



**Address to the European Union Council Working Group on Public International Law (COJUR-ICC)
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Honourable delegates, on behalf of the International Bar Association (IBA) International Criminal Court and International Criminal Law (ICC & ICL) Programme¹, I am grateful for this opportunity to address you. The European Union (EU), and its member states individually, have an important role in ensuring the efficiency and effectiveness of the ICC. The IBA commends the EU for its continued leadership as a consistent and dependable partner of the Court.

The IBA is a strong and steadfast supporter of the ICC and the Rome Statute system. As part of our ongoing work to strengthen States Parties' support for the Court, the IBA created the Implementing Legislation Project in 2020, aimed at broadening the group of countries that have adopted implementation and cooperation legislation for the Rome Statute, by promoting the adoption of legislation at a national level. Last year, as part of the Implementing Legislation Project and in the context of the Independent Expert Review², the IBA produced a *Guide for States Parties*³. This resource provides over 100 detailed recommendations on: effective oversight of the ICC, national frameworks for domestic prosecutions of Rome Statute crimes, cooperation, and universality.

Today I will focus on ways States Parties can strengthen cooperation and support fairness, and in particular the importance of providing voluntary cooperation for interim and final release, and making donations to the Court's Trust Fund for Family Visits.

In our recommendations, the IBA emphasises that States Parties can strengthen cooperation by ensuring implementing legislation is in place. We also recommend that States Parties actively review and strengthen their ability to cooperate with the ICC's financial investigations, and support the

¹ The IBA ICC & ICL Programme monitors issues related to fairness and equality of arms at the ICC and other Hague-based war crimes tribunals and encourages the legal community to engage with the work of these Courts. The IBA's work includes thematic legal analysis of proceedings, and ad hoc evaluations of legal, administrative and institutional issues which could potentially affect the rights of defendants, the impartiality of proceedings and the development of international justice. <https://www.ibanet.org/ICC-ICL-Programme>

² The Independent Expert Review of the ICC was established by the Assembly of States Parties in December 2019, with a mandate to make 'concrete, achievable and actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole'. https://asp.icc-cpi.int/en_menus/asp/Review-Court/Pages/default.aspx

³ IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties*, available at: <https://www.ibanet.org/document?id=ICC-Report-Rome-Statute-October-2021>; Report launch event available at: <https://www.ibanet.org/IBA-publishes-guide-for-strengthening-International-Criminal-Court-and-Rome-Statute>

Court's requests to identify, trace, freeze and seize proceeds, property, assets and instrumentalities of crimes.

1) Concluding framework agreements with the ICC providing for cooperation with interim and final release

Alongside these fundamental forms of cooperation, the Court requests voluntary cooperation, in the form of framework agreements on victim and witness relocation and enforcement of sentences, and in particular interim and final release.⁴ It is notable that agreements on interim and final release have been among the most difficult agreements to obtain.⁵ To date, only two States Parties have signed an agreement on interim release (Argentina and Belgium), and only one State Party (Argentina) has entered into a cooperation agreement on final release.

The inadequate number of these agreements leaves the Court in an untenable situation. Without sufficient cooperation, interim release can be delayed or made impossible, with significant consequences for the Court's ability to meet its obligations to conduct fair trials. The Court also must be able to implement orders for release – for example in cases where charges are not confirmed, or the person has been acquitted at trial or on appeal. When, in these situations, a released person cannot be returned to their state of nationality and no other state steps forward, these individuals remain de facto detained, despite having been ordered released.

It is time to acknowledge that lack of cooperation in these areas has a much broader impact on the Court's functioning, and an impact on its stature as a standard-setting institution. The Court's limited resources are spent seeking solutions, and without State support individuals can remain in limbo for extensive periods of time, with long-term damage to the individuals as well as the credibility of the institution. It is time to recognise, more explicitly, that providing for these forms of cooperation is an integral part of state support for the Rome Statute system and its goals, and to put in place the necessary support required by the ICC.

2) Contributing to the Trust Fund for Family Visits

Second, I would like to address the Trust Fund for Family Visits.⁶ We are in a moment where much work is being done to improve the Court's efficiency and effectiveness, providing an opportunity to acknowledge and examine areas where time and experience has shown the structures and procedures in place are inadequate.

The ICC Presidency has confirmed the Court's obligation to fund a limited number of family visits for indigent detainees. However, in the twelve years since the voluntary Trust Fund for Family Visits was created by States Parties, only six States Parties have made donations. The Fund has been depleted on some occasions, and the Court has had to rely on an ad-hoc approach, including donations from non-State Party sources.⁷ This lack of participation underlines the fragile nature of this system as well as the resources the Court must expend to seek funding.

⁴ ICC, *Cooperation Agreements*, available at: https://www.icc-cpi.int/news/seminarBooks/Cooperation_Agreements_Eng.pdf

⁵ See ICC-ASP/20/25, *Report of the Court on Cooperation*, 29 October 2021, paras 36 – 39, available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/ICC-ASP-20-25-ENG-ICC%20Report%20Cooperation.%20-%20ENG.pdf

⁶ ICC, *The Trust Fund for Family Visits*, available at: <https://www.icc-cpi.int/Publications/20190919-tffvisits-eng.pdf>; <https://www.icc-cpi.int/get-involved/Pages/Trust-Fund-for-family-visits.aspx>

⁷ ICC-ASP/20/25, *Report of the Court on Cooperation*, 29 October 2021, para 17.

There are currently eight persons in ICC custody, at various stages of legal proceedings.⁸ As the Court has made clear, family visits support the efficiency of the judicial process, by contributing to the wellbeing of detainees, and may prevent the delay of proceedings due to issues related to a detained person's mental or physical health. Without a predictable source of funding, the ICC can't ensure the requisite number of family visits for these detainees.

The inability to provide for family visits is more than a logistical concern: it calls into question the ICC's human rights record. Based on the low level of participation in the Trust Fund, it is time to ensure that family visits can be funded from the regular budget of the Court. In the short term, States Parties should make donations to the Trust Fund for Family Visits to protect the rights of those currently in ICC detention.

I thank you for your time and look forward to your questions.

⁸ As of 2 February 2022, Mr Al Hassan Ag Abdoul Aziz, Mr Ali Muhammad Ali Abd-Al-Rahman, Mr Paul Gicheru, Mr Patrice-Edouard Ngaïssona, Mr Bosco Ntaganda, Mr Dominic Ongwen, Mr Mahamat Said Abdel Kani, and Mr Alfred Yekatom are in the custody of the ICC. <https://www.icc-cpi.int/Pages/defendants-wip.aspx>