



## Assembly of States Parties

Distr.: General  
11 November 2016

Original: English

---

### Fifteenth session

The Hague, 16-24 November 2016

## Report of the Bureau on legal aid

### I. Introduction

1. The present document has as a specific objective defining, conceptualizing, and explaining the legal aid system applied by the International Criminal Court (“the Court”).
2. We will explain the origins of the legal aid mandate, its trail among the first decade of the Court and its Assembly of States Parties, all the way to the present days. The document will give Assembly delegates an overview of the legal aid system, the efforts of the Assembly and Court officials involved in this matter, as well as a proposed way forward for future analysis and discussions.
3. The paper also conveys some of the main points and concerns that have been raised during the different consultations held by the focal point with different key actors of the Court such as the Registrar’s office, the International Criminal Court Bar Association (ICCBA), and other relevant actors.

### II. Concept

4. Legal aid is internationally recognized as a fundamental human right of access of an individual to fairness and impartiality of justice. It is essential to materialize the political-legal notion of equality, which calls for treatment of every individual on an equal footing. The responsibility of legal practitioners and their assistants to provide legal aid is a matter of ethically guided ‘professionalism’. Hence, no legal aid can be considered adequate and efficient unless it imbibes all necessary elements of professionalism. Therefore, no one may simply jump into a mission of legal aid without fully acquired professional skills and arts of legal professionalism.
5. In other words, and at the center of the concept, there is always a client asking for legal representation and a lawyer providing it. What distinguishes this client from others is his or her economic condition. For the purpose of legal aid, he or she is a person who cannot afford to pay his or her Counsel the fees for the services to be rendered.
6. Legal aid work is evidence of the lawyer's recognition of that professional obligation not only to the individual client but to the general public. Sometimes it is assumed individually. At other times it is a matter for joint action through the bar association.<sup>1</sup>

---

<sup>1</sup> Legal aid, its concept, organization and importance; John S. Bradway, Louisiana Law review, vol. XIV, page 554

### III. Historical background

7. According to some academics, “The need of the low income client for legal aid is not new. We are told that in an early stage of the development of law in a comparatively primitive world it was customary not to allow the individual litigant a lawyer.<sup>2</sup> The right to be represented by counsel is an improvement rather than a basic concept in Anglo-American procedure.”

### IV. Views expressed by the focal point

8. It is obvious that in the first years of existence of the Court, the legal aid system was developed in order to face the needs of a fast evolving international court. The legal aid remuneration policy currently applied by the Court has both positive and negative effects in respect of the efficiency of the Court’s legal proceedings.

9. Based on the various meetings held with different actors, both of the Court and academia, the legal aid policy of the Court will need to be modified from its original conception (what was considered to be necessary when negotiating the Rome Statute) in order to reflect the Court’s needs 16 years after its establishment.

10. The Court, along the years, has seen an increase not only in the number of States Parties to the Rome Statute, but also in the cases been litigated under its jurisdiction. Therefore, and consequently, the overall amount of both human and financial resources to be provided for defence of the accused has also grown, and so has the need to provide similar or same amount of resources for the rightful representation of victims.

11. As mentioned above “Legal aid is internationally recognized as a fundamental human right of access of individual to fairness and impartiality of justice”. Therefore, adjustments to the remuneration policy need to be done to improve the legal aid system so it can properly represent the needs of both accused and victims in the most effective and efficient manner.

12. At its fourteenth session, the Assembly acknowledged the Court’s efforts to continue implementing the legal aid remuneration policy and stressed 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.<sup>3</sup> Based on this acknowledgement, the focal point is of the view that the Assembly should discuss in due course, through its working groups, and as early as possible the proper mechanism for enhancing the reach of the legal aid system, with a view to allowing the Court to modify its current policy to ensure greater efficiency and transparency and to reinforce the aim of its mandate.

13. It is important to note that on March 2015 a drafting committee was established for the constitution of the ICCBA. On 1 July 2016, the first General Assembly of this body took place, and in this occasion its Executive Committee was elected and established. This Bar Association can independently play a direct role on future discussions with the Court on the legal aid remuneration policy.

### V. The current mandate

14. The mandate contained in Assembly resolution ICC-ASP/12/Res.8 of 27 November 2013, which was later reiterated in Assembly resolutions ICC-ASP/13/Res.5 of 12 December 2014, and ICC-ASP/14/Res.4 of 26 November 2015, requests the Court to report to the Bureau and both a reassessment of the functioning of the legal aid system and, as appropriate, on proposals for adjustments to the existing legal aid system. To this end, the Court was requested to engage with independent experts.

---

<sup>2</sup> Pollock and Maitland express it in these words: "The old procedure required of a litigant that he should appear before the court in his own person and conduct his own cause in his own words." Pollock & Maitland, *History of English law*, 211 (2d ed. 1899).

<sup>3</sup> ICC-ASP/14/Res.4.

15. Furthermore, the Assembly requested that the Court submit the first report 120 days following “the completion of the first full judicial cycles”.<sup>4</sup> The Assembly acknowledged that the conclusion of a full judicial cycle requires a final decision on reparations in the *Lubanga* and *Ngudjolo* cases.<sup>5</sup> In light of the continued judicial activities in the reparations phase of the *Lubanga* case, which are foreseen to be ongoing at least until the end of 2016, the Assembly reiterated its request at its last session under the same conditions (see ICC-ASP/14/Res.4, annex I, paragraph 6.c). Therefore, under the current mandate, the Assembly expects a report only upon the issuance of a final reparations decision in the timeline set out in the abovementioned resolutions.

## VI. Views of the Registry

16. In light of the importance and the impact of the legal aid system on the judicial proceedings before the Court, as well as the concerns raised by the legal profession, and the significant resources that are dedicated within the Registry to the management of the legal aid system, the Registry decided to proactively initiate the assessment of the legal aid system with a view to identifying concrete measures, amendments and other solutions, as appropriate, at the earliest possible stage prior to completion of a first judicial cycle. While substantial work remains to be done, the Registry considers that it will be ready to present a comprehensive evaluation of the current legal aid system together with proposals for adjustments of the remuneration policy to the sixteenth session of the Assembly.

17. To this end, a simplified mandate from the Assembly would be required, thus directly requesting the Registry to provide such an assessment and proposals for the consideration of the Assembly at its sixteenth session in December 2017.

18. For this to happen, preparatory work and adequate consultations with all relevant stakeholders need to take place sufficiently in advance. This includes internal stakeholders, the legal profession (including the ICCBA), civil society organizations, and of course, the Committee on Budget and Finance and States Parties.

## VII. Conclusions

19. It is of the opinion of the focal point on legal aid that the system of legal aid (structure) should be amended or modified to simplify and at the same time allow the Assembly to ensure the proper allocation of resources required by defence and victims, as it is absolutely clear that the need of both teams are different and they also differ from case to case and year to year.

20. Baring this in mind, it is important to note that excessive bureaucracy in the management of the legal aid system delays and creates obstacles to the proper running of the system.

21. In its moment the Registry presented amendments that were accepted, but it is important to observe that these changes were done due to pressures created by deadlines. In the current system, two different methodologies or systems clash, both the original one and the modifications proposed by Registry and later on accepted by the Assembly. It is also important is to realize that the clash or overlap of these two systems occur even within the same case.

22. A new proposal is to be proposed by the Registry, in which the defence of the accused and victims representation need different types and amounts of resources. Today the Counsel Support Section manages both accused and victim’s representation.

<sup>4</sup> ICC-ASP/12/Res.8, annex I, para. 6(3), footnote 2; ICC-ASP/13/Res.5, annex I, para. 5(c); ICC-ASP/14/Res.4, annex I, para. 6(c).

<sup>5</sup> *Ibid.*

23. Based on the above mentioned, different steps should be taken into consideration:
- (a) The Assembly should recognize the establishment and operation of the ICCBA;
  - (b) The Registry should submit a report containing, as appropriate, proposals for adjustments of the legal aid remuneration policy for the consideration of the Assembly at its sixteenth session; and,
  - (c) The focal point on legal aid should not be an independent facilitation, but should be merged with or become a sub-facilitation of the budget facilitation, to properly frame the discussions under the Assembly's financial oversight of the Court.
24. The proposals for inclusion in the omnibus resolution are contained in the annex to this report.

## **Annex**

### **Proposal for inclusion in the omnibus resolution**

1. To this end, it is proposed to amend the legal aid mandate as currently contained in Section 6, paragraph (c) of annex 1 of the omnibus resolution to:
- (c) *requests* the Court to reassess the functioning of the legal aid system and to present, as appropriate, proposals for adjustments to the legal aid remuneration policy for the consideration of the Assembly at its sixteenth session;

---