

Eighth session

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**Report of the Court on legal aid:
Legal and financial aspects of funding victims' legal representation
before the Court*****A. Introduction**

1. In its resolution ICC-ASP/7/Res.3, "Strengthening the International Criminal Court and the Assembly of States Parties", the Assembly of States Parties ("the Assembly") invited the Court, in paragraph 16, to "present to the Assembly at its eighth session an updated report on the legal and financial aspects for funding victims' legal representation before the Court". The Assembly asked the Court, in preparing such a report, to take into account the comments of the Committee on Budget and Finance ("the Committee") in the report on the work of its eleventh session.¹ Further, the Assembly invited the Court to "engage in a constructive dialogue with States Parties on this issue in a timely manner, allowing for a proper review by the Committee on Budget and Finance at its twelfth and thirteenth sessions".

2. On 26 March 2009, the Court presented to the Committee an interim report, which was discussed at its twelfth session.² In its report on the work of its twelfth session, the Committee encouraged the Court and The Hague Working Group to further identify and analyse the budgetary implications of the system, and agreed to continue its consideration of the issue at its thirteenth session.³ The Committee requested the Court in particular to "develop scenarios showing the possible budgetary impact for the full cycle of the proceedings through to the final reparations stage".

3. On 30 March, 10 June and 8 July 2009, meetings were held with The Hague Working Group at which key aspects of the issue were discussed. Those discussions have guided the drafting of the present report.

* Previously issued as ICC-ASP/8/CBF.2/13. Re-issued with some modifications, as ICC-ASP/8/25.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II.B.2, paras. 128-129.

² Interim report of the Court on legal aid: Legal and financial aspects for funding victims' legal representation before the Court (ICC-ASP/8/3).

³ Report of the Committee on Budget and Finance on the work of its twelfth session, ICC-ASP/8/5, paras. 81-85.

4. On 12 May 2009, the Court presented the interim report to the seventh Seminar of Counsel, held at the World Forum Convention Center in The Hague, and invited a panel of four eminent representatives of the legal profession from around the world to comment on it.⁴ On 6 July 2009, a consultation meeting was held with representatives of the legal profession, non-governmental organizations and States Parties, at which a draft of the present report was discussed. The input received from these stakeholders is reflected here.⁵

B. Legal framework

5. The participation of victims in the proceedings and their right to request reparations is established in the Rome Statute (“the Statute”) and the Rules of Procedure and Evidence (“the Rules”).⁶ Article 68, paragraph 3, of the Statute provides that the views and concerns of victims may be presented by the legal representatives of the victims where the Court considers it appropriate and in accordance with the Rules. The latter accordingly provide, in rule 90, that victims may choose a legal representative. The same rule provides for the common legal representation of victims where there are a number of victims, whilst calling for reasonable steps to ensure that the distinct interests of the victims are represented and any conflict of interest is avoided. Rule 90 (5) provides that “a victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance”.

6. It has become evident through the experience of the first four situations before the Court that, while the language of rule 90 (5) may be permissive rather than mandatory, the rights afforded to victims by the Statute can only be exercised effectively if financial assistance is made available for legal representation of victims by the Court through the legal aid scheme. In all four situations currently before the Court, most victims will not have the means to contribute towards their legal representation.

7. The legal aid scheme of the Court is further elaborated in the Regulations of the Court. As regards the determination of means, no distinction is made in regulation 84 of those Regulations between the defence and victims when it comes to the types of means to be taken into account and the nature of the assessment. As regards the scope of legal aid, however, regulation 83 provides simply that “the scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate”.

⁴ The panellists were Mr. Pascal Vanderveeren, President of the International Criminal Bar, Mr. Mark Ellis, Executive Director of the International Bar Association, Mr. Moussa Coulibaly, President of the Niger Bar Association and Member of the Pan African Lawyers Union and Mr. John Hall, Member of the ICC Disciplinary Appeals Board. The session was chaired by Mr. Didier Preira, Deputy Registrar.

⁵ As regards comparisons with other international tribunals or domestic systems, some comparisons with domestic legal systems regarding the assessment of indigence have been mentioned in the Interim report of the Court on legal aid: Alternative models for assessment of indigence (ICC-ASP/8/4) of 6 May 2009, paragraph 15. The Court benefited from input from experts invited to a meeting on legal aid held at the Court in November 2008, which informed this report. Participants included experts with knowledge of the legal aid systems in South Africa, Italy, Spain and France. Of the other international tribunals, the Extraordinary Chambers in the Courts of Cambodia (ECCC) has victim participation but does not as yet have an in-house office equivalent to the Office of Public Counsel for Victims. The revised budget from 2005 to 2009 of the ECCC includes resources to cover two legal teams in order to represent civil parties in the proceedings. The budget also includes two international legal consultants at P-3 level to provide legal assistance to the teams of lawyers representing civil parties in Case 1 and Case 2, who are not paid by the Court. In addition, additional resources have been allocated to cover a further two legal teams (financial agreement between the Cambodian and German governments, implemented by the ECCC and GTZ), in a structure reflecting the composition of the defence teams. Resources to cover travel and accommodation expenses for the co-lawyers are also covered. Resources to facilitate meetings between the legal teams and their clients have also been included.

⁶ See in particular articles 68, paragraph 3, and 75 of the Statute and rules 85 to 99 of the Rules of Procedure and Evidence.

Conclusion

8. *Whilst the legal basis for funding legal representation of victims is not the same as that for the defence, legal representation of victims before the Court must be funded through the legal aid scheme of the Court if the rights afforded to victims in the Statute are to be exercised effectively.*

C. Differences between legal aid for victims and legal aid for the defence

9. On the basis of this legal framework, the Registry developed and proposed to the Assembly a legal aid system to apply to legal representation both for accused persons and for victims.⁷ From the outset, the Registry recognized that, as the scheme developed, there would be a need for certain differences to emerge between the nature of the scheme for the defence and that for victims.⁸ There are many reasons for this, including the following:

- a) The role of victims as participants in the proceedings is different from that played by the defence, leading to differences in the scope and nature of their intervention. The role of victims will depend on decisions taken by the relevant Chamber on modalities of participation, and differ according to the stage of the proceedings. See annex III;
- b) An integral aspect of representing victims is maintaining contact with them for the purpose of keeping them informed of developments in the proceedings, ascertaining their interest and taking their instructions. Legal representatives of victims are likely to find themselves representing a group of victims, potentially numbering several tens or even hundreds,⁹ whereas for the defence, even in a joint case, it is likely that a legal team will represent only one accused; and
- c) Further, whereas an accused will be in detention in The Hague and a suspect being interviewed by the Office of the Prosecutor would be in one defined location, a group of victims may be scattered over a wide geographical area, including in locations that are difficult to access for either logistical or security reasons.

10. The legal framework of the Court left many issues relating to the participation of victims to be determined by the judges through case law, and was itself an innovation in international criminal law. Several fundamental aspects of the participation of victims have gone to appeal. The nature of the legal aid necessarily follows from the manner of participation and from the actual needs of the legal teams. As a result of developments in the applicable jurisprudence, the Registry is now in a position to propose an outline for a specific legal aid system for victims, although not for reparations, since there have as yet been no reparations proceedings before the Court. The Registry's proposals are thus shaped both by the Court's legal framework and by the decisions of Chambers.

11. The principles underlying the legal aid scheme for the defence – equality of arms, objectivity, transparency, continuity and economy¹⁰ – also appear applicable to legal aid for victims, with the exception of the principle of equality of arms, which applies to the parties and not necessarily the participants. It may appropriately be replaced by the principle that

⁷ See, for example, Report on the operation of the Court's legal aid system and proposals for its amendment (ICC-ASP/6/4).

⁸ For instance, the Registry informed the Presidency that a separate financial information form would need to be developed for victims, different from that for the defence.

⁹ One legal team in the Lubanga trial currently represents 74 victims.

¹⁰ Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons (ICC-ASP/3/16), para. 16.

victims must be assured of the possibility of playing in full the role accorded to them in the proceedings.

12. Further, the Registry believes that the principles underlying legal aid for victims will need to take account of the fact that legal representation of victims involves two equally important elements. One is the representation of clients' interests before the Court, through personal appearance at hearings and the filing of written documents. The second is contact with clients, including keeping them informed of developments, taking instructions, and ascertaining their interests in order to be able to represent them effectively before the Court. The second element goes to the very purpose of the participation of victims in proceedings, which requires the victims to maintain regular communication with their lawyers. The different Chambers of the Court have also underlined in their decisions the importance of keeping victims informed of judicial developments before the Court. This difference requires some adaptation of the legal aid scheme in order to ensure that legal representatives of victims are able to fully implement both aspects.

Conclusion

13. *While the principles that underlie the legal aid scheme for victims are broadly the same as those for the defence, there are certain differences that need to be taken into account in conceptualizing and implementing the legal aid system for victims. These differences arise from the different role played by victims in the proceedings, the greater number and distant geographical location of the victims and the need to enable legal representatives to maintain regular contact with them.*

D. The assessment of indigence

Method of assessment of indigence

14. There are a range of possible approaches to establishing the eligibility of victims for legal aid, which can be summarized as follows:

- a) Adopt a presumption that all victims are indigent, unless there is information to indicate that they might not be indigent;
- b) Ask all victims to provide detailed information regarding their financial circumstances, and carry out a detailed examination; and
- c) Submit victims to a prima facie financial assessment based on their individual means.

15. As regards the first option, the Registry believes that the legal framework governing the legal aid system of the Court, notably regulation 84 of the Regulations of the Court and regulation 132 of the Regulations of the Registry, do not permit a full presumption of indigence to be applied. The Registrar's responsibility to ensure that funds allocated for legal aid are appropriately managed and disbursed also precludes such an approach. Further, the Registry believes it cannot be presumed that every victim in every situation will be unable to pay for, or contribute to, his or her legal fees.

16. As regards the second option, this would create a heavy burden both on the victims and on the administration of the Court, particularly where the circumstances in which the person lives make it evident that they are not in a position to contribute towards their legal costs.

17. The current practice of the Registry therefore follows the third option. All applicants for legal aid are asked to sign a declaration authorizing the Registry to investigate their assets, should the Registry so determine. A prima facie determination is then made, based on an applicant's apparent circumstances (for example, where the applicant is a child or is living in a displaced persons' camp), which may conclude either that the applicant is indigent, or that he or she should supply further information.

18. In sum, some individualized assessment of each victim's means is conducted, but the Court does not ask each victim to fill in a detailed financial information form, particularly where it is evident that the victim is very far from being able to contribute to the costs of legal representation. The Registry believes that this flexible approach is sound and achieves an appropriate balance. The Registry also believes that it is proportional, and consistent with its duties to manage the legal aid funds judiciously, to make certain presumptions when considering the indigence of victims.

19. The Registry's approach was endorsed by the Presidency in a decision dated 18 February 2009.¹¹ In response to an appeal by legal representatives in 2008, in which they submitted that the Court should make a presumption of indigence where victims are concerned, the Presidency confirmed that the Registry's approach is consistent with the current legal framework of the Court.

20. The consequences also need to be considered where one or more members of a group of victims are found not to be indigent, given that victims are normally grouped for purposes of legal representation. The approach of the Court is that a member of a group of victims represented by a common legal representative would be assessed on the basis of his or her ability to meet a relevant proportion of the costs rather than the entire cost.

21. A related issue is whether indigence should continue to be calculated on the basis of a formula or whether an alternative, such as establishing absolute thresholds of asset holdings, should be adopted. This question has been considered in a separate report in relation to the defence, and for the time being it is proposed that a similar approach should be adopted here.¹²

Conclusions

22. *The assessment of indigence of victims for the purpose of determining their entitlement to legal aid should be on the basis of a prima facie financial assessment based on individual means, as is the current practice. A member of a group of victims should be assessed on the basis of ability to meet the relevant proportion of the cost of representing the group, which will thus be linked to the size of the group.*

23. *The question of whether or not to adopt a different approach to calculating indigence, such as establishing a threshold of asset holdings, should be monitored in conjunction with consideration of the same question in relation to the defence.*

¹¹ ICC-01/04-559 dated 18 February 2009, Reasons for the Decision of the Presidency.

¹² Interim report of the Court on legal aid: Alternative models for assessment of indigence, ICC-ASP/8/4, dated 6 May 2009, para. 16.

E. Remuneration of legal representatives of victims

Salary levels

24. Generally, the remuneration of legal teams under the legal aid scheme in terms of fees and expenses is on the same basis as for the defence.¹³ The management of legal aid for victims and for the defence is closely coordinated in order to ensure consistency in implementation.

25. As regards salary range, paragraph 84 of the Report of the Committee¹⁴ provides as follows:

“Furthermore, the Committee also suggested that consideration be given to whether the salary range of a P-5 was really appropriate in order to ensure competent legal counsel for victims participation given the different role that such counsel play in the proceedings.”

26. After due consideration, the Court does not find a basis for separate treatment. Recognizing the important role played by victims participating in Court proceedings, the Rules of Procedure and Evidence and the Regulations of the Court provide that a legal representative of victims must have the same qualifications as a counsel for the defence, including at least 10 years’ relevant experience in criminal proceedings.¹⁵ As a result, all teams representing victims must have at least one counsel who meets these requirements. A person with the necessary 10 years’ experience is, in the recruitment practices of the Court, appointed at the P-5 level, in accordance with the United Nations common system, which the Court is bound by.¹⁶ The appointment of counsel for victims at the same level as for the defence is not based on the equality of arms principle, but is rather a means to make the rights of victims effective. It is a recognition of the value placed by the States Parties on ensuring a quality legal representation for victims before the Court for purposes of their participation in proceedings, a key feature and innovation of the Rome Statute.

27. The Court does acknowledge the differing needs of the defence on the one hand and victims on the other, and these differences have been taken into account in the resources allocated to each at different stages of the proceedings under the legal aid scheme.¹⁷ Further, it should be noted that, although counsel for victims play a different role from that of counsel

¹³ For example, the monthly ceiling of €4,000 for travel and other costs, the payment of up to 40 per cent compensation of charges to counsel where justified, the remuneration levels of the different members of the team and the payment procedures.

¹⁴ Report of the Committee on Budget and Finance on the work of its twelfth session (ICC-ASP/8/5).

¹⁵ Rule 22 (1) of the Rules, further elaborated in regulation 67 of the Regulations of the Court, establishes the qualifications and experience that a counsel for the defence must have;

Rule 90 (6) of the Rules provides that “a legal representative of a victim or victims shall have the qualifications set forth in rule 22, sub-rule 1”; and Rule 21 (2) of the Rules provides that the Registrar shall create and maintain a list of counsel who meet these criteria. Counsel accepted on the list are asked to indicate whether they have a preference for representing either the defence or victims, or if they have no preference.

¹⁶ Another reason for the level of payment for counsel for the defence at the P-5 level was with a view to maintaining an equilibrium between resources of the accused and those of the prosecution, so that the fees of members of defence teams are based on the salaries paid to the Office of the Prosecutor (OTP) of the Court and at the ad hoc tribunals. See Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons, ICC-ASP/3/16, para. 16. In the OTP, Senior Trial Attorneys, the equivalent of counsel, are appointed at the P-5 level. Although the equality of arms principle does not operate in the same way between the prosecution and the defence on the one hand and victims on the other, as noted, all counsel must meet the same requirements.

¹⁷ The composition of teams and other resources to be allocated to the defence and victims at different stages of the proceedings are explained in the Report on the operation of the Court’s legal aid system and proposals for its amendment, ICC-ASP/6/4.

for the defence, victims are nonetheless participants in the proceedings,¹⁸ and at least during any reparations stage, victims' legal representatives would be expected to take a leading role.

28. In light of the above, it is recommended that the current practice, whereby legal representatives of victims are remunerated at the P-5 level, be maintained.

Costs

29. The Court also examined the possibility of reducing the amount of costs reimbursed to legal teams representing victims, which are currently treated in the same way as those of the defence. Such costs include travel to the seat of the Court to attend hearings and undertaking missions to the field.

30. For similar reasons, it is recommended that costs continue to be reimbursed on the same basis as for the defence. The common system currently applied to teams for the defence and victims has been calculated on the basis of what is actually needed to conduct effective representation before the Court. To introduce differing levels would undermine the capacity of legal teams representing victims to represent their clients effectively.

Conclusions

31. *A counsel representing a group of victims should continue to be remunerated at the P-5 level, to reflect the level of experience required and in order to ensure a quality legal representation for victims before the Court.*

32. *Legal teams representing victims should have costs reimbursed on the same basis as the defence, in order to enable them to conduct effective representation before the Court.*

F. Operation of the legal aid scheme for victims

33. From the outset, the central role of the Chambers in defining the scope of participation of victims, in organizing legal representation and in relation to the legal aid scheme itself should be underlined. The Chambers make determinations on the status of victims who have applied to participate in the proceedings and on the modalities of their participation, in accordance with the legal texts of the Court.

34. The organization of legal representation for victims is a joint responsibility of Chambers and the Registry. Rule 16 (1) (b) of the Rules makes the Registrar responsible for assisting victims in obtaining legal advice and organizing their legal representation, while rule 90 provides for him to assist Chambers in organizing common legal representation. Under the scheme of rule 90, however, it is the Chamber that controls and directs the organization of common legal representation. The Registrar issues decisions on the scope of legal aid, but the Chamber may review such decisions on the application of the person receiving the legal aid.¹⁹

35. Annex I sets out the practice to date at the different phases of the proceedings. On this basis the Court has prepared a set of tables showing the cost of legal representation at different stages. These are shown in annex III.

36. The annexes indicate an increase in activity, and of corresponding calls on the legal aid budget, as case progresses. The lowest demand on the legal aid budget is for representation in relation to a situation, and in the pre-trial phase of a case prior to the confirmation of charges hearing. Generally, the arrest or appearance of an accused person

¹⁸ For example, 93 victims have been accepted as participants in the first trial, the Lubanga case, in accordance with article 68, paragraph 3 of the Statute.

¹⁹ Regulation 83, paragraph 2, Regulations of the Court.

triggers an intensification of the proceedings. The highest demand on the legal aid budget is for the trial, and it is expected to be particularly high during any reparations phase.

G. In-house and external representation of victims

Involvement of external counsel in representing victims

37. The involvement of external counsel in proceedings before the Court generally – whether representing suspects, accused or victims – has been the subject of consideration, including with external stakeholders, in the context of the development of the Court’s strategy on counsel.

38. There are clearly advantages in having specialized in-house counsel who practise exclusively before the Court. These can be summarized as follows:

- a) Clients benefit from representation by counsel specialized in the law and practice before this Court; in-house counsel are able to appear and follow the proceedings before the Court on a permanent basis, enabling them to keep up to date with all the relevant jurisprudence of the Court;
- b) Counsel are free from other external obligations and are able to focus exclusively on their cases before the Court; and
- c) Savings can be made on fees, and costs such as those involved in the travel of external counsel to the Court for hearings would be avoided.

39. There are, however, also important advantages in having a broader involvement of external counsel experienced in criminal proceedings generally intervening before the Court alongside their normal practice. These can be summarized as follows:

- a) Excluding external counsel would compromise the principle of freedom to choose one’s counsel, including the choice to be represented by counsel from one’s own country. The Court in The Hague may appear to victims as distant, and having a legal representative who is familiar with their situation and may speak their language, and with whom they may have developed a relationship of trust, can be crucial in making the experience of participation meaningful;²⁰
- b) Local lawyers from the victims’ country are able to bring to the Court their unique qualities and experience, including knowledge of the culture and background of the victims and the context of the alleged crimes;²¹
- c) External lawyers play an important role, in that the number of victims accessing the Court might be considerably less if there were to be a total “internalization” of legal representation of victims.²² External lawyers play an important role in enabling victims to access the Court, for example assisting victims to make their applications on a pro-bono basis and reaching areas where Court staff are

²⁰ Although independent studies have not yet been carried out, this point was made forcefully by lawyers representing victims in *L’organisation de la représentation des victimes, l’aide légale et le BPCV : l’expérience des conseils*, a document signed by eight legal representatives in the Lubanga and Katanga/Ngudjolo Chui cases, and submitted to a consultation meeting on the present report held at the Court on 6 July 2009, as well as by non-governmental organizations taking part in the same meeting, and is borne out by the experience of the Registry in interviewing victims for the purpose of assisting them to choose a legal representative.

²¹ The legal representatives in the Lubanga and Katanga/Ngudjolo Chui cases assert that this benefit has been demonstrated in the Lubanga trial, see *L’organisation de la représentation des victimes, l’aide légale et le BPCV : l’expérience des conseils*.

²² *Ibid.*

not able to go. They might be discouraged from doing so if they were not able to continue to represent the victims once the latter's status had been recognized;

- d) Involvement of external counsel enables the Court to benefit to a greater extent from the richness of experience acquired by lawyers through their practice at national level, and to encourage the participation of more counsel from around the world in the work of the Court; and
- e) Involvement of external counsel enables the Court to contribute to a greater extent towards capacity building and the promotion of international criminal law in national legal systems, in line with the principle of complementarity.

40. On the basis of these consultations and reflections, the Registry has concluded that there are strong policy reasons for retaining the involvement of both external lawyers and in-house counsel in the representation of victims. External and in-house lawyers each bring unique elements that cannot be provided by the other. The best solution is therefore to ensure that each is able to make its own appropriate contribution, and to avoid duplication.

The role of the Office of Public Counsel for Victims (OPCV) and measures to avoid duplication

41. The role of the OPCV is defined in regulation 81 (4) of the Regulations of the Court, which provides that the Office will provide support and assistance to legal representatives of victims and to victims, including, where appropriate, legal research and advice and appearing before a Chamber in respect of specific issues.²³ Regulation 80 (2) provides that a Chamber may appoint the Office to represent victims.

Providing support to external legal teams

42. The first part of the Office's mandate involves providing legal representatives of victims, upon request, with support and assistance such as factual background documents, research papers and advice and draft submissions.²⁴ Legal teams representing victims and Chambers have acknowledged the importance of this support, which inter alia provides the teams with research capacity, specialist knowledge of relevant areas of international law and of the law and practice of the Court, the ability to follow Court proceedings on an ongoing basis and technical knowledge of the Court's systems for managing information.

43. The purpose of establishing the OPCV was to create an in-house capacity that was complementary to, and would not duplicate, the role of external lawyers. In providing support to external teams, the OPCV provides a valuable resource that would otherwise have to be provided in the form of additional team members, adding a significant burden to the legal aid budget. The Court takes into account this support provided by the OPCV when allocating resources to external legal teams.

²³ According to regulation 81 (4), this includes, where appropriate: a) legal research and advice; and b) appearing before a Chamber in respect of specific issues.

²⁴ Background document prepared by the Office of Public Counsel for Victims and presented to The Hague Working Group on 10 June 2009.

Representing victims

44. The second part of the OPCV's mandate is to represent victims directly. All Chambers of the Court have taken advantage of this option in order to appoint the Office to represent victims who would otherwise have no legal representative at two crucial points:

- a) The period before the Chamber has decided on their status; and
- b) After their status has been recognized and until a common legal representative is chosen or appointed by the Court.

This fills an important gap, since a significant number of victims approach the Court with no legal representative. If external legal representatives were to be appointed to fill these gaps, this would add a significant burden to the legal aid budget.

45. Further, the availability of the OPCV provides a flexible option when a need for legal representation may arise unexpectedly. For instance, during the confirmation of charges hearing in the Katanga and Ngudjolo Chui case, a group of victims was suddenly left without a legal representative when a possible conflict of interest arose, and the Pre-Trial Chamber appointed the OPCV to represent the victims at the hearing until the issue could be resolved.

46. As regards representation of victims by the OPCV during trial proceedings, the Rules leave the organization of common legal representation for trial in the hands of the relevant Chamber,²⁵ assisted as need be by the Registry.

47. In this respect, Trial Chamber I in the Lubanga case expressed the view that "during the early stage in the Court's existence it is critical that the Office concentrates its limited resources on the core functions given to it under the Rome Statute framework which ... is to provide support and assistance to the legal representatives of victims and to victims who have applied to participate (rather than representing individual victims)", and decided that during the trial external legal representatives should be appointed, "unless there are specific reasons ... as to why this course would be detrimental to individual participating victims".²⁶ The Trial Chamber, however, decided in this instance that the OPCV should continue to represent four victims having the dual status of witness and participating victim during the trial, taking into account a number of factors, including the fact that victims had expressly requested counsel from the OPCV, that the Office had established a long-term relationship of trust and confidence with those victims, that they would require particular and sensitive assistance when they came to The Hague to give evidence, and the fact that their evidence would be heard in the relatively near future. The Chamber decided that the other victims formerly represented by the Office should choose another legal representative.²⁷

48. Where the OPCV plays the two roles (support to external teams and separate representation of victims) it creates a level of separation within the Office to avoid a conflict of interest and preserve an appropriate level of independence.²⁸ The OPCV dedicates different staff to each, and internal measures are taken in order to avoid conflicts of interest.

49. In light of the above, the Registry proposes to continue to assist Chambers to find workable solutions on a case-by-case basis, including drawing their attention to cost implications as well as to other relevant factors, whilst bearing in mind the need to avoid duplication and to draw the full benefit from the respective strengths of external lawyers and of the OPCV.

²⁵ Rule 90 of the Rules.

²⁶ Decision on the role of the Office of Public Counsel for Victims and its request for access to documents, ICC-01/04-01/06-1211 of 6 March 2008, paras. 32 and 34.

²⁷ Oral decision of Trial Chamber I, Status Conference held on 16 January 2009.

²⁸ OPCV's plans for balancing its support and representation functions are currently under discussion with external counsel, who have expressed concerns in this respect.

Conclusion

50. *There are sound policy reasons to provide resources for external counsel experienced in criminal proceedings to represent victims participating in Court proceedings or seeking reparations, so long as there is no duplication with the role played by in-house counsel.*

H. Scenarios for common legal representation of victims, including cost implications

51. Paragraph 82 of the Report of the Committee on Budget and Finance on the work of its twelfth session²⁹ provides as follows:

“The Committee welcomed the information provided by the facilitator and the Court. While noting that the discussions in The Hague Working Group were still at a preliminary stage, the Committee suggested that the Working Group integrate the cost implications of the different options as part of its consideration.”

52. As requested by the Committee, annex II provides a number of scenarios, giving, for each one, an indication of the cost implications for the full cycle of a case. Aside from scenario 1, where OPCV represents all victims, and scenario 5, where external lawyers represent all victims, the scenarios envisage continued representation of victims by both the OPCV and external counsel.

53. Cost estimates for the following scenarios are provided in annex II:

Scenario 1: Exclusively in-house: OPCV represents all victims at every stage (two teams per case);

Scenario 2: Mixed 1: OPCV represents all victims at the pre-trial stage and external lawyers represent all victims from the trial stage onwards (two teams per case);

Scenario 3: Mixed 2: both OPCV and external lawyers represent victims at each stage: only one external team (OPCV provides separate representation for one or more groups if conflicts of interest arise);

Scenario 4: Mixed 3: both OPCV and external lawyers represent victims at each stage: two external teams (as in the Lubanga case); and

Scenario 5: Exclusively external: OPCV provides assistance only to external legal teams at all stages, and only represents victims in exceptional circumstances and on a temporary basis.

54. It should be emphasized that these are approximate calculations based on the experience of the first proceedings, and a full cycle has yet to be completed in any case. In any event, a number of conclusions can already be drawn.

²⁹ ICC-ASP/8/5.

Number of external legal teams

55. In its report on its eleventh session, the Committee suggested that the Registry consider the possibility of having one legal team for victims per case.³⁰

56. It emerges from these costings that the main cost-driver variable is the number of external legal teams representing victims. This is particularly the case during the trial stage, which is the most costly stage (see annex III).

57. As discussed in part F above, the number of external legal teams is dependent on the approach taken by Chambers. In this respect, the approach of the Chambers has varied as regards the number of legal teams recognized to represent victims at different stages of the proceedings. At the confirmation stage, Pre-Trial Chamber I recognized four teams of legal representatives of victims in the Katanga/Ngudjolo case, while Pre-Trial Chamber III in the Bemba case ruled that only one team of legal representatives should appear. In the only case to proceed to trial to date, the Trial Chamber has recognized two teams of external common legal representatives of victims in the Lubanga case, with the OPCV representing a third group.

58. In keeping with the approach taken by Chambers, the Court has based itself on the assumption that there would be two teams of victims' legal representatives per accused.³¹ Conflicts of interest may and indeed do arise between victims or groups of victims, making separate legal representation necessary. This is an issue that the Court is obliged to consider under the Rules,³² and all counsel have a duty under the Code of Professional Conduct for Counsel to exercise all care to ensure that no conflict of interest arises and, should it arise, to take the appropriate steps.³³ A conflict of interest might arise, for instance, as in the Katanga/Ngudjolo Chui case, where victims of a case might include both child soldiers participating in an attack and the civilian victims of that attack, and it should be borne in mind that conflicts may arise during the course of the proceedings, even if not apparent from the outset.

Organization of legal teams: lessons learned from the Trial Chamber

59. As regards the organization of external legal teams, it is useful to look at the lessons that can be learned from the first experience of common legal representation in the first two cases.

60. At the trial stage of the Lubanga case, there are two teams of external legal representatives, each composed of several counsel (three in one team, four in another), with one counsel per team present at the seat of the Court at any one time, with a monthly rotation. The advantages of this approach are that it has maintained the involvement of all lawyers chosen by victims with whom they may have built up a relationship of confidence, and potentially enables each lawyer to intervene in relation to their particular clients as appropriate. The rotation system has a number of potential disadvantages and cost

³⁰ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II.B.2, para. 129.

³¹ For the 2009 budget, the Court nevertheless assumed that for the joint case of Katanga and Ngudjolo, there would be three, and not four, teams of legal representatives for victims. At the time of this interim report, the Trial Chamber had not yet decided how many legal teams would be permitted to participate in the trial.

³² Rule 90 (4) provides that: "The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided."

³³ Code of Professional Conduct for Counsel, article 16.

implications, however.³⁴ The Registry proposes to draw these lessons to the attention of future Chambers.

61. In the preparation for trial in the Katanga and Ngudjolo Chui case, the Trial Chamber ordered a different approach. Due to conflict of interest it was necessary for there to be two teams representing victims. One group, comprising more than three hundred victims, was asked to choose, with the assistance of the Registry, one common legal representative who would be fully available throughout the entire duration of the proceedings.³⁵ Other lawyers formerly representing members of the group would therefore withdraw. The Chamber also ordered that a suitable support structure be established in order to provide the common legal representative with the necessary legal and administrative support both at the seat of the Court and in the field. The Chamber ordered that the second, smaller group should also be represented by an external legal representative.

62. The Registry believes that, as envisaged in rule 90 of the Rules, the organization of common legal representation in each case will need to be looked at on a case-by-case basis.³⁶ While it may in some circumstances be appropriate to retain the involvement of several counsel chosen by victims in a particular team, it may not necessarily be appropriate for all to remain involved, as has occurred in the Katanga and Ngudjolo Chui case. Where a large number of counsel are representing victims, some, such as those who represent only a small number of victims, might be asked to withdraw. Rule 90 allows for such a qualification of the choice of counsel.

63. A more appropriate and cost-effective use of the legal aid resources might be to shift some resources – such as the costs involved in rotation and a proliferation of external teams – away from The Hague towards aspects of legal representation that can be carried out in the field, including maintaining contact with the victims. It would be up to the legal representatives to justify any additional resources as being reasonably necessary in accordance with regulation 83 of the Regulations of the Court.³⁷

Number of victims

64. One of the findings from the scenarios in annex II is that the number of victims in a group has a lesser impact on cost than does the number of legal teams. If a counsel – whether from the OPCV or an external legal team – represents only one victim, then the cost of attendance in The Hague every day of the trial would not be very different to the cost if he or she represents 100 victims. This also goes for the OPCV: even though the financial cost of a staff member of OPCV representing victims is less than the cost of an external team, that one counsel of OPCV still has to spend most of his or her time in the courtroom for the duration of that trial, whether representing one victim or one hundred.

³⁴ For example, the continuity of representation may be interrupted, and all counsel in the team must spend time in order to keep up with developments. Since the rotation is on a monthly basis and arranged in advance, it may not in practice provide the flexibility to allow a particular counsel to intervene on behalf of his/her particular clients. It also leaves room for ambiguity as to whether it actually constitutes common legal representation. The travel costs involved in the monthly rotation leave few resources available for maintaining contact with victims, and additional fees may be incurred by counsel who are not present at the Court. The two teams in the Lubanga case have had to be allocated additional resources in order to respond to these needs.

³⁵ Order on the organisation of common legal representation of victims, Trial Chamber II, 22 July 2009, ICC-01/04-01/07-1328.

³⁶ For example, at present there is only one lawyer from the Central African Republic and two from Uganda on the Court's list of counsel, while there are many more from the Democratic Republic of the Congo.

³⁷ In the Report on the operation of the Court's legal aid system and proposals for its amendment, ICC-ASP/6/4, at paragraph 57, it is noted that the possibility of providing additional resources for the legal representation team could be considered, inter alia, where the number of victims in a group exceeds 50.

65. On the other hand, the number of victims in a group does have some impact on the costs involved in the field. The cost of keeping in contact with one hundred victims is likely to be more than the cost of keeping in contact with one victim, particularly where the counsel meets with the victims in person. A larger number might necessitate additional resources, such as additional team members based in the field or additional costs for field-based work such as maintaining contact with victims. However, the costs incurred in work in the field are less than the costs incurred in representation in The Hague.

Other factors

66. The costings in annexes II and III show that other factors have a lesser, but still significant, impact in terms of cost. These include the number of team members and their level (for example, the addition of an assistant during the reparations phase), and whether there is a “rotation” system, whereby a number of counsel in the same team appear at the seat of the Court in rotation.

Costs of the OPCV

67. The figures in annex II include the cost of OPCV representing victims directly. With the resources available to it at the level of the 2009 budget, the Office is able to compose two teams representing victims at any given time. A maximum of two cases can be handled by each team, which is composed of a Counsel, an Associate Legal Officer and a Case Manager. In order to avoid conflicts of interest, each team is in charge of two cases in different situations.

68. For purposes of maintaining contact with their clients, the OPCV assumes that a team of two people would travel four times a year, for a duration of a maximum of 10 days, to the locations where the victims reside. Other costs relate to the rental of premises to meet with victims, costs for transport and board and lodging of clients in a location different from that where they normally reside, if necessary for security reasons, and reimbursement of payments to local people helping the Office to establish initial contact with clients.

69. Due to the increasing workload of the OPCV, the Office estimates that an additional P-3 position will be necessary in the future. He or she will be responsible for locating victims represented by the Office, facilitating contact with them, acting as the link between victims and members of the Office, and collecting from victims documents, information or evidence relevant for assistance and/or representation in the proceedings.

70. The function of providing support and assistance to external legal representatives is carried out by OPCV staff other than those who are appointed to a legal team representing victims in a case. A minimum of two OPCV staff are always available to provide such assistance in all situations and cases with the resources available in the 2009 budget. Currently, the Office is assisting 19 external legal representatives involved in all situations and cases pending before the Court.

71. In considering the costs involved in the representation of victims by the OPCV, it should not be forgotten that, in accordance with regulation 115 (4) of the Regulations of the Registry, where a member of the Office is representing victims, calls may be made on the legal aid system. While the OPCV has not to date made calls on the legal aid system, it might potentially do so, for instance, to cover the cost of an investigator in the context of reparations proceedings.

Conclusions

72. *The number of legal teams is a more important cost driver for legal aid for victims than the number of victims. Legal aid for victims must take into account the need for resources to maintain contact with victims in the field as well as for representation before the Court.*

73. *The experience of a full cycle of a case including a reparations phase and of the organization of common legal representation in other cases drawing on lessons learned is needed in order to draw further conclusions on the application of legal aid resources for common legal representation.*

74. *As far as possible, resources from the legal aid scheme would be provided to one team of legal representatives per case at the trial phase, bearing in mind that there may be occasions where it is necessary to have more than one team, such as where a conflict of interest arises.*

75. *The relationship between the role of external counsel representing victims and that of the Office of Public Counsel for Victims and the corresponding level of resources to be allocated to the Office requires further consideration and should be kept under review.*

I. Final Remarks

76. Cost comparisons show that the biggest cost driver for legal aid for victims is not the number of victims but the number of legal teams. Conflicts of interest may necessitate more than one team representing victims in a case. Experience shows that normally no more than two teams would be required: the assumption underlying the budgets for the years 2008 and 2009 has been that a maximum of two external legal teams for victims per accused would be paid for from the legal aid budget. This is also the assumption underlying the budget submissions for 2010.

77. The Court is learning the lessons of how to respond to the specific requirements of the legal representation of victims. To date, these requirements – such as the need for activities in the field as well as appearance at the seat of the Court – have been met within the existing budget. The field aspect would benefit from further exploration, as lessons are learned from the first case and the second trial proceeds. The Registry is confident that the Court can currently manage legal aid for victims within current levels of budget allocation, even if there were to be a significantly larger number of victims participating in a given case.

78. The funds allocated for the legal representation of victims are for the purpose of giving concrete expression to the rights of victims enshrined in the Statute, which represent a fundamental element of the Court's proceedings. These funds are managed by the Court in strict conformity with the legal aid system approved by the States Parties. While the appointment of external legal teams representing victims may be more costly than a purely in-house option, the continued engagement of external lawyers in Court proceedings alongside the OPCV would create an appropriate balance between the different considerations at stake and create the best possible basis for an effective representation of victims before the Court.

Annex I

Development of the legal aid scheme for victims in light of Chambers' decisions

1. The design and implementation of the legal aid scheme for victims has followed the evolution of decisions of Chambers defining the scope of participation of victims in the proceedings in accordance with the Rome Statute ("the Statute") and the Rules of Procedure and Evidence ("the Rules").
2. The decisions of the Chambers have, in turn, responded to the numbers of victims who have applied to participate in the proceedings. The factors influencing the numbers of victims participating at any given stage or case include:
 - a) The level of outreach activities of the Court;
 - b) The prevailing security situation affecting victim communities;
 - c) The capacity of the Court to reach out to victims and distribute standard application forms and other appropriate documentation;
 - d) The availability of capable and informed intermediaries to assist victims to make their applications; and
 - e) Political factors.
3. Some victims approach the Court having already appointed a lawyer of their choice. Others do not yet have a lawyer at that stage and the Registry, in accordance with rule 16 of the Rules, assists them in choosing a lawyer. Under regulation 80 of the Regulations of the Court, where the interests of justice so require, the Chamber has the power to appoint legal representatives of victims, who may be from be the Office of Public Counsel for Victims. Under rule 90 of the Rules, the Chamber, with the assistance of the Registry, may organize victims into groups for the purpose of common legal representation.¹
4. The ways in which the legal aid scheme has responded to the role afforded to victims in the proceedings at different phases is described below.

Participation of victims in relation to a situation

5. As regards legal aid in the context of a situation (as opposed to a particular case), following a decision of Pre-Trial Chamber I in the situation in the Democratic Republic of the Congo ("the DRC") in January 2006, and subsequent decisions of that Chamber and of Pre-Trial Chamber II, victims have been accepted as participants in the proceedings in relation to the situations in the DRC, Uganda and Darfur. To date, legal aid granted in respect of a situation has been limited to participation in interlocutory appeals regarding the nature of such participation and to missions of legal representatives for purposes of informing their clients in that regard and taking instructions from them in relation to the DRC and Darfur situations. A decision of the Appeals Chamber of 19 December 2008 on victim participation in the investigation stage of proceedings has had the effect of restricting the participation of victims

¹ Rule 90 envisages that where there are "a number" of victims, they would be grouped so as to be represented by a common legal representative or representatives, if necessary with the assistance of the Court, and ultimately that the Court might itself appoint legal representatives if the victims are unable to do so.

in the investigations of the Prosecutor.² The decision did not, however, rule out the participation of victims in relation to a situation, or even to an investigation, where their personal interests are affected. It is therefore necessary to envisage legal representation for participation in relation to a situation. It is probable that, if external counsel were to be appointed, the scope of their intervention would be defined by the relevant Chamber and be limited to specific oral and/or written interventions in relation to a specific issue.

The pre-trial stage of a case

6. In its Report on the operation of the Court's legal aid system and proposals for its amendment,³ the Registry indicated that it was not at that time in a position to propose a framework for legal aid for victims at the pre-trial phase, due to the absence of established and confirmed jurisprudence on the modalities of participation by victims during that phase and of sufficiently reliable parameters. For the time being, therefore, the Registry proposed to deliver ad hoc decisions, with the aim of responding effectively to the needs of the legal representatives flowing from decisions of the Chambers.

7. Developments since that time have provided a greater degree of predictability regarding the scope of legal aid that would be required during the pre-trial stage of a case. Where a suspect is brought before the Court, the main procedural activity in which victims would expect to participate would be the confirmation of charges hearing and any status conferences that might precede it. Three confirmation of charges hearings have been held to date, with participating victims being covered by the legal aid scheme in each case.⁴

8. As regards the composition of the teams representing victims at the pre-trial stage of a case, the experience of the Registry to date, based on the nature and scope of participation permitted by the Chambers to date, has been that the inclusion of a case manager in a legal team will normally be reasonably necessary during the actual confirmation of charges hearing. The anticipated costs of legal aid during the pre-trial stage of a case would therefore generally cover the costs of one counsel to attend status conferences, conduct missions for the purpose of consulting with his/her clients, and prepare for and attend the confirmation of charges hearing, with the addition of a case manager during the period immediately surrounding the confirmation of charges hearing itself.

9. In relation to Uganda, where warrants of arrest have been issued but not executed, a number of victims were accepted for participation in the case of Kony et al., and the Office of Public Counsel for Victims (OPCV) has been appointed to represent them. The OPCV represented those victims, and others, in the proceedings on admissibility under article 19 of the Statute initiated by Pre-Trial Chamber II in October 2008. It is probable that, if external counsel were to be appointed, the scope of their intervention would be defined by the relevant Chamber and be limited to specific oral and/or written interventions in relation to a specific issue.

² ICC-01/04-556.

³ ICC-ASP/6/4.

⁴ Confirmation of charges hearing in the Lubanga case in November 2006, in the Katanga and Ngudjolo case in June/ July 2008 and in the Bemba case in January 2009.

The trial stage of a case

10. The trial stage of a case involves not only the trial itself, but also the preparation for trial, which involves a series of status conference hearings held over a period of several months, together with opportunities for legal representatives to present written observations on a range of matters.⁵ During the preparation for trial stage, it is to be expected that legal representatives would need to consult with their clients in order to keep them informed and to take their instructions. During the trial itself, legal representatives would be expected to continue to consult with their clients as well as to represent their interests, through both written submissions and appearances in person before the Chamber.

11. As regards the composition of teams, the Registry recommended to the Assembly in its report⁶ that, during the trial phase, legal aid during should cover a core team present at the seat of the Court, comprising:

- a) One counsel (P-5) (as described in the body of the present report in paragraphs 60 and 61, this may involve several counsel in rotation); and
- b) One case manager (P-1).

12. Legal representatives may apply to the Registrar under regulation 83 of the Regulations of the Court for additional funds, including costs associated with practical aspects of their representation of victims. These may include, for example, costs associated with consulting their clients during the trial with a view to keeping them informed and seeking their instructions, and a resource person in the field to facilitate communication with clients.

13. In its report to the Assembly,⁷ the Registry recommended the provision of a lump sum to cover investigations for an entire case, and this was included in the budget for 2009. It represented 60 days' fees for one investigator, plus travel costs. It was stated to cover, in particular, issues arising in respect of reparations. It is apparent from the decision of Trial Chamber I, confirmed by the Appeals Chamber, that this did not preclude the possibility that victims might present and challenge evidence during the trial. This could trigger requests for additional resources from the legal teams representing victims, which would need to be considered in accordance with regulation 83 of the Regulations of the Court.

14. Legal representatives in the Lubanga case proposed, and the Trial Chamber accepted, an arrangement whereby the external legal representatives already representing victims accepted in the case would continue to represent their clients within the framework of common legal representation, organized into two teams, with OPCV representing a separate group.⁸ This would have the important benefit of victims not being asked to change lawyers when they had already established a relationship of trust with their present lawyer, thus

⁵ For example, approximately 10 status conferences were held between March 2008 and January 2009 by Trial Chamber I for the preparation of the Lubanga trial.

⁶ Report on the operation of the Court's legal aid system and proposals for its amendment (ICC-ASP/6/4).

⁷ Ibid.

⁸ There was a total of seven lawyers already representing 93 victims accepted for participation at the start of the trial in January 2009. Instead of some lawyers withdrawing and their clients being represented by other lawyers, the legal representatives proposed to form themselves into two teams, so that each of the lawyers would remain involved, even though there would only normally be one lawyer appearing before the Court on behalf of each team at any one time. This ensured that the fees of only one legal representative at the seat of the Court for each team would need to be covered at any one time. The proposal of the legal representatives is contained in document ICC-01/04-01/06-1602, and Trial Chamber I confirmed this in an oral decision (ICC-01/04-01/06-T-105-ENG, p. 13).

respecting the principle that the victim has the right to choose his or her lawyer.⁹ The proposal was accepted by Trial Chamber I.

Reparations phase

15. For the reparations phase, it was envisaged in the Registry's report to the Assembly¹⁰ that the resources available to the legal teams representing victims would need to be supplemented by additional resources at the Registrar's discretion and subject to the oversight of the relevant Chamber. During this phase, it is likely that the legal representatives of the victims will play a leading role in the proceedings, presenting the requests of their clients in accordance with article 75 of the Statute. Given that, to date, no case before the Court has proceeded to the reparations phase, the Registry's proposals will at this stage necessarily be based largely on the legal texts of the Court as opposed to actual practice.

16. Since a Chamber has a number of options under the framework established by article 75 of the Statute, and in any case there has not yet been a full cycle including a reparations phase, it is difficult to establish a uniform and detailed system that would apply in every case. For example, a Chamber may decide to make a determination on the scope and extent of any damage, loss or injury, and may make an order for reparations against a convicted person, or seek measures of cooperation under article 93, but equally may choose not to do so. In other words, the extent and scope of any reparations proceedings will be determined by Chambers on a case-by-case basis. The Registry therefore proposes that the best approach is to envisage a core team, with the provision of additional resources as necessary.

17. Accordingly, and bearing in mind the difficulties in making assumptions in the absence of the experience of a reparations phase to date, the Registry has proposed in its report to the Assembly¹¹ that, during the reparations phase, a core team composed as follows would be necessary:

- a) One Counsel (P-5);
- b) One Legal Assistant (P-2); and
- c) One Case Manager (P-1).

⁹ Rule 90 (1) of the Rules.

¹⁰ Report on the operation of the Court's legal aid system and proposals for its amendment (ICC-ASP/6/4).

¹¹ *Ibid.*

Annex II

Scenarios showing the possible budgetary impact of victims' legal representatives for the full cycle of a case¹

	Scenario	Cost of OPCV (in euros)	Cost of external legal team(s) (in euros)	Total costs (in euros)
1	Exclusively in-house: OPCV represents all victims at every stage (2 teams per case)	621,000 ²		621,000
2	Mixed 1 OPCV represents all victims at the pre-trial stage and external lawyers represent all victims from the trial stage onwards (2 teams per case ³)	352,500	1,010,078 ⁴	1,362,578
3	Mixed 2 Both OPCV and external lawyers (1 team) represent victims at each stage	352,500	568,826 ⁵	921,326
4	Mixed 3 Both OPCV and external lawyers (2 teams) represent victims at each stage	352,500	1,137,652 ⁶	1,490,152
5	Exclusively external OPCV provides assistance only to external legal teams at all stages, and only represents victims in exceptional circumstances and on a temporary basis (2 teams of external lawyers per case)		1,137,652 ⁷	1,137,652 ⁸

¹ Costings are based on figures given in annex 1 and include every stage of proceedings, plus missions to meet clients and investigations.

² Costings assume a team composed of a counsel at the P-5 level and another where the counsel is at the P-4 level. Staff costs, travel (a total of four trips for two persons) and other costs (such as rental of premises to meet with clients, costs of travel and board and lodging for clients in locations different from those where they normally reside, if necessary for security reasons, reimbursement of payments to local people helping the Office to establish initial contact with clients) are included.

³ In all instances where two teams are envisaged, costings are made on the basis of an assumption that one team would comprise a counsel from Africa and the second would comprise a counsel from Europe.

⁴ This rises to at least €1,100,868 if a rotation system is applied such as in the Lubanga case, where several counsel remain in a team and a different counsel attends the trial each month.

⁵ The cost would be at least €603,570 if a rotation system is applied.

⁶ The cost would be at least €1,207,140 if a rotation system is applied.

⁷ The cost would be at least €1,207,140 if a rotation system is applied.

⁸ The total would be at least €1,207,140 if a rotation system is applied.

Annex III

Costs of teams of legal representatives of victims

A. Fees of one external legal team per month

Type of team	Composition	Cost per month (€)
Counsel only	1 Counsel P-5	10,832
Core team	1 Counsel P-5 1 Case Manager P-1	10,832 / 15,165 ¹ 4,872 Total: 15,704 / 20,037
Expanded team	1 Counsel P-5 1 Legal Assistant P-2 1 Case Manager P-1	10,832 / 15,165 ² 6,113 4,872 Total: 21,817 / 26,150

B. Estimated cost of a case for one external legal team at different stages of a case

Stage	Details	Fees (€)	Expenses (€)	Total (€)
Pre-trial	2 months' fees (Counsel only 1 month, core team 1 month) Confirmation of charges hearing, status conferences and associated work, travel + DSA for 2 status conferences and confirmation of charges hearing	10,832 15,704	Counsel - Trip: 2,500 x 3 (total of 2 status conf. + confirmation of charges) = <u>7,500</u> - DSA: 7,800 x 1.5 (2 status conf. + 1 month hearing) = <u>11,700</u>	45,736 ³
Preparation for trial	10 months, 6 status conferences Core team 2 months' fees; travel and DSA for 6 status conferences for 6 days each	31,408	Counsel - Trip: 2,500 x 6 (total of 6 status conf.) = <u>15,000</u> - DSA: 1,260 x 6 (6 status conf.) = <u>7,560</u>	53,968 ⁴

¹ If a counsel is present at the Court for more than 15 days, they may be entitled to up to 40% reimbursement of costs, normally only relevant during trial stage.

² If a counsel is present at the Court for more than 15 days, they may be entitled to up to 40% reimbursement of costs, normally only relevant during trial stage.

³ It is assumed that the Counsel is from Africa; for a permanent counsel from Europe, the total would be €9,736.

⁴ It is assumed that the Counsel is from Africa; for a permanent counsel from Europe, the total would be €40,468.

Stage	Details	Fees (€)	Expenses (€)	Total (€)
Trial	Core team 10 months Travel and DSA	200,370	Counsel - Trip: 2,500 x 3 (total of 3 recesses when legal representative will return to his home country) = <u>7,500</u> - DSA: 7,800 x 11 (total of 1 month of recess throughout the year) = <u>85,800</u>	293,670 ^{5 6}
Reparations	Expanded team 3 months Travel and DSA	78,450	Counsel - Trip: 2,500 x 1 = <u>2,500</u> - DSA: 7,800 x 3 = <u>23,400</u>	104,350 ^{7 8}
Appeals	Core team 1 month's fees, 1 mission to the field, travel and DSA for 1 mission to the field and 1 status conference	15,704	Counsel - Trip to The Hague: 2,500 x 1 = <u>2,500</u> - DSA to The Hague: 270 x 7 (7 days) = <u>1,890</u> - Trip to the field: 500 x 1 = <u>500</u> - DSA to the field: 100 x 7 (7 days) = <u>700</u>	21,294 ⁹
Missions to meet with clients throughout	Counsel or Legal Assistant 1 during pre-trial, 1 during preparation for trial, 4 during trial, 2 during reparations, 1 during appeal (total of 9 missions). Average cost of 1 mission if victims' legal representative (VLR) is based in the same country = 500 euros; average cost if VLR is based in Europe = 2,500 euros	5,000 (1 week mission)	Missions - Trip: 500 x 9 = <u>4,500</u> - DSA: 700 x 9 = <u>6,300</u>	15,800 ¹⁰
Investigations	60 days' fees for an investigator, plus DSA and travel costs ¹¹	17,912	26,840	43,752

⁵ It is assumed that the Counsel is from Africa; for a permanent counsel from Europe, the total would be €87,670.

⁶ The total would be at least €13,670 if a rotation system is applied.

⁷ It is assumed that the Counsel is from Africa; for a permanent counsel from Europe, the total would be €102,350.

⁸ The total would be at least €109,350 if a rotation system is applied.

⁹ It is assumed that the Counsel is from Africa; for a permanent counsel from Europe, the total would be €1,294.

¹⁰ It is assumed that the Counsel is from Africa; for a permanent counsel from Europe, the total would be €3,800.

¹¹ Report on the operation of the Court's legal aid system and proposals for its amendment, ICC-SP/6/4, 31 May 2007, para. 58.

C. OPCV costs, per team representing victims in a case

Staff costs (€)	Travel (€)	Other costs (€)	Total (€)
321,500 or 299,500 This represents a team composed of 1 P-5 (Principal Counsel) <i>or</i> 1 P-4 (Counsel), 1 P-2 (Associate Legal Officer) and 1 P-1 (Case Manager), based on salary costs for The Hague for 2009.	16,000 A total of 4 trips for 2 persons for a maximum of 10 days to the area where the victims reside (figures based on the 2009 budget).	15,000 Includes rental of premises to meet with clients, costs for travel and stay of clients in a location different from that where they reside, if security issues arise, reimbursement of payments to local people helping the Office to establish initial contact with clients.	352,500 or 330,500

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