

# AMNESTY INTERNATIONAL

## The International Criminal Court Fact sheet 10 State cooperation with the ICC

*“{A} treaty-based International Criminal Court will depend, in practical terms, on effective state co-operation for its proper functioning, just as much as the ad hoc Tribunals for the former Yugoslavia and Rwanda do.”*

**Louise Arbour, Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, Statement to the Preparatory Committee on the Establishment of the International Criminal Court, 8 December 1997**

The International Criminal Court (ICC), unlike national courts, has no direct powers of enforcement, apart from a few limited powers of investigation in the exceptional situation when a state’s criminal justice system has collapsed. It cannot execute arrest warrants, search homes or buildings or compel witnesses to attend trial. The ICC will depend on national authorities to perform these roles, unless states consent to the ICC doing so. It is therefore essential for the effective working of the ICC, that countries which have ratified the Rome Statute (Statute) of the ICC (states parties) cooperate fully, from the opening of an investigation to the enforcement of a sentence.

### ***What is the basic requirement of states parties to cooperate with the ICC?***

Each state party when it ratifies the Statute undertakes in Article 86 an obligation to “cooperate fully” with the ICC in its investigation and prosecution of crimes within its jurisdiction. The ICC can make requests to any state party for cooperation.

### ***Can states parties use existing national procedures of cooperation with other states?***

States parties agree in Article 88 to “ensure that

there are procedures available under their national law for all forms of cooperation” listed in Part 9 of the Statute, which spells out in detail the obligations of states to cooperate with the ICC. This commitment means that each state party must eliminate obstacles to cooperation in existing national procedures and ensure that its national law requires its courts and other authorities to cooperate fully with requests by the ICC for cooperation.

### ***Are states which are not parties to the Statute obliged to cooperate with the ICC?***

There is no express general requirement in the Statute itself requiring states which are not parties to cooperate. However, Article 87 (5) authorizes the ICC to invite any state which has not ratified the Statute to provide assistance on the basis of an *ad hoc* agreement. If a state enters into such an agreement, it is bound to comply with requests for assistance. In addition, if the United Nations (UN) Security Council refers a situation threatening international peace and security to the ICC, the Security Council may use its powers under Chapter VII of the UN Charter to ensure that non-states parties cooperate with requests by the ICC for assistance.

### ***What assistance have states parties agreed to provide during an investigation or prosecution?***

States parties have agreed in Article 93 to provide a broad range of assistance to the ICC during investigations and prosecutions, including identifying and locating witnesses and things, taking evidence, questioning persons who are being investigated or prosecuted, serving legal documents, facilitating the voluntary appearance of witnesses, examining sites and exhuming graves, conducting searches and seizures, providing documents, protecting victims and witnesses and preserving evidence. They have also undertaken to identify, trace and freeze assets and instruments of crime, such as weapons or

vehicles, with a view to forfeiture, particularly for the benefit of victims. In addition, states parties have agreed to provide any other form of assistance which is not prohibited by their own law. To enhance the effectiveness of the ICC, they should eliminate such restrictions.

***What must states parties do when they receive a request for an arrest and surrender?***

Article 59 (1) requires states parties to comply immediately with requests by the ICC to arrest and surrender accused persons in their territories. The ICC must assist states in locating the accused including with its request the arrest warrant; information enabling the identification of the person; and documents needed to fulfil the national requirements of the surrender process in the country in question. National courts are required under Article 59 (2) and (7) to ensure that the rights of the accused have been respected and to surrender that person as soon as possible.

***What if the national law prohibits the extradition of nationals?***

Such national prohibitions are not relevant to the ICC. As Article 102 makes clear, *surrender* of an accused to the ICC, an international institution established by the states parties themselves, is a completely different legal procedure from *extradition* of a person from one state to another state. In any event, states parties have agreed under Article 86 to full cooperation with the ICC, which includes compliance with requests for surrender.

***What other forms of cooperation are states parties obliged to provide?***

States agree in Article 75 (5) to give effect to ICC awards of reparations to victims. They also agree in Article 70 (4) to make offences against the administration of justice by the ICC, such as perjury and threats to witnesses, crimes under national law and, upon request by the ICC, to submit cases involving such offences to their prosecutors.

***Where will persons convicted by the ICC serve their sentences?***

The ICC has no prisons of its own. Therefore, sentences will be served in the detention facilities of states parties which have volunteered their facilities, provided that they are consistent with widely accepted international treaty standards

governing the treatment of prisoners. States will have no power to revise or change sentences. All states parties should offer their detention facilities to the ICC so that the burden - although minimal - can be shared.

***Is postponement or denial of a request permitted if national law is inadequate?***

State parties cannot postpone complying with a request for assistance or refuse compliance on the grounds that they do not have adequate national procedures to deal with the request. Therefore, states parties will have to ensure, before the Statute enters into force, that their national legislation has provided for the procedures needed to cooperate with the ICC.

***What if a state investigation or prosecution or admissibility challenge is pending?***

Article 94 permits states parties to postpone the immediate execution of a request which would interfere with an active investigation or prosecution, but the length of the postponement must be agreed with the ICC and the postponement must be no longer than necessary. In addition, Article 95 provides that states may postpone execution of a request pending the outcome of a challenge to admissibility, unless the ICC has otherwise decided.

***What if a state thinks compliance would prejudice its national security?***

Article 72 permits a state party in narrowly circumscribed circumstances to deny requests for the disclosure of information or the production of documents would prejudice its national security interests. However, the state must consult the ICC to see if there may be alternative ways in which the information or documents could be provided, such as through *in camera* (closed to the press and public) or *ex parte* (closed to everyone other than the state) hearings. If it persists in its denial of the request and the ICC determines that the evidence is relevant and necessary to determine the guilt or innocence of the accused and that the state is not acting in compliance with its obligations under the Statute, under Article 87 (7) it can refer the matter, as in any other case of a refusal to cooperate, to the Assembly of States Parties or, if the situation was referred by the Security Council, to the Security Council for appropriate action.