

**Ninth session**

New York, 6-10 December 2010

**Updated Report of the Court on legal aid:
Legal and financial aspects of funding victims' legal
representation before the Court, the comparison between
internal and external counsel***

I. Introduction

1. In paragraph 16 of its resolution ICC-ASP/7/Res.3, "Strengthening the International Criminal Court and the Assembly of States Parties", the Assembly of States Parties ("the Assembly") invited the International Criminal Court ("the Court") to "present to the Assembly at its eighth session an updated report on the legal and financial aspects for funding victims' legal representation before the Court".¹ The Assembly asked the Court, in preparing such a report, to take into account the comments of the Committee on Budget and Finance ("the Committee") in the report on the work of its eleventh session.² In that same paragraph, the Assembly further invited the Court to "engage in a constructive dialogue with States Parties on this issue in a timely manner, allowing for a proper review by the Committee on Budget and Finance at its twelfth and thirteenth sessions".³

2. On 26 March 2009, the Court presented an interim report⁴ to the Committee, which was discussed at its twelfth session. In its report on the work of its twelfth session, the Committee encouraged the Court and the Hague Working Group to further identify and analyse the budgetary implications of the system, and agreed to continue its consideration of the issue at its thirteenth session. The Committee requested the Court in particular to "develop scenarios showing the possible budgetary impact for the full cycle of the proceedings through to the final reparations stage".⁵

3. On 5 October 2009, the Court presented to the Assembly the Report of the Court on legal aid: Legal and financial aspects of funding victims' legal representation before the Court ("the Court's Report").⁶ Annex 2 to that report comprised scenarios showing the possible budgetary impact of victims' legal representatives for the full cycle of a case. One of the conclusions noted in the Court's Report was that the relationship between the role of external counsel representing victims and that of the Office of Public Counsel for Victims and the corresponding level of resources to be allocated to the Office required further consideration and should be kept under review.⁷

* Previously issued as ICC-ASP/9/CBF.1/11.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (ICC-ASP/7/20), vol. I, part III, ICC-ASP/7/Res.3, p.30.

² *Ibid.*, vol. II, part B.2, paras. 128-129.

³ See footnote 1 above.

⁴ Interim report of the Court on legal aid: Legal and financial aspects for funding victims' legal representation before the Court (ICC-ASP/8/3).

⁵ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. II, part B.1, paras. 81-85.

⁶ ICC-ASP/8/25.

⁷ *Ibid.*, para. 75.

4. In its report on the work of its thirteenth Session, the Committee, while welcoming the Court's Report, noted several concerns regarding the figures contained in Annex 2. The Committee observed that, in the absence of a common baseline for the calculations provided, the figures provided in Annex 2 were unreliable. The Committee recommended that the Court review these, and report back to the Committee at its fourteenth session with established common parameters for comparison.⁸

II. Revised cost analysis

5. Annex 1 to the present report comprises an updated version of Annex 2 to the Court's Report, including costings of OPCV and external representation for the full cycle of a case, calculated with a common baseline. That is to say, the same number of months of work has been assumed, and all costs of OPCV have been included, including administrative costs.

6. In paragraph 74 of its previous Report, the Court had concluded that, as far as possible, resources from the legal aid scheme would be provided to one team of legal representatives per case, bearing in mind that there may be occasions where it is necessary to have more than one team, such as where a conflict of interest arises. In light of this, the cost of external legal representation has also been revised, in order to show the costs both in situations where there is one external team and where there are two. This has been done in order to permit comparisons involving the most likely scenarios.

7. The Court would again emphasise that, as was the position at the time of its previous Report, no full cycle of a case has yet been completed. In particular, no reparations phase, which is of particular significance as regards legal representation of victims, has taken place. As a consequence, the Court would again caution that more experience is needed in order to draw further conclusions on the application of legal aid resources for common legal representation.

III. Comparison between internal and external counsel

8. The Court would like to briefly recall three points made in its previous Report.

9. First, the decisive role of Chambers in determining common legal representation for victims in accordance with Rule 90 of the Rules of Procedure and Evidence, including the number of legal teams representing victims as well as the role of the OPCV. In the Court's Report, a number of examples were given of decisions of different Chambers to date on these matters.

10. Second, the consideration of the question of in-house and external representation of victims contained in the Report, in which the Court concluded that there are strong policy reasons for retaining the involvement of both external lawyers and in-house counsel in the representation of victims. External and in-house lawyers each bring unique elements that cannot be provided by the other, and the best solution is to ensure that each is able to make its own appropriate contribution, whilst avoiding duplication.

11. Third, in the Report the Court described efforts made by the Court to avoid duplication and establish appropriate roles for both in-house and external lawyers, always bearing in mind the role of the judiciary in deciding on common legal representation for victims. The important roles that are played by the OPCV were outlined in the Report.

IV. Conclusion

12. The Court continues to learn the lessons of how to respond to the specific requirements of the legal representation of victims. Once the full cycle of a case has been completed, a further review may be appropriate. Until then, the Court proposes to maintain the current approach whereby the representation of victims is conducted by a mixture of external lawyers and the OPCV, as detailed in its previous Report.

⁸ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. II, part B.2, paras. 125-126.

Annex I

Scenarios showing the possible budgetary impact of victims' legal representatives for the full cycle of a case¹

	<i>Scenario</i>	<i>Cost of OPCV (in euros)</i>	<i>Cost of external legal team(s) (in euros)</i>	<i>Total costs (in euros)</i>
1.	Exclusively in-house: OPCV represents all victims at every stage (1 team) ²	411,100 ³ <i>OR</i> 378,700 ⁴		411,100
2.	Mixed 1 OPCV represents all victims at the pre-trial stage (1 team) ⁵ and external lawyers represent all victims from the trial stage onwards (1 or 2 teams per case ⁶)	37,650 <i>OR</i> 34,050	1 team = 505,039 2 teams = 1,010,078	1 external team= 542,689 2 external teams= 1,047,728
3.	Mixed 2 Both OPCV (1 team) and external lawyers (1 team) represent victims at each stage	411,100 <i>OR</i> 378,700	568,826	979,926
4.	Mixed 3 Both OPCV (1 team) and external lawyers (2 teams) represent victims at each stage	411,100 <i>OR</i> 378,700	1,137,652	1,548,752

¹ Costings are based on figures given in annex 2 and include every stage of proceedings (pre-trial, preparation for trial, trial, reparations and appeal), plus missions to meet clients and investigations.

² In cases where a conflict of interest arises between victims or groups of victims, OPCV would need to form two teams. In such instances, one team would be composed of a counsel at the P-5 level, and the other of a counsel at the P-4 level. The total cost to OPCV would thus be €789,800.

³ Costings assume a team composed of a counsel at the P-5 level. Staff costs, travel (a total of four trips for two persons) and other costs (such as rental of premises to meet with clients, costs of travel and board and lodging for clients in locations different from those where they normally reside, if necessary for security reasons, reimbursement of payments to local people helping the Office to establish initial contact with clients) are included.

⁴ Counsel from the OPCV may be either at the P-5 or the P-4 level. Therefore, both are included here (and costed in the Annex), though the totals column assumes the counsel is at the P-5 level. The figures are based on standard salary costs for The Hague for 2009.

⁵ In cases where a conflict of interest arises between victims or groups of victims, OPCV would need to form two teams. In such instances, one team would be composed of a counsel at the P-5 level, and the other of a counsel at the P-4 level. The total cost to OPCV would thus be 71,700.

⁶ Where two teams are envisaged, costings are made on the basis of an assumption that one team would comprise a counsel from Africa and the second would comprise a counsel from Europe, and the cost of one team is an average of the two.

Annex II

Cost of OPCV team of legal representatives of victims⁷

A. Fees of OPCV team per month

<i>Type of team</i>	<i>Composition</i>	<i>Cost per month ('000s)</i>
Counsel only ⁸	1 counsel P-5 <i>OR</i> 1 counsel P-4	€12.5 <i>OR</i> €10.7
Core team	1 counsel P-5 and 1 case manager/legal assistant P-1 <i>OR</i> 1 counsel P-4 and 1 case manager/legal assistant P-1	€12.5 + €7.1 = €19.6 <i>OR</i> €10.7 + €7.1 = €17.8
Expanded team	1 counsel P-5, 1 associate legal officer P-2 and 1 case manager P-1 <i>OR</i> 1 counsel P-4, 1 associate legal officer P-2 and 1 case manager P-1	€12.5 + €7.1 + €7.1 = 26.7 <i>OR</i> €10.7 + €7.1 + €7.1 = 24.9

⁷ Please note that the figures are based on the assumptions provided by the Registry in its previous Report to the CBF in 2009.

⁸ Counsel from the OPCV may be a P-5 or a P-4. Therefore, both costings are included and applied in this Annex. The figures are based on standard salary costs for The Hague for 2009.

B. Estimated costs of a case for one OPCV team at different stages of a case ('000s)

<i>Stage</i>	<i>Details</i>	<i>Fees</i>	<i>Travel</i> ⁹	<i>Other fees</i> ¹⁰	<i>Investigations</i> ¹¹	<i>Total</i>
Pre-trial	2 months fees: Counsel only 1 month Core team 1 month (2 status conferences for preparation of the confirmation of charges hearing and confirmation of charges hearing)	€12.5 <i>OR</i> €10.7 €19.6 <i>OR</i> €17.8	1 mission €3.0	€2.55	N/A	37.65 <i>OR</i> €34.05
Preparation for trial	6 status conferences for 6 days each 2 months fees: Core team	€39.2 <i>OR</i> €35.6	1 mission €3.0	€2.55	N/A	€44.75 <i>OR</i> €41.15
Trial	10 months Core team	€196.0 <i>OR</i> €178.0	4 missions €12.0		2 missions €6.0	€214.0 <i>OR</i> €196.0
Reparations	3 months Expanded team	€80.1 <i>OR</i> €74.7	2 missions €6.0		2 missions €6.0	€92.1 <i>OR</i> €86.7
Appeal	1 month fees Core team	€19.6 <i>OR</i> €17.8	1 mission €3.0		N/A	€22.6 <i>OR</i> €20.8

⁹ Costs relate to missions in the field to meet with clients, obtain their views and concerns, and keep them informed of the proceedings. The amount of €k is the average cost for a mission for 1 person for 1 week (including Travel and DSA) based on the 2009 budget figures.

¹⁰ Costs relate to rental of premises to meet with clients (for 5 days; the average cost for rental of premises in the field is €100 per day); costs of travel and stay of clients in a different location from where they reside if security issues arise (in accordance with the experience of the Office it is estimated that only a maximum of 20 persons will need to be housed for 2 days: the average cost for travel and stay for 1 person for 2 days in the field is €100); reimbursement of fees to locals helping the Office to establish the first contact with clients (fuel and transport. Average cost is €50). The amount indicated is the maximum fees encountered by the Office so far. In accordance with the experience of the Office, these costs arise not more than twice a year. Therefore such amount has been included only twice (at the pre-trial stage and during the preparation for trial, when such possibility is more likely to arise).

¹¹ Costs relate to mission in the field to collect evidence/material for the purposes of the proceedings. The amount of €k is the average cost for a mission for 1 person for 1 week (including Travel and DSA) based on the 2009 budget figures.