



COALITION FOR THE INTERNATIONAL CRIMINAL COURT

**COMMENTS AND RECOMMENDATIONS OF COALITION TEAMS
TO THE TWELFTH SESSION OF THE ASSEMBLY OF STATES PARTIES**

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*Together for Justice: Civil Society in 150 countries advocating for a fair,
effective and independent ICC*

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INTRODUCTION

The Coalition for the International Criminal Court (Coalition/CICC) monitors a wide range of specific topic areas and organises some of its most active members through its unique issue-based teams. Composed of international, regional and national civil society organizations, the Teams are at the centre of the Coalitions advocacy with respect to oversight and administration of the Court and implementation of the Rome Statute. Coalition members use the Teams as a platform for the exchange of information and expertise, but also develop common advocacy strategies. The present document represents a compilation of the consensus achieved in the Teams on issues of critical importance, some of which will be addressed at the twelfth session of the Assembly of States Parties in The Hague.

The positions expressed by the different Teams reflect the views of those members who form part of the respective Teams and cannot be said to represent the views of the Coalition as a whole.

For more information about the Coalition, please visit: www.coalitionfortheicc.org. Follow the Coalition on:





SUMMARY OF TEAM ADVOCACY

BUDGET AND FINANCE

- The Assembly of States Parties (ASP/Assembly) should fully consider the recommendations of the Committee on Budget and Finance (CBF/Committee), taking into account the views of the ICC on how proposed reductions may affect its work in 2014.
- The ASP should request the CBF to provide further details of the formulae that underpin its recommendations and encourage the Committee and the ICC to develop these tools further for future years.
- The ICC should set out its plans to develop its work in the next years, including any budgetary implications.

COOPERATION

Draft Cooperation Resolution

- The draft operative language on non-essential contacts as proposed (OP6) fails to set a clear policy on limiting contacts with ICC fugitives. If clearer language is not possible at the 12th session, the ASP should continue discussions in 2014.
- The ASP should repeat its call for states to sign the Agreement on Privileges and Immunities (APIC) and amend domestic legislation should it prove to be a barrier. The bracketed language in OP9 should be deleted.
- The Cooperation Team welcomes discussions on a coordinating mechanism in the coming year (OP17). The Bureau should give consideration of the relationship between the prospective coordinating mechanism and current cooperation facilitation, and evaluate whether there still remains a need to establish a standing committee/working group on cooperation.
- The Bureau should directly or through a designated focal point prioritize the follow-up to the Kampala pledges in 2014 (OP28)

Victims and witness protection

- States should use the opportunity of the plenary session on cooperation to pledge to conclude victim and witness relocation/protection agreements with the ICC.
- States should also use the plenary session to address national capacity to protect victims and witnesses as per the principle of complementarity.

Bilateral agreements

- States should conclude bilateral framework agreements for interim release and relocation of acquitted persons or address obstacles to doing so.

Non-cooperation

- The ASP should address the effectiveness of its non-cooperation procedures and keep them under review.
- The thirteenth ASP session (2014) in New York should address the relationship between the ICC and the UNSC and its referrals as well as the role of Rome Statute States Parties on the UNSC.

ELECTIONS

Judicial Elections

- States parties should take into account the report of the ASP's Advisory Committee on Nominations and responses to the Coalition's Questionnaire to judicial nominees.
- The existence or absence of gender minimum voting requirements should not become a limiting factor on women's participation at the highest level of the ICC.

Committee on Budget and Finance

- Ahead of elections in 2014 for members of the CBF, the ASP should consider how to avoid *clean slate* elections and increase choice in the election of ASP and other officials.

ASP OVERSIGHT

Independent Oversight Mechanism

- The ASP should ensure that the ICC implements the anti-retaliation and whistleblower protection policy as soon as possible, to shield those who report misconduct in good faith from retaliation.
- There is scope to consider in more detail the establishment of other expert standing, subsidiary bodies to the ASP.

Working Methods of the ASP

- The ASP Oversight Team suggests a prioritized review in 2014 of ASP working methods to enhance the best availability and use of technical expertise.
- The Team invites the ASP to reform its procedures and adopt a general principle on transparency in light of international law and standards, according to which transparency should be the norm rather than the exception in its inter-sessional work.

Study Group on Governance

- The Team feels that the reference to 'participants' in the amendment proposal to Rule 68.1 by the Working Group on Lessons Learned should have been retained.
- Although the rights of the accused are referenced in the proposed amendment to Rule 68.1, if it is adopted, the Team urges the Assembly to monitor the implementation of the amendment to ensure that it will not negatively affected those rights in practice.
- The Team urges the ASP to request more transparency in the work of the CBF.
- The Team urges the CBF to ensure that all meetings with states are open to observers and, at the very least, formal reports of the meetings should be made public.

TRUST FUND FOR VICTIMS

- States should contribute to the Fund in accordance with their financial abilities, and in a regular manner.
- In developing its 2014-2017 Strategic Plan, the Trust Fund for Victims (TFV) should prioritize the further development of its public information and outreach capacity, including a French version, among other relevant languages, of its website.
- The TFV should further develop its fundraising capacity.

GENDER JUSTICE

Complementarity

- The ASP should promote the adoption of legislation establishing effective mechanisms and legal provisions for the investigation and prosecution of sexual and gender-based crimes at the national level, including defining crimes in line with international standards and strengthening domestic criminal justice systems to ensure functional and effective justice processes and equal access to justice for women and men.
- The ASP should promote the adoption of legislation on the rights of victims and witnesses, especially to protection, support, participation, information and reparation that includes a gender-sensitive approach.
- The ASP should encourage States Parties to address the barriers that victims of SGBV face in accessing justice at the domestic level and engage in initiatives aimed at reinforcing States' capacity to investigate and prosecute these crimes.
- The ASP should encourage States to ensure that judgments for gender based crimes rendered at the domestic level are enforced, in particular when reparations are ordered.

Victim Participation

- The ASP should encourage equitable gender representation among victims' participation, for example through supporting gender-specific outreach to women and girls.
- The ASP should grant the Court the financial means requested to process the growing number of victims' applicants in a fair and effective manner.
- The ASP should enable the Victim Participation and Representation Section (VPRS) to collect disaggregated data on applicants seeking to be formally recognized as victims by the Court.

Victim and Witness Protection

- The ASP should significantly increase the resources available to both the Victims and Witnesses Unit (VWU) and the VPRS of the Registry to allow them to efficiently carry out their tasks and duties towards victims, including towards victims of gender-based crimes.
- The ASP should welcome the Guidelines on Intermediaries and ensure that their implementation is funded to the appropriate level to allow, as required, capacity building activities aimed at reinforcing intermediaries' ability to work/assist victims of SGBV and to ensure the protection of the victims they work with.

OTP Gender Policy

- The ASP should encourage the OTP to comprehensively address gender issues in all of its policies, including its prosecution policy, without infringing on the independence of the Prosecutor's functions with respect to prosecutorial decision-making in relation to situations, cases and preliminary examinations.

ICC COMMUNICATIONS

- States parties should underline that public information and outreach are integral to the delivery of meaningful justice, including by facilitating victims rights. Ensure these activities have appropriate diplomatic and financial support.
- States parties should welcome ongoing evaluation and coordination efforts aimed at strengthening court-wide communications. Urge the Court to include new practices in updated strategies.
- States parties should highlight that early and direct communication with various audiences makes for a more effective and efficient Court. Intensify dialogue with the Court on how it can bolster its positive impact through outreach at the earliest opportunity, including in preliminary examinations.

LEGAL REPRESENTATION TEAM

- The Team welcomes a reassessment of legal aid following the Court's first trial cycles, however, the Team strongly cautions that any such reassessment not be undertaken purely to find cost-savings, but rather must take into account the particular needs of counsel for victims and defence to effectively and meaningfully represent their clients, and guarantee their rights in the courtroom.
- The team welcomes the initiative to assess the resources which are required in order to allow counsel to inform, consult and take instructions from victims. The Team underlines that any such reassessment must seek and take into account the views of legal representatives for victims, international and local NGOs providing assistance to victims and counsel, as well as victims themselves.
- The independent reassessment should take place in full consultation with legal representatives and associations of counsel at the ICC, the judges of the ICC, experts on defence and victims' representation, civil society and victims. The reassessment must also take into account particular nuances and differences which exist between the legal representation of defendants and victims.
- Any reassessment of the legal aid system should take place after the completion of the reparations phase of the first cases.
- The Counsel Support Section (CSS) must have the necessary resources to be able to quickly and efficiently process requests for legal aid from victims' and defence counsel.
- In recruiting additional staff to support CSS, sufficient care should be placed on ensuring that staff have experience and expertise in relation to victims' rights and knowledge of the requirements and modalities of legal representation of large groups of vulnerable victims.
- The Team strongly urges states parties to ensure that the Registry ensure that legal representatives are consulted as part of any proposed reorganization process, particularly related to the provision of legal aid, but also in relation to any aspect of reorganisation which will materially affect the ability of legal representatives' to properly represent their clients' (both defendants and victims) interests.

STRATEGIC PLANNING TEAM

- The Court, and each of its organs, should establish their own priorities, evaluating the necessary activities, and their performance indicators. States Parties may have a role in overseeing the implementation of the strategic plan, predominantly as an accountability exercise, but States Parties should not 'approve' the Court's priorities or activities.
- Strategic planning at the ICC provides an opportunity for positive engagement with the ICC and its organs, but should not give rise to any states party micromanagement that may endanger the independence of the institution.
- Transparency of the Strategic planning of the ICC should be governed by the principle of publicity as the norm. Exceptions to the principle should be properly justified in line with international principles.
- Strategic planning at the ICC should not be a private dialogue between States and the ICC. Transparency and accountability require the consideration of the wider public and civil society and other relevant stakeholders.
- The Team strongly cautions against the budget influencing and driving the ICC's strategic planning. The ICC's Strategic plans may serve as the tools by which certain budgetary elements can be foreseen. However, the strategic plan must drive and inform the budgeting of the ICC, not the reverse.
- The Team urges states parties and the ICC to ensure that the object and purpose of the Rome Statute and the fulfilment of its mandate, including the rights of victims is the starting point in any strategic planning exercise undertaken at the ICC or in discussions at the states parties' level.

- The new OTP strategic plan contains a number of important and significant changes in policy and practice which will require further consideration and evaluation by the OTP and interested stakeholders as the OTP moves forward with the implementation of its plan.
- A number of strategies will be developed in 2014 which will require further discussion and consultation. The Team strongly urges states parties and the ICC to ensure that the views of all stakeholders are gained and implemented as appropriate in the drafting of the ICC's strategic planning documents over the next year.



BUDGET AND FINANCE TEAM

The CICC's Budget and Finance Team (Team) submits the following three recommendations to the Assembly of States Parties in relation to its consideration at the 12TH Assembly session of the recommendations contained in the Report of the Committee on Budget and Finance (Committee) on the 2014 Budget of the International Criminal Court.¹

1. The Assembly of States Parties should consider the Committee's recommendations fully, taking into account the views of the ICC on how proposed reductions may affect its work in 2014.

The Committee recommends that the ICC's request this year of €126.07 million, including an increase of €10.95 million from 2013, should be reduced by approximately €4.5 Million to €121.57 million. The ICC's Budget requested the increase to fund a rise in staff costs, costs related to the Mali situation (which started in January 2013 and has so far been funded by the contingency fund), the Banda (which is scheduled to start in May 2014), expected increases in victims and witness protection and efforts to improve the capacity of the Office of the Prosecutor's (OTP) to conduct high-quality preliminary examinations, investigations and prosecutions.

As the Team recommends each year, the Assembly should consider the Committee's recommendations fully and the impact that proposed reductions could have on the ICC's work, to ensure that the ICC is allocated sufficient resources to function effectively and independently. The ICC should therefore inform the Assembly how the recommended reductions would impact each of the areas of work where additional resources have been requested or other areas of the ICC's work in 2014. In particular, the OTP should explain whether the cuts will affect its ability to implement its new strategic plan and to meet the assumptions set out in the proposed 2014 budget. In addition, noting that the ICC's requested increase for victim and witness protection was linked to the increase in the OTP's request, the Registry should report on how the proposed reduction of €1.1 million from its budget would affect this vital area of work.

2. The Assembly should request the Committee to provide further details of the formulae that underpin its recommendations and encourage the Committee and the ICC to develop these tools further for future years.

The Team notes that, this year, the Committee's recommendations are mostly at the macro-level and apply new formulae. In particular, it has recommended reductions to the OTP based on "a detailed examination of the average cost of per case in recent years" which arrived at a figure of €1.31 million per case. The Committee also applied the ratio of 2:1 comparing, historically, the costs of the Prosecutor and the Registry to deal with a new situation or case. However, unfortunately, the Committee does not explain in detail how it reached the cost per case figure or the 2:1 ratio. The Team believes this information would be particularly useful to states and observers to understand both the ICC's budget and the Committee's recommendations.

¹ *Draft report of the Committee on Budget and Finance on the work of its 21st session*, ICC-ASP/12/15, advanced version dated 3 October 2013. See also the Team's *Comments on the Proposed Programme Budget for 2014 of the International Criminal Court and other matters*, 5 September 2013, available at: http://iccnow.org/documents/Comments_and_Recommendations_to_the_CBF_at_its_21st_Session.pdf.

Moreover, although comparisons can be a useful basis for budgetary review and decision making, it should also be recognized that many situations and cases will be unique and may require resources above or below the average. For example, some cases may involve much higher security than others. Bearing in mind that the average cost per case may not always be sufficient, the Team recommends that the Assembly asks the Committee to explore how unique factors can be incorporated into the budget review process to ensure that the ICC receives adequate resources for new cases and situations.

3. The ICC should set out its plans to develop its work in the next years, including any budgetary implications.

The Team notes that the OTP requested an increase for 2014 to enhance the quality and efficiency of its work and that further increases would be “phased in over the next four years.”² The Team has also repeatedly highlighted other areas of the ICC’s work that are currently under-funded that should also be addressed by the ICC in the next years, and expresses concern regarding the need for continued investment in the Court’s ability to implement its mandate across the board, including with regard to ensuring equality of arms and effective implication of victims’ rights under the Rome Statute.³ There are also a number of activities set out in the ICC’s Strategic Plan 2013 to 2017 that may require additional resources.

To enable the Assembly of States Parties to fully consider the 2014 budget request and the recommendations of the Committee in the context of these longer-term plans, the ICC should set out clearly the areas of its work it intends to develop, how the changes will be phased in, the benefits that it will provide, and the projected additional costs for each of the next years. It will be particularly important for the ICC to identify the additional staff requirements so that they can be taken into account in reviewing the on-going freeze on recruiting permanent posts. This information will enable States Parties to understand the direction that the ICC intends to take and ensure that states are prepared for increase requests when they are made.

Members of the Coalition’s Budget and Finance Team will be available to discuss these recommendations and other comments on the 2014 Budget during the Assembly session.

² *Proposed Programme Budget for 2014 of the International Criminal Court*, ICC-ASP/12/10, para. 122.

³ For example, in the Team’s commentary on the 2014 proposal (see note 2), the Team highlighted underfunding in the Office of Public Counsel for the Defence, legal representation and participation of victims, field presence and outreach, implementing the Revised Strategy in relation to victims and the Trust Fund for Victims.



COOPERATION TEAM

The Coalition's Team on Cooperation submits the following recommendations to the Assembly of States Parties at its 12th session. From the outset the Team notes the important achievements made this year in the Bureau's cooperation facilitation, including the continuing use by The Hague Working Group of external expertise to inform the Assembly's decision making, most notably during the one-day workshop on cooperation as well as progress made in other areas that will be addressed in 2014, specifically the *roadmap* on arrest strategies, which should also draw on external expertise. The Team also commends the efforts of the Cooperation Facilitator, the Netherlands and Estonia as well as participating African states in convening meetings on witness protection in Dakar and Arusha that were hugely important in expanding the cooperative role of States Parties beyond The Hague Working Group.

1. Comments to the Draft Resolution on Cooperation

The Team welcomes adoption at the Assembly session of the stand-alone resolution on cooperation. While the Team is of the view that the resolution as a whole is a positive step forward and builds on the gains of last year, it wishes to draw attention to the following specific paragraphs:

1.1 Discussions on non-essential contacts should continue next year [OP6]

Where States Parties do not have the authority or capacity to execute an arrest, for example where the accused may be outside the territory of the State obliged to arrest or beyond the reach of its law enforcement agencies, any engagement or "*contact*" with persons who are the subject of an ICC arrest warrant should be avoided. The Team encourages the Assembly, regional organizations, and individual States Parties to adopt policies proscribing *non-essential contacts* with such persons. Avoiding such contacts with a view to isolating the fugitive is essential to long-term strategies of arrest by maintaining the authority of the court's arrest warrants and signalling that there can be no *business as usual* with ICC fugitives. Such contact also contravenes the spirit and purpose of the Rome Statute and sends the wrong message to victims and their families.

Nevertheless the Team is of the view that the draft operative language on contacts fails to set a clear policy on limiting contacts with such persons short of an arrest and is therefore inadequate to deal with the importance of the issue. The Assembly should continue to work toward putting in place adequate guidance, but if clearer language is not possible this year, then the matter should be taken up over the course of 2014 for further discussion.

1.2 The ASP should reaffirm the importance of signing APIC [OP8 & 9]

The Team notes that previous resolutions on cooperation have reaffirmed the importance of states and non-States Parties signing Agreements on Privileges and Immunities with the ICC as a means to give effect to Article 48 in the Rome Statute, not least in light of the detention of ICC staff in Libya in 2012. The Team therefore believes that language reaffirming this from previous resolutions should be retained together with the instruction that domestic legislation be amended should it prove to be a barrier. Unfortunately, the bracketed language as it appears in the draft does not meet that standard and the Team therefore recommends its deletion.

1.3 The Team welcomes discussions on a prospective coordinating mechanism [OP17]

The Team welcomes the proposal that the Bureau report to the next ASP session on the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation. The Team has consistently raised the importance of discussions that *inter alia* draw on the expertise and experience of persons in capital and who are responsible for processing requests for cooperation. The Team, therefore, welcomes discussion in the coming year as to how such a mechanism could be established in order to contribute to the exchange of best practices and lessons learned and help enhance cooperation, for example, assistance to enable more states to enter into bilateral framework agreements.

The Team has also recommended previously that the Assembly establish a standing committee or working group on cooperation, to augment the capacity of the cooperation facilitation and provide additional, inter-sessional opportunities for focused, expert discussion. There have been positive developments in the past two years, for example, the convening of seminars on cooperation issues that have sought the expertise of experts and which have moved the Assembly toward a model in which cooperation is given the priority and sustained attention it requires. A prospective coordinating mechanism could further equip the Assembly with the tools it needs to address cooperation on an inter-sessional basis. In assessing the establishment of a coordinating mechanism of national authorities, the Bureau should give consideration to the relationship between the mechanism and the current cooperation facilitation, and evaluate whether there still remains a need to establish, in addition, a standing committee or working group, to ensure the full range of court cooperation needs, whether in judicial assistance or in diplomatic and political support, can be addressed.

The Team would urge that discussions on a prospective mechanism also benefit from wider consultation with New York and capital and with a view to ensuring broad participation.

1.4 Follow-up to Kampala pledges should be prioritized in 2014 [OP28]

The Team welcomes the suggestion that the Bureau follow-up on the pledges made at the Review Conference in Kampala. The pledges at the Review Conference were a unique exercise on the part of the ASP, but there has been little follow-up to date to ensure the implementation of those pledges and to provide a clear framework for additional pledges. The Team further suggests that this follow-up be done either directly by the Bureau or through a designated focal point that would also develop a framework for follow-up in the future and receiving new pledges.

2. Discussions at the ASP should lead to greater Victim and Witness Protection

The efforts of the Cooperation Facilitator in convening forums in Dakar and Arusha, were an important contribution to encouraging states in the Africa region toward signing relocation agreements. This is nevertheless an obligation that should be shared by all states and while the need may presently be to protect witnesses by relocating them in the region where the ICC is currently investigating – the ICC's attention may very well turn to other regions in the future, conversely relocation in the region may not always be a viable option. It is therefore, imperative that the ICC cast its net as wide as possible in identifying states willing to relocate witnesses.

The Team considers the focus on witness protection and relocation in the plenary session as timely and hugely important – not least in light of the alleged interference with witnesses that has been claimed in the Kenya cases. As well as an opportunity to increase understanding of the Court's challenges, the Team hopes that the plenary discussion will be goal orientated. The Team encourages states to come prepared to actively participate in the session, and, where possible, to also commit to concluding agreements with the Court in this area. It would also be appropriate in the plenary discussion for states to reflect on strengthening domestic capacity to protect witnesses and victims, which could benefit the ICC's protection

needs, but also benefit national efforts to prosecute such crimes under the principle of complementarity, providing a connection to the Bureau's complementarity facilitation. In this respect the discussion should also address how the Court can strengthen its own practice and whether other approaches beyond relocation agreements are needed to ensure the Court has adequate systems for the protection and support of victims and witnesses as per the Rome Statute.

3. States should conclude bilateral framework agreements or address obstacles to doing so

It is the obligation of all States Parties to give effect to the rights of accused persons contained in the Rome Statute and bilateral framework agreements - which previous ASP resolutions have rightly promoted the conclusion of - are a crucial tool to give effect to the right of interim release and relocation following acquittal. There is however a regrettable absence of both agreements and while the Court has only recently circulated a model agreement for the relocation of acquitted persons, a model agreement for interim release has been in circulation since May 2011. While one state has shown an interest in concluding an interim release agreement according to the Court's report on cooperation, it is unclear why no state has yet signed such an agreement.⁴ The Team would therefore strongly urge states to consider and sign such agreements or address obstacles to doing so.

4. The ASP'S non-cooperation procedures should be kept under review

The Team takes note that in 2013, due to non-cooperation by an ICC State Party, ICC Judges once again issued a decision referring an instance of non-cooperation to the Assembly and Security Council that related specifically to the failure to arrest, but issued several other decisions that related to potential visits or actual visits of fugitives.⁵ The Team further notes the efforts of the ASP President who has not only condemned such incidents where they have occurred, but also called attention to the possibility of such incidents taking place and the opportunities for States Parties to work together to avoid non-cooperation (as per the Assembly's non-cooperation procedures). While the team welcomes the proposed Road Map on Arrest Strategies – necessarily leading to further instances of non-cooperation - it is also important that the Assembly address the effectiveness of its non-cooperation procedures and keep them under review. The Team also reiterates its dismay that the UN Security Council has failed to respond to these instances of non-cooperation that relate to its referred situations. Given that the next session of the Assembly will take place in New York, it may be appropriate to consider whether special attention to the relationship between the ICC and the UN, including the Security Council and its referrals as well as the role of States Parties who hold permanent or rotational membership on the Council, could be a feature of discussions.

⁴ http://www.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-35-ENG.pdf, para 39

⁵ See <http://icc-cpi.int/iccdocs/doc/doc1573530.pdf>; also *inter alia* <http://icc-cpi.int/iccdocs/doc/doc1640857.pdf>; <http://icc-cpi.int/iccdocs/doc/doc1646291.pdf>; and <http://icc-cpi.int/iccdocs/doc/doc1645811.pdf>



ELECTIONS TEAM

The Coalition's Team on Elections submits the following recommendations to the Assembly of States Parties, which will see the election of a Judge nominated by the Group of Latin American and Caribbean States and six members of the Committee on Budget and Finance.

Judicial elections

The Team has consistently called on States Parties to uphold the tenets of a fair, transparent and merit-based nomination and elections process. Any guidance or advice that States Parties can utilise that would assist in electing the most qualified and experienced judges should be given due attention.

Ahead of the upcoming elections, States Parties have the benefit of independently-compiled data in which to make an informed decision on the most appropriate candidate. In advance of the 12th session, the Coalition had circulated its questionnaire on the motivation and qualifications of judicial nominees, which the two nominees have graciously responded to and which complement the first-ever report of the ASP's own Advisory Committee on Nominations (ACN). The CICC's questionnaires aim to further elucidate nominees' motivation and skill sets so that a more informed evaluation may take place.

Following the example set by the Coalition-established Independent Panel on ICC Judicial Elections, the ACN was established pursuant to Article 36(4)(c). In providing meaningful and much-needed substantive expert advice, the ACN represents an important contribution to the ASP's management oversight functions.

In this respect and in addition to the responses to the Coalition's questionnaires, the Team welcomes the first ever-report of the ACN and its candid assessment of the nominees. The Team would strongly urge States Parties to consider the responses to the Coalition questionnaire and the report of the ACN.

Nevertheless the Team is dismayed that while there were no gender minimum voting requirements for this election, States Parties failed to nominate any female candidates. While designed to help ensure a fair representation of female and male judges of the Court, the minimum voting requirement with regards to gender should not become a limiting factor on women's participation at the highest levels of the ICC.

Given that the next judicial elections at the thirteenth meeting of the Assembly in 2014 will see a significant turnover of judges with six seats to be filled, it is important that States Parties start thinking ahead of time how they might identify the most qualified candidates. The CICC hopes that States Parties will endeavour to ensure a transparent national nomination process takes place ahead of the Assembly nomination process, which opens in the summer of 2014.

Committee on Budget and Finance

The Team notes that with six seats on the Committee on Budget and Finance (CBF) up for election at the 12th session, the nomination process managed to attract seven candidates, five of which are presently serving on the CBF. Only two of those nominated were female. ASP elections in the past, particularly insofar as the CBF is concerned, have been characterised by a process whereby States Parties identify

candidates through regional consensus and the number of candidates corresponding to the number of vacancies.

While seven candidates have been identified for six seats on the CBF, only two are competing for a single seat (Africa), the others are all nominated within their regional grouping, guaranteeing appointment. This effectively means there will be no election for the Eastern Europe and WEOG seats.

While the ASP resolutions governing the elections of the CBF encourage consensus candidates, 'clean slate elections' mean that the process is less competitive, some officials are guaranteed re-election and other States Parties are discouraged from fielding their own candidates. States Parties are encouraged to ensure that all elections are competitive, open and fair. Avoiding clean slate elections would also allow for fresh insight and expertise to be utilised for the good of the Court, and may help remedy the gender imbalance where it might exist.

Indeed, the practice of identifying single or consensus candidates can lend itself to candidates being identified on political grounds as opposed to qualification. The ASP as a governing body would benefit from having more choice of highly qualified candidates in all its elections.

With this in mind, the Team takes note of the Facilitator's discussion paper annexed to the Draft Report to the Bureau on the Review of the Procedure for the Nomination and Election of Judges, which addresses proposed changes in approach to clean slate elections and increasing choice in the election of judges.⁶ While the proposals contained in the discussion paper apply only to judicial elections, the Assembly should consider how to avoid clean slate elections and increase choice in the election of ASP and other officials in future elections. The Team would strongly urge the Assembly to address this in advance of elections for six CBF members due to take place at the thirteenth Assembly session in 2014.

⁶ Draft 8 November 2013.



ASP OVERSIGHT TEAM

The Coalition's Team on the ASP Oversight submits the following recommendations to the Assembly of States Parties at its 12th session.

Independent Oversight Mechanism

The Team welcomes the agreement reached in 2013 on the comprehensive operationalisation of the Independent Oversight Mechanism (IOM). The IOM is crucial instrument of the ASP to carry out its oversight mandate. The IOM will strengthen the ASP's credibility and effectiveness and will play an important role in enhancing the transparency and accountability of the Court, while ensuring both the judicial independence of the Court and the independence of the Office of the Prosecutor.

The Team urges the ASP to ensure that the Court implements the anti-retaliation and whistleblower protection policy as soon as possible, to shield those who report misconduct in good faith from retaliation.

Reform of the Working Methods of the Working Groups

It is essential that the ASP continues to strengthen its oversight role to better contribute to the successful functioning of the Court. The evaluation and rationalization of the working methods of the subsidiary bodies of the Bureau that took place over the course of 2013 is a very important initiative in this regard. The Team welcomes the mapping out of areas for improvement in the working methods of the ASP such as the need to improve the intersessional workload, the need to ameliorate the relationship and communication between the New York Working Group and The Hague Working Group, the lack of intersessional decision making possibilities, and the need for enhanced expertise to feed into ASP discussions. The Team calls on the ASP to renew the mandate for evaluating and rationalizing of the working methods of the subsidiary bodies of the Bureau for 2014.

The Team strongly encourages discussions in 2014 to be aimed at the *concrete* implementation of the many constructive recommendations set out by the *ad country* focal points in the Bureau Report. In addition, discussions in 2014 could consider the desirability of establishing additional standing bodies within the Assembly to enhance its working methods and, as discussed further below, expert advice.

Enhanced expertise

After ten years of operation, the challenges faced by the Court are becoming more technical. The Team is therefore particularly concerned with the need to enhance the institutional and technical expertise available to the ASP in its decision making process. Currently, the only two subsidiary bodies which report to the ASP composed of independent experts are the Committee on Budget and Finance and the Advisory Committee on Nominations. The lack of expert bodies leads to over-reliance on the CBF. The CBF is composed of experts "of recognized standing and experience in financial matters at the international level"⁷ but is asked to pronounce on issues beyond its specialized expertise and mandate. While the Team welcomes reference in the report on the Bureau's working methods to the possibility of making use in its facilitations of experts or groups of experts, the Team submits that there is scope to consider in more detail the establishment of other expert standing, subsidiary bodies. This would assist the ASP in its oversight by understanding the root causes – and not just through a budgetary lens - of obstacles to the fulfillment of the Court's mandate such as failures to execute judicial decisions or ensure effective legal representation.

⁷ ICC-ASP/1/Res.4, Establishment of the Committee on Budget and Finance, para. 2.

The Team suggests a prioritized review in 2014 of ASP working methods to enhance the best availability and use of technical expertise.

Transparency

The Team welcomes that the Study Group on Governance placed the dialogue with Court officials at the centre of its discussions and welcomes the ongoing consultations with civil society organisations and other stakeholders. The Team believes that broad consultation leads to enhanced transparency, key to the credibility of the work of the ASP in providing oversight to the Court and to build trust between the Court and the ASP. However, the Team has noted a worrying trend in the broader inter-sessional work of the ASP as an increasing number of facilitations and informal discussions are being closed to stakeholders such as the Court and civil society.

The Team invites the ASP to reform its procedures and adopt a general principle on transparency in light of international law and standards, according to which transparency should be the norm rather than the exception in its inter-sessional work. Exceptions should be duly justified, pursue a legitimate purpose and be the only available mechanism to ensure that purpose. Exceptions cannot comprise mere convenience.

The Study Group on Governance

The Team considers that the Study Group on Governance is an important forum for discussing ways to strengthen the institutional framework and efficiency of the Rome Statute system. The Team notes in particular that the Study Group has consistently and successfully sought to enhance the dialogue between the ASP and the Court.

Cluster I: Expediting the judicial process

The Team welcomes the consolidated process established by the Study Group to engage in a structured dialogue between all stakeholders within the Rome Statute system on proposals aimed at expediting the criminal process of the Court. The Team notes the amendment proposal put to the ASP to amend Rule 100 and to amend Rule 68. On Rule 68 on 'prior recorded testimony', the Team wishes to offer the following observations.

The Team feels that the reference to 'participants' in the amendment proposal to Rule 68.1 by the WGLL should have been retained. The use of the term 'parties' instead of 'participants' is a missed opportunity to give the appropriate status to victims and to further enhance the efficiency of the proceedings. The inclusion of 'parties' only may render the proceedings more complex and thus defeating the purpose of this cluster.⁸

Although the rights of the accused are referenced in the proposed amendment to Rule 68.1, if it is adopted, the Team urges the Assembly to monitor the implementation of the amendment to ensure that it will not negatively affected those rights in practice.

⁸ As raised during this year's discussions on the issue in The Study Group on Governance, leaving it to each judge/Chamber's discretion will entail a lengthy process, whereby Legal Representatives for Victims will need to request leave to file observations, parties will then reply to such an application and, following a positive decision, the actual submission will be filed, here as well subject to replies by the Parties. The Team wishes to point out that at the moment a similar situation is being applied in relation to victims' ability to participate in interlocutory appeals where such participation has to be decided on a case by case basis. In practice almost all applications to participate in such appeals have been granted and some, including Judges themselves in separate opinions, have stressed that an automatic right to participate would streamline the process and render it more efficient.

Cluster II: Enhancing the transparency and predictability of the budgetary process

The Team notes the efforts by the Study Group of Governance to enhance the transparency and predictability of the budgetary process and welcomes the constructive recommendations by the focal point for Cluster 2. A more transparent and stable budgetary process promises to lead to a better recognition in the ASP of the Court's mandate and consequential resource needs. In this regard, the Team urges the ASP to request more transparency in the work of the CBF, in particular, the publicity of reports from the Court that do not refer to the security of individuals, the judicial strategies of the parties, confidential information from international organizations or information from State Parties that would be protected under their national legislation.

The Team notes that in the last year, the Study Group on Governance has committed to improve communication between States Parties and the Committee on Budget and Finance. This led to draft resolution language being proposed to the ASP at its 12th session encouraging the organization of informal briefing sessions at the beginning of the regular biannual Committee-sessions in The Hague. The Team believes this is important to ensure that states understand the work of the Committee and its recommendations. However, safeguards for transparency remain a concern. Any communication between states and the CBF should reflect the independent nature of the CBF's evaluations and recommendations. In the Team's view, closed and non-transparent meetings with only a limited number of States Parties who are represented in The Hague in advance of the Committee's sessions risks undermining the perception of the Committee's independence.

The Team urges the CBF to ensure that all meetings with states are open to observers and, at the very least, formal reports of the meetings should be made public.



TRUST FUND FOR VICTIMS TEAM

The Coalition's Team on the Trust Fund for Victims submits the following recommendations to the Assembly of States Parties at its 12th session.

Voluntary contributions to the Trust Fund for Victims (TFV) remain insufficient for the TFV to effectively fulfill its mandates. In that respect, the Team welcomes the ASP's call upon states, international and inter-governmental organizations, individuals, corporations and other entities to contribute voluntarily to the TFV in the ASP 12 draft resolution on 'victims and affected communities and the Trust Fund for Victims, including reparations and intermediaries'.

Cognizant of the financial limitations of states in these difficult economic times, the Team calls on states to contribute to the Fund in accordance with their financial abilities, and in a regular manner. States should not be deterred from contributing by an inability to make a large contribution. Indeed, regular contributions by more states, regardless of the amount, would improve the financial sustainability of the Fund's programs by supplying it with a broader and more consistent base of financial support.

The Team calls on States Parties to follow up on the recent international political acknowledgements of the TFV including the adoption of a G8 Ministerial Declaration in March 2013 that singled out the TFV as an initiative meriting support by the international community for addressing the harm resulting from sexualized violence in conflict, echoed by the UN Security Council Resolution 2106 on Women, Peace and Security adopted in June 2013.

The ability of the Trust Fund to deliver on its reparation mandate is under very close scrutiny following role outlined for it in the decision of the Trial Chamber on reparation principles in the Lubanga case, which is the subject of appeals. The Trust Fund therefore needs to the full support of States and of the Court, in particular the Registry, to be able to successfully implement reparation.⁹ It also need additional resources to expand its projects of assistance – currently focused in DRC and Uganda¹⁰ - into other situations under investigation by the Court. In this regard, the Team stresses the imperative need to ensure the TFV has adequate financial and administrative capacity for fundraising activities. It will also be essential for the successful implementation of potential future reparation that the Trust Fund further develops its public information and outreach capacity.

The Team remains concerned that the Fund is reliant on the Registry's resources for its public information and outreach efforts. A particular concern to the Team is that the Fund's website remains available only in English. This makes non-English speakers dependent on the limited outreach and public information activities to receive information on the Fund, instead of being able to access the information easily and autonomously. However, all victims and affected communities have a legitimate interest in understanding the mandate of the Fund, how to access it and its limitations. The lack of easily available basic information to those with internet access in a language that they understand has the potential to exacerbate unrealistic expectations and create tensions on the ground.

⁹ Pending Appeals Chambers decisions on the conviction of Thomas Lubanga and on the Reparations decision in the same case, respectively.

¹⁰ Project have also been developed in CAR, however they have been suspended due to the security situation.

The Team recommends that, in developing its 2014-2017 Strategic Plan, the Trust Fund for Victims includes the following priorities:

1. the Trust Fund for Victims should develop further its public information and outreach capacity, including a French version, among other relevant languages, of its website; and,
2. the Trust Fund for Victims should develop further its fundraising capacity.



GENDER JUSTICE TEAM

The Coalition's Team on Gender Justice submits the following recommendations to the Assembly of States Parties at its 12th session.

Complementarity

In a great number of situations where the Court exercises or could exercise its jurisdiction, the lack of relevant or comprehensive legislation can lead to unwillingness or inability to genuinely prosecute sexual and gender-based crimes. The implementation of the Rome Statute should provide the opportunity for increased protection of the rights of victims of sexual and gender-based violence, enhancing their access to justice and all forms of reparation (including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition).

Incorporating a gender perspective in processes and mechanisms of domestic justice is, moreover, essential to ensuring gender justice. Such an approach includes ensuring both equal access to justice for women and men and removing obstacles to the investigation and prosecution of gender-based crimes, particular by defining crimes in line with the Rome Statute and international standards.

Recommendations to the Assembly of States Parties

- The ASP should promote the adoption of legislation establishing effective mechanisms and legal provisions for the investigation and prosecution of sexual and gender-based crimes at the national level, including defining crimes in line with international standards and strengthening domestic criminal justice systems to ensure functional and effective justice processes and equal access to justice for women and men.
- The ASP should promote the adoption of legislation on the rights of victims and witnesses, especially to protection, support, participation, information and reparation that includes a gender-sensitive approach.
- The ASP should encourage States Parties to address the barriers that victims of SGBV face in accessing justice at the domestic level and engage in initiatives aimed at reinforcing States' capacity to investigate and prosecute these crimes.
- The ASP should encourage States to ensure that judgments for gender based crimes rendered at the domestic level are enforced, in particular when reparations are ordered.

Victim Participation

Equitable gender representation among victims participating in proceedings is essential to ensure gender justice. The Team is concerned that collective approaches to participation may prevent the particular views of victims of sexual and gender-based violence, disproportionately women and girls, from being heard. Collective applications may not be appropriate for these victims who are often already marginalized and stigmatized.¹¹ The Court therefore needs to ensure that those victims will not be further excluded. The

¹¹ This position was stressed by OPCV in the *Gbagbo case*, Requests to appear before the Chamber pursuant to Regulation 81(4)(b) of Regulations of the Court on the specific issue of victims' application process, (ICC-02/11-01/11-40), Pre-Trial Chamber II, 14, Feb. 2012, <http://www.icc-cpi.int/iccdocs/doc/doc1331914.pdf>; Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims' application process (ICC-02/11-01/11-51), Pre-Trial Chamber I, 8 March 2012, <http://www.icc->

application scheme must guarantee access to participation to all victims of all crimes and must contribute to achieving equitable gender representation among victims participating in the proceedings.

Recommendations to the Assembly of States Parties

- The ASP should encourage equitable gender representation among victims' participation, for example through supporting gender-specific outreach to women and girls.
- The ASP should grant the Court the financial means requested to process the growing number of victims' applicants in a fair and effective manner.
- The ASP should also enable the Victim Participation and Representation Section (VPRS) to collect disaggregated data on applicants seeking to be formally recognized as victims by the Court. Currently, there are significant gaps in the data and profile of applicants seeking to be recognised formally as victims. The percentage of applicants whose gender is registered as 'unknown' continues to be high. Identifying trends in the number of victims applying to participate in Court proceedings is critical in order to understand any barriers faced by certain groups of victims and to ensure resources and activities are targeted efficiently and as needed towards underrepresented groups. Indicators on the implementation of the different policies and strategies of the Court should be gender-sensitive.

Recommendation to the Court

- The Court should develop a gender-sensitive approach to the victim application process, in particular taking into account the special needs of victims of gender-based crimes as required by article 68(1) of the Rome Statute and the challenges victims of gender based crimes face in seeking to access the application process.

Victim and Witness Protection

The Team notes that without a robust system in place to ensure the protection of victims and witnesses, few would agree to engage with the Court, whether as witnesses, participants or in any other category. While the continued existence of conflicts in many situation countries complicates the process of putting in place protection measures, this, however, does not lessen the legal or moral obligation to ensure adequate and effective protection.

Recommendations to the Assembly of States Parties

- The ASP should significantly increase the resources available to both the Victims and Witnesses Unit (VWU) and the VPRS of the Registry to allow them to efficiently carry out their tasks and duties towards victims, including towards victims of gender-based crimes.
- The ASP should welcome the Guidelines on Intermediaries and ensure that their implementation is funded to the appropriate level to allow, as required, capacity building activities aimed at reinforcing intermediaries' ability to work/assist victims of SGBV and to ensure the protection of the victims they work with.

Recommendations to the Court

- Ensure that protection and support measures are sensitive to the particular circumstances of women in conflict situations and are implemented in consultation with those to be protected or supported. Ensure also that women and girls who are recognized as 'victims' by the Court benefit from protection procedures where required.
- States Parties should request the Court to outline its staffing needs in the area of gender expertise and victim assistance when considering in 2014 whether to maintain the freeze on recruitment of permanent posts.

[cpi.int/iccdocs/doc/doc1367762.pdf](http://www.cpi.int/iccdocs/doc/doc1367762.pdf); It was also reflected in the Registry report on the implementation of the semi collective approach in the *Gbagbo case*. Decision Requesting the Victims Participation and Reparations Section to Submit Observations, 26 April 2013, ICC-01/04-02/06, <http://www.icc-cpi.int/iccdocs/doc/doc1585388.pdf>

OTP Gender Policy

Ensuring that sexual and gender-based crimes under the jurisdiction of the Court are fully investigated is essential to ensuring that justice is delivered to female and male victims of these crimes, who are often marginalized and stigmatized. This requires an adequate focus on this category of crimes in the policies of case selection and prioritization, as well as in relation to a number of other issues, including the manner in which such crimes are prosecuted. The Team welcomes the development of a gender policy by the OTP and the pledge that consultations with concerned stakeholders, including the States Parties, victims' organisations and civil society, will take place once a draft is ready.

Recommendations to the Assembly of States Parties

- The ASP should encourage the OTP to comprehensively address gender issues in all of its policies, including its prosecution policy, without infringing on the independence of the Prosecutor's functions with respect to prosecutorial decision-making in relation to situations, cases and preliminary examinations.

Recommendations to the Office of the Prosecutor

- The OTP should continue to engage in meaningful consultations with all concerned stakeholders, including States Parties, victims and their representatives and civil society, concerning the scope and content of the proposed OTP gender policy.

The OTP should ensure that sufficient time is given for such consultation so that input from external stakeholders can be comprehensive and meaningful.



COMMUNICATIONS TEAM

The Coalition's Team on Communications outlines below comments relating to ICC public information and outreach¹² activities in 2013, and proposes several recommendations to the Assembly of States Parties at its 12th session.

The ASP and States Parties (including in this year's declaration by the Informal Ministerial Network on the ICC) have attached great importance to the Court's public information and outreach activities. These have strong mandates in ICC legal documents, and are critical to the successful implementation of a range of Court policies and strategies. Judges have also highlighted outreach as crucial to enabling victims to participate in the trial phase and the reparations phase of Court proceedings.

Meanwhile, lessons learned—including from the ad hoc tribunals—clearly demonstrate that early, Court-led communication is essential for the meaningful delivery of fair and credible justice as set out in the Rome Statute.¹³ The Team welcomes efforts by the Court in the past year to strengthen its communication activities, particularly through greater coordination and increased ability to anticipate and respond to the need to communicate timely information about proceedings.

How can states continue to demonstrate their support for these crucial Court functions?

1. In the General Debate, highlight public information and outreach as integral to the Court fulfilling its mandate to deliver meaningful justice.
2. In discussions relating to victims, highlight the role of public information and outreach in facilitating victims' rights as outlined in the 2012 Revised Victim's Strategy and in the victims' resolution to be adopted at the ASP.
3. Ensure that the 2014 budget allocation supports the need for outreach and public information activities of both the Registry and the Office of the Prosecutor (OTP), through the regular budget of the Court.
4. Highlight developments in Kenya and at the African Union as examples of the crucial need for the Court to be able to communicate effectively and directly with various audiences to counter misinformation campaigns and political manipulation of the facts.
5. Welcome and support the continued inclusion of references in the Omnibus Resolution on the importance of, as well as the need to improve, Court outreach and public information activities and the need for early outreach from the outset of the Court's involvement, including during the preliminary examination stage. Underline how early and direct ICC communication ensures a fair, effective, independent and efficient Court.

¹² External communications functions of the Court include: a) external relations; b) outreach; and c) public information. These are defined in the Court's Integrated Strategy for External Relations, Public Information and Outreach.¹⁴ This paper covers recommendations on outreach and public information.

¹³ Please refer to the Team's Comments and Recommendations to the 11th ASP for an overview of the importance of the ICC's public information and communications activities @ <http://bit.ly/16v8xw2>

6. Encourage the Court to outline clearly the resources needed to fulfill their request from the Assembly. At present, neither the Registry nor the OTP have sufficient resources to communicate in preliminary examinations or when a new situation is opened. The Public Information and Documentation Section (PIDS) continues to be forced to focus primarily on cases at trial phase, while rotating resources from situation to situation. Because of this, crucial opportunities to reinforce the positive impact of the Court and counter misinformation have been lost in situations such as Kenya, Mali and Cote D'Ivoire.
7. At the same time, encourage the Court to find creative means of addressing this information gap, including through greater coordination between the OTP and the Registry. The Team notes in particular the lack of outreach in the Libya situation where recent decisions in the Saif Gaddafi and the Abdullah Al-Senussi cases have caused much confusion, particularly in Libya where there is a need for certainty and clarity.
8. Recognize the need for the Trust Fund for Victims (TFV) to reinforce its public information capacities, in both French and English. The TFV does not have its own outreach unit, relying mainly on PIDS and the Victims Participation and Reparations Section (VPRS) for its communication needs. State support is necessary to ensure outreach forms an integral part of Trust Fund's upcoming Strategic Plan for 2014-2017.
9. Welcome and support efforts underway to update the Court's 2006 Strategic Plan on Outreach through lessons-learned exercises conducted internally and with external partners, including civil society.
10. Welcome the inclusion of communications related objectives in the new OTP strategic plan (2012-2015) as a means of ensuring "understanding and cooperation from all stakeholders, partners and the communities the OTP serves," as well as in reinforcing deterrence, improving the effectiveness of preliminary examinations and promoting complementarity.
11. Recall the obligation of the OTP to "disseminate information on its activities to, and respond to enquiries from States, international organizations, victims, non-governmental organizations and the general public, with a particular focus on the communities affected by the work of the Office, as appropriate in coordination with the Registry" (R. 15, OTP Regulations¹⁴).
12. Welcome steps taken towards the development of a new ICC website, whose launch is expected in 2014, including ongoing consultations with various stakeholders, as well as wider efforts to improve online communications (such as daily videos summaries and thematic programs produced for the Ruto/Sang trial). Urge the Court to ensure these wider efforts form an integral part of a new Public Information Strategy (to update the 2011-13 strategy).
13. Encourage Court organs and officials to continue to increase internal coordination and effectiveness of court-wide messaging under the direction of the new Prosecutor and Registrar, and as appropriate the Presidency, codifying these efforts in updated communications strategies. In this respect, urge the Court to consider updating its Integrated Strategy for Outreach, Public Information and External Relations to reflect lessons-learned and new strategic approaches.

¹⁴ Regulations of the Office of the Prosecutor, 23 April 2009, http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/regulations%20of%20the%20otp.aspx

14. Underline, however, that any envisaged structural changes to the Registry or OTP should not impact negatively upon their respective mandates to communicate independently and effectively with victims and affected communities.
15. Call on the Court to ensure the development of gender-sensitive outreach and public information strategies and activities that allow women and girls to receive information appropriate to their needs in a timely fashion. This should include aiming at increasing the number of women able to make an informed decision on whether to apply to participate in proceedings and/or to request reparations.
16. Urge real attention in the development of court-wide completion strategies to the need for strong communications efforts as Court activities lessen in a given situation. This should include comprehensive plans for maintaining a presence and legacy in the fight against impunity at the national level, including for sexual and gender-based crimes and for crimes against children.
17. Call for consistent, gender-sensitive, messaging around the principles and procedures relating to reparations proceedings and processes, in consultation with victims legal representatives, the VPRS and TFV.
18. Join the call of the Informal Ministerial Network to intensify dialogue with the Court on strengthening its positive impact through communications on affected populations through robust and well-supported outreach conducted at the earliest opportunity.
19. In the same vein, commit to assisting in the implementation of the Court's public information strategy by convening seminars or other public fora to increase awareness of the ICC's mandate, activities, and jurisprudence.
20. Pledge to mainstream expressions of support for the ICC, universality and complementarity, the rights and needs of victims, and gender justice, in a wide range of state resolutions and statements.



LEGAL REPRESENTATION TEAM

The Coalition's Team on Legal Representation submits the following recommendations to the Assembly of States Parties at its 12th session. The Team supports efforts to review and ultimately improve the effectiveness and meaningfulness of legal representation at the ICC, including through an efficient legal aid system. At the outset, the Team wishes to recall that the final decision on the specific modalities of representation in each case rests exclusively with the judiciary of the ICC.

Furthermore, the Team places utmost importance on ensuring that legal representation is effective. This is essential to the realization of fair trial rights, and victim rights to participation and reparation, as set out in the Rome Statute. These rights are central to the legitimacy and purpose of the Rome Statute system.

Legal aid exists as a result of the need to ensure that indigent defendants and victims can have access to effective and meaningful legal representation so that they can fully exercise the rights that are recognised and accorded to victims in the Statute. Therefore, States Parties must ensure that any reviews or assessments of the legal aid system ensure such meaningful and effective representation. The Team notes that the current modalities for legal representation at the ICC (particularly for victims' representation) are by no means settled or uniform and future assessments to be undertaken into the legal aid system of the Court must be cognisant of this.

Reassessments of Legal Aid following the Court's first trial cycles

The Team notes that the functioning of the legal aid system will be 'reassessed' following the Court's first trial cycles.¹⁵ The Team welcomes such an initiative, and welcomes that the reassessment will include the engagement of independent experts. However, the Team strongly cautions that any such reassessment not be undertaken purely to find cost-savings, but rather must take into account the particular needs of counsel for victims and defence to effectively and meaningfully represent their clients, and guarantee their rights in the courtroom.

In particular the Team notes that the reassessment of the legal aid system will pay special regard to the 'resources required for the legal representation of victims, including the ability of counsel to consult with victims'¹⁶. The team welcomes the initiative to assess the resources which are required in order to allow counsel to inform, consult and take instructions from victims. The Team underlines that any such reassessment must seek and take into account the views of legal representatives for victims, international and local NGOs providing assistance to victims and counsel, as well as victims themselves.

The Team strongly also urges States Parties to ensure that the independent reassessment should take place in full consultation with legal representatives and associations of counsel at the ICC, the judges of the ICC, experts on defence and victims' representation, civil society and victims. The reassessment must also take into account particular nuances and differences which exist between the legal representation of defendants and victims.

The Team stresses that any reassessment of the legal aid system should take place after the completion of the reparations phase of the first cases. To undertake such a reassessment prior to this stage would be

¹⁵ Draft report of the Bureau on legal aid, ICC-ASP/12/29, 15 October 2013, Annexed Resolution paragraphs, para. 4
16 Ibid.

premature, in light of the fact that the reparations phase is presented as a separate trial phase for the purpose of the Court's legal aid system.¹⁷ While victims are allowed to introduce evidence relating to reparation during the trial phase, a separate reparation phase, with distinct reparation proceedings may also be envisaged, which could entail specific needs for legal aid resources for both defence and victims' counsel. Furthermore, the approach of Chambers towards reparation proceedings may vary (there has only been one decision so far, which is under appeal) and it should not be assumed that the procedure set out in the *Lubanga case* will be replicated in other cases.

However, the future reassessment of legal aid should not preclude ongoing efforts and changes being made to ensure clarity and consistency in the assessment and processing of legal aid requests in the current system at the Court. Clarity and consistency is required in processing resource and legal aid requests, as well as in the ultimate decisions taken by the Court, particularly in relation to enabling legal representatives of victims to consult with their clients in the field.

Finally, the Team notes that the impact and role of the Office of Public Counsel for Defence on the legal aid system has been highlighted as requiring further review.¹⁸ The Team notes also that independent experts to be engaged by the Court have been tasked with preparing a strategic plan for defence. The team wishes foremost to highlight the crucial importance of defence to the ICC. However, the Team also notes that a 'strategic plan for the defence' may go beyond merely legal aid and financial issues and the Team is cognisant that such a strategic plan may overlap with other facilitations, particularly the facilitation on strategic planning, and this will require careful consideration. In relation to a 'strategy for the defence' the independence of the defence in its functioning is of utmost importance.

Counsel Support Section

The Team supports the request of the Counsel Support Section (CSS) in its 2014 proposed budget submission for additional human resources.¹⁹ In particular the Team notes that in light of the extra administrative requirements within the CSS which are as a direct result of the implementation of the Assembly of States Parties' legal aid amendments adopted at the eleventh ASP session, the CSS must have the necessary resources to be able to quickly and efficiently process requests for legal aid from victims' and defence counsel. Not having proper resources will likely lead to a slow and inefficient processing of legal aid applications and will adversely affect representation and the smooth and expeditious running of cases.

However, in recruiting additional staff to support CSS, sufficient care should be placed on ensuring that CSS staff have experience and expertise in relation to victims' rights and knowledge of the requirements and modalities of legal representation of large groups of victims, including vulnerable victims, spread over large distances and how these issues may impact ensuring meaningful and effective legal representation. The Team notes that the Court's legal aid system has been modelled principally on the provision of legal aid for the defence and therefore a particular understanding of the novel provision of legal aid for victims is necessary.

Finally, while increased resources for the CSS may be necessary, the Team is cognisant of certain navigational difficulties within the legal aid system for legal representatives which are caused in part by a lack of articulated processes and systemic (as opposed to personal) feedback. The Team strongly urges the States Parties to ensure that the Registry, in light of the Registrar's public commitment to reorganize the Registry, ensure that legal representatives are consulted as part of any proposed reorganization process, particularly related to legal aid provision, but also in relation to any aspect of reorganisation which will materially affect legal representatives' ability to properly represent their clients' (both defendants and victims) interests.

¹⁷ Registry's single policy document on the Court's legal aid system, CBF/20/5, paras. 50 – 59.

¹⁸ Draft report of the Bureau on legal aid, ICC-ASP/12/29, 15 October 2013, Annexed Resolution, para 6.

¹⁹ Proposed Programme Budget for 2014 of the International Criminal Court, ICC-ASP/12/10, 29 July 2013, at p.92.



STRATEGIC PLANNING TEAM

The Coalition's Team on Strategic Planning submits the following recommendations to the Assembly of States Parties at its 12th session.

Strategic planning is essential for building confidence in the International Criminal Court and strengthening its capacity, strategic planning also contributes to the accountability and transparency of any institution. Strategic planning also increases understanding of the work of the ICC and by doing so, avoids undue interference in its work. At the same time, the strategic planning of the ICC has to contribute to strengthening its independence. The Strategic Planning Team of the Coalition, ('Team') underscores that the Court, and each of its organs, should establish their own priorities, evaluating the necessary activities, and their performance indicators. States Parties may have a role in overseeing the implementation of the strategic plan, predominantly as an accountability exercise, but States Parties should not 'approve' the Court's priorities or activities. In other words, strategic planning at the ICC provides an opportunity for positive engagement with the Court and its organs, but should not give rise to any micromanagement that may endanger the independence of the institution.

Transparency of the Strategic planning of the ICC should be governed by the principle of publicity as the norm. Exceptions to the principle should be properly justified in line with international principles. The strategic plans of the ICC should allow for further understanding of the Court and furthermore, as a result of transparency, the important views of different stakeholders can be contributed. The Team therefore submits that strategic planning at the ICC should not be a private dialogue between States and the Court. Transparency and accountability require the consideration of the wider public and civil society and other relevant stakeholders who, even if not involved directly in the decision making process, should be given an important role as independent observers. Indeed, wide consultations contribute in building a sense of trust in the Court in all stakeholders.

Linking Strategic Planning to the Budget

The Team notes that the Assembly has highlighted 'the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process'²⁰. The Team highlights that this may allow for predictability in the Court's budgeting. However, the Team strongly cautions against the budget influencing and driving the Court's strategic planning. The Court's Strategic plans may serve as the tool by which certain budgetary elements can be foreseen, which again fosters confidence in the institution. However, the strategic plan must drive and inform the budgeting of the Court, not the reverse. To do otherwise would be for the Court to run the very real risk of becoming a resource rather than demand driven institution, where the Court's strategy and functions are determined by budgetary constraints rather than the Court's strategy, which has as its key purpose to ensure that the Court can fulfill its mandate.

The Rome Statute at the heart of strategic planning

The Team urges States Parties and the Court to ensure that the object and purpose of the Rome Statute and the fulfillment of its mandate, including the rights of victims is the starting point in any strategic planning exercise undertaken at the ICC or in discussions at the States Parties' level. The importance of the

²⁰ Report of the Bureau on the Strategic planning process of the International Criminal Court, ICC-ASP/12/48, 8 November 2013, Annexed Resolution, para. 8

preventative effect of the investigations and proceedings of the ICC should be recognised, the importance of fair trial rights and standards, outreach on the Court's activities and ensuring effective and meaningful victims' participation should be recognised - to name a few. The development of the Court's strategies and the implementation of all strategic documents should be closely coordinated and cross-referenced to ensure that ultimately the "mission" and objective of each plan better and more concisely reflects the values and the object and purpose of the Rome Statute, and how each activity may lead to the strengthening of the Rome Statute system and the fulfillment of the Court's mandate.

Future ICC Strategic Planning Activities

The Team notes that a number of specific ICC strategic planning exercises are being undertaken. In particular, the Team notes that the OTP strategic plan has been revised and will be implemented in the coming years. The new OTP strategic plan contains a number of important and significant changes in policy and practice which will require further consideration and evaluation by the OTP and interested stakeholders as the OTP moves forward with the implementation of its plan.

The Team notes also that a number of other strategies may be developed following the Assembly of States Parties' 12th session and in 2014, including a 'strategic plan for defence' as well as strategic plans for outreach and the Registry by way of examples. These will require further discussion and consultation in 2014, and the Team strongly urges States Parties and the Court to ensure that the views of all stakeholders are gained and implemented as appropriate in the drafting of the Court's strategic planning documents next year.