

*COJUR Address March 5, 2013**

Ladies and gentlemen, I am grateful for this opportunity to address you on behalf of the International Bar Association (IBA), the largest network of individual lawyers, bar associations and law societies worldwide. The IBA's programme on the International Criminal Court (ICC), which commenced in 2005 and is based in The Hague, works to ensure a fair, effective and efficient ICC through its [Fair Trial Monitoring](#) programme which assesses the Court's implementation of international fair trial standards in its proceedings and policies.

Honourable delegates, I fully concur with all that has been said so far by my colleagues. However, I wish to briefly address some issues which also deserve attention. Ladies and gentlemen, as we speak the first person acquitted by the ICC languishes in detention because he is unable to return to his country due to legitimate security concerns, and there is no agreement in place for him to be accepted into another country. This embarrassing situation is reminiscent of similar developments at the United Nations International Criminal Tribunal for Rwanda where some accused remained in custody for some time even though they had been acquitted. In addition, since 2010, the ICC has been unable to conclude any additional witness relocation agreements, and to date only 10 have been concluded. This impacts both prosecution and defence witnesses and adversely affects timely disclosure to the defence, ultimately resulting in delayed trial proceedings, protracted pre-trial detention for accused persons and denial of justice to victims and affected communities.

The common thread is the absence or inadequate numbers of framework agreements on witness relocation, interim release and acquittal. This is an issue that must be collectively addressed by States Parties to the Rome Statute. Full cooperation from States in arresting and surrendering persons indicted by the ICC must remain top priority. However, there must also be commitment to cooperating with the Court to ensure that it can fulfil its mandate to protect witnesses and to ensure the due process rights of accused persons.

The rate at which framework agreements have been concluded have not kept pace with the level of Court activity. In its cooperation report more than 7 years ago, the Bureau of the Assembly of States Parties recognised that lack of timely cooperation would have an adverse impact on the work of the Court. Among its 66 recommendations, the report recognised that the defence faced particular challenges in obtaining cooperation to conduct investigations, access witnesses among others and 'may be treated differently from the prosecution in respect of requests for judicial assistance'. The defence challenges have unfortunately persisted with grave implications for the efficiency of the trial process.

There are encouraging signs that this issue will be looked at in the context of The Hague Working Group facilitation on cooperation. The facilitator has included review and implementation of the 66

recommendations as part of the priorities under her mandate. This must be encouraged at all levels as there is urgent need for the sharing of best practises and exchange of ideas on these issues.

I encourage you to give this matter your urgent attention.

* Presented by Lorraine A. Smith-van Lin, IBA ICC Programme Manager