



**Cour  
Pénale  
Internationale**  
**International  
Criminal  
Court**

Le Bureau du Procureur  
The Office of the Prosecutor

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## **Inter-State and Inter-Institutional cooperation at the heart of cooperation challenges**

*Seventh Plenary Meeting: Cooperation*

*Venue: World Forum, The Hague | Date: 5 December 2019 | Time: 10:00*

Monsieur le Président de l'Assemblée ;

Monsieur le Ministre de Justice et des Droits de l'Homme de la République Centrafricaine ;

Monsieur le Greffier de la Cour ;

Ambassadeur S.E. M Luis Vassy ;

Ambassadeur S.E. M Momar Gueye ;

Excellences, Mesdames et Messieurs.

Tout d'abord, je tiens à remercier leurs excellences Messieurs les Ambassadeurs Luis Vassy et Momar Gueye, pour les efforts que la France et le Sénégal ont mené au fil des années en tant que co-facilitateurs de la coopération, y inclus l'organisation de cette session plénière.

Amidst intense discussions at this Assembly on, *inter alia*, the Court's 2020 budget and the review, the importance of this plenary session on cooperation cannot be overstated.

Any efforts to strengthen the performance of the ICC is incomplete if they do not also include serious consideration of, and measures, to enhance cooperation, a critical component at the heart of the functioning and performance of the Rome Statute system.

Cooperation also entails coming to the principled defence of the institution and its officials when under direct assault by forces intent to undermine the Court's crucial work and independence. In the interests of time, I do not wish to develop my thoughts again in this setting, only to recall what I have already stated in this regard at the opening plenary. I have noted with appreciation the statements of support and concern from many States Parties that have taken the floor at this Assembly as well as those who have engaged me bilaterally on this issue. I am grateful for that support and can only urge you to stand firm and united in the defence of the Court and its crucially important mandate.

Continued attention and focus is also necessary, with a view to making tangible progress, in particular when considering the stubborn challenge of affecting arrests and surrender of ICC suspects at large.

With your indulgence, I will focus my remarks on this crucial aspect, not because of lack of imagination, but rather because as we are gathered here today, 15 arrests warrants against ICC suspects remain outstanding. As such, you will therefore understand that the execution of arrests warrants remains a priority for my Office, and for the Court as a whole.

The status quo concerning these outstanding warrants is no longer tenable. Change is required, and for that change to occur, we need to think better, and do better, together.

As we embark in a review process, it bears stressing that the very core functions of the ICC depend on States' ability to cooperate genuinely and fully with the Court and with one another when needed, in particular with a view to arresting suspects.

Some of the arrests I mentioned date as far back as 2005, that is over a decade ago. For too long, ICC suspects have evaded justice under the reign of impunity. This simply cannot be right.

The figures and stats are sobering.

ICC suspects, as a whole, are sought for a total of 206 counts: 87 counts of crimes against humanity, 116 counts of war crimes, three counts of genocide and 13 counts of offences against the administration of justice.

The United Nations Security Council has referred two situations to my Office, Darfur, Sudan and Libya. In these two situations alone, eight arrests warrants are outstanding.

On 7 November, I presented my 18<sup>th</sup> report on the situation in Libya, where there are three outstanding arrests warrants. On 18 December, I will present my 30<sup>th</sup> report to the UN Security Council on the situation in Darfur where five arrests warrants are pending execution.

My recurrent public call on the Council and the wider ICC community is done in the genuine hope to ensure that suspects against whom ICC warrants of arrest have been issued are arrested, without delay, and surrendered to the Court. This requires the coordination of all your efforts and capacities, to seize any opportunity and to help each other in sharing information and expertise and facilitating relevant operations.

The situation, alas, has hardly improved over the years, despite frequent cross border travel by a number of these suspects and continued calls by the Court and my Office for greater efforts in this field.

Below the radar, the Court itself undertakes a great deal of work. In 2016, we established an internal inter-organ ICC Arrest Working Group to enhance collaboration and information-sharing on tracking, and on the judicial and operational phases of the execution of arrest warrants. Also, my Office, in line with its strategic goals and as part of this working group, is developing, in coordination with States, enhanced strategies and methodologies to track and arrest suspects.

As the Court intensifies its own efforts to assist or enable States to arrest ICC suspects, it is more important than ever that States Parties also take greater ownership and initiative regarding this matter.

I don't need to stress that arresting ICC fugitives is the exclusive responsibility of States Parties. The power to arrest is vested in States. This Court cannot prosecute *in absentia*. The Court lacks its own police force, and if States Parties do not arrest ICC suspects, who will?

It is therefore increasingly important that States work together to find effective ways to arrest ICC fugitives.

What is needed are practical actionable measures.

First, States can contribute to the tracking of suspects by sharing information at the inter-state and inter-institutional level as well as with the Court.

Second, States can help with the identification of opportunities and partners to jointly work on arrest issues. States can contribute through their support in multilateral fora, such as the United Nations, in regional and in specialized networks or in bilateral meetings. States may also disseminate information to raise awareness about the arrests and in turn, help create political will and an environment conducive to enforcing arrests. Such efforts may also be undertaken in concert or with the assistance of civil society and other partners.

Third, and in furtherance of their responsibilities and obligations under the Statute, States may contribute to the Assembly of States Parties and the UN Security Council stepping up efforts to prevent and account in cases of non-compliance with requests for cooperation for arresting ICC suspects. To date, no action has been by states whatsoever in response to decisions of non-compliance referred to this Assembly, or in the UN Security Council forum where States Parties can have influence.

Failure to arrest ICC suspects impedes the Court's ability to properly exercise the mandate bestowed upon it by its States Parties. It undermines the credibility of the Court and the international justice project as a whole. It sends a message that impunity is tolerated and can still thrive in the face of inaction.

Failure to arrest ICC suspects also has financial implications for the Court and its States Parties. Timely arrests also mean a more efficient use of resources. The longer the suspect remains at large, the longer the investigations and proceedings may be and the more costly it becomes for all involved.

Failure to arrest ICC suspects jeopardizes the collection and preservation of evidence. It may also jeopardize the safety and well-being of possible witnesses and victims. It may mean that there is no deterrent to other future perpetrators. The suspect may also continue committing crimes and contributing to the escalation or perpetuating the cycle of violence.

Lastly, failure to arrest ICC suspects prevents the Office and Court from developing more cases and jurisprudence and from executing their very mandate of presenting before Judges those suspected of the worst crimes.

The task of enforcing ICC arrest warrants is not an easy one. Challenges to arresting ICC suspects are numerous and vary in nature.

Some suspects operate in remote areas with little or no Government presence and are protected by militias. This, for example, is the case with Joseph Kony in the situation of Uganda.

Some suspects' whereabouts are well known but there is lack of political will to arrest them.

I am cognisant that some States Parties may encounter particular challenges, including the suspect not being in their own territory to start with, lacking capacity or this issue simply not being a priority. Some may consider that arrests may undermine any ongoing peace processes.

However, accountability and justice are at the heart of sustainable peace and stability, and are necessary for victims – and humanity as a whole – to move forward.

As ICC suspects are alleged to have committed the most serious international crimes, their arrest concerns us all. And we all have a role to play, however big or small.

States Parties to the Rome Statute in particular have a key role in this regard. States can contribute by helping other States and creating a spill over effect. Every effort counts, every effort can make a difference.

Excellencies,

In times of increasing calls for justice, our work expands in volume and in geographic scope; the opening of the investigations in Myanmar, authorised by the judges just few weeks ago is one such example. New opportunities and challenges therefore arise. The support of States Parties is crucially important.

The Court depends on States Parties' cooperation, including for the arrest of ICC suspects. If arrests warrants are not executed, the wheels of justice cannot turn.

As long as ICC suspects remain at large, justice still eludes the victims of their alleged crimes. Surely we cannot accept that. We can and need to do more.

My message is a call for collective action: our words alone will not suffice to arrest ICC suspects. We need to translate words into tangible, joint, action.

Contributing to the arrest of ICC fugitives is our common duty. The victims of atrocity crimes – at the heart of which this very court was created – deserve nothing less.

Thank you for your attention. | OTP