



**Statement of Kate Orlovsky, Director of the International Bar Association ICC & ICL
Programme to the Cooperation Plenary at the Eighteenth Assembly of States Parties on 5
December 2019**

Excellencies and esteemed colleagues, on behalf of the International Bar Association, I am honoured to address you today on the important issue of voluntary cooperation.

The IBA was established in 1947 to contribute to global stability and peace through the administration of justice. Our members include more than 80,000 individual international lawyers, and 190 bar associations and law societies from more than 170 countries. Since 2005, our ICC & ICL Programme has monitored issues related to fairness and equality of arms at the ICC. The IBA is a strong supporter of the ICC.

We wish to thank the Assembly's cooperation co-facilitators, France and Senegal, for their continued work and commitment towards the improvement of cooperation. Cooperation is crucial for the Court to effectively exercise its core functions and fulfil its mandate. It is intertwined with every area of the Rome Statute system.

Excellencies, the consequences of the lack of voluntary cooperation agreements are no longer in the abstract. The court is currently facing challenges implementing Chambers' decisions due to the insufficient number of cooperation agreements, and is expending additional resources while it seeks ad-hoc solutions.

These challenges impact the fundamental rights of detained persons. Prolonged detention during lengthy pre-trial and trial proceedings has the potential to violate rights such as the presumption of innocence, right to a fair trial, and the right against arbitrary detention.

We wish to congratulate the States Parties who have already concluded these agreements, and in particular Argentina and Belgium for concluding agreements on interim release, and Argentina for signing an agreement on final release. The importance of this support cannot be understated.

However, more needs to be done. Concluding a cooperation agreement is a tangible contribution States Parties can make towards ensuring a reliable system of cooperation that will strengthen the functioning of the ICC. We urge States who are considering concluding these agreements to increase their efforts, and we note with appreciation that States that have signed agreements are standing by to share their experience and provide information on the technical aspects of the process.

Excellencies, the IBA also urges States Parties to contribute to the Trust Fund for Family Visits. In 2009, the ICC Presidency recognised that there is a right to family visits, that this right fundamentally affects the well-being of detained persons, and that the court holds a positive obligation to fund these visits for indigent detainees. States Parties opted to create a trust fund for family visits in 2010.

However, to date only five States Parties have contributed, which is a participation rate of around 6%. In our side-event yesterday we were informed that the Kingdom of the Netherlands and the Federal Republic of Germany have, during this ASP, contributed to the Fund and we wish to congratulate them for this. We urge other States Parties to follow this example, as a show of commitment to the mechanism they created.

The issue of family visits engages the fundamental rights of the accused, specifically the presumption of innocence, as enshrined in the Rome Statute. The right to family visits has also been recognised by national and regional courts, such as the European Court of Human Rights.

Maintaining family contact during a lengthy judicial process plays a critical role in reducing depressive symptoms, improving the psychological well-being of detainees as well as their children, and in improving the participation of an accused in court proceedings. It improves the chances of positive social reintegration following release.

In the short term, we need immediate voluntary contributions to meet the immediate needs of the Court. We also call on the ASP to reconsider the source of funding for family visits, and to consider allocating funds as part of the regular budget of the court.

As long as the ICC has the capacity to arrest, detain, and try suspects, it has the concurrent obligation to meet basic needs while in custody, including respecting the right for family visits.

Thank you.