



## **Revision of the International Criminal Court Legal Aid System**

**July 2017**

The UIA has consulted the *Review of the International Criminal Court Legal Aid System* Concept Paper published by the Registry and attended the meeting of 19 June 2017 that was held to discuss matters related to the revision of the legal aid system.

We welcome the efforts made recently by the Registry in order to initiate dialogue with the representatives of the legal profession, whether in the form of bar associations, lawyers' organisations or individual lawyers.

We note that it is urgent to present the States Parties, which will meet in December 2017, with a draft that takes into account the concerns expressed unanimously by ICC lawyers.

In this respect, we refer to the *International Criminal Court Bar Association Response on the Legal Aid Issue – 24 April 2017*<sup>1</sup>. This document includes comprehensive commentaries on the issues associated with the management of legal aid and with the changes to be made to the way in which it is managed, as well as on other issues that are intrinsically related to legal aid and that directly affect the day-to-day work of ICC lawyers.

We also refer to "*The position submitted by a group of 40 Counsels registered with the ICC and assistants for circulation and discussion during the Seminar on Legal Aid held by the ICC Registry on 19 June 2017*". This document identifies a series of serious shortcomings in the allocation and management of legal aid and, among other things, calls for the monthly payment of an additional uplift in order to compensate professional charges automatically (the immediate result of which would be a significant increase in counsels' remuneration, with no increase in the budget for legal aid), with immediate effect. Moreover, the ASP should modify modified the structure of the budget in December 2017 : the legal aid budget should no longer be part of the Registry's budget and be a separate budget that is administered by the Counsel Support Section.

The legal aid system must be now revised transparently and take into account, in a consistent and fair manner, the reality of the experience of the lawyers who plead before the ICC, whether on behalf of defendants or victims:

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<sup>1</sup> [http://siteassets.pagecloud.com/iccbar-abcpi/downloads/1\\_Concept\\_Paper\\_-\\_Comments\\_-\\_FINAL\\_1-ID-637d0e55-77e4-43be-d52a-53dfe11a3e49.pdf](http://siteassets.pagecloud.com/iccbar-abcpi/downloads/1_Concept_Paper_-_Comments_-_FINAL_1-ID-637d0e55-77e4-43be-d52a-53dfe11a3e49.pdf)

- 1) In our view, it is important not to confine the discussions to budgetary matters alone. The issues encountered with respect to the financing of legal aid are linked to its general organisation, its management, and to the proposed policy for representing accused and victims, with regard to which the discussion was initiated by the ReVision project. The budget-related discussions should rather be seen in a more general context that will reaffirm certain essential principles, such as freedom to appoint the lawyer of one's choice and the independence of chosen lawyers with regard to all the bodies of the Court.
- 2) The discussions on legal aid must be used as an opportunity to stress the obvious fact that the defence needs to have a status that is worthy of the name, without which a court cannot, intrinsically, function correctly. We are therefore surprised at the steps taken by the ASP to make continual cuts in the legal aid budget, on false premises, and without explaining (i) how the reduction of a budget that represents less than 3% of the Court's total budget supposedly represents a real saving for the Court, and (ii) why some organs of the Court are protected from this policy of cuts, which therefore appears to be discriminatory. We note that all of the discussions surrounding legal aid, as they were held before the ASP, in particular in 2012, were full of approximations, incomplete assessments and incorrect information<sup>2</sup>. It is urgent for the States Parties to the Rome Statute to recognise these shortcomings and for future discussions to be conducted on a transparent basis that reflects the reality of the situation. The Registry must surely approve of any steps along these lines.
- 3) Over and above the improvement of the working conditions of ICC lawyers, an improvement of the legal aid system will have a direct impact on the work of the Court and how the Court is perceived, by both the communities concerned and public opinion. As regards victim representation, in particular, we are convinced that the Court owes much of its recognition and its legitimacy to the work that is done among these communities by the lawyers who, over and above their remit, defend the work of the Court as a whole. Their work is precious and many of them are driven by a personal commitment, which enables them to overcome their working conditions, which are barely satisfactory. The Court should acknowledge their contribution to its recognition. The work of the lawyers who are fighting to obtain fair trials and effective representation of victims' rights is a key tool in obtaining external recognition for the Court.
- 4) All steps to ensure that, as from the first stages of the proceedings, the rights of the defence and of the potential victims are represented by trained lawyers who have the requisite technical and human resources, will directly benefit the proceedings and therefore the budgetary interests defended by the States Parties. The defence must be present from the very outset of the proceedings. In the same manner, the potential victims must be represented by lawyers who are capable of guiding their claims and, where necessary, advising against making claims that do not fall within the scope of the case. On both sides, quality legal assistance will make it possible to gain precious time for the subsequent parts of the proceedings, to avoid errors in strategy, as well as deferrals or continuances. For the Court, this is an investment in the proper administration of justice, the benefits of which will be tangible in terms of both the quality and the cost of the justice it is called upon to render.

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<sup>2</sup> Cf. Richard Roger, "Assessment of the ICC's Legal Aid System", <https://www.icc-cpi.int/itemsDocuments/legalAidConsultations-LAS-REP-ENG.pdf>

In our opinion, it is not acceptable for the issues raised during the discussions of 19 June 2017, on which all the meeting participants agreed, in particular concerning the insufficient nature of the fee levels and the need for a re-adjustment in the very near future, to be postponed until 2018. We urge the Registry to submit these questions without delay to the Committee on Budget and Finance, and to the other relevant organs, with a view to the forthcoming ASP.

**Paris, 10 July 2017**  
**International Association of Lawyers (UIA)**