



**Address to the Committee on Budget and Finance of the ICC ASP by Matteo Tonella, IBA
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6 September 2023

Honourable members of the Committee on Budget and Finance, I am grateful for this opportunity to address you today on behalf of the International Bar Association (IBA) International Criminal Court and International Criminal Law (ICC & ICL) Programme¹.

The IBA is a strong and steadfast supporter of the ICC and the Rome Statute system. We work to strengthen States Parties' support for the Court, together with our members, including by promoting the adoption of legislation at a national level, and through providing recommendations on effective oversight of the ICC, national frameworks for domestic prosecutions of Rome Statute crimes, cooperation, and universality. Since 2005 our office in The Hague has monitored fair trial and equality of arms issues at the ICC.

Today I would like to share some reflections on the ongoing efforts to reform the legal aid policy of the ICC and relatedly on the importance of ensuring sufficient resources for the Court through its budget.

Legal Aid

Legal aid is a key component of the ICC's administration of justice. An adequately funded and efficient legal aid system ensures that indigent defendants and victims have access to legal representation before the Court, and guarantees the fairness of judicial proceedings.

The IBA welcomes the ongoing efforts of the Registry to review the Court's legal aid system and calls for the adoption of a revised legal aid policy based on the needs of external defence and victims' teams to effectively represent their clients in ICC proceedings.

The current legal aid policy, entered into force in 2013, has become obsolete and fails to grant to external counsel adequate working conditions, in particular when compared to the ones enjoyed by their counterparts in the Office of the Prosecutor and their colleagues in the Registry and Chambers. The outdated legal aid policy threatens the equality of arms principle on which the policy itself is based, and has led to protests and strikes from support staff based on the serious shortcomings of their working conditions.

¹ The IBA ICC & ICL Programme monitors issues related to fairness and equality of arms at the ICC and other Hague-based war crimes tribunals and encourages the legal community to engage with the work of these Courts. The IBA's work includes thematic legal analysis of proceedings, and ad hoc evaluations of legal, administrative and institutional issues which could potentially affect the rights of defendants, the impartiality of proceedings and the development of international justice. <https://www.ibanet.org/ICC-ICL-Programme>

External defence and victims' teams are not ICC personnel. As such, they do not enjoy contractual protection, they do not have sick leave or parental leave, health insurance or pension, and they cannot access the Court's internal justice system protecting staff from harassment and abuse.

The remuneration of external counsel is, according to the ICCBA, at least 35% lower if compared to equivalent counterparts working at the Court. The disparity is largely impacted by the different tax regimes applied to ICC personnel and external counsel, further exacerbated by the high inflation rates in the Netherlands and the lack of automatic adjustment mechanisms.

The interim measures taken by the ICC Registrar to increase the salary of external counsel of 10% in 2023, which is a welcome step, does not *per se* achieve the necessary equality of means.

The IBA welcomes the submission to the CBF of a reviewed draft legal aid policy reform and expresses its appreciation for the consultations held with the legal profession, states parties, and civil society towards its development.

The IBA reiterates that the new ICC legal aid policy must ensure, at a minimum, that external counsel and teams enjoy basic labour rights, employment protection, and protection against harassment and abuse. The policy must also ensure that external counsel have a level of remuneration that guarantees their ability to effectively represent their clients, with a simplified procedure to determine inflationary adjustments.

These are necessary substantive changes that can only be achieved by taking into account the actual representation needs of defence and victims' teams and that must not be limited by financial constraints, as was clearly recognized by the independent experts in their report². The imposition of a financial envelope to the reform efforts, in fact, is one of the main reasons for the failure of numerous previous revision attempts.

We believe that a sound reform of the ICC's legal aid system cannot prescind from addressing the issue of income taxation for defence and victims' teams. The CBF should recognise that resolving the issue of taxation would provide the necessary additional resources to bring legal aid funding up to a reasonable level, and in doing so promote the fairness and equality of arms that the ICC and ASP strive to achieve.

In expressing its recommendation to States Parties on the revised legal aid policy reform, the CBF should carefully consider the views expressed by the ICC Bar Association and other counsel before the Court as the main users of the legal aid system. It is essential that any reforms adopted do not have the counterproductive effect of resulting in a lower net pay for counsel than is already being received.

Sufficient resources

Before concluding, we would like to stress once again the importance that the IBA places on the sufficiency, sustainability, and predictability of ICC resources, of which the funding of the legal aid system represents only one facet. The ICC should be afforded the necessary resources through its regular budget cycle to discharge its mandate effectively, efficiently, independently, and in line with considerations of fairness.

² Independent Expert Review of the ICC, Final Report, Recommendation R328.