



Assembly of States Parties

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Report of the Bureau on legal aid

Note by the Secretariat

Pursuant to paragraph 34 of resolution ICC-ASP/12/Res.8 of 27 November 2013, 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 twelfth session, requested the Court and the Bureau to further keep the legal aid system under review and called on the Court to continue quarterly reporting on the implementation performance of legal aid to the Bureau.
2. The Assembly also requested the Court to 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. It was also requested that, as appropriate, a proposal should be presented to the Bureau for adjustments of the existing legal aid system within 120 days following the presentation of the original report on the findings of the reassessment. Within the above outlined process, the Assembly specifically requested the Court to, while assessing the impact of the role and responsibilities of the Office of Public Counsel for the Defence on the legal aid system, prepare a Strategic Plan for the Defence.
3. The Assembly also mandated the Bureau 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.
4. The Bureau reappointed Ambassador Gyula Sümeghy (Hungary) as facilitator for legal aid at its first meeting on 10 February 2014.
5. Based on the conditional elements of the resolution of the Assembly at its twelfth session regarding the legal aid system, most importantly the pending completion of the first full judicial cycles, the facilitator’s primary goal was to continue the consultation process with all interested stakeholders, in order to contribute to the timely and efficient execution of any future modifications in the functioning of the legal aid system, that may arise from the outlined process of reviewing the system.

II. Consultation process

6. The Hague Working Group (“working group”) held four informal consultations on this topic, on 27 March, 8 May, 11 September and 22 October 2014.
7. The facilitator also held bilateral informal meetings with the following stakeholders: the Director of the *ReVision* project of the Registry, the Head of the Counsel Support Section, the Head of the Office of Public Counsel for Victims, the Head of the Office of Public Counsel for the Defence, as well as with representatives of the Coalition for the ICC.
8. At the consultations on 27 March, the “Registry’s fourth quarterly report on monitoring and assessing the implementation and performance of legal aid”¹ was presented to the working group. The facilitator also informed the group about his plans to continue with the consultations aimed at further enhancing the efficiency of the Court’s legal aid system.
9. At the consultations on 8 May, and under the auspices of the the meeting of the Hague Working Group, the Head of the Office of Public Counsel for Defence made a presentation about the structure and activities of the office. Additionally, and in accordance with the request of the Assembly, the Special Assistant to the Registrar presented the “First quarterly report of the Registry on legal aid”.²
10. At the consultations on 11 September, the “Registry’s sixth quarterly report on legal aid”³ was presented to the working group. As a next item, the representative of the Registry provided a briefing on the findings and proposals of the Registry’s *ReVision* process,

¹ The report was dated 10 February 2014, it was issued as Committee on Budget and Finance document-CBF/22/2, and subsequently as Assembly document-ICC-ASP/13/2.

² The report was dated 17 April 2014, issued as Committee on Budget and Finance document-CBF/22/17, and subsequently as Assembly document-ICC-ASP/13/17.

³ While the Quarterly Report is the sixth sequentially, it is in fact the second one in 2014. The report was dated 28 July 2014, issued as Committee on Budget and Finance document-CBF/23/3, and subsequently as Assembly document-ICC-ASP/13/24.

especially on its applications regarding the legal aid system. Finally, the facilitator outlined the proposed way forward for the preparations to the next Assembly.

11. At the consultations on 22 October 2014, the draft report of the Bureau on legal aid, as well as the draft provisions on legal aid for the forthcoming session of the Assembly of States Parties were circulated.

III. Conclusions

12. The working group welcomed the timely submission of the requested reports by the Registry, and found that the Registry had fulfilled its obligations regarding the ongoing review of the legal aid system, as requested by the Assembly and the Bureau.

13. When assessing the progress regarding the review of the legal aid system and that of the implementation of the relevant resolutions of the twelfth session of the Assembly, the working group took note of the following two factors:

- (a) At the time of the drafting of this report, the first full judicial cycles, as defined by the Assembly in resolution ICC-ASP/12/Res.8, have not yet been completed in the period since the twelfth session of the Assembly. Accordingly, neither the period of 120 days for the preparation of a report by the Court on the reassessment of the functioning of the legal aid system nor the subsequent period of 120 days for the presentation, as appropriate, by the Court of a proposal to the Bureau for adjustments of the existing legal aid system have begun so far.
- (b) Independent of the above fact, but in harmony with the aim to keep the legal aid system under review, the Registry has launched its *ReVision* process in order to reorganize and streamline its structure and work. The outcome of the process, when implemented, will alter the operation of the legal aid system and the functions of those actors of the Registry who deal with legal aid.

14. The working group is of the opinion that the above-mentioned factors have a significant and direct impact on the future of the legal aid system in general and on the implementation of the relevant resolutions of the twelfth session of the Assembly in particular.

15. The working group acknowledges the *ReVision* process as a crucial contribution to the efforts that are being made, in full accordance with the ambitions of the Assembly, to further improve the functioning of the legal aid system.

16. Subsequently, when driven by the overall ambition to further strengthen a transparent, effective and sustainable legal aid system, the working group attaches great importance to the harmonization of proposals related to legal aid of the *ReVision* process with the implementation of the relevant resolutions of the Assembly. The working group considers such harmonization as a key factor in creating the best possible legal aid system in the future.

IV. Recommendations

17. Having in mind the above conclusions, the working group reiterates the need for a comprehensive Strategic Plan for the Defence and requests the Court to submit such a plan to the Bureau.

18. Based on the experiences so far with the Registry's quarterly reports on legal aid, the working group considers that quarterly reporting directly to the Bureau should discontinue. No additional reporting should be requested from the Court until the mandates defined in paragraph 6 of Annex I of resolution ICC-ASP/12/Res.8 are complied with.

19. The expected outcome of the *ReVision* project with regard to defence issues, in particular the changes to the relevant parts of the Registry's structure and other recommended measures to achieve greater synergy and efficiencies, shall be fully in line with the resolutions of the twelfth session of the Assembly regarding legal aid.

20. Depending on the date of the completion of the first full judicial cycles, and based on the actual situation of the *ReVision* process at that date, an interim assessment of the legal aid system is desirable in order to avoid potential overlaps and parallel processes aimed at improving the system.

21. The working group considers it utmost important that the Registry keeps the Bureau continuously updated about the status and consequences of the *ReVision* process regarding legal aid and the status of implementation of the *ReVision* recommendations as to the Registry's structure and other measures with direct bearing on legal aid. Furthermore, it notes that future modifications of and adjustments to the relevant resolutions of the twelfth session of the Assembly might be necessary.

22. The working group is of the opinion that the topic of legal aid deserves further attention by the Bureau until the mandates concerning the reassessment of the Court's legal aid system set by the twelfth session of the Assembly are fulfilled, as appropriate. In this regard, the progress of the *ReVision* process should be closely followed.

Annex I

Draft paragraphs on legal aid

The Assembly of States Parties,

Acknowledges the Court's efforts to continue implementing the revised legal aid remuneration policy as adopted by the Bureau on 23 March 2012, *takes note* of the fulfilled reporting obligation in this regard, and *stresses* the need for continuous monitoring of the efficiency of the legal aid system to uphold and strengthen the principles of the legal aid system, namely fair trial, objectivity, transparency, economy, continuity and flexibility,¹

Welcomes the initiative of the Registrar, in the context of the legal aid related aspects of the Registry ReVision project, to reorganize, streamline and strengthen the Registry's support to the defence and victim participation and representation, and *underlines* the need for measures to achieve greater synergy and efficiency in the legal aid system, in line with the mandates laid down in resolution ICC-ASP/12/Res.8 with regard to legal aid,

1. *Requests* the Court and the Bureau to keep the legal aid system under review; and *recalling* the mandates laid down in paragraph 6 of Annex I of resolution ICC-ASP/12/Res.8 with regard to legal aid, *calls on* the Court to ensure their full and timely implementation, as appropriate;
2. *Calls on* the Court to continue monitoring the implementation performance of legal aid;
3. *Requests* the Court, in the context of the on-going reorganization and streamlining of the Registry and in line with paragraph 6 of Annex I of resolution ICC-ASP/12/Res.8, to continue reassessing the functioning of the legal aid system and to report on its findings to the Bureau; as well as to present, as appropriate, a proposal to the Bureau for adjustments of the existing legal aid system, upon the completion of the first full judicial cycles² and within the timeframe as indicated in the above mentioned resolution;
4. *Mandates* the Bureau, as appropriate, to further consider the matter having recourse to any appropriate process or mechanism, 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 Official Records ... Third Session ... 2004 (ICC-ASP/3/18), para. 16.

² 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.