



**International Criminal Court Bar Association**  
**Association du Barreau près la Cour pénale internationale**

## **ANNUAL REPORT OF THE VICTIMS COMMITTEE**

**Chair:**  
LUC WALLEYN

**Secretary:**  
GREGORY TOWNSEND

**Members:**  
AGATHE AFFOUGNON AGO  
SHYAMALA ALAGENDRA  
MAYOMBO KASSONGO  
FIDEL NSITA LUVENGIKA  
PAOLINA MASSIDDA

### **A. Goals and Objectives for the year (as submitted to the EC)**

1. legal aid for victim counsel
2. organization of common legal representation
3. clarify the relationship between external counsel and OPCV, including mixed teams
4. clarify the relationship between common legal representative and his/her individual clients: how to contact a large group of victims, how to act with leaders of communities or (self-appointed) leaders of victim groups, role of intermediaries, etc.
5. good practices in victim representation
6. other issues including demands from individual counsel or from the registry

### **B. Meetings**

The Committee held its first meeting on 29 August 2016. A total of 5 meetings were convened in the year.<sup>1</sup> All members participated in the meetings either in person at the ICC premises or by phone. Members were in regular communication with each other via email. The VC was invited and attended 1 meeting with the entire Executive Council.<sup>2</sup> The VC had **3** meetings<sup>3</sup> with individual EC members on particular issues of concern to the Committee.

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<sup>1</sup> Meetings were convened on 29 August 2016, 23 November 2016, 6 February 2017, 18 April 2017 and 30 May 2017.

<sup>2</sup> 25 May 2017, Fidel Luvengika represented the VC at this meeting.

## C. Summary of Decisions Taken and Work Done

The VC's discussions and work this year was focused on three main issues: (1) Legal Aid for Victims Counsel, (2) lack of resources of victims' teams and (3) organization of legal representation of victims and the role of OPCV.

### 1. Legal Aid for Victim Counsel

The committee discussed the Legal Aid Report prepared by Richard Rogers on 6 February 2017 and submitted its observations to the EC, *inter alia*:

- (i) agreeing with the proposal to examine the process of determining indigence of individual victims. As a general rule there must be a presumption that victims of mass crimes in countries whose situation is currently referred to the Court are indigent and cannot afford the costs of legal representation before the ICC
- (ii) supporting the proposal that resources allocated to an external advisory team should be equivalent to those granted to a team of the OPCV or mixed teams. It is in the interests not only of the individual victims but the process of administration of justice that the legal representatives selected by the victims and paid within the legal aid framework have adequate means to ensure effective representation of the victims.
- (iii) the resources presently allocated to the victims' teams is wholly inadequate. The shared, open-plan office and workspace is not conducive for efficient work and makes it difficult for counsel to ensure its obligations of confidentiality under the Code and Statute are respected.
- (iv) Lead Counsel should be given the authority to organize his/her team in the way he/she deems appropriate bearing in mind the duty to ensure effective representation of victims. To this end, Lead Counsel will be best placed to know the needs of the team, including whether there is a need for a field assistant and the frequency and duration of assignments.
- (v) The VC calls for more transparency on the part of the Registry on the issue of the budget to be established or monitored, the remuneration of external counsel and teams, and the nature of the remunerated services. For administrative and tax purposes, a monthly or quarterly document that accurately reflects the amount paid as compensation and reimbursement, should be provided (or such information be made available online). Where payments or reimbursements of claims are

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<sup>3</sup> **25 October 2016**, Executive Council Member Leigh Lawrie attended the VC meeting at the ICC; **23 November 2016**, ICCBA Vice President for Victims Ghislain Mbanga attended the VC meetings at the ICC premises; **30 May 2017**, meeting between VC (represented by Luc Walley, Fidel Luvengika and Shyamala Alagendra) and Executive Council Member, Karim Khan QC at the ICC.

denied, the Registry should be required to give particularized reasons for its decisions.

- (vi) The committee suggested the drafting of a document which will detail the applicable rules, and hopes that the ICCBA will be associated with the drafting of such a document.

## **2. Complaint by Manoba & Cox in relation to the provision of legal aid for Legal Representatives of Victims in the Ongwen case**

The Committee was presented with a complaint by Counsels Manoba and Cox who were representing thousands of victims in the Ongwen case. The VC submitted its recommendations in relation to the complaint to the Executive Council on 30 August 2016. The VC's views were that:

- (i) Manoba & Cox were relying on the previous practice of the Court and had a well-founded expectation of receiving legal aid for indigent victims.
- (ii) It was concerned that OPCV or other sections of the Registry was benefitting from the legal aid budget. If the role of OPCV was limited, the funding for external counsel could be increased.
- (iii) The OPCV should support claims by external *pro bono* counsel for funding.
- (iv) If the legal aid issue becomes a live issue again in the *Ongwen* trial, the ICCBA could take the opportunity to submit an *Amicus Curiae* brief addressing matters.
- (v) The ICCBA could write to the Presidency to start a discussion on the global strategy of victim representation at the ICC.

On 7 November 2016, the VC submitted its recommendations, supporting the request of Manoba and Cox, in a letter to the Registry dated 10 October 2016, for legal assistance/legal aid. The request by Manoba and Cox for legal aid was subsequently granted by the Registrar on 29 November 2016.

## **3. Organization of Victim Representation and the Role of OPCV**

On 5 May 2016, the Chair of the VC wrote to the President and Vice President informing them of the problems with the legal representation of victims and requested that for a meeting between the EC and the VC so that the issues may be presented. The crux of the issue is that victims were being denied their right to choose their lawyers, and the role of OPCV has been systematically expanded, such that it now effectively acts as Principal Counsel for victims in all cases, even where external counsel have been appointed and represent very large groups of victims. This arrangement is problematic for a variety of reasons including the potential for conflicts of interest, ineffective (or less experienced) representation, denial of the right to counsel of choice, unavailability of the OPCV to assist and even OPCV being in competition with the remaining external teams. The OPCV should play the

same supportive role for victims' counsel, as OPCD effectively does for defence counsel.

The VC has requested that a dialogue be opened between the ICCBA and the Presidency/Judges and the Registrar on this matter.

During the meeting with EC representative Karim Khan QC, it was agreed that the ICCBA needs to play an active and important role in this issue, including:

- (i) making representations to the Chamber by way of an *Amicus Curiae* brief in the next case or situation which presents an opportunity for intervention by the ICCBA.
- (ii) requesting that the Registry to revert to the previous system of calling for applications for legal representative for victims (LRVs) and for a panel to be formed for the selection. ICCBA should play a role in such a panel, so that the selection of counsel will be the responsibility of the Registrar in consultation with the ICCBA
- (iii) submitting, by the VC - in conjunction with the Legal Advisory Committee, Amicus Committee and Victim Representatives, a position paper on the issue, to be circulated to the Judges and ASP and civil society
- (iv) organizing, by the ICCBA. a workshop on this topic to be attended by victims representatives, ICCBA members, judges and Registrar so that this topic can be discussed and views presented. There is a feeling that the Judges do not understand the full repercussions of their decisions assigning OPCV as principal counsel for victims.

#### **4. Lack of Resources for Victims' Teams**

The present state of affairs is wholly inadequate and has been the subject of several complaints and requests to the Registrar.

Currently all the victims' teams share one open-plan office space. Team members have expressed frustration with this arrangement that impacts on their ability to function effectively and the integrity of their work.

On 30 May 2017, the VC invited EC representative Karim Khan QC to view the working space currently provided to victims' teams. Some simple suggestions were agreed as to how this matter could be quickly resolved in the interim, e.g. partitioning and creating 3-4 separate offices in the same place that is now an "open-plan" office.

This will allow teams to be able to communicate with their team members on the phone/skype conveniently and confidentially. It will ensure that evidence and disclosures are stored securely and only the team involved in a case will have access to those materials.

## **D. The extent to which the committee's original project plan was realised**

The VC met its plan to ventilate and give its views on the fundamental and structural and resource issues facing legal representatives of victims and counsel on the list for this purpose.

The issue of legal representation is not resolved. It is a fundamental issue which needs to be formally taken up by the ICCBA to preserve/restore the effectiveness, efficiency and integrity of victim representation at the ICC.

## **E. Difficulties encountered**

1. The VC would like to place on record that the Head of OPCV being a member of the VC was not without difficulty. On several occasions, the Head of the OPCV, who is a member of the Committee, had to be recused from discussions on the basis that there was a conflict of interest. A proposal to include in the meeting agenda an exchange on the relationship between external counsel and OPCV was refused by the Head of the OPCV on the basis that it would require her input as Head of the OPCV and not as member of the VC, and that this dialogue between the ICCBA and OPCV should be done at the level of the Executive Committee. The main issue of concern to the VC during this year was the issue of legal representation of victims (LRVs). The matter is still not resolved, and it is anticipated that the VC would be dealing with this issue in the coming year as well. At the last meeting, some members agreed on the proposal that OPCV and OPCD being partners of the bar, their presence in the respective victim and defence committees, as in the Executive, should be avoided in the future.
2. There was no clarity on what the role of the ICCBA VP for Victims is and the VC generally felt that there was very little interaction and coordination between the VP for Victims and the VC.

## **F. Recommendations and Proposals for the Future**

The Victims Committee, by a majority, makes the following recommendations for the greater efficiency of the important work of the ICCBA Committee:

- a. On the Executive Committee, several members should be counsel for victims (not solely "defence"). Perhaps 3 of 14 posts. This might require constitutional change.
- b. The VP for Victims should also act as the Chair of the Victims Committee. This may not require a constitutional change and may come within the ambit of 10(6) of the Constitution to be dealt with by

way of an internal directive. Otherwise, the VC requests that by way of an internal directive a practice be established that the Chair of the VC will be invited to all meetings of the EC relating to or that may be relevant to the mandate and work of the VC.

- c. The VC, by a majority, would recommend that ICCBA members who are ICC staff members should not serve on the (i) Executive Committee, (ii) Victims Committee and (iii) Defence Committee (but serve on any others).
- d. Consideration should be given to ICCBA elections being held semi-annually (every 2 years) or alternatively that only half the posts be subject to yearly election. This again will require a constitutional amendment.
- e. The ICCBA should request that ICC Security provide (temporary or longer term) badges with at least limited access to the meeting rooms on ground floor to committee members meeting regularly at the ICC (and who do not already have other badges).
- f. More contact and better coordination between the VC and other committees (in particular professional standards and legal advisory committee) would be useful.