

**The Legal Representation Team**  
**Of the Coalition for the International Criminal court (CICC)**

**Recommendations to the Fifth Session of the Assembly of State Parties**  
**From 23 to 25 and 27 November to 1 December 2006**

**29 November 2006**

**PREFACE**

*While the work of the ICC Legal Representation Team reflects the positions of those Coalition members most active on particular issues and this paper has been prepared in consultation with other Coalition teams, this paper cannot be construed to represent the views of all organizations/members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. Coalition teams now follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the International Criminal Court. Teams provide a forum within which interested members discuss issues, follow developments, elaborate relevant research and positions in response to developments, and elaborate and implement advocacy strategies in relation to those positions. All Coalition members are welcome to join any teams and all Coalition members are regularly apprised of the work of the teams.*

***Legal representation: lessons to learn from the Lubanga case***

*While the Pre-Trial Chamber of the ICC is hearing its very first case on the confirmation of the charges brought against Thomas Lubanga, the CICC Legal Representation Team of the Coalition would like to draw the attention of the States Parties to lessons that can already be learned from this first case, especially with respect of the practices of the Court regarding legal representation.*

**1/LIST OF COUNSEL**

Female counsel are still underrepresented on the List of Counsel established by the Registry: Out of 168 counsel<sup>1</sup> accepted on the list only 27 (or 16%) are women. In the Lubanga case, only one out of four persons presently appearing as counsel<sup>2</sup> is a woman.

**A more active and informative outreach strategy** needs to be developed by the Court to encourage women to apply to the list. However, we are aware that in some of the situation countries, women are underrepresented in national bar associations.

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<sup>1</sup> As of 9 October 2006

<sup>2</sup> 1 defense counsel, 3 counsel for victims

**The ASP should request a report from the Court** assessing the implementation of the admission policy.

**Eventually, the rules and regulations for counsel might need to be reviewed**, in order to allow more female lawyers to comply with the conditions (Rule<sup>3</sup> 22, ROC<sup>4</sup> 67).

Female lawyers are often more experienced in family law and other gender sensitive issues (Gender Based Violence, experience in working with traumatized victims) but often less specialized in criminal law or international law. Experience in gender and child related law is very useful, considering the nature of the crimes under the jurisdiction of the Court.

In addition, **State Parties should develop a more active approach on encouraging access for women to the legal profession in their countries.**

## **2/ LIST OF ASSISTANTS TO COUNSEL**

ROC<sup>5</sup> 68 and ROR<sup>6</sup> 124 and 125.

When the Lubanga case started, the list of assistants to counsel was not yet available which created some difficulties for the defense team. Therefore, the Team welcomes the call for applications and the publication of the application forms for assistants to counsel on the ICC website and **looks forward to the publication of a gender-balanced list of assistants to counsel and a report on this to the ASP next year.**

## **3/ LIST OF INVESTIGATORS TO COUNSEL**

ROR 137

Given the difficulties in the Lubanga case to identify and recruit an investigator for the defense team, the Team also welcomes the publication of the call for applications to the list of professional investigators and is **looking forward to the publication of the list as well as the selection and vetting procedures for both female and male investigators.**

## **4/LEGAL AID**

ROC 83-85. ROR 113 and 130-134.

**The budget for legal aid will need to be reviewed in the light of the experience of the Thomas Lubanga case.**

In the Lubanga case, legal aid has been (provisionally) granted to the suspect as well as to one victim. The other victims are being represented by counsel supported by human rights NGOs.

Victims and defense counsel: underestimation of workload

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<sup>3</sup> Rules of Procedure and Evidence

<sup>4</sup> Regulations of the Court

<sup>5</sup> Regulations of the Court

<sup>6</sup> Regulations of the Registry

The workload of both defense and victims' counsel in the preliminary phase has been underestimated: **the confirmation of charges procedure since the arrest warrant has been issued is already much longer than the 3 months estimated in the Court Capacity Model**<sup>7</sup>. In addition, the Court, and thus also counsel, have to deal with important new issues, such as victims' participation, victims' rights during the confirmation of charges hearing, as well as the confirmation of charges itself.

#### Defense Counsel : adequate resources

This underestimation of the workload has been recognised by Pre-Trial Chamber I in the Lubanga case, which has granted more resources to the defense counsel team than provided for by the legal aid system<sup>8</sup>. It is also reflected in the Report of the Court to the ASP on options for ensuring adequate defense counsel for accused persons.<sup>9</sup>

#### Victims counsel: adequate resources and assumptions and criteria for legal aid

The draft budget for 2007 provides for legal aid on the assumption of two groups of victims per case<sup>10</sup>. Meanwhile, the Lubanga case already shows that various groups of victims with conflicts of interest (former child soldiers on the one hand, victims of other crimes on the other hand) have applied for participation. Moreover, the Prosecution announced that more investigations will take place in the DRC situation as well as in other situation countries, which will hopefully inspire more victims' groups to apply for participation. These applicants require legal assistance as well. It therefore remains to be seen if the assumption regarding victims' participation will stand.

Problems related to the Legal Aid for victims have already been exposed in the Victims Rights Working Group letter to the Court<sup>11</sup>. The Court should make reasonable efforts to provide legal aid right from the filing of a request for participation. Currently, legal aid to victims is only granted once their request for participation has been accepted. Various victims, having applied for participation in the Lubanga case, have seen their requests rejected, while they have not benefited from legal assistance to help them. Legal aid should continue until decisions on reparations are enforced.

In addition, teams of victims' counsel should be provided with the resources necessary to engage the assistance of medical and psychological experts, when appropriate. Again, the Court should seek gender balance in this regard.

#### Review and transparency

The process for granting legal aid needs to be transparent and open to evaluation and review.

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<sup>7</sup> Report on the Court Capacity Model, 21 August 2006, p. 8, 23.

<sup>8</sup> Decision of PTC I, 22 September 2006, ICC-01//04-01/06.

<sup>9</sup> ICC-ASP/3/16. Update to annex 2 : Payment details of the ICC legal aid scheme.

<sup>10</sup> Proposed Programme Budget for 2007 of the ICC, Annex III, Assumptions for the proposed programme budget for 2007, p. 177.

<sup>11</sup> VRWG, Application forms for legal aid for victims, 28 April 2006.

**The Team therefore welcomes the establishment of a Legal Aid Commission Commission<sup>12</sup>. The composition of the Commission ought to be of experts with specific experience on legal aid systems, who also are sensitive to the context of the situation countries and the specific problems of applicants at the grassroots level, including gender related issues.**

**The Team is looking forward to the Commissions' first report and to the review of the legal aid system.**

## **5/PUBLIC OFFICES FOR COUNSEL**

ROC 80.2 and 81

Both the OPCD and the OPCV have played an important role in the confirmation of charges hearing in the Lubanga case, providing legal research and advice as well as support to the defense as well as the victims' counsel.

However, the objectives of the Public Offices of Counsel are still unclear and need to be clarified. For instance, in the Proposed Programme Budget for 2007, in the list of expected results of the OPCV, the number of victims to be represented by its Office figures as a performance indicator<sup>13</sup> and yet such representation is under discussion (as shown during the ICC seminar on counsel issues in May-June 2006).

Thus, it is clear that the role of both Public Offices needs to be clarified. While their expected results are already mentioned in the Proposed Programme Budget, the Offices are not integrated in the Strategic Plan of the Court. The CICC team is of the opinion that **both Offices need to develop an independent and transparent strategic plan.**

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<sup>12</sup> ROR 136.

<sup>13</sup> Proposed Programme Budget for 2007 of the ICC, Annex III, Assumptions for the proposed programme budget for 2007, p. 154.