

**Thirteenth session**

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

1. This report on Cooperation is submitted by the International Criminal Court (“ICC” or the “the Court”) pursuant to resolution ICC-ASP/12/Res.3. It covers the period of 1 October 2013 to 30 September 2014.¹

2. During the reporting period, the cooperation needs of the Court have continued to grow, due notably to the increase in its investigative, prosecutorial and judicial activities, as well as the complexities of the situations and challenges the Court deals with. The Registry transmitted 162 requests for cooperation to States and international organisations on behalf of the Chambers, on behalf of the Defence or on its own account². The Office of the Prosecutor (“OTP”) sent out 356 requests for assistance³ to different partners, including States parties, non-State parties, and international and regional organizations during the reporting period, which represents an increase of 19,06% compared to the last reporting period⁴. It is noteworthy that the number of incoming requests for assistance (on the basis of article 93(10) of the Rome Statute) received by the OTP has increased by 25% from 2012-2013 to 2013-2014, showing the growing integration, legitimacy and relevance of the ICC in a wider network of international criminal justice actors.

3. This report is meant to provide an update to ICC States Parties on the different cooperation efforts undertaken by the Court, with the support of States and other stakeholders, during the reporting period. The Court notes that the priority areas in terms of cooperation identified and highlighted by the Court in its 2013 Cooperation Report⁵ remain valid (these areas are: arrest strategies; voluntary agreements; Agreement on Privileges and Immunities of the ICC; and supporting, protecting and enhancing the Rome Statute system and its intrinsic cooperation needs, at the regional and international levels).

4. The Court also notes that the 66 Recommendations on cooperation adopted by States Parties in 2007⁶ remain highly relevant and continue to form an important basis for cooperation discussions and efforts.

¹ Certain information were 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 This number does not reflect notifications of judicial documents, missions and requests concerning the signature of voluntary cooperation agreements.

³ This number includes notifications of missions of the OTP, as well as bulk monthly notifications concerning multiple missions sent to situation countries in which the OTP has a high volume of investigative activities.

⁴ 299 requests for assistance to different partners, including States parties, non-State parties, and international and regional organizations, were sent by the OTP between October 2012 and September 2013.

⁵ ICC-ASP/12/35.

⁶ resolution ICC-ASP/6/Res.2, annex II.

5. The purpose of the present report is thus not to repeat the points raised and developed in the past cooperation reports produced by the Court, but rather to report on the recent efforts developed by the Court, such as the cooperation seminars and the seminars with regional (the African Union and the European Union) or international organisations (the United Nations), with a view to attaining the strategic objectives set out by the Court to enhance cooperation and find solutions for the specific challenges identified.

6. The Court is very appreciative of the continued efforts undertaken by the cooperation facilitator, Ambassador Krutnes (Norway), including co-organizing three cooperation seminars with the Court and the Netherlands, facilitating discussions in the context of The Hague Working Group on key topics of concern for Court, including inter alia the cooperation needs of the Defense, voluntary agreements, as well as the availability of channels of communication and the coordination of national authorities dealing with cooperation with the ICC.

7. The Court is in particular appreciative of the discussions on arrest strategies – led by its rapporteur – in the context of the cooperation facilitation. The latest report of the Court on cooperation extensively touched upon this priority area and highlighted the importance of arrest and surrender and the impact of the non-execution of the Court’s requests on the functioning of the Court and its credibility. The Court has engaged actively in these discussions during the reporting period, and looks forward to continuing this important work towards concrete and tangible results in this crucial area.

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

A. Regional Seminars with African States

8. During the reporting period, the Court organized, together with Norway, Estonia and the Netherlands, a seminar on witness protection for Anglophone African States Parties in Arusha, the United Republic of Tanzania, on 29-30 October 2013⁷. A high level seminar for Fostering Cooperation was also organised together with Norway, the Netherlands and the financial support of the European Commission, with Anglophone African States in Accra, Ghana, on 3-4 July 2014. A similar seminar with Francophone African States will be held in November 2014 in Cotonou, Benin.

9. Following on the earlier seminars organized in 2013, and in line with the Court’s strategic goal of becoming a well-recognized and adequately supported institution, these gatherings have been tailored to promote cooperative relationships between the ICC and the participating States on key priority areas identified by the Court, including further support from States in the area of witness protection. More substantial information about this priority cooperation area can be found in the Court’s 2013 cooperation report, paras. 30 to 32.

10. Recognizing that the ICC’s current situation countries are all located on the African continent, and taking into account the recent concerns and discussions raised regarding the relationship between the African continent and the ICC, these seminars are intended to stimulate candid and in-depth discussions on some of the most relevant issues regarding cooperation between the ICC and African States, notably the protection of witnesses, State cooperation during ICC investigations, voluntary agreements, as well as the connection between national capacity building and cooperation. Furthermore, the seminars aimed at strengthening the network between States themselves as well as between the ICC and States.

11. High-level representatives from nine States, including Ministers of Justice and Attorney-Generals, participated in each seminar, together with ICC officials and staff. With the third cooperation seminar planned to take place in Benin in November 2014, the Court will have brought together representatives from 26 African States, including Parties as well as non-Parties to the Rome Statute. In addition to States, the Arusha seminar benefited from the participation of the United Nations Office on Drugs and Crime (“UNODC”), and the

⁷ A similar seminar was organized for Francophone African States Parties in Dakar, Senegal, on 25-26 June 2013.

Accra seminar from the participation of an expert identified thanks to the Justice Rapid Response (“JRR”).

12. Both seminars, and the Witness Protection Seminar in Arusha in particular, allowed for positive exchanges between States and the Court on the witness protection system established by the Court, the challenges faced by the Court and by States in this area, the relocation agreements, the Special Funds for witness relocation, as well as the complementary role of the national witness protection systems. This interaction, as well as the bilateral side discussions, allowed both States and the Court to understand the difficulties met by each party, as well as the operational and legal aspects that are in play when the Court requests States for cooperation in this area.

13. Participating States at the two seminars confirmed that the seminars had responded well to their urgent need for more information from the ICC on the relevant ICC cooperation aspects and their implementation at the national level.

14. The regional dimension of the seminars was particularly welcomed by the participants. Issues such as witness protection are not relevant only for the ICC purposes but also in the context of national, regional and inter-state criminal processes. The seminar brought together policy-makers and justice practitioners who pledged to continue dialogue on these issues also independently of the ICC-organised events. Already during seminars, States with best practices to offer were approached by others who were in need of capacity support or contacts in a specific area of cooperation.

15. The seminars served also as a useful place to clarify national cooperation focal points and roles in the countries that participated, and to assist in identifying the requirements from a State perspective that would enable the Court’s requests to be more effective.

16. Both seminars also offered a venue to discuss openly and transparently the concerns States have regarding witness relocation agreements, a key tool for the Court to protect its witnesses. It should be recalled here that in its last resolution on cooperation (resolution ICC-ASP/12/Res.3), the Assembly of States Parties (“ASP”) acknowledged the importance of protective measures for victims and witnesses for the execution of the Court’s mandate, and “while welcoming the relocation agreements concluded with the Court in 2013, stresse[d] its serious concern that thus far only a small number of States Parties have entered into agreements or established sufficient arrangements with the Court for the expeditious relocation of victims and witnesses”. The Assembly also called upon “all States Parties and other States, to consider strengthening their cooperation with the Court by entering into agreements or arrangements with the Court, or any other means concerning, inter alia, protective measures for victims and witnesses, their families and others who are at risk on account of testimony given by witnesses”.

17. The Court is therefore encouraged by the fact that several States participating in the seminar agreed to continue discussions on the agreements or ad hoc arrangements for relocation after the seminars, as well as concrete relocation measures that could be taken in the near future. Four relocation agreements were signed in 2013 and 2014, which may have been prompted by the discussions held during The Hague Working Group meetings, as well as the seminars.

18. The Court would like to thank the host States, namely the United Republic of Tanzania and Ghana, for their valuable support and assistance; the Court expects that the cooperation seminar for Francophone African States, which is scheduled to take place in November 2014 in Cotonou, Benin, will be as successful as the previous ones.

19. The Court is also planning to organize a roundtable for the focal points of the situation countries from 17 to 21 November 2014 at the seat of the Court with the assistance of the Netherlands, France and Finland. This roundtable aims at enabling a direct exchange of views and experiences between the relevant staff of the Court and their primary cooperation interlocutors in the situation countries, as well as between the focal points themselves on cross cutting topics. The role of the focal points is absolutely crucial for the Court as requests for cooperation are channelled through them. It is therefore essential that they are kept informed of the judicial developments and the evolving needs of

the Court, as well as being given an opportunity to voice and share their experiences in order to facilitate effective cooperation.

B. Regional seminar with South American States Parties

20. During the reporting period, the Court enhanced its interaction with Latin American States, as part of a strategic goal to continue to increase understanding about the mandate and the cooperation needs of the Court, as well as to encourage the domestication process of the Rome Statute legal framework. In addition to visits to different Latin American countries in 2013 and 2014 by Court officials and staff, a High-level seminar on Fostering Cooperation with South American States Parties was organized by the Court, together with Norway and the Netherlands, and with the financial support of the European Commission, in Buenos Aires, Argentina, on 20-21 May 2014.

21. High-level Government representatives from 10 States participated in the seminar, together with ICC officials and staff, as well as representatives of the International Humanitarian Fact-Finding Commission and the Inter-American Court of Human Rights.

22. Recognizing the region's commitment to international justice and the ICC, part of the discussions were geared towards reinforcing public and diplomatic support to the Court, notably at the regional level, through organizations such as the Organization of American States ("OAS"), the Union of South American Nations ("UNASUR") and the Southern Common Market ("MERCOSUR"), which can also help to promote a more regular dialogue and a better understanding between the Court and South American States. To a large extent as a result of the connections made at the seminar and discussions held in its margins, a Framework Cooperation Agreement between the ICC and the Parliament of MERCOSUR was concluded on 4 August 2014 in Montevideo. The Agreement foresees mutual cooperation on matters of common interest, such as the promotion of cooperation legislation and the conclusion of bilateral cooperation agreements with the ICC among MERCOSUR member state parliaments.

23. The seminar was also a good opportunity to further discuss the cooperation framework established by the Rome Statute, allowing States to seek clarifications regarding the process and expectations of the Court concerning requests for assistance and cooperation, as well as arrest warrants and requests for the freezing of assets; it also allowed States to understand how they could also seek the assistance of the Court, and in particular the OTP, regarding their own national proceedings for ICC crimes on the basis of article 93(10) of the Statute.

24. Discussions also focused on witness protection, as a clear priority area identified by the Court regarding cooperation. The Court intensified its efforts with African countries, as ICC witnesses come mostly from this continent, but also encourages all States Parties to enter into relocation agreements. It is important that all States assist the Court and share responsibility in this area. The geographical distance between the area of threat and the area of relocation can even be an asset, as the bigger distance can contribute in making the witnesses safer. The Court is also aware of some geopolitical sensitivities that could also be pre-empted through the existence of relocation possibilities further away from the area of threat. The existence of national witness protection systems of South American States was also touched upon, as well as explanations regarding the needs and challenges met by the Court. Promising bilateral discussions took place, and the Court is hopeful these will yield positive results soon.

25. Finally, the seminar allowed for exchanges of experiences between States, the Inter-American Court of Human Rights and the ICC regarding victims' reparations; the Inter-American Court and several South American States have extensive experiences in this area, which are very relevant for the Court, given that it will have to look into the implementation of this right for victims for the first time in the very near future.

26. The Court would like to thank the host State, Argentina, for its valuable support and assistance in organizing this seminar.

C. Seminars and roundtables with regional and international organizations

27. As part of the priority area of supporting, protecting and enhancing the Rome Statute system and its intrinsic cooperation needs at the regional and international levels, as identified by the Court in its 2013 cooperation report, the ICC has continued to increase its efforts to engage with regional organizations during the reporting period.

28. This is in line with recommendation 61⁸, which notes that “States Parties should through their membership of international and regional organizations work to promote the mainstreaming of Court issues, horizontally and vertically within the organizations”. The 2013 resolution on cooperation also emphasizes “the importance of States Parties enhancing and mainstreaming diplomatic, political and other forms of support for, as well as promoting greater awareness and understanding of the activities of the Court at the international level, and encourages States Parties to use their capacity as members of international and regional organizations to that end”.

29. To support this strategic goal, the Court has inter alia co-organized two seminars with regional organizations during the reporting period: the third technical joint seminar between the Court and the African Union (“AU”), which took place in Addis Ababa, Ethiopia, on 7-8 July 2014, and the first roundtable between the ICC and the European Union (“EU”), which took place at the seat of the Court on 11 July 2014.

30. The ICC/AU joint seminar offered an important opportunity to continue the momentum gained from the first two Joint Seminars of 2011 and 2012 and to renew a dialogue with the AU. This was particularly important in light of changes among the AU officials, as well as among the African representatives to the AU due to rotation.

31. Participants included the new AU Legal Counsel and staff of the AU Commission, Ambassadors and legal advisors from the Permanent Missions of the AU member States, as well as Court officials and staff. The discussions touched on various issues, including ICC judicial processes, evidence collection and investigations, witness protection, cooperation and complementarity.

32. Following the first two seminars, and taking into account the Court’s cooperation priorities, the specific objectives of this seminar were to continue the momentum gained from the first two Joint Seminars, with a view to reinforcing ICC-AU dialogue; to discuss and exchange views on lessons learnt from ICC proceedings in Africa and concerns raised by AU and its Member States; to exchange views on the issue of complementarity between the ICC and national criminal jurisdictions and possibly the African Court of Justice and Human Rights; to explain the ongoing cooperation between the ICC and different regional and international organizations; to foster understanding regarding the work processes of the ICC, based on the Rome Statute provisions, from preliminary examinations to the start of investigations, the selection of cases, and the pre-trial and trial requirements; to provide information regarding new and revised strategies and policies of the different organs of the ICC; to map out the roles and functions of each organ, sections and units of the ICC at various stages of the proceedings, and how they interact and coordinate with each other; to exchange views on some of the critical challenges faced by the ICC in its investigation and prosecution of serious crimes; to exchange views on the importance of States’ cooperation in facilitating the work of the ICC, including voluntary cooperation agreements; and to lay the ground for developing possible strategies and practical actions for ICC-AU cooperation and discuss possible practical recommendations.

33. A broad exchange of views in the form of an interactive dialogue on various cooperation-related matters took place. The seminar allowed to a certain extent to restore the confidence between the AU and the ICC, at least at the working level, and opened up the way to continuing the dialogue. It is hoped that a fourth joint seminar will take place in 2015.

34. The Court would like to thank the AU for co-organizing this seminar, as well as the Organisation Internationale de la Francophonie (“OIF”), the European Commission and the Ministry of European and International Affairs of Austria for their financial support.

⁸ resolution ICC-ASP/6/Res.2, annex II.

35. The EU/ICC roundtable was the first of its kind, although the Court and its different organs regularly interact with the EU. The roundtable brought together representatives from the European External Action Service (“EEAS”), the European Commission and the European Parliament, as well as ICC staff members.

36. Discussions focused on specific areas of interaction between the two organizations where cooperation and exchanges of information could be enhanced, such as preliminary examinations, cooperation agreements and non-cooperation, presence and cooperation in situation countries, diplomatic support and mainstreaming, universality, public information and outreach, and complementarity.

37. Concrete initiatives were developed as a result of this meeting, including on more regular exchanges of information and the mainstreaming of ICC issues in EU activities in the field.

38. There was a clear consensus about the need to have follow-up meetings, as well as another annual roundtable in 2015, possibly in Brussels.

39. The annual round table between the United Nations (“UN”) and the Court was held via videolink on 17 and 19 December 2013. The two institutions updated each other on relevant developments, at both the judicial and operational levels, as well as on the challenges they face. Discussions also focused on information-sharing, cooperation needs, channel of communications and challenges, including regarding the needs of defence teams. These roundtable meetings are an important opportunity for the Court and the UN to discuss and find solutions to concrete issues of cooperation, as well as to identify further avenues of collaboration and exchanges between the two institutions.

III. Topics discussed in the context of the 2014 The Hague Working Group cooperation facilitation

A. Availability of channels of communication and domestic procedures for dealing with Court cooperation requests

40. Availability of channels of communication and domestic procedures for dealing with Court cooperation requests, as well as coordination between national authorities dealing with ICC cooperation requests, are of great importance for the Court, as they greatly contribute to the efficiency and expeditiousness of the Court’s work.

41. Recommendations 7 and 8 had already suggested that States Parties may consider “designating a national focal point tasked with the coordination and mainstreaming of Court-issues within and across government institutions”, and “further consider, based on the activities of the focal point, to establish a more permanent coordinating mechanism either through the focal point or through a working group or task force. Such a mechanism could deal with all Court-related issues.”

42. The 2013 resolution on cooperation in particular encourages States “to establish a national focal point and/or a national central authority or working group tasked with the coordination and mainstreaming of Court related issues, including requests for assistance, within and across government institutions”, and further requests “the Bureau to report to the thirteenth session of the Assembly on the feasibility of establishing of a coordinating mechanism of national authorities dealing with cooperation with the Court, for sharing knowledge and know-how, on a voluntary basis”.

43. The Court is grateful for the informal discussions which took place in the context of the cooperation facilitation of The Hague Working Group on 11 June on this topic, as well as for the current efforts led by Belgium regarding the feasibility of the establishment of a coordinating mechanism of national authorities dealing with cooperation with the ICC.

44. The Court highly values efforts to enhance the coordination and the mainstreaming of its cooperation needs within and across national authorities. Given the priority areas in terms of cooperation identified by the Court in 2013, States could perhaps consider the possibility of focusing these coordination or networking efforts on specific themes or areas

of expertise, such as witness protection or freezing of assets. The Court is available to engage further in these discussions.

B. Voluntary agreements

45. The Court has developed two release agreements for the benefit of the defence. The first one concerns detained persons who have been granted interim release by a Chamber. The second one concerns persons released from the custody of the Court but who cannot go back to their country of nationality or residence. These agreements aim at securing a number of States with whom the conditions of such release have been negotiated and who would be willing in principle to host a person either on a temporary basis or on a permanent basis. The signature of such agreement does not oblige a State to accept all individuals referred to them by the Court. They aim at facilitating the judicial process and providing legal certainty regarding the conditions of stay of the individual on the territory of the receiving States.

46. On 8 April 2014, the Court and Belgium finalised an exchange of letters. Belgium became the first State to enter into an agreement on interim release with the Court.

47. With a view to giving full effectiveness to the right of the defence enshrined in the Statute as well as preventing situations whereby a person found innocent would be deprived of his/her right to liberty, the Court seeks to conclude more release agreements.

48. During the reporting period, the Court continued discussions with the United Nations Office on Drugs and Crime (UNODC), as an important capacity-building partner of the Court, with a view to increasing the capacity of States Parties in various domains of importance for cooperation with the Court. The increased capacity of States in these areas (such as witness protection or enforcement of sentences) is expected to enable the relevant national actors to provide more effective cooperation to the Court, while at the same time reinforcing their national capacity to carry out judicial proceedings concerning mass atrocities and other serious crimes.

49. These discussions resulted in the conclusion by the Presidency of the Court, in September 2014, of a Memorandum of Understanding between the International Criminal Court and the United Nations, on Building the Capacity of States to Enforce, in Accordance with International Standards on the Treatment of Prisoners, Sentences of Imprisonment Pronounced by the Court. The Memorandum of Understanding establishes a framework for the Court and UNODC to cooperate in assisting those States Parties desiring to build their capacity to receive sentenced persons in accordance with international standards. To this end, it includes provisions on mutual consultations and exchange of information, as well as the possibility of UNODC providing technical assistance related to the treatment of prisoners and the management of facilities to States Parties.

C. Cooperation with the Defence

50. States can assist the defence teams in entering into the agreements mentioned above. The Registry also needs the assistance of State to facilitate the work of the various defence teams with respect to inter alia the respect of their privileges and immunities, the organising of their travels to their territory, the facilitation of meetings with government officials, the transmission, respectfully of the applicable procedures, of their various requests (i.e. requests for obtaining information, documentation, visit to specific places, interview of witnesses, including of detained persons). The Registry also needs the assistance of States to facilitate the appearance of and protect defence witnesses. Finally, it is important that specific defence related provisions are inserted in the agreements signed by the Court with situation countries (and the relevant UN missions) to ensure that the defence teams also benefit from the support offered to the staff of the Court.

IV. Conclusion

51. As indicated in this most recent report, the cooperation needs of the Court and its different organs have consistently increased since the start of its operations, and are expected to continue to increase in the coming years, given the increase in its investigative, prosecutorial and judicial activities, as well as the complexities of the situations and challenges the Court deals with.

52. Additionally, the challenges and priority areas in terms of cooperation identified by the Court in its 2013 cooperation report remain up-to-date; the Court looks forward to continuing its active engagement with States Parties, including through The Hague Working Group cooperation facilitation, in order to find creative, tangible and concrete solutions to address these critical issues. The different activities carried out by the Court during the reporting period which are being reported in this document must thus be understood as part of a wider strategy developed by the ICC to enhance cooperation and find solutions for the specific challenges identified.

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

54. Finally, the Court and its organs would like to thank the cooperation facilitator for her leadership during these last three years' cooperation facilitation, as well as States Parties and non-Parties for their cooperation and support, and remain available for further discussion or information on the basis of this present, as well as past, reports.
