



Assembly of States Parties

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Report of the Bureau on legal aid

Note by the Secretariat

Pursuant to paragraph 6, Section H of resolution ICC-ASP/11/Res.1 of 21 November 2012, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on legal aid. The present report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau with the Court and other stakeholders.

I. Introduction

1. The Assembly of States Parties (“the Assembly”), at its eleventh session, requested the Court and the Bureau to keep the legal aid system under review, and mandated the Bureau to elaborate and propose systemic changes to the legal aid system to be, if necessary, adopted at the twelfth session of the Assembly, including proposing measures to further enhance the efficiency of the legal aid system, as appropriate.¹
2. The Assembly also requested the Court to present quarterly reports to the Bureau on monitoring and assessing the implementation performance of legal aid, and to submit to the Committee on Budget and Finance and the Bureau a single policy document on the legal aid system, as well as a report on the comprehensive review of the legal aid system.² The Registrar presented the requested reports in due time.
3. The Bureau appointed Ambassador Gyula Sümeghy (Hungary) as facilitator for legal aid at its first meeting on 22 February 2013.
4. The facilitator set three goals for the facilitation: a) to consider the issue of legal aid in the broader context of the overall mandate of the Court; b) to examine legal aid, while acknowledging its substantial financial component, from all the other important aspects such as quality, efficiency and transparency, and; c) to act as an impartial mediator between the Court and the Assembly to enhance the dialogue and cooperation between the two and with a view to ensuring an effective and sustainable legal aid system in the long run.

II. Consultation process

5. The Hague Working Group (“working group”) held six informal consultations on this topic, respectively on 27 March, 16 and 31 May, 25 June, 26 September and 2 October 2013.
6. On 15 May 2013, a workshop on legal aid was organized in close cooperation with the Secretariat. Representatives from the Registry’s Counsel Support Section (“CSS”), as well as the Office of Public Counsel for Victims (“OPCV”), the Office of Public Counsel for the Defence (“OPCD”), the Coalition for the International Criminal Court (“CICC”) and the International Federation for Human Rights (“FIDH”) presented the main features of the legal aid system of the Court and shared their views on the current challenges and prospects for reform.
7. The facilitator also held informal meetings bilaterally with the following stakeholders: the two Vice-Presidents of the Court, the former and current Registrar of the Court, the Chairperson of the Committee on Budget and Finance (“the Committee”), the Head of the OPCV, the Head of the OPCD, the CICC, the FIDH, and other key stakeholders.
8. At the informal consultations on 27 March 2013, the Registry presented the Registry’s single policy document on the Court’s legal aid system,³ dated 4 June 2013. In addition, the “Registry’s first quarterly report on monitoring and assessing the implementation performance of legal aid”, dated 4 June 2013 was made available to the Working Group.
9. At the 16 May 2013 informal consultations, the facilitator requested the Registry and the CSS to present the report of the Registry on the Comprehensive Review of the Legal Aid System of the Court,⁴ dated 2 April 2013. The facilitator gave a brief overview of the state of play reflecting the written comments that had been submitted on the Comprehensive Review Document, as well as revisiting the workshop on legal aid held on 15 May 2013.
10. On 31 May 2013, the Chair of the Committee on Budget and Finance was invited to present his views on the legal aid reforms already in place, in light of the recommendations made by the Committee at its twentieth session.

¹ ICC-ASP/11/Res.1, section H, paras.6 and 7.

² ICC-ASP/11/Res.1, section H, paras. 4 and 5.

³ ICC-ASP/12/3.

⁴ ICC-ASP/12/2.

11. On 25 June 2013, the facilitator briefed the working group on the visit of the working group's facilitators to New York from 4 to 5 June 2013. The facilitator also put forward a number of proposals, namely the possible merging the legal aid facilitation with the facilitation on victims and reparations; drafting a strategic plan for the Defence and; devising legal principles regarding victims' participation and victims' rights. These proposals were subject to a first round of consultations with the working group. The "Registry's second quarterly report on monitoring and assessing the implementation performance of legal aid" dated 7 June was also made available at this meeting.

12. On 13 September 2013, the facilitator briefed the Committee on the working group consultation process on legal aid.

13. Ahead of the informal consultations on 26 September 2013, the draft report of the Bureau on legal aid, as well as the draft language on legal aid for the forthcoming Assembly of States Parties were circulated. At the informal consultations the Registry presented the "Registry's third quarterly report on monitoring and assessing the implementation performance of legal aid", dated 20 August 2013. Subsequently, the facilitator proposed to discuss the draft report and resolution language. As comments were made, the facilitator asked the group to convey to him comments in writing.

14. A sixth round of informal consultations took place on 2 October 2013 to discuss the remaining outstanding issues regarding the draft report and resolution language. The facilitator, after summarizing the amendments proposed, presented his views on the procedure to be followed. Comments focused on the issue and modalities of an independent evaluation and its relation to the reassessment process to be conducted by the Court. There was consensus that the informal facilitation process should continue and that the Bureau's mandate to keep the legal aid system under review and to have recourse to any appropriate process to do so should be emphasized. The facilitator indicated his readiness to accommodate further amendments along the lines of the general consensus, and to circulate the finalized text for a silence procedure.

III. Conclusions

15. The working group welcomed the timely submission of the requested reports by the Registry, and found that the Registry had fulfilled its obligations at the present stage regarding the reform of the legal aid system, as requested by the Assembly and the Bureau.

16. In general terms, the working group assessed that the legal aid system functions effectively and along the guidelines stipulated by the Assembly and the Bureau. The working group however noted that adjustments can and should be made where further improvement is possible.

17. In view of the recent comprehensive review conducted by the Registry, no major review of the functioning of the legal aid system would seem desirable until the first full judicial cycles⁵ have been completed. However, appropriate preparations for conducting such a review are necessary in order to provide all relevant stakeholders with more experience and information. Once the first full judicial cycles have been completed, further adjustments might be implemented to improve the legal aid system's effectiveness and efficiency, on the basis of a reassessment process also engaging independent external experts. This process should be conducted by the Court, and the Bureau should decide, as appropriate, on any further steps to further enhancing the process.

18. The working group noted that costs were expected to rise substantially in the coming years, due to the increase in the number of cases before the Court and the possible commencement of the reparations phases.

19. Concerns were also voiced relating to the question of indigence, in particular the relatively high proportion of defendants who have been declared indigent, which could become problematic and very costly.

⁵ The end of full judicial cycles refers to the issuance of a final appeal decisions in the *case of the Prosecutor v. Thomas Lubanga Dyilo* and the *case of the Prosecutor v. Mathieu Ngudjolo Chui* respectively, including, as appropriate, a final decision on reparations.

20. As regards the OPCD, it appeared that many stakeholders would appreciate further information on the organisation and role of the OPCD and that the efficiency and transparency of the functioning of the OPCD might need enhancing.

21. A discontinuation or merger of the facilitation on legal aid was not considered desirable after all.

22. The issue of legal aid principles regarding victims' participation and victims' rights might need further consideration.

23. The working group recognised once more that legal aid is an important element of international criminal justice, and stressed the importance of the quality of legal representation before the Court.

IV. Recommendations

24. The Court shall continue implementing the revised remuneration policy as adopted by the Bureau on 23 March 2012 and quarterly reporting on the implementation performance of legal aid to the Bureau.

25. States Parties and the Court shall prepare themselves for a possible reassessment of the legal aid system, with special regard to indigence, the Office of Public Counsel for the Defence, as well as to victims' related legal aid issues, within a realistic deadline, once the first full judicial cycles⁶ are completed. This reassessment shall be supported by independent experts. The Court is requested to report on the findings of the reassessment to the Bureau.

26. The Court shall, as appropriate, present a proposal for adjustments of the existing legal aid system to the Bureau based on the findings of the above reassessment within a realistic deadline, following a comprehensive consultation with relevant stakeholders in accordance with Rule 20.3 of the Rules of Procedures and Evidence.

27. The Assembly shall request that a Strategic Plan for the Defence be devised based on the Court's reassessment supported by independent experts, while making the necessary link with the Registry's on-going reorganisation and streamlining process.

28. The facilitator should continue consultations with all major stakeholders, including the Court, the Committee, States Parties as well as NGOs, in order to keep abreast of developments relevant to legal aid.

29. The Bureau shall be mandated, on the basis of the above and as appropriate, to further consider the strengthening of the efficiency and effectiveness of the legal aid system, and to elaborate and propose further structural changes to be, if necessary, adopted by the Assembly of States Parties.

⁶ The end of full judicial cycles refers to the issuance of a final appeal decisions in the *case of the Prosecutor v. Thomas Lubanga Dyilo* and the *case of the Prosecutor v. Mathieu Ngudjolo Chui* respectively, including, as appropriate, a final decision on reparations.

Annex

Draft paragraphs on legal aid

The Assembly of States Parties,

1. *Acknowledges* the Court's efforts to continue implementing the revised legal aid remuneration policy as adopted by the Bureau on 23 March 2012 and *notes* the Registry's single policy document on the Court's legal aid system,¹ the report of the Registry on the comprehensive review of the legal aid system of the Court² and the Registry's quarterly reports on monitoring and assessing the implementation performance of legal aid;³

2. *Stresses* the need for continuous monitoring of the efficiency of the revised legal aid system to uphold and strengthen the principles of the legal aid system, namely fair trial, objectivity, transparency, economy, continuity and flexibility;⁴ and therefore *requests* the Court and the Bureau to keep the legal aid system under review;

3. *Calls* on the Court to continue implementing the revised remuneration policy as adopted by the Bureau on 23 March 2012 and to continue quarterly reporting on the implementation performance of legal aid to the Bureau;

4. *Requests* the Court to, in support of the on-going reorganization and streamlining of the Registry, engage independent experts to reassess the functioning of the legal aid system and to report on its findings to the Bureau within 120 days following the completion of the first full judicial cycles.⁵ Such reassessment should pay special regard to the determination of indigence and the resources required for the legal representation of victims, including the ability of counsels to consult with victims;

5. *Requests* the Court to present, as appropriate, a proposal to the Bureau for adjustments of the existing legal aid system within 120 days following the presentation of the report on the findings of the reassessment to the Bureau, based on the findings of the above reassessment process and following a comprehensive consultation with relevant stakeholders in accordance with Rule 20.3 of the Rules of Procedure and Evidence;

6. *Requests* the Court to engage independent experts to assess, as part of the on-going process of reorganization and streamlining of the Registry, the impact of the role and responsibilities of the Office of Public Counsel for the Defence on the legal aid system, as well as to prepare a Strategic Plan for the Defence and report its findings, and to present the Strategic Plan to the Bureau in advance of the thirteenth session of the Assembly of States Parties;

7. *Mandates* the Bureau, following a proposal by the Court for adjustments to the legal aid system, as appropriate, to further consider the matter having recourse to any appropriate process, and to elaborate and propose any structural changes to the legal aid system, to be, if necessary, adopted by the Assembly, including proposing measures to further enhance the efficiency of the legal aid system.

¹ ICC-ASP/12/3.

² ICC-ASP/12/21.

³ ICC-ASP/12/2, ICC-ASP/12/50, ICC-ASP/12/51.

⁴ *Official Records ... Third session ... 2004* (ICC-ASP/3/18), para. 16.

⁵ The end of the full judicial cycles refers to the issuance of a final appeal decisions in the *case of the Prosecutor v. Thomas Lubanga Dyilo* and the *case of the Prosecutor v. Mathieu Ngudjolo Chui* respectively, including, as appropriate, a final decision on reparations.