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No.: ICC-01/04-01/06

Date: **14 June 2007**

TRIAL CHAMBER I

Before: Judge Elizabeth Odio Benito
Judge René Blattmann
Judge Adrian Fulford

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR *v.* THOMAS LUBANGA DYILO**

Public Document

Registration in the record of the case of the “Registrar’s Decision on the additional means for the trial phase sought by Mr Thomas Lubanga in his ‘Application for additional means under regulation 83(3) of the Regulations of the Court’ filed on 3 May 2007”, of 14 June 2007

The Office of the Prosecutor
Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Mr Thomas Lubanga Dyilo

Legal Representatives for Victims
a/0001/06 to a/0003/06 and a/0105/06
Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu

Please find attached the Registrar's Decision on the additional means for the trial phase requested by Mr Thomas Lubanga Dyilo in his "Application for additional means under regulation 83(3) of the Regulations of the Court" filed on 3 May 2007, which was communicated to him today.

[signed]

For the Registrar

Didier Daniel Preira

Head of the Division of Victims and Counsel

Dated this 14 June 2007

At The Hague

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR *v.* THOMAS LUBANGA DYILO**

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**Registrar's Decision on the additional means for the trial phase sought by
Mr Thomas Lubanga Dyilo in his "Application for additional means under
regulation 83(3) of the Regulations of the Court" filed on 3 May 2007**

THE REGISTRAR of the International Criminal Court (“the Court”),

NOTING the “Application for additional means under regulation 83(3) of the *Regulations of the Court*”¹ (“the Application”), submitted by Mr Thomas Lubanga Dyilo (“the Applicant”) on 3 May 2007, and the Registrar’s Decision dated 14 May 2007 (“the Decision”);

NOTING rule 20 of the Rules of Procedure and Evidence on the “Responsibilities of the Registrar relating to the rights of the Defence”;

NOTING regulation 83(1) of the Regulations of the Court, under which “[l]egal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence”;

NOTING the scheme of legal assistance paid by the Court;²

NOTING the Registrar’s Decision dated 31 March 2006,³ in which the Applicant “is provisionally deemed to be wholly indigent under regulation 85(1) *in fine* of the Regulations of the Court”;

NOTING Pre-Trial Chamber I’s Decision of 29 January 2007⁴ confirming the charges against the Applicant, committing him to a Trial Chamber for trial on the charges as

¹ ICC-01/04-01/06-878-880

² “Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons (ICC-ASP/3/16)” dated 17 August 2004, and “Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons (ICC-ASP/3/16), Update to Annex 2: Payment details of the ICC legal aid scheme”(ICC-ASP/5/INF.1), dated 31 October 2005.

³ ICC-01/04-01/06-63

⁴ ICC-01/04-01/06-803

confirmed and transmitting the Decision and the record of the proceedings in the case to the Presidency;

NOTING the “*Transmission à la Présidence de la décision sur la confirmation des charges et du dossier de la procédure*”, filed by the Registrar on 14 February 2007;⁵

NOTING the Presidency’s “Decision constituting Trial Chamber I and referring the case of *The Prosecutor v. Thomas Lubanga Dyilo*” of 6 March 2007;⁶

NOTING Pre-Trial Chamber I’s “Decision on the Prosecution and Defence applications for leave to appeal the Decision on the confirmation of charges” of 24 May 2007;⁷

NOTING the application to intervene in the “Application for additional means under regulation 83(3) of the *Regulations of the Court*”, filed by the Applicant before Pre-Trial Chamber I on 24 May 2007;

NOTING the “Decision on the application for additional means under regulation 83(3) of the *Regulations of the Court* and on the applications to intervene as *amici curiae* under rule 103 of the *Rules of Procedure and Evidence*” rendered by Pre-Trial Chamber I on 5 June 2007;⁸

NOTING the “Decision transmitting the pre-trial record of the proceedings in the case of *The Prosecutor v. Thomas Lubanga Dyilo* to Trial Chamber I” rendered by the Presidency on 5 June 2007;⁹

⁵ ICC-01/04-01/06-822-Corr

⁶ ICC-01/04-01/06-842

⁷ ICC-01/04-01/06-915

⁸ ICC-01/04-01/06

⁹ ICC-01/04-01/06-920

NOTING the “Registrar’s observations pursuant to rule 20(1)(d) of the Rules of Procedure and Evidence on the applications to intervene as *amicus curiae*, in accordance with rule 103 of the Rules of Procedure and Evidence, filed on 29 May and 4 June 2007 by the *Ordre des Avocats de Paris* and the International Criminal Bar, respectively” of 7 June 2007;¹⁰

NOTING the Decision rendered by the Appeals Chamber on 13 June 2007 dismissing the Applicant’s appeal against the Decision on the confirmation of charges of 29 January 2007;¹¹

CONSIDERING that the Registry has the primary responsibility for managing the legal assistance scheme of the Court;¹²

CONSIDERING that the Registrar of the Court, in accordance with rule 20 of the *Rules of Procedure and Evidence*, must promote the rights of the Defence, and that he is determined to respect his obligations, but also has a responsibility to the States Parties to ensure that the resources earmarked for the legal assistance scheme of the Court are utilised responsibly and judiciously;

¹⁰ ICC-01/04-01/06-923

¹¹ ICC-01/04-01/06-926

¹² The Registry’s primary responsibility in the administration of legal assistance is unequivocally asserted in the Court’s basic texts and jurisprudence and in the jurisprudence of the *ad hoc* tribunals. With reference to the **Court texts**, see in particular article 43(1) of the Rome Statute, rule 21(1) of the Rules of Procedure and Evidence and regulations 83 to 85 of the Regulations of the Court.

For jurisprudence, see in particular the Decision of the Presidency of the International Criminal Court “Decision of the Presidency upon the document entitled ‘Clarification’ filed by Thomas Lubanga Dyilo on 3 April 2007, the requests of the Registrar of 5 April 2007 and the requests of Thomas Lubanga Dyilo of 17 April 2007” (ICC-01/04-01/06-874), 2 May 2007, para. 17: “It is the Registrar who has the primary responsibility for managing the legal assistance scheme of the Court in accordance with [...] regulations 83-85 of the Regulations of the Court [...]”. For the *ad hoc* tribunals, see, in particular the cases *The Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-PT, “Decision on urgent motion for ex parte oral hearing on allocation of resources to the Defence and consequences thereof for the rights of the accused to a fair trial”, 17 June 2003; *Prosecutor v. Strugar*, Case No. IT-01-42-PT: “Decision on Defence request for review of Registrar’s Decision and motion for suspension of all time limits”, filed by the Defence, Trial Chamber, 19 August 2003; and *The Prosecutor v. Milutinović et al.*, Case No. IT-99-37-AR73.2, “Decision on Interlocutory Appeal on Motion for Additional Funds”, 13 November 2003, paras. 19 and 20.

CONSIDERING that the Applicant “requests the Registry to consider his application as relating not only to the current pre-trial phase which is coming to a close, but also to the means allotted in the legal aid scheme for the trial phase”;¹³

CONSIDERING that the Applicant thus expressly informed the Registrar that the means sought also relate to the trial phase;

CONSIDERING that in his Decision the Registrar considered, *inter alia*, with respect to the additional means sought by the Applicant with a view to a trial, that he would examine the application upon confirmation of the opening of a trial against the Applicant – while respecting the presumption of innocence and in the interest of justice – and would consequently render a decision on the Application on an urgent basis and with the greatest diligence, with due regard for all relevant circumstances that may warrant granting additional means in order to facilitate an effective and efficient defence;

CONSIDERING that the Applicant is applying to the Registrar for the allocation of the following additional resources for the requirements of his representation before the Court for the trial phase:

- regarding the composition of the Defence team, the Applicant is requesting, in addition to “the core team envisioned in the legal aid scheme for the trial phase [...]”¹⁴ the following additional resources:
 - i) one or more highly qualified *attaché(s) à la défense* to be determined on the basis of relevant factors and the progress of the case;
 - ii) one Legal Assistant (P2);
 - iii) one Legal Assistant (P1);

¹³ Para. 60 of the Application.

¹⁴ Paras 62, 97 and following of the Application.

iv) exceptional but reasonable financial means for the management of the case in the transition phase.

- Furthermore, the Applicant requests:
 - i) the adoption of a new investigations budget;¹⁵
 - ii) at least three (3) permanent investigators (P2);
 - iii) the possibility of recruiting more investigators on a temporary basis.¹⁶

RENDERS THIS DECISION:

I. ON THE COMPOSITION OF THE DEFENCE TEAM

1. In support of his Application, the Applicant submits a list of activities relating to the trial phase, including all generic tasks of a lawyer who is beginning a case with complex ramifications and historic issues and, moreover, who must act quickly because of the demands relating to his assuming responsibility for the trial phase, as well as the tasks described in paragraphs 70, 81, 82, 88, 89, 93 and following of said Application;
2. The Registrar recalls, as the Applicant rightly notes in paragraph 62 of his Application, that the current scheme of legal assistance paid by the Court establishes a regulatory framework defining the composition of the Defence teams for the various phases of the proceedings, and submits that, under that very scheme, the Defence teams for the *trial phase* consist of:
 - one P5 Counsel,
 - one P4 Legal Advisor,

¹⁵ Para. 62 of the Application

¹⁶ Para. 104 of the Application

Both counsel fulfil the criteria set forth in rule 22 of the Rules of Procedure and Evidence and regulation 67 of the Regulations of the Court, that is, in particular, they: (i) have established competence in international or criminal law and procedure and (ii) have acquired at least ten years of relevant experience in criminal proceedings as judge, prosecutor, advocate...

- one P2 Legal Advisor (or Assistant),
- one G5 Assistant,¹⁷ and
- human resources (investigator and resource person) provided for in the investigations budget.

3. The Registrar would point out, on the one hand, that the aforementioned resources are allocated automatically¹⁸ for the Applicant's representation before the Court during the trial phase, and that all members of the team, with the exception of the P4 Legal Advisor – who is scheduled to join the team as of the first status conference before the Trial Chamber – begin their mission before the effective start of the trial, and on the other hand, that the members of the team defending the Applicant will continue to receive assistance from the Office of Public Counsel for the Defence,¹⁹ which is led by one Principal Counsel (P5 Legal Officer) assisted by three (3) Legal Officers, in accordance with the relevant Court texts which define the mandate of the said Office;

¹⁷ See footnote 2, *supra*.

¹⁸ The Registrar points out that the investigators and resource person are provided for within the limits of the amounts provided for in the investigations budget.

¹⁹ The Registrar emphasises that this additional support for the Defence does not exist at the *ad hoc* tribunals.

(i) *On the highly-qualified attaché(s) à la défense to be determined on the basis of relevant factors and the progress of the case*

4. The Applicant is seeking “one or more highly qualified *attaché(s) à la défense* to be determined on the basis of relevant factors and the progress of the case” to accomplish the tasks set out in paragraph 97 of the Application;
5. The Registrar first of all points out that the Applicant seeks the above-mentioned resource without specifying the exact number of persons required to this effect and which would vary according to “relevant factors and the progress of the case”, factors which cannot currently be ascertained. Furthermore, he notes that the vague nature of the additional resources sought in this respect does not allow him to determine whether they fulfil the conditions for the assignment of additional resources required by regulation 83(1) of the Regulations of the Court, under which “[l]egal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence”;
6. The Registrar further points out that the composition of the team includes one P5 Counsel and one P4 Legal Advisor, who, exceptionally, is authorised to intervene immediately in the case without waiting for the first status conference before the Trial Chamber as provided for, in principle, by the Court’s legal assistance scheme.²⁰ Both aforementioned Counsel fulfil the criteria set forth in rule 22 of the Rules of Procedure and Evidence and regulation 67 of the Regulations of the Court.

²⁰ See footnote 2, *supra*.

7. The Registrar notes that the activities envisaged for the *attaché(s) à la Défense* may reasonably be performed by the Principal Counsel and/or the P4 Legal Advisor, or one of the P2 Legal Assistants in respect of legal research on the further issues possibly arising from the case;
8. Finally, the Registrar is of the opinion that the *attaché(s) à la Défense* obviously cannot have previous knowledge of the case file which might allow them to assist the Defence for the *transition period* as indicated in the Application²¹ and that, as regards their assistance in the management of the trial phase, the additional means granted in paragraphs 10 to 25 of this Decision allow this task, and those described in paragraph 97 of the Application, to be dealt with reasonably;
9. Accordingly, the Application is denied on this point.

The P1 and (iii) P2 legal assistants

10. The Applicant justifies the need for two additional P2 and P1 Legal Assistants on the basis of the activities in paragraphs 99 to 102 of the Application as well as those mentioned in the organigram on page 34 of the Application.
11. The Registrar carefully considered the nature of the tasks which would be delegated to these three assistants in relation to the criteria for the allocation of additional means set out in regulation 83(1) of the *Regulations of the Court* and the following non-exhaustive factors:
 - the nature and limited number of the charges (three) against the Applicant;²²

²¹ Para. 97 of the Application

²² See the *Decision on the Confirmation of Charges* of 29 January 2007.

- the modes of criminal liability alleged against the Applicant;
- the limited number of victims currently authorised to participate in the proceedings, that is four (a/0001/06 to a/0003/06 and a/0105/06), as well as the specific regime for such participation under the relevant Court texts and jurisprudence;²³
- the limited number of applications for participation received to date from persons wishing to participate as victims in the trial stage of the case of the *The Prosecutor v. Thomas Lubanga Dyilo*;
- the limited role of the victims in relation to prosecution evidence against the person being prosecuted, as this falls within the competence of the Office of the Prosecutor who has the responsibility to investigate incriminating and exonerating circumstances equally;
- the sites concerned by the alleged crimes;
- the specific circumstances of the case due to the withdrawal of counsel;
- the need for the new counsel and the new members of the defence team to rapidly acquaint themselves with the case to represent the Applicant in the trial proceedings, the date of which has not yet been set, and a period separating the first status conference before the Trial Chamber and the effective commencement of the trial;
- the means which are available and directly allocated for the defence team for the trial phase under the Court's legal assistance scheme;
- the assistance provided by the Office of the Public Counsel for the Defence under regulation 77 of the *Regulations of the Court*; and

²³ In particular, see article 68(3) of the Statute and rule 91 of the *Rules of Procedure and Evidence* which embody the principle that participation and interventions by victims in the proceedings before the Court not be prejudicial to or inconsistent with the rights of the defence. See also Pre-Trial Chamber I's *Decision on the Arrangements for Participation of Victims a/0001/06, a/0002/06 and a/0003/06 at the Confirmation Hearing* of 22 September 2006 (ICC-01/04-01/06-462-tEN); the *Decision of the Appeals Chamber* of 12 December 2006 (ICC-01/04-01/06 (OA 7)) and the *Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the "Directions and Decision of the Appeals Chamber" of 2 February 2007* of 13 June 2007 (ICC-01/04-01/06-925).

- the need to make judicious use of the funds allocated to the system of legal assistance paid by the Court and to avoid duplication of work by team members.

The Registrar considers that to ensure the Applicant's effective and efficient representation, it is reasonably necessary to allocate to his team, beyond what is provided for by the legal assistance scheme, **an additional P2 Legal Assistant** who fulfils the criteria set out in regulation 124 of the *Regulations of the Registry*. This person would be immediately included in the team, with the specification that this additional resource is provided on an exceptional basis until the final pleadings have been presented.

11. As far as the additional Legal Assistant at P1 level is concerned, the Registrar observes that the Applicant justifies the requested post on the basis of the work he or she will carry out, i.e. to support in general, the work of the other assistants on relevant points of the defence strategy.²⁴ Taking into consideration the factors described in paragraph 11 of this document, as well as the above additional means made available to the applicant for his representation requirements before the Court, the Registrar considers that the duties referred to can be reasonably performed by the other team members. Accordingly, the Registrar concludes that the request for an additional P1 Legal Assistant does not fulfil the requisite eligibility criteria for additional means under regulation 83(1) of the *Regulations of the Court* and for this reason, rejects the Application on this point.

(iv) *The provision of exceptional but reasonable financial means allocated to the management of the case during the transitional phase*

²⁴ Para. 101 of the Application.

12. The Applicant requests “exceptional but reasonable means for the management of the case in the transition phase”²⁵ to “permit the outgoing counsel to transfer his knowledge of the case as a consultant for a period of three months, in order to facilitate the transfer of the file”.²⁶ Thus, the Applicant observes that, considering the reasons for the withdrawal of the former counsel, it is necessary to provide his defence team with “an allotment equivalent to three months of (P5) counsel hours distributed in accordance with the incoming counsel’s wishes bearing in mind the following alternative arrangements: (i) 3 months of consultation fees (P5 level); (ii) 6 months of consultation fees (P3 level); 8 months of consultation fees (P2 level)”.²⁷
13. The Registrar is of the opinion that the withdrawal of counsel from a case before the trial phase entails changes to the defence team’s composition in the event of the start of a trial, that when this withdrawal has been effected as in this case, it is necessary to ensure the Applicant’s effective and efficient defence, and that counsel taking up the baton must be put in a position to grasp, within a reasonable period of time, the relevant parts of the case referring to the outgoing counsel’s period of service.
14. In this respect, underscoring that the purpose of the above requested additional means is to provide the new Counsel and other team members with an understanding of the case in relation to those aspects pertaining to the outgoing Counsel’s period of service, the Registrar considers that to ensure a smooth handover of the case and also to enable the defence team to be in a position to better understand the case in order to represent the Applicant effectively and

²⁵ Para. 62(4) of the Application.

²⁶ Para. 70 of the Application.

²⁷ *Idem.*

efficiently, the allocation of means for this purpose must be made by giving preference to proven expertise in the case.

15. The Registrar states that the purpose of such means must, in principle, be strictly limited to passing on expertise in the case with a view to guaranteeing a smooth handover over a limited period of time.
16. The Registrar considers that any consultations carried out as advocated by the Applicant according to the alternative arrangements will not, in principle, put the new Defence team staff in a position to better understand the case for the purpose of representing the Applicant effectively and efficiently, if such consultations were to be implemented by persons with no experience in the pre-trial phase of the case.
17. Moreover, the Registrar observes that, considering the specific circumstances of the case, to ensure the Applicant's effective and efficient representation, it is necessary for the new team to be in a position to grasp the relevant components of the case pertaining to the outgoing counsel's period of service, as well as the entire proceedings of the case until the time of the said counsel's withdrawal.
18. The Registrar observes that after the outgoing Counsel's withdrawal from the case which was authorised by Pre-Trial Chamber I on 21 February 2007,²⁸ the outgoing counsel continued to submit records of hours worked for activities carried out during the months of March and April 2007 for the Applicant's representation and reiterates that the work completed for this period under

²⁸ ICC-01/04-01/06-833-Conf-tEN.

articles 15 and 18 of the *Code of Professional Conduct for counsel*²⁹ (“Code”) and regulation 83(3) of the *Regulations of the Court*, is covered by the legal aid scheme.

19. The Registrar further notes that the Legal Assistant (P2) and the Assistant (G5) were kept in the team without interruption and remunerated under the legal assistance scheme and that their knowledge of the case will facilitate the transition.
20. Accordingly, the Registrar considers that to guarantee the rights of the Defence, and particularly taking into account the specific circumstances of the case due to the timing and the effective withdrawal of the outgoing counsel, it is reasonably necessary under the criteria required by regulation 83(3) of the *Regulations of the Court*, to grant leave to the outgoing counsel,³⁰ if he is available and willing, to work as a consultant for three (3) months to transmit his knowledge of the case to newly arrived team members. This is to put them in a position to better understand the case so as to represent the Applicant effectively and efficiently and to thus ensure a smooth handover of the entire case file in accordance with his obligations under the relevant articles of the Code.
21. The Registrar emphasises that remuneration for the abovementioned work is calculated on the basis of the hourly fee applicable to duty counsel in accordance with the fee schedule set out in the scheme for legal aid³¹ paid by the Court.
22. The Registrar considers that the allocation of this additional resource is consistent with regulation 83(3) of the *Regulations of the Court*, with the judicious use of the funds allocated for the Court’s legal aid scheme and with the outgoing

²⁹ ICC-ASP/4/32.

³⁰ The Registrar recalls that the outgoing Counsel is on the Court’s list of counsel and a held a post at P5 level in the team.

³¹ See footnote 2, *supra*.

Counsel's obligation under articles 15 and 18 of the *Code of Professional Conduct for counsel*.

23. In the event of the outgoing counsel not being available for this purpose, and mindful of the impact that this situation could have on the actual time worked by the new team during the trial phase in that the team must at the same time devote hours to studying the case in the period extending from the start until the time of the withdrawal of counsel, the Registrar puts at the Applicant's disposal, on an exceptional basis, a total sum equivalent to the remuneration of duty counsel according to the above fee schedule to pay for one of the "alternative arrangements"³² which the Applicant will consider appropriate.
24. From all the above, the Registrar considers that the resources made available to the team to ensure the applicant's representation during the trial phase – namely one Counsel (P5), one Legal Adviser (P4), one Legal Assistant (P2), one Case Manager (P1) one Legal Assistant (P2) and the additional resources allocated for "the management of the case in the transition phase" – are reasonably necessary to cope with the work the team members will have to perform during the trial phase to effectively and efficiently represent the Applicant pursuant to regulation 83(1) of the *Regulations of the Court*.

³² Para. 70 of the application.

II. THE RESOURCES FOR INVESTIGATIONS

(i) The adoption of a new budget for investigations

25. In his letter of 13 April 2007 to the Applicant³³ and his response of 14 May 2007, the Registrar had indicated that he would look into any requests for additional means for investigations for his defence team without delay, at an appropriate time, in accordance with regulation 83(3) of the *Regulations of the Court* and applicable procedures before the Court.
26. The Registrar recalls, on the one hand, an overall investigations budget of €55,315.00 was allocated to the team representing the Applicant before the Court for the entire proceedings – as provided by the legal aid scheme, and on the other hand, that the former counsel used almost all of the funds (53,031.00 of the 55,315.00 euros) on the pre-trial phase alone.
27. The Registrar points out that the funds allocated by the States Parties to the scheme for legal aid paid by the Court are not unlimited and that in any case and at every stage of the proceedings, Counsel has the duty to manage the resources allocated to his or her client's defence responsibly, including those resources allocated to investigations; and observes that the former Counsel's use of almost all of the budget provided for investigations during the pre-trial phase, whereas it was intended for the entire proceedings, constitutes both lax management of the funds on the part of the former counsel and a problem of concern for the Applicant's effective and efficient representation during the trial phase.

³³ ICC-01/04-01/06-868-Conf-Exp-Anx-tEN.

28. The Registrar points out that the Court's current legal aid scheme, as adopted by the State Parties following consultations conducted with experts and members of the legal profession, specifically takes into account the Court's reality and specific character, the magnitude and complexity of the cases before it, the related costs and the nature of the conflicts at issue etc, and is based on the principles of equality of arms, objectivity, transparency, continuity and economy. The Registrar recalls that the total budget for investigations, as set forth in the Court's legal aid scheme (€55,315.00) was drawn up in this context and is based, *inter alia*, on the needs of investigations in cases before international criminal courts.

29. In view of the criteria required by regulation 83(1) of the *Regulations of the Court*, the Registrar's responsibility to manage the funds allocated to the Court's legal aid scheme judiciously, the reasonable level of the funds for investigations as set out in the said scheme, and particularly taking into consideration the sites concerned by the commission of crimes alleged against the Applicant, the importance of investigations to the criminal proceedings, the investigation activities described in paragraph 84 *et seq.* of the Application, the Registrar considers that for the Applicant's effective and efficient defence, it is reasonably necessary to grant the team representing him, on an exceptional basis, a further budget consisting of a sum equivalent to that provided by the Court's legal assistance scheme for the entire proceedings, namely an additional €55,315.00.

*ii) A minimum of three (3) permanent Associate Investigators (P-2 level) and
iii) the option of recruiting additional investigators on a temporary basis*

30. The Registrar observes that the Applicant is additionally requesting for the team representing him, a minimum of three (3) permanent Associate Investigators (P-

2 level) and the option to recruit additional investigators on a temporary basis. In relation to this, the Registrar recalls that, firstly, it is the responsibility of Counsel, as the person responsible for the defence team and administrator of the financial resources allocated to his client's representation, to select his or her own temporary or permanent investigators in accordance with the relevant Court texts and his or her obligations under *inter alia* the Code; secondly, under the legal aid scheme, the costs of the defence investigators are covered by the investigations budget which implies that Counsel must keep track of the money at his or her disposal for investigations when selecting investigators.

31. The Registrar is of the opinion that the costs for investigators necessary for the effective and efficient defence of the Applicant can be reasonably covered by the budget of €55,315.00 allocated for investigations. Accordingly, he considers that the Application for a minimum of three (3) permanent Associate Investigators (P-2) in the team does not fulfil the criteria required by regulation 83(1) of the *Regulations of the Court*, and therefore is rejected on this point.

FOR THESE REASONS

DECIDES:

- 1) to grant on an exceptional basis to the Applicant's defence team beyond what is provided for by the legal assistance scheme to his team, for the *trial* phase, an additional P2 Legal Assistant, to be automatically included into the team and to work in it until the final pleadings have been presented;

- 2) that the Legal Adviser (P4) be immediately included into the Applicant's defence team at the same time as the other members without waiting for the first status conference before the Trial Chamber;
- 3) that the former counsel, if he so agrees, is authorised to assist the team as a consultant for three (3) months, paid on the basis of the hourly fee applicable to duty counsel, by applying the fee schedule set out in the scheme for legal aid paid by the Court, and in the event of the contrary, to make available to his team, on an exceptional basis, the equivalent to the amount of that fee for three (3) months, to remunerate one of the "alternative arrangements"³⁴ which the Applicant will consider appropriate;
- 4) to allocate to the Applicant's defence team, on an exceptional basis, an additional budget for investigations of €55,315.00;
- 5) to dismiss all the other requests in their entirety.

Done in French and English, the French version being authoritative.

[signed]

For the Registrar
Didier Daniel Preira
Head of the Division of Victims and Counsel

Dated this 14 June 2007

At The Hague

³⁴ Para. 70 of the Application.