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## Registry's single policy document on the Court's legal aid system \*

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## I. Introduction

1. Pursuant to Resolution ICC-ASP/11/Res.1, during its eleventh session, the Assembly of States Parties (hereinafter “the Assembly”) requested the International Criminal Court (hereinafter “the Court”) to submit to the Bureau and the Committee on Budget and Finance (hereinafter “the Committee”), by 1 March 2013, a single policy document on the legal aid system (hereinafter the “ICC Legal Aid Policy”).

2. The ICC Legal Aid Policy is the combined updated effect of relevant resolutions adopted to date by the Assembly on the question of legal aid as listed in annex I, the applicable legal provisions governing legal aid as stipulated in the Court’s legal instruments and internal Registry guidelines and standard operating procedures. For all intents and purposes, this document constitutes the legal aid scheme of the Court.

3. The Registry however recalls that, as indicated in, *inter alia*, the “Supplementary Report of the Registry on four aspects of the Court’s legal aid system” (hereinafter the “Supplementary Report”),<sup>1</sup> the Court’s legal aid scheme is not set in stone and is a living system, which is constantly monitored, scrutinized and moulded or perfected, to reflect the experience gained from the application of the system in practice. That is, while the ICC Legal Aid Policy is in force as *the* document of reference outlining the Court’s legal aid scheme, future reviews may implement new amendments to the policy.

## II. Background and principles governing the legal aid system

### A. Background to the legal aid system

4. The Court has in place a comprehensive legal aid scheme which balances the requirements for adequate, effective and efficient legal representation of indigent clients with the budgetary constraints of a publicly funded legal aid scheme. The existing legal aid system is the by-product of extensive and multiple consultations conducted by the Registry in accordance with rule 20.3 of the *Rules of Procedure and Evidence* (hereinafter the “RPE”).

5. The Court’s first legal aid policy was instituted following direct consultation with over 50 experts comprising the Court’s external partners, independent bodies representing the legal profession and *ad hoc* tribunals, *inter alia*, in a process that commenced in January 2003. In addition, Court officials undertook exploratory missions to national bars and countries such as the United Kingdom, which have in place well established domestic legal aid systems, with a view to developing a comprehensive legal aid scheme for the Court. A seminar of counsel, which has since become an annual event, was organised by the Court in October 2003, and was attended by more than 40 experts and representatives of lawyers’ associations who provided feedback and comments enabling the Registry to formulate a proposal on the Court’s first legal aid system and to submit the same to the Committee in August 2004.

6. The Registry continued to monitor the legal aid scheme assiduously with a view to reflecting the actual needs of its end-users. A mere nine months into the first proceedings before the Court, the Registrar commenced a performance review of the legal aid scheme on a *proprio motu* basis in order to propose to the Assembly amendments intended to hone the Court’s legal aid policy on the basis of the experience gained.

7. The 2007 review process also involved comprehensive consultation and contributions were received from lawyers on the List of Counsel created and maintained by the Registrar, who submitted comments on the operation of the existing system, notably counsel in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.<sup>2</sup> The Registry distributed an initial working paper to a number of partners – both internal and external – and received helpful responses from various lawyers’ associations, including the International Bar

<sup>1</sup> Supplementary Report of the Registry on four aspects of the Court’s legal aid system (ICC-ASP/11/43).

<sup>2</sup> See *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06.

Association and the International Criminal Bar.<sup>3</sup> The Registry incorporated further lessons learnt from the *ad hoc* tribunals, and Registry staff undertook missions to London (United Kingdom) and Madrid (Spain) to exchange experiences with the institutions responsible for the management of legal aid programmes and lastly held meetings, including with external partners, to discuss the proposals at the Court's headquarters on 23 February 2007.<sup>4</sup> All contributions were taken into consideration, wherever possible, and the final report adopted by the Assembly of States Parties added more resources and introduced significant changes to the existing system.<sup>5</sup>

8. The adjusted system adopted has been in operation since 1 January 2008. The subsequent "Decision of the Bureau on legal aid"<sup>6</sup> (hereinafter the "Decision of the Bureau") dated 23 March 2012, introduced substantial changes to the remuneration scheme under the Court's legal aid system. Following that Decision, the Registry engaged in further consultation concerning four aspects of the legal aid system, in conformity with the lessons learnt on implementation of the legal aid scheme, and presented a Supplementary Report to the Committee. The Supplementary Report was adopted as presented without any changes by the Assembly at its eleventh session.<sup>7</sup>

## B. Applicable principles

9. The following principles govern the application of the Court's legal aid system<sup>8</sup> and related decisions of the Registrar. The principles listed below apply to the consideration and management of legal aid afforded to both indigent defendants and victims involved in proceedings before the Court with the exception of Principle 1 ("equality of arms") which is applicable only to indigent defendants.

**Principle 1 | *Equality of arms*:** The payment system must contribute to maintaining a balance between the resources and means of the accused and those of the prosecution;

**Principle 2 | *Objectivity*:** The payment system allocates resources on the basis of the requirements of the case and not on the basis of subjective requirements;

**Principle 3 | *Transparency*:** The payment system is structured and operated in such a way that it complies with the requirements of budgetary oversight and auditing in the management of public funds without interfering with the confidentiality of the work undertaken or the autonomy of counsel or legal team members;

**Principle 4 | *Continuity and flexibility*:** The payment system must provide for mechanisms that are flexible enough to adapt to situations as they arise in order to preclude any paralysis prejudicial to the interests of the due administration of justice;

**Principle 5 | *Economy*:** In conformity with the legal texts of the Court, specifically, regulation 83(1) of the Regulations of the Court (hereinafter, "the RoC"), the legal aid system covers only costs that are reasonably necessary for an effective and efficient legal representation.

<sup>3</sup> Report on the operation of the Court's legal aid system and proposals for its amendments", No. ICC-ASP/6/4, 31 May 2007, para. 26 (hereinafter "Adjustment Report").

<sup>4</sup> *Ibid* para. 27.

<sup>5</sup> *Ibid* para. 29.ff. In short, the new revisions provided higher salaries for all members of legal teams; supplemented the investigation budget with more funds; provided for a specific provision for victims investigation budget; added additional staff members to the pre-trial phase team structure under the Court's legal aid system, and established a detailed module system, which counsel must use to justify requests for additional resources based on objective criteria.

<sup>6</sup> The Decision of the Bureau on legal aid (ICC-ASP-2012).

<sup>7</sup> The Supplementary Report, *supra*, footnote 1.

<sup>8</sup> Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons, No. ICC-ASP/3/16, 17 Aug. 2004, para.16.

## C. Main legal basis

10. Article 43(1) of the Rome Statute establishes the Registry as the organ responsible for the non-judicial aspects of the administration and servicing of the Court. Management of the Court's legal aid scheme falls within the ambit of the Registrar with the beneficiaries of the Court's legal aid system having recourse to judicial review of administrative decisions of the Registrar concerning legal aid.

11. Similar to the jurisprudence rendered by the *ad hoc* tribunals, the Chambers and the Presidency of the Court have confirmed that it is "the Registrar in whom primary responsibility for managing the legal assistance scheme of the Court is vested, including overseeing the scheme of legal assistance by the Court [...]".<sup>9</sup>

12. The Court's legal texts, including its founding instrument, are replete with provisions governing the Court's legal aid system. The main provisions of interest are highlighted below.

13. Articles 55(2)(c) and 67(1)(d) of the Statute establish the legal grounds for entitlement, for persons about to be questioned by the Prosecutor or by national authorities under Part 9 of the Statute, and accused persons respectively, to legal assistance, or, if the person does not have legal assistance, for legal assistance to be assigned to him or her, in any case where the interests of justice so require, and *without payment by the person in any such case if he or she does not have sufficient means to pay for it*.

14. Rule 21(1) of the RPE stipulates that the criteria and procedures for assignment of legal assistance shall be established in the Regulations, based on a proposal by the Registrar, following consultations with any independent representative body of counsel or legal associations, as referred to in Rule 20(3) of the RPE.

15. In terms of the application of the legal aid system, regulation 83 of the RoC is the most pertinent in providing the Registry with the necessary guidance. The provision stipulates:

(1) Legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances.

(2) The scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate. [...]

16. The 'determination of means' finds its legal basis mainly in regulation 84 of the RoC, where it is stated:

(1) Where 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.

(2) The means of the applicant shall include means of all kinds in respect of which the applicant has direct or indirect enjoyment or power freely to dispose, including, but not limited to, direct income, bank accounts, real or personal property, pensions, stocks, bonds or other assets held, but excluding any family or social benefits to which he or she may be entitled. In assessing such means, account shall also be taken of any transfers of property by the applicant which the Registrar considers relevant, and of the apparent lifestyle of the applicant. The Registrar shall allow for expenses claimed by the applicant provided they are reasonable and necessary.

17. Regulation 85 of the RoC in turn specifies the procedure for the Registrar to decide on a legal aid application. The regulation stipulates:

(1) In accordance with the procedure set out in the Regulations of the Registry, the Registrar shall decide within one month of the submission of an application or, within one month of expiry of a time limit set in accordance with the Regulations of the Registry,

<sup>9</sup> The Presidency, *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06-937, 29 June 2007, para. 16.

(hereinafter, “RoR”), whether legal assistance should be paid by the Court. The decision shall be notified to the applicant together with the reasons for the decision and instructions on how to apply for review. The Registrar may, in appropriate circumstances, make a provisional decision to grant payment of legal assistance.

(2) The Registrar shall reconsider his or her decision on payment of legal assistance if the financial situation of the person receiving such legal assistance is found to be different than indicated in the application, or if the financial situation of the person has changed since the application was submitted. Any revised decision shall be notified to the person together with the reasons for the decision and instructions on how to apply for review.

(3) Persons as referred to in sub-regulations 1 and 2 may seek review of the decisions described in those provisions by the Presidency within 15 days of notification of the relevant decision. The decision of the Presidency shall be final.

(4) Subject to rule 21, sub-rule 5, where legal assistance has been paid by the Court and it is subsequently established that the information provided to the Registrar on the applicant’s means was inaccurate, the Registrar may seek an order from the Presidency for recovery of the funds paid from the person who received legal assistance paid by the Court. The Registrar may seek the assistance of the relevant States Parties to enforce that order.

18. Chapter 4, Section 3 of the RoR (regulations 130 to 136) provide additional legal bases and guidance to the Registry on management of the Court’s legal aid system.

19. As regards victims’ legal aid entitlements, while the Statute does not expressly provide for legal assistance to be paid by the Court as a matter of right for victims, rule 90(5) of the RPE 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.” [italics are ours]

20. As regards to the scope of legal aid to be provided, regulation 83(2) of the RoC provides simply that “the scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate.” In short, the legal basis for funding legal representation of victims is not as clearly defined as that for the defence. Nevertheless, experience before the Court has demonstrated that in order to ensure the effective exercise of the rights afforded to victims under the Court’s legal framework, the Court must ensure that legal aid resources are made available to indigent victims.

### III. Indigence determination

21. The Court’s publicly funded legal aid system covers the costs of legal representation of indigent persons – those who lack sufficient means, in part or in whole to assume such costs – and ensures that indigent beneficiaries receive adequate resources to cover “all costs reasonably necessary as determined by the Registrar for an effective and efficient” legal representation as stipulated in regulation 83 of the RoC.

22. The principles and criteria for the determination of indigence are defined in the “Report on the principles and criteria for the determination of indigence for the purposes of legal aid (pursuant to paragraph 116 of the Report of the Committee on Budget and Finance of 13 August 2004)”<sup>10</sup> complemented by the Amendment to principles governing the determination of indigence contained in annex I of the “Report on the operation of the Court’s legal aid system and proposals for its amendment.”<sup>11</sup>

<sup>10</sup> Report on the principles and criteria for the determination of indigence for the purposes of legal aid (pursuant to paragraph 116 of the report of the Committee on Budget and Finance of 13 August 2004), no. ICC-ASP/6/INF.1, 31 May 2007.

<sup>11</sup> The Adjustment Report, *supra* footnote 3, page 13.

## A. Principles underlying the appraisal of indigence<sup>12</sup>

23. The appraisal of indigence at the Court is based on several important principles. These are outlined below:

**Principle 1** | The system is based on *objective criteria* for calculating both the means at the disposal of the person requesting payment of legal assistance by the Court and the scale of admissible expenses, thereby reducing, if not avoiding, the risk of error in the assessment of either;<sup>13</sup>

**Principle 2** | The system enables the person requesting legal assistance to honour his or her *obligations to dependants*. To this effect, the financial information form (annex II), which is the standard form for legal aid applications, contains several slots in which the occupation, salary and other sources of income of these dependants must be stated in order to allow the Registry to calculate the amount of the obligations owed to them, if any, by the person requesting the payment of legal assistance from the Court;

The financial information form is designed to enable a person seeking legal aid to properly inform the Registry of the income and assets at his or her own disposal and at the disposal of the persons living in his or her household. The purpose of this declaration is to commit the person claiming indigence to full cooperation with the Registry in the financial investigation process in order to facilitate the speedy completion of the initial phase of the financial investigation, allowing the Registrar, within one month,<sup>14</sup> to make a provisional determination of eligibility and, in the event of a positive determination, to determine the extent of the Court's contribution to the cost of the person's legal representation. The information is checked by the financial investigator in order to properly assess the application for legal aid and to avoid undue use of legal aid funds;<sup>15</sup>

**Principle 3** | To comply with fairness requirements, the system is also *flexible*, allowing account to be taken of any changes in the financial status of the person and his or her dependants;<sup>16</sup>

**Principle 4** | Finally, to facilitate understanding and management of the system, excessive complexity has been avoided, enabling the Registry to present a *simple* yet comprehensive mechanism that fully complies with all the aforementioned principles.<sup>17</sup>

## B. Calculation of the financial means of the person claiming indigence

### 1. Assets of the person claiming indigence

24. Upon submission of the application form,<sup>18</sup> an estimation of the value of assets, excluding those deemed necessary for the normal living expenses of the person and his or her dependants, needs to be made to determine the person's disposable means. In particular:

(1) *The person's residence* will be excluded from the disposable means, to the extent considered reasonable in light of the needs of the dependants living in it.<sup>19</sup> The value considered reasonable will be calculated as follows: the Estimated Monthly Rent (EMR), as determined by the relevant housing authority of the place where the residence is located, or

<sup>12</sup> *Supra* footnote 10, paras. 8 -11.

<sup>13</sup> *Ibid.* para. 8.

<sup>14</sup> Regulations of the Court No. ICC-BD/01-03-11, adopted by the judges of the court on 26 May 2004, regulation 85(1) and also Regulations of the Registry No. ICC-BD/03-01-06-rev.1, date of entry into force, 6 March 2006, regulation 132 of the RoR.

<sup>15</sup> In accordance with rule 21(5) of the RPE, "[w]here a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order to recover the cost of providing counsel."

<sup>16</sup> *Supra*, footnote 10, para. 10.

<sup>17</sup> *Ibid.* para. 11.

<sup>18</sup> Annex I.

<sup>19</sup> In accordance with annex I of the ICC-ASP/6/4 (the Adjustment Report), when assessing the needs of persons dependent on the applicant, the Registry will base its calculations on the following sources, in order of priority: official statistics relating to living expenses in the State of residence of each dependent; official statistics published by the International Civil Service Commission; other statistics relating to living expenses in the dependants' place of residence; and the rate of daily subsistence allowance set by the International Civil Service Commission for stays lasting more than one month.

by an independent taxation service, will be deducted from the Monthly Subsistence Allowance (MSA) payable to the dependants actually living in the residence.<sup>20</sup> In addition, by considering the residence as belonging to the applicant, the estimated rental value would be deducted from the estimated needs of the dependants living there; if the rent was higher than the needs of those persons, the difference would be treated as a disposable asset of the applicant.<sup>21</sup>

(2) *The furnishings* contained in the principal family home, and the property of the person claiming indigence, will be excluded from the disposable means, except for luxury items of extraordinary value, including but not limited to art and antique collections. The value of these items will be estimated by a certified expert.

(3) *Motor vehicles* that are the property of the person claiming indigence will be excluded from the disposable means, up to a maximum of two. The value of vehicles considered as disposable means will be estimated according to any available official scale, or with the help of a certified expert.<sup>22</sup> No vehicle which, in the opinion of the Registry, is of a lavish or ostentatious nature would be excluded from the calculation of indigence.<sup>23</sup>

(4) All other assets, including real estate, owned by the person claiming indigence, as well as assets transferred to another person for the purpose of concealment, will be included among the person's disposable means. These assets include, among others, stocks, bonds or bank accounts. Family or social benefits to which the person claiming indigence may be entitled are excluded.

25. For all assets included under paragraphs (2), (3) and (4) above, a *monthly value* will be determined:

(a) In the case of real estate, by calculating the estimated monthly rent, as provided for in point (1) above related to the person's residence; and

(b) For other assets, by dividing the assessed total value by 60, which is the depreciation period calculated for the assets.

26. Assets owned by dependants will only be taken into account to determine the existence and extent of the obligations to such dependants of the person claiming indigence and cannot be considered as disposable means, subject to point (4) above under this section dealing with the calculation of the financial means of the person claiming indigence.

## 2. Obligations of the person claiming indigence

27. The obligations of the person claiming indigence to dependants will be calculated on a monthly basis. In accordance with annex I of the ICC-ASP/6/4 (the Adjustment Report), when assessing the needs of persons dependent on the applicant, the Registry will base its calculations on the following sources, in order of priority: official statistics relating to living expenses in the State of residence of each dependent; official statistics published by the International Civil Service Commission; other statistics relating to living expenses in the dependants' place of residence, and the rate of daily subsistence allowance set by the UN International Civil Service Commission for stays lasting more than one month.

28. Where the value of the EMR<sup>24</sup> in respect of the residence of any of these dependants is higher than the MSA:<sup>25</sup>

(a) If the residence is the property of the dependant, the monthly rent may be deducted from the MSA of that dependant and, if applicable, any other dependant living in the same residence up to a maximum of 100 per cent of the MSA. In this context, it is noted that for the residence belonging to a dependant, the estimated rental value would be

<sup>20</sup> *Supra* footnote 10, para. 13 (a).

<sup>21</sup> The Adjustment Report, *supra* footnote 3, annex I, point 2.

<sup>22</sup> *Supra* footnote 10, para. 13(c).

<sup>23</sup> The Adjustment Report, *supra* footnote 3, annex I, point 2.

<sup>24</sup> Estimated monthly rent.

<sup>25</sup> Monthly subsistence allowance.

deducted from the estimated needs of the person in question (and, if necessary, those of other dependants living with the latter) up to the estimated value of those needs;<sup>26</sup> and

(b) If the residence is the property of the person claiming indigence, the difference will be taken into account as assets of that person.

### 3. Amount of monthly disposal means (MDM)

29. The MDM is calculated by subtracting the obligations of the person claiming indigence from the assets calculated as explained above in the subsection on ‘Assets of the person claiming indigence.’ It will be used to determine indigence for the purpose of according legal aid to be paid by the Court.

### C. Determination of the legal costs to be paid by the Court

30. The starting point for the determination of indigence is that, where the MDM is higher than the monthly cost of defence for the most onerous phase of the proceedings i.e. that of the trial, when the maximum extent of the legal team is in place, the person will be deemed not indigent and his or her request will be refused. On the other hand, where the MDM is <0, indigence will be recognized to the full extent, i.e. the Court will pay all costs in conformity with regulation 83 of the RoC.

31. The issue of partial indigence is approached cautiously: the practical impossibility of forecasting the length of the proceedings makes calculation of their total cost a very risky proposition. The fair and effective solution is the appraisal for each phase in respect of which the allocation of funds by the Registry changes, i.e.: pre-trial, trial and appeals phase. In addition, during the first 12 months of the procedure, one twelfth of the sum allocated for investigations will be included in the cost of the defence. Where the MDM is sufficient to meet the cost of representation during one or more of these stages, as calculated in the system established by the Registry above, indigence will not be recognized for the stage or stages concerned. Where the MDM is insufficient to satisfy this cost, the person will pay the MDM to the defence team on a monthly basis and the Court will contribute the rest.<sup>27</sup>

### D. Specificities concerning the assessment of indigence of victims

32. There is no distinction made in the determination of means under regulation 84 of the RoC between the defence and victims when it comes to the types of means to be taken into account and the nature of the assessment.

33. All legal aid applicants are required to sign a declaration authorizing the Registry to investigate their assets. A prima facie determination is then made, based on an applicant’s apparent circumstances (for example, where the applicant is a child or is living in a displaced persons’ camp), which may conclude that the applicant is either indigent, or that he or she ought to furnish additional information to enable the Registrar to make an informed decision on the indigence of the person(s) concerned.<sup>28</sup>

34. Some individualized assessment of each victim’s means is conducted, but the Court does not ask each victim to fill in a detailed financial information form, particularly where it is evident that the victim is far from being able to contribute to the costs of legal representation.

35. The Presidency of the Court has endorsed this approach, finding it to be in accordance with the current legal framework governing the legal assistance scheme as it relates to victims. In particular, the Presidency of the Court has found that in subjecting victims to a financial assessment based upon their individual means whilst taking into account their specific situation, rather than acting upon a presumption of indigence, the

<sup>26</sup> The Adjustment Report, *supra*, footnote 3, annex I, point 2.

<sup>27</sup> *Supra*, footnote 10, paras. 19-26.

<sup>28</sup> Report of the Court on legal aid: Legal and financial aspects of funding victims’ legal representation before the Court, No. ICC-ASP/8/25, 5 October 2009, para. 17.

Registrar acts in accordance with the legal framework.<sup>29</sup> The legal framework referred to is regulation 84 of the RoC and regulation 132 of the RoR, which do not permit a full presumption of indigence to be applied.

36. The consequences of the application of this procedure is that where one or more members of a group of victims represented by a common legal representative are found not to be indigent, the non-indigent member(s) is assessed on the basis of the ability to meet a relevant proportion of the costs rather than the entire cost.<sup>30</sup>

37. In short, the assessment of indigence of victims for the purpose of determining their entitlement to legal aid is on the basis of a *prima facie* financial assessment based on individual means. A member of a group of victims is assessed on the basis of ability to meet the relevant proportion of the cost of representing the group, which is thus linked to the size of the group.

## IV. Legal aid resources: Team composition and investigation budget

### A. Composition for defence teams

38. The Court's legal aid system provides resources to defence and victims' teams based on the concept of a core team.

#### 1. Defence teams: team composition

39. A defence team operating under the Court's legal aid scheme is provided resources for a core team. This core team operates throughout the proceedings with the exception of two periods when counsel is required to act alone. These instances are: the period from the start of the investigation phase of the proceedings until the first appearance before the Pre-Trial Chamber, and the period between the conclusion of the closing statements and the judgment.<sup>31</sup>

40. The core legal defence team is composed of: one counsel, one legal assistant and one case manager.<sup>32</sup>

41. An additional resource in the form of funds to remunerate an associate counsel is automatically provided during the trial phase. The associate counsel is eligible to commence his or her intervention in the team as soon as a definite decision has been taken relating to the confirmation of charges.<sup>33</sup> This provides the associate counsel sufficient time to become acquainted with the case before the commencement of the trial.<sup>34</sup> The resources furnished for an associate counsel intervenes in the team until the conclusion of the closing statements of the case.<sup>35</sup>

42. The core composition of the team (one counsel, one legal assistant and one case manager) is immediately reinstated when the case progresses to the Appeals phase.<sup>36</sup>

43. The varying composition of defence team under the Court's legal aid system throughout the proceedings is set out in the following diagram:

<sup>29</sup> Reasons for the Decision on the "Request for Review of the Registrar's Decision of 28 March 2008 on the Application for Legal Assistance ...", 18 Feb. 2009 (ICC-01/04-559).

<sup>30</sup> *Supra*, footnote 28, para. 20.

<sup>31</sup> The Adjustment Report, *supra*, footnote 3, para. 29.

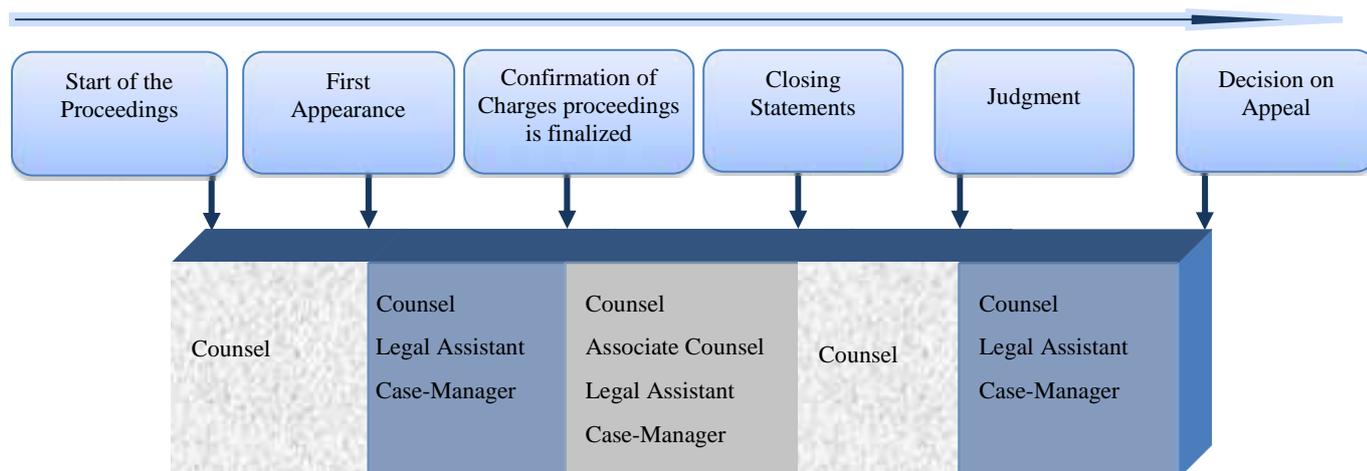
<sup>32</sup> *Ibid*, para. 32(a).

<sup>33</sup> Amendments to the RoC, which entered into force on 29 June, 2012, provide the *possibility* for the associate counsel to be appointed after the first appearance pursuant to Rule 121 of a person subject to a warrant of arrest or summons to appear under Article 58 of the Statute, and to have the costs of this intervention covered by the Court's legal aid system when the person in question has been found to be indigent. This exception to the rule is however not automatic and may, on a case-by-case basis, be applied on a request and needs basis (see regulation 83 of the RoC: ICC-BD/01-03-11). In the first instance, it is for the Registrar to gauge the appropriateness of the request and whether the intervention of associate counsel after the first appearance is justified on the merits.

<sup>34</sup> *Ibid*, para. 32 (b).

<sup>35</sup> See rule 142 of the RPE.

<sup>36</sup> The Adjustment Report, *supra*, footnote 3, annex IV.

**Diagram 1: Composition of the core defence team for each phase of the proceedings**

44. Counsel may exercise the flexibility principle of the Court's legal aid system to utilize the resources provided to structure the team in a manner that both best serves the interests of the indigent client and is compatible with the judicious financial use of legal aid funds. For instance, the resources made available under the Court's legal aid system for one legal assistant can be used to recruit several team members who are instead remunerated at a lower monthly rate than the system has foreseen, provided the maximum monthly cap is not surpassed.<sup>37</sup>

45. The Court's legal aid entitlements do not, in principle, extend to proceedings brought before national jurisdictions on the basis of Article 59 of the Statute seeking a ruling on arrest proceedings in the custodial State.<sup>38</sup>

## 2. Defence teams: investigation budget

46. The Court's legal aid system provides each defence team with an investigation budget in the amount of €73,006 to be used for the entirety of the case. This budget, which is held in trust by the Registry for the benefit of the team, is managed by counsel. The budget provides the legal team with the financial resources necessary to conduct effective investigations in the field.

47. All costs associated with the investigation requirements of the defence team are assumed by this budget and accordingly deducted. Such costs include the hourly fees of the professional investigator(s) or resource person(s) assigned to the team to conduct investigative work in the field; travel expenses, and the daily subsistence allowance of all team members in connection with in situ investigation work in the field.

48. The amount of €73,006 allocated to the defence for investigations is determined on the basis of the equivalent of 90 days' of fees for one professional investigator (corresponding to the remuneration of an investigator in the Office of the Prosecutor at the P-4 level), the remuneration of one resource person for the same period (corresponding to the remuneration of an assistant investigator in the Office of the Prosecutor at the G-5 level), the daily subsistence allowance for the same period (€20,970) and €13,000 for travel costs. This budget is considered to be a core budget covering the investigative needs of the defence, for example, for identifying potential witnesses and reaching a decision regarding their testimony, or acquiring relevant evidence for an average of 30 prosecution witnesses.

49. The investigation budget may be increased in response to a successful request for additional means made pursuant to regulation 83(3) of the RoC, where justified by relevant factors in the case, particularly in the following cases and under the following conditions:

<sup>37</sup> *Ibid.*, para. 33. In such cases, the Registrar ensures that she is satisfied that the team member(s) concerned has given his or her voluntary consent to the tailored remuneration arrangement.

<sup>38</sup> ICC-ASP/6/7, para. 29.

- (a) For each supplementary witness called by another participant: 0.5 day of investigations would be added; and
- (b) Travel costs would be increased at the following rate:
  - (i) For every 10 days of additional investigations: one national/regional trip;
  - (ii) For every 30 days of additional investigations: one intercontinental trip.

50. Other factors may have an impact on the teams' investigation work and in turn, their needs. The Registry takes this fact into account when assessing requests for additional investigation resources.

## **B. Composition of victims' teams**

### **1. Introduction**

51. The principles underlying legal aid for victims take into account the fact that legal representation of victims involves two equally important elements. One is the representation of clients' interests before the Court, through personal appearance at hearings and the filing of written documents. The second is contact with clients, including keeping them informed of developments, taking instructions, and ascertaining their interests in order to be able to represent them effectively before the Court. The second element goes to the very core of the participation of victims in proceedings, which requires the victims to maintain regular communication with their lawyers. The different Chambers of the Court have also underlined in their decisions the importance of keeping victims informed of judicial developments before the Court. This difference requires some adaptation of the legal aid scheme in order to ensure that legal representatives of victims are able to fully implement both aspects.

52. While the principles that underlie the legal aid scheme for victims are broadly the same as those for the defence, there are certain differences that need to be taken into account in conceptualizing and implementing the legal aid system for victims. These differences arise from the different role played by victims in the proceedings, the greater number and distant geographical location of the victims and the need to enable legal representatives to maintain regular contact with them.

53. Further, the design and implementation of the legal aid scheme for victims has followed the evolution of decisions of Chambers defining the scope of participation of victims in the proceedings. The decisions of the Chambers have, in turn, responded to the numbers of victims who have applied to participate in the proceedings.

54. The legal aid policy for victims was first stipulated in the Adjustment Report<sup>39</sup> in which the Assembly adopted the core resources to be availed to legal representatives for victims during trial and reparations proceedings before the Court. At that time, due to the absence both of established precedents and confirmed jurisprudence on the procedures for participation by victims, and of sufficiently reliable parameters relating to this, no legal aid policy was established for the pre-trial phase.

### **2. Victims' teams: team composition**

55. After four confirmation of charges hearings,<sup>40</sup> a greater degree of predictability was developed for the scope of legal assistance. The policy adopted for the composition of the teams representing victims at the pre-trial stage of a case, depending on the nature and scope of participation permitted by the Chambers, is for counsel to act alone and to include a case manager in a legal team during the actual confirmation of charges hearing. *The resources during the pre-trial stage* of a case therefore generally cover the costs of one counsel to attend status conferences, conduct missions for the purpose of consulting with his/her clients, and prepare for and attend the confirmation of charges hearing, with the

<sup>39</sup> The Adjustment Report, *supra* footnote 3, para. 55.

<sup>40</sup> The hearings in the *Lubanga* case of November 2006, *Katanga and Ngudjolo* cases of July 2008 and the *Bemba* case in January 2009.

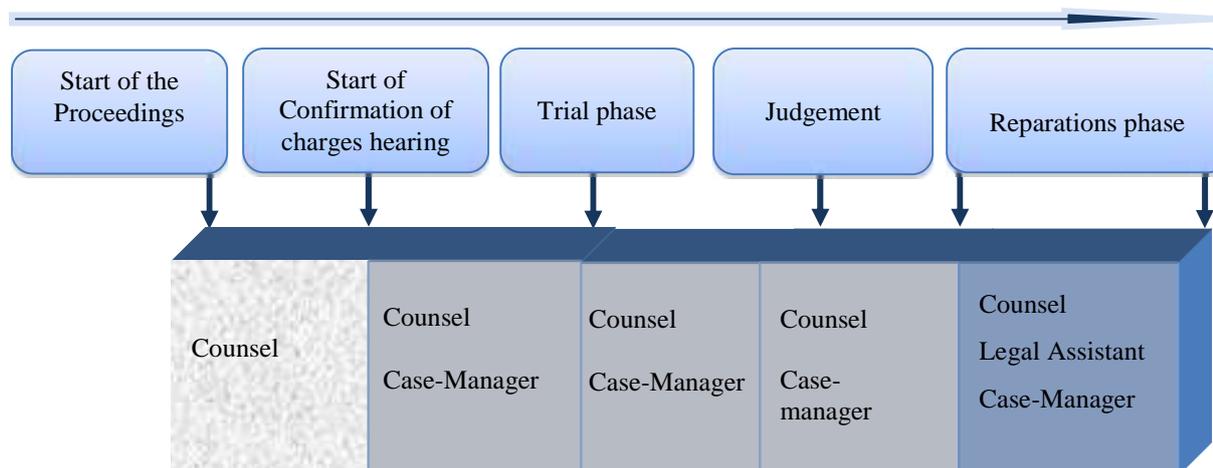
addition of a case manager during the period immediately surrounding the confirmation of charges hearing itself.

56. *The resources for the trial phase* cover a core team of one counsel and one case manager, which can be reduced or increased at the Registrar's discretion in the light of the actual participation procedures decided by the Chambers and other relevant factors.<sup>41</sup>

57. *The resources for the reparations phase*, the resource available to the legal teams representing victims is supplemented by an additional resource of one legal assistant at the Registrar's discretion and subject to the oversight of the relevant Chamber. The resources forecast at this phase is based on the presumption that the legal representative of the victims plays a leading role in the proceedings, presenting the requests of their clients in accordance with Article 75 of the Statute. Given that to date, there has not yet been a full cycle of a case including the reparations phase, and that the Chamber has considerable options under the framework established by Article 75 of the Statute, and bearing in mind the difficulties in making assumptions in the absence of any experience of a reparations phase, the policy during the reparations phase is currently that there should be a core team composed of one counsel, one legal assistant and one case manager, which can be increased or reduced at the Registrar's discretion.

58. The composition of legal representative of victims' teams under the Court's legal aid system throughout the proceedings is set out in the following diagram.

**Diagram 2: Composition of the core victims' team for each phase of the proceedings**



### 3. Victims' teams: team composition in case of common legal representation

59. In accordance with regulation 80(1) of the RoC, a Chamber, following consultation with the Registrar, may appoint a legal representative of victims where the interests of justice so require. The role of the Registry in cases where the Chamber is contemplating the appointment of common legal representatives is merely to assist the relevant Chamber, guided by the interests of the victims in need of legal representation through the provision of relevant information on a case-by-case basis so as to enable the Chamber to make an informed appointment. The Registry, if possible, consults the victims prior to any recommendation to the Chamber on common legal representation. Other sections of the Registry are also consulted and often local legal and other organizations in the area where the victims are located. Any recommendation on common legal representation is based on facts, after careful assessment of all legal and factual parameters of the case and of the information available to the Registry.

60. Consequently the decisions by the Chambers on common legal representation affects the level of resources to be availed to the legal teams, and the Registry accordingly uses several objective parameters to determine the level of resources to be provided for an effective and efficient representation of victims. The parameters considered by the Registry

<sup>41</sup> The Adjustment Report, *supra*, footnote 3, para. 55 and *supra*, footnote 28, para. 11.

include, amongst others, the number and locations of victims and their indigence status, the stage of the proceedings, the specific request of the relevant Chamber, the specific need of the team, the availability and or possibility of the Office of Public Counsel for Victims to intervene and/or provide assistance. Furthermore, and if necessary, the Registry consults with the relevant Chamber, the Office of Public Counsel for Victims and the common legal representative and victims in order to arrive at an informed decision on the scope and structure of support to be provided to the legal team.

61. The management of legal aid for victims and for the defence is closely coordinated in order to ensure consistency in implementation. In accordance with rule 90(6), a legal representative for victims shall have the qualifications set forth in rule 22(1) of the RPE. Counsel for victims must meet the same qualifications as those for the Defence, to ensure effective representation. Therefore, generally, the remuneration of legal teams under the legal aid scheme in terms of fees and expenses is on the same basis as for the defence.<sup>42</sup>

#### 4. Victims' teams: resources to facilitate communication with victims

62. As stated in the introduction in part B on the composition of victims' teams, the importance of keeping victims informed of judicial developments before the Court is of critical importance – a notion repeatedly confirmed by the Chambers of the Court.<sup>43</sup> The post of field assistant is specifically created to assist the legal representative of victims, on an *ad hoc* basis, “to facilitate the communication of the views and preoccupations of victims and assist a counsel to fully represent the views and concerns of victims before the Chamber.”<sup>44</sup> To the extent possible and within the limits of the available legal aid structure, field assistants also assist the common legal representative to keep his or her clients informed about the progress of the proceedings in accordance with Article 15 of the Code of Professional Conduct for counsel.<sup>45</sup>

63. As for the qualifications of field assistants, pursuant to the Court's jurisprudence, field assistants should preferably have an established relationship with the victims in question, possess “a background in outreach or victim support” and familiarity with the work of the Court;<sup>46</sup> and be able to communicate with victims in a language they understand.<sup>47</sup> The remuneration of field assistants, due to the nature of their work which is comparable to resource persons,<sup>48</sup> is paid on an hourly basis up to a maximum of €4,047 per month and deducted from the investigation budget allocated to the team.

#### 5. Victims' teams: investigation budget

64. The budget allocated for investigations for victims' teams is €43,752 for the duration of the proceedings of the case, including the reparations phase. This budget is established on the basis of the equivalence of 60 days' fees for one professional investigator (corresponding to the remuneration of an investigator in the Office of the Prosecutor at the P-4 level), the daily subsistence allowance for the same period (€15,840) and €0,000 for travel costs. The investigation budget is held in trust by the Registry for use by the legal representative of victims.

65. The Registry continues to monitor and adjust as necessary the legal aid resources required for an effective and efficient legal representation of victims in all phases of proceedings.

<sup>42</sup>Victims' teams under the legal aid system of the Court receive a monthly allotment of €3,000, and the maximum monthly remuneration is set at the same level as for the defence. It is worth noting however that while the remuneration of legal representatives of victims and their team members is based on a lump-sum monthly cap, the modalities of payment are based on actual hours worked on the cases as reviewed and approved by the Registry.

<sup>43</sup> Order on the organisation of common legal representation of victims (Case No. ICC-01/04-01/07-1328) dated 22 July 2009; Proposal for the common legal representation of victims (Case No. ICC-01/09-02/11-214) dated 5 August 2011. Proposal for the common legal representation of victims ICC-02/05-03/09-203 adopted by decision ICC-02/05-03/09-209 dated 7 September 2011.

<sup>44</sup> The Supplementary Report, para. 55.

<sup>45</sup> ICC-01/04-01/07/1328, dated 22 July 2009, para. 17(a).

<sup>46</sup> ICC-02/09-01/11-214, dated 5 Aug. 2011, para. 34 (3).

<sup>47</sup> ICC-01/04-01/07-1328.

<sup>48</sup> ICC-ASP/8/25.

## V. Additional means

66. As indicated above, pursuant to regulation 83(3) of the RoC, a person receiving legal assistance paid by the Court may personally or through his counsel apply to the Registrar for “additional means which may be granted depending on the nature of the case.” Additional resources are *not* granted automatically. They have to be specifically requested by defence counsel or the legal representative of victims, who have to submit to the Registrar a substantiated request for additional means.

67. Decisions of the Registrar in response to regulation 83(3) of the RoC requests for additional resources can be appealed before the relevant Chamber on a judicial review application pursuant to regulation 83(4) of the RoC.<sup>49</sup>

68. In view of the impossibility of predicting exactly which extra resources any given team may need at a given time in the course of the proceedings, a formula was established that allows the additional resources allocated to defence teams to be varied to match the sometimes considerable fluctuations which may occur during a case.

69. Without excluding other parameters which might justify the allocation of additional resources, the Registry has estimated and quantified a number of non-exhaustive parameters in order to arrive at equivalences which would allow counsel to recruit additional assistants, who would be paid from the Court’s Contingency Fund. The unit adopted for this purpose is the “Full Time Equivalent” (FTE), corresponding to the amount of work performed by a team member working full-time:

- (a) For each count submitted by the Prosecutor: 0.025 FTE (1 FTE = 40 counts);
- (b) For each person submitting an application for participation in the proceedings: 0.005 FTE (1 FTE = 200 persons);
- (c) For each victim or group of victims whose application for participation in the case is accepted by the Chamber: 0.02 FTE (1 FTE = 50 victims);
- (d) For every 3000 pages added to the case file by other participants: 0.1 FTE (1 FTE = 30,000 pages); and
- (e) For every 3000 pages submitted by the Prosecutor: 0.1 FTE (1 FTE = 30,000 pages)

70. A team’s accumulation of FTE would entitle it to recruit additional staff in accordance with the following scale:

- (a) For each FTE: One legal assistant; and
- (b) For each 3 FTE: One associate counsel

71. Defence counsel is able to distribute the accumulated FTEs as he or she deems appropriate in order to recruit additional team members in the interest of the client, within the limits of the additional resources granted.

72. The choice of the FTE as the work unit for the flexible recruitment of additional team members is consistent with the general approach adopted in the Court Capacity Model. It gives the system the flexibility required to adequately respond to actual needs of the defence and victims’ teams as they arise in the course of the proceedings, while guaranteeing the necessary objectivity.

<sup>49</sup> The standard of judicial review of an administrative decision of the Registrar – on legal aid or otherwise – has been defined by the Presidency of the Court, in conformity with a similar test applied at the UN *ad hoc* tribunals, as follows: “It is recalled that the judicial review of 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”: see the decision of the Presidency of 20 December 2005, ICC-PresRoC72-02-5, para. 16, and supplemented in its decision of 27 November 2006, ICC-01/04-01/06-731Conf, para. 24; the decision of 10 July 2008, ICC-Pres-RoC72-01-8-10, para. 20, as well as the decision on the “Request for Review of the Registrar’s Decision of 25 Aug. 2008 on the Application for Legal Assistance Paid by the Court”, ICC-RoC85-01/08-4.

73. However, an excessive increase in the size of a team owing to an accumulation of FTE might make the financial burden disproportionate to the real needs, which could create problems of team management and overburden the financial resources of the Court. In such extreme cases, the Registry will therefore set a limit on the variable additional resources which could be allocated.

74. Moreover, the principle of variability of additional resources according to the above parameters presupposes that these resources will be reconsidered when the parameters are reduced or cease to have an impact on the defence's workload at a particular stage of the proceedings. For instance, in the case of the "Count" parameter, if a warrant of arrest incorporating a number of charges which had justified a certain FTE was amended during the proceedings by an amount equivalent to one or more FTE, the variable additional resource(s) allocated to that case would be reduced. In the same way, in the case of the parameter "Person submitting an application for participation in the proceedings," the variable resources allocated under that parameter would be reconsidered as soon as the Chamber had issued its decision on applications for participation. The variable additional resources allocated under the other parameters could continue until the closing arguments before the Trial Chamber.

75. Variable additional resources would not be granted automatically. They would have to be specifically requested by counsel, who would have to justify the need for them.

76. As stated earlier in this section, victims, through their legal representative(s), may also make a request for additional resources pursuant to regulation 83(3) of the RoC. As is the case for similar requests coming from the defence, the Registrar will review and consider such requests on a case by case basis and on the basis of objective criteria and the actual needs of the team in question. The possibility of providing additional resources for the legal representation team could be considered in the following non-exhaustive cases: for instance, when the number of victims in the group exceeds on average more than 50; when the reparation proceedings involve the need to request protective measures pursuant to Article 93(1) of the Statute; when the Chamber has decided that it will determine the extent of any damage; costs associated with consulting their clients during the trial with a view to keeping them informed and seeking their instructions.

## **VI. Remuneration: Defence and victims**

77. As previously stated, the legal aid system of the Court was engineered and later honed following consultations with the relevant stakeholders. As of the date of this policy document, the Registry implements two remuneration regimes as defined in the "Report on the operation of the Court's legal aid system and proposals for its amendments,"<sup>50</sup> and the Decision of the Bureau. Additionally, the Supplementary Report introduces a new remuneration regime in instances of multiple mandates falling under the Court's legal system and in phases in which activities are considerably reduced.

78. The remuneration scales defined in the said documents applies both to defence and victims' teams operating under the Court's legal aid system.

### **A. Remuneration of team members under the Adjustment Report<sup>51</sup>**

79. The remuneration of all team members as established in the 2007 amendments has been calculated according to the gross pensionable salary of a staff member of the appropriate grade at step V<sup>52</sup> within the Office of the Prosecutor of the International Criminal Court, following from the United Nations system salary table approved in autumn 2006.

80. The remuneration scheme for each external legal team member is defined in the table below.

<sup>50</sup> *Supra*, footnote 41.

<sup>51</sup> *Idem*.

<sup>52</sup> The remuneration has been set at step V from the outset for team members, partly to account for the fact that while staff of the Court gain incremental steps each year they work at the Court, external team members who may work on any given case for years do not benefit from the same privileges.

**Table 1: Fee scheme based on gross salary. Remuneration under the adjustment report**

	<i>Gross base salary (€)</i>
Counsel / Legal Representative for Victims	10,832
Associate counsel	8,965
Legal assistant	6,113
Case manager	4,872
Professional Investigator*	8,965
Resource Person*	4,047

\* The monthly fees of professional investigators and resource persons are paid in accordance with the information provided in table 2.

81. The rates detailed in the above table are paid monthly as fees to team members. With the exception of the professional investigator and the resource person, payment for the other team members is based on the assumption that each team member guarantees a full-time commitment to the case to which he or she has been appointed. This lump-sum payment policy has been set primarily with the interests of suspects, accused persons and victims in mind, and secondly, to reasonably justify a lump-sum payment scheme.

**Table 2: Monthly fees of professional investigators and resource persons**

<i>Professional Investigator</i>	<i>Resource Person</i>
38 €/hour, a maximum of	17 €/hour, a maximum of
299 €/day, a maximum of	135 €/day, a maximum of
8,965 €/month	4,047 €/month

## **B. Revised remuneration of team members pursuant to the Decision of the Bureau**

82. The Decision of the Bureau introduces new amendments to the legal aid remuneration regime. Under these revisions, the remuneration system is no longer calculated based on gross but rather net fees. The implementation of these new amendments is contingent upon the crystallization of certain conditions (detailed later in this document).

### **1. Establishment of a net base salary**

83. The gross fees under the Adjustment Report were set taking into account imperatives related to, *inter alia*, taxation of counsel and/or pension contributions, as well as to ensure a degree of equivalence between counsel and members of the Office of the Prosecutor, so as to further uphold the principle of equality of arms.

84. However, the implementation of the Court's legal aid system in practice demonstrated that the reference to gross remuneration was not justified, as payment was duplicated by the granting of compensation for professional charges as described below. The difference between the gross salary and the net salary of a staff member employed by the Court is accounted for by the total deductions applicable to Court officials, which are irrelevant and duplicate the regime applicable to independent counsel. The amount of tax paid by counsel on their remuneration under the legal aid system has moreover proven to be recoverable through the compensation for professional charges scheme described above. The gross fee basis was hence no longer considered to be a relevant or reasonable criterion and is to be replaced in future situations and cases by a net fee payment scheme according to the conditions set out in the Decision of the Bureau.

85. Table 3 below details the revised system of remuneration on the basis of a *net fee* scheme<sup>53</sup> as approved by the Decision of the Bureau. The last column from the right also provides a total amount for each team member who is also eligible and demonstrated to have incurred professional charges to cover the totality of taxes or other relevant charges payable due to their intervention before the Court and under the Court's legal aid system. The percentage for professional charges would be included in this total *global* amount.

**Table 3: Revised fees scheme based on net base salary**

<i>Category</i>	<i>Net base salary (€)</i>	<i>Max. percentage (%) compensation for charges</i>	<i>Maximum total monthly payment (€)</i>
Counsel	<b>8,221</b>	30	10,687
Associate counsel	<b>6,956</b>	30	9,043
Legal assistant	<b>4,889</b>	15	5,622
Case manager	<b>3,974</b>	15	4,570

86. This revised system of remuneration (based on a net monthly fees payment) applies only to the above-listed members of the legal team. It applies neither to the remuneration of professional investigators nor resource persons.

87. The revised remuneration system also applies to duty and *ad hoc* counsel appointed in accordance with the applicable legal texts of the Court.

88. Duty and *ad hoc* counsel are appointed in accordance with regulations 73 and 76 of the RoC. Such appointments are by definition limited in both time and scope. Payments of duty and *ad hoc* counsel who intervene in proceedings before the Court are ordinarily deducted against the Court's publicly funded legal aid system.<sup>54</sup> When the Court's legal aid system assumes the remuneration of duty and *ad hoc* counsel, the following payment scheme will apply.

89. As it concerns remuneration, the duty or *ad hoc* counsel will be paid:

- (a) €6.53 per hour,<sup>55</sup> with an upper limit of;
- (b) €649 per day, with an upper limit of; and
- (c) €2,221 per month.

90. The Court's policies for payment of duty and *ad hoc* counsel – for work carried out in the field or at the Seat of the Court – cover the costs of travel; remuneration for expenses of accommodation, a lump-sum terminal expense; visa and vaccination costs when required, and legal fees for work actually conducted and directly linked to the purpose of the mission and specific mandate of the duty counsel.

91. The Court's policy does not remunerate counsel in the form of legal fees for the time spent by counsel in connection with confirming his or her availability or related preliminary engagements. Ordinarily, the policy limits payment for legal fees to the duration of the mission in the field and exceptionally for pre-mission preparation work.

92. In addition to legal fees, duty and *ad hoc* counsel are also entitled to reimbursement of additional reasonable expenses incurred in the course of the execution of his or her Court-granted mandate, provided that the expenses do not exceed the maximum monthly allotment of €3,000 for expenses. Duty and *ad hoc* counsel are provided with relevant documentation and templates in order that payment may be effected on completion of their

<sup>53</sup> "Proposal for a review of legal aid system of the Court in accordance with resolution ICC-ASP/10/Res.4 of 21 December 2011" dated 15 February 2012, in *Report of the Hague Working Group on legal aid*, 23 March 2012, Appendix II.

<sup>54</sup> There are situations where resort to the Court's legal aid system for remuneration of duty and *ad hoc* counsel may not be justified. Two non-exhaustive examples include for instance, where the duty counsel assigned has been appointed to assist a non-indigent suspect for the purposes of the initial appearance before the Court. Another example is where a person being interviewed by the Office of the Prosecutor is not indigent, and duty counsel has been appointed to assist that person pursuant to Article 55 of the Rome Statute.

<sup>55</sup> This rate applies when the counsel works in his/her place of residence; when counsel is on mission and therefore required to work outside his/her place of residence, the daily rate is applied.

intervention. The relevant templates provided are the time-sheets, expenses reimbursement and the requisite bank information forms.

## **2. Implementation of the revised system of remuneration**

93. The Decision of the Bureau defines the manner in which the revised remuneration is implemented. The 2012 revised regime of remuneration took into account several factors, including the need to ensure effective legal representation and the importance of fair trials; the concerns of relevant stakeholders, in particular issues pertaining to fairness which may jeopardize the integrity of judicial proceedings; and the conclusions at the tenth session of the Assembly of States Parties which declared that there were no legal impediments to the implementation of the revised remuneration to the existing cases and teams.

94. In effect, the Decision of the Bureau introduces three major regimes for the implementation process of the 2012 revised remuneration system: (i) immediate implementation, (ii) deferred implementation, and (iii) gradual implementation.

### **(a) Immediate implementation**

95. As of 1 April 2012, the revised remuneration system will apply immediately to (a) new teams appointed before the Court, and (b) any changes in the team composition during any stage of the proceedings, either by means of replacement of individual members or of whole teams, as well as in the case of appointments of additional team members. It is noted that any change by an individual member of a team shall not impact the status under which other team members are paid, unless the composition of the whole team changes.

### **(b) Deferred implementation**

96. With respect to teams, which as of 1 April 2012, are operating in a case where the confirmation of charges hearing, as set out in Article 61(1) of the Statute, has not yet commenced, the revised remuneration system applies only when the confirmation of charges hearing has started. Until such time, the team members' remuneration will be subject to the remuneration regime established in Table 1 above. For the purposes of determining the relevant period of time, the critical factor will be the date of commencement of the oral stage of the confirmation of charges hearing.

97. With respect to teams, which as of 1 April 2012, are operating in a case where the hearing of the trial has not yet commenced, the revised remuneration will only apply once the hearing of the trial has started. Until such time, the team members in the case will be subject to the remuneration regime established in Table 1 above. For the purposes of determining the period of time, the critical factor will be the date of commencement of the oral stage of the trial hearing.

### **(c) Gradual implementation**

98. With respect to teams, which as of 1 April 2012, are operating in cases where the trial is on-going, the remuneration regime established in Table 1 above applies until such time proceedings before the Trial Chamber have been completed and the case is before the Appeals Chamber. Once proceedings before the Appeals Chamber commence, transitional remuneration, as described below, applies.

99. The first step involves the estimation of the length of time required for the case in question to be completed before the Appeals Chamber. This estimation exercise is the responsibility of the Registry, which shall consult with the Presidency and the relevant teams, where appropriate. This estimated length of time will be divided into three (A, B and C) equal segments of duration, each of which will be consecutive in order of time, starting from the day all relevant proceedings before the Trial Chamber have been completed. Each segment has its own remuneration scheme:

(a) The remuneration regime established in Table 1 above applies to the period of time in *segment A*;

(b) The period of time in *segment B* is subject to fees which are in- between the revised fees and the remuneration regime established in Table 1 above, and

(c) The period of time *segment C* is subject to the revised remuneration, as set out in Table 3 above.

100. Variances between the average length of time estimated by the Registry and the actual duration of the matter will be balanced out at the end of the case, so as to address any excess or reduced payments.

## C. Supplementary considerations on remuneration

101. Following a request from the Bureau of the Assembly of States Parties<sup>56</sup> inviting the Court to continue developing the legal aid system, the Registry presented its proposals in the Supplementary Report<sup>57</sup> which was adopted by Resolution ICC-ASP/11/Res. 1 dated 22 November 2012. Two of the four adopted aspects of this Supplementary Report address issues related to payment for teams acting under the Court's legal aid scheme. These aspects concern remuneration: (a) in the case of several mandates, and (b) remuneration during phases of reduced activities.

### 1. Remuneration in the case of several mandates

102. In accordance with the Supplementary Report and the principles of judicious management of a publicly funded legal aid system, simultaneous mandates are limited to *no more than two cases*. As of 1 January 2013, the following fees arrangement applies when a counsel who has already been retained by one indigent client in Court proceedings is appointed to represent client(s) in a second case. The same regime of fees is applicable to duty and *ad hoc* counsel who may assume more than one mandate in proceedings before the Court.

**Table 4: Counsel Fees**

	<i>1<sup>st</sup> Case</i>	<i>2<sup>nd</sup> Case</i>
Counsel Fees	100% (€8,221 per month)	50% ( €4,110.5 per month)

103. In the life of a permanent international judicial institution such as the Court, situations can arise where a counsel who is already representing a client in Court proceedings is freely chosen by another client wishing to be represented by the same counsel before the Court. Financial considerations arise when both clients in such a scenario are found by the Registrar to be indigent. Furthermore, in such cases the question of whether the quality of legal representation is not adversely affected to the detriment of the clients by the fact that counsel has to divide his or her time between two cases also raises important considerations on the merits of simultaneous mandates.

104. Ordinarily, should a *non-indigent* person choose to have a counsel represent him or her knowing full well that counsel is engaged in another case before the Court that is a prerogative that rightly belongs to the non-indigent client, who will equally have to face and accept the consequences of that decision. Conversely, the Registry can exercise control over payment of counsel and the appointment of the latter in cases of simultaneous mandates that fall under the Court's legal aid system.

105. The right to freely choose counsel is firmly entrenched in Article 67(1)(d) of the Statute and rule 21(2) of the RPE. The Registry is fully committed to this principle, and its *modus operandi* to date confirms this commitment. However, this right is not absolute.<sup>58</sup> Under appropriate circumstances, the right can be circumscribed, when this is not arbitrary, and it is reasonable to do so. This is in accordance with seminal authorities, both international and domestic, as well as with rulings of the Court's Presidency, entrenching

<sup>56</sup> The Decision of the Bureau, *supra* footnote 6, annex.

<sup>57</sup> The Supplementary Report, *supra* footnote 1.

<sup>58</sup> See *e.g.* Khan et al., *Archbold International Criminal Courts: Practice, Procedure & Evidence*, 3rd ed. (Sweet & Maxwell) ("Archbold"), at pages 1568 ff.

this principle in the Court's jurisprudence.<sup>59</sup> One of the permitted exceptions to the right to freely choose counsel is when the person in need of legal representation is indigent.<sup>60</sup> Similarly, it should be borne in mind that it is "the Registrar in whom primary responsibility for managing the legal assistance scheme of the Court is vested, including overseeing the scheme of legal assistance by the Court and the determination of matters relating to qualification, appointment or assignment of counsel."<sup>61</sup> In other words, the right to freely choose counsel does not tie the Registry's hands, for example when simultaneous mandates under the Court's legal aid system produce inappropriate financial consequences (in that the same counsel is receiving two full monthly lump-sum payments as fees intended for full-time work), while also entailing a risk that clients' interests may be adversely affected.

106. In order to have in place a policy that, in addition to its potential cost savings for the Court's legal aid system, also ensures effective legal representation and is mindful of the right to freely choose counsel, the Registry has established a policy that limits simultaneous mandates to no more than two cases. Capping the number of cases to which counsel can be simultaneously appointed before the Court, in addition to potential cost savings, helps ensure that obligations owed to clients are honoured without the distraction and burden of additional cases, and, by diminishing the financial incentives to multiple mandates, counsel (and other team members in the case) are discouraged from taking on more cases than can reasonably be handled.

107. The prospect of the same counsel appearing in more than one case in proceedings before the Court may have negative implications for the quality of the legal representation provided. The Court's proceedings are, by their very nature, complex, and in order to navigate them efficiently and effectively and to best represent the interests of client(s), much energy and full dedication are required of counsel. To guard against a situation where multiple mandates may undermine the quality of the representation, the Registry implements a 'three conflicts' model in considering a case of simultaneous representation: (i) conflict of interests; (ii) conflicts in scheduling, availability and time commitment of counsel who desires to take on two cases simultaneously in Court proceedings, and (iii) conflicts in payments under the Court's legal aid system in view of the principles the Registrar is instructed by States Parties to follow in judiciously managing the system. In relation to the first two conflicts, the Registry will conduct a "due diligence" check before authorizing the second mandate, as a safeguard measure to ensure that the additional mandate is in conformity with the relevant texts and will not adversely affect the rights and interests of the clients involved or result in disruptions and delays in the proceedings. As part of this process, the Registry will carry out direct consultations with the relevant clients and obtain the necessary consents, and with the Chambers seized of the matter, prior to finalization of the appointment. This approach is similar to the practice at the UN-ICTY on the question of simultaneous mandates.<sup>62</sup> The final decision of the Registrar on whether or not to authorize the appointment may be challenged by way of judicial review before the relevant Chamber, and the question will then be a matter of judicial discretion.

108. The third conflict relates to the fair compensation that counsel can expect to receive for services rendered in the second mandate. The current rate of €8,221 paid monthly as legal fees to counsel per case under the Court's new legal aid system is based on the assumption that counsel guarantees a full-time commitment to the case to which he or she has been appointed. This policy has been set primarily with the interests of suspects,

<sup>59</sup> See e.g. Presidency, "Reasons for the Decision on the 'Application for Review of Decision of the Registrar's Division of Victims and Counsel dated 2 January 2008 not to Admit Prof. Dr. Sluiter to the List of Counsel'", ICC-Pres.-RoC72-01-8-10, 10 July 2008; Presidency, "Decision on the '*Demande urgente en vertu de la Regle 21-3 du Règlement de procédure et de preuve*' and on the 'Urgent Request for the Appointment of a Duty Counsel' filed by Thomas Lubanga Dyilo before the Presidency on 7 May and 10 May, respectively," ICC-01/04-01/06-937, para. 25.

<sup>60</sup> See Article 67(1)(d) of the Statute. See also Archbold, at pages 1568 ff. See similarly, *Prosecutor v. Hadžihanović et al.*, Case no. IT-01-47-PT, (26 March 2002); *Prosecutor v. Blagojević et al.*, Case no. IT-02-60-PT, (9 December 2002); *Prosecutor v. Akayesu*, Case no. ICTR-96-4-A, 1 June 2001, at para. 61-62.; *Prosecutor v. Dushko Knežević*, Case no. IT-95-4-PT/IT-95-8/1-PT, (6 September 2002); *Jean Kambanda (Appellant) v. the Prosecutor*, Case no. ICTR-97-23-A, 19 October 2000, at paras. 12 ff.

<sup>61</sup> The Presidency, *Prosecutor v. Thomas Lubanga Dyilo*, Case/filing no. ICC-01/04-01/06-937, 29 June 2007, para. 16.

<sup>62</sup> *Idem*.

accused persons and victims in mind and, secondly, to reasonably justify a lump-sum payment per month to counsel.

109. It should be noted that the Registry, having learned from the experience and challenges faced by the *ad hoc* tribunals, has attempted to integrate the remuneration of external counsel and their team members with that applicable within the Court, and to treat them on a par basis with staff of the Court, as far as feasible within the limits of managing a publicly funded legal aid system. Thus salary amounts for external team members under the Court's legal aid system are set so as to correspond to the net salaries received by Court staff performing equivalent duties, and are automatically fixed at Step V within the relevant grade from the commencement of the mandate of the team. It should be noted in this regard that the individual composition of each team — and hence the salary entitlements of its members — is comparable to that of teams in the Office of the Prosecutor, who simultaneously work on several cases in proceedings before the Court.

110. As manager of a publicly funded legal aid system, the Registry considers that paying an additional €8,221 to counsel who represents simultaneously a second indigent client (or set of clients in the case of victims) in proceedings before the Court is not in conformity with the principle of judicious management of the legal aid system as required by the Assembly of States Parties,<sup>63</sup> in particular where each person in need of legal representation implicated in the main Court proceedings benefits not from a single counsel, but from a team of lawyers and other relevant professionals who assist in the representation of the case.

111. It is based on the above rationale that the split remuneration outlined in Table 4 has been set.

112. Under the Court's legal aid system, the same proportionate reduction of fees equally applies to other team members appointed to two cases simultaneously.

113. Furthermore, there is no payment of professional charges in the second case if counsel (or other relevant team member) is already receiving such compensation in the first case.

114. In the event that proceedings in one case end prior to those in the second one, then remuneration in the second case will be restored to the full level.

## 2. Remuneration during phases of reduced activity

115. The Court's legal aid system is based on the assumption that counsel or relevant team members guarantee a full-time commitment to the case to which they have been assigned. Members of external legal teams are remunerated accordingly *in full* on a lump-sum basis.

116. Judicious management of the publicly funded legal aid system cannot allow members of the team to continue to be remunerated in full on a lump-sum basis when this is not justified by the workload of the reduced period of activity. As of 1 January 2013, in instances where activity in the proceedings of the Court is considerably reduced, the default position is that the payment of lump-sum remuneration of team members under the Court's legal aid system ceases.

117. Non-exhaustive examples of periods where activities are reduced include the period between closing statements rendered at trial and the decision of the Chamber; stay, suspension or other protracted delays in the proceedings; and the waiting period after an appeal against the confirmation of charges by a Pre-Trial Chamber.

118. In instances of reduced activity in the proceedings, remuneration of counsel and each team member in all situations is determined on the basis of hours actually worked up to a monthly ceiling equal to the payment for each category under the Court's legal system.

119. Payment is made after a detailed review of time-sheets submitted by each team member for actual work undertaken as required by the demands of the phase in the case at that juncture. In reviewing the time-sheets, the Registry assesses whether sufficient grounds

<sup>63</sup>*Supra* footnote 8, para. 16.

exist for team members to be reasonably engaged in work on the case file. The Registry may consult with the relevant Chamber and the team members concerned to determine whether the requirements of the case at the time in question justify the work undertaken and billed.

120. Not every team member will necessarily be remunerated during such phases of reduced activity. The onus of demonstrating, to the satisfaction of the Registrar, the need for the work of each team member will fall on the counsel in charge of the case and on the team member(s) in question.

121. In practice, as soon as a phase in a case arises in the proceedings where activity will be reduced, and after the Registry has conducted the necessary consultations with, *inter alia*, the relevant Chamber or Presidency, the relevant section of the Registry – i.e. the Counsel Support Section – will notify counsel and/or the legal representative who has overall responsibility for the management of the team, that payments for the period in question will be stopped by the Registry, and that, instead, from that point forward, remuneration will be paid on an hourly basis for necessary work undertaken to ensure the effective and efficient legal representation of the client(s). The period of notice will be 30 calendar days, in accordance with the Registry's current practice regarding a phase of reduced activities in a case, or a change of phase of the proceedings, resulting in a change in the scope of the legal aid applicable. This will enable counsel to take any relevant action, including providing the Registry with further information, or inviting reconsideration of any relevant decision, requesting additional means under regulation 83(3) of the RoC or, if appropriate, referring the matter to the relevant Chamber for review under regulation 83(4) of the RoC. Moreover, particulars of the possibility of such a change in the remuneration regime will be duly notified to counsel upon their appointment, during the initial induction carried out with the relevant services of the Registry, and incorporated in the induction documents provided to counsel upon their appointment.

#### **D. Procedures for payment of legal fees**

122. *The action plan:* In accordance with regulation 134 of the RoR, *before* each phase of the proceedings, or every six months, counsel shall establish an action plan for the approval for the Registrar and in so doing, may consult the legal aid commissioners pursuant to regulation 136(1) of the RoR. This action plan details all the activities counsel deems most appropriate in order to represent his/her client(s) efficiently and effectively at each phase of the proceedings. This information is restricted to the Registry's internal use in the management of the legal aid scheme and is treated with the utmost confidentiality. At the end of each phase of the proceedings - or six months, whichever occurs first - counsel submits a report on implementation of the action plan to the Registry.

123. *Modality of payment of fees:* The payment of fees under the Court's legal aid system is processed on a monthly basis upon the submission of time-sheets duly completed and signed by counsel and each team member (in the case of the time-sheet of the team members other than counsel, the latter also has the obligation to review and sign the time-sheets of his or her team members).

124. While remuneration under the Court's payment system is based on a monthly lump-sum ceiling for each category of persons paid, time-sheets are nevertheless required before payment is made. Time-sheets are in effect a record or itemized statement of activity for each team member for the duration of the month in respect of which payment is being sought. The time-sheets enable the Registry to ensure that team members are effectively providing professional services in their respective capacities as members of the legal team before payment is released. Time-sheets are also requested and archived for internal auditing and record keeping purposes. Ordinarily, moneys owed are transferred into the bank accounts of team members within two to three weeks of submission and after processing by the relevant sections of the Registry.

125. Counsel and associate counsel are paid 75 per cent of monthly fees on receipt of the statement of hours worked submitted each month. The remaining 25 per cent is paid at the end of every phase of the proceedings or every six months, after a review of the implementation of the action plan initially approved by the Registry. This split payment

procedure applies *only* to counsel and associate counsel and not the other members of the team. However, in the period from the effective start date of trial, as fixed by the Trial Chamber, to the closing arguments, counsel and associate counsel are also exempted from application of the split payment procedure.

#### **E. Disputes relating to fees**

126. Regulation 135 of the RoR requires the Registrar to take a decision on any dispute concerning the calculation and payment of fees or the reimbursement of expenses at the earliest possible juncture and notify counsel accordingly. Counsel may request the relevant Chamber to review any such decision within 15 calendar days of notification.

#### **F. Prohibition against fee-splitting**

127. The Court exercises a zero-tolerance policy for the offense of fee-splitting where legal assistance is paid exclusively by the Court. Violations would constitute misconduct under the Code of Professional Conduct for counsel and subject the counsel to disciplinary proceedings under that Code.

128. All counsel operating under the Court's legal aid system sign an undertaking pursuant Article 22 of the Code not to accept any form of remuneration from any other source other than the Court's legal aid system or transfer or lend all or part of the fees received for representation of a client or any other assets or monies to a client, his or her relatives, acquaintances, or any other third person or organization in relation to which the client has a personal interest.

### **VII. Compensation for professional charges**

129. In addition to fees, team members operating a professional practice, alone or in association with others, while working at the Court, are eligible to receive an additional amount to compensate for professional charges, which is paid up to a maximum of 40 per cent of fees.<sup>64</sup> Charges eligible for compensation must be *directly* linked to the work carried out in proceedings before the Court.

130. Compensation for professional charges is designed to cover costs related to operating a law practice, the payment of clerks and outside associates where necessary, and bar fees, which may increase in the event of appointment at the Court, as well as contributions to social security, pension and health insurance schemes to which counsel belongs, including international hospitalization coverage for high-risk countries.

131. The payment of such compensation is limited to the trial phase or to the pre-trial and appeals phase where the constraints imposed by the Court's calendar justify counsel's presence at the seat of the Court for a period exceeding 15 days.<sup>65</sup>

132. The above regime of compensation for professional charges was completed by the Decision of the Bureau which introduced significant changes to this head of payment under the Court's legal aid system. While the above described system for compensation for professional charges is still in force and applicable to some of the existing cases before the Court, as of April 2012, all new legal team members will be subject to the compensation scheme outlined in the Decision of the Bureau and detailed below.

133. As a result of the Decision of the Bureau, remuneration of team members is based on a net base salary set in accordance with the Table 3 above, plus *a total global amount* to cover the totality of taxes or similar additional charges payable by the relevant team members. The percentage for professional charges indicated in this Table 3 is included in this global amount.

<sup>64</sup> Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons (ICC-ASP/3/16) – Update to annex 2: Payment details of the ICC Legal Aid Scheme No. ICC-ASP/5/INF.1, 31 October 2006, para.5, and Report on the operation of the Court's legal aid system and proposals for its amendment, No. ICC-ASP/6/4, annex VIII.

<sup>65</sup> The Adjustment Report, *supra* footnote 3, annex VIII, para. 5.

134. Counsel, associate counsel, *ad hoc* and duty counsel may receive compensation for professional charges up to a maximum of 30 per cent of the net base salary as compensation for all charges combined (including pension and health insurance contributions) that are directly related to a legal representation before the Court. This percentage represents a weighting which ultimately provides counsel with at least the equivalent of the gross salary of the corresponding category within the Office of the Prosecutor. Legal assistants and case managers may also receive this compensation up to a maximum of 15 per cent of the net base salary, subject to the same conditions applied to counsel.

135. Professional investigators and resource persons are not entitled to compensation of professional charges<sup>66</sup> for two main reasons; firstly, because their fees are funded out of the budget for investigations and secondly, this budget would be considerably reduced if any percentage were to be applied to them.

136. In addition, where counsel and or a team member holds simultaneous mandates, the payment for compensation for professional charges is not applicable for the second case, if counsel or the team member is already receiving such compensation in the first case.<sup>67</sup>

137. Further, once the regime of remuneration during phases in which activities for legal teams are considerably reduced is triggered, the payment for professional charges for team members determined eligible to receive such compensation will be adjusted proportionally to reflect the changes in remuneration during the phases of reduced activity.<sup>68</sup>

138. Compensation of charges is not paid automatically and costs compensated must have a direct link with intervention and involvement in Court proceedings. It is conditional on the production (at the end of the year in respect of which compensation is claimed) of supporting evidence/documentation of actual payment of charges enabling the Registry to determine whether the person concerned is eligible for compensation and, if so, to calculate the applicable rate of compensation using objective criteria such as national statistics, where available. This determination will be proportionate to the amounts received from the Court's legal aid system and will also take particular circumstances into account. Where necessary, the Registrar can seek the advice of the legal aid commissioners.

## VIII. Expenses

139. The Court's legal aid system provides for a flat fixed-rate monthly allowance to cover the expenses of each legal team.<sup>69</sup> As of 1 January 2013, the monthly allotment made available to teams is €3,000.<sup>70</sup> Unused amounts are carried over to the following month(s). The €3,000 monthly allotment is not provided directly to legal teams, but rather held in trust for them by the Registry, to be used when reasonably necessary expenses for an effective and efficient legal representation arise and are pre-approved by the Registry. Once approved, the costs of the expense are then deducted by the Registry from the monthly allotment.

140. This ceiling, which is separate from the investigation budget afforded to each legal team, is designed primarily to cover two categories of expenses: miscellaneous and travel. Miscellaneous expenses include office supplies (other than those already provided by the Court), translation costs related to material in a foreign language generated as part of investigations, as well as other reasonable expenses of the team directly linked to their mandate before the Court. The monthly expenses allotment may also be used when soliciting preliminary expert advice or opinions in the legal representation. However, if an expert - defence expert or otherwise - has been approved and requested to give testimony by the Chamber, the payment of his/her fees and expenses is assumed by the budget allocated for that purpose by the Victims and Witnesses Unit.<sup>71</sup>

<sup>66</sup> The Decision of the Bureau, *supra* footnote 6, Appendix II, para. 52.

<sup>67</sup> The Supplementary Report, *supra* footnote 1, para. 19.

<sup>68</sup> *Ibid*, para. 44.

<sup>69</sup> The previous monthly allotment made available to teams was €4,000 [See Documents. ICC-ASP/3/16, 17 Aug. 2004, annex 2; ICC-ASP/5/INF.1, 31 October 2006, page 3; ICC-ASP/4/CBF.1/8, 15 March 2005, page 2.

<sup>70</sup> ICC-ASP/11/20, page 19 and the Supplementary Report, *supra* footnote 1, para. 32.

<sup>71</sup> The Adjustment Report, *supra* footnote 3, para. 51.

141. The expenses budget covers the transportation expenses incurred by counsel and associate counsel to and from The Hague. While the costs of travel (by air, train, personal vehicle, etc.) of counsel and associate counsel to and from The Hague are covered by the €3,000 monthly expenses allotment, automatic application of Daily Subsistence Allowance and terminal expenses payments are not used to determine the entitlements of counsel and associate counsel in respect of their stay in The Hague.<sup>72</sup>

142. Costs of accommodation and other expenses related to the stay of counsel and associate counsel in The Hague on official business and deemed reasonably necessary by the Registrar will be covered up to the maximum monthly ceiling of €3,000, upon provision of proof that such costs have actually been incurred.

143. Counsel and associate counsel are not reimbursed for the costs of their stay in The Hague if such costs are already assumed by any other judicial institution or entity. While the Registry conducts its own due diligence in this regard, the onus rests on counsel to inform the Registry that they are benefiting from funding from a third source.

144. Reimbursement of these expenses is not extended to other team members as they are presumed to be primarily based at the Seat of the Court.

145. The monthly allotment is not provided directly to legal teams, but rather held in trust for them by the Registry, to be used when reasonably necessary expenses for an effective and efficient legal representation arise and are pre-approved by the Registry. Once approved, the costs of the expense are then deducted by the Registry from the monthly allotment, in any case, no more than €3,000 per month maximum. While unused funds in one month can be transferred to future months for use, no expenses claimed will be reimbursed if they exceed the monthly ceiling or the accumulated reserves in the expenses budget, subject to a successful application under regulation 83(3) of the RoC.

## **IX. Legal Aid Commissioner**

146. The legal texts of the Court provide for the position of Legal Aid Commissioners, an innovation that did not previously exist at the UN *ad hoc* tribunals. In accordance with regulation 136(1) of the RoR, the Registrar must appoint three legal aid commissioners to serve for a period of three years, which is not renewable.

147. The role of the Legal aid commissioners is to provide the Registrar with advice regarding the management of the funds allocated by the Assembly to legal assistance paid by the Court. To that effect, the commissioners are mandated to evaluate the performance of the system put in place regarding legal assistance paid by the Court; propose amendments to the system; and at the request of either counsel or the Registrar, assess whether the means requested by legal teams in their action plans are reasonably necessary for the effective and efficient representation of their client(s).

148. The advice or recommendations provided by the legal aid commissioner(s) are not binding on the Registrar of the Court.

149. Legal aid commissioners are not staff of the Court and are called upon to perform their functions as required on an *ad hoc* basis. They are to perform their tasks with complete independence and with due regard to confidentiality.

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<sup>72</sup> The Supplementary Report, *supra*, footnote 1 para. 34.

## Annex I

### List of relevant documents governing the Court's legal aid system

Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons	ICC-ASP/3/16	17 August 2004
Report by the Registry on the Formal Procedure for Assessment and Oversight of the Court's System of Legal Assistance	ICC-ASP/4/CBF.2/3	30 August 2005
Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons (ICC-ASP/3/CBF.2/3) Update to annex 2: Payment details of the ICC legal aid scheme	ICC-ASP/4/CBF.1/8	15 March 2005
Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons (ICC-ASP/3/16) – Update to annex 2: Payment details of the ICC legal aid scheme; (previously issued as ICC-ASP/4/CBF.1/8 and Corr.1)	ICC-ASP/5/INF.1	31 October 2006
Report on the operation of the Court's legal aid system and proposals for its amendment	ICC-ASP/6/CBF.1/1	29 March 2007
Report of the Committee on Budget and Finance on the work of its eighth session	ICC-ASP/6/2	29 May 2007
Report on the operation of the Court's legal aid system and proposals for its amendment; (previously issued as ICC-ASP/6/CBF.1/1 and Add.1)	ICC-ASP/6/4	31 May 2007
Report on the principles and criteria for the determination of indigence for the purposes of legal aid (pursuant to paragraph 116 of the Report of the Committee on Budget and Finance of 13 August 2004); (previously issued as ICC-ASP/4/CBF.1/2)	ICC-ASP/6/INF.1	31 May 2007
Report on appropriate resources for financial investigations under the Court's legal aid programme; (previously issued as ICC-ASP/7/CBF.1/1)	ICC-ASP/7/4	26 May 2008
Interim report on different legal aid mechanisms before international criminal jurisdictions	ICC-ASP/7/12	19 August 2008
Report on different legal aid mechanisms before international criminal jurisdictions	ICC-ASP/7/23	31 October 2008
Report of the Court on family visits to indigent detained persons	ICC-ASP/7/24	5 November 2008
Interim report of the Court on legal aid: Legal and financial aspects for funding victims' legal representation before the Court; (previously issued as ICC-ASP/8/CBF.1/2)	ICC-ASP/8/3	6 May 2009
Interim report of the Court on legal aid: Alternative models for assessment of indigence; (previously issued as ICC-ASP/8/CBF.1/3)	ICC-ASP/8/4	6 May 2009
Report of the Court on the financial aspects of enforcing the Court's obligation to fund family visits to indigent detained persons; (previously issued as ICC-ASP/8/CBF.1/7)	ICC-ASP/8/9	6 May 2009
Report of the Court on legal aid: Alternative models for assessment of indigence; (previously issued as ICC-ASP/8/CBF.2/8)	ICC-ASP/8/24	5 October 2009
Report of the Court on legal aid: Legal and financial aspects of funding victims' legal representation before the Court; (previously issued as ICC-ASP/8/CBF.2/13)	ICC-ASP/8/25	5 October 2009
Report of the Bureau on legal aid for victims' legal representation	ICC-ASP/8/38	28 October 2009
Report of the Bureau on Legal Aid (Defence): Alternate Methods for the Assessment of Indigence	ICC-ASP/8/39	28 October 2009
Updated Report of the Court on legal aid: Legal and financial aspects of funding victims' legal representation before the Court, the comparison between internal and external counsel; (previously issued as ICC-ASP/9/CBF.1/11)	ICC-ASP/9/9	30 July 2010
Report of the Court regarding the desirability of absolute thresholds for the purposes of indigence calculation; (previously issued as CBF/16/4)	ICC-ASP/10/4	17 June 2011
Resolution ICC-ASP/10/Res.4 (Section J), Ninth (9 <sup>th</sup> ) plenary meeting	ICC-ASP/10/20	21 December 2011
Report of the Bureau on legal aid	ICC-ASP/11/2	23 October 2012
Supplementary report of the Registry on four aspects of the Court's legal aid system; (previously issued as CBF/19/6 and Add.1)	ICC-ASP/11/43	1 November 2012
First report of the Bureau on legal aid	ICC-ASP/11/2/Add.1	8 November 2012
Resolution ICC-ASP/11/Res.1 (Section H), Eighth (8 <sup>th</sup> ) plenary meeting	ICC-ASP/11/20	21 November 2012

**Annex II****Application form for legal aid**

**Cour  
Pénale  
Internationale**

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**International  
Criminal  
Court**

**FINANCIAL INFORMATION FORM****PART I: IDENTIFICATION OF APPLICANT****1. General Details:**

<b>Family name:</b>	<b>First name:</b>	<b>Middle name:</b>	<b>Other names (include maiden name &amp; aliases):</b>
<b>Date of birth</b>			
<b>Place of birth</b>			
<b>Nationality (ies) at birth</b>			
<b>Present nationality</b>			
<b>Passport or travel document number</b>			
<b>National ID card number, if any</b>			
<b>Sex</b>	Male	Female	
<b>Marital status</b>	Single	Married	Separated Divorced Widow(er)
<b>Languages</b>	Native language(s): Other languages:		
<b>Please indicate your current location</b>	Address (including country and telephone number):		

**2. If married please give the following information:**

<b>Name of spouse</b>	
<b>Age</b>	
<b>Address</b>	
<b>Telephone number (if any)</b>	
<b>E-mail address (if any)</b>	
<b>Profession/occupation</b>	

\* If you have more than one spouse, please provide the relevant information on a separate sheet.

<b>Title of his/her post</b>	
<b>Gross salary</b>	
<b>Net salary</b>	
<b>Name of his/her employer</b>	
<b>Name of his/her supervisor</b>	
<b>E-mail address of employer/ Supervisor (if any)</b>	
<b>Postal address</b>	
<b>Telephone number (if any)</b>	

**3. If divorced please give the following information**

<b>Name of former spouse</b>	
<b>Age</b>	
<b>Address</b>	
<b>Telephone number (if any)</b>	
<b>E-mail address (if any)</b>	
<b>Profession/occupation</b>	

**4. Children or Dependants**

<b>Do you have any children?</b>	Yes	No
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**If YES, please give the following information**

	<b>Relationship</b>	<b>Name</b>	<b>Age</b>	<b>Address/Telephone/Email</b>	<b>Occupation/ Profession</b>
<b>1.</b>					
<b>2.</b>					
<b>3.</b>					
<b>4.</b>					
<b>5.</b>					
<b>6.</b>					
<b>7.</b>					

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\* If you are divorced but have previously had more than one spouse at any given time, please provide the relevant information on a separate sheet.

**5. Refugee Status**

<b>Do you have a refugee status?</b>	Yes	No
<b>If so, please provide the following information:</b>		
1. When did you last leave your country of origin?	.....	
2. Which country has granted you refugee status?	.....	
3. When were you granted refugee status?	.....	
4. What country issued your last passport or travel document?	.....	
5. Please provide any other relevant details associated with your status as refugee.	.....	
<b>Are you in the process of seeking a refugee status in any country?</b>	Yes	No
<b>If so, please provide any relevant details including country, reasons and stage of the process</b>		

**Part II: STATEMENT OF ASSETS** (Please answer ALL questions - attach extra sheets if necessary)

**1. Last address prior to arrest or surrender:**

<b>Complete address</b>	
<b>Estimated value (if property)</b>	
<b>Monthly rent (if rented)</b>	
<b>Number of rooms</b>	
<b>Monthly electricity and water bill</b>	
<b>Monthly salary of domestic staff</b>	
<b>Specify other household-related expenses</b>	

**2. Persons living in your household:**

	<b>Relationship</b>	<b>Name</b>	<b>Age</b>	<b>Address/Telephone/Email</b>	<b>Occupation/Profession</b>
1.					
2.					
3.					
4.					
5.					
6.					
7.					

**3.1 Last employment following your departure from \_\_\_\_\_ ( Name of country)**

<b>Occupation</b>		
<b>Title of post</b>		
<b>Period post was held</b>	From (month/year) .....	To (month/year) .....
<b>Gross salary</b>		
<b>Net salary</b>		
<b>Name of your employer</b>		
<b>Name of supervisor</b>		
<b>E-mail address of employer / supervisor (If any)</b>		
<b>Postal address</b>		
<b>Telephone number</b>		
<b>Reasons for leaving</b>		
<b>Other information</b>		

**3.2 Previous employment**

<b>Occupation</b>		
<b>Title of post</b>		
<b>Period post was held</b>	From (month/year) .....	To (month/year) .....
<b>Gross salary</b>		
<b>Net salary</b>		
<b>Name of your employer</b>		
<b>Name of supervisor</b>		
<b>E-mail address of employer / supervisor (if any)</b>		
<b>Postal address</b>		
<b>Telephone number (If any)</b>		
<b>Reasons for leaving</b>		
<b>Other information</b>		

**3.3 Previous employment**

<b>Occupation</b>		
<b>Title of post</b>		
<b>Period post was held</b>	From (month/year) .....	To (month/year) .....

<b>Gross salary</b>	
<b>Net salary</b>	
<b>Name of your employer</b>	
<b>Name of supervisor</b>	
<b>E-mail address of employer / supervisor (if any)</b>	
<b>Postal address</b>	
<b>Telephone number (If any)</b>	
<b>Reasons for leaving</b>	
<b>Other information</b>	

**4. Person(s) and/or institution(s) responsible for the management of your assets:**

<b>Name &amp; address of person/institution</b>	<b>Telephone or E-mail address</b>	<b>Period</b>
		From (mth/yr)..... To (mth/yr).....

**5. Your bank details:**

<b>Name &amp; Address of Bank</b>	<b>Telephone or E-mail address</b>	<b>Account number &amp; available funds</b>

**6. Value of other financial assets:**

<b>Type</b>	<b>Personal</b>	<b>Spouse(s)</b>	<b>Persons mentioned in table 2</b>
<b>Rents</b>			
<b>Income derived from land properties</b>			
<b>Pension benefits</b>			
<b>Insurance claims</b>			
<b>Bank interests</b>			

<b>Interests on loans and investments</b>			
<b>Bonds and shares of private companies and State Corporation</b>			
<b>Others</b>			

**7. Value of other movable and immovable property:**

Type	Personal	Spouse(s)	Persons mentioned in table 2
Houses			
Land			
Commercial Buildings			
Cars			
Trucks			
Other Vehicles			
<b>Other effects:</b> 1. Jewellery 2. Household Appliances 3. Electronic Appliances 4. Electrical Appliances 5. Other Assets			

Are you in the process of receiving inheritance? If yes, please explain and provide approximate value.	
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**8. Give names and addresses of persons, other than your family members and persons living in your household, who can attest the information provided in this declaration**

	Name	Full address
1		
2		
3		
4		
5		

## DECLARATION

I am aware that my statement is subject to verification by the Registrar and that any omission or false statement may in the Registrar's discretion result in either withdrawal of assignment of Counsel or my being deemed liable to pay all or part of Counsel's remuneration;

I hereby authorise the Registrar of the International Criminal Court or his or her representative to have full access to *my household, previous employment history, bank accounts*, and any other relevant financial information for the purpose of assessing whether I am eligible for payment of legal assistance by the Court;

Through my signature I authorise the Registrar of the International Criminal Court or his or her representative, without further recourse to me, to make any inquiries with financial institutions and land registries or similar institutions to evaluate any property, real or personal, legally or beneficially owned by me, whether now or anytime in the future, with a view to determining my contribution to the cost of my legal representation under the Court's legal assistance programme;

I have been informed that this authorisation is irrevocable. It is given freely from undue influence, duress, force or coercion;

I hereby acknowledge that a refusal to assist the Registrar in this matter in an expeditious fashion and any misrepresentation or material omission may result in the delay of the decision concerning the granting of payment of legal assistance by the Court, for which the Court shall bear no responsibility. Likewise, I acknowledge that such refusal, misrepresentation or material omission could result in the review of the provisional decision to grant payment of legal assistance by the Court;

I understand and accept that in the event the Registrar undertakes to pay for the costs of my legal representation, that the Registrar may, pursuant to Regulation 84 (1) of the Regulation of the Court, require a financial contribution from myself whether now or at any time in the future should it come to the attention of the Registrar that I possess, or have acquired, the means to make such a contribution;

I hereby declare that, in the case of being granted a partial payment of legal assistance, according to regulation 84 (1), of the Regulations of the Court, I will provide the legal team with the portion of their payment as decided by the Registrar;

I am hereby informed that I am required to promptly inform the Registrar of the International Criminal Court of any changes concerning my financial situation and to refund the total amount of legal assistance paid by the Court resulting from the non-communication of such changes;

I hereby certify on my honour that all the information provided in this declaration is complete and accurate;

I hereby declare that, in case that this information is inaccurate, I will reimburse the Court the funds unduly paid.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

All information and sources communicated in this form shall be used for the purpose of establishing whether the person requesting financial assistance by the Court is an eligible candidate. This information may be communicated to the Chamber dealing with the case at any time pursuant to Rule 21 sub-rule 5 of the Rules of Procedure and Evidence.

\_\_\_\_\_