



Barreau Pénal **International** Criminal Bar

20 February 2012

Madame T. INTELMANN

President of the Assembly of State Parties

OBJECT: Legal Aid Reform

Dear Madame President,

In late December 2011 a limited number of NGOs were invited by the ICC Registrar to provide comments on a discussion paper prepared by her Office. This paper proposes a series of severe cuts in the allocation of resources to Defence and Victim's counsel pursuant to the ICC legal aid scheme. While this invitation was only received by most in early January 2012, comments were requested by 31 January 2012.

The Registrar received many detailed observations from a number of different organizations, including professional organizations of counsel. All opposed the proposed reductions, which would directly impede the ability of defence and victim's counsel to fulfill their statutory and ethical obligations on different levels.

A meeting, qualified by the Registrar as "informal", was held on the 7th of February 2012; invitations were only sent late in the afternoon of Friday the 3rd of February, which made it impossible for many stakeholders to attend. It was announced during the meeting that the final Registrar's report was due on 15 February. The Registrar was told by participants present that this deadline was unrealistic, given the real complexity of the matter and the obligation imparted to the Registrar to **consult** with any representative body of counsel or legal

Barreau Pénal International Criminal Bar

Barcelona Secretariat:

Avenida Diagonal 529, 1^o2^a 08025 Barcelona, España

Tel.+34 +93 405 14 24, Fax: Tel.+34 +93 405 14 24/ E-mail: nuria_bpi@icab.es, erinda_bpi@icab.es

associations, pursuant to **rules 20.3 and 21.1** of the rules of Procedure and Evidence.

The final report was, notwithstanding, issued on 15 February 2012 and contained a few - modest - changes. The basic idea of seriously reducing the resources allocated to legal aid was kept.

The Registrar's final report did state, in paragraph 9, that "consultations" were held in conformity with Rule 20.3. It also states that the Registrar wants to continue the dialogue with extern partners, "in order to be able to install a program of revised legal aid in a coherent and substantial manner".

The report indicates that it contains propositions concerning two aspects of the ICC legal aid system with regard to the composition of teams and the determination of remunerations. It also indicated that other issues, such as compensation for travels, the issue regarding several mandates and the intervention of the offices of public counsel, would be debated in the "consultation process" and included in propositions that would be made to the Assembly of State Parties (ASP) in course of its 11th session.

We are therefore unclear as to whether the current propositions made by the Registrar's office are provisional or final.

ICB and ICDAА are of the opinion that the current propositions constitute a serious reduction of the resources available under the ICC legal aid system and do not meet the international standards necessary to ensure "equality of arms". ICB and ICDAА are of the opinion that it is of the utmost importance to set up an expert ad hoc commission to assess in depth this very complex issue, at the heart of fair trial procedure.

ICB and ICDAА fear that the proposed measures would have serious repercussions on the fairness, integrity and overall credibility of proceedings before the ICC.

ICB and ICDAА would like to remind the ASP of **regulation 83.1** of the Rules of the Court which places upon the **Registrar** the responsibility to determine the costs that need to be met to enable an effective and efficient defence.

Barreau Pénal International Criminal Bar

Barcelona Secretariat:

Avenida Diagonal 529, 1º2ª 08025 Barcelona, España

Tel.+34 +93 405 14 24, Fax: Tel.+34 +93 405 14 24/ E-mail: nuria_bpi@icab.es, erinda_bpi@icab.es

This obligation must be executed in a manner which is consistent with the obligation placed on the Registrar under **Rule 20.2** of the Rules of Procedure and Evidence concerning the financial administration of the Registry which must be organized “*in such a manner as to ensure the professional independence of defence counsel*”.

ICB and ICDAА are concerned with a justice system that meets international standards of human rights as enshrined in the Rome Statute and is both fair and effective. This goes far beyond the issue of costs and cannot be determined on the basis of “market” – criteria. This is fundamental to ensuring the credibility of the process and the legitimacy of the Court.

Yours Sincerely,



Ms Elise GROULX,
President of the ICDAА

Mr. Luis DEL CASTILLO ARAGON,
President of ICB, Former Dean of the Bar
of Barcelona.

Honorary President
and Past President of ICB.

International Criminal Bar www.bpi-icb.com

International Criminal Defence Attorneys Association www.aiad-icdaa.org