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**Registry report on ways to improve the legal aid procedures\****Summary*

This report addresses the Committee's recommendations and outlines the ways in which the legal aid procedures might be improved.

Request (ICC-ASP/12/15, para. 137); content:

- (a) The Court provides information on the ways to improve existing legal aid procedures.
- (b) The decisions rendered help to define the requirements associated with the proceedings before the Court and highlight the need to ensure continuity within the teams, even during phases of reduced activity, whilst accepting a reduction in the sums paid at these times. With regard to the victims, the decisions highlight the fact that it is important for the common legal representative to be in frequent contact with the victims he or she represents.
- (c) In order to ensure the availability of the funds required to meet these requirements without imposing an additional burden on the legal aid system, this report focuses on simplifying procedures and improving budget predictability.
- (d) The report proposes to simplify the payments made to team members, switching from three monthly payments (for fees, professional charges and travel costs, where applicable) to a single payment, and also to simplify the relevant procedure.
- (e) As far as the Defence is concerned, adopting new rates would allow the resource-person and the associate counsel to be included in the Defence's core team for the entire proceedings, whilst the investigation budget would be reduced from €73,006 to €50,000. Remuneration for team members would be adjusted depending on the relevant stage in the proceedings (100 per cent for the trial; 75 per cent for the pre-trial stage; 50 per cent for appeals).
- (f) The possibility of adopting a lump-sum system for the pre-trial stage and the appeals stage will be considered at a later stage, taking into account the duration of these two stage before the Court.
- (g) With regard to legal aid for the victims, the involvement of a legal assistant in the field is required when the common legal representative is based elsewhere. Furthermore, it is essential that missions are funded from time to time when the common legal representative needs to meet with the victims.

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## I. Introduction

1. In its report on its twenty-first session, the Committee on Budget and Finance (‘the Committee’) ‘recommended that the Registry conduct a study, based on key decisions already rendered, to identify common themes in the various judgments. The Registry could then identify ways to improve existing procedures, and this would make it easier to quantify financial requirements.’<sup>1</sup>

2. The Chambers of the Court have rendered a series of decisions which have a direct and indirect impact on legal aid, by ruling on the legal representation of victims,<sup>2</sup> by reviewing the Registrar’s decisions on this matter<sup>3</sup> or by amending the planned progress of a case.<sup>4</sup> The Registrar has also rendered decisions on granting additional resources to respond to the objective requirements of the cases before the Court. These decisions highlight the fact that teams must be available to work, even if capability has to be reduced, at any time during a case, as well as certain specific requirements of the common representatives for the victims.

3. The Registry therefore outlines the following possibilities to streamline administrative procedures in the legal aid system whilst maintaining its approach to maximise the savings achievable in this area. This approach takes into account the demands of a fair trial, for which legal aid paid for by the Court is a fundamental aspect, and in particular the principles of the equality of arms, objectiveness, transparency, continuity and savings. Flexibility remains a fundamental aspect of implementing the system.

4. Particular attention must be paid to the effects of the proposals on the preparation and implementation of the legal aid budget; predictability was therefore one objective also to be achieved in this regard.

5. The Registry wishes to draw the attention of the Committee to the need to submit for consultation all the proposals to change the current system to the existing teams and to the independent representative body of counsel or legal associations pursuant to Rule 20(3) and to the legal aid commissioners, as provided for by Regulation 136 of the Regulations of the Registry.

## II. Simplifying the payment of fees

6. At present, one member of the team (counsel or associate counsel specifically) are entitled, in addition to their fees, to compensation for professional charges and to reimbursement for travel and subsistence costs. The system imposes a significant workload in terms of administration and verification by the Registry, which must ensure that each amount paid out does in fact correspond to the expenditure incurred and that the expenditure in question is included in the mission plan submitted and approved in advance. Incorporating the monthly allocation of €3,000 for expenditure into a single payment, as highlighted below, would simplify and streamline the payment of reimbursements.

7. It would be possible to attempt to simplify the process for the administrative handling of payments by putting forward a monthly lump sum which might be somewhere between the net amount of the fees and the gross payment (maximum amount provided for by legal aid). Such an amount would cover both fees and professional charges and other expenditure associated with travel to the seat of the Court. Furthermore, the Registrar could allocate the necessary resources for all necessary reasonable expenditure.

8. It would also be appropriate to review the system currently applied for the payment of fees – which involves each member of the team submitting a monthly time sheet – and to replace it with a system based on submitting an action plan and a report outlining how it will be implemented every quarter. Thus 85 per cent of the payments to members of the team would be made automatically as soon as the action plan is approved and the remaining 15 per cent would be made as soon as the report on the implementation of the plan is approved.

<sup>1</sup> ICC-ASP/12/15, para. 137.

<sup>2</sup> Each Chamber has adopted its own approach to guarantee the right of victims to representation, ranging from multiple external teams in the same case (as in the *Lubanga*, *Katanga*, *Ngudjolo*, *Bemba*, and *Banda* cases) to the appointment of the Office of Public Council for Victims (*Laurent Gbagbo*, *Simone Gbagbo*, *Ntaganda* cases) and the appointment of external counsel supported by the Office (*Ruto and Sang*, *Kenyatta* cases).

<sup>3</sup> See in particular ICC-01/04-01/06-2800. This is also addressed in other, confidential, decisions which have been taken into account but which are not cited in this report.

<sup>4</sup> See, for example, ICC-01/04-01/07-3319 and all subsequent decisions.

9. In addition to improving the system, the afore-mentioned measures could generate savings, not to mention their impact in terms of saving time for the various Registry sections involved (Counsel Support Section, Budget and Finance Section, Travel Unit). It would also make the work involved in preparing and implementing the legal aid budget easier and more relevant.

10. This proposal would apply immediately to all the teams and would assume that the temporary implementation arrangements adopted pursuant to the decision rendered by the Office in 2012 would be cancelled.

### **III. Defence team resources**

11. The Defence teams currently have a budget of €73,006 for all the costs associated with the investigations in the case. The same administrative treatment is required to implement this budget as to deal with requests for missions to the seat of the Court.

12. The possibility of allocating the necessary funds to the Defence teams to pay for a resource-person in the field from the start of the case until its completion would allow better continuity for the team and for its presence in the field, something which has proved necessary, occasionally even after the trial has ended.<sup>5</sup> The resource-person could be paid a monthly amount determined in advance, to include fees and travel within the region.

13. Including the resource-person within the team would have an impact on the budget for investigations which could be reduced as a result. Furthermore, it would be possible to envisage the involvement of the associate counsel right from the pre-trial stage if the new rates were approved.

### **IV. Fee adjustment**

14. The standard remuneration, for full-time workers, might be paid only during the trial phase or proportionally depending on the number of days worked, when team members are paid hourly. For the other stages in the proceedings, remuneration could be adjusted depending on their individual requirements.

15. During the pre-trial phase, team members could receive 75 per cent of the standard amount and 50 per cent of the same amount during the appeal phase. Other phases, such as the reparations phase, would need to be determined given the ongoing uncertainty surrounding the requirements for intervention by the legal representation teams, both for the Defence and for the victims.

16. When implementing the legal aid system, the Registry will continue to take into account all those factors which could have an impact on the work required to ensure effective and efficient representation and consequently on resources which will be reasonably necessary. As a result, the amount for resources and payments will be reviewed, for example in the case of reduced activity, several posts being held, a stay in the proceedings etc.

17. The new payment scales will be examined alongside the possibility of implementing a lump-sum payment system during the pre-trial and the appeals phases.

### **V. Adjustments for legal assistance for the victims**

18. Although the various Chambers of the Court have adopted different approaches on the issue of the common legal representation of the victims, it can nonetheless be seen that decisions in this area have several common points which are relevant for legal aid purposes.

19. The composition of the core team of legal representatives of the victims might be reviewed by exploring the possibility of allocating funds to cover the cost of including a legal assistant, preferably based in the field. With this strategy, the legal representatives could count on assistance on the ground which would enable them to respond to the needs of the case more effectively, by facilitating contacts with the victims for example.

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<sup>5</sup> See, for example, ICC-01/04-01/07-3388.