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Report of the Bureau on Legal aid

Contents

I.	Background.....	2
II.	Consideration of the issues by the Legal aid facilitation.....	2
	“Step 5” for counsel, LRVs, and their teams.....	2
	Legal aid policy.....	3
	Tax exemption for counsel, LRVs, and their teams: APIC amendment.....	3
III.	Preparatory meeting convened pursuant to resolution ICC-ASP/23/Res.1	4
	Financial investigations on suspects and accused persons	5
IV.	Consideration of the draft resolution text.....	6
V.	Recommendations.....	7
	Annex I.....	7
	Annex II	8

I. Background

1. This report is submitted pursuant to the mandate to the Bureau on legal aid adopted at the twenty-third session of the Assembly. In that resolution, the Assembly gave mandates to the Court and to the Bureau.¹
2. On 18 February 2025, the Bureau re-appointed Ambassador Hugh Adsett (Canada) as the facilitator for legal aid.
3. The facilitation held 7 meetings, on 27 March, 29 April, 27 May, 30 June, 18 September, 29 October and 7 November 2025. The meetings were attended by States Parties, representatives of the Court, of the Coalition for the International Criminal Court (CICC) and of the International Criminal Court Bar Association (ICCBA).

II. Consideration of the issues by the Legal aid facilitation

4. In the first meeting, held on 27 March 2025, the facilitator presented the workplan, structured around the mandates given to the Bureau and the Court in paragraph 7, of annex 1 to the omnibus resolution ICC-ASP/23/Res.1. The facilitator referred to the timeline for the Preparatory meeting to prepare a draft text of a possible amendment to the Agreement on the Privileges and Immunities of the International Criminal Court (APIC) to address the question of a legal basis for tax exemptions to defence and victims' counsel and persons assisting counsel, who are subject to the Legal Aid Policy, set out in ICC-ASP/23/Res.1, "in the first half of 2025" and informed the participants that this meeting would be held on 30 June 2025. The facilitator also recalled that the mandate contained in paragraph (e) regarding "financial investigations on suspects and accused persons" was addressed to the Legal aid and the Cooperation facilitation and noted that discussions were being held with the facilitators for Cooperation, Ambassador François Alabrune (France) and Ambassador Ramatoulaye Bâ Faye (Senegal) and that a joint meeting would likely be held in the second semester. The workplan was adopted without amendment.

"Step 5" for counsel, LRVs, and their teams

5. On 27 March 2025, the Director of the Division of Judicial Services briefed the participants on the Registry's proposal to introduce a new "Step 5" for counsel, legal representatives for victims, and their teams. It was recalled that the topic had been considered by the Legal Aid facilitation at the 7 and 18 November meetings in 2024. The creation of a new step 5 had been recommended by the Joint Committee on Legal Texts to provide the opportunity for step increments for counsel, especially those starting at step 4. The Registrar had agreed to put forward this recommendation as a proposal for the consideration of States Parties, and indicated that, if approved by the Assembly and if required, the Registry would consider what to reprioritise in the Registry programme budget for 2026 so as to absorb the costs. However, there would be budgetary implications for the future for those counsel who reached that level.

6. It was recalled that States Parties had expressed diverging views at the 18 November 2024 meeting, with some States in support of the step 5 as a means of attracting qualified legal counsel at senior levels, with others expressing concern over budgetary implications. Accordingly, delegates had agreed to take note of the proposal and continue consideration of the matter in 2025. The facilitator observed that the Legal Aid facilitation could issue a policy recommendation on whether to approve a "Step 5". However, since the matter involved budgetary implications, some States considered that the matter should be further examined in the Budget facilitation. Subject to the views of States Parties, the Legal Aid facilitation could forward a recommendation to the Budget facilitation, which in turn could make a recommendation to the Assembly.

7. Written responses from the Registry to pre-submitted questions had been circulated on 24 April 2025, and the proposal returned to the table for further discussion on 29 April 2025. During this meeting, the Registry's representative presented further details on the proposal and key related data. As of January 2025, around eleven counsel and three associate counsel would have qualified for the new step. The financial implications were estimated at

¹ ICC-ASP/23/Res.1, annex I, para. 7

between €25,000 and €90,000, depending on whether only lead counsel or additional team members were included, with the latter potentially raising the figure to about €80,000. The Registry stressed that remuneration for ICC counsel remained among the lowest across international tribunals, reassuring delegations that no further steps beyond Step 5 were envisaged, in line with UN capping systems.

8. Defence and victims' counsel showed broad support to the initiative, describing the measure as modest but essential for fairness in the legal aid system. Several delegations engaged with the proposal from different angles. Some reserved their positions, emphasising that financial decisions would ultimately be taken during the Fall budget round. Others sought greater clarity on the scope of the calculations and requested a fuller financial breakdown, while expressing tentative support pending the outcome of budget facilitation. There were also calls for figures covering entire teams, to which the Registry agreed to provide further information. At the same time, certain delegations considered the Registry's approach reasonable and signalled openness to the proposal, subject to budgetary consultations.

9. The Chair concluded the 29 April 2025 meeting by proposing a two-step approach: (i) to secure policy agreement; and (ii) to address financial implications through the relevant budgetary facilitation. He reminded participants that any proposal with budgetary impact would have to be submitted to the Committee on Budget and Finance by early August.

10. At the third meeting held on 27 May 2025, the facilitator recalled that delegates had requested a more thorough understanding of the budgetary impact of the creation of a step 5. Such an assessment had been provided on 26 May 2025, by a Registry's communication stating the following: "It is estimated that the budgetary impact of granting step level V to all eligible legal team members next to Counsel and Associate Counsel would be in the region of €36,000 (total amount for 12 persons at €250/month) depending on the then team composition and the specific phase of the proceedings (i.e. reduced activity, reparations implementation, sharing of positions). The total combined budgetary impact of granting step level V to all External Counsel (€22,700) and eligible legal team members would be around €58,700". The Registry's representative followed up on this information at the meeting, providing further details.

11. Following the discussions, the facilitator noted consensus on the proposal from a policy perspective and indicated that he would communicate the policy decision in support of the adoption of a step 5 to the Budget facilitation for its consideration of the financial aspects of the proposal. This communication was transmitted to the Budget facilitator through a letter from the Legal aid facilitator, dated 1 October 2025.

Legal aid policy

12. On 27 March 2025, the Director of Judicial Services provided an update on the progress of the application of the new Legal Aid Policy pursuant to paragraph 7(b) of the mandate set out in ICC-ASP/23/Res.1. It was noted that the full report of the Court on this issue was due on 31 August 2025.

Tax exemption for counsel, LRVs, and their teams: APIC amendment

13. On 27 March 2025, the facilitator outlined the plans for a preparatory meeting, recalling the mandate in resolution ICC-ASP/23/Res.1, paragraph 7(c) of annex 1, which requested the Bureau to address the question of the legal basis for tax exemptions for defence and victims' counsel and persons assisting counsel, prepare a draft amendment to the APIC, with a view to convening a Review Conference, and report ahead of the twenty-fourth Assembly session.

14. The facilitator referred back to a paper circulated in October 2024,² which presented options for addressing the taxation of counsel under the ICC legal aid system. Among these, States Parties had shown growing support for initiating a multilateral discussion to amend the APIC, as this was seen as the most viable path forward. While concerns were raised about the time needed for any amendment to take effect, delegates were reminded that the APIC already provided a clear procedure for amendment, including the convening of a Review Conference under article 36.

² "Non-Paper on Options to address the taxation of defence and victims' team members remunerated under the ICC legal aid system", dated 14 October 2024.

15. Looking ahead, the facilitator proposed that the preparatory meeting should last one day and be open not only to States Parties but also to non-States Parties, the Court, the ICCBA and civil society. Since the meeting would focus on textual amendment proposals, prior discussions would be essential to shape a possible draft. The ultimate goal was to prepare an agreed text for consideration at a Review Conference.

16. The facilitator further recalled article 18(3) of the APIC,³ which addressed taxation in relation to residence, but noted that consensus on interpreting this provision to exempt counsel had proven elusive. States were therefore invited to suggest additional language that could help achieve the intended tax exemption.

17. At the 29 April meeting, discussions on the issue were carried forward. The facilitator drew attention to a paper circulated a week earlier,⁴ outlining the modalities for the upcoming preparatory meeting. The purpose was to start examining potential proposals for amending the APIC ahead of that meeting, with delegations encouraged to share their views and contribute ideas to the process. The facilitator referred to a message circulated on 24 April advising of a position paper from the ICCBA regarding taxation of legal aid payments, dated 22 April 2025. States Parties were invited to consider the ICCBA's amendment proposals and encouraged to consult with capitals and to submit possible amendment proposals.

18. The Netherlands, as host State, while welcoming the discussion, requested more information to determine the national implications of any APIC amendments. States Parties requested data on the number of persons who would benefit from tax exemption and the Registry estimated between 80-100 individuals. The ICCBA provided a summary of the contents of its position paper of 22 April 2025, in which it proposed replacing the reference to "defence counsel" in the APIC with "counsel" to include victims' representatives; eliminating taxation based on residence and aligning language with that applicable to Court staff. In closing the discussion, the facilitator emphasised the importance of consensus and urged delegations to work collectively towards a draft text for the 30 June preparatory meeting. Proposals of States would be compiled and circulated to guide future discussions.

19. In the 27 May meeting, the facilitator noted a paper prepared by the Registry which set out the estimated financial impact of taxation exemption for defence and victims counsel and their legal teams. He noted that the Registry had calculated €2,489,256 at the maximum for all taxation exemptions in all countries (globally). The impact on any individual country would depend on how many of these counsel were resident in that country. The actual tax rate and family composition would be other factors. The facilitator further noted that the Registry had for the sake of the exercise, applied globally a tax rate of 40%.

20. Noting that no proposals from States Parties had been thus far received, the facilitator recalled the ICCBA's suggested APIC amendment. With a greater number of States Parties in attendance than at the previous meeting, the ICCBA reiterated its proposal. The facilitator reminded delegations that the 30 June meeting would focus on textual amendment proposals, with the goal of preparing an agreed draft for consideration at a Review Conference. He urged States Parties to submit their proposals, stressing the need for consensus and the importance of seizing the opportunity for multilateral discussion on a potential amendment.

Preparatory meeting convened pursuant to resolution ICC-ASP/23/Res.1

21. On 30 June 2025, the Legal aid facilitator held a Preparatory meeting⁵ pursuant to resolution ICC-ASP/23/Res.1, annex 1, paragraph 7 (c):

"(c) requests the Bureau to continue to address the question of a legal basis for tax exemptions to be granted to defence and victims' counsel and persons assisting counsel, who are subject to the Legal Aid Policy, to convene a preparatory meeting in the first half of 2025, in consultation with States Parties, to prepare a draft text of a possible amendment to the Agreement on the Privileges and Immunities of the

³ "Where the incidence of any form of taxation depends upon residence, periods during which counsel is present in a State Party for the discharge of his or her functions shall not be considered as periods of residence".

⁴ "Modalities of the preparatory meeting foreseen in ICC-ASP/23/Res.1, annex 1, para. 7(c)", dated 22 April 2025.

⁵ See "Facilitator's summary": https://asp.icc-cpi.int/sites/default/files/asp_docs/Facilitator%27s%20summary%20-%20Legal%20aid%20-%20Prep%20meeting%2030%20June%202025-16Jul25.1040.pdf

International Criminal Court to address this issue, with a view to convening a Review Conference in accordance with article 36 of the Agreement to discuss the proposal as soon as possible, as well as options or recommendations on measures that should be taken in the interim, and to report on the matter in advance of the twenty-fourth session of the Assembly;”

22. Ahead of the 30 June 2025 preparatory meeting, in the absence of any amendment proposals submitted by States Parties, the facilitator circulated a draft amendment to the APIC reflecting the ICCBA’s amendment proposal and invited delegations to use it as a starting point for discussions. At the preparatory meeting, the draft received broad support as a sound basis for amendment, though many delegations sought more time for consultation, while some offered full support. No opposition to the draft was voiced. A few delegations representing States not yet Party to the APIC said that they similarly believed the text to present a suitable path forward.

23. The Netherlands, as host State, made opening remarks, followed by the ICCBA. The ICCBA and Registry underlined the need for reform, noting that taxation issues had reduced the pool of experienced counsel, with consequences for the efficiency and cost of proceedings. Delegations raised questions on practical application, drafting refinements, and the host State’s perspective, which remained open to discussion. A draft text was proposed and it was agreed that a follow-up session set to consider the draft texts reflecting the preparatory discussions would be held.

24. At the resumed preparatory meeting on 18 September 2025, delegations considered two amendment proposals to the APIC: one from Colombia, tracing the ICCBA’s suggested amendment, and another from the United Kingdom, a technical clarification of article 18(4) of APIC regarding its applicability to both defence teams and victims’ representatives. Broad support was expressed for the amendment proposals, though concerns were raised about the financial and legal implications, the lengthy ratification process, and the need for precise terminology to align with national tax systems. The next steps would include preparation of a draft resolution, to reflect the discussions in the preparatory meetings. Delegates raised questions about the formal treaty amendment process, to which the facilitator referred to article 36 of the APIC.. Importantly, it was stressed that agreeing to convene a Review Conference did not bind States to adopt or ratify an amendment, but simply opened the door for formal consideration.

25. At the meeting held on 29 October 2025, discussions focused on preparation of a draft resolution text to reflect the discussion in the preparatory meeting convened pursuant to resolution ICC-ASP/23/Res.1. Consultations had produced a draft text incorporating the input of States Parties, the Registry, ICCBA and civil society. The zero-draft resolution text reflected the mandate, drew on agreed language, and proposed continued discussions toward a potential Review Conference, which would specifically address the question of a legal basis for tax exemptions to be granted to defence and victims’ counsel and persons assisting counsel who are subject to the Legal aid policy. Several delegations welcomed the draft as balanced and constructive, stressing the need to maintain momentum, and it was viewed as a good starting point. The ICCBA regretted the omission of interim measures, and urged States Parties to consider the similar language of the 2022 resolution,⁶ which allowed the Registry to explore short-term relief for defence and victims counsel. One delegation suggested stronger language but agreed to support the draft for consensus.

26. At the 7 November 2025 meeting, the draft text concerning the potential APIC amendment was adopted ad referendum. Continued discussion and further examination of the draft would take place in 2026, with a view to arriving at a mutually agreeable text as well as convening a Review Conference specifically for the purpose of addressing an amendment on the issue of tax exemptions to be granted to defence and victims’ counsel and persons assisting counsel who are subject to the Legal aid policy. The draft APIC amendment text would appear in the omnibus resolution annex as an informational reference.

Financial investigations on suspects and accused persons

27. The 29 October 2025 meeting was held in collaboration with the Cooperation facilitators, and focussed on financial investigations. It was recalled that under resolution

⁶ ICC-ASP/22/Res.3, para. 89.

ICC-ASP/23/Res.1, annex I, paragraph 7(e), the Court was tasked with strengthening its ability to trace, freeze, and seize assets while safeguarding the rights of the accused.

28. The Director of Judicial Services outlined the legal framework governing financial investigations, noting that cooperation requests depended on national laws. He emphasized that the Registry handled three main areas: recovering legal aid funds from non-indigent defendants, freezing assets for reparations (often hindered by weak domestic laws), and overcoming enforcement gaps when cases shift to civil courts. With the Court's liability fund nearly depleted, new mechanisms were being explored to recover outstanding funds.

29. The Registry emphasized that financial investigations were central to accountability, linking crimes to funding networks and exposing cross-regional patterns. Success depended on State cooperation in providing financial data, tracing assets, and enforcing orders, though challenges persisted due to divergent laws and limited access to records.

30. The representative of the OTP Financial Investigations Unit (FIU) presented the establishment and mandate of the newly created unit. Operational since 2025, FIU supported all investigative teams with financial inquiries and asset tracing. It had developed workflows, trained staff, and built partnerships. It was stressed that early asset identification was crucial for both legal aid contributions and later reparations. Cooperation with States and partners such as Europol remained vital, with calls for stronger legislation, focal points, and seconded experts.

31. Discussions highlighted difficulties in managing recovered funds, illustrated by a concrete ICC case. Stronger cooperation and judicial oversight were urged to ensure proper allocation. REDRESS, an NGO group, added that asset recovery was key to justice, whether for reparations or legal aid. Its comparative study of nine jurisdictions revealed obstacles such as restrictive laws and weak asset management, while models in Switzerland and France showed more effective approaches. REDRESS called for comprehensive national rules and closer coordination between States and the ICC to maximize the impact of asset recovery.

32. At the 7 November 2025 meeting, the text of the zero-draft resolution on Legal Aid was adopted *ad referendum*. Continued review of the current framework and operation of the functions regarding financial investigations on suspects and accused persons across all organs would take place in 2026, in order to make proposals to the Assembly through its relevant facilitations (legal aid and cooperation).

Consideration of the draft resolution text

33. At the 7 November 2025 meeting of the facilitation, delegations considered the zero-draft resolution on Legal aid. The draft text largely repeated the 2024 text with minor updates and two new paragraphs in the mandates. A joint proposal from Colombia, France, Germany, and the United Kingdom had been circulated, following informal consultations, and delegations discussed whether to incorporate it into the final resolution text. The proponents explained that the proposal aimed to allow the Registry some flexibility to grant interim measures using surplus funds within the Registry's Legal aid budget. The Registry noted that reserves had allowed a temporary 10-12% remuneration adjustment in 2023, but little funds remained available for this purpose under the new Legal aid policy. With €58,000 already allocated to be absorbed if Step 5 were to be granted, there would be little margin in the legal aid budget, though the proposed language offered a safeguard. Despite the unavailability of funds, the ICCBA noted that the language on interim measures would be an important gesture of support for counsel facing financial challenges. The ICCBA also emphasized that, given the unpredictability of the legal aid budget, retaining the text would keep open a theoretical possibility of limited relief from taxation for defence and victims' teams.

34. The facilitation examined the draft resolution text paragraph by paragraph. Delegates agreed to adopt the joint proposal concerning interim measures. A minor editorial adjustment and a clarification on the formatting of the annex were raised. The resolution was adopted *ad referendum* for inclusion in the omnibus resolution. In closing, the facilitator indicated that the Legal aid policy would continue to be monitored and reviewed in 2026, consistent with the mandates.

III. Recommendations

1. The facilitation recommends that the Assembly request the Bureau to continue to oversee the application of the new Legal aid policy and to report thereon to the twenty-fifth session of the Assembly.
2. The facilitation further recommends that the Assembly request the Bureau to continue to address the question of a legal basis for tax exemptions for counsel and to prepare, in consultation with States Parties, the draft text of a possible amendment to the Agreement on the Privileges and Immunities of the International Criminal Court to address this issue, with a view to convening a Review Conference to discuss the proposal as soon as possible, as well as options or recommendations on measures that should be taken in the interim, and to report on the matter.
3. The facilitation proposes the following text for inclusion in the omnibus resolution:

Preambular paragraphs on Legal aid

~~*Mindful of the recommendations of the Group of Independent Experts related to legal aid and noting that the outcome of the assessment process of these recommendations, are still ongoing,*~~

Noting that it is the responsibility of the Court to present proposals to the Assembly for reform of the Legal Aid Policy and calling on the Court to continuously consult with States Parties and other relevant stakeholders, using existing structures in the course of drawing up these proposals;

Recalling the commitment of the Court and States Parties to ensuring equality of arms in proceedings before the Court,

Annex I

Mandates of the Assembly of States Parties for the intersessional period

With regard to **legal aid**,

- a) *takes note* of the general interest expressed during the preparatory meetings convened in 2025 to examine the text of a possible amendment to the Agreement on the Privileges and Immunities of the International Criminal Court, to address the question of a legal basis for tax exemptions to be granted to defence and victims' counsel and persons assisting counsel who are subject to the Legal Aid Policy;
- b) *decides* to continue the discussion and examine further the draft text as prepared in Annex II with a view to arriving at a mutually agreeable text and with a view to convening a Review Conference in accordance with article 36 of the Agreement to discuss the proposal as soon as possible;
- c) *requests* the Court to consider interim measures, within existing resources in the legal aid budget, to the benefit of members of defence and victims' teams who are subject to taxation on their legal aid earnings;
- d) *stresses* the need for continuous monitoring and scrutiny of the new legal aid system and, to this end, *requests* the Court to report on the progress in the application of the new Legal Aid Policy of the International Criminal Court by 31 August 2026, in consultation with members of defence and victims' teams, in order to facilitate the Assembly's review and consideration of the Legal Aid Policy at the twenty-fifth session of the Assembly;
- e) *requests* the Court to continue to ensure appropriate representation of counsel in the Advisory Committee on Legal Texts;
- f) *also requests* the Court to continue its review of the current framework and operation of the functions regarding financial investigations on suspects and accused persons across all organs in order to make proposals to the Assembly through its relevant facilitations (legal aid

and cooperation) with a view to strengthening the Registry's capacity to trace, freeze and seize assets of the accused in the context of legal aid requests, while paying due respect to the rights of the accused and to ensure increased efficiency of that global framework; and

g) *requests* the Bureau to continue its work on legal aid and to report to the Assembly at its twenty-fifth session;

Annex II

Draft text of a possible amendment to Article 18 of the Agreement on the Privileges and Immunities of the International Criminal Court

Article 18

Counsel and persons assisting defence counsel

1. Counsel shall enjoy the following privileges, immunities and facilities to the extent necessary for the independent performance of his or her functions, including the time spent on journeys, in connection with the performance of his or her functions and subject to production of the certificate referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of his or her personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by him or her in official capacity, which immunity shall continue to be accorded even after he or she has ceased to exercise his or her functions;

(c) Inviolability of papers and documents in whatever form and materials relating to the exercise of his or her functions;

(d) For the purposes of communications in pursuance of his or her functions as counsel, the right to receive and send papers and documents in whatever form;

(e) Exemption from immigration restrictions or alien registration,;

(f) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the counsel concerned;

(g) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(h) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Upon appointment of counsel in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court, counsel shall be provided with a certificate under the signature of the Registrar for the period required for the exercise of his or her functions. Such certificate shall be withdrawn if the power or mandate is terminated before the expiry of the certificate.

3. **Counsel shall be exempted from taxation on the fees, allowances, and other expenses paid to them by the Court under the legal aid system. States Parties may take these fees, allowances, and other expenses into account for the purpose of assessing the amount of taxes to be applied to income from other sources.** ~~Where the incidence of any form of taxation depends upon residence, periods during which counsel is present in a State Party for the discharge of his or her functions shall not be considered as periods of residence.~~

4. The provisions of this article shall apply mutatis mutandis to persons assisting defence counsel in accordance with rules 22 **and 90** of the Rules of Procedure and Evidence.