

IBA Comments to Visiting Members of the European Parliament and Friends of the ICC visit to the CICC *Monday, 25 March, 2013*

The International Bar Association (IBA) is grateful for this unique opportunity to meet and share views on ways to further strengthen and reinforce the work of the International Criminal Court (ICC). The European Union (EU) has been a consistent and strong partner of the ICC, providing technical, financial and political support for the Court, and there are encouraging signs that this will continue.

The IBA also acknowledges the contribution of the 'Friends of the ICC' in bringing ICC issues to the attention of the European Parliament. We all here acknowledge that the group was one of the driving forces for the new EU action plan for the ICC in 2011 and the EU Common Position.

IBA Mandate

- The IBA is the world's leading organisation of international legal practitioners, bar associations and law societies, with a membership of more than 50,000 individual lawyers and over 200 bar associations and law societies spanning all continents.
- The IBA has always been a staunch advocate for and supporter of the ICC. Consequently, in 2005 the IBA ICC Programme was established in The Hague, to monitor the fairness of ICC proceedings and to advocate for a fair, efficient and effective ICC. In our view, fair ICC proceedings are critical for the Court's credibility and also impact international justice generally.
- The programme also encourages the international legal community to engage with the ICC. We believe that the engagement of the legal community on ICC issues is vital for improving the efficiency of the Court and acts as a 'check and balance' for its work.

The IBA commends the EU for its continued leadership in tangibly supporting the ICC. The strong statements of support have been matched by clear actions by individual EU member States in ensuring that the ICC is able to effectively function. Of particular note is the

sustained EU sponsorship of the annual training seminar for lawyers admitted to the List of Counsel at the ICC, which enables lawyers from affected communities and throughout the world to increase their knowledge of international criminal law and the work of the ICC. We wish however to highlight two areas in which we consider that even more progress can be made: cooperation and messaging.

1. Cooperation on witness relocation, interim release and acquitted persons agreements

EU member States have led the way in cooperating with the ICC including signing agreements on the enforcement of sentences and judicial cooperation more broadly. However, some gaps remain in relation to agreements on witness relocation, interim release and acquittals.

- **Concerning witnesses**, the Court reports that only 10 relocation agreements have to date been signed (the last in 2010) and even where there are agreements there is a reluctance to accept witnesses. The existence of the Witness Trust Fund has not produced any noticeable change in this situation. The IBA is concerned that the Registry's ability to effectively manage witnesses may be adversely impacted under the current status quo.
- We welcome the positive steps being taken in the context of The Hague Working Group by the facilitator on cooperation to organize an event in June in Arusha on this issue, bringing together key stakeholders to discuss the way forward. However, much more needs to be done to keep the issue on the agenda at high level and bilateral meetings to encourage full cooperation with the Court. Insufficient relocation agreements may compromise the security of witnesses and delay proceedings, so this is crucial.
- **Interim release and acquittal agreements**: Currently there is no agreement in place at the Court to facilitate persons granted interim release before trial or who have been acquitted by the ICC. This is very troubling in light of the fact that the appeal judges have made it clear that despite the fact that interim release is a due process right, without a state willing to receive the defendant, it cannot be realized.
- Even worse, a defendant who has been fairly tried and acquitted by the ICC must unfortunately remain in custody if he cannot be repatriated to his home country for security reasons, and no agreement is in place for him to be sent to another State.

This was also the case with some acquitted defendants at the UN International Criminal Tribunal for Rwanda. The absence of framework agreements on acquittal could potentially have financial repercussions for the Court, as these persons may later seek to claim compensation for their unjust treatment. **We urge the EU to make this issue a priority and to encourage member States to conscientiously explore ways in which this situation can be remedied.**

Impact of non-cooperation on the overall fairness and efficiency of proceedings of the ICC

- While the ICC has a clear responsibility towards victims and affected communities, lack of timely cooperation in relation to accused persons may regrettably also undermine the Court's credibility. Cooperation must be consistent. It is critical to cooperate in facilitating the arrest and surrender of suspects to the Court, but it is equally important, to cooperate in fulfilling judicial requests for cooperation including those from the defence. If the prosecution is provided with adequate resources to conduct investigations but the defence is not, the Court may be perceived as unfair and ineffective. While the Prosecution has a cooperation division, there is no clear framework or mechanism for managing defence requests for cooperation. Cooperation before and during the trial is critical to allow the Court to function; however, the process cannot end there. When the trial has concluded, cooperation is crucial to facilitate the enforcement of sentences or relocation of persons in the event of an acquittal. We urge the EU to encourage further consideration of these issues as a matter of urgency, so that approaches to cooperation requests are even-handed.

Agreement on Privileges and Immunities

- The IBA is pleased that all EU member states have signed and ratified the APIC, a clear achievement which again demonstrates the EU's commitment to the ICC. We also appreciate the fact that every EP Resolution on the ICC calls upon more States Parties to ratify the APIC.
- Reiterating the need for States to respect the privileges and immunities under the Statute and APIC is a key way to ensure that the unfortunate detention of ICC staff which took place last year is not repeated. It will also hopefully prevent the unlawful search and seizure of privileged items belonging to defence counsel, which has not been as widely publicized.

2. Messaging

Finally, a few brief words on messaging through EU statements and resolutions. The importance of EU statements in support of the ICC cannot be overemphasized. Recent statements concerning the travel of ICC suspect President Omar Al-Bashir and the surrender of Bosco Ntaganda to the Court clearly indicate that the ICC is a priority on the EU's agenda. However, the IBA strongly urges the EU to ensure that its messages convey the importance of a fair and effective ICC. Balanced messaging from key stakeholders and ICC partners such as the EU will go a long way towards reinforcing the credibility of the ICC.

Conclusion

The IBA reiterates its endorsement of EU initiatives, resolutions and statements on the ICC. We believe that the important leadership of the EU and the concerted action of individual member States will continue to ensure that cooperation with the ICC remains top priority. We look forward to future initiatives aimed at strengthening the ICC and making the court a fair, effective and efficient institution.

Document prepared by the staff and interns of the IBA ICC Programme.

For additional information please see the IBA website at [http://www.ibanet.org/Human Rights Institute/ICC Outreach Monitoring/IBA ICC Programme Homepage.aspx](http://www.ibanet.org/Human_Rights_Institute/ICC_Outreach_Monitoring/IBA_ICC_Programme_Homepage.aspx)

Contact details:

IBA ICC Programme

Carnegieplein 2

2517 KJ, The Hague

The Netherlands

Telephone: +31 703022859, +31 703022827