

Policy for the Appointment and Remuneration of *Amici Curiae* Investigators and Prosecutors in Proceedings before the International Residual Mechanism for Criminal Tribunals

Adopted on 10 May 2018

Revised on 12 April 2021

PREAMBLE

The Registrar of the International Residual Mechanism for International Criminal Tribunals;

NOTING Article 4 of the Statute of the Mechanism as adopted by the Security Council under Resolution 1966 (2010) of 22 December 2010;

NOTING the Rules of Procedure and Evidence of the Mechanism, as adopted on 8 June 2012, and in particular Rules 90(C)(ii), 90(D)(ii) as well as Rules 108(B)(ii) and 108(C)(ii) thereof;

CONSIDERING the need to facilitate the appointment and the remuneration of *amici curiae* investigators and prosecutors once an order for their appointment is issued by a Single Judge pursuant to Rule 90 or Rule 108;

HEREBY ADOPTS this revised policy.



Abubacarr Tambadou
Registrar

Dated this 12th day of April 2021
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, the ICTY, or the Mechanism, in accordance with Article 1(4) of the Statute.
- Amicus Curiae:*** A person appointed pursuant to Rule 90(C)(ii) or Rule 108(B)(ii) of the Rules to investigate, or, pursuant to Rule 90(D)(ii) or Rule 108(C)(ii) of the Rules, to prosecute allegations of contempt or false testimony before the Mechanism.
- Branch:** The relevant branch of the Mechanism in Arusha or The Hague.
- Chamber:** The President, a Trial or Appeals Chamber of the Mechanism, or a Single Judge, in accordance with Article 12 of the Statute.
- CPI:** Consumer Price Index for the Netherlands as determined by the International Civil Service Commission.
- DSA:** Daily Subsistence Allowance pursuant to Article 28 of the Directive on the Assignment of Defence Counsel (MICT/5, 14 November 2012), and as subsequently amended.
- 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.

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| Invoicing Guidelines: | Guidelines on the Submission of Hourly Invoices and Remunerable Activities, November 2015, and as subsequently amended. |
| Mechanism: | The International Residual Mechanism for Criminal Tribunals, established by Security Council resolution 1966 of 22 December 2010. |
| Policy: | The present Policy for the Appointment and Remuneration of <i>Amici Curiae</i> Investigators and Prosecutors in Proceedings before the Mechanism for International Criminal Tribunals. |
| President: | The President of the Mechanism appointed pursuant to Article 11 of the Statute. |
| Prosecutor: | The Prosecutor of the Mechanism appointed pursuant to Article 14 of the Statute. |
| Registrar: | The Registrar of the Mechanism appointed pursuant to Article 15 of the Statute. |
| Registry: | The organ of the Mechanism responsible for the administration and servicing of the Mechanism pursuant to Article 15 of the Statute. |
| Rules: | The Rules of Procedure and Evidence adopted by the Mechanism pursuant to Article 13 of the Statute, adopted on 8 June 2012, and as subsequently amended. |
| Statute: | The Statute of the Mechanism annexed to Security Council resolution 1966 of 22 December 2010, and as subsequently amended. |
| Support Staff: | Any person appointed or approved by the Registry to provide support to the <i>Amicus Curiae</i> in her task, including legal consultants, legal assistants, case managers, investigators and language assistants, as applicable. |

In this Policy, the feminine shall include the masculine.

B. GENERAL PROVISIONS

1. This Policy sets out the procedure for the selection of an *Amicus Curiae* investigator or prosecutor following the issuance of an order for her appointment pursuant to Rules 90 or 108 of the Rules and provides for the remuneration of reasonable and necessary work performed by an *Amicus Curiae*.
2. The Policy is primarily based on an hourly payment system subject to maximum monthly remuneration. In exceptional circumstances, this Policy allows for remuneration through a lump sum approach (as detailed in §G below). The generally applicable hourly rates for the *Amicus Curiae* and Support Staff are set out in the Hourly Payment Rates Applicable to Defence Teams.¹ Only Support Staff assigned by the Registry can receive remuneration under this Policy. Support Staff may only be remunerated for work performed from the day of their assignment.
3. All payments made pursuant to this Policy are subject to prior authorization by the Registry. Accordingly, prior authorization of work plans by the Registry is required before the *Amicus Curiae* and her Support Staff undertake any work, unless performance of work prior to such authorization is essential for the discharge of the *Amicus Curiae*'s mandate.
4. The Registry shall adjust the amounts set out in this Policy by reference to the movement of the CPI.² 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.
5. The *Amicus Curiae* 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.

C. APPOINTMENT OF AMICI CURIAE

6. The Registrar maintains a roster of pre-approved candidates for appointment as *Amicus Curiae* investigator or prosecutor pursuant to Rules 90 or 108 of the Rules. Pre-approved candidates fulfil the following requirements:
 - (a) ten years of professional legal experience in the field of (international) criminal law, preferably with experience working in proceedings at the ICTR, ICTY or other international criminal tribunals;
 - (b) experience with investigative or prosecutorial work in an international setting;
 - (c) excellent written and oral legal communication skills; and
 - (d) written and oral fluency in English and/or French.
7. Upon issuance of a judicial order for the appointment of an *Amicus Curiae* investigator or prosecutor pursuant to Rules 90 or 108 of the Rules, the Registrar shall select the most suitable candidate from the roster of pre-approved candidates for such assignment. The

¹ A copy of these rates is available on the Mechanism website. Depending on the type of work to be performed, the *Amicus Curiae* may request the conversion of counsel hours to support staff hours at the rate of 1:4. For *Amicus Curiae* and their teams (if any), these rates apply *mutatis mutandis*.

² No adjustment shall be made if the aggregate increase does not reach 1 per cent in a given year.

selection criteria shall be based on the specific mandate in question as outlined in the judicial order.

8. Before appointing a specific candidate, the Registrar shall confirm that the candidate is immediately available and does not have a conflict of interest. The Registrar shall then file the appointment on the record.

D. REMUNERATION

Initial Allocation

9. Where an *Amicus Curiae* has been appointed, the Registry shall allocate an initial allotment of up to 40 hours to facilitate the commencement of work.

Further Allocation

10. As soon as practicable after receipt of the initial allotment, the *Amicus Curiae* 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 E of this Policy, outlining all tasks envisaged during the course of the proceedings as mandated by the judicial order, and the estimated time required for each task.
11. Based on the work plan, the Registry shall make a determination as to the maximum number of hours that are reasonable and necessary for the *Amicus Curiae* to fulfil her mandate. The Registry may request further information from the *Amicus Curiae* should this be required to allow for a meaningful review of the reasonable and necessary character of the proposed work.
12. 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 for the appointment of the *Amicus Curiae*, the *Amicus Curiae* 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. The Registry may request further information from the *Amicus Curiae*, should this be required to allow for a meaningful review of the reasonable and necessary character of the proposed additional work.
13. Remuneration for attendance at any court hearings before a Chamber shall be payable to the *Amicus Curiae* in full, over and above any allotment granted.

E. WORK PLAN

14. The work plans and work plan addenda submitted pursuant to paragraphs 10 and 12 shall provide details of all activities that the *Amicus Curiae* deems necessary to accomplish her mandate and shall include:
 - (a) significant tasks to be undertaken and the estimated time for completion of each task;
 - (b) if applicable, a request for the assignment of Support Staff, including the names and *curriculum vitae* of the proposed candidates and the distribution of work;³ and
 - (c) if applicable, a plan for travel and investigation.

³ Requests for the assignment of support staff may also be submitted at a later stage.

15. The work plans and work plan addenda are solely judicial management documents. Their purpose is to provide the Registry with objective information related to the planning and preparation of the case in order to determine whether the work 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.
16. The Registry shall treat the work plans and work plan addenda as confidential and restrict access accordingly. To this end, the Registry will not share the work plans nor work plan addenda with the Prosecution, the Defence or any other third party. The Registry may only share such work plans and work plan addenda for the purposes of audits if so required.
17. The *Amicus Curiae* is responsible for preparing sufficiently detailed work plans and work plan addenda to allow for a meaningful review by the Registry.

Support Staff and Experts

18. The *Amicus Curiae* may request the assignment of Support Staff, including language assistants, or, exceptionally, experts. However, noting the usually limited scope of proceedings covered by this Policy, the *Amicus Curiae* is required to demonstrate that the scope of her mandate warrants the assignment of any Support Staff or experts.
19. The *Amicus Curiae* is responsible for the management and supervision of the assigned Support Staff, as well as assigned experts.

F. INVOICING AND MAXIMUM MONTHLY REMUNERATION

20. The *Amicus Curiae*, and any assigned Support Staff, 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 *Amicus Curiae* 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. Remuneration under this Policy shall be efficient, economical and equitable. Accordingly, any payment hereunder shall be subject to a maximum level of monthly remuneration, as follows:
 - i. *Amicus Curiae* & Experts with 20 Years' (or more) Experience – 10,000 Euro per month;
 - ii. *Amicus Curiae* & Experts with 15-19 Years' Experience – 9,500 Euro per month;
 - iii. *Amicus Curiae* & Experts with 10-14 Years' Experience – 9,000 Euro per month;
 - iv. *Amicus Curiae* & Experts with 0-9 Years' Experience, Legal Consultants – 8,500 Euro per month;
 - v. Support Staff (i.e., Legal Assistants, Case Managers, Investigators, Language Assistants, Administrative Assistants, etc.) with 10 Years' (or more) Experience – 5,000 Euro per month;
 - vi. Support Staff with 5-9 Years' Experience – 4,500 Euro per month; and
 - vii. Support Staff with 0-4 Years' Experience – 4,000 Euro per month

G. LUMP SUM APPROACH IN EXCEPTIONAL CASES

21. In *Amicus Curiae* cases of an exceptional nature, as determined by the Registry, payment under this Policy may be administered by a uniquely tailored lump sum approach. While not exclusively determinative, cases of an exceptional nature are likely to be those which require the extended, full-time engagement of the *Amicus Curiae* and any Support Staff. Administration of a lump sum approach in such cases will be at the discretion of the Registrar and following consultation with the *Amicus Curiae*. In such circumstances, the lump sum approach may incorporate relevant components of other IRMCT remuneration policies.⁴ Except for the terms of a uniquely tailored lump sum approach, all other provisions of this Policy shall remain applicable.

H. TRAVEL

22. The Registry shall authorize and arrange travel and cover travel-related expenses on a case-by-case basis and in accordance with United Nations travel rules and regulations.⁵

23. The Registry will authorize travel and DSA that is reasonable and necessary in the particular circumstances of a case. To this end, the Registry will consider the geographical distance to be covered during the travel, the required travel time, the nature and amount of the work to be undertaken and the efficient use of public funds. The *Amicus Curiae* should, whenever possible, combine different objectives in one trip.

24. The Registry may exceptionally authorize travel and DSA for Support Staff, in particular with regard to investigative missions, upon a reasoned request of the *Amicus Curiae* in this regard.

I. TRANSLATION AND INTERPRETATION

25. The Mechanism shall translate documents to be tendered as evidence.

26. Should the *Amicus Curiae* require language assistance beyond the above, she 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.

J. FINAL PROVISIONS

27. The Registry may, if serious concerns arise, request information about, and perform checks into, the work performed by the *Amicus Curiae* and her Support Staff. The *Amicus Curiae* shall, for this purpose, retain all relevant files for a period of at least five years after the end of the proceedings.

28. The Registry shall treat all documents submitted by the *Amicus Curiae* pursuant to this Policy with due respect for the appropriate level of confidentiality.

⁴ For example, and when a lump sum approach is implemented, it may be appropriate to introduce the withholding of some funding for an End-of-Stage payment, to eliminate certain administrative burdens imposed by this Policy, and/or to otherwise address particular circumstances of the case.

⁵ Wherever possible, the *Amicus Curiae* must submit travel requests at least 21 days before the anticipated travel date.

29. If additional work is required because of the replacement of the *Amicus Curiae*, as approved by the Registry, the newly appointed *Amicus Curiae* shall not be disadvantaged for this reason. The Registry will address such issues on a case-by-case basis.
30. In instances where a deadline under this Policy falls on a non-working day, it shall be extended to the next working day.
31. Any disputes arising from the application of this Policy shall be governed, *mutatis mutandis*, by Article 32 of the Directive on the Assignment of Defence Counsel.