

## Resolution ICC-ASP/8/Res.4

*Adopted at the 8<sup>th</sup> plenary meeting, on 26 November 2009, by consensus*

### ICC-ASP/8/Res.4

#### Family visits for indigent detainees

*The Assembly of States Parties,*

*Recalling* that, at its seventh session, the Assembly had noted that further discussions were necessary in order to facilitate a policy decision on the issue of financial assistance for family visits to indigent detainees, including, but not limited to, consideration of the substantial and long-term financial implications of this question,<sup>1</sup>

*Further recalling* that the Assembly had also recognized that detained persons are entitled to receive visits and that specific attention should be given to visits by family members,<sup>2</sup> while, according to existing law and standards<sup>3</sup>, the right to family visits does not comprise a co-relative legal right to have such visits paid for by the detaining authority,<sup>4</sup>

*Welcoming* the dialogue between the Court and States Parties on the issue of family visits,

*Noting* the views of the Committee on Budget and Finance on the issue,<sup>5</sup> and the report of the Court on family visits to indigent detained persons,<sup>6</sup>

*Noting* the decision of the Presidency of 10 March 2009 on "Mr. Mathieu Ngudjolo's Complaint under Regulation 221(1) of the Regulations of the Registry against the Registrar's Decision of 18 November 2008" in relation to the funding of family visits to an indigent detainee,

*Stressing* the management oversight role of the Assembly as enshrined in article 112, paragraph (2)(b), of the Rome Statute, together with its decision-making role in respect of the Court's budget enshrined in article 112, paragraph (2)(d) of the Rome Statute,

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.3, para. 18, and part II, E, 1b), which set out the following caveats:

- a) The funding of family visits by the Court in 2009 should be implemented solely in accordance with the priority needs of the current indigent detainees; and
- b) The decision to fund family visits in 2009 has been taken on an exceptional basis and does not in anyway create or maintain a status quo; nor establish any legal precedent in respect of those States that have already or will enter into sentence enforcement agreements with the Court; nor does it create any legal precedent in respect of current or future detainees at a national or international level; nor does the Assembly's decision prejudice or prejudge in any way the future outcome of discussions on the issue of funding family visits for indigent detainees.

<sup>2</sup> *Ibid.*, part III, resolution ICC-ASP/7/Res.3, para. 17.

<sup>3</sup> Such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (approved by Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977); the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988; and, at regional level, Recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules adopted by the Committee of Ministers of the Council of Europe on 11 January 2006; Committee for the Prevention of Torture Imprisonment Standards (CPT/Inf/E(2002)1-Rev.2006).

<sup>4</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.3, paras. 17 and 18.

<sup>5</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. II, part B.1, paras. 86-97 and part B.2., para. 127.

<sup>6</sup> ICC-ASP/7/24.

*Mindful* of the overall responsibility of the Registrar to manage the detention center and to ensure that the detainees are treated with humanity<sup>7</sup> in the course of the detention in different phases of the trial arising from the *sui generis* nature of the Court;

1. *Takes note* of the report of the Bureau on family visits for indigent detainees and of the recommendations contained therein;<sup>8</sup>

2. *Reaffirms* that according to existing law and standards, the right to family visits does not comprise a co-relative legal right to have such visits paid for by the detaining authority or any other authority;

3. *Invites* the Court to continue to address the well-being of the detainees under its custody, paying particular attention to the maintenance of family contacts. In this light and in the particular circumstances of each detainee, alternative and complementary measures to family visits should be fully explored by the Court in order to ensure the maintenance of contacts;

4. *Acknowledges* that various mechanisms could usefully be implemented in order to support family links and, in that regard, as a matter of priority, *invites* the Court to report to the Assembly on the feasibility and the conditions for the establishment of a voluntary system of funding family visits, with a view to its establishment by the Assembly at its ninth session;

5. *Decides* that, pending the establishment of such system, in the case of an indigent detainee, while no legal obligation exists for the detaining authority or any other authority to fund family visits, on purely humanitarian grounds and following the application of clear criteria determining:

- full or partial indigence as determined by the procedure established by the Court to ascertain the status of indigence,
- family relation to the detainee, and
- equal treatment of detainees;

the Court may, on a temporary basis, partly or fully subsidize family visits for indigent detainees up to an amount to be determined by the Assembly in the context of the approval of the programme budget;

6. The temporary budgetary funding shall be subject to re-evaluation upon the establishment of such a mechanism of voluntary funding, no later than at the tenth session of the Assembly;

7. *Underlines* that such assistance is applicable exclusively in the case of an indigent detainee in the Court's custody and is not applicable in any other circumstance, such as but not limited to the case of a detainee under temporary release in a third country, a convicted person serving sentence of imprisonment in the host State pending the designation of a State of enforcement by the Court and until its implementation, or a convicted person serving sentence in a third country;

8. *Invites* the Court to review the relevant parts of the Regulations of the Registry in light of this resolution and the above-mentioned report of the Bureau, and *invites* the Registrar to continue the dialogue with States Parties;

9. *Invites* the Court to report to the Assembly on the measures undertaken pursuant to this resolution and their financial implications;

10. *Requests* the Bureau to remain seized of the matter.

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<sup>7</sup> Regulations 90 and 91 of the Regulations of the Court.

<sup>8</sup> ICC-ASP/8/42.