



Association Française pour la promotion de la compétence universelle - Judiciary Pole,
Member of the Coalition for the International Criminal Court

Observations on the recommendations related to the Court's Legal Aid System

8 June 2017

1. This document, prepared by the French organization promoting universal jurisdiction called *Association Française pour la promotion de la compétence universelle* (AFPCU)¹, is produced in response to the International Criminal Court (ICC) Registry's call for experts and organisations of the civil society, dated 9 May 2017, to submit written observations on the Review of the ICC Legal Aid System (LAS)².
2. The AFPCU team³ based its work on the assessment of the current ICC LAS (in particular through the Assessment Report⁴⁵) with the aim to identify its shortcomings and

¹ *Association Française pour la promotion de la compétence universelle* (AFPCU) is an active member of the coalition for the International Criminal Court (ICC). AFPCU is the first French association delivering

² ICC Registry, *Concept Paper – Draft for Comments – Review of the International Criminal Court Legal Aid System* (Concept Paper): available at: <https://www.icc-cpi.int/itemsDocuments/legalAidConsultations-CP-ENG.pdf>.

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⁴ Richard J. Rogers, Global Diligence LLP, *Assessment of the ICC's Legal System*: <https://www.icc-cpi.int/itemsDocuments/legalAidConsultations-LAS-REP-ENG.pdf> (Assessment Report) ; James Bethke, Marcel Lemonde et Andrew Silverman, International Criminal Justice Consortium, *Report on the Assessment of the Functioning of the International Criminal Court's Legal Aid System*, 27 octobre 2015.

⁵ Richard J. Rogers, Global Diligence LLP, *Assessment of the ICC's Legal System* : <https://www.icc-cpi.int/itemsDocuments/legalAidConsultations-LAS-REP-ENG.pdf> (Assessment Report) ; James Bethke, Marcel Lemonde et Andrew Silverman, International Criminal Justice Consortium, *Report on the Assessment of the Functioning of the International Criminal Court's Legal Aid System*, 27 octobre 2015.

to provide recommendations for a system more efficient while taking into account both the objective to save potential costs and the need to establish a LAS enabling an ambitious, effective and dynamic representation for suspects, accused and victims.

3. Before going further, the AFPCU would like to commend the public feature of this consultation on the Registry's single policy document on the Court's LAS (Single Policy Document). By giving experts and organisations from the civil society the opportunity to submit observations, the Registry contributes to this ideal of transparency claimed not only by victims, accused and practitioners, but also by the civil society, States and members of the international community around the ICC activities.
4. This submission will exclusively focus on the LAS towards victims. Such a positioning seems to us even more accurate in light of the results from the report of the ICC LAS in 2016⁶. Numbers show a vast distortion between the budget assigned to Defence legal aid - representing more than 69,7% of the total legal aid budget – compared to the one assigned to victims legal aid. Such a distortion turns out to be even more prejudicial to victims given the budget implementation rate: it rose up to 109,50% for Defence, while it remained at 68,50% for victims⁷. AFPCU finds these facts even more regrettable to the extent that the excess of Defence legal aid budget was financed through a transfer from budget granted for Victims legal aid⁸. Yet, the improvement of Defence legal aid should not be done to the detriment of victims.
5. On the contrary, 14 years after the creation of the ICC and the development of its case law, its LAS should grant more consideration to victims' special needs and accordingly adapt both its LAS and representation system towards victims, in the same way that the representation of the accused is being considerably developed. For instance, AFPCU regrets that the Assessment Report has only contemplated a designation system of counsels through the prism of Defence Counsel's perspective and that the Concept Paper

⁶ CPI, *Rapport sur les résultats du système d'aide judiciaire de la Cour en 2016*, CBF/28/4 ; Voir également CPI, *Rapport sur les résultats des activités et programmes de la Cour pénale internationale en 2016*, CBF/28/21.

⁷ ICC, *Report of the Committee on Budget and Finance on the work of its twenty-eighth session*, p. 20 : https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-5-ENG.pdf.

⁸ ICC, *Report of the Committee on Budget and Finance on the work of its twenty-eighth session*, par. 127 : https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-5-ENG.pdf.

does not even refer to it from perspective of the victims' representation. Instead, we support that the designation of victims' counsels should be thought through with regards to the specificities of the ICC, the first international criminal tribunal to grant victims the right to participate during the proceedings and the status of 'party' during the reparation stage⁹.

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⁹ ICC, The Prosecutor v. Germain Katanga, Order on Victims Reparation, Article 75 of the Statute, ICC-01/04-01/07, 24 March 2017, par. 15.

I. Observations regarding the Aspects Relevant to Defence and Victims

6. Within the ICC, the attribution of legal aid differs, depending on whether the beneficiary is an indigent suspect/accused or an indigent victim. In the first scenario, the attribution of legal aid is automatic (article 55-2 and 67-1-d of the Rome Statute). In the second scenario, its attribution is discretionary and the Registry can, after having consulted the Chamber, set both the type and level of legal offered in each case (norm 83-2).
7. To date, the ICC LAS does not feature a harmonized model for victims' representation but rather a plurality of systems with teams composed in different ways¹⁰. For purposes of transparency, foreseeability, and clarity, it would be best to put in place a model fulfilling the victims' representation and legal aid requirements, to the same extent that it exists for Defence.

A) Remuneration

1. Preliminary Observations

8. The Expert Assessment and the Concept Paper revealed two main concerns. Firstly, the existence of a distortion in the salary between external counsels and Prosecution counsels. Secondly, the significant drop (roughly 25%) in the wages of counsels and co-counsels since the 2012 evaluation, which resulted in the underfunding of both Defence and victims counsels in comparison to the other international criminal tribunals.

¹⁰ For instance, in the **Katanga** Case, there was two common legal representatives, representing two groups of victims having a conflict of interest. In this case, the concept of field work support structure through a legal assistant was introduced (**ICC-01/04-01/07-1328**) ; in the **Bemba** Case, initially, two common legal representative were representing numerous victims in various localities, after one of the representative passed away, all the victims were represented by the same legal representative. Each legal representative was assisted by a case manager and a limited field assistance thought a legal assistant (**ICC-01/05-01/08-1005**) ; in the **Lubanga** case, there were two teams of external counsels and one group of victims having the « double quality », represented by the Office of Public Counsel for Victims (OPCV). However, here the direct representation by the BCPV was an exception to the extent the Trial Chamber I decided that the main role of the BCPV was to assist legal representative rather than represent victims (**ICC-01/04-01/06-1211**, par. 32. Cf **ICC-01/05-01/08-1005**, par. 29), in the **Kenyatta** preliminary stage, there was one external legal representative common by case, recruited through an open process, with the support of a legal assistant, a case manager and 2 to 3 field assistants (**ICC-01/09-02/11-267**).

2. The AFPCU's Observations about the Recommendations

9. To address this finding, we endorse the recommendation toward the principle of equivalence according to which external counsels shall perceive a remuneration equivalent to their peers working for the Prosecution¹¹. While exact equivalence between the Prosecution office members and independent counsels seems impossible to reach, equity commands to get closer to it. This can be specifically achieved by taking into account the cost of an independent law practice, including taxes on revenues, as well as the benefits of social rights and pensions.
10. In light of this principle of equivalence, we also support the need to address the critical underfunding of Defence and Victims Counsels by setting levels of salary within the range offered by the others international criminal tribunals¹². The implementation of both recommendations would ensure attractiveness of the ICC to experienced and talented counsels, which would be a guarantee for an effective legal representation for Defence and Victims.

B) Conditions of Counsels and Consultants: Other Issues

11. We fully endorse all the recommendations from the Assessment Report¹³ and from the Concept Paper¹⁴.
- Tax-free earnings for lawyers and consultants;
 - Extension of social rights to counsels and consultants.

¹¹ We endorse the recommendation providing that a Counsel should receive a salary equivalent to one a P-5 Prosecutor ; a co-counsel should receive one equivalent to a P-4, and legal assistants and case manager should be entitled to a remuneration equivalent to a P-3 and P1/P-2 respectively.

¹² Assessment Report, p. 65.

¹³ Assessment Report, p.13.

¹⁴ Concept Paper, p. 8.

C) Procedures for Monitoring Fee Claims and Other Resources

1. Preliminary Observations

12. Documents related to this consultation on the ICC LAS demonstrate the will to balance the administrative burden of the current system (action plans presentation, hourly timesheets, reports and follow-ups) with the imperative to monitor the work performed for the purpose of transparency and costs saving.

2. The AFPCU's Observations about the Recommendations

13. The AFPCU supports the recommendation aiming at combining diverse options in order to ensure flexibility depending both on the complexity of cases and procedural stages.

14. We are of the opinion that the recommendation combining hourly timesheets (during periods requiring a closer control), with fixed monthly fees (during periods requiring lesser control) and a lump sum per stage fulfils both transparency and flexibility requirements as well as lightens the administrative burden.

15. For the above reasons, we strongly endorse the option taking into account the procedural stages:

- **Pre-Trial phase** (from Counsel's designation to three month before the trial): we agree to the suggestion of replacing the current flat rate by the timesheet system inspired by the Special Tribunal for Lebanon, with a maximum hourly ceiling monthly rate to be determined. Even more so, we support the recommendation consisting in sparing legal assistants and assistants working at the ICC seat to deliver detailed timesheets. Furthermore, the AFPCU does not exclude the idea to balance the requirement to deliver timesheets for counsels and co-counsels based on their presence or installation in The Hague. For counsels based in The Hague, presentation of monthly timesheets would not be necessary, while it would be required for counsels based outside of The Hague. For the confirmation of charges or the three-month

period before the opening of the trial, we support the need to re-establish a flat monthly fee.

- **Trial phase:** The AFPCU endorses the recommendation to drop the requirement to deliver action plans and detailed timesheets and to replace it by a standard monthly fee for team members.
- **Appeal phase:** The AFPCU supports the idea of introducing a global fee system, the amount of which would be based on the size and the complexity of the case. However, the AFPCU would like to express one reservation: the criteria to assess the complexity of an appeal should be set in advance. In this respect, the AFPCU suggests to use criteria defined by the ICTY and the MICT¹⁵. We would also like to stress the need to define “*the exceptional circumstances that may require increasing or decreasing the lump sum*”¹⁶.
- **Reparation phase:** The AFPCU regrets that the Concept Paper does not consider the reparation phase on its own. The AFPCU would like to emphasize the need to contemplate this procedural phase through a specific approach. Indeed, by nature the reparation phase requires a greater contribution from the Victims teams than from the Defence teams. Nonetheless, the current ICC system requires from both sides to deliver action plans, implementation plans, monthly time sheets and a monthly flat fee (as during the preliminary stage), except during periods when the activity is reduced.

16. The AFPCU emphasized the administrative burden of such a system at the reparation stage, particularly for teams representing victims. Consequently, the AFPCU supports the recommendation aiming at more flexibility through the establishment of a flat fee system based upon the amount of foreseeable hours needed by the teams. Exceptional circumstances increasing or decreasing the said fee should, again, be defined from the very beginning.

¹⁵ On criteria assessing the complexity of the case, see ICC, Concept Paper, p. 6.

¹⁶ Concept Paper, p. 9.

17. For all the above recommendations, the AFPCU would like to draw the attention on the relevance of the use of a common software facilitating and automatizing the input of data related to fees and worked hours. Its establishment would contribute to more transparency and would reduce the administrative burden of the current timesheet system.
18. Lastly, the AFPCU would like to highlight that, both in practice and in light of the ICC jurisprudence, the work required from the victims legal representatives regarding reparations can start way ahead of the reparation phase and even during the trial stage¹⁷. Hence, the position of the Concept Paper and the Assessment Report considering that the victims' legal representatives' work does not increase before the beginning of the reparation phase could be nuanced. Consequently, using this as an argument to justify the fewer resources allocated to victims teams than to Defence teams during other stages of proceedings does not appear relevant.

D) Additional Means

1. Preliminary Observations

19. Both Defence and victims' teams can recruit additional members to the initial team when required to by the complexity of the case. To do so, the current ICC system is based upon FTE, where each team cumulate FTE points according to objective criteria such as the number of pages of the case¹⁸. However, the Assessment Report highlighted that external counsels, both for Defence and for victims, find the FTE system too complicated, time-consuming, and difficult to understand. In particular, because its purely quantitative aspects occult the qualitative features of a criminal process¹⁹.
20. Hence, the aim is to establish a system featuring objective criteria to allocate additional resources, while setting an easier system for users.

¹⁷ ICC, *Observations from the Victims Legal Representative*, 31 October 2016, ICC-01/05-01/08-3459-Conf.

¹⁸ Assessment Report, par. 82, 83, 84.

¹⁹ Assessment Report, par. 92.

2. The AFPCU's Observations about the Recommendations

21. With the view to increase the effectiveness with which additional means are allocated, we endorse the recommendation seeking to develop a system based upon the complexity of the case, rather than on the current FTE system based upon negotiations with the Registry that deteriorates the relationship between the Registry and the teams. We are of the opinion that, as long as the criteria assessing the complexity of the case are defined from its beginning²⁰, such a system would ensure a greater transparency in the decision process, currently too opaque and granting a discretionary power to the Registry²¹. The recommendation provides that each case would be classified from the beginning of the procedure in order to determine whether additional resources are needed.
22. We agree with the aforementioned. However, the AFPCU would like to draw some attention on two main issues. First, it appears important to set objective criteria according to which the complexity of the case will be defined. This can be achieved through the use of the criteria used before the ICTY or the MICT²². To elaborate transparent criteria to classify cases complexity, we find appropriate and wise to get assistance from the ICCBA.
23. Secondly, we are concerned both by the time chosen to define the criteria and to classify the complexity of the case at the beginning of the procedure. It does not appear relevant to us to set the classification exclusively during the pre-trial phase. We recommend foreseeing the possibility of readjusting the classification of a case in the course of the procedure as well as the possibility to allocate additional resources during the trial.
24. In addition, if before the ICC a flat rate during the appeal and the reparation stages were to be chosen, we endorse the recommendation providing that additional resources should be taken into account within calculation. However, the AFPCU emphasizes the need to ensure some flexibility in the allocation of additional resources in the event where an excess of workload could not be foreseen at the beginning of each procedural phase (appeal and reparations) but appears during the said stage.

²⁰ On criteria assessing the complexity of the case, see ICC, Concept Paper, p. 6.

²¹ Assessment Report, par. 92.

²² On criteria assessing the complexity of the case, see ICC, Concept Paper, p. 6.

II. Observations regarding Legal Aid for Victims

25. Both the Concept Paper and the Assessment Report on the ICC LAS assign a part to the legal aid for victims. From the Counsels point of view, three main issues should be addressed. First, the lack of visibility and foreseeability about the type of assistance that can be allocated. Second, the lack of stability, foreseeability and transparency about the budget allocated. It jeopardizes the planning of the work, the fieldwork and the constitution of the teams. Finally, it is regrettable that the Counsel Support Section of the Registry does not grant more attention to the work achieved by teams representing the victims, in particular the outreach work that must be done to inform the victims. This situation leads to frustration and to a relationship between the victims' counsels and the aforementioned section qualified as a loss of time.

A) Determination of Indigence

1. Preliminary Observations

26. The determination of indigence is a crucial point in the LAS for victims. The AFPCU wishes to take the opportunity to address specific issues.

27. First of all, the current way of determining the indigence is inconsistent given that different approaches were implemented in response to diverse situations. Secondly, all the different actors agree that the current way of evaluating victims' indigence is not only a waste of time but also a "*waste of resources*"²³.

2. The AFPCU's Observations about the Recommendations

28. With regards to an objective of saving costs and time, we understand the recommendation to adopt the principle of "presumption of indigence" towards victims through a mere declaration of indigence. However, it appears inappropriate to fully abolish any requirement for indigence for all victims authorized to participate to the proceedings. Indeed, the sustainability of the LAS for victims requires it to be viable. Yet,

²³ Assessment Report, p . 93, footnote 33.

even though we understand that situations arising within the ICC jurisdiction are mostly related to populations located in Africa suffering from a loss of administrative, political and judiciary stability and financial means, one expects from a Single Policy Document to aim for the highest common denominator and to plan ahead for all situations that may arise. It matters to foresee that the ICC jurisdiction may apply to conflicts where victims have the financial capacity to participate, even partly, to the cost of proceedings. In the end, it boils down to question the ICC philosophy about prosecution and judgment of international crimes. In this respect, it seems unnecessary to us to introduce a general presumption of indigence for victims that would be based on the idea that determining the cost of indigence would be higher than contributions of non-indigent victims. We are of the opinion that the message that a Single Policy Document should send is to aim for a mutualisation of financial efforts whenever possible.

29. Consequently, we endorse the recommendation enabling the Registry to require from victims a financial declaration, in the exceptional situation where the case implies a restricted group of victims and that there is no reason to think that all or some of them are not indigent.
30. In this respect, in order to ensure the transparency and foreseeability of procedures, we would like to draw attention on the need to establish from the very start the criteria upon which a person could be regarded as indigent or not.

B) System for Assigning Victims Counsels

1. Preliminary Observations

31. The AFPCU regrets that both the Concept Paper and the Assessment Report only contemplate the designation system of Counsels from the perspective of the Defence. On the contrary, the designation system for victims' counsels should also benefit from a specific thinking process, and a policy should be defined with respect to the ICC specificity being the first international criminal tribunal granting to victims a role of participant in the proceedings. Fourteen years after the creation of the ICC and its major contribution in taking into consideration victims, the legal aid policy should be able to

assign a specific part to the victims' representation system, in the same way it did for the suspect and accused representation.

32. The Assessment Report prescribes that the evaluation and recommendations related to legal aid for Defence (Part II – Administration of the legal system – overview, system of list and legal services contracts) shall apply *mutatis mutandis* to the legal aid for victims²⁴. In particular, the Concept Paper asks for thoughts on the recommendation consisting in “*a reduced list of counsels’ according to criteria set by the suspect or the accused (we add here victims/group of victims), this list shall be verified objectively for equity purposes*”²⁵.

33. The consultation showed that the majority of counsels are of the opinion that:

- i) The application process is too burdensome. Members of the Counsel Support Section also share this opinion and regret how much time-consuming the processing of applications is.
- ii) The Counsels’ selection process, whether permanent or *ad hoc*, lacks of transparency. This opaque system is rather based on recommendations of suspects in between themselves or direct contact with families.

2. The AFPCU’s Observations about the Recommendations

34. As a preliminary observation, the AFPCU would like to highlight the importance that each recommendation on the LAS is in accordance with article 6 of the ICC Code of Conduct for Counsel related to their independence. It provides that:

1. « Counsel shall act honourably, independently and freely.
2. Counsel shall not:
 - (a) Permit his or her independence, integrity or freedom to be compromised by external pressure; or
 - (b) Do anything which may lead to any reasonable inference that his or her independence has been compromised »²⁶.

Hence, the more the counsel selection process will be guided by and respects the client’s will and its freedom of choice, the more the essence of article 6 will be upheld.

²⁴ Assessment Report, p. 107.

²⁵ Concept Paper, p. 10.

²⁶ ICC, Code of Conduct for Counsel, ICC-ASP/4/Res.1, adopted 2 December 2005, article 6.

35. Also, the AFPCU wishes to support the possibility for victims to freely choose their counsels, even when the ICC decides to nominate a common legal representative when the interest of justice requires so²⁷. In this respect, legal aid granted to an indigent victim shall not depend of the victim's decision to get an external counsel.
36. With respect to the application process, for time saving purposes, the AFPCU endorses the recommendations to i) reduce the list of documents to add to the application, ii) implement a two-month period to study new applications for the Counsel Support Section and consider the application as rejected if no response is issued within the two-month period, with the possibility to lodge an appeal internally.
37. With regard to the counsels' choice, the AFPCU supports the necessity to produce to the client (suspect, accused, victim) a list of counsels shortened according to criteria set by the client. However, the AFPCU would like to stress a reserve: such a process can only be implemented if criteria set by the client for the selection are purely objective, like the fluency in a given language for instance. The AFPCU wants to draw attention on the necessity to set, in advance, both which entity or section would be competent to produce the list accordingly to the client's criteria and who would be competent to control it. The AFPCU is of the opinion that the ICCBA could be in charge of such a control, in partnership with an association representing the interests of external counsels for victims.

C) Team Composition

1. Preliminary Observations

38. Before the ICC, team members' work together throughout the entire proceedings (except before the first appearance before the Pre-Trial Chamber and except before the end of closing statements and judgment). "Core" teams are composed of a counsel, a legal assistant and a case manager. In addition to this 'core' team, a co-counsel usually joins the team from the moment of the confirmation of charges up to the closing statements at trial. According to Norm 83, the Registry can designate a co-counsel at an earlier stage (from the initial appearance) when needed.

²⁷ ICC, Rules of Procedure and Evidence, Rule 90 (1) – (2).

39. Both on Defence and victims side, it appears that teams should be bigger from the start of the proceedings. Such claim coincides with the finding that, according to a comparative analysis with all the other international tribunals, the teams before the ICC are smaller than teams before other Courts.

2. The AFPCU's Observations about the Recommendations

40. The AFPCU supports the necessity to offer the possibility to hire a co-counsel in addition to the core team, from the initial appearance to the confirmation of charges (on the basis of a reduced set limit of billable hours (25 to 40 hours a month).

41. In addition, we are of the opinion that it would be relevant that the fees set for the appeal phase takes into account the possibility to hire a co-counsel/or an appeal specialist to assist the team.

D) Regarding the Establishment of a General Budget

1. Preliminary Observations

42. The Assessment Report features that teams representing victims are composed of:

- a sole counsel until the confirmation of charges;
- a counsel and a case manager from the confirmation of charges until the end of the trial;
- a counsel and a legal assistant;
- a case manager at the reparation stage.

43. It prescribes that each team representing victims is granted a budget for investigation of 43 752 euros for the entire duration of the case.

44. The allocation of additional resources can be considered upon justification.

45. Finally, when a legal aid representation is ordered, resources can vary after reviewing different elements.

46. External counsels who worked in teams representing victims criticised the lack of transparency and information on the budget available, jeopardizing the planning and the preparation on the work to be done.

47. Hence, it appears fundamental to address these issues by contemplating recommendations providing greater transparency and foreseeability. This will enable teams to have a better anticipation of financial resources available and to plan and organize their work in the most efficient manner.

2. The AFPCU's Observations about the Recommendations

48. As said before, there is a plurality of models of victims' representation depending on the different cases. This lack of harmonization makes it difficult to foresee the general budget in a given case. However, it appears necessary to define common criteria in order to set a general budget while ensuring some flexibility depending on procedural stages. The aim of predictability could then be achieved.

49. The ICC case law shows, in terms of victims' legal aid, that the nature of victims teams are often hybrid (i.e. composed of ICC members and external consultant) can add difficulty in the budget projections. However, the AFPCU endorses the Assessment Report when stating that it should be possible to calculate the ordinary general budget, by case and by phase of procedure, by taking for reference the core composition of the Office of Public Counsel for Victims team²⁸ and projecting related expenses

50. In addition, the AFPCU strongly encourages implementing the recommendation that the Counsel Support Section applies this general budget to cases where the common legal

²⁸ According to the Chief of the OPCV, the composition of a core team is:

- Pre-trial phase: 1 counsel, 1 legal assistant, 1 case manager, 1 field assistant (consultancy contract)
- Trial phase: 1 counsel, 2 legal assistants, 1 case manager, 1 field assistant
- Appeal phase: 1 counsel, 1 legal assistant, 1 case manager, 1 field assistant
- Reparation phase: 1 counsel, 2 legal assistants, 1 case manager, 1 field assistant

NB : It is worth noting that the core team from the OPCV is bigger than the one prescribed by the Single Policy Document.

representative is an external counsel whose team is paid through the ICC LAS – whether the staff is entirely or partly external or from the Office of Public Counsel for Victims.

51. In order to address the need to plan expenses, the AFPCU endorses the Assessment Report on the idea that the general representative of Victims could present to the Counsel Support Section at the beginning of each procedural stage, a detailed action plan describing the expected work and costs for the team based in the Hague and the team based in the field.

E) Establishment of an Investigation Budget/Field Resources

1. Preliminary Observations

52. We endorse the idea to change the vocabulary of this section to speak more of a “budget for field expenses” that would cover both the team based in the field and the field expenses (including Counsels travel expenses to the field).
53. The current budget set for investigations is **43 752 euros** for the whole duration of the case. This amount seems to have been set discretionarily and is, apparently, not representative of the experience gathered so far with respect to victims’ representation. Indeed, it seems quite important to highlight here that the work of victim representation requires a specific thinking rather than a mere comparison with the Defence system. This specificity makes even more sense given the number of victims involved and participating to the procedure and regarding their location in unstable regions.

2. The AFPCU’s Observations about the Recommendations

54. The AFPCU is of the opinion that a set budget is not appropriate since it would not take into consideration, neither the necessity related to the number of victims involved in the case, nor the need related to outreach in unstable region – even though outreach work is crucial in the aim of a justice understandable and accessible by all.

55. Consequently, the AFPCU endorses the recommendation to establish a budget assigned to investigations on case-by-case basis within the general budget. It should take into consideration previous orders rendered by the Court, numbers and locations of the victims, organizations of the victims groups, languages, transportations means, safety concerns, use of an external office from the ICC, etc....
56. Moreover, the AFPCU obviously supports the necessity to provide at least one field assistant hired for the duration of the proceedings. First, it would ensure the “proximity” of the international criminal justice, enhance the understanding of the work done, facilitate transmission of information and instructions received, and improve communication with *in situ* actors. In addition, a field assistant is likely to reduce *in fine* the costs of and the duration of procedures to obtain elements from local authorities. Furthermore, there is no doubt that the elaboration of a litigation strategy is enhanced when counsels and/or assistants who have a full command of the situation and its presence on site adds substantial value to both the knowledge of the conflict, the historical and political context, and domestic law. To this end, AFPCU supports the idea that several field assistants shall be comprised in the budget in order to limit intermediary costs. The *Ruto, Sang and Kenyatta* case demonstrated the crucial role played by field assistant in terms of mobilisation and logistical coordination.
57. Finally, the AFPCU considers that the budget assigned to expense accounts should cover purely individual expenses in The Hague by teams representing victims, such as travel and accommodation expenses which should be capped.

F) Article 70 Cases

58. AFPCU endorses every recommendations detailed in the Assessment Report with respect Article 70 cases.

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