



International Bar Association

Address to the European Union Council Working Group on Public International Law (COJUR-ICC) in The Hague by Aurelie Roche-Mair, Director of the IBA's International Criminal Court and International Criminal Law Programme, Hague Office

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Honourable delegates, on behalf of the International Bar Association (IBA), I am grateful for this opportunity to address you and to share views on ways to strengthen the work of the International Criminal Court (ICC). The ICC & ICL Programme of the IBA monitors the Court's application of international fair trial standards in its proceedings and policies to ensure that fair and efficient justice is delivered at the Court. The work of our Office includes thematic legal analysis of proceedings. It also includes evaluations of legal, administrative and institutional issues which could potentially affect the impartiality of proceedings, and the development of international justice.

The IBA continues to commend the European Union for its continued leadership as a consistent and dependable partner of the ICC, providing technical, financial and political support to the Court.

As a preliminary point, I would like to emphasise that we stand strong alongside states and civil society organisations in support of the ICC and the integrity of the Rome Statute, and that we regret the latest developments on the withdrawals from Burundi, South Africa and The Gambia.

But today, I want to address two issues – both of which affect the Court's fairness, efficiency, and credibility as the main institution tasked with delivering international criminal justice - because the future and legitimacy of the Court will also be defined and influenced by its ability to function in a sustainable manner.

(i) Cooperation and Voluntary Agreements

One area of concern for the IBA relates to the lack of voluntary agreements.

Currently, the number of existing voluntary agreements remains low.

As of 2016, there are 17 agreements concerning witness relocation; eight agreements concerning the enforcement of sentences; and one agreement concerning interim release. In particular in the course of 2016, only one additional agreement for enforcement of sentences was signed (Norway), and no agreements regarding interim release or relocation of persons released by the Court were concluded.¹

In contrast, during the upcoming year 2017, the Court expects to have three cases at the trial phase, which will hear an estimated 92 witnesses.² The ICC anticipates that nine accused will appear before the Court, five of whom will remain in detention.³ It will also conduct six active investigations.

A strong network of voluntary agreements is essential for the Court, as a low number of agreements creates operational challenges and limitations for the Court.

In addition, the conclusion of voluntary agreements supports complementarity, as the agreements are individually negotiated instruments that take into account the needs and realities of each State Party, while also presenting opportunities to build capacity at the national level on issues such as witness protection and prison standards. Voluntary agreements also support the efficiency of the Court, in that the lack of agreements may result in delays to trial proceedings, protracted pre-trial detention for defendants and the Court's inability to implement judicial orders.

Finally they have an impact on the budget, as without sufficient agreements the Court is required to address, on an ad-hoc basis, arrangements for situations as they arise in respect of witness relocation, provisional release, and the enforcement of sentences or relocation following an acquittal.

More can be done by States Parties to conclude voluntary agreements.

The IBA urges the EU and its Member States which have not concluded voluntary agreements to rapidly respond to the Court's call for cooperation – in particular with respect to the enforcement of sentences, interim release and relocation of persons released by the Court.

¹ ASP, Report of the Court on cooperation, ICC-ASP/15/9, 11 October 2016, paras 47-53.

² Ibid, paras 11, 33, 43. The trials are in the *Gbagbo and Blé Goudé*, *Ongwen*, and *Ntaganda* cases.

³ Ibid, para 42.

We also encourage more leadership and support to the ASP's Hague Working Group on cooperation on this issue specifically, notably by appointing a Special Rapporteur on voluntary cooperation.

(ii) The Trust Fund for Family Visits

An accused held in detention by the ICC has the right to family visits. This principle is consistent with international law⁴, texts of the Court⁵ and in accordance with ASP Resolution 4 from 2009.⁶ Further, the Presidency of the ICC has held that for the effective implementation of the right of the Court's indigent detainees to receive family visits, the Court has the obligation to fund these visits.⁷ To this end, the ASP decided that family visits would be funded by voluntary donations through a Trust Fund for Family Visits.⁸

However, as you know, since its creation in 2010, the Trust Fund for Family Visits has hardly received any voluntary donations. Approximately two months ago, the Registry indicated that the money available is 'barely sufficient' to arrange for one visit.⁹ This clearly puts the rights of an indigent accused in jeopardy as at least three indigent accused are currently in detention. The Presidency of the ICC has also recognised the urgency of this situation, and has publicly re-affirmed the Court's positive obligation to provide funding for the right to family visits for indigent ICC detainees.

The IBA calls on the EU and its Member States to ensure that the Trust Fund has sufficient resources to allow family visits to take place.

Such contributions are essential to ensure the ICC's effective administration of international criminal justice in a fair and sustainable manner.

The IBA also encourages the Registry and the Member States to develop tools to support the sustainability of the Trust Fund through greater transparency and visibility regarding the administration of the Trust Fund for Family Visits, and the annual level of funding required.

⁴ See e.g. United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988 and United Nations Revised Standard Minimum Rules for the Treatment of Prisoners 2015.

⁵ See e.g. Regulations of the Court, Regulation 100 (1) and Regulations of the Registry, Regulation 179 (1).

⁶ ASP Resolution ICC-ASP/8/Res.4 (2009).

⁷ ICC, *Prosecutor v Germain Lubanga and Mathieu Ngudjolo Chui*, ICC-RoR217-02/08-8, Decision on 'Mr Mathieu Ngudjolo's Complaint Under Regulation 221(1) of the Regulations of the Registry Against the Registrar's Decision of 18 November 2008', 10 March 2009.

⁸ ASP, Resolution for Family visits for indigent detainees, ICC-ASP/8/Res.4, 26 November 2009; ASP, Resolution ICC-ASP/9/Res.4, 10 December 2010, Section X.

⁹ See NV/2016/EOSS/253/JCA/cb.

Conclusion

Honourable delegates, the EU has pledged to preserve the integrity of the Rome Statute. The IBA urges the EU to use all available mechanisms to facilitate greater voluntary cooperation between States and the ICC; and to support the right of indigent detainees to see their family.

I thank you for your time.

*** This is an unedited speech authored and presented by Aurelie Roche-Mair, IBA ICC/ICL Programme Director.**

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