

Remuneration Policy for Persons Representing Indigent Convicted Persons in Post-Conviction Proceedings, upon Issuance of a Judicial Order Granting Assignment of Counsel at the Expense of the Mechanism for International Criminal Tribunals

Adopted on 28 September 2017

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;

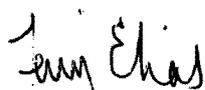
CONSIDERING the Directive on the Assignment of Defence Counsel, issued on 14 November 2012;

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;

CONSIDERING that, while convicted persons are not entitled to the provision of legal assistance at the Mechanism's expense *per se*, the Mechanism may order the assignment of counsel to a convicted person in exceptional circumstances, pursuant to a judicial order;¹

CONSIDERING the need to facilitate the administration of legal aid upon the issuance of a judicial order for the assignment of counsel at the Mechanism's expense in post-conviction proceedings;

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


Olufemi Elias
Registrar

Dated this 28th day of September 2017
At The Hague
The Netherlands.

¹ See, e.g., *Prosecutor v. Vujadin Popović*, Case No. MICT-15-85-R.1, Decision on a Request for Assignment of Counsel, public, 23 September 2016, p. 2 (and references cited therein).

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A. DEFINITIONS

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

- Accused:** A person indicted by the ICTR, the 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 The Hague.
- Chamber:** The President, 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.
- Convicted Person:** A person against whom the ICTR, the ICTY, or the MICT has rendered a final judgement of conviction.
- Counsel:** A person assigned to represent an indigent or partly indigent Convicted Person pursuant to Rules 43 or 44 of the Rules and Article 16(B) or 16(C) of the Directive.
- Co-Counsel:** A person assigned to assist Counsel with the defence of a Convicted Person, pursuant to Rules 43 and 44 of the Rules and Article 16(C) of the Directive.
- Defence Team:** Counsel assigned by the Registrar to represent an indigent or partly indigent Convicted Person 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.
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, 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 Convicted Persons in Post-Conviction Proceedings, upon Issuance of a Judicial Order Granting Assignment of Counsel at the Expense of the Mechanism for International Criminal Tribunals.
Post-Conviction Proceedings:	A legal proceeding before the MICT after final conviction of an Accused.
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.

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 Convicted Person during Post-Conviction Proceedings upon issuance of a judicial order granting assignment of counsel at the MICT's expense.
2. The Registry may apply the terms of this policy *mutatis mutandis* where the President or a Chamber has issued an order allocating a specific time allotment when granting legal aid or where an entitlement to assigned counsel at the MICT's expense arises otherwise in accordance with the Rules and/or the MICT's jurisprudence and the administration of legal aid is not covered by any other remuneration policy.
3. 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.² 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.
4. 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 Convicted Person.
5. 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.
6. For purposes of this Policy, the MICT shall recognise the previous determination of indigency of a Convicted Person made by the ICTR or the ICTY, unless new information is obtained that establishes that the Convicted Person has sufficient means to remunerate counsel or a judicial order directs the Registry to confirm or verify a previous indigency determination. Where the ICTR or the ICTY have not made a determination on indigency, the MICT will assess the financial means of the Convicted Person in accordance with the Directive.
7. This Policy does not 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 case of conflict, the provisions of the Statute, the Rules, or the Directive shall prevail. In case of a conflict between the judicial order granting assignment of counsel at the MICT's expense and the provisions of this Policy, the terms of the judicial order shall prevail.

C. REMUNERATION

Initial Allocation

8. Where Counsel is assigned to represent a Convicted Person during Post-Conviction Proceedings upon issuance of a judicial order granting such assignment, the Registry shall

² A copy of these rates is available 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.

allocate an initial allotment of up to 40 hours to facilitate the commencement of work by Counsel.

Further Allocation

9. Within one week of the receipt of the initial allotment, Counsel shall submit a reasoned request for the allocation of further funding, if necessary. This request should entail an initial work plan in accordance with Section D of this Policy, outlining all tasks envisaged during the course of the proceedings as authorised by the Chamber, and the estimated time required for each task.
10. Based on the work plan, the Registry shall make a determination as to the maximum number of hours that are reasonable and necessary for Counsel to fulfil his mandate. 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.
11. Should additional work be required beyond what is included in the initial work plan and should such additional work be covered by the judicial order granting legal aid, Counsel may submit a work plan addendum and request additional funds for the Registry's consideration. The work plan addendum must include a detailed description of the additional work required, provide the estimated time needed for each task, and explain why this additional work is required and was not included in the original work plan. As with the initial work plan, 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 additional work.
12. Remuneration for attendance at any court hearings before a Chamber shall be payable to Counsel in full, over and above any allotment granted.

D. WORK PLAN

13. The work plans and work plan addenda submitted pursuant to paragraphs 9 and 11 should provide details of all activities that Counsel deems necessary to represent the Convicted Person, and shall include:
 - (a) envisaged number of consultations with the client, Defence Team meetings, communications with Counsel for former co-Accused, if any, as well as with the Office of the 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 proposed 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.
14. The work plans are solely 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.

15. The Registry shall treat the work plans as a 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 or any other third party. The Registry may only share such work plans for the purposes of audits if so required.
16. 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

17. Counsel may request the assignment of Support Staff or experts. However, noting the more limited scope of proceedings covered by this policy as compared to full trials or appeals, Counsel is required to demonstrate that the scope of the Post-Conviction Proceeding warrants the assignment of any Support Staff or experts. Any such assignments shall be governed by the Directive. Pursuant to Article 16(C) of the Directive, the Registry will only consider the assignment of Co-Counsel if this is necessary in the interests of justice.
18. In accordance with the Directive and Code of Conduct, Counsel is responsible for the management and supervision of the Defence Team, including Legal Assistants, Language Assistants, and any other Support Staff, as well as experts.

E. INVOICING

19. 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. Counsel must approve and counter-sign any invoices submitted by Support Staff and experts. The Registry will consider the monthly invoices in conjunction with the work plans submitted.

F. TRAVEL

20. The Registry shall authorise and arrange travel and cover travel-related 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.³
21. The following principles will govern the travel of Counsel: (1) the Registry will authorise travel and DSA that is reasonable and necessary in the particular circumstances of a case; and (2) the need to make the most efficient use of public funds, while ensuring full respect for the rights of the Convicted Person. In practice, this means that the Registry will consider the geographical distance and travel time required, the nature and amount of the work to be undertaken and the efficient use of public funds when authorising travel and DSA for Counsel, and Counsel should, whenever possible, combine different objectives in one trip.
22. 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. Such travel will also be governed by the principles as set out in paragraph 21.

³ Wherever possible, Counsel must submit travel requests at least 21 days before the anticipated travel date.

G. TRANSLATION AND INTERPRETATION

23. The MICT shall translate documents to be tendered as evidence, in accordance with Article 29 of the Directive.
24. Language Assistants assigned to the Defence Team may invoice separately 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, for up to a maximum of \$1,500 USD per month. Language Assistants must submit detailed monthly invoices to the Registry, specifying the tasks performed and the number of working hours, or were applicable, words translated, in accordance with the Invoicing Guidelines.
25. Should Counsel require language assistance beyond the above, he may submit as part of the work plan or a work plan addendum, a reasoned request for the allocation of resources in this regard for the Registry's consideration.

H. FINAL PROVISIONS

26. The Registry may, if serious concerns arise, request information about, and perform checks into, the work performed by any 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.
27. The Registry shall treat all documents submitted by Counsel pursuant to this Policy with due respect for the appropriate level of confidentiality.
28. 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.
29. In instances where a deadline under this Policy falls on a non-working day, it shall be extended to the next working day.
30. Article 32 of the Directive shall govern the settlement of any disputes arising from the application of this Policy.