

**Remuneration Policy for Persons Representing Indigent Accused
in Trial Proceedings before the Mechanism for International Criminal Tribunals**

Adopted on 8 December 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 policies at the MICT and at the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia;

CONSIDERING the purpose of this lump sum system is to administer legal aid efficiently at the Trial stage by providing the Lead Counsel with flexibility in managing resources;

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


John Hocking
Registrar

Dated this 8th day of December 2016
At The Hague,
The Netherlands.

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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 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:** The relevant branch of the MICT in Arusha or in The Hague.
- Chamber:** The Trial 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.
- Counsel:** A person assigned to represent an indigent or partly indigent Accused pursuant to Rule 43 and 44 of the Rules and Article 16(B) or 16(C) of the Directive.
- Co-Counsel:** A person assigned to assist Lead Counsel with the defence of an Accused, pursuant to Rules 43 and 44 of the Rules and Article 16(C) of the Directive.
- CPI:** Consumer Price Index for the Netherlands as determined by the International Civil Service Commission.
- Defence Team:** Lead Counsel assigned by the Registrar to represent an indigent or partly indigent Accused and any other person assigned or approved by the Registry to assist Lead Counsel in this task, including Co-Counsel, Consultants, Legal Assistants, Case Managers, Investigators, and Interpreters/Translators, 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.
- End-of-Phase Payment:** The portion of the lump sum that is withheld and paid after approval by the Registry of the Defence End-of-Phase Report.
- 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.
- Lead Counsel:** A person assigned to represent an indigent or partly indigent Accused pursuant to Rules 43 and 44 of the Rules and Article 16(B) of the Directive.
- 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 Accused in Trial 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 Lead Counsel pursuant to Article 16(E) of the Directive.
- Trial:** A proceeding before the MICT pursuant to Article 18 of the Statute.
- WISP:** The Witness Support and Protection unit of the MICT.

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 the Defence Team of an indigent or partly indigent Accused during Trial proceedings. The Policy is based on a lump sum payment system, which is designed to give Lead Counsel maximum flexibility in the use of the available resources. This means in particular that Lead Counsel can retain the services of Support Staff as he sees fit in the course of Trial proceedings, depending on the needs of the case during this stage. However, only Defence Team members who have been assigned by the Registry can receive remuneration from the lump sum.
2. This Policy does not purport to create any rights or entitlements beyond those established in 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.
3. The lump sum covers all aspects of representation during Trial. These include, but are not limited to: Lead and Co-Counsel fees; Legal Assistant fees; Consultant fees; Investigator fees; Case Manager fees; interpretation and translation costs (*see* paragraph 4); and administrative expenses.¹ Office costs are generally included in the lump sum.² However, should Counsel opt to use office facilities for exclusive use of the Defence Team offered by the MICT, where available, 70 per cent of the office cost component as established in paragraph 23 will be deducted from the lump sum.
4. Included in the lump sum are all interpretation and translation costs, except: (a) those related to the translation of documents to be tendered as evidence (which will generally be translated by the MICT); and (b) 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 these latter 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 or the number of words translated.³ Those invoices must be submitted within 60 days of the last day of work performed.
5. Fees for Defence experts providing expert reports are also not included in the lump sum. Lead Counsel may request the assignment of experts for the provision of expert reports on a particular area of fact or law on an *ad hoc* basis by submitting a request to the Registry detailing the expertise to be provided, a CV of the proposed expert and the number of hours needed to complete the specific assignment. The Registry may allocate a total maximum of 150 remunerable expert hours⁴ for the provision of expert reports.
6. Experts must submit a detailed, hourly invoice in accordance with the Invoicing Guidelines. The invoice must be submitted through Lead Counsel, who must also sign the invoice. Invoices must be submitted within 60 days of the last day of work performed.

¹ The amounts set out in the Policy are derived from the maximum allotments of hours and/or lump sum amounts applied by the ICTR and the ICTY during the Trial stage. All amounts are set in United States Dollars, but payments may be made in Euros applying the official United Nations exchange rate for the month in which the payment is made.

² Office costs include costs for phone, mail, express mail, photocopies, books, journals, lease of office space, purchase of office equipment, office supplies, secretarial support, arranging visits to the detention facilities, arranging visas, arranging document storage and/or destruction, and correspondence with the Registry.

³ For this type of work, Language Assistants are remunerated at hourly rates for interpretation and at rates per word for translation, as established by the Registry.

⁴ Experts are remunerated at hourly rates established by the Registry.

The Registry will consider requests for potential travel of experts pursuant to paragraphs 57 and 58.

7. The Registry shall adjust the amounts set out in this Policy by reference to the movement of the CPI.⁵ Such adjustment shall be effective as of 1 January of each year and will be based on the movement of the CPI during the twelve month period from November of the preceding year.
8. The Registry shall make payments, in principle, within 30 calendar days of the submission of a valid and accurate *pro forma* invoice or other documentation prescribed below, and deposit payments directly into the bank accounts of the respective Defence Team members.

C. DETERMINATION OF THE LUMP SUM

9. The Registry allocates the lump sum for a specific phase of the Trial proceedings, and the lump sum is linked to the completion of this phase. The lump sum is not contingent on the number of hours actually worked per month or the actual duration of the phase *per se*.⁶
10. The Registry shall determine a lump sum allotment after consulting with the Trial Chamber and Lead Counsel regarding both the estimated duration and complexity of the phase.
11. To make the financial planning more manageable, the Trial stage will be divided into two phases: (i) the Prosecution Phase; and (ii) the Defence Phase. In the event that either of these phases is expected to last longer than 12 months, it may be sub-divided into two sub-phases. The Registry will calculate and allocate separate lump sums for each phase of the Trial at the time the respective phase is set to begin. In the event that the entire Trial stage is expected to last less than 12 months, it may constitute only one phase for the purpose of this Policy.

D. CALCULATING THE DURATION OF A PHASE

12. As the Trial Chamber is ultimately responsible for controlling the proceedings, the estimated duration of the Prosecution Phase will be based on the time allocated for the presentation of the Prosecution case, as set by the Trial Chamber at the pre-trial conference in accordance with Rule 81, and specifically Rule 81(C), and the anticipated time it will take to issue a Rule 121 ruling after the Prosecution Phase.
13. Similarly, for the Defence Phase, the estimated duration will be based on the time allocated by the Trial Chamber for the presentation of the Defence case in accordance with Rule 82, and specifically Rule 82(E). If the Trial Chamber's allocation of time is not yet available at the time of the Registry's decision, the Registry may, at the request of Lead Counsel, employ a provisional estimate based on the information then available, in order to allocate a provisional lump sum. The Registry shall adjust the calculation of the duration of the phase as soon as the Trial Chamber sets the time for the presentation of the Defence case including the time allocated for the preparation of the final briefs and closing arguments. For the purpose of this payment Policy, the Defence Phase shall end with the presentation of the Defence's closing arguments.⁷

⁵ No adjustment shall be made if the aggregate increase does not reach 1 per cent in a given year.

⁶ The final duration of a phase as relevant for payment is calculated in accordance with paras. 39–43.

⁷ This includes time allocated for the presentation of rebuttal or rejoinder evidence pursuant to Rule 102.

14. As a general principle, the Registry does not take into account scheduled court recess periods, such as the summer and winter recess, in determining the estimated duration of a phase. However, the Registry may remunerate the Defence Team separately for work performed during these periods in accordance with paragraphs 44 and 45.
15. Where the phase extends beyond the estimated duration because the Trial Chamber has allocated additional time for the presentation of either the Prosecution or Defence case, the Registry shall calculate the revised estimated duration based on the new allocation of time.
16. Where the hearings extend beyond the estimated duration of the phase without an allocation of additional time by the Trial Chamber for the presentation of the respective case,⁸ the Registry, after obtaining information from the Trial Chamber as to the precise circumstances and reasons for the extension of the phase, shall continue to disburse the monthly stipend until the end of the phase. The Registry may increase the lump sum if appropriate.
17. With the exception of regular working months during which the Trial Chamber is not sitting,⁹ if the Trial Chamber has not been, or is expected not to be, sitting for six or more consecutive days,¹⁰ such periods fall under the recess payment scheme, outlined in paragraphs 44 and 45.
18. Where the phase ends earlier than initially estimated, the Registry may decrease the lump sum for the phase in accordance with its actual duration. In determining whether such a decrease is warranted, the Registry shall request information from Lead Counsel as well as the Trial Chamber with regard to the reasons for the decreased duration of the phase, including the potential impact on the work performed by the Defence Team.

E. ASSESSING THE COMPLEXITY LEVEL

19. The Registry shall determine the complexity of the case after consulting with the Chamber and Lead Counsel either in writing or at a meeting taking place no later than 10 days after the last Rule 70 conference for the Prosecution Phase, and no later than 10 days after the issuance of a Rule 121 decision for the Defence Phase.
20. In making a complexity determination, the Registry shall consider, *inter alia*:
 - (a) the position of the Accused, including within the political or military hierarchy;
 - (b) the number and nature of counts in the indictment;
 - (c) whether the case raises any novel issues;
 - (d) the geographical scope of the case;
 - (e) the complexity of legal and factual issues involved;
 - (f) the number and type of witnesses and documents involved; and
 - (g) any other factor put forth by either Lead Counsel or the Chamber which may be relevant to facilitate the Registry's decision.

⁸ Where, for instance, cross-examination or questions posed by the Chamber take more time than originally estimated.

⁹ Regular working months are included in the calculation of the duration of the phase as the Defence Team is expected to work full time. Such periods include briefing periods and preparations for the closing arguments.

¹⁰ Where, for instance, the health of the Accused requires a court adjournment.

21. The complexity of a case is not necessarily correlated with the estimated duration of a case. A case may be ranked differently during the different phases, or from the pre-trial stage to the Trial stage, since the ranking reflects the complexity of legal and factual issues raised during a particular stage or phase, and not the case in general. Accordingly, the Registry will issue separate determinations of the complexity for the Prosecution and Defence Phases, respectively.
22. On the basis of the above factors, the Registry shall determine the complexity of the phase, and accordingly rank the phase at Level 1 (difficult), Level 2 (very difficult), or Level 3 (extremely difficult).
23. The lump sum for each case is calculated by multiplying the following allotments by the estimated number of months of the duration of the case.

Difficulty	Monthly allotment	Monthly allotment for interpretation and translation
Level 1 (Difficult)	\$26,015 ¹¹ + \$4,245 = \$30,260	\$1500
Level 2 (Very Difficult)	\$26,015 ¹² + \$12,735 = \$38,750	\$1500
Level 3 (Extremely Difficult)	\$26,015 ¹³ + \$21,225 = \$47,240¹⁴	\$1500

24. These allotments are calculated on the basis of three components:
 - (a) the gross salary of a P5 Step VII staff member plus a component for office costs amounting to 40 per cent of the corresponding amount, or a total of \$14,203 (for Lead Counsel);
 - (b) the gross salary of a P4 Step VII staff member plus a component for office costs amounting to 40 per cent of the corresponding amount, or a total of \$11,812 (for Co-Counsel);
 - (c) a Support Staff component which varies according to the complexity of the case, for one (Level 1), three (Level 2), or five (Level 3) Support Staff.
25. The different amounts of which the lump sum is composed are not binding upon Lead Counsel who is free to decide on the number of Support Staff and the distribution of the lump sum amongst the assigned Defence Team members in the best interest of the defence of his client.

F. DISTRIBUTION OF THE LUMP SUM

26. The Registry will distribute the lump sum in: (i) an up-front initial payment; (ii) monthly stipends paid for each month of the phase; and (iii) a final End-of-Phase Payment. The monthly stipends do not represent a monthly allotment of hours, nor are they a monthly salary. Rather, the up-front payment and monthly stipends are advance payments of the

¹¹ This figure includes an office cost component amounting to \$7,433. The Registry may, however, adjust the office cost component in accordance with paragraph 3.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ The three figures in bold represent the sum of the three components listed in paragraph 24(a)–(c).

lump sum, which would otherwise be due at the end of the Trial stage, once all work has been performed and approved by the Registry.

Up-front Initial Payment

27. At the commencement of the Prosecution Phase, Lead Counsel may request an up-front initial payment of up to 10 per cent of the lump sum to the Defence Team. This payment is intended to facilitate any extraordinary expenses that might be incurred as a result of relocation and establishment of the Defence Team's office at the respective seat of the MICT.
28. No up-front initial payment will be made for the Defence Phase.

Monthly Stipends

29. The monthly stipends are calculated by dividing the lump sum by the estimated number of months of the phase, and multiplying this amount by 70 per cent for the Prosecution Phase¹⁵ and by 80 per cent for the Defence Phase.
30. Each month, Lead Counsel shall sign and submit a *pro forma* invoice. Lead Counsel shall advise the Registry how to distribute the stipend among the Defence Team members. Payments shall be made pursuant to paragraph 8.
31. The monthly *pro forma* invoices need not detail the work performed. However, all members of the Defence Team must keep a record of the hours and work performed in the course of that phase, as Lead Counsel is required to present a detailed statement to the Registry in the End-of-Phase Report, as described in paragraphs 34–38.

End-of-Phase Payment

32. At the end of each phase, the Defence Team is entitled to receive the End-of-Phase Payment, calculated pursuant to paragraph 33. The End-of-Phase Payment shall be made upon the Registry's approval of the End-of-Phase Report, submitted in line with paragraph 34. Lead Counsel must submit the End-of-Phase Report within 60 days of the end of the respective phase.
33. The End-of-Phase Payment equates to the re-calculated lump sum (as determined pursuant to paragraph 39), less any amount previously paid in monthly stipends; and, where applicable, less the 10 per cent up front initial payment.

End-of-Phase Report

34. The End-of-Phase Report must contain a formal accounting of hours covering the phase, details on the type of work performed during the phase, as well as details of the work performed by each Defence Team member. More specifically, the End-of-Phase Report shall include the following information:
 - (a) for each month, the name of each Defence Team member and a detailed description of the work performed by them;
 - (b) for each month, the number of hours worked per assignment/task and a detailed description of the work performed by each member of the Defence Team; and

¹⁵ This percentage will be proportionate to the up-front initial payment for the Prosecution Phase, if any.

- (c) for the entire phase, a recapitulation of the total number of hours worked by each member of the Defence Team, the work performed and its output¹⁶ with sufficient specificity to allow the Registry to verify that the work was performed. The End-of-Phase Report will include information such as the number and names/pseudonyms of witnesses met and interviewed, amount of research done, the number of filings prepared, filings submitted and documents reviewed, including disclosure, and the number of pages of such documents.

35. In reviewing the End-of-Phase Report, the Registry shall verify that:

- (a) all information requested in paragraph 34 is included;
- (b) the work of each Defence Team member is sufficiently described to satisfactorily establish that it was accomplished for the purpose of preparing the case for Trial;
- (c) the work reported by all members of the Defence Team was reasonable and necessary, and justifies the payment of the lump sum; and
- (d) all legal aid funds were paid to authorised members of the Defence Team duly assigned or approved by the Registry, as requested by Lead Counsel.

36. The Registry may request Lead Counsel to provide additional information or documentation to enable the Registry to assess the work performed by the Defence Team. Based on the End-of-Phase Report and any additional information received from Lead Counsel, the Registry shall disburse the remainder of the End-of-Phase Payment. The Registry may reduce payment *pro rata* if insufficient or no additional information is received,¹⁷ and the Registry is therefore not in a position to verify the factors outlined above in paragraphs 34 and 35.

37. In addition, the Registry may decline to pay part or all of the End-of-Phase Payment if there is reason to believe that irregularities have occurred in the work or conduct of the Defence Team, or that a substantial amount of work performed by the Defence was unreasonable or unnecessary. The Registry, before declining such payment, shall give Lead Counsel an opportunity to comment on the purported irregularities or deficiency, and:

- (a) obtain written agreement from Lead Counsel; or
- (b) consult with the Trial Chamber and/or the Association of Defence Counsel; or
- (c) consult with the Trial Chamber and refer the matter to the Disciplinary Panel set forth in Article 40 of the Code of Conduct.

The Registry may also, if instructed by the Trial Chamber, deduct any fees associated with the production of a motion which has been declared frivolous or an abuse of process, in accordance with Rule 80(D).

38. Should Lead Counsel disagree with the Registry's decision not to pay all or part of the lump sum, Lead Counsel may request a review of the Registry's decision in accordance with the procedure set forth in Article 32 of the Directive.

¹⁶ The output of the work performed will in no way be judged upon the success or failure of the Defence Team's performance.

¹⁷ For example, when time sheets or DSA forms for certain months are not submitted, or if Counsel fails to provide sufficient details regarding the work performed to allow for a meaningful review of the work.

G. RECONCILING AND RECESS PAYMENT SCHEME

39. Once the phase ends and its actual duration is known, the Registry shall recalculate the lump sum in accordance with the revised duration in order to reconcile the funds paid to the Defence Team and the funds the Defence Team is entitled to receive, based on the recalculated lump sum.
40. In recalculating the lump sum, the Registry shall take the following into account:
- (a) the actual number of sitting days; and
 - (b) the number of non-sitting days for which the Registry is satisfied, based on information from the Trial Chamber and submissions from Lead Counsel, that reasonable and necessary work was performed by the Defence Team. This does not normally apply to periods that fall under the recess payment scheme, outlined in paragraphs 44 and 45.
41. For this purpose, the Defence Team is required to keep and submit to the Registry together with the End-of-Phase Report, detailed information regarding the work that was performed by each Defence Team member during periods of five and less non-sitting days. For periods of six and more non-sitting days, all Defence Team members will need to maintain detailed hourly invoices in accordance with paragraph 44.
42. If the recalculated sum is consistent with the provisional lump sum, the corresponding End-of-Phase Payment will be made in full. If the recalculated lump sum is greater than the provisional lump sum, the corresponding increase in the lump sum shall be paid to the Defence Team with the End-of-Phase Payment. If the recalculated lump sum is less than the provisional lump sum, the corresponding amount disbursed to the Defence Team which exceeds the recalculated lump sum shall be subtracted from the End-of-Phase Payment.
43. The Registry will consider periods of five and less non-sitting days during the reconciling as set out above. If the Defence performs reasonable and necessary work on such days, the Registry will add these days to the revised duration of the phase.

Remuneration during recess periods

44. Save from regular working months during which the court is not sitting,¹⁸ periods of six or more consecutive non-sitting days, including days of scheduled court recess, are not ordinarily included in the revised duration for the purpose of recalculation of the lump sum. Lead Counsel may submit a reasoned request to the Registry for the separate remuneration of reasonable and necessary work performed by the Defence Team during such periods. Counsel must demonstrate in this request why such work has to be performed during the recess period. The Registry may seek the Trial Chamber's input as to the work required. If the Registry is satisfied that recess remuneration is warranted, the following scheme applies:
- (a) for recess periods of six days up to four weeks, the Registry will continue to disburse the monthly stipend from the lump sum previously calculated. The Defence Team shall maintain detailed hourly invoices in accordance with the Invoicing Guidelines. These invoices must be submitted together with the End-of-

¹⁸ See fn. 9.

Phase Report. Upon review of the invoices, the amount to be paid for reasonable and necessary work performed will be added to the End-of-Phase Payment.

- (b) for recess periods extending beyond four weeks, the Registry will stop disbursing monthly stipends, unless there are compelling reasons to continue. The Defence Team shall submit detailed hourly invoices in accordance with the Invoicing Guidelines at the end of each month. Upon review of the invoices the Registry will remunerate each member of the Defence Team directly for reasonable and necessary work performed. The total payable amount for the entire team per month may not surpass the maximum available monthly stipend. Lead Counsel may request that the Registry disburse a monthly maintenance allotment at the start of each month, not exceeding the maximum available office costs as per paragraph 23.¹⁹

- 45. The applicable hourly rates for Counsel and Support Staff are set out in the Hourly Payment Rates Applicable to Defence Teams.²⁰ Hourly invoices must be submitted in line with the Invoicing Guidelines.²¹

H. RESOURCES AFTER CLOSING ARGUMENTS

- 46. Should there be compelling factual or legal circumstances that arise following the close of the Defence Phase which lead to a substantial amount of work necessary to be performed during the period between the closing arguments and the pronouncement of the Trial judgement, Lead Counsel may submit a reasoned request for remuneration for the Registry's consideration. The request must be in writing, in advance and include a description of the work to be performed, the estimated number of counsel and/or support staff hours needed for each task and explain why this work could not have been performed before the close of the Defence Phase. The Registry may request further information and documentation from Lead Counsel should such be required for a meaningful review of the request. The Registry may seek the Trial Chamber's input as to the work required.

- 47. The applicable hourly rates for Counsel and Support Staff are set out in the Hourly Payment Rates Applicable to Defence Teams.²² Counsel shall submit detailed monthly invoices to the Registry specifying the number of working hours and the tasks performed, in accordance with the Invoicing Guidelines.²³

I. TRAVEL

- 48. Payment for travel-related expenses shall be made pursuant to Articles 27 and 28 of the Directive.²⁴
- 49. The following principles will govern the travel of members of a Defence Team: (i) travel and DSA will be authorised where it is deemed reasonable and necessary in the particular circumstances of a case; and (ii) the need to make the most efficient use of public funds at the lowest possible cost to the MICT, while ensuring full respect for the rights of the

¹⁹ The Registry will establish the available office costs subject to paragraph 3. The Defence is entitled to this as a monthly maintenance allotment even if no work is required during this month.

²⁰ A copy can be found on the MICT website.

²¹ *Idem.*

²² *Idem.*

²³ *Idem.*

²⁴ Wherever possible, Counsel must submit such request at least 21 days before the anticipated travel date.

Accused. In practice, this means that whenever it is possible to combine different objectives in one trip, this should be done.

50. Taking into consideration the geographical distance and travel time required, the Registry may authorise the following travel.

Travel for Investigative Purposes

51. The Registry may authorise travel during the Trial stage for the purpose of investigation, meeting witnesses, searching archives, and engaging in other investigative tasks. This travel will primarily be undertaken by Investigators, occasionally by Lead Counsel or Co-Counsel (*e.g.* to interview key witnesses and witnesses who are scheduled to testify in the case), and exceptionally by Legal Consultants/Assistants acting on behalf of Counsel or Investigator (*i.e.* where the Counsel or Investigator is unable to travel for objective reasons).
52. The Registry shall consider such travel and the accompanying DSA on a case-by-case basis, taking into account the reasonableness and necessity of the travel, the nature and amount of the work to be undertaken, and the efficient use of public funds.

Travel of Lead Counsel and Co-Counsel to their Country of Residence

53. The Registry may authorise one trip every three months and prior to the summer and winter judicial recesses to the country of Counsel's place of residence. Counsel shall not receive DSA for such trips.
54. If Counsel's place of residence is so remote from the respective seat of the MICT that it is impossible or impractical for Counsel to travel to his place of residence every three months during Trial, for the purposes of this Policy, Counsel may request the Registry to accept another State with which Counsel has ties as his alternative place of residence.
55. If Counsel chooses to travel by private motor vehicle to and from the seat of the MICT, the cost of such travel shall be borne by the MICT to the extent that it does not exceed the cost of an economy class airplane ticket.

Travel of Support Staff to a seat of the MICT

56. The Registry may authorise one round-trip per Trial phase for one Support Staff member to travel to a seat of the MICT. Support Staff shall not receive DSA while at a seat of the MICT.

Travel of Defence Experts

57. Generally, the MICT will not bear the costs of an expert's travel to a seat of the MICT. Exceptionally, where travel is necessary to fulfil the scope of the expert's assignment (*e.g.* medical examination of the Accused, examination of materials only accessible from the seat of the MICT), the Registry may authorise such travel to be covered by the MICT. Requests for travel of Defence experts will be considered on a case-by-case basis, taking into account the nature of the expertise.
58. Costs associated with the travel and accommodation of Defence expert witnesses are borne by the MICT through WISP. Defence Teams must contact and make arrangements directly with WISP in such instances.

Travel for Communication with the Accused between the end of the Trial and the Trial Judgement

59. Following the presentation of closing arguments, Counsel's presence at the seat of the MICT shall typically not be needed. However, during such time, and until the Trial judgement is rendered, the Registry may authorise the following travel, taking into account the geographical distance and travel time required:
- (a) one trip per month for up to three days of DSA for either Lead Counsel or Co-Counsel; or
 - (b) one trip every two months for up to seven days of DSA for either Lead Counsel or Co-Counsel.
60. If the specific and exceptional circumstances of the Accused (*e.g.* a documented deterioration in the mental or physical health of the Accused) necessitate more frequent visits by Counsel, Counsel shall submit a reasoned request to the Registry. The Registry will consider such requests on a case-by-case basis, in light of the specific circumstances of the case.

J. TRIAL DSA

61. During Trial, Counsel, whose place of residence is not the respective seat of the MICT, will receive DSA for days spent on Trial-related work at a seat of the MICT, notwithstanding paragraph 66. Counsel is not entitled to receive DSA for days spent away from the respective seat of the MICT on private trips or days spent at a seat of the MICT on which Counsel did not work at least four hours on case-related matters.
62. At the end of each month during the Trial stage, Lead and Co-Counsel whose place of residence is not the respective seat of the MICT, are entitled to receive a general allotment of 22 days of DSA, subject to paragraphs 66–69.
63. The Registry shall pay the first general allotment of Trial DSA automatically at the start of Trial.
64. The Registry shall pay the second and subsequent general allotments upon submission by Counsel of a duly filled Trial DSA Form. Lead Counsel shall countersign the Trial DSA forms of Co-Counsel. On the Trial DSA Form, Lead and Co-Counsel shall claim a number of days of DSA for the preceding month and account for those days by declaring, for each day, that they either:
- (a) attended or otherwise followed court proceedings; or
 - (b) worked on case-related matters at the respective seat of the MICT for a minimum of four hours, including, but not limited to preparing written submissions, preparing for the examination of witnesses, meetings with the Office of the Prosecutor, meetings with Counsel of co-Accused in the case, etc. Counsel shall provide sufficient detail on the work performed.
65. Any subsequent general allotment shall consist of 22 days of DSA, plus or minus the necessary adjustment of the general allotment for the previous month. This adjustment is the "additional allotment":

- (a) if the number of days spent at the seat of the MICT for case-related purposes in the previous month exceeds the 22 days of the general allotment of DSA, Counsel shall be entitled to an additional allotment (*i.e.* Counsel is entitled to receive days of DSA in addition to the general allotment of 22 days).
 - (b) if the number of days spent at the seat of the MICT for case-related purposes in the previous month is less than the 22 days of the general allotment, Counsel is not entitled to receive the full general allotment (*i.e.* Counsel is entitled to receive DSA only in accordance with paragraph 64).
66. Counsel is not entitled to receive DSA if the proceedings are adjourned for more than five days. Exceptions may be made if Counsel shows that he was required to work on the case at the respective seat of the MICT.²⁵ For this purpose, Counsel is required to submit details on the work performed and why this work had to be performed at the respective seat of the MICT. Counsel may claim DSA for one day prior to the continuation of Trial proceedings.
67. The number of days spent on private and case-related travel outside the respective seat of the MICT shall be excluded from the general allotment. DSA for case-related travel outside the respective seat of the MICT must be claimed in accordance with Section I.
68. DSA for the last month of Trial shall only be paid after the Registry's acceptance of Counsel's Trial DSA Forms for the last two months of Trial, and after making the necessary adjustments.
69. Defence Team members must submit DSA Forms within 60 days from the last day of the month during which DSA was claimed.

K. FINAL PROVISIONS

70. Where the Trial Chamber is to be consulted or otherwise asked to provide information pursuant to this Policy, the Trial Chamber may decline to provide its views or information concerning the case, may request that any such consultation by the Registry be copied to Lead Counsel, or may take any further steps deemed appropriate. If the Trial Chamber declines to provide its views or information concerning the case to the Registry, all applicable timelines in this Policy shall run from the Registry's receipt of the Trial Chamber's indication to that effect.
71. The Registry may, if serious concerns arise, request information and perform checks into the work performed by any and all members of the Defence Team. Lead Counsel shall, for this purpose, retain all Defence files for a period of at least five years after the issuance of the final judgement or a decision terminating the proceedings.
72. The Registry shall treat documents submitted by Lead Counsel pursuant to this Policy with due respect to the appropriate level of confidentiality.
73. In instances where a deadline under this Policy falls on a non-working day, it shall be extended to the next working day.
74. Any disputes arising from the application of this Policy shall be settled in accordance with Article 32 of the Directive.

²⁵ For example, to visit the client in the detention unit or to meet with officials from the Office of the Prosecutor, Chambers or Registry.