

**Thirteenth session**

New York, 8-17 December 2014

Report of the Bureau on cooperation**Addendum****Summary on the seminar on fostering cooperation,
held in Cotonou, Bénin****I. Introduction**

1. On 3 and 4 November 2014, a high level seminar for fostering cooperation between the International Criminal Court (ICC) and States Parties as well as Observer States to the Rome Statute was held in Cotonou, Benin. Government representatives and other high level officials from seven francophone African countries – Benin, Cameroon, Republic of the Congo, Mali, Morocco, Senegal, and Togo – as well as Norway and the Netherlands, ICC officials and experts, held in-depth discussions on cooperation between the ICC and States Parties, with an emphasis on witness protection and investigations. The seminar highlighted the importance of judicial cooperation nationally, regionally and with the Court, and explored avenues on how the capacity of States in this regard could be strengthened. The seminar was the French speaking version of the seminars that had taken place in Buenos Aires, Argentina on 20-21 May 2014 and Accra, Ghana on 3-4 July 2014.

2. In her keynote address to open the seminar, Judge Silvia Fernández de Gurmendi, stated “Cooperation is essential for the proper functioning of the ICC. Such cooperation involves political support, as well as legal and operational cooperation. It should also be recognised that a good knowledge and proper understanding of the activities of the Court, and of the States’ experiences and difficulties in their relations with the Court, are a prerequisite for cooperation”. “In order to be able to assist the Court, one must know the Court and understand it”.

3. Representing the seminar's host State, Benin's Keeper of the Seals and Minister of Justice, Legislation and Human Rights, H.E. Valentin Djènontin-Agossou, stated that the seminar was essential for a “better understanding of the mutual benefits of a closer collaboration between States and the ICC”.

4. In all of its activities, the ICC relied on the cooperation of States and international organizations, including in arresting and surrendering suspects, seizing and freezing assets, enforcing sentences of imprisonment pronounced by the Court, implementing decisions on interim release, or relocating witnesses. The Court might enter into arrangements or agreements to provide such cooperation. The successful cooperation also depended on a mutual understanding between the Court and States Parties of the needs and requirements pertaining to the relevant cooperation issues.

5. The event was organized by the ICC in close cooperation with the facilitator for cooperation between the Court and the States Parties- the Norwegian Ambassador to the Netherlands- and the Permanent Representative of the Netherlands to the ICC; it was funded by the European Commission, the Governments of the Netherlands and Norway, and supported by the Government of Benin.

II. Witness protection

6. Participants had privileged and fruitful exchanges of views on: the system of witness protection in place at the Court, the challenges faced by States and the Court in ensuring the protection of witnesses, the relocation agreements and the Special Fund for relocations, and the complementary role of national systems of protection. The Court, while recognizing its responsibility for protecting both the prosecution and defence witnesses, emphasized the crucial importance of States Parties' cooperation in this area, through the signature of relocation agreements or any other ad hoc arrangements. The Court noted with satisfaction that since the two 2013 seminars on witness protection in Dakar, Senegal and in Arusha, United Republic of Tanzania, the number of witness protection agreements with African States had increased from one to five. However, even if relocation of witnesses to other States was a measure of last resort, the Court was facing a strain on its capacity to relocate. It was stressed that the current number of agreements was not sufficient and that the Court approached States Parties in all regions to enhance the capacity. Broad regional capacity would also allow for finding solutions that, while fulfilling the strict safety requirements, would minimize the humanitarian costs of geographical distance and the change of linguistic and cultural environment when relocating witnesses and their families.

7. The Court also made it clear that the emphasis of witness protection was a global recent development. However, even realizing that legal systems vary, minimum standards for witness protection exist and can be applied in all countries. Substantial knowledge has now been assembled on what works and what does not, and this knowledge can and must be shared. The responsibilities and functioning of the witness protection section within the Court was clearly presented to participants, who gained a better understanding of the operational issues at stake when seized with a cooperation request from the Court. The Court, for its part, was able to gain valuable feedback on the individual countries specific situations and needs.

8. Through the use of the Special Fund for relocations, States can benefit from assistance from the Court and would be able to receive witnesses on a cost neutral basis. States could also benefit from the assistance of partners of the Court whose mandate is to provide capacity building in the area of the protection of witnesses. Such assistance will strengthen the national witness protection capacities in general. A substantial number of States representatives made it clear that the increase in serious cross border crimes, as well as the crucial role of witnesses with regard to successful investigations and prosecutions, called for enhanced efforts. Established as well as improved capacities in this field in a larger number of countries might therefore prove crucial in ensuring effective bilateral and regional cooperation for the investigation and prosecution of all serious crimes.

III. Implementing legislation for facilitating cooperation with the ICC

9. Representing Civil Society, Mrs Maïa Trujillo, Senior Programme Officer International Law and Human Rights Programme from Parliamentarians for Global Action, delivered an interactive session, entitled "Implementing Legislation for Facilitating Cooperation with the ICC". Mrs Trujillo explained the importance of national implementing legislation and provided an analysis of the existing implementing legislations comparing approaches taken by States using information drawn from the National Implementing Legislation Database (NILD), which was part of the ICC Legal Tools Project, and the recently commissioned Cooperation and Judicial Assistance Database (CJAD). She indicated that PGA is available to assist States that are working on an implementing legislation.

IV. Voluntary agreements

10. Thanks to its interactive format, the seminar allowed for an open and constructive dialogue among the participating States Parties and the Court on the implications of entering into voluntary agreements with the Court on witness relocation, enforcement agreements, agreements on interim release and release of acquitted persons. These agreements create a framework, that enables States to adapt the provisions to their legal systems in a manner that would be satisfactory for the Court. In any event the decision to accept specific persons under these agreements is subject to their approval in each case.

V. How to take cooperation further

11. The participants discussed the recommendations which could be given to the Court and the States Parties in order to take cooperation further. The issues discussed included: agreements and arrangements on witness relocation, developing and strengthening regional networks, identifying national focal points, capacity building in the justice sector, implementing legislation, as well as improved routines for communication between States Parties and the Court.

12. During the discussions, the participants from the African States expressed a strong wish for more outreach from the Court. The close relation between complementarity and cooperation was repeatedly recognized. Those observations were made with regard to the cooperation obligations outlined in Part 9 of the Rome Statute, as well as to issues related to voluntary agreements and arrangements. Capacity building had also to be done in a sustainable way. The States recognised that they also have a responsibility to put in place mechanisms that ensure that the knowledge of the Court is kept at an intuitional level and not at a personal level to avoid losing the experience acquired when the persons change position. The network created at the seminar could, as appropriate, serve for both further cooperation between States and the Court, and between States on the African continent.
