands pursuant to an arrest warrant issued by the Court under seal on 10 March 2015, subsequently unsealed on 10 September 2015, in relation to offences against the administration of justice consisting in corruptly influencing witnesses regarding the cases from the situation in Kenya. His first appearance before the Court took place on 6 November 2020. Mr Gicheru was granted interim release on 29 January 2021 and travelled back to Kenya shortly after. On 15 July 2021, Pre Trial Chamber A confirmed the charges as brought forward by the Prosecutor. His trial is scheduled to start on 15 February 2022. Despite the challenging COVID-19 context, the cooperation and assistance provided by the Netherlands in the surrender process were commendable.

25. Mr Gicheru is the fourth defendant to surrender himself to the Court. His surrender was also a result of continuous efforts by the relevant organs of the Court to remaining seized and ensuring that conducive avenues for the enforcement of pending arrest warrants are in place. This stresses the importance of allocating internal capacities within the Court to track and interact with defendants at large. The OTP and the Registry continued their common efforts to devise and implement strategies to facilitate the arrest of suspects within the inter-organ working group on arrest strategies created in March 2016.

26. On 24 January 2021, the Central African Republic surrendered Mr Mahamat Said Abdel Kani (also known as Mahamat Said Abdel Kain and Mahamat Said Abdelkani (or Mr Said) to the Court, in response to a warrant of arrest issued under seal on 7 January 2019 against him, on the charges of alleged crimes against humanity and war crimes committed in Bangui in 2013. The successful surrender operation, once again amidst the challenging COVID-19 context, showed the effectiveness of States' cooperation in this regard, as demonstrated by CAR and the Netherlands authorities.

27. Court-issued requests for arrest and surrender remain outstanding against 12 individuals :

It should be noted that in relation to a number of individuals, the Court has received information from various sources to the effect that they were deceased. However, official information in each case is required to establish the reported death. Warrant of arrest remains in effect until otherwise ordered by the Court.

- i. DRC: Sylvestre Mudacumura, since 2012;
- ii. Uganda: Joseph Kony and Vincent Otti, since 2005;
- iii. Darfur: Ahmad Harun, since 2007; Omar Al-Bashir, since 2009 and 2010; Abdel Raheem Muhammad Hussein, since 2012; Abdallah Banda, since 2014;
- iv. Kenya: Walter Barasa, since 2013 and Philip Kipkoech Bett, since 2015;

v. Libya: Saif Al-Islam Gaddafi, since 2011; Al-Tuhamy Mohamed Khaled, since 2013; Mahmoud Mustafa Busayf Al-Werfalli, since 2017.

28. The warrant of arrest for Simone Gbabgo was vacated on 19 July 2021 at the request of the Office of the Prosecutor.

*Recommendations on the way forward*

29. Based on its experience, the Court believes that in order to galvanize arrest efforts, different types of actions are needed for each warrant at different stages, all of relevance to States. These notably include:

- Tracking efforts (whereabouts, movements, activities):
  - *Recommendation 12*: Access to information from national authorities, including, when appropriate, specialised services (including solely for the purpose of validating or invalidating information collected by the Court).
  - *Recommendation 13*: Transmission of information and alerts on suspects.
  - *Recommendation 14*: Availability of judicial measures and tools to facilitate access to information on the whereabouts of suspects, including access to special investigative techniques and tools in the hands of national law enforcement and intelligence services as needed.
- Identification of potential leverage and partners:
  - *Recommendation 15*: Support in multilateral fora (UN, regional, specialised networks) and bilateral encounters, and efforts to keep the issue on the agenda.
  - *Recommendation 16*: Insertion of arrest warrant execution in talking points and external relation strategies, as appropriate.
  - *Recommendation 17*: Focus on compliance with ICC decisions, including as part of larger diplomatic discussions and fora.
  - *Recommendation 18*: Link arrests to the importance of the Court's mandate. Campaigns and reminders on the alleged crimes and the charges, especially in the situation where the investigations take place<sup>14</sup>.
  - *Recommendation 19*: Reactivity when information sent on suspects' movements.
- Operational support:
  - *Recommendation 20*: Surrender procedures and availability of legal and technical processes (SOPs developed, including established procedures in place for different arrest / surrender / transfer scenarios, taking into account key elements that can influence legally and operationally the operations, such as for instance the existence of complete implementing legislation in the State of arrest).
  - *Recommendation 21*: The integration of exceptions to UN travel bans for the fulfilment of a judicial process are also a useful tool for the ICC for the purposes of bringing arrested individuals to the Court, and these mechanisms need to be triggered on an urgent and simplified basis.
  - *Recommendation 22*: Transport and logistics: the Registry has also recently developed a model agreement for air transport, following earlier contact with a number of States to explore innovative ways of tapping into their air transport capacity that could be made available to the ICC when persons arrested are transferred to the seat of the Court. The Registry will be approaching States with this model agreement, hoping it will provide the Court with new options to enable the operational and logistical support needed to make transfer operations a success.

<sup>14</sup> The Court has developed factsheets on the suspects at large, a leaflet to increase attention for and knowledge of pending warrants, as well as reformulated its website to further highlight the issue and make relevant information easier to access as well as to facilitate transmission of relevant information from external sources. These efforts were combined with a communication campaign launched in November 2018, and the Court will continue to call upon its States Parties to support it with similar efforts at the national and regional levels.



30. Through its dedicated Working group and its external relations efforts, the Court on its side will continue to promote further informal exchanges and coordination with States and relevant intergovernmental organizations to share information and develop concrete strategies towards arrests, including but not limited to efforts concerning sanctions and travel bans. At the same time, the Court encourages all relevant stakeholders to re-commit and make meaningful strides in order to find remedy to this crucial challenge to the cooperation regime and the credibility of the Rome Statute system.

#### 4. Priority area 4: Identification, seizing and freezing of assets

<i>Office of the Prosecutor</i>	
<b>Total number of RFAs sent during the reporting period for financial investigations for identification of assets</b>	2
<b>% of execution rate</b>	0 %
<b>Average time needed to execute an RFA</b>	n/a

<i>Registry</i>	
<b>Total number of RFCs sent during the reporting period for financial investigations for legal aid</b>	3
<b>Total number of RFCs sent during the reporting period for asset recovery for fines and reparations</b>	2
<b>Average time needed for reply</b>	124
<b>% of positive replies to RFCs during the reporting period</b>	40%

#### Update on ICC efforts during the reporting period

31. Regarding this complex cooperation matter, the Court is thankful to the HWG cooperation co-facilitators for the efforts put forward in the course of 2019 and 2020, in furtherance of the Paris Declaration on cooperation regarding financial investigations and asset recovery of 2017, which forms a very useful basis for further discussions and concrete enhancements regarding cooperation in this area.

32. Thanks to a generous donation by France, the Court will also organise a first meeting of operational focal points designated to assist the Court in the implementation of its requests for identification, seizing and freezing of assets. The objective will be to develop a network of operational focal points who are both familiar with domestic requirements and ICC procedures. The OTP and the Registry have continued to approach several States Parties on a bilateral basis during the reporting period to explore with them ways to access information in a timely manner and identify focal points among the relevant authorities and fast track channels to ensure preservation of relevant information. Reference is made here to paragraphs 48 to 56 of the 2018 ICC Report on Cooperation, which detail the specific legal and operational framework in which the Court seeks cooperation from States and other stakeholders in the area of financial investigations and recovery of assets. The Court also continued its efforts to exchange with States to improve its requests and explain its specific mandate to States as recommended by the Assembly of States Parties following the Paris Declaration. In support to its investigative activities, the OTP has also continued to approach private entities and experts to seek their support and advice to review and improve as needed its investigative practices and methodologies in this area. During the reporting period, the Registry sent fewer new requests for cooperation in this area focusing its efforts on obtaining replies from existing pending requests and analysing replies received.

Recommendations on the way forward

33. A number of immediate steps could indeed be taken by States to support the work of the Court:

- Recommendation 23: The adoption of the necessary legislation or procedures in line with Rome Statute obligations to be in a position to reply timely and effectively to relevant requests from the Court. It is paramount that the Court can count on the full and timely cooperation from States in order to successfully retrace the complex asset recovery scheme of any given ICC suspect and/or accused.

- Recommendation 24: Streamlining ICC specific needs domestically so that the prosecution of war crimes and crimes against humanity triggers the same reflexes in terms of financial intelligence and investigations as the prosecution of financial crimes or transnational organised crimes. It is hoped that the leaflet that was produced in 2018 on Financial Investigations and the Recovery of Assets by the Court will help the national experts in understanding better these needs.

- Recommendation 25: The opening of domestic investigations into possible financial crimes on the basis of information received by the Court so that States can use the full arsenal offered by their national law.

- Recommendation 26: The appointment of focal points on freezing of assets, without prejudice to the formal channels of communication identified by each State, to follow up on exchanges with the ICC as appropriate.

- Recommendation 27: Within the judicial context, by replying to the requests of Chambers and asking for clarification where required, States can contribute to shaping the Court's case-law on this complex matter.

- Recommendation 28: Periodic bilateral meetings can be organised so that the staff of the Court understand the specificity of relevant national systems and identify the best procedures to follow together with the requested State; the Court has already started to include this item in all planned meetings with relevant State representatives it meets, whether at the headquarters or during missions.

- Recommendation 29: Subject to the authorization of the relevant Chamber, the Registry recommends to share information provided individually by several States amongst these States with a view to obtaining a more general picture of the estate of the person. This way, States could combine their analytical efforts to obtain more targeted and comprehensive information to the benefit of the Court.

**5. Priority area 5: Cooperation agreements**

<i>Registry</i>	
<b>Total number of RFCs sent during the reporting period for release matters</b>	45
<b>Average time needed for reply</b>	140 days
<b>% of positive replies to RFCs during the reporting period</b>	15.5%

Update on ICC efforts during the reporting period

34. This area of cooperation remains a challenge despite the two voluntary agreements signed during the reporting period. On 11 October 2021, the Court and the Government of the France signed an Agreement on the Enforcement of Sentences. Under the agreement, persons convicted by the ICC may serve sentences of imprisonment in France if so decided by the Court and accepted by the Government of France. Similar agreements on the enforcement of sentences are currently in force between the ICC and Argentina, Austria, Belgium, Denmark, Finland, Georgia, Mali, Norway, Serbia, Sweden and the United Kingdom of Great Britain and Northern Ireland. The Court is grateful to the Government of France for concluding the agreement, and encourages other States Parties to follow this example in the spirit of article 103(3)(a) of the Rome Statute, according to which the "States

Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution”.

35. In September 2021, the Registry entered into a relocation agreement which brings the total number of relocation agreements to 25. The Registry continues its efforts on this issue that is paramount for the Court to be able to offer protection to its witnesses.

36. Unfortunately, no agreement on release or interim release was signed despite numerous efforts engaged by the Registry. The Court urges States Parties to consider signing these agreements, and stands available to provide additional information and enter into bilateral discussions with any interested State Party on the matter. It will continue to engage with States and other relevant stakeholders through high level and working level engagements, including official visits and meetings, as well as seminars and events it organizes, thanks notably to the financial support of the European Commission, or takes part in. The Registry has continued to develop the practice of informal videoconferences with relevant officials in capitals of interested States in order to provide additional information and clarify concerns or misconceptions on the agreements. This has proven to be a quite successful practice, and one that the Registry is ready to explore with other interested countries. Finally, the Registry continues to rely on the brochure on cooperation it has developed in English, French and Spanish to promote better understanding of its needs, as well as to share with interested States model agreements they can consider in their national discussions.

37. The Court is grateful in this regard for the support of civil society to promote these agreements, and is in particular thankful to the Coalition for the ICC, Parliamentarians for Global Action and the International Bar Association (IBA) for their work including the recent release of the IBA guide titled “Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties”

38. Given the scarce amount of framework or ad hoc cooperation agreements on interim release, the Registry is facing challenges in implementing the Chambers’ decisions in this regard. This is demonstrated by the data collected regarding cooperation in the area of release. As emphasized repeatedly by the Court, the consequences of the absence of States Parties willing to accept released persons are serious. For example, individuals who cannot be successfully relocated may remain *de facto* detained, despite having been released. In this respect, other international criminal tribunals, such as the International Criminal Tribunal for Rwanda, have encountered difficulties in finding States willing to accept acquitted persons on their territory. In addition to the egregious impact such a situation would have on the released person, it prevents the Court’s system from functioning and runs counter to the Court’s objective of applying the highest international standards. Moreover, in the case that the Pre-Trial or Trial Chamber grants a person with interim release, in order for it to be effective, the Court must rely on States Parties and their willingness to accept the person on their territory. If States Parties are unwilling to do so, this could hamper the possibility of interim release or render it impossible.

39. In the Gbagbo / Blé Goudé case, for instance, which was referenced in the Court’s Report on cooperation of 2019, the Registry has had to deploy and is still deploying as far Mr. Blé Goudé is concerned extensive efforts since early 2019 to try to find a sustainable and fair solution. While these energies are geared towards finding a solution to the case at hand, it is crucial to build a common understanding of the fact that voluntary cooperation requires sustained multilateral, shared efforts for the Court and States Parties to find effective long-term solutions.

#### Recommendations on the way forward

40. Based on the efforts of the last five years to prioritize the signature of these agreements, the Court has identified some recommendations for the consideration of States:

- Recommendation 30: The inclusion of elements of the cooperation agreements in the provisions of national implementing legislation of the Rome Statute, which will facilitate the negotiation, if needed, with the Court, for the later operationalization of this cooperation; the Registry is available to advice States in this regard, if relevant.

- *Recommendation 31:* The possibility to engage in synergies between the cooperation and the complementarity facilitations, especially when considering the identified needs of certain States and available organizations or States that can share their expertise or provide capacity-building activities, including in areas covered by the cooperation agreements (such as witness protection, monitoring systems, reintegration programs or the national penitentiary systems).

- *Recommendation 32:* The possibility for States that have signed cooperation agreements with the Court to act as “goodwill Ambassadors” in their region and in their contacts with other States, in order to explain how they are working with the Court and to clarify implications and opportunities.

- *Recommendation 33:* The availability of the Court to take part in videoconferences or technical engagements with the relevant national stakeholders of interest countries, to discuss in detail the agreements and how they can function within the national legal framework of each State.

- *Recommendation 34:* The possibility of including the signature of cooperation agreements as an item in the agenda of meetings of regional groups.

- *Recommendation 35:* Utilizing, where necessary, the availability of the Special Fund for Relocations and of Memoranda of Understanding with the UNODC, which can contribute to neutralize costs for the State, as well as to enhance the national capacity of an interested State, not only to cooperation with the Court but also to strengthen its domestic system.

### **III. Update and key recommendations on the three other cooperation priority areas not linked to data collection (legal mechanisms and procedures for cooperation; diplomatic and public support; and inter-State cooperation)**

#### **1. Priority area 1: Enacting the legal mechanisms set in the Rome Statute and setting up effective procedures and structures regarding cooperation and judicial assistance**

##### *Update on ICC efforts during the reporting period*

44. Due to the COVID-19 pandemic, the Court was not able to organize its 8th Focal Points Seminar on Cooperation during the reporting period. The seminar is expected to take place in 2022, bringing together the national focal points from situation countries and other countries of relevance for the judicial activities of the Court and which are instrumental in facilitating the cooperation between the Court and the competent authorities. These gatherings provide a unique platform to enhance dialogue and cooperation between the Court and States, including on new developments in terms of technical areas of cooperation (such as witness protection, disclosure, cooperation with the Defence, financial investigations and asset recovery, implementation of arrest warrants); they also have contributed to the development of an informal network of national experts on cooperation with the Court that can share and learn from each other’s experiences. The Court has benefited in this context from the financial support of the European Union, and participation of the HWG cooperation co-facilitators, as well as representatives from regional and specialized networks and organizations, that have also shared their expertise and provided new avenues for States to interact and seek support should they need it to fulfil their cooperation obligations vis-à-vis the Court.

45. Similarly to 2020, due to the ongoing pandemic travel and gathering restrictions, in addition to the Focal Points Seminar referred to above, several other events aimed at promoting cooperation had to be postponed, among which, a High-level regional seminar in the Asia-Pacific region as well as a regional high-level seminar in Dakar, Senegal. Considering the pandemic situation and to pursue the mandate of the ICC, the Court organized events online instead, in order to maintain the momentum created by its cooperation efforts before the pandemic.

46. Missions to States Parties provide important opportunities for engagement with multi-ministerial counterparts that are part of the national effort to cooperate with the Court, and allow the OTP and the Registry to identify specific focal points as well as areas of further cooperation (including regarding cooperation agreements). They can also be used as opportunities to raise awareness of the Rome Statute and the Court within a variety of relevant pools of interlocutors, such as the judiciary, law enforcement agencies, bar associations, specialized units working on witness protection or asset recovery, as well as civil society, academia and students. The developments with regard to COVID19 pandemic will determine the extent with which the Court may begin re-engaging in the in-person engagements or missions, while making use of the newly acquired digital tools and skills to reduce costs and increase impact of the said engagements.

Recommendations on the way forward

47. Based on its experience and assessment, the Court suggests the following recommendations:

- Recommendation 36: As recalled by paragraphs 7 to 9 of the 2019 ASP Resolution on Cooperation, as well as in the Paris Declaration with respect to the tracing and recovery of assets, adequate implementing legislation at the national level, including through integration of the relevant provisions of the Rome Statute into national legislation, greatly facilitates cooperation between the Court and States. As less than half of the 123 States Parties have adopted legislation in order to implement the cooperation obligations provided for in Part 9 to this date, the Registry of the ICC has availed itself in several instances during the reporting period to provide support and technical advice to interested States engaged in a domestic process to adopt cooperation implementing legislation. While the Registry will not provide substantive advice on matters of national concern, it is ready to participate in discussions and provide written submissions to national stakeholders at the request of the State on the key elements of Part 9, and share what has been its experience and lessons learned in the last 15 years of implementing the cooperation provisions with States Parties. The Court is also following the Mutual Legal Assistance (“MLA”) initiative with interest, as an example of a platform where relevant inter-State cooperation matters are being discussed.

- Recommendation 37: Clear procedures and distribution of roles and responsibilities at the domestic level in the national implementing legislation will help governments ensure that they can expeditiously respond to requests for assistance coming from the Court without any undue delay and, where incorporating the Rome Statute crimes in domestic legislation is concerned, that they can also investigate and prosecute such crimes before their national jurisdictions as relevant.

- Recommendation 38: Further, to adopt the necessary national legislation regarding cooperation with the Court guarantees that the actors involved (governmental agencies, but also witnesses, victims and suspects) have legal certainty on the way the different requests for assistance from the Court will be treated.

- Recommendation 39: Finally, the adoption of clear legal framework for cooperation between the Court and States Parties covering all relevant aspects of potential judicial cooperation requests helps to avoid instances where a country is not capable of addressing a specific request for assistance, thus hindering the execution of the mandate of the Court.

- Recommendation 40: In addition, it has been the Court’s experience that the availability of channels of communication and simplified domestic procedures for dealing with ICC cooperation requests, as well as coordination and information sharing between national authorities dealing with Court cooperation requests, is a best practice that should be fostered.

48. As paragraph 17 of the 2020 Resolution on Cooperation stresses, it is a matter of priority that States that have not yet done so become parties to the Agreement on Privileges and Immunities of the ICC (“APIC”), and that they incorporate it in their national legislation, as appropriate.

49. States Parties are under an obligation stemming from article 48 of the Rome Statute to “respect such privileges and immunities of the Court as are necessary for the fulfilment of

its purposes”. Paragraphs 2-4 of article 48 furthermore provide for the privileges and immunities of specific categories of Court officials and other persons. However, the general nature of article 48 may give rise to differing interpretations of the exact scope of the Court’s privileges and immunities in concrete situations. This may be problematic for the Court as well as for the States concerned.

50. Indeed, the Court faces various challenges in the context of its operations relating to the interpretation or application of the relevant legal provisions, or the absence of necessary privileges and immunities. In instances of travel to States that have not become parties to the APIC, the Registry has to send note verbales based on article 48 and invite States to grant the privileges and immunities, instead of relying on existing legal protections covered by the APIC. Given the current and potential future contexts of operation of the Court, as well as the liability issues that can be attached, the lack of these legal protections for staff and its work can have clear legal, financial and reputational consequences for the Court and States.

51. APIC increases legal clarity and security by specifying in detail the scope of the Court’s privileges and immunities. By becoming parties to APIC, States can ensure consistent and unambiguous application of the Court’s privileges and immunities on their territory.

- *Recommendation 41:* Accordingly, all States Parties are strongly urged to ratify or accede to APIC for their own as well as the Court’s benefit. States are also encouraged to implement the provisions relating to the Court’s privileges and immunities in their national legislation, and to take active steps to ensure that the relevant national authorities are aware of the Court’s privileges and immunities and their practical implications.

## **2. Priority area 6: Diplomatic and public support in national, bilateral, regional and international settings**

### *Update on ICC efforts during the reporting period*

52. During the reporting period, because of the restrictions required to avoid the spread of COVID19, most external relations events were organised on line or with an hybrid format. The Court has continued to engage with its long standing partners, its States Parties, the United Nations, the European Union and other International and Regional Organisations as well as civil society during the reporting period.

53. The former Prosecutor addressed the meeting of the Informal Ministerial Network for the ICC during the high-level segment of the seventy-fifth General Assembly session held in September 2020,

54. The Prosecutor’s biannual briefings to the Security Council on the Darfur situation ([10 December 2020](#) and [9 June 2021](#)) and Libya situation ([10 November 2020](#) and [17 May 2021](#)) provided opportunities to inform the Council and the United Nations membership of progress and challenges in relation to the Office’s investigations, and the importance of cooperation including with regard to the outstanding arrest warrants. The Court believes that, building on past exchanges, the dialogue between the Court and the Council on matters of mutual interest, both thematic and situation-specific, could be further enhanced, with a view to strengthening synergies between the respective mandates and further developing working methods.

55. The Court, and the Office of the Prosecutor in particular, is grateful for the support demonstrated by the States Parties and other States serving at the Council. The Office has benefitted from formal and informal exchanges in addition to the strong expressions of support, including in the context of media stakeout sessions organised by the ICC focal points on the Council on behalf of the ICC State Party Caucus members following briefings by the Prosecutor to the Council.

56. A joint roundtable of the United Nations and the Court was held virtually on 19, 20, 25, 26 and 27 May 2021. It was an important occasion for officials from the United Nations and the Court to discuss cooperation matters, while reflecting upon best practices and the lessons learnt from cooperation between the United Nations and the Court, with a view to further strengthening the relationship between the two organizations.

57. The Court continued to develop its interaction and cooperation with international and regional organizations as key partners for promoting universality of the Rome Statute, raising awareness of the Court's work, adopting national implementing legislation, enhancing cooperation and promoting wider geographical representation within staff.

58. On 18 February 2021, the Court, together with the Trust Fund for Victims, held a virtual roundtable with representatives from the European Union to discuss the Court's work and current challenges, and the European Union's efforts to support it and the Rome Statute system. This roundtable continued the practice of similar meetings held in the past on an annual basis.

59. The Court greatly values the activities that civil society partners undertake to raise awareness about the Court, to promote the universality of the Rome Statute and to encourage the Statute's full implementation, and continued to participate in those activities. On 19, 21, 28, 31 May and 3 June 2021, the Court held, via videoconference, an annual roundtable with non-governmental organizations. The programme of the roundtable covered a wide range of issues of common interest.

60. Finally, the Court commemorated the Day of International Criminal Justice on 17 July 2021 with the theme of building a #MoreJustWorld, demonstrating the determination of the ICC and its personnel, as well as those affected by crimes, to build a more peaceful, more just world and crafting many calls to action for the general public to get involved

61. On a separate but important note, the Court is highly appreciative of the support of the Assembly, individual States Parties, international and regional organizations and civil society organizations in the context of the threats and sanctions directed against the Court by the previous administration of the United States, which were thankfully ended with the 2 April 2021 decision of the US Government to revoke Executive Order 13928. The public and diplomatic support of the States Parties and other stakeholders of the Court was crucial for the Court to be able to continue its operations during this difficult period.

#### Recommendations on the way forward

62. Based on its experience and assessment, the Court would suggest the following recommendations:

- Recommendation 42: The Court believes further engagement with regional organizations can help promote efforts regarding universality, implementing legislation, cooperation and complementarity, as well as raise awareness of its work, dispel misconceptions, and encourage wider geographical representation within its staff. For this purpose, the Court welcomes opportunities to integrate its work and mandate within the activities of regional and specialized organizations.

- Recommendation 43: The Court will also continue to seek increased exchanges and integration with specialised organisations on key cooperation priorities, such as regional and international networks of prosecutors and law enforcement, as well as financial investigations and asset recovery, such as UN Office on Drugs and Crime, CARIN, FATF and its regional branches, Interpol, Europol, Eurojust, Justice Rapid Response and the International Commission on Missing Persons ("ICMP").

- Recommendation 44: The Court will continue to work towards expanding its relations with States, organizations and partners that can help facilitate such integration, and will also maximize such opportunities by also bringing forward other key objectives for the Court, such as the ongoing efforts from the Registry to promote geographical representation of all States Parties within its staff.

- Recommendation 45: The Court calls on the ASP to devise a strategy to protect the Court and its personnel against attacks, and be prepared to speak up in the Court's defence, given that its dignity and political impartiality seriously inhibits its ability to defend itself against such attacks by political actors.

### 3. Priority area 7: Inter-State cooperation in the context of the Rome Statute system

#### *Update on ICC efforts during the reporting period*

63. Progress on many of the concrete areas of cooperation of concern for the Court can benefit from exchanges of experience and expertise, as well as mutual assistance between States, as well as between States, the Court and other relevant partners. The Court attempts to promote these exchanges in the context for instance of the annual focal points' seminar cooperation agreements it negotiates with States; as well as by availing the expertise it has developed in the many areas of its work in its fifteen years of operations. Some of these aspects are further detailed in the Court's 2012 report on complementarity<sup>15</sup>.

64. Much like inter-State cooperation combines elements of cooperation and complementarity, this is also the case where the Court provides assistance to national jurisdictions in accordance with the Rome Statute for the purpose of domestic proceedings. During the reporting period, the OTP continued its efforts under Goal 6 of the Strategic Plan 2019-2021, aimed at developing, with partners and to the extent permissible under the Rome Statute, a coordinated investigative and prosecutorial strategy to close the *impunity gap*. To tackle both the crimes under its direct jurisdiction that it cannot prosecute itself and the complex international, transnational and domestic associated crimes being committed in the situations under investigation and fuelling the violence and the continuation of conflicts, the OTP has continued to engage, where appropriate and within its mandate and means and when possible in the difficult context associated with the COVID19 pandemic, with national and regional authorities in charge of law enforcement. This has included: sharing its experience, technical expertise and lessons learned, when possible directly with national partners or otherwise through online consultations; contributing to specialised training needs by judicial actors; assisting or advising on standard setting for complex investigative activities; providing technical assistance when needed and appropriate; devising strategies to preserve evidence collectively; as well as answering positively to multiple incoming requests and transmitting information and evidence in its possession that may be relevant to those actors to tackle ICC crimes and the interconnected areas of criminality, thus contributing to a multi-layered, multi-party approach. The OTP has been able, in that context and during the reporting period, to provide an essential contribution to several national judicial proceedings against persons accused of ICC crimes. The OTP has continued in parallel to ensure a diligent turnaround of information and support requested by national jurisdictions and to address the ever-increasing number of demands received in a timely manner. Although access to relevant information through missions to its Headquarters has proven more difficult, the OTP has sent up tools to facilitate the secure sharing and remote review of material when legally possible and safe to continue facilitating the work of various law enforcement national authorities.

65. Coordination and sharing of expertise and lessons learned have continued and actually increased in particular in the context of the OTP's investigations in Libya, in the Central African Republic (CAR II), including through the continued OTP's interaction with the Special Criminal Court, as well as in the DRC, Côte d'Ivoire and Uganda situations.

66. The Court believes in the mutual benefits that can result in further synergies and exchanges between the cooperation and complementarity discussions, and looks forward to the launching of the database promoted by the complementarity co-facilitators in this regard. Information hence shared by the Court can be further shared with a third State provided necessary consultations with the Court are made and relevant Rome Statute requirements are met.

## IV. Conclusion

67. The Court looks forward to continuing its active engagement with States Parties, including through the Bureau's cooperation facilitation, to identify additional creative, tangible and concrete solutions to address the seven cooperation priorities identified.

68. The Court warmly welcomes any initiatives by States to engage in dialogue with the Court on the issues addressed in this report, to provide feedback, or to discuss proposals for

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<sup>15</sup> ICC-ASP/11/39



the purpose of enhancing cooperation and for addressing any obstacles that may exist, including, *inter alia*, in the context of the work plan of the cooperation facilitation for the year 2021 with a view to strengthening the Court and the Rome Statute system.

69. 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, especially during these challenging times and remains available for further discussion or information on the basis of this as well as past reports.

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