

## Registry ReVision Project

### Basic Outline of Proposals to Establish Defence and Victims Offices

#### Introduction

At its twelfth session, the Assembly of States Parties (Assembly) gave the Registrar a mandate to reorganize and streamline the Registry's organizational structure and operations with the goals of eliminating duplication, increasing effectiveness and efficiency, as well as creating synergies.<sup>1</sup> Notably, the Assembly also mandated the Registrar to assess, as part of the on-going process of reorganization and streamlining of the Registry and with the support of independent experts, the impact of the roles and responsibilities of the Office of Public Counsel for the Defence on the legal aid system and to develop an overall strategic vision for the Defence.<sup>2</sup> The Registrar established a small project team to implement the reorganization project (known as the *ReVision* project).

A detailed review of the Registry's main functions at the start of the project revealed fragmentation and overlaps, inefficient use of resources, and notably, sub-optimal services provided by the Registry in a number of operational areas. These observations were further verified by the results of two major surveys among Registry staff, clients and other stakeholders. As a first step in addressing these issues, the Registrar decided upon a new high-level organizational structure, which reflects, *inter alia*, the consolidation of similar or closely related functions, the pooling of resources, and the re-definition of some of the functions in order to refocus and enhance the Registry's performance and improve service delivery.

Within that high-level structure, a proposal has been made to rationalise and streamline the existing Registry structures providing support to victim participation, including assistance and support to victims, victims' representatives and Chambers, as well as assistance and support to suspects and accused and their Defence Counsel. As some of the current structural elements supporting these functions are defined in the Regulations of the Court, the implementation of this proposal is subject to an amendment of the Regulations by Court's Judges.

This paper presents a brief overview of the proposals to establish a Victims Office and a Defence Office within the Registry. It also serves as a basis for further discussion with relevant stakeholders in order to assist in the preparation of a formal proposal under the Court's Regulations, to be submitted to the Advisory Committee on Legal Texts (ACLT) and plenary of Judges. The proposals do not adversely impact the rights of the suspects and accused to a fair trial or the rights of victims to participate in proceedings before the Court. On the contrary, these proposals seek to correct some of the gaps and disadvantages of the current system and bring about a stronger and more effective structure to ensure the full

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<sup>1</sup> ICC-ASP/12/Res.1, section H, paragraph 3.

<sup>2</sup> ICC-ASP/12/Res.8, Annex 1, paragraph 6 (e).

respect and realisation of the rights of the Defence and the rights of victims participating in proceedings before the Court.

## I. VICTIMS OFFICE

The Registrar proposes the creation of a single Victims Office, which would consolidate the functions currently performed by the Office of Public Counsel for Victims (OPCV) and the Registry's Victims Participation and Reparations Section (VPRS), as well as redefine some functions currently being performed by the Counsel Support Section (CSS).

### Current situation and benefits of the proposed change

At present, a multitude of Registry Sections and other actors perform functions in support of victims, including VPRS, OPCV, CSS, PIDS (Outreach) and the Trust Fund for Victims (TFV), as well as external legal representatives of victims. The roles of these actors are closely related, but on taking a close look at their functioning after more than ten years of experience, it has become apparent that their fragmentation into different organisational units may have produced, on occasions, negative consequences in relation to some of their functions, mainly by not allowing for valuable potential synergies. In this regard, the Assembly has called upon the Court to review the victim participation system with a view to ensuring its sustainability, effectiveness and efficiency,<sup>3</sup> and a panel of nine independent experts concluded in 2013 that reforms were necessary in order to ensure that victims can participate meaningfully, in particular highlighting that different efforts aimed at addressing the considerable challenges are disjointed.<sup>4</sup> In addition to the important work undertaken by the Court's Judges in this respect, from the Registry's perspective, bringing together all the functions relating to victim participation in a single operational unit will bring significant improvements in the assistance and support provided to victims participating in the proceedings, strengthen their representation and enable the Registry to provide a more consolidated and effective support to Chambers. By taking this step, the Registry will maximize the use of limited resources by creating synergies, removing unnecessary overhead costs and creating a central support base for victim participation-related functions. Here are some of the disadvantages of the current structure, which the proposal seeks to address:

- Victims and affected communities, as well as local intermediaries, interact with different parts of the Court during the application process for victim participation or reparation. After the assignment of a victim representative, victims often continue having direct contacts with different organizational units, including VPRS and OPCV, in addition to their legal representative (who may on some occasions be OPCV Counsel). The differing working methods and systems of these different actors sometimes cause confusion and frustration for victims, as well as the proliferation of Registry personnel they come into contact with. A key objective of the proposed integration of the relevant functional units is to improve the experience

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<sup>3</sup> ICC-ASP/10/Res.5, para. 49

<sup>4</sup> Independent Panel of Experts Report on Victim Participation at the International Criminal Court, 26 July 2013, available at <http://amnesty.org/en/library/info/IOR53/001/2013/en>

of victims, as well as intermediaries, when they interact with the Court, including by reducing the number and diversity of contact points so as to allow for a more consistent and integrated communication.

- Currently both the Registry and some legal representatives of victims have field-based staff or team members, whereas the OPCV and other legal representatives do not. The proposal will allow the Registry to provide better support in the field. In this regard, a consolidation of the Registry's field presence is being designed so as to support all Court activities including those of the victims' legal representatives.
- Moreover, currently legal representatives of victims interact with several Registry sections, including CSS, VPRS and OPCV, for support and services, which sometimes causes confusion as to the division of responsibilities within the Registry and results in support that is overly decentralised and sometimes uncoordinated. Upon assignment of an external victim representative, under the current structure both OPCV and the CSS are mandated to provide support and assistance.<sup>5</sup> OPCV provides primarily legal advice while CSS provides assistance of a practical nature. In practice legal representatives also seek practical support from VPRS, mostly on an ad hoc basis or informally. The consolidation of these services into a single organisational unit will allow legal representation of victims to be supported more effectively in an integrated way.
- Information pertaining to victims is currently being collected, processed and stored by different actors (in and out of the Registry) at different times, but it is not directly accessible to others involved in the representation or support of the same victims. VPRS is often required to assist (external) Counsel in generating such information.<sup>6</sup> Furthermore, VPRS and OPCV collect and generate similar information that is stored in separate databases. A merger of the two would allow for integrated information systems that would be more efficient in terms of staff time required to maintain them, and would also ensure that all concerned are working from the same base.
- The possibility for assignment of either OPCV and external Counsel (under the Court's legal aid system) as common legal representatives of victims has in instances led to competition and tensions between these two groups, in addition to sometimes conflicting views on how to approach the representation in a specific case.<sup>7</sup> Bringing all counsel representing victims under one operational roof will deal with this problem, and therefore result in better quality representation for victims.
- The current structure and division of responsibilities creates another potential anomaly: in a given case, an external victims' legal representative and OPCV may respectively represent two separate groups of victims with opposing interests, while

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<sup>5</sup> Regulation 81.4 (a) of the Regulations of the Court for OPCV; Rule 90 of the Rules of Procedure and Evidence, Regulation 83 of the Regulations of the Court and Regulation 113 of the Regulations of the Registry for the CSS.

<sup>6</sup> For example, VPRS is expected to provide information generated in the course of the application procedure, to lawyers (external or from the OPCV) appearing as legal representatives for victims.

<sup>7</sup> Of course, the need for consistency in the actions of legal representatives appearing on behalf of the same group of victims does not prevent individual legal representatives from adopting a particular approach if so required by developments in the case.

the OPCV remains responsible for providing legal advice and support to the external representative. Due to the current setup of OPCV this could lead to a potential conflict. The new structure will be organised in such a way as to allow for separate legal representation of groups of victims that have opposing interests. In addition, by no longer relying on external legal representatives and instead having a separate common support function and independent lawyers within the Office acting as legal representatives, under the proposed structure such a conflict would be effectively prevented.

The examples illustrate that the fragmentation of Registry functions related to the participation and reparation of victims in the Court has resulted in a complex and inefficient organizational structure, which allows for duplication of efforts and is confusing not only for the Court's own staff members at times, but, most importantly, also for victims to which the Court owes a heavy responsibility to provide for adequate mechanisms for an effective representation.

## **Proposal**

With a view to ensuring a more joined up and effective approach to victim participation, the Registrar is proposing the establishment of a single Victims Office, which would consolidate most functions currently performed by OPCV and VPRS.<sup>8</sup> A single Victims Office would integrate all these services related to victim participation in one consolidated structure and thus ensure increased sustainability by allowing for more effective planning and use of resources, maximize the use of limited resources by creating synergies and removing some overhead costs, and enable rapid deployment and targeting of resources where they are needed.

The Victims Office would perform the full range of victim participation related functions, including, but not limited to:

- (i) Establishing first contact with victims, informing them about the opportunity to participate in the proceedings, and providing assistance with filling-in the relevant forms (the function will be performed by personnel in the Field Offices under the supervision of a senior Head of the Field Office).
- (ii) Administering and processing of victims' applications for participation and reparation (a dedicated unit within the Victims Office would be established for that purposes).
- (iii) Maintaining a single central victims' database containing all essential information relating to victims.
- (iv) Providing information about the cases and relevant trial developments to participating victims and intermediaries.
- (v) Providing uniform and coherent information and more effective assistance to the Judges on all relevant issues, including victim applications, types and groups of victims, relevant developments in a given situation country, etc.

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<sup>8</sup> Following this proposal CSS will have no role in relation to victims due to the central role the new Victims Office will have in relation to victim representation. Also the role of PIDS will be impacted because of more coordinated organisation of activities in the field under the Head of Field Office.

(vi) Providing legal advice and representation to victims through the appointment of a (common) legal representative from within the Victims Office.

Within the Victims Office, there will be a pool of independent lawyers would be available for assignment to (groups of) victims at all times, much like a Public Defender's Office. Furthermore, an *ad hoc* "external" counsel could also be added in each case for the duration of the case, either as lead or co-representative and would form an integral part of the team. Preference would be given to a lawyer from the situation country or with sufficient knowledge of that country (or particular group of victims) in order to complement the in-house capacity. This Counsel would typically be based in the field to ensure closer ties and communication with the victims.

The Counsel assigned as the lead common legal representative in each case would be responsible for all aspects of the representation. This includes directing the work of an *ad hoc* support team, consisting of the external Counsel, one or more legal officers, case managers, legal assistants and data processing clerks within the Victims Office, assigned from a pool of support personnel who would be assigned to one or more different victim representatives' teams at a time, provided there this doesn't lead to a potential conflict of interest. By pooling resources in this manner – bringing together counsel and support staff - the Victims Office would preserve and further develop the expertise necessary to defend the victims' rights and interests successfully. In addition, the new envisaged set up for field presences will ensure a more effective and efficient provision of support to the teams in the field.

The Chief of the Victims Office would be responsible for the overall management of the Office, for giving effect to decisions by the Judges, ensuring that there are no conflicts of interest, and for the allocation of support and resources to the victims' representatives. The Chief of the Victims Office would not supervise the Counsel within the Office nor would he or she be able to give them instructions on how to conduct the representation. The Counsel would be independent in the performance of their representation role and subjected to the Code of Professional Conduct.

The Victims Office would have direct and easy access to all other Registry support services, such as logistics, facilities, travel, etc. which would improve the overall servicing of participating victims and their representatives. The envisaged Victims Office would also present the added benefit of building on and further developing the expertise and institutional knowledge of OPCV and VPRS in furtherance of victims' rights.

The proposal to create a single Victims Office does not mean a reduction in the functions carried out at present. On the contrary, all the functions remain essential, but they would be performed in a more efficient manner, thereby increasing the available services (and their quality) within the available resources. Moreover, the proposal to provide a more cost-effective and efficient in-house support structure for victims' representation instead of relying on the resource-intensive application and administration of the legal aid system will likely result in savings for the Court both in terms of the actual cost of the victim's legal

representation<sup>9</sup> and the overhead costs related to the administration of a legal aid system for victims. This approach would allow the Registry to do more and provide better support and representation within the existing resources. Overall, a solid in-house capacity to represent victims, coupled with the addition of external expertise in each case is a sustainable model that enables effective victim representation while allowing the Registry to absorb additional workload due to the economies of scale that the model represents.

## II. DEFENCE

The Registrar is also proposing the creation of a single Defence Office, which would consolidate most of the functions currently performed by the Office of Public Counsel for the Defence (OPCD) and CSS, except for the representation function which OPCD may currently be called upon to exercise. It is proposed that in the future, the representation of suspects and accused, including any Duty Counsel or *ad hoc* assignments, would be carried out only by external independent lawyers.

### Current situation

Currently two offices handle a range of defence-related issues – OPCD and CSS. Broadly speaking, CSS is in charge of the administration of the Court’s legal aid system for indigent suspects and accused, as well as for victims participating in the proceedings before the Court, including the maintenance of the List of Counsel, the assignment of Counsel, and their remuneration. It is also mandated to provide support and assistance to Counsel, including training. In this regard, CSS is meant to implement a substantial part of the Registrar’s obligation under Rule 20 of the Rules of Procedure and Evidence (Rules) to provide support and assistance to the Defence and to organize the Registry in such a manner as to promote the rights of the Defence.

OPCD, on the other hand, was established by the Court’s Judges through the Regulations of the Court as an independent Office, which may be assigned as duty counsel or on an *ad hoc* basis to represent the rights of the Defence during the initial stages of an investigation. OPCD is also mandated to provide support and assistance to the Defence, in particular legal research and advice to Counsel.

While at first glance the roles of the two Offices are different, in practice there is overlap and confusion as to the exact scope of their respective roles and responsibilities. Moreover, the functional analysis conducted by the *ReVision* team suggests that a fresh look at how the Court administers and supports the Defence is required. Therefore also the adequacy of the current structures and the distribution of functions have been analysed, with the following outcomes:

- In terms of OPCD’s representation role, the aspiration was for the OPCD to act as Public Counsel or an in-house Public Defender’s Office. However, since OPCD’s

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<sup>9</sup> Currently, the legal aid budget for victim representation is €3 million per year. While part of these resources would be utilized by the Victims Office for the remuneration and expenses of the “external” counsel, it would likely be less than the amount spent on legal aid at present because the entire support structure, including legal assistance, document and case management, etc. would be available within the Victims Office and would serve all teams.

establishment in 2006, it has only been assigned a handful of times as Duty Counsel or *ad hoc* Counsel, and only once, briefly, as Counsel (in the *Gaddafi* case). By and large, representation of suspects and accused by independent external counsel remains the norm, including for Duty Counsel assignments.<sup>10</sup> Such Counsel are either privately retained by the accused or assigned under the Court's legal aid scheme. Consequently, there seems to be little justification, either legally or financially, for maintaining an in-house representation capacity for suspects and accused.

- The “support and assistance to Counsel” function is not clearly defined and both OPCD and CSS are formally mandated to provide such services to Counsel. There is little to no coordination between CSS and OPCD on support activities, or even, more basically, on the actual needs and entitlements of Counsel. Except for assistance with some routine activities such as mission planning, support is usually requested and provided on an *ad hoc* basis, if and when requested. This has not only resulted in a duplication of effort in some areas, such as training and practical support, including the use of information technology, but also, regrettably, in tensions, opposition and even competition between the OPCD and CSS. In these circumstances, the OPCD has been providing assistance “as dictated by the Defence practitioners themselves.”<sup>11</sup> While this has undoubtedly assisted individual Counsel significantly, from an institutional perspective, it has further contributed to the confusion as to which Office is responsible for the provision of which support service. In this respect, the very existence of two offices with similar and unclear mandates as to the “support and assistance” function allows for the duplication of efforts and the inefficient use of limited resources, which ultimately hampers the beneficiary of the services, namely the Defence.
- OPCD's role in providing legal research and advice to Counsel, is a crucial function and must be maintained and strengthened in the future. Often Defence Counsel have not had any specific training in international criminal law prior to appearing in proceedings before the Court. Moreover, the jurisprudence of the Court is developing rapidly and there is a clear need for institutional support to the Defence in providing digested and ready-to-use information and advice on the Court's case law. OPCD has helped preserve and transfer the acquired knowledge and experience through the provision of information and advice to the Defence teams. The new Defence Office would continue playing this role through a separate unit within the Office. However, the provision of this type of institutional support needs to be balanced against Counsel's own duties and responsibilities in organising and managing the Defence. For instance, research and assistance provided by OPCD should not amount to doing work which is the responsibility of assigned Defence team members under the Court's legal aid scheme. Research and advice on case-specific issues would almost always fall in that category.

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<sup>10</sup> The Court's practice in this regard is fully consistent with the practice of all other international courts and tribunals. Even the Special Tribunal for Lebanon, which is the only international tribunal to date to have established an independent Defence Office as a separate organ of the tribunal, assigns independent external counsel to represent suspects and accused and is not a Public Defender's Office.

<sup>11</sup> OPCD Memorandum to the ReVision Team, 24 July 2014, Ref. OPCD/0016/xjk/GD, on p. 4.

- Finally, OPCD maintains that it also represents the “general interests of the Defence” and is the voice of the Defence. While undoubtedly OPCD does this with the best of intentions, despite its best efforts it is not in a position to effectively or legitimately put forward and represent the position of all Counsel practicing at the Court or the general interest of the Defence. This is because, unlike a body of independent counsel, OPCD does not have a representational role since it is not an executive body of the profession, nor, more significantly, is it subject to any democratic oversight by the Counsel it purports to represent. In this regard, OPCD’s independent status, which is linked to the Office’s functions listed in Regulation 77 of the Regulations of the Court, seems to have led to the assumption that it is also able to take a stance on Defence issues in general. However, Regulation 77 of the Regulations of the Court does not foresee such a role for the OPCD.

### **OPCD and the issue of independence**

A closer look at OPCD’s independence as it exists at present shows that the recent debate about the independence of the Defence Office is somewhat fictitious. Firstly, OPCD is part of the Registry, its budget is part of the Registry’s budget, its Principal Counsel and staff report to the Registrar and the Registrar appraises their performance and approves their leave as he does for all other Registry staff. OPCD is therefore not independent institutionally. OPCD rightly enjoys functional independence. However, that independence relates first and foremost to OPCD’s representation role: when the Office acts as counsel, either as duty, *ad hoc* or permanent Counsel assigned by the Court. As discussed below, the new Defence Office would not have a representation role. The representation of suspects and accused, as well as any other *ad hoc* assignments, would continue being handled by independent external Counsel.

Moreover, in relation to the legal research and advice function, if the OPCD does not get involved in the substance of the case, as it should not,<sup>12</sup> and the research and advice they provide is of general nature, then the issue of independence does not even arise in relation to that role. If the specific questions raised or the assistance sought requires access to the case file or disclosure of client-counsel privileged information for the OPCD to properly carry out their advisory function, then the concern is not about independence, but about the non-disclosure to third parties of information provided to the Office by the Defence. As discussed below, this concern, which is fully legitimate, can be addressed effectively by a legislative amendment, which would extend the client-counsel privilege to the staff of the Defence Office. In any event, OPCD’s research and advice is provided to the Lead Counsel in each case who bears personal responsibility for the representation of the suspect and accused before the Court.<sup>13</sup> When performing this function OPCD acts, at best, as an agent of that Counsel and its research or advice does not have an independent life – it is for Counsel to integrate it in his or her submissions to the Court. As such, the independence or otherwise of the Office providing the research or advice adds little value to the Counsel’s independent

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<sup>12</sup> OPCD submits that it cannot and does not take a position on the facts and on the merits of the issues it deals with. See for example OPCD filing of 12 February 2007, ICC-01/04/06.

<sup>13</sup> Article 24(2) of the Code of Professional Conduct for Counsel.



assessment of the quality, legal correctness and overall usefulness of the research or advice received.

Lastly, the independence of the OPCD or the proposed Defence Office should not be mistaken for the independence of the Defence function as such. There is no question that the performance of the Defence function, i.e. the representation of suspects and accused or the representation of the general interests of the defence in the early stages of the proceedings, requires full functional and institutional independence. That function, however, is exercised by independent Defence Counsel and not by OPCD or the Defence Office.

## **Proposals**

The Registrar is proposing to consolidate all Defence-support functions into a single Defence Office. Such a structural change would optimize the utilization of existing resources and would improve the services provided to the Defence. This would not affect adversely the resources available for legal aid.

The envisaged Defence Office would be responsible for exercising the Registrar's duties under Rule 20 of the Rules to promote the rights of the Defence and to support the Defence, and would have the capacity to carry out the full range of defence-related functions, except for the actual representation of suspects and accused, which would continue being carried out by independent external counsel.

In particular, the new Defence Office would perform the following functions, including but not limited to:

- (i) maintain the List of Counsel and rosters of persons assisting Counsel;
- (ii) appoint Counsel and persons assisting Counsel;
- (iii) administer legal aid (all three functions to be performed by a separate unit within the Defence Office);
- (iv) maintain effective relations with Counsel and Counsel's representative body;
- (v) provide information, legal research and advice to Counsel (function to be performed by a separate unit within the Defence Office);
- (vi) provide practical support and assistance to Counsel, including in the use of information technology such as eCourt, travel to the Court, planning of (field) missions and investigations, obtaining State cooperation in relation to Defence matters, etc; and
- (vii) act as a Defence focal point for other (Registry) services required.

The envisaged Defence Office would have two separate units, a Legal Aid Unit and a Support and Assistance Unit, which would also be in charge of providing legal advice and logistical assistance to Counsel. The latter unit would consolidate all "support and assistance" activities, currently entrusted to the Registrar and the OPCD respectively by the Rules and the Regulations. Such consolidation, with a clear focus on support and assistance to the Defence, would enhance the quality and quantity of services provided to the Defence and, due to the pooling of resources and the avoidance of duplication, would allow the Registry and the Court to do more within the same resources.

Moreover, while the Office would be part of the Registry, i.e. not an independent entity as such, measures would be taken to preserve the confidentiality of Defence matters and to enable Counsel to communicate with the Office freely at all times. In particular, it is foreseen that the client-counsel privilege be extended to all members of the Defence Office formally through the inclusion of a special provision to that effect in the Regulations of the Court.<sup>14</sup> In addition to the general confidentiality obligations of the Registry, such legislative amendment would guarantee that Registry officers who may become privy to matters covered by the client-counsel privilege cannot be compelled to disclose such information to third parties. Moreover, since the administration of Defence payments under the legal aid system requires the review of information that may reveal the Defence strategy or even client-counsel privileged information, the proposed amendment to the Regulations would cover all Registry staff in the Defence Office, including those handling legal aid. This protection does not exist at present.

Finally, and in addition to a new organizational structure as outlined above, further steps need to be taken for an optimal performance of the Defence function at the Court. For example, the administration of legal aid needs to become less bureaucratic. Furthermore, the practical needs of the Defence teams need to be re-evaluated and met with adequate solutions in order to enhance the overall performance of the defence function. Notably, at its last session the Assembly requested the Registrar, in the context of the on-going reorganization and streamlining of the Registry, to reassess the functioning of the legal aid system and to present, as appropriate, a proposal for adjustments of the existing legal aid system, upon the completion of the first full judicial cycles.<sup>15</sup> Such issues will be tackled in the next phase of the *ReVision* Project in consultation with the relevant stakeholders.

### III. INDEPENDENT ASSOCIATION OF COUNSEL

While a single Defence Office would facilitate and optimize the promotion of the Defence interests within the institution, in conformity with the Registrar's duties under Rule 20 of the Rules there is, in addition, a need for an independent representation of the collective interests of all Counsel practicing before the Court. This is a role that the Registrar cannot reasonably fulfil not least because the collective interests of Counsel may require the adoption of positions independent from or contrary to the Registrar's. That role would be most adequately performed by an independent self-governing Association of Counsel founded on democratic principles and representing all Counsel practicing before the Court. Such an Association of Counsel must be in a position to effectively exercise its role both internally and externally, and as such must be recognised by the Court, must receive relevant information and be actively involved institutionally in the relevant areas of the administration of justice. The non-existence of an Association of Counsel is a major structural and institutional gap.

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<sup>14</sup> This approach is consistent with national practice and has also been adopted by other international tribunals, for example in Article 17 of the ICTY's Directive on the Assignment of Defence Counsel and Articles 27 et seq. of the STL's Directive on the Assignment of Defence Counsel.

<sup>15</sup> ICC-ASP/12/Res.8, Annex 1, paragraph 6

The establishment and formal recognition of an independent self-governing Association of Counsel is a key element of the reform of the Defence support structure. The recognition of such an Association, particularly if membership is a requirement for admission to the List of Counsel, would reinforce the independence of the legal profession and would ensure the proper and legitimate representation of the general interests of the defence and the collective interests of counsel. It is envisaged that the Association could have the responsibility to, among others:

- (i) Act as the Court's interlocutor on Counsel-related issues, acting as the legitimate representative of all Counsel practicing before the Court, including through participation in various (consultative) bodies, such as the ACLT;
- (ii) Appoint members to relevant disciplinary organs;
- (iii) Play a role in the assessment of Counsel's competence for the purpose of admission to the List of Counsel in partnership with the Registry;
- (iv) Organise (mandatory) training for Counsel practicing before the Court;
- (v) Provide advice to Counsel on conduct and ethics issues;
- (vi) As a self-regulating body, oversee Counsel's performance and adherence to standards of ethics and conduct, including through peer reviews; and
- (vii) With the leave from a Judge or a Chamber, make submissions on matters of collective interest of counsel or any other Defence –related matters.

The Association of Counsel would complement the institutional support provided to the Defence by the Registry. It would represent the collective interests of Counsel and would be an interlocutor for the Registrar and others in the Court dealing with Defence issues. Through the Association, the Defence will become more involved in the development of policies that impact on the Defence. As such, it would further promote and enhance the independence of the Defence function. At the same time, it could provide an effective platform to address Counsel's performance when it is below acceptable standards, for example through peer reviews. It is recognized that in view of the still limited number of cases before the Court, the funding of an Association of Counsel may be problematic, certainly in the first years. The Registrar would therefore be willing to seek the ASP's approval for a subsidy for the recognized Association of Counsel in order to be able to effectively exercise its functions.

While the establishment and formal recognition of an independent Association of Counsel is considered essential and indispensable for the Defence function within the Court, there are also advantages of having all legal practitioners, including the legal representatives of victims, as members of join the Association. These discussions are currently on-going.

#### **IV. WAY FORWARD**

The implementation of the above proposals would present a major improvement in Registry functions and services to victims and the Defence. However, they require an amendment of the Regulations of the Court, and therefore the support of the Court's Judges. The Registrar has already briefed the Judges and is preparing proposals for amendments to the Regulations of the Court, for submission to the ACLT.

# DRAFT



Should the proposed new Victims and Defence Office be established, OPCD, OPCV, CSS and VPRS would cease to exist as such. A single manager, to be appointed after a competitive recruitment process, would head each of the new Offices. In principle, other staff in both Offices will be administratively redeployed to the new Victims and Defence Offices.

As for the establishment of an Association of Counsel, the Registrar is prepared to work closely with the List Counsel to identify a preferred initiative and support the process of the formal establishment and recognition of the Association. The process should, however, be led by Counsel themselves. Initial meetings have been held with several groups of counsel to that end. Throughout the establishment process, there should be a dialogue with the Registry in relation to the process and requirements for recognition, i.e. the Association's governance structure and the definition of its role, among others.

The establishment of a new Defence Office and Victims Office would require a transitional period for its full implementation in order to ensure that it does not affect adversely on-going cases, current assignments or entitlements under the legal aid scheme.