



Assembly of States Parties in New York

# Cooperation

*Twenty Years Later :  
The future of Cooperation with the International Criminal Court*

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## **Introduction**

) Ten years ago, the Assembly made 66 recommendations on cooperation – there was a mandated review and the co-facilitators highlighted two main priorities: “voluntary agreements and financial investigations”. The first session today discussed financial investigations, as follow-up to a conference held in Paris on this topic, which I was pleased to attend in October.

) The topic of voluntary agreements, however, is of equal significance and warrants the attention of States going into 2018. While these comments will primarily focus on matters relevant to the Defence, voluntary cooperation is, of course, also a matter of interest for Victims and their counsel.

## **Voluntary Agreements**

) First, when speaking of voluntary agreements, the ICCBA wishes to highlight those that are some of the greatest significance to defendants – release (interim, post-acquittal and post-conviction) and custodial agreements.

) Regardless of whether we are discussing a defendant to whom the presumption of innocence applies, a person who has been cleared of criminal charges before the Court, or a person who has been convicted and is serving a sentence or has served his/her sentence, the consistent factor is that they are persons; human beings deserving of human rights.

- **Release After Acquittal:** Starting with perhaps the easiest case, a person who has been tried and acquitted by the Court and cannot return home due to post-conflict or other threats deserves States and the Court to provide remedy to a situation of potential statelessness. There are currently no States who have signed on or dedicated themselves to consider such cases. Why is that in 2017?
- **Release after Time Served:** While discussed far less than other agreements, it is no less important to consider what happens to a defendant when he or she has served the time to which she or he was sentenced by the Chamber. Once finished, the person has a right, as much as anyone, to live in safety and peace with the opportunity to meaningfully contribute to society. Just as with acquittals, this may not be possible – or even wanted – in the defendant’s former country. States should consider the possibility that these persons may need their assistance and the States may be able to provide it and, indeed, benefit from that individual’s contribution to society.

- **Interim Release:** Equally, defendants before the Court have a right to be presumed innocent until proven guilty beyond reasonable doubt (Article 66 of the Rome Statute), yet only one State (Belgium) has signed on to consider hosting – on a case-by-case basis – suspects and accused who may be eligible for interim release by Court decision. As we know from practice, the cases before the Court take some time to conclude and time spent in detention is something that can never be returned in the instance of an acquittal. If there is ever going to be a possibility for suspects/accused to have any meaningful opportunity for interim release applications, there have to be States showing that they support the presumption of innocence, as guaranteed in the Rome Statute, and are open to such considerations. It is a matter of the credibility of the Court itself.
  
- **Custodial Sentences:** Perhaps receiving the most discussion and signatories, it is still surprising that only 10 States – of 123 – have signed the voluntary agreement regarding the enforcement of sentences (Austria, U.K., Belgium, Finland, Denmark, Serbia, Mali, Norway, Argentina and Sweden). While DRC has accepted both Mssrs Lubanga and Katanga by ad hoc agreement, and a handful of other States have signalled an intention to accept convicted persons, though subject to conditions, this is something that should be a point of universal cooperation – just as important as arrest and surrender cooperation.

J The commitment to cooperate is ongoing – States cannot simply assist in case-building and the prosecution of suspects, but must assist equally in the outcome and impact post-trials, both with respect to reparations, the awarding and implementation of which are crucial to the victims who have suffered from these most devastating of crimes, and with regard to the convicted or acquitted person.

J While much progress is needed in this area, the ICCBA does commend the Registry of the Court for actively working to secure the assistance of States in this regard.

## **66 Recommendations**

J Next year's 20<sup>th</sup> anniversary of the Rome Statute provides a perfect opportunity to review not only the principles laid forth in the 66 recommendations, but the hidden corners of cooperation that are unexplored or, to-date, underdeveloped.

J The 66 Recommendations relate to a number of issues concerning suspects, focusing on arrests and transfer (including a model transfer agreement), but they

also provide some guidance as to how to respect and fulfill the other types of cooperation necessary to the Court’s mandate, including with respect to legal teams for victims.

J For example, Recommendation 24 states that the ASP “*may wish to further monitor developments regarding [...] issues related to victims and defence teams, as an increasingly important part of the cooperation dossier*”. Recommendation 28 provides, more pointedly, “*All States Parties should, to the extent possible, accommodate requests from the defence teams for operational support – the Court should facilitate this, inter alia, by exploring ways in which the defence teams can benefit from existing agreements between the Court and States Parties*”. Recommendations 4-6 and 63 can also provide guidance as to how to focus attention and progress on the matters of voluntary agreements.

### **Voluntary Agreements Conference**

J So, for this pressing issue, we would suggest that a specific conference on this matter be called by the States in 2018, just as was done for financial investigations in 2017. There is a wealth of topics that could be explored, such as the parameters of the voluntary agreements, examination of the current Situations of the Court to anticipate where future defendants may be seeking the most assistance with regard to this type of agreement, a programme for the mutualisation of funds to allow for a greater number of States to host - but with a shared financial burden; and bi-lateral agreements of States who may be best-placed to assist each other.

J It would be a welcome initiative – signalling the importance of this type of cooperation to the process of justice and commitment of the international community to ensuring that all principles of the Rome Statute are fully implemented.

### **Defence Focal Point**

J The Voluntary Agreements are just one area that the Defence requires assistance of the States and greatly appreciates having consideration.

J Issues such as family visits are of equal importance. Regulation 100 of the Regulations of the Court states that “a detained person shall be entitled to receive visits”. It is the Registrar’s duty to facilitate the organisation of such visits since “[he] shall give specific attention to visits by family of the detained persons with a view of maintaining such links” (Regulation 179(1) of the Regulations of the Registry). In March 2009, the Presidency of ICC declared that in order to render

the right to receive family visits effective, the Court had the obligation to fund these visits for indigent detainees. In 2010 the Trust Fund for Family Visits was created but this fund received little support (only four States have so far contributed) and its current balance is dwindling.

) To this end, the ICCBA would like to suggest the potential to have a Defence Focal Point of the Assembly to address these and other matters important to the Defence and, thus, crucial to the proceedings, in the working groups. With this, the Court's work can be fulfilled more effectively, more efficiently, and with the highest respect and fulfilment of the lofty principles set out for us by the drafters of the Rome Statute and supported by this international community.