

**Eighth session**

The Hague

18-26 November 2009

**Report of the Court on the financial aspects of enforcing the Court's obligation to fund family visits to indigent detained persons \***

1. The Committee on Budget and Finance (hereinafter "the Committee") at its eleventh session recalled that the Court had been invited by the Assembly of States Parties (hereinafter "the Assembly") at its sixth session to present to the Assembly at its next session an updated report on family visits, noting that the Assembly in its seventh session would consider the substantial and long-term financial implications of this question for the Court's budget and the precedent that would be set.<sup>1</sup>

2. At its seventh session, the Assembly noted with reference to the recommendations of the Committee that further discussions are necessary in order to facilitate a policy decision on the issue of financial assistance for family visits to persons detained on remand by the Court, as well as in case of the adoption of such a policy, the specific conditions for its implementation. Therefore 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 at its twelfth and thirteenth sessions and for a decision to be taken at the eighth session of the Assembly, and requested the Bureau to remain seized of the matter.

3. The Assembly also discussed the issue of family visits in the context of the Court's budget for 2009 and decided as follows:

"15. ... In view of the need for further deliberation pending a policy decision on the issue, the Assembly agreed, on an exceptional basis and limited to 2009 only, to allow the Court to fund family visits up to the amount of €40,500 in accordance with the 2009 programme budget, subject to the following caveats:

- a) The funding of family visits by the Court in 2009 should be implemented solely in accordance with the priority needs of the current indigent detainees; and
- b) The decision to fund family visits in 2009 has been taken on an exceptional basis and does not in anyway create or maintain a status quo; nor establish any legal precedent in respect of those States that have already or will enter into sentence enforcement agreements with the Court; nor does it create any legal precedent in respect of current or future detainees at a national or international level; nor does the Assembly's decision prejudice or prejudge in any way the future outcome of discussions on the issue of funding family visits for indigent detainees.

\* Previously issued as ICC-ASP/8/CBF.1/7.

<sup>1</sup> ICC-ASP/7/15, paras 66-67.

16. Finally, in the spirit of facilitating discussion on the issue and in the interests of transparency, but without prejudice to further discussions, the Assembly invited the Court to prepare a separate document identifying any potential budgetary implications for 2010 regarding proposed family visits.”<sup>2</sup>

4. The budget for 2009 allocated by the Assembly for this purpose was based on the proposal of the Court to fund two visits of three persons, or three visits of two persons for three indigent detained persons, as detailed in its report to the Assembly titled “Family visits to detained persons”.

5. In line with this proposal, endorsed by the Assembly as detailed in paragraph 3 above, the Registry offered to fund either two visits of three family members, or three visits of two family members, in the course of one calendar year to the detainee Mr. Mathieu Ngudjolo Chui. Mr. Ngudjolo Chui appealed this decision to the Presidency on 21 November 2008.

6. On 5 December, the Registrar was asked by the Presidency to explain its policy on family visits, as well as any financial constraints. The Registrar did so on 12 December, stressing the lack of any positive norm requiring a detaining authority to fund family visits to detained persons, and explaining that the interim policy was for consideration before the Assembly in light of their concerns, both financial and legal. The Presidency issued its decision on 10 March 2009<sup>3</sup> (“the Decision”), and rendered it public on 24 March 2009.

7. In its Decision, the Presidency granted the application, noting that “a positive obligation to fund family visits must be implied in order to give effect to a right which would otherwise be ineffective in the particular circumstances of the detainee. As such, in determining that there is no positive obligation to fund family visits in particular circumstances of the detainee, the Registrar erred in law.”<sup>4</sup>

8. In this report, the Court will explore the financial implications of the Decision. The report also proposes ways of decreasing the costs of funding family visits to detainees, including through reviewing the current method used to calculate indigence for the purposes of family visits.

#### **Financial implications of the 10 March 2009 decision**

9. The Decision places as a baseline for the Registrar that an indigent detained person should be allowed to see all members of his nuclear family (spouse, biological and adopted children), with regards to their personal circumstances, in a single calendar year. Taking into account the current circumstances of the 3 indigent detained persons at the ICC detention centre, as well as the composition of their respective families, the costs for family visits in 2010 will be the following:<sup>5</sup>

---

<sup>2</sup> *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. I, part II, paras. 15 and 16.

<sup>3</sup> ICC-RoR-217-02/08, reclassified as public on 24 March 2009.

<sup>4</sup> Para 37.

<sup>5</sup> Without prejudice of any further considerations the Registrar may take into account while analysing the request of the detained person.

**Proposed budget for funding family visits to ICC indigent detained persons<sup>6</sup>**

	<b>Thomas Lubanga Dyilo</b>	<b>Mathieu Ngudjolo</b>	<b>Germain Katanga</b>	
Family composition	Spouse + 7 children	Spouse + 6 children	Spouse + 5 children	
Town of departure <sup>7</sup>	X (DRC)	X (DRC)	X (DRC)	
Number of visitors <sup>8</sup>	10	9	8	
International airfare Adult	3 x 1500 EUR	3 x 1500 EUR	3 x 1500 EUR	
International airfare Children	7 x 1150 EUR	6x 1150 EUR	5 x 1150 EUR	
In-country airfare for all visitors	2000 EUR	1620 EUR	2300 EUR	
Total Airfare	14550 EUR	13020 EUR	12550 EUR	
Dignity allowance (for all visitors)	2340 EUR	2160 EUR	1980 EUR	
Other expenses (accommodation, visa, medical insurance, etc)	12000 EUR	11000 EUR	11900 EUR	
<b>Total</b>	<b>28890 EUR</b>	<b>26180 EUR</b>	<b>26430 EUR</b>	<b>81500 EUR</b>

**Mechanisms for reducing costs**

10. The Court intends to closely follow-up its initial determination on the financial resources of the detained persons, using its financial investigator to investigate the accuracy of information provided by the detained persons on their resource.

11. The Court will also consider excluding some costs related to the travel or the journey in The Hague, such as extra luggage, transportation within the city of The Hague, and any telephone calls made by the family members during the visits.

**Current modalities of calculation of the indigence:**

12. Another way to keep costs down is to review the current method used to calculate indigence. To facilitate discussion on this issue, the Court reiterates below the current methodology used, and welcomes the views of the Committee thereon.

13. Following the submission of each request for family visit, the information provided by the detained person in respect of his available means is assessed in order to determine the ability of the detained person to fund the visit.

<sup>6</sup> The figures take into account a total of 45 days/year spent in The Hague by each family.

<sup>7</sup> For security reasons, location of residence is not disclosed in this document. However the estimated costs take them into account.

<sup>8</sup> This is based on three yearly visits by the spouse, with different children accompanying each visit so as to ensure the whole family visits in one calendar year. This takes into account the capacity at the detention centre, security concerns, availability of staff, etc. For instance in the case of Thomas Lubanga Dyilo, there could be 1 visit of the spouse and 2 children, 1 visit of spouse and 3 other children and 1 visit of spouse and the 2 other children.

14. The fact that the detained person has been declared indigent and receives legal assistance paid by the Court is useful only as a preliminary criterion. In addition, the Court will identify the monthly available means of both the family (spouse and children) and the detained person in order to assess their current ability to contribute to the funding of the visit.

15. The monthly means, or available monthly income (“AMI”), is determined by subtracting the monthly obligations from the monthly income. The monthly income includes but is not limited to incomes resulting from the financial use or rent of properties (land, house, motor vehicles, and other assets). Obligations take into account the daily subsistence allowance of each member of the family in the city where they live.

16. When considering the financial means of the family, the family’s available monthly income is compared with the lowest wage of a locally recruited United Nations staff member in the country where the family lives. Based on these criteria, the Court can make the following findings:

- a) *Indigent*: The detainee is declared indigent for the purposes of legal aid, and the family’s AMI is less than one-third of the lowest wage of a United Nations staff member in the country where the family lives. In this case, the Court will finance the visit in full.
- b) *Partially indigent*. This covers two situations:
  - The family’s AMI is lower than the lowest wage of a United Nations staff member in the country where the family lives, but above one third of the lowest wage of a United Nations staff member; or
  - The family’s AMI is above the lowest wage of a United Nations staff member in the country but less than the monthly amount necessary to fund a visit.

In both cases, the family will finance the costs of the visit to the extent possible, and the Court will cover the remaining costs taking into account the circumstances of the family

- c) *Non indigent*: The detainee is either not declared indigent for the purposes of legal aid, or he/she is declared indigent but the family’s AMI is equal to or above the monthly amount necessary to fund the visit. In this case, the Court will not finance the cost of the visit.