

Remuneration Policy for Persons Representing Indigent Suspects and Accused in Contempt and False Testimony Proceedings before the Mechanism for International Criminal Tribunals

Adopted on 29 June 2016

PREAMBLE

The Registrar of the Mechanism for International Criminal Tribunals;

CONSIDERING Article 19 of the Statute of the MICT as adopted by the Security Council under Resolution 1966 (2010) of 22 December 2010;

CONSIDERING the Rules of Procedure and Evidence of the MICT, as adopted on 8 June 2012, pursuant to Article 13 of the Statute;

CONSIDERING the Directive on the Assignment of Defence Counsel, issued on 14 November 2012;

CONSIDERING the principles, policies and procedures governing the remuneration schemes at the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia;

HEREBY ADOPTS this remuneration policy, pursuant to Article 25 of the Directive.



John Hocking
Registrar

Dated this 29th day of June 2016
At Arusha
Tanzania.

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A. DEFINITIONS

For the purpose of this Policy, the following definitions shall apply:

Accused:	A person indicted by the ICTR, ICTY, or the MICT, in accordance with Article 1(4) of the Statute.
Association of Counsel:	An Association of Defence Counsel practicing before the MICT, recognised by the Registrar in accordance with Rule 42(A)(iii) of the Rules.
Branch:	A relevant branch of the MICT in Arusha or The Hague.
Chamber:	A Trial or Appeals Chamber of the MICT, or a Single Judge, in accordance with Article 12 of the Statute.
Code of Conduct:	The Code of Professional Conduct for Defence Counsel Appearing before the MICT, issued by the Registrar on 14 November 2012, and as subsequently amended.
Contempt Proceedings:	A proceeding before the MICT pursuant to Article 1(4)(a) of the Statute and Rule 90 of the Rules.
Counsel:	A person assigned to represent an indigent or partly indigent Suspect pursuant Rule 40(A)(i) or Accused pursuant to Rules 43 and 44 of the Rules and Article 16(B) or 16(C) of the Directive.
Defence Team:	Counsel assigned by the Registrar to represent an indigent or partly indigent Suspect or Accused and any other person assigned or approved by the Registry to assist Counsel in this task, including Co-Counsel, Consultants, Legal Assistants, Case Managers, Investigators and Language Assistants, as applicable.
Directive:	The Directive on the Assignment of Defence Counsel, issued by the Registrar on 14 November 2012, in accordance with Rule 43 of the Rules, and as subsequently amended.
DSA:	Daily Subsistence Allowance pursuant to Article 28 of the Directive.

Duty Counsel:	A person assigned pursuant to Rule 43(C) of the Rules to represent an Accused for purposes of the initial appearance, in accordance with Rule 64(D) of the Rules.
False Testimony Proceedings:	Proceedings before the MICT pursuant to Article 1(4)(b) of the Statute and Rule 108 of the Rules.
ICTR:	The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Security Council Resolution 955 of 8 November 1994.
ICTY:	The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993.
Invoicing Guidelines:	Guidelines on the Submission of Hourly Invoices and Remunerable Activities of November 2015, and as subsequently amended.
MICT:	The International Residual Mechanism for Criminal Tribunals, established by Security Council Resolution 1966 of 22 December 2010.
Policy:	The present Remuneration Policy for Persons Representing Indigent Suspects and Accused in Contempt and False Testimony Proceedings before the MICT.
President:	The President of the MICT appointed pursuant to Article 11 of the Statute.
Prosecutor:	The Prosecutor of the MICT appointed pursuant to Article 14(4) of the Statute.
Registrar:	The Registrar of the MICT appointed pursuant to Article 15 of the Statute.

Registry:	The organ of the MICT responsible for the administration and servicing of the MICT pursuant to Article 15 of the Statute, and, for purposes of this Policy, Registry staff specifically tasked with administering legal aid.
Rules:	The Rules of Procedure and Evidence adopted by the MICT pursuant to Article 13 of the Statute, adopted on 8 June 2012, and as subsequently amended.
Statute:	The Statute of the MICT annexed to Security Council Resolution 1966 of 22 December 2010, and as subsequently amended.
Support Staff:	Any person providing support to Counsel pursuant to Article 16(E) of the Directive.
Suspect:	A person who the MICT has a reasonable basis to believe has committed a crime under Article 1(4) of the Statute, over which the MICT has jurisdiction.

In this Policy, the masculine shall include the feminine and *vice versa*.

B. GENERAL PROVISIONS

1. This Policy provides for the remuneration of reasonable and necessary work performed by a Defence Team of an indigent or partly indigent Suspect or Accused during contempt proceedings pursuant to Article 1(4)(a) of the Statute and Rule 90 of the Rules or false testimony proceedings pursuant to Article 1(4)(b) of the Statute and Rule 108 of the Rules.
2. The Policy is based on an hourly payment system. The applicable hourly rates for Counsel and Support Staff are set out in the Hourly Payment Rates Applicable to Defence Teams.¹ Only Defence Team members assigned by the Registry can receive remuneration under this Policy. Defence Team members may be remunerated only for work performed from the day of their assignment.
3. All payments made pursuant to this Policy are subject to prior authorisation by the Registry in accordance with Article 24(A) of the Directive. Accordingly, prior authorisation of work plans by the Registry is required before the Defence Team undertakes any work, unless performance of work prior to such authorisation is essential for the protection of the rights of the Suspect or Accused.
4. Counsel is responsible for appropriately planning and managing resources carefully and efficiently so as to ensure that sufficient funds are available to cover work being performed during the entire duration of the proceedings.
5. For purposes of this Policy, the MICT shall recognise the previous determination of indigency of an Accused made by the ICTR or the ICTY, unless new information is obtained which establishes that the Accused has sufficient means to remunerate Counsel. Where the ICTR or ICTY has not made a determination on indigency, the MICT will assess the financial means of the Suspect or Accused in accordance with the Directive.
6. This Policy does not purport to create any rights or entitlements beyond those established by Article 19 of the Statute, and is without prejudice to the Rules and the Directive. In cases of conflict, the provisions of the Statute, Rules or Directive shall prevail.

C. REMUNERATION

Preliminary Interview

7. Where Counsel is assigned to represent a Suspect during a preliminary interview with the Office of the Prosecutor or *amicus curiae* prosecutor in a contempt or false testimony investigation, initiated pursuant to Rule 90(C) or 108(B) of the Rules, the Registry shall allocate up to 10 counsel hours, in addition to the duration of the preliminary interview itself.
8. This allotment covers all work to be performed by Counsel in preparation for the preliminary interview, including consultations with the client.

¹ A copy can be found on the MICT website. Depending on the type of work to be performed, Counsel may request the conversion of counsel hours to support staff hours at the rate of 1:4.

Initial Appearance

9. In the event that no preliminary interview takes place or where Counsel assigned for the preliminary interview does not continue to represent the Accused when proceedings are initiated pursuant to Rule 90(D) or 108(C), the Registrar will assign a Duty Counsel for the initial appearance.
10. The Registry shall allocate up to 10 counsel hours for the preparation of the initial appearance.
11. This allotment covers all work necessary for the preparation of the initial appearance, including consultations with the Accused. Remuneration for attendance at the initial appearance(s) or related hearings shall be payable to Counsel over and above this allotment.

Pre-Trial

12. The pre-trial stage commences the day following the initial appearance and ends the day preceding the first day of trial.
13. Should further work be required during the pre-trial stage, including the preparation of trial or pertaining to a possible referral pursuant to Article 1(4) of the Statute. Counsel shall - as soon as practicable - submit a detailed work plan for the Registry's consideration, covering all tasks envisaged during the pre-trial stage of the proceeding and the estimated time needed to accomplish each task, along with a request for an allocation of hours to cover said tasks, in accordance with Section D of this Policy.
14. Based on the work plan, the Registry shall make a determination as to the maximum number of hours reasonable and necessary for the preparation of the case. The Registry may request further information from Counsel should this be required to allow for a meaningful review of the reasonable and necessary character of the proposed work.
15. Should there be compelling factual or legal circumstances that arise in the course of the pre-trial stage that were not known to Counsel when drafting the work plan and which lead to a substantial increase in the work necessary for the work to be performed during this stage, Counsel may submit a work plan addendum to supplement the initial work plan for the Registry's consideration. The work plan addendum must include a detailed description of the additional work required, the estimated time needed for each task, and explain why this additional work is required and was not included in the original work plan.
16. Remuneration for attendance at pre-trial hearings shall be payable to Counsel over and above any allotment granted.

Trial

17. The trial stage commences the first day of trial and ends at the conclusion of closing arguments.
18. The Registry shall allocate an initial allotment of up to 40 counsel hours for the trial stage.

19. Within one week of receipt of the initial allotment, Counsel shall submit a detailed work plan for the Registry's consideration, covering all tasks envisaged during the trial stage along with a request for an allocation of hours to cover said tasks, in accordance with Section D of this Policy.
20. Based on the work plan, the Registry shall make a determination as to the maximum number of hours reasonable and necessary for the preparation and presentation of the case. The Registry may request further information from Counsel should this be required to allow for a meaningful review of the reasonable and necessary character of the proposed work.
21. Should there be compelling factual or legal circumstances that arise in the course of the trial stage that were not known to Counsel when drafting the work plan and which lead to a substantial increase in the work necessary for the preparation of the case, Counsel may submit a work plan addendum to supplement the initial work plan for the Registry's consideration. The work plan addendum must include a detailed description of the additional work required, the estimated time needed for each task, and explain why this additional work is required and was not included in the original work plan.
22. Remuneration for attendance at trial hearings shall be payable to Counsel over and above any allotment granted.
23. The Registry may authorise, on a case-by-case basis, remuneration of one Support Staff member for attendance at trial hearings over and above any allotment of Support Staff hours granted, upon demonstration that the attendance is reasonable and necessary. For this purpose, Counsel shall submit a reasoned request to the Registry.
24. Should there be compelling factual or legal circumstances leading to a substantial amount of work necessary to be performed between the closing arguments and the pronouncement of Judgement or a Decision disposing of the contempt case pursuant to Rule 90(J) or false testimony case pursuant to Rule 108(I), Counsel may submit a reasoned request for remuneration to the Registry for consideration. The request must be in writing and include a description of the work to be performed, the estimated time needed for each task and explain why this work could not have been performed before the closing arguments. The Registry may request further information and documentation from Counsel should such be required for a meaningful review of the request.

Appeal

25. The appeals stage commences either upon rendering of the Judgement or a Decision disposing of the contempt case pursuant to Rule 90(J) or false testimony case pursuant to Rule 108(I) and shall end with the rendering of the Judgement or Decision on Appeal.
26. The Registry shall grant an initial allotment of up to 10 counsel hours to cover work, including, but not limited to: review and analysis of the Judgement or Decision; consideration of possible grounds of appeal; and consulting with and advising the client.
27. Should the convicted person decide to file a Notice of Appeal, Counsel may request an additional allotment of up to 20 counsel hours to further review and analyse the Judgement or the Decision, and to draft a Notice of Appeal.

28. The Registry shall not grant an initial or additional allotment under paragraphs 26 or 27 where an Accused is acquitted on all counts.
29. Within one week after a Notice of Appeal, if any, is filed by either Party, Counsel shall submit a work plan covering all tasks envisaged at the appeals stage, and the estimated time needed to accomplish each task, along with a request for an allocation of hours to cover said tasks, in accordance with Section D of this Policy.
30. Based on the work plan, the Registry shall make a determination as to the maximum number of hours reasonable and necessary for the preparation and presentation of the appeal. The Registry may request Counsel to provide further information should this be required to allow for a meaningful review of the reasonable and necessary character of the proposed work.
31. Should there be compelling factual or legal circumstances that arise in the course of the appeals stage that were not known to Counsel when drafting the work plan and which lead to a substantial increase in the work necessary for the preparation of the case, Counsel may submit a work plan addendum to supplement the initial work plan for the Registry's consideration. The work plan addendum must include a detailed description of the additional work required, the estimated time needed for each task, and explain why this additional work is required and was not included in the original work plan.
32. Remuneration for attendance at appeals hearings shall be payable to Counsel over and above any allotment granted.

D. WORK PLAN

33. The work plans submitted pursuant to paragraphs 13, 19 and 29 and work plan addenda submitted pursuant to paragraphs 15, 21 and 31 must specify in detail all activities that Counsel deems necessary to efficiently represent the Accused, and shall include:
 - (a) envisaged number of consultations with the client, Defence Team meetings, communications with Counsel for co-Accused, if any, as well as with the Office of the Prosecutor or *amicus curiae* prosecutor and the Chamber;
 - (b) if applicable, a request for the assignment of Support Staff, including the names and curriculum vitae of each of the proposed members of the Defence Team and the projected distribution of work;
 - (c) if applicable, a plan for travel and investigation; and
 - (d) significant tasks to be undertaken for the relevant phases and the estimated time for completion of each task. Such tasks may include:
 - (i) At Pre-Trial:
 - review of investigative reports and indictment or order in lieu of indictment
 - legal research
 - consultations with client
 - entering a plea
 - work related to investigations, including obtaining documents and identifying, interviewing and preparing potential defence and prosecution witnesses and expert witnesses
 - drafting of any preliminary motions, including preliminary motions pursuant to Rule 79(A), and responses

(ii) At Trial:

- preparation of witnesses
- review and analysis of materials disclosed
- preparation of defence disclosures
- legal research
- drafting of any motions and responses
- preparation for the hearings, including participation in the hearings

(iii) On Appeal:

- legal research
- drafting of any motions and responses
- preparation of the Notice of Appeal, if any
- preparation of the Appeal Brief, if any
- preparation of the Response Brief, if any
- preparation of the Brief in Reply, if any
- preparation for the appeal hearing

34. The work plans serve solely as judicial management documents. Their purpose is to provide the Registry with objective information related to the planning and preparation of the case for the Defence in order to determine whether the work to be performed is reasonable and necessary. The work plans shall be cumulative, in that each work plan submitted must incorporate any previous work plans and must indicate, where possible, progress on tasks outlined in previous work plans and work completed.
35. The Registry shall treat the work plans as confidential work product of the Defence Team and restrict access accordingly. To this end, the Registry will not share the work plans with the Office of the Prosecutor, *amicus curiae* prosecutor or any other third party. The Registry may only share such work plans for the purposes of audits if so required.
36. Counsel is responsible for preparing work plans sufficiently detailed to allow for a meaningful review by the Registry, without disclosing information subject to counsel-client privilege.

Support Staff and Experts

37. Should Counsel demonstrate that the scope of the contempt or false testimony matter requires the assignment of Support Staff or experts, the Directive shall govern such assignments. Pursuant to Article 16(C) of the Directive, the Registry will only consider the assignment of Co-Counsel in the interests of justice.
38. Counsel is responsible for the management of the Defence Team, including Legal Assistants, Language Assistants, and any other Support Staff as well as experts. In accordance with the Directive and Code of Conduct, Counsel shall be responsible for supervising the work of Defence Team members and for approving any invoices submitted by Defence Team members and experts.

E. INVOICING AND RATES

39. Counsel, and any assigned Defence Team member, shall submit detailed monthly invoices to the Registry specifying the number of working hours and the tasks performed, in accordance with the Invoicing Guidelines. The Registry will consider the monthly invoices in conjunction with the work plans submitted.

F. TRAVEL

40. The Registry shall cover case-related travel expenses on a case-by-case basis pursuant to Articles 27 and 28 of the Directive and in accordance with United Nations travel rules and regulations.²
41. The Registry may authorise travel and DSA for Counsel on a case-by-case basis taking into consideration the geographical distance and travel time required, the nature and amount of the work to be undertaken and the efficient use of public funds. The Registry may authorise travel for investigations, initial appearance, preparation of trial and hearings. Counsel should, whenever possible, combine different objectives in one trip.
42. The Registry may exceptionally authorise travel for Support Staff, in particular with regard to investigative missions, upon a reasoned request of Counsel in this regard.

G. TRANSLATION AND INTERPRETATION

43. The MICT shall translate documents to be tendered as evidence.
44. For interpretation and translation costs incurred for the purpose of facilitating client-counsel communication as provided for in Article 19(4)(a), (b), and (f) of the Statute, Language Assistants assigned to the Defence Team may invoice separately for such costs up to a maximum of \$1,500 per month. Language Assistants must submit detailed invoices to the Registry specifying the number of working hours and the tasks performed, in accordance with the Invoicing Guidelines.
45. Should Counsel require further language assistance, he may submit a reasoned request for the assignment of a Language Assistant and allocation of resources for the Registry's consideration.

H. FINAL PROVISIONS

46. The Registry may, if serious concerns arise, request information about and perform checks of the work performed by any and all members of the Defence Team. In accordance with Article 16(I) of the Directive, Counsel shall, for this purpose, retain all Defence files for a period of at least five years after the end of the proceedings.
47. The Registry shall treat all documents submitted by Counsel pursuant to this Policy with due respect for the appropriate level of confidentiality.
48. If additional work is required because of the replacement of Counsel, as approved by the Registry, the newly appointed Counsel shall not be disadvantaged for this reason. The Registry will address such issues on a case-by-case basis.
49. In instances where a deadline under this Policy falls on a non-working day, it shall be extended to the next working day.
50. Article 32 of the Directive shall govern the settlement of any disputes arising from the application of this Policy.

² Where possible, Counsel must submit such requests at least 21 days before the anticipated travel date.