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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 38 of resolution ICC-ASP/21/Res.3 (“2022 Resolution on Cooperation”). It covers the period of 16 September 2022 to 15 September 2023.¹
2. Similar to the Court’s previous reports on cooperation, 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 2021.²
3. The report should be read in conjunction with the latest ICC annual report to the United Nations General Assembly (A/78/322), providing, *inter alia*, information on the Court’s recent cooperation with the United Nations (“UN”).
4. The Court also refers to the final report of the Group of Independent Experts dated 30 September 2020³, which touches upon relevant matters for this current report including the relationship between the Court and the United Nations, cooperation between the Court and international organisations and agencies, assistance in evidence collection, as well as the capacity of the Office of the Prosecutor (“OTP” or “the Office”) and increased inter-organ coordination in the field of financial investigations and the tracking of suspects.
5. 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 Hague Working Group (“HWG”). To amplify its messaging, the Court used, where appropriate, 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: cooperation agreements, financial investigations and recovery of assets, arrest and surrender (“Arresting ICC suspects at large”), and the Trust Fund for Family Visits (“TFFV”).
6. Using their internal databases pertaining to requests for cooperation and assistance, the OTP and the Registry have continued their efforts in compiling and analysing information on their respective cooperation-related activities with States and other partners.
7. Cooperation has remained a key component in the new Strategic Plan of the Court, and those of the OTP and the Registry, for the period 2023-2025, directly linked to the

¹ 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.

² ICC-ASP/20/25.

³ ICC-ASP/20/16.

Court's goal to foster political support and develop the modalities of cooperation and operational support for all parties as regards preliminary examinations, investigations, protection of witnesses, implementation of arrest warrants and judicial proceedings. Linked to these objectives, certain Key Performance Indicators (KPIs) were and continue to be identified and measured.

8. The Court is undertaking various concrete steps to reinforce its capacity to achieve these goals. To this end, the Registry has proposed to create a new Judicial Cooperation Support Section. This section would work specifically on the priorities identified below in this report. The Office of the Prosecutor has issued a new draft policy on Cooperation and Complementarity and is seeking support from the Assembly of States Parties to strengthen its staffing structure with respect to judicial cooperation and tracking of suspects.

9. Using as a compass the seven priority areas for cooperation identified in the 66 recommendations flyer,⁴ this report (i) provides data on cooperation priority areas two to four⁵; (ii) provides an update on the efforts undertaken by the Court during the reporting period to strengthen cooperation in those areas; (iii) highlights the main challenges identified; and (iv) identifies recommendations for a way forward for each of the aforementioned three cooperation priorities, based on the Court's experience and lessons learned in the past 20+ years of operation. Finally, the report provides a short update and key recommendations on the three other priority areas⁶ that are not linked to data collection.

⁴ <https://www.icc-cpi.int/sites/default/files/ICC-ASP-ASP6-Res-02-ENG.pdf>

⁵ 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.

⁶ Area 1: Enacting the legal mechanisms set in the Rome Statute and setting up effective procedures and structures regarding cooperation and judicial assistance; area 5: Cooperation agreements, 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 disaggregated data collected 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>	
Total number of Requests for Assistance (“RFAs”) sent during the reporting period (16/09/2022 to 15/09/2023)	478 RFAs (including 133 notifications of missions)
Evolution based on the last reporting period (16 September 2021 to 15 September 2022)	+ 23.83% (with notifications) and + 42.56% (without notifications)
Average time needed to execute an RFA	55.46 days

<i>Registry</i>	
Total number of Requests for Cooperation (“RFCs”) sent during the reporting period (16/09/2021 to 15/09/2022)	455 RFCs (including 301 RFCs sent by the relevant sections in HQ and 154 operational requests sent by the Country Offices) ⁷
Evolution based on the last reporting period (16/09/2021 to 15/09/2022)	+ 40.5% for RFCs in total and 82% for RFCs sent by the HQ.
Average time needed for reply to requests sent by the HQ⁸	47 days
% of positive replies to RFCs sent by the HQ during the reporting period	17.5 % (given the high numbers of pending requests that were sent for arrest and surrender)
Number of notifications of decisions/orders sent during the reporting period	67

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>	
Total number of RFAs sent during the reporting period	478 RFAs (including 133 notifications of missions) – <i>same as above since all the OTP RFAs relate to investigations, prosecutions and judicial proceedings</i>
Total number of Requests for Information (“RFIs”) concerning preliminary examinations for the reporting period	1 RFI
% of replies for the RFAs during the reporting period	38.49 % (a total of 184 RFAs executed out of the 478, between 16/09/2022 and 15/09/2023) ⁹
Average time needed to execute an RFA	55.46 days

⁷ This number does not reflect notifications of judicial documents, missions and efforts deployed concerning the signature of voluntary cooperation agreements.

⁸ The average time (in this table and the following) is calculated on the basis of requests which received a reply – pending requests are excluded from the calculation.

⁹ 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 and the RFAs for which the record process is ongoing.*

Registry	
<i>Total number of Requests for Cooperation (“RFCs”) sent during the reporting period for specific requests</i>	
Number of requests for cooperation	301
Defence teams’ requests transmitted by the Registry	23
Legal Representatives for Victims teams’ requests transmitted by the Registry	2
Witness protection requests	38
Support to judicial proceedings’ requests	224
Average time needed for reply to request from defence teams	46 days

Update on ICC efforts during the reporting period

10. The Court welcomes the initiative of the cooperation co-facilitators in recent years 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. A total of 27 States have replied to the questionnaire.

11. The Court continues to dedicate time and efforts to consult with the relevant authorities and companies to 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.

12. In the context of its investigations and prosecutions, the OTP observes that, overall, cooperation has been largely forthcoming and positive.

13. The Office has been working to find novel and imaginative ways, through a dynamic approach to cooperation, to partner with States Parties; States not Party; international organisations; civil society, the private sector, including telecommunication, social media, and other information technology companies; and other stakeholders to enhance the effective delivery of justice, at the ICC, and in other fora including at the domestic level. The Office, through a variety of initiatives, is seeking to place itself as a hub at the centre of accountability, with national jurisdictions and the Office functioning effectively together through partnership and vigilance.

14. The Office’s ongoing work to support and harness cooperation mechanisms, such as its engagement in the Joint Investigation Team (JIT) under the auspices of Eurojust in relation to the situation in Ukraine, and the Joint Team aimed at supporting investigations into crimes against migrants and refugees in Libya, is an example of this approach. Also the Office’s collaborative efforts with States Parties in the framework of its Forensic Rotation Model have intensified, with, during the reporting period, a series of deployments under its auspices with experts from a variety of States Parties in the context of the Office’s investigation in the situation in Ukraine. The Office is making efforts to expand these efforts to other situations where it is conducting and supporting investigations into Rome Statute crimes.

15. The Office’s efforts are strengthened through the use of technology as accelerant for its activities. Overhauling its technological architecture allows the Office to not only receive, process and preserve larger data sets, but also categorise and analyse volumes of information using tools including machine learning and advanced cognitive services that are strengthening the Office’s position to provide evidence and analytical products in support of national proceedings.

16. The Office continues to observe in particular that getting access to information collected by military or law enforcement personnel, information from social media and

telecommunication companies and entities, financial information, and information on the location of suspects remains challenging. A meaningful progress has been observed as regards States' willingness to share immigration and asylum related information with the Office. The Office continues to emphasize the importance of the efficient and timely execution of simpler requests aimed at interviewing witnesses in secure environments, through a lesser cumbersome procedure to ensure the expeditiousness of the investigations.

17. In line with paragraph 17 of the 2022 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.

18. The Registry continues to support the work of counsel both by requesting States to grant them privileges and immunities during their missions, assisting them in meeting with relevant authorities. It also transmits request for assistance pertaining to the investigations of the Defence both to States and International Organisations. As a matter of example, the Registry transmitted 14 requests to States during the reporting period for one specific defence team.

19. It has been the Registry's experience that cooperation with Defence teams is not easily forthcoming for a number of reasons. States have indicated that they lack the internal mechanisms to deal with such requests especially without a judicial order. They have also indicated that the volume of requests is important and the requests are wide in scope requiring significant resources which they do not have. This is even more significant when the requested States are not party to the Rome Statute. To facilitate the process, the Registry compiles the different national requirements to process requests from the defence so that defence teams can be advised in due time. Focal points from targeted countries were consulted during a seminar held in April 2023 to explain the work and needs of the defence teams in the presence of the President of the ICC Bar Association and see whether States were willing to have direct contacts with the defence teams. Most States indicated that they prefer to continue receiving requests via the Registry.

20. During the reporting period, the Court continued to receive crucial support and cooperation from the UN. The Court is grateful for the important role that 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. The Court draws on its Liaison Office in New York to support dialogue with relevant UN offices and member States. The Liaison Office can, upon request, follow-up on urgent requests for cooperation. To maintain and strengthen this crucial relationship, the three Principals visited New York during the reporting period and held discussions with senior UN officials, as well as with representatives of member States.

21. The Court continues its work to ensure maximum flexibility and optimising operations in relation to its offices and presences in situation countries. This includes more effective allocation of resources across all situations before the Court, including with respect to those situations where the Court does not have a continuous field presence, to ensure that its mandated tasks are performed to the highest standards. The Court will maintain a full-time physical presence in six situation countries, namely Uganda, DRC, CAR, CIV, Mali and Ukraine. The offices and presences in CIV, DRC, Sudan and Georgia will be scaled down or closed. A country office was opened in Ukraine on 14 September 2023. The Office of the Prosecutor has also enhanced its presence in the field in Bangladesh and Venezuela in recent months following official visits by the Prosecutor to Dhaka and Caracas.

22. Owing to the precarious security and political situation in Sudan and the uncertainty regarding when the ongoing armed conflict in the country will end, the Registry considers it most appropriate to continue to rely on the support of the UN to maintain its capacity in Sudan to facilitate trial activities in the Abd-Al-Rahman case, and to provide its support from the Country Office in Uganda. 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/witness participation and

reparations related activities, 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

23. 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: Ratification of the Agreement on Privileges and Immunities of the ICC by all States Parties.
- Recommendation 8: States could consider signing the framework agreements on interim release, release relocation of witnesses, transport of detained persons and witnesses and enforcement of sentences and accept cases on an ad hoc basis or within the framework of the said agreements.
- Recommendation 9: States should consider making voluntary donations to the existing Trust funds pertaining to family visits for detained persons and the relocation of witnesses.

24. 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 in the context of the 2019 Resolution on the Review of the International Criminal Court and the Rome Statute system 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."¹⁰ 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

¹⁰ ICC-ASP/18/Res/7, para. 18.

non-cooperation, as well as to developing guidelines regarding the formal dimension of the ASP procedures regarding non-cooperation.

25. 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. This has been reflected as the first trial at the Court stemming from a United Nations Security Council referral opened in April 2022. However it is also essential that there is 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, so as 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.

26. To date, the Court has transmitted a total of 16 communications on non-cooperation to the Council regarding the situations in Darfur and Libya. The Court will continue to engage relevant stakeholders 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 for attaining the mutual goals of preventing and ending impunity for atrocity crimes. On 24 June 2022, a UN Security Council Arria-formula meeting was organised on the relation between the ICC and the Council, with participation of the Prosecutor. The Office and the Court as a whole continue 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>	
Total number of RFCs sent during the reporting period for arrest and surrender¹¹	127
Average time needed for reply	10 days
% of positive replies to RFCs during the reporting period	0% – No arrest took place during the reporting period

Update on ICC efforts during the reporting period

27. The lack of implementation of arrest warrants has been identified as major strategic risk for effective mandate delivery by the Court. No arrest operation took place during the reporting period. Arrest operations may be complex to put in motion and require significant efforts by States Parties and requested States however without arrest, no accountability process can start. Reflecting the strategic risk identified, and taking into account practice and lessons from other international tribunals, the Office of the Prosecutor and the Registry are seeking to strengthen their capacity to more effectively support tracking and arrest efforts, with a view to ensuring a more robust analysis, enabling the Court to work closely together with States Parties and other stakeholders to ensure greater effectiveness in the arrest of suspects at large. In that vein, the Registry has proposed the creation of a Suspects-at-Large Unit within the new Judicial Cooperation Support Section that would specifically work on this question in close cooperation with the Office of the Prosecutor. The Office has requested in the Proposed Programme Budget for 2024 a limited amount of additional staffing in this area, and would intend in consultation with the Registry to propose a more enhanced staffing framework for 2025. The Court encourages States to engage with the Court on the basis of Article 97 of the Rome Statute when facing difficulties in the execution of a request for arrest and surrender.

¹¹ Requests are sent to States where suspects are likely to travel. However suspects may not travel to these countries. A low percentage of positive reply is not indicative of a lack of cooperation by requested States.

28. Public Court-issued requests for arrest and surrender remain outstanding against 16 individuals:

- i) DRC: Sylvestre Mudacumura, since 2012;¹²
- 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;
- vi) CAR II: Mahamat Nouradine Adam, since 2019, unsealed in 2022;
- vii) Georgia: David Georgiyevich Sanakoev, Gamlet Guchmazov and Mikhail Mayramovich Mindzaev, since 2022.
- viii) Ukraine: Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, since 2023.

29. 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 confirmation in each case is required to establish the reported death. Warrant of arrest remains in effect until otherwise ordered by the Court.

Recommendations on the way forward

30. 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 10*: 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 11*: Transmission of information and alerts on suspects.
 - *Recommendation 12*: Enhance support to the Suspects at Large Working Group, including through financial support through the ICC annual budget.
 - *Recommendation 13*: 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 14*: Support in multilateral fora (UN, regional, specialised networks) and bilateral encounters, and efforts to keep the issue on the agenda.
 - *Recommendation 15*: Insertion of arrest warrant execution in talking points and external relation strategies, as appropriate.
 - *Recommendation 16*: Focus on compliance with ICC decisions, including as part of larger diplomatic discussions and fora.
 - *Recommendation 17*: 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.
 - *Recommendation 18*: Reactivity when information sent on suspects' movements.

¹² The Office of the Prosecutor is in the process of verifying the reported death of Sylvestre Mudacumura (in 2019).

- Operational support:
- *Recommendation 19*: 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 20*: 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 21*: Transport and logistics: the Registry has also 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. Only one State entered into this agreement to date.

31. 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. 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>	
Total number of RFAs sent during the reporting period for financial investigations for identification of assets	4
% of execution rate	0 % ¹³
Average time needed to execute an RFA	n/a

<i>Registry</i>	
Total number of RFCs sent during the reporting period for financial investigations for legal aid	1
Total number of RFCs sent during the reporting period for asset recovery for fines and reparations	3
Average time needed for reply	All requests are pending – n/a
% of positive replies to RFCs during the reporting period	All requests are pending – n/a

Update on ICC efforts during the reporting period

32. During the reporting period, the Registry continued its effort to analyse existing case law and replies from States in order to identify lessons learnt that could be used by the Court and States when working on the issue of the recovery of assets. In this spirit, the Registry is also liaising with one State to develop a vade mecum retracing the procedure to be followed to execute a request for identification, freezing, seizure and confiscation of assets at the domestic level in consultation with the different stakeholders concerned. The Registry hopes to replicate this initiative with other States. The Court also updated the forms sent to all States in the context of the facilitation on cooperation to obtain more information regarding the existing systems at the national level in this area. It has also engaged with UN and European

¹³ All the Requests for Assistance were sent during the last part of the reporting period.

law enforcement agencies to explore initiatives facilitating the collection of financial intelligence and with NGOs advocating for robust implementing legislations enabling victims to obtain reparations. This area of cooperation will be a priority of the proposed new Judicial Cooperation Support Section of the Registry.

33. As part of its strategic review, the Office of the Prosecutor has identified the need to strengthen its capacity with respect to financial investigations from the early stages of its evidence collection work. This is required in order to bolster its ability to collect financial evidence for article 5 crimes and to identify and trace proceeds, property, assets and instrumentalities of crime for the purpose of potential Court ordered forfeiture. The Financial Investigations Unit was established to ensure that the Unified Teams across the Office can draw on dedicated and specialized capacity in this area as part of their investigative work. However, the Unit does not have any dedicated staffing at present. The Office has requested additional specialised staffing resources for financial investigations in the Court's proposed budget for 2024.

Recommendations on the way forward

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

- *Recommendation 22:* 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.
- *Recommendation 23:* Streamlining ICC specific needs domestically so that the prosecution of Rome Statute crimes 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 24:* 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 25:* 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 26:* Complete the questionnaire distributed to States on the recovery of assets. Identify a focal point for the network of the operational freezing of assets.
- *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.

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

35. The enactment by States of legal mechanisms and the setting up of effective procedures to facilitate cooperation and judicial assistance remains of paramount importance to the Court's activities.

36. The annual Focal Points Seminar on Cooperation took place in The Hague from 24 to 26 April 2023, 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 cooperation between the Court and the competent authorities. These gatherings provide a unique platform to exchange on the crucial role of the focal point and enhance dialogue and cooperation between the Court and States, including on new developments in terms of structures, partnerships, working methods, and complementarity. The technical areas of cooperation (such as arrests of suspects; freezing of assets; request for information from defence teams) were discussed during workshops and a focus has been made on the role and rights of victims. This forum has also 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 seminar is funded by the European Commission and a reception was organised at the Court with the sponsorship of the French authorities.

37. In addition, with the financial support of the European Commission, the Court organized over ten seminars and events in support of the Court's efforts to foster cooperation with States, including the Asia-Pacific Regional Seminar for Judges on the Rome Statute, virtual training for ICC Counsel and a training for Ukrainian officials on applying an integrated witness and victim-centred model of protection and support for victims of sexual violence.

38. Missions to States Parties provide important opportunities for engagement with counterparts from different ministries and other government services that are part of the national effort to cooperate with the Court, and allow the Court to identify specific focal points as well as areas of further cooperation (including 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. With funding from the European Commission, the Court organized several high-level and working level missions, in particular, to Japan, Central African Republic and France.

Recommendations on the way forward

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

- *Recommendation 28*: As recalled by paragraphs 7 to 9 of the 2021 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 29:* 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 30:* 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 31:* 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 32:* 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.

40. As paragraph 18 of the 2021 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.

41. 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.

42. 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.

43. 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 33:* 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 5: Cooperation agreements

Update on ICC efforts during the reporting period

44. On 8 December 2022, the Court and the Government of Spain signed an Agreement on the Enforcement of Sentences. Under the agreement, persons convicted by the ICC may serve sentences of imprisonment in Spain if so decided by the Court and accepted by the Government of Spain. Similar agreements on the enforcement of sentences are currently in force between the ICC and 14 States Parties. The Court is grateful to the Government of Spain 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”. The Presidency of the Court continued to actively raise this important aspect of voluntary cooperation with a large number of States, which continues to increase in importance as more proceedings before the Court progress toward conclusion.

45. Belgium signed an agreement on release of persons during the ceremony of the 25th anniversary of the Rome Statute. The Court is grateful for this engagement especially as Belgium already had concluded 4 cooperation agreements with the Court. To continue sensitising States to this crucial area of cooperation, on 23 June 2023 the Registry organised a hybrid meeting with States from the Group of Latin American and Caribbean States (GRULAC) on framework cooperation agreements, with participation by representatives of embassies as well as experts from capitals.

46. Despite these efforts, 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. As a matter of example, in the case of the Prosecutor v. Maxime Geoffroy Mokom Gawaka, the Registry contacted an important number of European States with a request to consider accepting Mr. Mokom on their territory for the purpose of interim release. Despite intense follow-up efforts, no such State accepted Mr. Mokom on its territory. In its Decision on interim release, issued on 8 March 2023, the Chamber acknowledged that Mr. Mokom was eligible for interim release with a number of conditions, but rejected the application for interim release in the absence of a State willing to accept Mr. Mokom on its territory. Amongst the reasons provided by the States, the Registry noted that the States were not in a position to accept an ICC suspect on their territory for interim release due to security concerns, the lack of family or other connections with a State and due to the lack of relevant provisions in their national legislation to cooperate with the Court on the matter and to enforce conditions.

47. 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.

48. In December 2022, the Registry entered into one witness relocation agreement which brings the total number of relocation agreements to 26. The Registry strongly encourages States to enter into Relocation Agreements with the Court, which can be tailored according to their needs, culture and legislations requirements. For those states that already signed a Relocation Agreement, the Registry regrets that the agreement is sometimes not implemented and witnesses not received on their territory and would encourage them to make this theoretical commitment concrete by accepting even only for a limited number of individuals. This would allow the Court to perform its mandate and the Registry to efficiently protect witnesses. The ICC witness protection system and the ability of the Court to enable witnesses

to safely testify depends on such tangible engagement. The Registry continues its efforts to increase the number of Relocation Agreements and partner States including via its newly created Relocation task force. The Registry is in the final step of amending the regulations for the Special Fund for Relocations which would offer more flexibility for the fund to be allocated to its most urgent witness relocation projects with partner states

49. A matter of key importance is the Trust Fund for Family Visits. As family visits to indigent detainees (7 currently) 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. During the reporting period, the TFFV received 191,526 euros. The Court is very grateful to all the contributing States over the years for all contributions, small or large. In order to be able to continue organizing funded family visits for all indigent detained persons in 2024 it is vital that stakeholders, States and others, cognisant of the current situation, maintain efforts towards a sustainable and adequate funding. Only a perennial funding will ensure the integrity of the proceedings, the proper management and administration of the ICC Detention Centre and avoid the Court incurring additional cost

50. Another increasing area of voluntary cooperation relates to the operational support to the Court. The Court operations have expanded in war zones requiring adequate training of the staff deployed in the area of medical emergency, use of specific firearms for example to secure the guarantee of sensitive operations and urgent need for transportation. These needs translate into the issuance by States Parties of authorisations and licences in relation to these firearms, specific flights authorisations and loans of aircrafts. The Court thanks the States Parties for their general support to the Court and those States that accepted to include ICC staff in relevant national trainings.

51. Finally, the ICC and Europol signed a Working Arrangement to enhance cooperation, in particular through the exchange of information, knowledge, experience, and expertise on 25 April 2023. Direct dialogue with relevant law enforcement agencies will enable the Court to send more targeted requests for cooperation in a more expeditious fashion.

Recommendations on the way forward

52. 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 34: 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 35: 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 36: 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 37: 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 38: The possibility of including the signature of cooperation agreements as an item in the agenda of meetings of regional groups.
- Recommendation 39: 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.

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

Update on ICC efforts during the reporting period

53. During the reporting period, the Court continued to engage with its long-standing partners, notably including the States Parties to the Rome Statute, the United Nations, and international and regional organisations as well as civil society.

54. In recent years, the Court has faced increasing threats against its elected officials and operations. During the reporting period, arrest warrants were issued against several of its officials; The Court has also been targeted by a cyber security attack in September 2023. The Court would like to thank its Host State for its immediate support in facing these challenges and its States Parties for the support expressed during this period. The Court anticipates that further threats will follow and will request increasing support from its States Parties in this area.

55. 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.

56. The President of the Court used the opportunities offered by his many meetings with senior authorities during the reporting period to underline the significance of firm political support for the Court and its independence as well as the crucial importance of cooperation for the Court's ability to carry out its mandate, and urged all partners to do their utmost in this respect.

57. The Prosecutor's biannual briefings to the Security Council on the Darfur situation and Libya situation 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.

58. 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.

59. The Court continued to enhance its engagement with the group of African States via different meetings with States representatives in The Hague, New York and Brussels as well as meetings in different African capitals and active engagement with the African Union. The Court concluded an agreement on cooperation with the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders on 21 October 2022. The President and the Prosecutor each held fruitful meetings with the Chairman of the African Union and the Chairman of the African Union Commission in September 2022. The Prosecutor furthermore attended the 36th Heads of State Summit of the African Union in February 2023, to discuss synergies and cooperation. The Prosecutor also travelled to Guatemala, in May 2023, for meetings with high-level representatives in the margins of the IX Summit of the Association of Caribbean States. The Court's organs engaged in many forms of interaction and cooperation with various entities of the European Union.

60. 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 1, 2 and 3

June 2023, 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. In addition, two thematic roundtables have been held by the Office of the Prosecutor with civil society, addressing the crime of gender persecution and the upcoming meeting on a trauma-informed approach to investigations.

61. Finally, the Court participated in several events marking the 25th anniversary of the Rome Statute highlighting the relevance of its mandate, its unique nature as a permanent international tribunal, and the support and cooperation it needs from States. In particular, on 17 July 2023, the Court's principals participated in the event organized by the Assembly of States Parties, at the United Nations Headquarters. The principals participated in a high-level Ministerial Roundtable entitled "Strategic vision for the next decade: How to ensure consistent and sustainable support for the ICC" in which numerous Ministers and Vice-Ministers expressed their ongoing support for the Court and its mandate.

Recommendations on the way forward

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

- Recommendation 40: 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 41: 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 42: 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 43: 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.

4. 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 complementarity¹⁴.

64. Much like inter-State cooperation combines elements of cooperation and complementarity, this is also the case where the Court provides assistance to national

¹⁴ ICC-ASP/11/39.

jurisdictions in accordance with the Rome Statute for the purpose of domestic proceedings. As a strategic priority, the OTP is aiming to increase, through proactive engagement, efforts by national authorities to fight impunity, including by strengthening, its ability to provide tangible support to domestic proceedings in relation to core international crimes and other serious crimes, in a manner consistent with the Rome Statute. The Office has undertaken notable efforts in this regard during the reporting period, including the above referenced efforts in the context of the JIT for Ukraine and the JT for Libya; its cooperation with and visit to the opening of the first trial of the Special Criminal Court (SCC) in the Central African Republic; the signing with the Government of the DRC of a Memorandum of Understanding (MoU), to accelerate implementation of the DRC national strategy through priority cases and to enhance national accountability institutions' capability to effectively address allegations of international crimes; the signing of a second MoU with the Government of Venezuela establishing, among others, the legal and operational framework for the establishment of an in-country office for the Office; the signing of an Action Plan between the Office and the Government of Colombia to facilitate enhanced implementation of the Cooperation Agreement, in addition to a complementary workplan with the Special Jurisdiction for Peace which will facilitate, *inter alia*, the provision of support in the near term with respect to the investigation and prosecution of sexual and gender-based crimes. The Office in September 2023 launched for consultation with stakeholders a draft policy paper on cooperation and complementarity, which captures these initiatives and the general strategy of the Office.

65. A notable positive development in the reporting period was the adoption of the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes, also known as the Ljubljana-The Hague MLA Convention, on 26 May 2023 at the MLA Diplomatic Conference in Ljubljana, Slovenia. Elected officials of the ICC from Chamber and the Office of the Prosecutor delivered remarks on the opening day of the Diplomatic Conference, both expressing support for the initiative, which is important for strengthening the ability of States to effectively exercise jurisdiction over Rome Statute crimes through enhanced cooperation.

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 cooperation priorities enumerated above and in view of the new challenges embraced by the Court.

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 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 2024 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, and remains available for further discussion or information on the basis of this as well as past reports.