Cour
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International
Criminal
Court

Original: **English** No.: **ICC-01/04**
Date: **18 February 2009**

THE PRESIDENCY

Before: **Judge Philippe Kirsch, President**
Judge Akua Kuenyehia, First Vice-President
Judge René Blattmann, Second Vice-President

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public

Reasons for the Decision

on the "Request for Review of the Registrar's Decision of 28 March 2008 on the Application for Legal Assistance Paid by the Court Filed by Mr Keta on behalf of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 under Regulation 85(3) of the Regulations of the Court"

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Mr Luis Moreno Ocampo
Ms Fatou Bensouda

The Office of Public Counsel for the Defence
Mr Xavier-Jean Keïta

Legal Representative of the Victims
Mr Joseph Keta

The Office of Public Counsel for Victims
Ms Paolina Massidda

REGISTRY

Registrar
Ms Silvana Arbia

Deputy Registrar
Mr Didier Preira

Victims Participation and Reparations Section
Ms Fiona McKay

The Presidency of the International Criminal Court (hereinafter "Court") has before it the application of Mr Joseph Keta for judicial review of the decision of the Registrar on legal assistance paid by the Court to victims.

The application is dismissed for the reasons set out below.

I. PROCEDURAL HISTORY

1. On 24 December 2007, Pre-Trial Chamber I authorised, *inter alia*, victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06 and a/0228/06 to participate in proceedings in the investigation stage of the situation in the Democratic Republic of the Congo (hereinafter "DRC").[1] On 7 January 2008, the Registrar invited the legal representative chosen by the victims, Mr Joseph Keta (hereinafter "applicant"), to apply for legal assistance paid by the Court on behalf of indigent victims either by completing the Financial Information Form or by submitting information which would enable the Registry to establish indigence on the part of the victims.[2] On 31 January 2008, the applicant explained that the situation in Ituri, DRC, makes it impossible to provide the information required by the Financial Information Form but provided information on the victims' financial status in order to establish indigence.[3] On 22 February 2008, the applicant submitted to the Registrar a request for legal assistance paid by the Court on behalf of the victims.[4] By letter dated 7 March 2008, the applicant submitted to the Registrar a statement signed on behalf of the victims, certifying on his honour that the information provided in respect of their indigent status was correct, irrevocably authorising the Registrar to take any action required without having to consult them and undertaking to inform the Registrar of any change in their financial situation (hereinafter "declaration(s)").[5]

2. On 26 March 2008, the Registrar issued a decision on the indigence of the victims and their eligibility for legal assistance paid by the Court (hereinafter "Decision of 26 March

[1] Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06, ICC-01/04-423. A corrigendum to that decision was issued on 31 January 2008 as ICC-01/04-423-Corr.
[2] ICC-01/04-530-Conf-Exp-Anx1.
[3] ICC-01/04-530-Conf-Exp-Anx2.
[4] ICC-01/04-530-Conf-Exp-Anx3.
[5] ICC-01/04-530-Conf-Exp-Anx5.

2008").[6] By that decision the Registrar considered that an initial review of the information provided by the applicant in respect of the victims suggested "*a priori*, that they do not have the means to bear all or part of the costs of their legal representation before the Court".[7] The Registrar provisionally deemed the victims to be indigent, pursuant to regulation 85(1) of the Regulations of the Court, pending the outcome of an investigation into their property and assets.[8] In so doing, the Registrar noted the absence of declarations signed by the victims and, on an exceptional basis, accepted the declaration signed by the applicant on behalf of the victims, deeming it sufficient to facilitate the financial investigation.[9] However it was maintained that such acceptance was temporary and subject to the Registrar receiving declarations signed by the victims.[10]

3. On 28 March 2008, the Registrar issued a decision granting, in part, the applicant's request for legal assistance paid by the Court (hereinafter "Decision of 28 March 2008").[11] However, it was stated that such legal assistance was temporary and that payment thereof would be subject to the receipt of: (i) a statement signed by the victims certifying, on their honour, the correctness of the information provided, irrevocably authorising the Registrar to take any action required without having to consult them and undertaking to inform the Registrar of any change in their financial situation; and (ii) additional information concerning the victims' current financial situation (hereinafter "requirements").[12]

4. On 14 April 2008, the applicant sought from the Presidency judicial review of the Decision of 28 March 2008, pursuant to regulation 85(3) of the Regulations of the Court (hereinafter "Application").[13] The applicant requests the Presidency to set aside the requirements imposed by the Decision of 28 March 2008 and to order the Registrar to apply a full presumption of indigence in favour of victims.[14]

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[6] Registrar's Decision on the Indigence of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06,a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06, ICC-01/04-490-tENG.
[7] Decision of 26 March 2008, page 3.
[8] Decision of 26 March 2008, page 5.
[9] Decision of 26 March 2008, pages 3 - 4.
[10] Decision of 26 March 2008, page 4.
[11] Corrigendum to the "*Registrar's Decision on the Application for Legal Assistance Paid by the Court Filed by Mr Keta on behalf of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06,a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06*", ICC-01/04-497-Anx1-tENG, pages 7 - 8.
[12] Decision of 28 March 2008, page 8.
[13] Request for Review of the Registrar's Decision of 28 March 2008 on the Application for Legal Assistance Paid by the Court Filed by Mr Keta on behalf of Victims *a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06* under Regulation 85(3) of the *Regulations of the* Court, ICC-01/04-494-tENG.
[14] Application, paragraphs 8, 43 and 44.

5. On 6 May 2008, the Registrar submitted observations on the Application pursuant to regulations 24*bis* and 34(b) of the Regulations of the Court (hereinafter "Observations").[15]

6. By decision of 17 December 2008, the Presidency dismissed the Application.[16] The reasons for that decision are set out herein.

II. ADMISSIBILITY

A. Observations of the Registrar

7. The Registrar submits that by his Application, the applicant appears to be challenging the Decision of 26 March 2008, which provisionally deemed the victims to be indigent, subject to the receipt of declarations signed by them and an investigation into their property and assets.[17] The Registrar contests the admissibility of the Application in so far as it relates to the Decision of 26 March 2008, on the ground that the applicant did not seek judicial review of that decision within the time limit prescribed by regulation 85(3) of the Regulations of the Court. It is argued that, consequently, the Decision of 26 March 2008 has become a final decision.[18]

B. Determination of the Presidency

8. It is noted that the applicant expressly brought his Application for judicial review in relation to the Decision of 28 March 2008, seeking to set aside the two requirements contained therein, and, in so far as that decision is concerned, did so within the time limit prescribed by regulations 33 and 85(3) of the Regulations of the Court.[19] Whilst the Application also has a bearing on the Decision of 26 March 2008, in that the earlier

[15] Registrar's Observations under regulations 24 *bis* and 34(b) of the *Regulations of the Court* in respect of the Request for Review of the Registrar's *Decision on the Application for Legal Assistance Paid by the Court Filed by Mr Keta on behalf of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06,* dated 28 March 2008, ICC-01/04-497-tENG.

[16] Decision on the "Request for Review of the Registrar's Decision of 28 March 2008 on the Application for Legal Assistance Paid by the Court Filed by Mr Keta on behalf of Victims *a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/*06 under Regulation 85(3) of the *Regulations of the* Court, ICC-01/04-555.

[17] Observations, paragraph 4.

[18] Observations, paragraph 4.

[19] See Application, paragraph 8. Regulation 33(1)(a) provides that days shall be understood as calendar days whilst regulation 85(3) provides that judicial review of decisions of the Registrar may be sought from the Presidency within 15 days of notification of the relevant decision. Regulation 33(1)(c) provides, *inter alia*, that where the day of notification is a Friday, the time limit shall not begin to run until the next working day of the Court. The Decision of 28 March 2008 was notified on the same day, which was a Friday. As such, the time limit began to run on Monday 31 March 2008. The Application was filed on 14 April 2008, in accordance with the given time limit.

decision contains the first of the two requirements set out in the Decision of 28 March 2008, the admissibility of the Application is unaffected.

III. THE MERITS

A. The submissions

1. Arguments of the Applicant

9. The applicant seeks the quashing of the requirements set out in the Decision of 28 March 2008.[20] It is submitted that the said decision, which ruled upon the request for legal assistance paid by the Court, erroneously attached additional requirements to the determination of indigence, which was previously dealt with in the Decision of 26 March 2008. It is submitted that whereas those requirements were set out in the reasoning of the Decision of 26 March 2008, they were not included in the disposition of that decision.[21]

10. The applicant submits that the Decision of 28 March 2008 delays the effective representation of the victims, by rendering the determination of indigence and the processing of applications for legal assistance paid by the Court contingent upon the submission of declarations signed by the victims and the provision of additional information on their financial situation.[22] It is argued that the said decision demands a specific field mission by the applicant, the cost of which is prohibitive without the receipt of legal assistance paid by the Court.[23] It is explained that the victims reside in a remote and relatively inaccessible territory, to which a previous mission by the applicant was unsuccessful due to insecurity on the ground; any field mission requires periodic assessments of the security situation and, as such, it cannot be known with certainty when it will be possible to reach that territory.[24] Furthermore, the applicant recalls the strict policy on contact with victims to which the Registry and the Office of the Prosecutor adhere. In order to ensure the safety of victims, this policy restricts contact to that which is strictly necessary.[25] The applicant argues that the Decision of 28 March 2008 requires direct contact with the victims which is not strictly necessary since the indigence of each victim participating in the proceedings can readily be presumed for reasons set out at paragraph 11 below.[26]

11. The Presidency is requested to review the scheme of legal assistance paid by the Court (hereinafter "legal assistance scheme"), including the manner in which the regulations

[20] Application, paragraph 8.
[21] Application, paragraph 6.
[22] Application, paragraph 37.
[23] Application, paragraph 38.
[24] Application, paragraphs 39 - 40.
[25] Application, paragraph 41.
[26] Application, paragraph 41.

governing the determination of indigence are interpreted in respect of victims in view of the repercussions of the Decision of 28 March 2008.[27] The applicant submits that an interpretation of regulation 132 of the Regulations of the Registry based upon the application of a full presumption of indigence would assist the Court in effectively administering the legal assistance scheme and would constitute a constructive interpretation of article 68(1) of the Rome Statute of the Court (on the protection and participation of victims).[28] It is submitted that the Court already applies a quasi-presumption of indigence, in that victims who have been accorded participatory status in proceedings on the basis of information provided in the Standard Application Form to Participate in Proceedings before the Court (hereinafter "Participation Form") must provide information on their means, upon which basis the Registrar decides whether they may be considered provisionally indigent, pending the outcome of a financial investigation.[29] However, it is argued that a full presumption of indigence can readily be raised from the Participation Form.[30]

12. The applicant argues that the application of a full presumption of indigence in favour of victims applying for legal assistance paid by the Court may be supported by the following reasons.[31] First, the cut-off point set by the Court for the calculation of indigence is such that victims would have to have significant means at their disposal in order not to be deemed indigent, an improbability where victims of alleged crimes committed in the conflict in the DRC are concerned.[32] Secondly, recourse to presumptions has assisted other institutions and claims bodies in the management of applications for damages or compensation.[33] Examples include presumptions to establish: a causal link between loss suffered and particular events;[34] responsibility in cases of ill-treatment and torture;[35] and the inability of victims of serious crimes to afford legal fees.[36] Thirdly, studies show that the humanitarian context in which victims of mass crimes live *de facto* implies indigence since it is marked by population displacement; the destruction of homes, provisions and livestock; impoverishment, insecurity and disease; physical and psychological trauma; stigmatisation and social exclusion.[37] The applicant argues that the harm suffered by the victims and the impact thereof is readily identifiable from the Participation Form, in which their loss and the physical and psychological consequences of their victimisation are

[27] Application, paragraph 8. The applicant requests the Presidency to interpret regulations 113 and 130 to 136 of the Regulations of the Registry as allowing a presumption of indigence in favour of victims.
[28] Application, paragraphs 9 - 10.
[29] Application, paragraph 11.
[30] Application, paragraph 12.
[31] Application, paragraph 13.
[32] Application, paragraphs 14 - 17.
[33] Application, paragraphs 18 - 21.
[34] Application, paragraphs 19 - 21. Reference is made to the International Commission on Holocaust Era Insurance Claims, the German Forced Labour Compensation Programme, the Claims Resolution Tribunal for Dormant Accounts in Switzerland and the United Nations Compensation Commission.
[35] Application, paragraphs 22 - 24. Reference is made to the jurisprudence of the European Court of Human Rights and the National Commission on Political Imprisonment and Torture in Chile.
[36] Application, paragraph 25. Reference is made to the Norwegian Criminal Procedure Act 1981.
[37] Application, paragraphs 26 - 31.

stated.[38] It is submitted that it is more appropriate and effective to deal with victims' needs in a manner entirely different from those of accused persons.[39] Finally, the applicant argues that a full presumption of indigence in favour of victims would neither be prejudicial to, nor inconsistent with, the right of the defence to a fair and impartial trial, since a quasi-presumption is already applied; rather, the application of a full presumption would lighten the procedure for applying for legal assistance paid by the Court and the administrative burden of managing the scheme.[40]

2. *Observations of the Registrar*

13. The Registrar submits that there was no error in the Decision of 28 March 2008 and that neither the Decision of 26 March 2008 nor the Decision of 28 March 2008 put victims at risk.[41] It is submitted that pursuant to the legal assistance scheme, applicants for such assistance are required to complete the relevant forms, in accordance with regulation 132(1) of the Regulations of the Registry, and the Registrar is required to undertake an objective and individual assessment of such applications.[42] It is argued that regulation 84 of the Regulations of the Court and regulation 132(1) of the Regulations of the Registry imply that the assessment of the indigence of victims must be based upon the individual means of each applicant regardless of their geographical, social or humanitarian origin.[43] It is argued, therefore, that the need to assess the indigence of each applicant for legal assistance paid by the Court stems from the legal instruments governing such assistance, as does the requirement to provide declarations signed by the victims.[44] As such, it is submitted that a full presumption of indigence cannot apply to the current regime governing legal assistance paid by the Court.[45] It is maintained that the Registrar has the responsibility of ensuring that funds allocated for legal assistance paid by the Court are appropriately disbursed and must therefore ensure the accuracy of applications and the merits of any decisions to grant such legal assistance.[46]

14. It is further submitted that it cannot be presumed that every victim of crimes falling within the jurisdiction of the Court is indigent, as it is possible to envisage a victim of a situation or case residing in a country or living in circumstances that enable him or her to pay for, or contribute to, his or her legal fees. However, the Registrar does not rule out that a form of presumption of indigence may be applied in pre-defined cases, such as minors. It is explained, however, that such a presumption would still, at a minimum, require the submission of information establishing that the victim belongs to the relevant category and

[38] Application, paragraph 32.
[39] Application, paragraph 33.
[40] Application, paragraphs 34 - 36.
[41] Observations, paragraphs 3 and 5.
[42] Observations, paragraphs 10 - 11.
[43] Observations, paragraph 12.
[44] Observations, paragraphs 13 - 14.
[45] Observations, paragraph 14.
[46] Observations, paragraph 12.

would not necessarily preclude the Registrar from requiring the victim to submit a signed declaration.[47]

15. The Registrar submits that the consequence of the Decision of 28 March 2008 is not that the applicant may not represent his clients, but that legal assistance paid by the Court can only be disbursed once the requirements in the said decision are met.[48] Whilst acknowledging the difficulties faced by the applicant in meeting with the victims, the Registrar argues that there is a duty upon legal representatives of victims to inform their clients of the status of the proceedings and to seek instructions.[49] Recalling the Court's policy discouraging contact with victims unless strictly necessary, it is submitted that a legal representative must take all necessary measures to meet with his or her clients when it appears compelling, which it does in the present case.[50]

16. The Registrar explains that the Court is in the process of developing a legal assistance scheme for victims. It is explained that despite a series of consultations initiated by the Registry, there is presently insufficient information to establish a scheme which determines indigence objectively whilst taking into account, *inter alia*, the precarious and/or vulnerable situation of victims, as well as the requirements of transparency in the management of public funds.[51] It is recalled that pending the establishment of a specific form pertaining to victims, the Presidency had approved the interim use of the Financial Information Form, which was initially created for suspects and accused persons appearing before the Court.[52] It may be reasonably expected, the Registrar submits, that any financial information form adopted for use by victims will require, at minimum, basic information as to the victim's means and a signed declaration as to the victim's cooperation in the investigation into his or her indigence.[53]

17. With respect to the applicant's specific arguments in support of the application of a full presumption of indigence, set out herein at paragraph 12, the Registrar submits that indigence is currently determined *in concreto*, based on the circumstances of each case, pursuant to regulation 84(1) of the Regulations of the Court.[54] Moreover, it is maintained that the Registrar has never required victims to fulfil the same assessment criteria as suspects or accused persons.[55] Secondly, the Registrar submits that none of the entities cited by the applicant are criminal courts and that the standards of proof, and the financial

[47] Observations, paragraph 15.
[48] Observations, paragraph 35.
[49] Observations, paragraph 36.
[50] Observations, paragraph 37.
[51] Observations, paragraph 7.
[52] Observations, paragraph 7. See ICC-01/04-497-Conf-Anx2.
[53] Observations, paragraph 9.
[54] Observations, paragraph 21.
[55] Observations, paragraph 23.

realities of the institutions to which the applicant refers, differ from those of the Court.[56] Thirdly, the Registrar submits that in provisionally deeming the victims to be wholly indigent in the Decision of 26 March 2008, it was taken into account that their region has seen "massive population displacement, making living conditions highly insecure and that many victims have seen their homes destroyed and their belongings pillaged".[57] However, it is argued that the limited budget of the Court does not at present permit the legal assistance scheme to be based on an automatic presumption of indigence in favour of victims.[58] Finally, the Registrar accepts that the rights of the defence would not be prejudiced by the application of a full presumption of indigence.[59]

B. Determination of the Presidency

18. It is recalled that the judicial review of the decisions of the Registrar concerns the propriety of the procedure by which the latter reached a particular decision and the outcome of that decision. It involves a consideration of whether the Registrar has: acted without jurisdiction, committed an error of law, failed to act with procedural fairness, acted in a disproportionate manner, taken into account irrelevant factors, failed to take into account relevant factors, or reached a conclusion which no sensible person who has properly applied his or her mind to the issue could have reached.[60]

19. In the instant case, the applicant requests the Presidency to set aside the requirements imposed by the Decision of 28 March 2008, namely that the provision of legal assistance paid by the Court would be subject to the receipt of: (i) a statement signed by the victims certifying, on their honour, the correctness of the information provided, irrevocably authorising the Registrar to take any action required without having to consult them and undertaking to inform the Registrar of any change in their financial situation; and (ii) additional information concerning the victims' current financial situation. Furthermore, the applicant proposes that the Presidency establish a scheme for victims applying for legal assistance paid by the Court fashioned upon a presumption of indigence.

20. As to the applicant's argument that the Decision of 28 March 2008 imposes additional requirements upon the determination of the victims' indigence, which had previously been determined in the Decision of 26 March 2008, it is noted that the earlier decision made clear that the acceptance of the declaration signed by the applicant on behalf of the victims was exceptional and temporary and that declarations signed by the victims were required.

[56] Observations, paragraphs 25 - 29.
[57] Observations, paragraph 30.
[58] Observations, paragraph 31.
[59] Observations, paragraph 32.
[60] The standard of judicial review was defined by the Presidency in its decision of 20 December 2005, ICC-Pres-RoC72-02-5, paragraph 16, and supplemented in its decision of 27 November 2006, ICC-01/04-01/06-731-Conf, paragraph 24.

The Decision of 28 March 2008 merely recalls the requirement that was contained in the Decision of 26 March 2008.

21. The Presidency finds the Decision of 28 March 2008 to have been in accordance with the current law governing the legal assistance scheme. Article 68(3) of the Rome Statute of the Court provides that the views and concerns of victims may be presented to the Court by their legal representatives where considered appropriate. Pursuant to rule 16(1)(b) of the Rules of Procedure and Evidence (hereinafter "Rules"), the Registrar is responsible for assisting victims in obtaining legal advice and organising their legal representation. Rule 90(5) of the Rules provides that "[a] victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance". In practice, the Registrar has given this provision a wide interpretation, taking it also to apply to victims who lack the necessary means to pay for a common legal representative of their choice.

22. The procedure for seeking legal assistance paid by the Court is set out in the Regulations of the Court and the Regulations of the Registry. Regulation 84(1) of the Regulations of the Court provides: "[w]here a person applies for legal assistance to be paid by the Court, the Registrar shall determine the applicant's means and whether he or she shall be provided with full or partial payment of legal assistance." This provision indicates that eligibility for legal assistance paid by the Court is assessed by the Registrar by way of means testing; hence, in order to be eligible for such legal assistance, financial eligibility must be established. It also makes clear that the means to be considered in the entitlement assessment include expenditure, income and capital, pursuant to regulation 84(2) of the Regulations of the Court. Regulation 113(2) of the Regulations of the Registry provides that in determining whether to grant legal assistance paid by the Court to victims, the Registrar shall take into account "*inter alia,* the means of the victims, the factors mentioned in article 68, paragraph 1, any special needs of the victims, the complexity of the case, the possibility of asking the Office of Public Counsel for Victims to act, and the availability of *pro bono* legal advice and assistance".[61] As such, in submitting the victims represented by the applicant to a financial assessment based upon their individual means whilst taking into account their specific situation, the Registrar acted in accordance with the above mentioned provisions.

23. Regulation 131(1) of the Regulations of the Registry provides that the Registry shall provide the person applying for legal assistance paid by the Court with the relevant form and regulation 132(1) of the Regulations of the Registry provides that the person applying

[61] The factors mentioned in article 68(1) of the Rome Statute of the Court include "age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children".

for such legal assistance must complete the relevant form and provide the necessary information to support their application. Where the information provided is incomplete, the Registrar, pursuant to regulation 131(2) of the Regulations of the Registry, may direct the person to provide the requisite supporting material; where there are grounds to believe that the information provided is inaccurate, the Registry may, pursuant to regulation 132(2) of the Regulations of the Registry, undertake an investigation and, in so doing, request from any person or body any information it deems appropriate. The person seeking legal assistance paid by the Court is bound to communicate to the Registry any change in his or her financial situation that might affect his or her eligibility for such legal assistance and the Registry may carry out random checks to verify whether any such changes have occurred, in accordance with regulation 132(4) of the Regulations of the Registry. The Registrar may, pursuant to regulation 85(2) of the Regulations of the Court, revoke a decision granting legal assistance paid by the Court if the financial situation of the person is found to be different from that indicated on the form or if the financial situation of the person has changed. In that case, the Registrar may seek an order for recovery of funds from the Presidency, pursuant to regulation 85(4) of the Regulations of the Court.

24. The requirements imposed by the Decision of 28 March 2008 are compatible with the current legal assistance scheme and the provisions of the aforementioned texts. The first requirement, the provision of the impugned declarations, is a legitimate condition of the legal assistance scheme. Whilst the difficulties outlined by the applicant, at paragraph 10 above, in retrieving the documentation sought by the Registrar are fully acknowledged by the Presidency, they cannot nullify the necessity of providing the requisite information in the instant case. A declaration from the person requesting legal assistance paid by the Court attesting that the information provided in support of his or her application is true and accurate to the best of his or her knowledge and undertaking to inform of changes in his or financial status is a standard component of a legal aid scheme based on means testing. It is central to the administration of such a scheme, as the declaration confirms the consent of the person seeking legal aid to the verification of their personal financial information by the scheme administrator and notifies that person of the consequences that may flow from providing inaccurate or false information; namely, in the case of the Court, the withdrawal of legal assistance paid by the Court and the repayment of funds. However, in recognition of the potential difficulties surrounding contact with victims, the Registrar, in providing assistance within the context of rule 16(1)(b) of the Rules and regulation 113(1) of the Regulations of the Registry, should ensure that victims seeking legal assistance paid by the Court or their legal representatives are provided with information as to how to obtain such assistance at the earliest possible opportunity. In respect of the second requirement, the Registrar, the scheme administrator, has the inherent power to request any information deemed necessary to assist him or her in disposing of an application for legal assistance paid by the Court, a power expressly provided for in regulation 131(2) of the Regulations of

the Registry. Without the requisite information, the Registrar may be unable to complete the eligibility assessment. As such, the requirements set out in the Decision of 28 March 2008 cannot be held to be unreasonable. The Presidency confirms the use of declarations or, unless otherwise provided, the continued use of the Financial Information Form in the eligibility assessment of victims for legal assistance paid by the Court.

25. In light of the above, the Presidency finds no discernable error in the Decision of 28 March 2008. In so far as the applicant is requesting the Presidency to interpret the provisions governing the legal assistance scheme as allowing for the application of a full presumption of indigence in favour of victims (in that victims participating in the proceedings in the situation in the DRC would be deemed indigent on the basis of information provided in the Participation Form and would not be subject to means testing), such an interpretation would go against the clear language of the Regulations of the Court and the Regulations of the Registry. However, the legal assistance scheme does not prevent the application of a rebuttable presumption of indigence (whereby persons applying for legal assistance paid by the Court are presumed to be financially eligible unless such eligibility is refuted by means testing), akin to that applied by the Registrar.

26. As to the alleged detrimental effect of the Decision of 28 March 2008, the Presidency understands that since the date of the Application the Registrar has released funds owed to the applicant pursuant to the said decision, following receipt of several declarations signed by victims. Being aware of that fact, the Presidency need not address the issue further.

27. It is noted that the scheme on the determination of indigence of, and legal assistance paid by the Court to, victims has yet to be finalised and that the Registry is still in the process of consulting partners thereon. It is further noted that the Registry is due to submit a report to the Assembly of States Parties of the Court at its eighth session on "the legal and financial aspects for funding victims' legal representation before the Court, together with a further report considering alternatives to the formula currently used by the Court for calculating indigence".[62] Within the context of ongoing consultations and the preparation of the aforementioned reports, the Registrar, in considering a variety of approaches to the legal assistance scheme for victims, is requested to address the viability of the scheme proposed by the applicant in the instant Application.

The Application is dismissed.

[62] See Resolution ICC-ASP/7/Res3 of the Assembly of States Parties, paragraph 16, contained in ICC-ASP/7/20.

Done in both English and French, the English version being authoritative.

Judge Philippe Kirsch

President

Dated this 18 February 2009

At The Hague, The Netherlands