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**Interim report on different legal aid mechanisms before international
criminal jurisdictions**

Interim report on different legal aid mechanisms before international criminal jurisdictions

1. In paragraph 13 of its resolution ICC-ASP/6/Res.2, the Assembly of States Parties (ASP) invited the International Criminal Court (ICC) to “present to the Assembly at its next session an updated report on the different mechanisms for legal aid existing before international criminal jurisdictions in order to assess, inter alia, the different budgetary impact of the various mechanisms”.

2. In accordance with this request, the Registry proceeded to analyse the legal aid systems, including the resources allocated to defence teams¹ and the determination of indigence,² and prepared a questionnaire of 15 questions deemed the most beneficial and relevant in order to submit a comprehensive report on which the Assembly could make an informed decision.

3. On 28 May 2008, the Registry communicated the questionnaire to the following international criminal jurisdictions: the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY); the United Nations International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC). The completed questionnaires were subsequently received and reviewed and a report was prepared based on the answers provided, together with any other relevant information.

I. Preliminary remarks

4. It should be noted that any tangible experience of proceedings is restricted by the young age of the Court and the limited number of cases currently before it, which are: one case in trial phase; another - the first with multiple defendants – in which the confirmation hearing has just been completed; and the last, which involves a newly transferred suspect who has just undergone his initial appearance before the Pre-Trial Chamber (PTC).

5. Given this limited experience, no definite benchmark can yet be set for future cases except for the assessment of the legal aid system made by the Court in 2007 prompting adjustments which were endorsed by the Committee on Budget and Finance (CBF) as constituting “a sound structure for the legal aid system”.³ The Committee further observed that “linking the composition of a team to the phase of the trial and, if so required, adding additional human resources according to a fixed set of quantified parameters, seemed reasonable”.⁴ The Court continues to monitor the performance of its legal aid system and, if and when deemed necessary, will propose further adjustments to ensure that the right of a suspect or accused to an effective and efficient defence is safeguarded, “while upholding the integrity of the system of legal aid administered by the Registrar and ensuring oversight of the costs of legal aid by the Committee and the Assembly of States Parties”.⁵

¹ Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons, ICC-ASP/3/16 (updated by ICC-ASP/5/INF.1); and Report on the operation of the Court’s legal aid system and proposals for its amendment, ICC-ASP/6/4.

² Report on the principles and criteria for the determination of indigence for the purposes of legal aid (pursuant to paragraph 116 of the Report of the Committee on Budget and Finance of 13 August 2004), ICC-ASP/6/INF.1.

³ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication ICC-ASP/6/20), vol. II, part B.1, paragraph 80.

⁴ *Ibid.*

⁵ *Ibid.*, para. 82.

6. The above should be borne in mind when considering this report. So, too, should the differences in comparing proceedings of the other international criminal jurisdictions studied with those of the *sui generis* nature of the Court proceedings. The participation of victims in such proceedings best illustrates this, and other examples include challenges with the disclosure obligations of the parties.⁶ The tables below indicate the workload created by these issues and relate only to the filing of public documents. Confidential, *ex parte*, or under seal documents are not included.

Table 1: Total public documents filed in the case: *The Prosecutor v. Thomas Lubanga Dyilo*

<i>Issues</i>	<i>Documents filed</i>	<i>Percentage of filings</i>
Regarding victims' requests to participate in the proceedings	77	18.55
Regarding participation modalities for admitted victims	23	5.54
Disclosure issues	255	61.45
<i>Sub-total</i>	355	85.54
Other issues	60	14.46
Total	415	100.00

Table 2: Total public documents filed by defence in the case: *The Prosecutor v. Thomas Lubanga Dyilo*

<i>Issues</i>	<i>Documents filed</i>	<i>Percentage of filings</i>
Regarding victims' requests to participate in the proceedings	19	21.35
Regarding participation modalities for admitted victims	4	4.49
Disclosure issues	38	42.70
<i>Sub-total</i>	61	68.54
Other issues	28	31.46
Total	89	100.00

Table 3: Total public documents filed in the case: *The Prosecutor v. Germain Katanga et al.*

<i>Issues</i>	<i>Documents filed</i>	<i>Percentage of filings</i>
Regarding victims' requests to participate in the proceedings	13	5.58
Regarding participation modalities for admitted victims	20	8.59
Disclosure issues	107	45.92
<i>Sub-total</i>	140	60.09
Other issues	93	39.91
Total	233	100.00

⁶ Trial Chamber I, 13 June 2008: "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008", ICC-01/04-01/06-1401.

Table 4: Total public documents filed by defence in the case: *The Prosecutor v. Germain Katanga et al.*

<i>Issues</i>	<i>Documents filed</i>	<i>Percentage of filings</i>
Regarding victims' requests to participate in the proceedings	6	10.17
Regarding participation modalities for admitted victims	4	6.78
Disclosure issues	27	45.76
<i>Sub-total</i>	<i>37</i>	<i>62.71</i>
Other issues	22	37.29
Total	59	100.00

7. In the cases of Lubanga and Katanga et al., the total number of filings in each case is 1,431 documents (of which 415 are public) and 683 (of which 233 are public) respectively. Such a rate averages some 2.5 filings per day and, when submitted by parties or participants other than the defence, all must be considered carefully by the defence itself. These documents are in addition to the countless ones disclosed by the Prosecutor to the defence and which are not in the case file.

8. The above tables illustrate that the issues most characteristic of the Court, for example requests for participation by victims, modalities of participation of admitted victims, disclosure issues, etc., are the reason for most of the filings made by defence and other parties and participants in the proceedings. While the comparison between the cases seems to indicate a decrease in the workload created by these issues, at such an early stage in the Court's evolution it is not possible to predict with any degree of certainty whether this trend will continue in the future.

9. It is also worth noting that at this equally early stage in the development of ICC law, many of the provisions of the Statute and the Rules and Regulations of the Court are open to interpretation and need to be settled by the Chambers. Again this requires added effort on the part of all parties and participants, including the defence, to litigate these ongoing contentious issues. It also augments the difficulty in assessing how and when the workload of defence teams will change in the future, or how often a similar situation will occur – either because of new circumstances that were hitherto unforeseen, or former decisions that need to be reviewed.

10. Since the determination of the level of indigence is inevitably linked to the costs of legal assistance, it is logical to first present the conclusions of the comparison among the resources allocated to the legal aid programme by each of the international criminal jurisdictions, and to continue with the consequences that the cost of these resources have on the determination of indigence.

II. Resources allocated

11. The scope of resources allocated within the framework of legal aid in all the international criminal jurisdictions studied is the result of the assessment of the necessary and reasonable work required to ensure effective and efficient legal representation. The subsequent monitoring of the performance of the programme by the appropriate managers has led to a constant review of each programme.

12. The current ICTY legal aid system was adopted in 2006 and comprises two different schemes, with a special stand-alone regime for the pre-trial phase.⁷ The ICTR reviewed its

⁷ See Defence Counsel Payment Scheme for the Pre-Trial Phase, online at: http://www.un.org/icty/legaldoc-e/basic/counsel/payment_pretrial.htm (last consulted on 10 July 2008),

legal aid programme in 2004, transforming its payment system from an hourly rate to a lump-sum per phase system, mainly to cover single accused cases and, when applicable, joint cases. Both the SCSL and the ECCC, which have considerably less experience than the ad hoc tribunals, have not yet felt the need to consider a review of their legal aid programmes.

13. As previously stated, the Court has been proactive, and in view of the experience acquired from the first proceedings before it has, *proprio motu*, proposed several adjustments and is committed to continue this monitoring taking into account, inter alia, effective use of resources, feedback from parties and participants in proceedings, and signals and orders handed down by the Chamber(s) in response to counsel's challenge of decisions of the Registrar on requests for additional resources,⁸ or any other decision requiring the allocation of additional resources.⁹

A. Composition of Teams

14. In the Court's case, from the moment a defendant is transferred to its custody, legal assistance is guaranteed. Where a defendant requests legal aid and once all relevant documentation has been received in support of his claim, the Registrar will declare him provisionally indigent pending the outcome of a thorough investigation into his financial situation. This legal assistance can take the form of duty counsel¹⁰ for the short period preceding the defendant's initial appearance before the Chamber, the initial appearance itself, and any related legal submissions that may need to be filed with the Chamber arising from the initial appearance hearing. Thereafter, the defendant proceeds to the appointment of a counsel to represent him/her for the entire length of the proceedings before the Court. It is the responsibility of counsel to compose his/her team to best provide the defendant-client with the necessary legal assistance.

15. A core team of one Counsel (P-5), one Legal Assistant (P-2) and one Case Manager (P-1) will thus be set for the proceedings, which can be supplemented during proceedings by additional resources, some automatically provided, for example Associate Counsel, and some varying in accordance with certain parameters which may influence counsel's workload.¹¹

16. Composition of the defence teams varies depending on the jurisdiction analysed; the stage of the proceedings in question; the system of legal aid payment applied; and in some cases, where a change in the legal aid programme has taken place. The various phases of proceedings, such as investigation and pre-trial phase, trial phase and appeals phase, in the international criminal jurisdictions surveyed differ slightly depending on the applicable procedural texts of each jurisdiction (see annex I).

17. Table 5 below shows the two-tiered system used by the ICTY to define the composition of a team depending on the stage of the proceedings (see annex I) and complexity of the case.

and Defence counsel payment scheme, online at: http://www.un.org/icty/legaldoc-e/basic/counsel/payment_trial.htm (last consulted on 10 July 2008).

⁸ See Pre-Trial Chamber I, 22 September 2006, "Decision on Defence Request pursuant to Regulation 83 (4)", ICC-01/04-01/06-460.

⁹ In its decision of 4 August 2006, Pre-Trial Chamber I ordered the Registrar "to have permanently available and free of any cost, a French interpreter to assist Thomas Lubanga Dyilo and the Defence team for the purpose of the confirmation hearing with documents of the case which are available only in English": Decision on the Requests of the Defence of 3 and 4 July 2006, ICC-01/04-01/06-268, p. 8, penultimate para.

¹⁰ See regulation 73(2) of the Regulations of the Court: "If any person requires urgent legal assistance and has not yet secured legal assistance, or where his or her counsel is unavailable, the Registrar may appoint duty counsel, taking into account the wishes of the person, and the geographical proximity of, and the languages spoken by, the counsel". This regulation has been applied in the case of all persons thus far transferred to the custody of the Court.

¹¹ See document ICC-ASP/6/4, paras. 32-37.

Table 5: Composition of teams under the ICTY legal aid system

Stage	Phase	Complexity level ¹²	Team composition ¹³
Pre-Trial	1		Counsel
	2		Counsel + 1 support staff
	3	Level One	Counsel + 2 support staff + Co-counsel (2.5 months)
		Level Two	Counsel + 3 support staff + Co-counsel (4 months)
		Level Three	Counsel + 5 support staff + Co-counsel (5.5 months)
Trial		Level One	Counsel + Co-counsel + 1 support staff
		Level Two	Counsel + Co-counsel + 3 support staff
		Level Three	Counsel + Co-counsel + 5 support staff
Appeal		Level One	1,050 hours for counsel + 450 hours for support staff
		Level Two	1,400 hours for counsel + 600 hours for support staff
		Level Three	2,100 hours for counsel + 900 hours for support staff

18. In the case of the ICTR, the basic team comprises counsel and three support staff, including legal assistants and investigators. The appointed counsel has the freedom to distribute resources allocated in a manner he/she deems most appropriate, i.e. to appoint one legal assistant and two investigators, or two legal assistants and one investigator. Co-counsel has a restrictive treatment in the pre-trial and appeal stages, while under the Court's legal aid system associate counsel (termed "co-counsel" at the ad hoc tribunals) can only be part of the team during trial phase.

19. The SCSL system gives the Principal Defender ample powers by which to negotiate the composition of teams and remuneration of its members, which form the basis of a Legal Services Contract with counsel. The experience of the SCSL has evolved into cases being treated differently. This is illustrated by the fact that in some co-accused cases, defendants in the same case have a different number of counsel and co-counsel, while respecting a fixed monthly cap of USD 25,000 per month. An ad hoc exception to this monthly cap was made in the case of *The Prosecutor v. Charles Ghankay Taylor*, where the monthly cap was set at USD 70,000. Normally, each team is assigned one legal assistant, but the Principal Defender can approve the addition of supplementary legal assistants if deemed necessary.

20. By contrast, the ECCC appoints a full legal team immediately on arrest comprising two Co-Lawyers (one Cambodian and one foreign, both at P-5 level), a foreign Legal Consultant (P-3) and one Cambodian Case Manager (P-1). Apart from the classification of one of the lawyers (under the Court's legal aid system, the associate counsel is paid at P-4 level and must meet the qualifications of admission to the list of counsel) and the legal consultant (legal assistants are paid at P-2 level at the Court), this system corresponds to the composition of defence teams at the Court during trial phase.

¹² The three levels are: (1) difficult, (2) very difficult, and (3) extremely difficult/leadership; the assessment is determined by (a) the position of the accused within the political/military hierarchy; (b) the number and nature of counts in the indictment; (c) whether the case raises any novel issues; (d) whether the case involves multiple municipalities (geographical scope of the case); (e) the complexity of legal and factual arguments involved; and (f) the number and type of witnesses and documents involved. These factors were taken into account in the adjustments proposed by the Court in 2007 including quantifying, where feasible, the workload they entail: see document ICC-ASP/6/4, paras. 35 and 45.

¹³ This composition is the theoretical minimum set by the Tribunal. The system is flexible in that counsel is free to compose a team as he/she deems fit within the limits of the allocated funds.

B. Remuneration of team members

21. The Court's legal aid system is based on a monthly lump-sum system. Prior to each phase of the proceedings and every six months thereafter if the phase is still ongoing, counsel must submit a detailed action plan for the Registrar's approval in accordance with regulation 134 of the Regulations of the Registry. This action plan details all the activities counsel deems most appropriate in order to represent his/her client efficiently and effectively at each phase of the proceedings. This information is restricted to the Registry's internal use in the management of the legal aid programme and is treated with utmost confidentiality. At the end of each phase of the proceedings - or six months, whichever ever occurs first - counsel submits a report on implementation of the action plan to the Registry.

22. To ensure that legal aid funds are used for work actually carried out on the case, the Registry reviews the action plan and said report, and verifies them against the monthly time-sheets provided by team members. From the beginning of each phase until the end of the interval periods described above (end of phase or every six months depending on which comes first), each team member receives a monthly lump-sum salary corresponding to the post he/she fills within the team upon processing of the time-sheets submitted. This system is based on the two core principles of providing an effective and efficient legal representation for indigent persons, and ensuring that the Court's legal aid funds are expended prudently.

23. These payments remain constant throughout the proceedings provided the appointment of the team member remains valid, and are payable even when judicial activity is minimal or non-existent, such as waiting for a decision to be delivered. The reasoning behind this is: (a) to make defence teams feel part of the Court by making their payment structure similar to that used for Court staff members; (b) to regularize defence team members' payments; (c) to lessen the burden on counsel for remuneration of team members and to avoid payment disputes between counsel and team members; and (d) to simplify management of the periodical payments to different team members, who would also benefit from receiving, *inter alia*, a fixed amount each month. The remuneration for each team member was fixed at the same rate as for teams in the Office of the Prosecutor.¹⁴

24. While the ECCC has also adopted this approach, ICTR has switched from an hourly rate system to a lump-sum system, which, keeping the hourly standard as the basis for calculation, has two different modalities: a maximum per phase during pre-trial and appeal stages, and a daily allocation during trial stage. The latter, additionally, has a different application depending on whether the relevant team member is at the seat of the Tribunal or elsewhere.

Table 6: Remuneration under the ICTR hourly rate system

<i>Team member</i>	<i>Hourly rate</i>	<i>Limit per month (p/m)</i>	<i>Remuneration limit p/m</i>
Counsel	USD 90-110	175 hours p/m	USD 15,750-19,250
Co-counsel	USD 80	250 hours (total) before trial	USD 20,000
		Trial: 175 hours p/m	USD 14,000
		350 hours (total) during appeal	USD 28,000
Legal assistants and investigators (3)	USD 25	100 hours p/m	USD 2,500

¹⁴ See document ICC/ASP/6/4, annex VI. It should be noted that different contingencies were taken into account in setting the appropriate salary step for defence team members, which is set at step V, as they have to arrange and pay for their own insurance and pension. Also, they may work for a team for several years without any increment in salary entitlements.

Table 7: Remuneration limits under the ICTR lump sum system

<i>Pre-trial stage</i>		Counsel	USD 180,000-220,000 (depending on experience)
		Co-counsel	USD 160,000
		Legal assistants + investigators (3)	USD 150,000
		<i>Stage total</i>	<i>USD 490,000-530,000</i>
<i>Trial stage</i>	At seat of Tribunal, per day	Counsel	USD 720-880
		Co-counsel	USD 640
		Legal assistants and investigators (3)	USD 600
	Away from seat of Tribunal, per day	Counsel	USD 450-550
		Co-counsel	USD 400
		Legal assistants and investigators (3)	USD 375
<i>Appeals stage</i>		Counsel	USD 153,000-187,000
		Co-counsel	USD 136,000
		Legal assistants and investigators (3)	USD 127,500
		<i>Stage total</i>	<i>USD 416,500-450,500</i>

25. The ICTY also extends the lump-sum payment structure to the trial stage and stresses that the amounts paid to the team per month do not correspond to the monthly allotment of hours but, rather, to advances of the lump sum which, for pre-trial and appeal phases, is determined according to the assessed complexity level, and in the trial phase consideration of the estimated duration of the case and the complexity of the stage.

26. The remuneration of counsel and co-counsel in the ICTY is similar to that established in the Court's legal aid system shown in table 8.

Table 8: Basis for the remuneration of counsel in the ICTY legal aid system

		<i>ICTY</i>	<i>ICC</i>
Counsel	Remuneration level:	<i>P-5 Step VII</i>	<i>P-5 Step V</i>
	Modalities	75% of gross salary for pre-trial phase 100% of gross salary for trial phase	100% of gross salary ¹⁵ throughout entire proceedings
	Professional charges	40% of remuneration (“office costs”)	Up to maximum of 40% of remuneration set based on justification
	Reference date for remuneration	2006	2007
Co-Counsel	Remuneration level:	<i>P-4 Step VII</i>	<i>P-4 Step V</i>
	Modalities	100% of gross salary during intervention	100% of gross salary during intervention
	Professional charges	40% of remuneration (“office costs”)	Up to maximum of 40% of remuneration set based on justification
	Reference date for remuneration	2006	2007

27. At the ICTY, the remuneration of the support staff is fixed at € 3000, based on the rate of € 20 per hour at 150 hours per month.

28. It should be noted that the lump sum allocated in each case is based on an average length of the appropriate phase. In both the ICTY and ICTR systems, when faced with a protracted phase where payment is calculated on a lump-sum basis, additional resources can be allocated by the Registry. In the case of the Court, the possibility exists to adjust the composition of the team to correspond to the de facto needs for effective and efficient representation, as is stipulated in the legal texts of the Court.¹⁶ At present, this is considered to be the most sensible approach until more experience is gained in the application of legal aid,¹⁷ when the matter can be reviewed.

29. In the SCSL, counsel have more flexibility to negotiate the remuneration of their team members with the Principal Defender under the framework of the Legal Services Contract. Such negotiations are guided by the norms in table 9 below:

Table 9: Remuneration of team members in SCSL

Counsel	USD 110 per hour & USD 500 per court appearance
Co-Counsel	USD 90 per hour & USD 350 per court appearance
Legal Assistant(s)	USD 35 per hour
National Investigators	USD 1,000 per month
International Investigators	Paid at UN P-3 and P-4 levels

¹⁵ The modalities of payment for the salary of counsel and co-counsel under the Court’s legal aid system are as follows: 75 per cent of gross salary is paid on a monthly basis during trial and appeals phases, with the remaining 25 per cent payable at the end of each phase or every six months, after review of the implementation of the plan of action initially approved by the Registry, whichever occurs first. One hundred per cent of the salary is paid during the trial phase: see ‘Report on the operation of the Court’s legal aid system and proposals for its amendment’, dated 31 May 2007, ICC-ASP/6/4, para. 63.

¹⁶ See regulation 83(3) of the Regulations of the Court.

¹⁷ See ICC-ASP/3/16, para. 16, fourth subparagraph (“Continuity”).

30. In the future, the Court could consider implementing a lump sum system similar to those at the ad hoc tribunals during its pre-trial and appeal phases once a reasonable assessment can be made of the average duration of a case, and in particular, the volume of participation of victims at pre-trial phase. To introduce the same degree of flexibility as that provided for in the SCSL system would entail assigning additional staff to properly manage each Legal Services Contract, which would have a financial impact without necessarily offering any guarantee of reducing the legal aid budget. As mentioned previously, however, the Court's legal aid system has a modicum of flexibility in that Counsel can structure their team as they deem appropriate within their set budget.

C. Compensation of Professional Charges

31. In the ICTY system, compensation of charges of legal fees are paid at a straight 40 per cent in phases two and three of the pre-trial and trial stages. By contrast, the ECCC's and the Court's systems allow for such charges to be paid up to a maximum of 40 per cent only if they can be justified. It should also be borne in mind that the ICTY compensates such charges as it does because it does not provide any permanent offices to its defence teams, unlike the Court, which does.

32. The rationale behind the provision of professional charges in the Court's system is detailed in the Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons.¹⁸ The rule is that the Registry sets a ceiling of up to a maximum of 40 per cent of the legal fees payable based on documentary evidence (receipts, etc.) of the actual professional charges incurred. Once the percentage has been determined, this amount becomes payable automatically each month during the trial phase and is added to the remuneration of the eligible team member. During pre-trial and appeals phases, those eligible must be at the seat of the Court for at least 15 consecutive days to be entitled to compensation for professional charges.

33. The ICTR system includes a payment of USD 2,000 to counsel at the end of each stage as compensation of professional charges. The SCSL includes all compensations for professional charges in the remuneration paid to counsel.

D. Other Expenses

34. In the Court system, missions to the seat of the Court by counsel and associate counsel are included in the monthly sum of €4,000 allocated for the expenses of the team. Other team members are expected to carry out their work in the offices provided by the Court at its headquarters and, with the exception of travel to The Hague on commencement and expiry of their appointment, no additional travel is compensated. The ICTY compensates only the costs of missions undertaken by counsel and co-counsel, whilst the other jurisdictions surveyed establish no limitation on the missions of team members to their respective seats, yet subject all missions to the review and approval by the Registry or the Defence Office, as applicable.

35. With regard to translation of documents, in all jurisdictions the general rule is that the appropriate section of the Registry translates all the necessary documents, as is the case in ECCC and SCSL. However, the ICTR covers the cost of any additional translations for defence team members when done by external translators, and at the ICTY resources can be used for documents to be tendered as evidence, and other translations can also be paid from the legal aid allotments received by teams. For the Court, such expenses are deducted from the above-mentioned monthly allowance of €4,000.

¹⁸ ICC-ASP/3/16, paras. 21-22.

E. Investigations

36. At the Court, the budget limits investigations to 90 days of work for an investigator (paid at a P-4 level) and a resource person (paid at a P-1 level) for a case where other participants in the proceedings present up to 30 witnesses, plus a further €33,970 for travel and subsistence purposes. The total investigation budget allocated to each team is currently set at €73,000. The adjustments proposed by the Court in 2007, which were endorsed by the Committee, included an increase in the number of witnesses among the criteria which could allow the allocation of additional resources to a defence team.¹⁹

37. The ECCC follows the same principle as the Court, and has established an investigations budget for each team.²⁰

38. The SCSL provides defence teams with a National Investigator and an International Investigator remunerated at a fee of USD 1,000 per month, and an international Investigator hired at a P-4 level;²¹ and the investigative missions are approved by the Defence Office according to the needs of each team.

39. The ICTY and ICTR systems include the investigators among the assistants to counsel. There is, therefore, no specific provision for them per se, and counsel must choose how they wish to construct their team, for example one less legal assistant, or one investigator. They also approve investigations missions on a case-by-case basis without any pre-established ceiling.

40. At present, the Court is of the opinion that the existing investigations budget should be sufficient to cover the investigative needs of defence team, but should experience indicate otherwise, the relevant amendments will be sought from the Assembly.

F. Assistance by Public Defender Offices

41. In 2004, the judges of the Court decided to create an independent Office of Public Counsel for the Defence (OPCD) which would have a supportive role for defence teams acting before the Court by providing them with substantive legal assistance by specialized legal staff, in addition to the possibility for the Office to be appointed by the Chamber as ad hoc counsel to represent the interests of the defence during the initial stages of the investigation, or for qualified members of the Office to act as duty counsel in specific circumstances.

42. The Office has equally acted as duty counsel pursuant to regulation 73 of the Regulations of the Court. In essence, the existence of the Office helps reduce the traditional institutional gap between the Prosecutor and the Defence and, in particular, is highly proficient in researching matters relating to international criminal law for the defence when necessary. Since external defence counsel are not always familiar with the unique elements of the Rome Statute and the constantly evolving jurisprudence of the Court, they may require additional time to familiarize themselves with these aspects. The OPCD assists in expediting this process by developing practice manuals for counsel, and in proactively advising defence teams on all relevant case law and legislation, and thus facilitates the ability of the defence to file submissions in an expeditious and focused manner.²² The OPCD also participates in

¹⁹ See ICC-ASP/6/4, para. 48.

²⁰ The amount was not communicated to the Court.

²¹ The Charles Taylor defence team is provided with a Sierra Leonean investigator, a Liberian investigator and an international investigator.

²² In this connection, it should be noted that prosecution teams are able to benefit from the legal research provided to them by the Legal Advisory Section and the Appeals Section in the Office of the Prosecutor. The need for such assistance from the OPCD was also recently recognized by Pre-Trial Chamber I,

internal working groups to put forward the interests of the defence when formulating Court policies and strategies which could impact on defence work before the Court.

43. The SCSL was a pioneer in public defenders' offices when it created its Defence Office headed by a Principal Defender. This Office is competent in all issues concerning defence, and provides administrative, logistical and substantive legal assistance. By contrast, the Court splits these functions between two separate units: the Defence Support Section (DSS) which, *inter alia*, provides logistical and administrative assistance, manages the legal aid budget and arranges training of counsel on behalf of the Registrar; and the OPCD which deals with substantive legal assistance. This delineation of tasks ensures that the OPCD is a wholly independent office falling within the remit of the Registry solely for administrative purposes, as stipulated in regulation 77.2 of the Regulations of the Court.

44. In addition to managing the two existing lists of lawyers (Cambodian and foreign) and the legal aid programme, the Defence Support Section of the ECCC (DSS-ECCC) also provides support to the defence teams, both substantively and administratively. Substantive assistance covers legal research and analysis, training on the law applicable by the Chambers, and appropriate software, while administrative assistance includes hiring of legal consultants and case-managers to assist the co-counsel, and, as with the Court's DSS, provides office space and facilities within the administration building at the ECCC.

45. As mentioned above, the DSS and the independent OPCD are wholly separate offices at the Court and, unlike the Public Defence Office at the SCSL, they do not share any overlapping functions and their budgets are determined and established separately, corresponding with their clearly distinct mandates. The OPCD comprises Court staff who are directly paid by the Court and who provide substantive legal assistance - more precisely, legal research and advice - to defence teams, and duty and ad hoc counsel acting before the Court. In addition, it is necessary for the OPCD to have sufficient staff to comply with Court decisions appointing the Office as ad hoc counsel during the situation phase, for example for the purpose of responding to victim applications and Trust Fund notifications, or to represent the interests of the defence during a unique investigative opportunity under article 56 of the Statute. In such scenarios, the OPCD does not provide support to an external counsel paid through legal aid but, in fact, acts as counsel in its own right. In this connection, Pre-Trial Chamber I has decided that in light of its mandate, the OPCD (and not external counsel) will be appointed as ad hoc counsel for all future victim participation applications in the DRC and Darfur situations.²³ The OPCD has also been appointed as ad hoc counsel in the Uganda situation, and may also be appointed in the event of victim participation in the CAR situation.

46. The Court's legal aid budget, which is devised and implemented by DSS, allocates resources to external counsel and their team members to ensure that eligible legal aid applicants can benefit from an effective and efficient defence in proceedings before the Court in conformity with the legal texts of the Court. It should be noted, however, that the substantive legal assistance provided by the OPCD within the limits of the office's mandate as defined in regulation 77 of the Regulations of the Court, was one of the factors taken into account by the Court in proposing its adjustments to the legal aid system in 2007 and, as a rule, is also considered by the Registrar in deciding on requests for additional resources pursuant to regulation 83.3 of the Regulations of the Court. It should be noted, however, that

which ordered the OPCD to assign a different staff member to each defence team, for the purpose of providing ongoing assistance during the confirmation hearing process in the Katanga and Ngudjolo case (Oral Order of 10 June 2008, transcript).

²³“Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation”, 17 August 2007, ICC-01/04-374. This decision was subsequently approved in the Darfur situation: “Decision on the time limit to submit observations on applications for participation as victims: a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07 and on the extension of page limit”, 22 August 2007, ICC-02/05-96.

the extent of the assistance provided by the Office to defence teams is constrained by the need for the Office to avoid any conflicts of interest, which would prejudice its ability to fulfil any aspects of its mandate under regulation 77.

47. Annex II shows the comparison of total costs for a case before each of the international jurisdictions surveyed in which the Court's costs (€ 1,324,218) are second lowest after those of ICTR.

III. Determination of the indigence of defendants

48. The Court ensures that those who are unable to pay for legal representation themselves are adequately provided for commensurate with their financial means. The burden of proof is on the person claiming indigence. The Court's legal aid system is based on a fair and objective assessment of the total amount of assets of the claimant compared with the total amount of his/her liabilities, and whether any resulting surplus can be used as partial or full settlement of the cost of legal assistance. Details of the Court's indigence determination are contained in the "Report on the principles and criteria for the determination of indigence for the purposes of legal aid (pursuant to paragraph 116 of the Report of the Committee on Budget and Finance of 13 August 2004)" ("Report on Indigence Determination").²⁴

49. Some precisions and adjustments were added in 2007 to express the option retained by the Court regarding the basis for the assessment of living expenses: to clarify the text to ensure accurate and deliberate consideration of certain assets relating to residences belonging to the applicant and/or his/her dependant(s), and to underline that vehicles of a lavish or ostentatious nature could not be excluded from the determination of the disposable means.²⁵

50. The Court thinks it important that the calculation of the level of indigence of applicants seeking legal aid takes into due consideration the needs of dependants. However, this does not mean maintaining an accustomed standard of living which might have been enjoyed prior to transfer of the defendant to the Court. The view taken by the Court, and explained in the 2007 legal aid document, advocates the use of objective data for assessing the needs of dependants to guarantee fairness of the system while ensuring that the Court's budget is judiciously applied. As stipulated in this report, the Court intends to adopt a holistic approach to the consideration of assets, excluding those which can reasonably be justified as meeting the obligations of the applicant to his/her dependants. Under the existing system, the following assets are excluded, within certain parameters:

- Residence: Main residence, if considered reasonable in light of the needs of dependants living therein;
- Furnishings: Essential items in main family home only. No luxury embellishments or items of extraordinary value;
- Motor vehicles: Up to a maximum of two;
- Family or social benefits: All if entitled; and,
- Assets owned by the dependants: All.

51. All other assets relating to property, stocks, bonds, bank accounts, etc., owned by the applicant will be included in the indigence determination, the formula for which is contained on page 3 of the Report on Indigence Determination (see above).

²⁴ ICC-ASP/6/INF.1.

²⁵ See Report on the operation of the Court's legal aid system and proposals for its amendment, ICC-ASP/6/4, annex I.

52. At the ICTY, in accordance with its Registry Policy for Determining the Extent to which an Accused is able to Remunerate Counsel, the indigence determination is similar to that of the Court and seeks to ensure that: (a) an accused/suspect is not obliged to realize assets which are considered essential for life's existence; and, if he/she owns assets of exceptional value or receives extraordinary income, (b) he/she contributes to the costs of his/her defence. The ICTY system first determines the disposable means of an applicant and after deducting the living expenses of the family and/or dependants, contributes any remainder towards the cost of the defence. The other international criminal jurisdictions surveyed also use the same core principles to determine indigence.

53. The information obtained from this survey is appended as annex III and highlights the similarities and differences between the various systems.

54. In addition, annex IV contains a review of available cost-of-living statistics from different States demonstrating that at domestic level account is taken of all expenses relating to housing and transport, inter alia, per person or per household, as applicable. This allows the Court's legal aid scheme to consider the value of all the assets of an applicant without excluding any disposable assets.

55. It is proposed that the Court adopt a similar system to that of the ICTY which, whilst it might result in a possible drop in the standard of living for the applicant's family and/or dependants, endeavours to keep this to a minimum. However, it is not expected that the Court should maintain an applicant's family and/or dependants at the same high standard they may previously have enjoyed prior to his/her arrest and subsequent transfer to the Court to face charges.

56. While the Court's threshold of indigence may initially seem excessive, it should be remembered that its determination is related to the costs of defence before it. The Committee, as recalled above, has already acknowledged that the proposed legal aid system has a sound structure in relation to the cases and nature of proceedings before the Court. The resources allocated within the framework of this system are the minimum necessary to guarantee an accused/suspect effective and efficient defence before the Court and, consequently, the indigence level must relate to the system's remuneration scheme.

57. Basically, this is the same principle as that adopted by the other international criminal jurisdictions, with only minor differences in its application. In the ICTR system, the threshold under which a person is considered totally indigent is USD 10,000 of assets after obligations have been deducted; if over this threshold, then he/she is considered partially indigent or not indigent depending on the anticipated cost of the legal assistance for the duration of the proceedings. In the SCSL, the Principal Defender determines such threshold.

58. In the ECCC system, the calculation of assets and obligations is similar to that of the Court, but in cases of partial indigence, the ECCC pays the total cost while retaining the power to order a payment of costs on conclusion of the trial if the suspect/accused is convicted.

59. It is important to note that at the ICTR and ECCC all suspects/accused persons were found totally indigent; at the SCSL 90 per cent were found totally indigent with the remaining 10 per cent partially indigent; and in the ICTY 59.69 per cent were found indigent and 27.91 per cent partially indigent.

Table No. 10: Percentage of indigents accused at the ICTY

<i>Type of indigence</i>	<i>% of accused</i>
Total indigence	59.69
Partial indigence	27.91

60. In annex V, the Court proposes new examples of calculation of indigence, taking into account the precisions and adjustments included in the system so that the Assembly can assess the need for further possible amendment.

IV. Conclusion

61. Since the beginning of its work, the Court has endeavoured to present the States Parties with a legal aid mechanism which meets the necessary balance between the rights of the defence and the financial constraints of the institution. Despite adjustments being made during the years of operation of the system, the principles inspiring it, such as equality of arms, objectivity, transparency, continuity and economy, have suffered no major changes and are still its main pillars.

62. The Court's legal aid system is a fundamental component of its commitment to the principle of fair trial, as defined in the Rome Statute; and while it is too soon for an in-depth review, the Court has been vigilant and pro-active in ensuring that to date its legal aid scheme is both judiciously applied and responsive to the real needs emanating from the proceedings before it. The Court will continue to monitor the performance of its legal aid programme assiduously to ensure that it provides effective and efficient legal representation in accordance with its above-mentioned founding principles.

63. Enshrined in the calculation of indigence at the Court is the need to take into account the obligations of the person(s) seeking legal aid towards dependants which are observed attentively and judiciously.

64. It is hoped that this report has provided the Assembly with valuable and sufficient information.

Annex I

Phases in procedure before international criminal jurisdictions (for the purpose of legal aid)

ICC	
Investigation Phase	Only for interviews in the framework of article 55, para. 2, of Statute.
Pre-Trial Phase	From initial appearance to decision on confirmation of charges.
Trial Phase	From transfer of case to Trial Chamber by Presidency till final judgment of Trial Chamber.
Appeals Phase	From transfer of dossier of the case to Appeals Chamber till decision of Appeals Chamber.
ICTY	
Pre-trial Stage	
• Phase One:	Initial appearance: from appointment of counsel to the day after entrance of plea by accused.
• Phase Two:	From end of Phase One (up to 90 days) or until counsel submits work plan (whichever is later).
• Phase Three	From end of Phase Two until commencement of trial.
Trial Stage	
Appeals Stage	
ICTR	
Initial appearance	Rule 62 of the Rules of Procedure and Evidence.
Trial Phase	After initial appearance until final judgement.
Appeals Phase	From final judgement of Trial Chamber until Appeals Chamber decision.
SCSL (Standard costs (team remuneration) of a case before each international criminal jurisdiction)²⁶	
Initial appearance	Rule 61 of the Rules of Procedure and Evidence.
Trial Phase	After the initial appearance until final judgment.
Appeals Phase	From final judgment of the Trial Chamber until the Appeals Chamber decision.
ECCC	
Investigation Phase	Investigative judges confirm charges brought by Prosecutors (who submit an introductory submission) by conducting interviews and gathering evidence. Also, investigative judges hand out decisions on issues which can be appealed to Pre-Trial Chamber (PTC). Confirmed charges are usually appealed to PTC and, if confirmed again, case file heads to Trial Chamber.
Pre-Trial Phase	PTC oversees the investigative phase by handing down decision of appealed issues.
Trial Phase	Trial Chamber receives the case file from investigative judges and conducts trial.
Appeals Phase	Supreme Court Chamber handles all appeals from Trial Chambers and appeals of convictions/acquittals.

²⁶ The SCSL allowing for an extraordinary flexibility in the resources allocated to each team (between USD 30,000 and USD 70,000 per month), which is exerted by the Principal Defender in the framework of the Legal Services Contract he/she concludes with counsel, the Court deems it appropriate to exclude it from this comparison.

Annex II

Standard costs (team remuneration) of a case before each international criminal jurisdiction²⁷

Notes:

1. The table below refers to the remuneration of legal team members; other expenses of the teams (among others and in particular, missions to the seat of the Court) are not included because of the difficulty in establishing a reliable comparison (see paragraphs 24 and 25).
2. The figures are calculated based on a pre-trial phase of 12 months, a trial phase of 18 months, and an appeals phase of 12 months.
3. The budgets of the ICTY and ICTR include fees for investigators which in the Court's legal aid scheme are part of a single package amounting to a total of €73,006. If this lump sum for investigations (which also includes all investigative missions) is added to the total above, the cost of the procedure would amount to €1,397,224.

<i>Phase</i>	<i>ICTY</i>	<i>ICTR</i>		<i>ECCC</i>	<i>ICC</i>
Pre-trial (12 months)	€523,640 ²⁸	*USD 530,000	€340,272	€511,092 ²⁹	€313,800
Trial (18 months)	€733,266 ³⁰	*USD 674,425 ³¹	€432,996	€766,638	€696,618
Appeal (12 months)	€226,200 ³²	*USD 450,500	€289,231	€511,092	€313,800
<i>Total</i>	€1,483,106	*USD 1,654,925	€1,062,378	€1,788,822	€324,218

* Conversion based on exchange rate of 1 USD = EUR 0.642 as at 30 July 2008.

²⁷ The SCSL allowing for an extraordinary flexibility in resources allocated to each team (between USD 30,000 and USD 70,000 per month), which is exerted by the Principal Defender in the framework of the Legal Services Contract he/she concludes with counsel, the Court deems it appropriate to exclude it from this comparison.

²⁸ €40,707 [phase 2] + phase 3 at complexity level 3: (276385 [counsel] + 64048 [co-counsel] + 142500 [assistants]) = 523640.

²⁹ Remuneration rates were calculated at the same level as at the Court, except for the legal assistant (P-2 at the Court and P-3 at ECCC), and on the same principle, i.e. P-3, Step V = €7,390 per month.

³⁰ €253,656 (counsel) + €209,610 (co-counsel) + €27000 (assistants and investigators) = €733,266.

³¹ 171 days of hearings + 34 further days at the seat of the Court + 198 days of work outside the seat of the Court

³² Lump sum comprising remuneration of counsel: 2,100 hours @ €97 p/hr + support staff: 900 hrs @ €25 p/hr.

Annex III

Evaluation of indigence by the different international criminal jurisdictions surveyed

1. Assets

The following table outlines the treatment of assets in the computation of the disposable means of the legal aid applicant.
Yes: This means that the particular asset is included in the calculation of the applicant’s indigence.

<i>Assets</i>	<i>ICTR</i>	<i>ICTY</i>	<i>SCSL</i>	<i>ECCC</i>
Residence	Yes	Yes: The principal place of residence of an applicant, his spouse or persons with whom he habitually resides; usually where the applicant would reside if he were not in custody is included in the computation. However, the Tribunal takes into account only the equity in the principal family home that exceeds the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides. The principal family home will exceed the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides if it is of greater value than the average family home in the region in which it is located.	Yes	Principal residence is not included.
Furnishings	Yes	No: Furnishings contained in the principal family home and owned by the applicant, his spouse or the persons with whom he habitually resides that are reasonably necessary for the applicant, his spouse and the persons with whom he habitually resides are excluded from the calculation, unless they can be considered as luxury items of extraordinary value, including but not limited to art collections, antique collections, etc.	Yes	Not included.

<i>Assets</i>	<i>ICTR</i>	<i>ICTY</i>	<i>SCSL</i>	<i>ECCC</i>
Motor vehicles	Yes	Yes: The Tribunal takes into account only the equity in the applicant's principal family vehicles that exceed(s) the reasonable needs of the applicant, his spouse and persons with whom he habitually resides. The principal family vehicle(s) will exceed the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides if their combined value is greater than the value of one average automobile in the State in which the applicant's family resides.	Yes, provided they belong to the applicant.	Principal vehicle not included.
Other assets	Yes	Yes: The Tribunal takes into account all other immovable assets (second and third houses, apartments, land) or movable assets (stocks, bonds or bank accounts owned by the applicant, his spouse and persons with whom he habitually resides) and incomes (salaries, wages and commissions; business income after deducting reasonable expenses; investment income; government pensions; government allowances other than welfare payments; workers' compensation payments; alimony, separation and maintenance payments owed to the applicant; regular payments received under any annuity; pension or insurance scheme; regular payments received from a mortgage, agreement of sale or loan agreement; royalties).	Yes. Valuable assets like cash, income movable and fixed assets.	Spousal assets, tools of the trade, non-disposable assets are not included.
Assets owned by dependants	Yes	Yes: The Tribunal takes into account assets and incomes of people with whom the applicant habitually resides, i.e. individuals who usually live with the applicant or who would live with the applicant if he/she were not in custody, and with whom the applicant is financially co-dependent; meaning that there is evidence of a pooling of financial resources such that the applicant and the individual constitute one financial unit.	The question that is posed is whether the applicant has any dependants, if yes, whether the dependants are working for a private or public institution at national/ international level.	The assets of dependants not part of the 'household' are not included.

2. Obligations

<i>Obligations</i>	<i>ICTR</i>	<i>ICTY</i>	<i>SCSL</i>	<i>ECCC</i>
Calculation basis	The current threshold for a determination of indigence is USD 10,000	All established liabilities are excluded from the applicant's disposable means (mortgages, loans, debts, insurances, taxes) including estimated living expenses for the applicant – the living costs likely to be incurred by the applicant, his spouse, his dependants and the persons with whom he habitually resides during the estimated period in which the applicant will require presentation before the international tribunal.	Calculated on the basis of the suspect/accused's assets/income divided by the average monthly expenditure of the accused/suspect's household including accommodation and living expenses multiplied by the time the Principal Defender issues her decision on the extent to which an applicant is able to remunerate counsel. This time is estimated as the period in which the applicant will require representation before the Special Court for Sierra Leone at the pre-trial, trial or appeals stage. The amount which remains at the end of these calculations is what the Principal Defender uses to determine whether the accused/suspect is in a position to remunerate counsel until the conclusion of the estimated period within which the applicant will require legal representation before the Special Court for Sierra Leone.	Calculated for the estimated period of the trial.
Persons concerned	Suspects/accused persons	Suspects/accused persons	Suspects/accused persons	Suspects/accused persons

3. Determination of indigence

<i>Determination</i>	<i>ICTR</i>	<i>ICTY</i>	<i>SCSL</i>	<i>ECCC</i>
Formula used	The threshold is USD 10,000	<p>From the established pool of income and assets, the Registry calculates the applicant’s disposable means. From the pool of assets as described under the “assets” table above, certain categories of assets are excluded. They are as follows:</p> <p>(a) the equity in the principal family home to the extent that is reasonably necessary for the applicant, his spouse and the persons with whom he habitually resides;</p> <p>(b) the equity in the applicant’s principal family vehicle to the extent that the principal family vehicle is reasonably necessary for the applicant, his spouse and persons with whom he habitually resides;</p> <p>(c) the equity in assets owned by the applicant, his spouse and the persons with whom he habitually resides that are not readily disposable;</p> <p>(d) the furnishings contained in the principal family home, except for luxury items of extraordinary value;</p> <p>(e) the equity in the tools of the trade owned by the applicant, his spouse and persons with whom he habitually resides that are reasonably necessary to the livelihood of the applicant, his spouse, his dependants or the persons with whom he habitually resides;</p> <p>(f) government welfare payments;</p> <p>(g) earnings of the applicant’s children, and</p> <p>(h) alimony, separation, or maintenance payments owed to the applicant’s spouse, his dependants or persons with whom he habitually resides.</p> <p>From the disposable means, the Registry deducts the estimated liabilities and living expenses of the applicant’s family and dependants during the estimated period in which the applicant will require representation before the International Tribunal. The amount remaining is the contribution to be made by the applicant to his defence.</p>	<p>The formula used to calculate the suspect’s/accused’s disposable income is: assets minus the estimated living expenses of the applicant’s dependants who habitually reside with/depend on him during the period beginning when the Principal Defender issues his/her decision until the end of the estimated period within which the applicant will require legal representation.</p>	<p>Estimate of the total cost of the trial, estimate of the assets and earnings of the charged person during the same period. Assessment of whether the accused is able to pay the entire cost of the trial.</p>

<i>Determination</i>	<i>ICTR</i>	<i>ICTY</i>	<i>SCSL</i>	<i>ECCC</i>
Partial indigence formula, if any	None actually applied due to difficulties encountered in gathering information on accused persons' assets, especially from member States.	As explained above. The balance of the applicant's pool of assets and income, minus those assets and income which are excluded from the asset base, minus the average expenditure of the applicant and his household members over the period for which he requires Tribunal-paid counsel.	The Principal Defender determines the threshold to be applied stating the minimum amount by an accused/suspect for that applicant to be considered partially/fully indigent. In situations in which an accused/suspect can afford to pay part of the cost of his defence but cannot meet the entire cost of his trial the presumption is that he is partially indigent. He is thus required to make a contribution towards his legal fees whilst the Special Court makes good the difference. It is worth noting that although the Principal Defender has declared one of the accused persons partially indigent, no actual contribution has been received by the Court from this individual as of now. The disposable means of the accused is tabulated against the threshold level and prorated with the cost of the trial, e.g. the disposable means of income minus the threshold of the total trial cost which is considered equal to the accused/suspect applicant's percentage.	If partially indigent, the full fees are paid by the ECCC, with the court able to order a payment of costs at the conclusion of the trial, in the event that the accused is convicted.

Annex IV

National and regional statistics resources

N.B. For this exercise, only those websites available in a working language of the Court have been selected. The Court would appreciate receiving additional information from any State Party concerning missing institutes or units, as well as the availability of relevant statistics.

Table 1: National institutes or administrative units

<i>States</i>	<i>Website address</i>
Afghanistan	http://www.cso-af.net/cso/index.php?page=1&language=en
Albania	http://www.instat.gov.al/
Algeria	http://www.ons.dz/IN_DEX1.htm
Argentina	http://www.indec.mecon.ar/
Armenia	http://www.armstat.am/en/
Australia	http://www.abs.gov.au/
Belgium	http://www.statbel.fgov.be
Belize	http://www.cso.gov.bz/
Bosnia and Herzegovina	http://www.bhas.ba/eng/Default.asp
Brazil	http://www.ibge.gov.br/english/
Bulgaria	http://www.nsi.bg/Index_e.htm
Cambodia	http://www.nis.gov.kh/
Cameroon	http://www.statistics-cameroon.org/
Canada	http://www.statcan.ca
Central African Republic	http://www.stat-centrafrique.com/
Chad	http://www.inseed-tchad.org/
Chile	http://www.ine.cl/canales/chile_estadistico/home_eng.php?lang=eng
China	http://www.stats.gov.cn/english/index.htm
Congo	http://www.cnsee.org/
Côte d'Ivoire	http://www.ins.ci/
Croatia	http://www.dzs.hr/default_e.htm
Cyprus	http://www.mof.gov.cy/mof/mof.nsf/DMLstatistics_en/DMLstatistics_en
Czech Republic	http://www.czso.cz/eng/redakce.nsf/i/home
Denmark	http://www.dst.dk/HomeUK.aspx
Denmark (Faroe Islands)	http://www.hagstova.fo/portal/page/portal/HAGSTOVAN/Statistics_%20Faroe_Islands
Djibouti	http://www.ministere-finances.dj/statist.htm
Egypt	http://www.msrintranet.capmas.gov.eg/pls/fdl/tst12e?action=&lname=
Estonia	http://www.stat.ee/?lang=en
Fiji	http://www.statsfiji.gov.fj/
Finland	http://www.stat.fi/index_en.html

<i>States</i>	<i>Website address</i>
Former Yugoslav Rep. of Macedonia	http://www.stat.gov.mk/english/glavna_eng.asp
France	http://www.insee.fr/fr/default.asp
Gabon	http://www.stat-gabon.ga/Home/Index1.htm
Gambia	http://www.csd.gm/
Georgia	http://www.statistics.ge/index.php?plang=1
Germany	http://www.destatis.de
Greece	http://www.statistics.gr/main_eng.asp
Guinea	http://www.stat-guinee.org/
Hungary	http://portal.ksh.hu/portal/page?_pageid=38,119919&_dad=portal&_schema=PORTAL
Iceland	http://www.statice.is/
Indonesia	http://www.bps.go.id/index.shtml
Ireland	http://www.cso.ie/
Israel	http://www1.cbs.gov.il/reader/?MIval=cw_usr_view_Folder&ID=141
Italy	http://www.istat.it/english/
Jamaica	http://www.statinja.com/
Japan	http://www.stat.go.jp/english/index.htm
Jordan	http://www.dos.gov.jo/dos_home/home_e.htm
Latvia	http://www.csb.gov.lv/?lng=en
Lebanon	http://www.cas.gov.lb/Newsrep_en.asp
Lesotho	http://www.bos.gov.ls/
Lithuania	http://www.stat.gov.lt/en/
Luxembourg	http://www.statec.public.lu
Madagascar	http://www.instat.mg/
Malawi	http://www.nso.malawi.net/
Malaysia	http://www.statistics.gov.my/
Maldives	http://www.planning.gov.mv/en/
Malta	http://www.nso.gov.mt/
Mauritania	http://www.ons.mr/
Mauritius	http://www.gov.mu/portal/site/cso
Moldova	http://www.statistica.md/index.php?lang=en
Mozambique	http://www.ine.gov.mz/Ingles
Nepal	http://www.cbs.gov.np/
Netherlands	http://www.cbs.nl/en-GB/default.htm
New Zealand	http://www.stats.govt.nz/default.htm
Niger	http://www.stat-niger.org/
Nigeria	http://www.nigerianstat.gov.ng/
Norway	http://www.ssb.no/english/
Oman	http://www.moneoman.gov.om/index.asp
Pakistan	http://www.statpak.gov.pk/

<i>States</i>	<i>Website address</i>
Papua New Guinea	http://www.nso.gov.pg/
Philippines	http://www.census.gov.ph/
Poland	http://www.stat.gov.pl/english/
Portugal	http://www.ine.pt
Republic of Korea	http://www.nso.go.kr/eng2006/emain/index.html
Romania	http://www.insse.ro/cms/rw/pages/index.en.do
Russian Federation	http://www.gks.ru/eng/
Saint Lucia	http://www.stats.gov.lc/
Senegal	http://www.ansd.sn/
Serbia	http://webrzs.statserb.sr.gov.yu/axd/en/index.php
Seychelles	http://www.misd.gov.sc/sdas/
Singapore	http://www.singstat.gov.sg/
Slovakia	http://portal.statistics.sk/showdoc.do?docid=359
Slovenia	http://www.stat.si/eng/index.asp
South Africa	http://www.statssa.gov.za/
Sri Lanka	http://www.statistics.gov.lk/
Swaziland	http://www.gov.sz/home.asp?pid=75
Sweden	http://www.scb.se/default___2154.asp
Switzerland	http://www.bfs.admin.ch/bfs/portal/fr/index.html
Tanzania	http://www.nbs.go.tz/
Tunisia	http://www.ins.nat.tn/
Turkey	http://www.turkstat.gov.tr/Start.do
Ukraine	http://www.ukrstat.gov.ua/
United Kingdom	http://www.statistics.gov.uk/
United States of America	http://www.fedstats.gov/
Uzbekistan	http://www.stat.uz/STAT/index.php?lng=1
Vietnam	http://www.gso.gov.vn/default_en.aspx?tabid=491
Zambia	http://www.zamstats.gov.zm/

Table 2: International and Regional Resources

<i>Organizations</i>	<i>Website Address</i>
Afristat	http://www.afristat.org/
Asian Development Bank	http://www.adb.org/Economics/
Eurostat	http://epp.eurostat.ec.europa.eu/
Inter-American Development Bank	http://www.iadb.org/research/data.cfm?language=en&parid=2
International Monetary Fund	http://dsbb.imf.org/
International Statistical Institute	http://isi.cbs.nl/
Organisation for Economic Co-operation and Development (OECD)	http://www.oecd.org/statsportal/0,3352,en_2825_293564_1_1_1_1_1,00.html
The World Bank	http://www.worldbank.org/

Annex V

Examples of calculation of indigence

Following all changes, adjustments, and precisions introduced in the two mechanisms, i.e. payment scheme, indigence determination of the legal aid system, the Court proposes the following examples of calculation, which are based on the same case as that used in the calculations provided in 2005.³³ Real names of places have been included as examples of available statistics.

Table 1: Monthly obligations of applicant

1 spouse + 1 child living in Luxembourg	Yearly budget of households = €43,673,5 in 1996. ³⁴ Applying Consumer Price Index (CPI), annual changes from 1996-2007 (25,31%), total = €54,727.26.	€4,560.60
1 son/daughter living in Douala (Cameroon)	Yearly budget per person = XOF 496,660.69 ³⁵ = €757.15 ³⁶	€63.10
1 son/daughter in Boston	USD 51,980 per year ³⁷ = USD 4,332.67 per month	€2,718.38
<i>Total monthly obligations = €7,342.08</i>		

³³ See ICC-ASP/6/INF.1, annex.

³⁴ <http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=1551> (16 July 2008).

³⁵ <http://www.statistics-cameroon.org/> (16 July 2008).

³⁶ All conversions were made or reviewed on 16 July 2008.

³⁷ <http://www.epi.org> (16 July 2008).

Case 1:

<i>ASSETS</i>	
<i>Property</i>	<i>EMR³⁸ (EUR)</i>
Family house in A	1,300
Apartment in B	1,500
Apartment in C	1,000
House in D	600

<i>Other Assets</i>	<i>Total Value (EUR)</i>	<i>Total/60</i>
3 cars	40,000	666.67
Paintings, jewellery	300,000	5,000
Bank accounts	150,000	2,500
Shares and bonds	500,000	8,333.33
<i>Total</i>	990,000	20,900

MDM³⁹ – Monthly Obligations = €13,558

In Case 1, the applicant would be found partially indigent, and should pay his or her defence team a sum equal to his or her MDM.

The Court's contribution would be calculated as follows (in EUR):

<i>Phase</i>	<i>Monthly cost⁴⁰</i>	<i>Monthly contribution</i>
Phase 1 (Investigation to initial appearance)	22,206.79 ⁴¹	8,648.79
Phase 2 (Initial appearance to confirmation of charges)	33,191.79	19,633.79
Phase 3 (Confirmation of charges to closing arguments)	45,742.79	32,184.79
Phase 4 (Closing arguments to delivery of judgment)	22,206.79 ⁴²	8,648.79
Phase 5 (Appeal)	33,191.79	19,633.79

³⁸ Estimated monthly rent (see ICC-ASP/6/INF.1, para. 13).

³⁹ Monthly disposable means (see document ICC-ASP/6/INF.1, para. 18).

⁴⁰ For this calculation, the total budget for investigations was divided by 24 and added to the monthly cost. See document ICC-ASP/6/4, annex IV.

⁴¹ Monthly ceiling for the legal cost of legal assistance during this phase.

⁴² Monthly ceiling for the legal cost of legal assistance during this phase.

Case 2:

<i>ASSETS</i>	
<i>Property</i>	<i>EMR (EUR)</i>
Family house in A	3,000
Apartment in B	2,000
Apartment in C	1,500
House in D	1,500

<i>Other assets</i>	<i>Total value (EUR)</i>	<i>Total/60</i>
3 cars	50,000	833.33
Paintings, jewellery	1,000,000	16,666.67
Bank accounts	1,500,000	25,000
Shares and bonds	3,000,000	50,000
<i>Total</i>	5,550,000	92,500

MDM – Monthly Obligations = €83,342.08

In Case 2, the applicant would be found not indigent.

Case 3:

<i>ASSETS</i>	
<i>Property</i>	<i>EMR (EUR)</i>
Family house in A	1,300
Apartment in B	1,500
Apartment in C	1,000
House in D	600

<i>Other Assets</i>	<i>Total Value (EUR)</i>	<i>Total/60</i>
3 cars	20,000	333.33
Paintings, jewellery	300,000	5,000
Bank accounts	500,000	8,333.33
Shares and bonds	1,000,000	16,666.67
<i>Total</i>	1,820,000	34,733

MDM – Monthly Obligations = €27,391

In Case 3, the applicant would be found partially indigent.

The Court's contribution would be calculated as follows (in EUR):

<i>Phase</i>	<i>Monthly cost</i>	<i>Monthly contribution.</i>
Phase 1 (Investigation to initial appearance)	22,206.79	0 ⁴³
Phase 2 (Initial appearance to confirmation of charges)	33,191.79	12,016.38
Phase 3 (Confirmation of charges to closing arguments)	45,742.79	18,351.79
Phase 4 (Closing arguments to delivery of judgment)	22,206.79	0
Phase 5 (Appeal)	33,191.79	12,016.38

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⁴³ The difference of €5,184.21 could be deducted from the contribution of the Court during next phase.