

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/11-01/11**

Date: **21 September 2015**

PRE-TRIAL CHAMBER I

Before: Judge Joyce Aluoch, Presiding Judge
Judge Cuno Tarfusser
Judge Péter Kovács

SITUATION IN LIBYA

**IN THE CASE OF
*THE PROSECUTOR v. SAIF AL-ISLAM GADDAFI***

Public

**Public Redacted Version of Request for review of Registrar's Decision, 25 May
2015, ICC-01/11-01/11-595-Conf-Exp**

Source: Defence for Mr. Saif Al-Islam Gaddafi

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence

Mr. John R.W.D Jones QC

Ms. Sarah Bafadhel

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel, Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

I. Introduction

1. On 11 December 2014, the Registrar was seized of a Defence request for review of the calculation and approach taken by the Counsel Support Section (“CSS”) when assessing the fees paid to Ms. Sarah Bafadhel (“Ms. Bafadhel”) for both language and legal assistance provided to the Gaddafi Defence team (“Defence Request of 11 December 2014”).¹
2. On 7 May 2015, the Registrar notified the Defence of his decision, which only addressed the calculation of fees for legal assistance provided by Ms. Bafadhel (“Registrar’s Decision”).²
3. When reviewing a decision of the Registrar, a Chamber “must assess whether the decision of the Registrar was materially affected by an error of law or fact or whether the decision is so unfair and unreasonable as to constitute an abuse of discretion”.³ Although this concerned a request made pursuant to regulation 83(4) of the Regulations of the Court, the same standard of review has been applied by Chambers when addressing requests made in accordance with regulation 135 of the Regulations of the Registry.⁴
4. In accordance with regulation 135 of the Regulations of the Registry, the Defence for Mr. Gaddafi hereby requests the Honourable Pre-Trial Chamber to reverse the Registrar’s Decision on the grounds that:
 - a. The Registrar has acted arbitrarily by using services provided as a language assistant as a basis for creating a variable rate for legal assistance; and

¹ Letter from Mr. Jones to Mr. von Hebel dated 11 December 2014 attached at Annex A.

² Letter from Mr. von Hebel to Mr. Jones dated 6 November attached at Annex B. See also Annex B for cover email notifying Mr. Jones of Registrar’s Decision on 7 May 2015.

³ ICC-01/11-01/11-390-Conf-Exp, paras 30-31 citing to ICC-01/04-01/07-3277, para. 9

⁴ See for example, ICC-01/04-02/06-389, paras 25-28; ICC-01/04-01/07-T-341-ENG ET WT, 18 June 2012, T. 1-11; ICC-01/05-01/08-1007-Red; and ICC-02/05-100.

- b. The Registrar's decision is unreasonable in so far as it fails to provide a breakdown of monthly payments.

II. Procedural History

A. Background

5. On 17 April 2013, the Chamber authorised the Office of Public Counsel for the Defence ("OPCD") to withdraw as counsel from the representation of Mr. Gaddafi and appointed John R. W. D. Jones ("Mr. Jones"), pursuant to regulation 76(1) of the Regulations of the Court.⁵ On 25 April 2014, the Registrar decided to afford legal aid to the Defence of Mr. Gaddafi on a provisional basis until a decision on whether he is indigent can be made following the normal procedures, and determined that, at this stage of the proceedings, payment would be confined to one counsel.⁶
6. On 30 July 2013, the Chamber acknowledged the need for a paid language assistant on the Gaddafi Defence team.⁷ Ms. Bafadhel subsequently submitted her application to CSS so that she could be appointed language assistant to the Gaddafi Defence team.
7. On 1 September 2013, CSS provided the daily rate for a language assistant pursuant to the Single Legal Aid Policy as follows:⁸ (a) Maximum monthly remuneration: €4,047; (b) Daily rate: €186.07; and (c) Hourly rate: €24.81.⁹
8. On 2 December 2013, CSS agreed that Ms. Bafadhel would be entitled to undertake twenty hours of work which required language assistance, without

⁵ ICC-01/11-01/11-311-Conf-Exp.

⁶ ICC-01/11-01/11-341-Conf-Exp-AnxA.

⁷ ICC-01/11-01/11-390-Conf-Exp.

⁸ ICC-ASP/12/3, Registry's single policy document on Court's legal aid system, 4 June 2013 ("Single Legal Aid Policy").

⁹ Email from Mr. Sevgili to Ms. Bafadhel dated 1 September 2013 attached at Annex C.

prior approval from CSS. By the same token, she would be remunerated for all language assistance undertaken with prior approval of CSS.¹⁰

9. On 20 February 2014, CSS met with Mr. Jones whereby in the course of the meeting it was agreed that Ms. Bafadhel would be remunerated for legal assistance provided to the Gaddafi Defence team. This payment would be provided for from the allocated €3,000.00 monthly expense budget provided to each Defence team.¹¹ More specifically, in the meeting, it was agreed that Ms. Bafadhel would be reimbursed for [redacted]. This agreement was formally accepted by way of email dated 21 February 2014 from Mr. Mbaye who confirmed:

“[the] request to remunerate Sarah up to a cap of €2,500 per month for her services rendered to the Defence intervenes in accordance with the flexibility principle governing the Court’s legal aid system. We consider this request reasonable. Accordingly, we are amenable to accommodate the payment above from the savings (monthly allotment), noting that, at this stage, you have accumulated approximately 22 000 euros on the monthly budget.

Within this framework, the payment for Sarah is subject to availability of such savings in the monthly budget, and no payment shall be made should such funds be exhausted. Thus, I think it will be useful if you discuss with Sarah, at the appropriate time, the availability of funds before the completion of relevant activity. In this context, please do not hesitate to contact our section at any time to inquire on the amount of accumulated savings.

As mentioned during our meeting, for the purpose of payment, we would very much appreciate if you inform us the amount to be paid for each timesheet.”¹²

¹⁰ Email from Mr. Peralta-Losilla to Mr. Jones dated 2 December 2013 attached at Annex D.

¹¹ ICC-ASP/13/17, First quarterly report of the Registry on legal aid, 23 May 2014, para. 16 and Single Legal Aid Policy, para. 92.

¹² Email from Mr. Mbaye to Mr. Jones dated 21 February 2014 attached at Annex E.

10. CSS did not provide an hourly work rate which would be applied towards fees up to the €2,500.00 monthly cap, clearly stipulating that the only limiting factor to Ms. Bafadhel's remuneration was the availability of funds in the monthly allotted expenses budget.
11. In the absence of any of explanation from CSS as to the applicable hourly rate for legal assistance provided by Ms. Bafadhel, the Gaddafi Defence provided its own breakdown of the hourly rate to be applied up until the €2500.00 monthly cap.
12. On 9 June 2014, Ms. Bafadhel submitted separate timesheets for language and legal assistance provided to the Gaddafi Defence team from January 2014 to May 2014. From this point onwards, Ms. Bafadhel submitted separate timesheets for both language and legal assistance once per month.
13. CSS did not initially respond to the timesheets sent on 9 June 2014, prompting follow-up emails from Ms. Bafadhel on 30 June 2014, 3 July 2014, 8 July 2014 and 9 July 2014. On 11 July 2014, CSS finally responded stating that they were reviewing the timesheets and that payment would be made following the review.
14. On 14 July 2014, CSS directed Ms. Bafadhel to amend her legal assistance timesheets stating that:

“some activities fall outside the scope of the legal aid advanced to Mr. Gadaffi, and other activities are lacking in detail to enable us fully appreciate the relevancy of such activities to the legal representation of the client before the Court. Please see the short comments in the timesheets and provide the necessary information or clarifications”.
15. Furthermore, Ms. Bafadhel was informed that her “On the other hand, [her] timesheets for services rendered as a language assistant are in process and [she] should receive your payments shortly”. This implied that Ms. Bafadhel would be reimbursed the full amount billed for language services completed between January to May 2014.

16. On 15 July 2014, Ms. Bafadhel clearly explained the relevance of each activity to her previously agreed legal assistance responsibilities. CSS confirmed receipt of this email. On 21 and 22 July 2014, Ms. Bafadhel again sought follow-up from CSS. On 22 July 2014, CSS informed Ms. Bafadhel that “the payment is in process with the Finance Section. At the same time, we're preparing detailed communication on the timesheets which you will receive shortly”. No mention was made of any outstanding issues or problems with the submitted timesheets-both legal and language.
17. On 23 July 2014, CSS informed Ms Bafadhel that her legal assistance “was in no way an invitation to supplant the activities that should be properly conducted by the counsel”. Furthermore, for the first time, CSS indicated that the language assistance timesheets did not reflect the duties of a language assistant. Handwritten marked up timesheets were attached to this email.
18. On 23 July 2014, Ms. Bafadhel sought, *inter alia*, further clarification from CSS as it was not clear from the marked timesheets as to which legal and language activities she would be paid for. Given the handwritten figures on the marked timesheets, Ms. Bafadhel also asked for clarification of the hourly rate CSS was applying to her timesheets.
19. On July 29 2014, Ms. Bafadhel was paid €1649.85, substantially less than what she had billed for. That same day Ms. Bafadhel sent another follow-up email asking for clarification as to what she had been paid and why.
20. On 5 August 2014, CSS provided the following calculation for legal assistance:

“The payment is based on relevant activities up to the maximum allowable, in this case 2500 euros. As you’re aware, there is no lump sum payment and accordingly, a daily and hourly rate is established for each month. By way of example, for the month of January, 2500 is divided by 31 days to arrive to 80.64 euros as the daily rate. 80.64 is divided by 7.5 hours to arrive to an hourly rate of 10.75 euros per hour.

The reporting of work for 7.5 hours or more per day is calculated at a daily rate.”¹³

21. On 11 August 2014, Mr. Jones informed the Head of CSS that Ms. Bafadhel had not been paid in accordance with the originally agreed terms and requested that he pay the balance on Ms. Bafadhel’s timesheets.¹⁴ Following further correspondence, Mr. Jones met with the representatives from CSS including Mr. Mbaye to discuss, *inter alia*, this matter. During the meeting, it was agreed that Ms. Bafadhel would be paid in full for her language assistance timesheets, thus resolving the concerns CSS expressed on 23 July 2014.
22. The calculation for the hourly rate for legal assistance was also discussed during the meeting of 11 August 2014 whereby Mr. Jones was informed for the first time that there was a policy that corresponded to the rates explained to Ms Bafadhel on 5 August 2014. CSS formally set out their position with regard to Ms. Bafadhel's outstanding fees in an email dated 17 September 2014.¹⁵ On 21 September 2014, Mr. Jones contested the points raised in the email sent by CSS dated 17 September 2014, and more specifically noted that the aforementioned policy was not provided.¹⁶ On 31 October 2014, Mr. Esteban Peralta-Losilla, Head of CSS finally responded indicating that CSS would not pay the disputed fees to Ms. Bafadhel.¹⁷
23. On 11 December 2014, Mr. Jones seized the Registrar of the dispute concerning Ms. Bafadhel’s remuneration and clearly set out the application of agreed terms for which Ms. Bafadhel would be remunerated.
24. Mr. Jones further set out the misapplication of agreed terms by CSS and contested, *inter alia*, the following three factors:

¹³ Email from Ms. Adyel to Ms. Bafadhel dated 5 August 2014 attached at Annex F.

¹⁴ Letter from Mr. Jones to Mr. Peralta-Losilla dated 11 August 2014 attached at Annex G.

¹⁵ Email from Mr. Mbaye to Mr. Jones dated 17 September 2014 attached at Annex H.

¹⁶ Email from Mr. Jones to Mr. Mbaye dated 21 September 2014 attached at Annex I.

¹⁷ Email from Mr. Peralta-Losilla to Mr. Jones dated 31 October 2014 attached at Annex J.

- a. Absence of breakdown of rates: Although CSS had subsequently agreed to the scope of language assistance provided by Ms. Bafadhel, it had failed to provide any payment breakdown between language and legal assistance despite numerous requests to do. In the absence of such a breakdown, Ms. Bafadhel remained unable to determine whether her language assistance was actually fully paid;
- b. Miscalculation of hourly rate for legal assistance: Based upon the calculation provided by CSS, Ms. Bafadhel was paid at a rate of €10.75 per hour for all legal assistance provided to the Gaddafi Defence team. Further, despite the cap at €2500.00 per month, as per the agreed terms, the cap remained nonsensical on the agreed terms as Ms. Bafadhel was expected to work 58.3 hours *per week* i.e. well over full time hours in order to approach the cap. This was despite the *ad hoc* arrangement to cover Ms. Bafadhel's service on a part-time basis.
- c. Relevance of legal activities: Despite attempts to further clarify the relevance of activity completed, CSS adopted an inconsistent approach to reject certain activities undertaken by Ms. Bafadhel without any further explanation.

25. Noting that as of 11 December 2014, Ms. Bafadhel had only been paid €6,182.74 in total for all language and legal assistance provided to the Gaddafi Defence over the course of eleven months,¹⁸ Mr. Jones requested the Registrar to reverse the CSS decision.

¹⁸ Breakdown of total payments provided to Ms. Bafadhel: 25 July 2014 (€1649.85); 6 October 2014 (€2607.63); 18 November 2014 (€925.38) and 5 December 2014 (€999.88)

B. Registrar's Decision

26. Following requests for a response on 16 February 2015 and 2 April 2015, the Registrar finally notified the Defence of his Decision on 7 May 2015. In his Decision, the Registrar agreed that the "hourly rate of 11 € applied in the present require[d] reconsideration". The Registrar calculated a new hourly rate of €34.31 ("the Registry Rate") for all legal assistance provided by Ms. Bafadhel which took into account "the hours actually worked by Ms Bafadhel as a language assistant". The basis of this calculation meant that the "aforesaid hourly rate will vary accordingly [per month]".
27. The Registrar then concluded that Ms. Bafadhel had been under-remunerated €3,560.33 and indicated that she would be notified accordingly and receive the difference.
28. The Registrar's Decision failed to: (i) address the relevance of activity undertaken by Ms. Bafadhel in legal assistance provided to the Defence; or (ii) provide a breakdown of monthly payments provided to Ms. Bafadhel, divided into remuneration for legal and language services respectively.

III. Submissions

a) The Registrar has acted arbitrarily by using services provided as a language assistant as a basis for creating a variable rate for legal assistance

29. At the outset of the Registrar's Decision, it is stated that "the agreement that the remuneration for the performance of tasks of legal assistant by Ms. Bafadhel was capped to a maximum of €2,500 per month was in addition to her remuneration as language assistant (emphasis added)."¹⁹ This sentence accurately reflects the fact

¹⁹ Annex B, p.1

that Ms. Bafadhel's language assistance and legal research were independent responsibilities which were billed separately.

30. However, the Registrar then purports to provide a new calculation for the remuneration of legal services provided by Ms. Bafadhel stating that the calculation takes "into account the hours actually worked by Ms Bafadhel as language assistant".²⁰ As a result, the Registrar proposes a variable hourly rate which is indexed to language assistant hours. This calculation directly contradicts the Registrar's initial understanding of the *ad hoc* arrangement which concerned two distinct payment structures.
31. This error is further compounded by the fact that the Registrar concludes that "Ms Bafadhel's remuneration over the total period was underestimated by €3,506.33, on the basis of an hourly rate of 34,31 € (emphasis added)."²¹ Rather confusingly, this is followed by the statement that the "aforesaid hourly rate will vary [on a monthly basis]."²² Given that the total period at the time the Registrar was seized of the dispute amounted to eleven months- it is reasonable to expect an indication of (i) which month the Registry Rate applied to; and (ii) a breakdown of the hourly rate for each month within the total period.
32. The Defence is willing to accept the Registry Rate as a reasonable remuneration rate for Ms. Bafadhel's legal research, even though it has previously argued that she was entitled to be paid at almost double this amount.²³ However, there is no justifiable reason why this amount should be variable.
33. Ms. Bafadhel is entitled to a predetermined rate for the same type of work completed each month. This is in accordance with the principle of transparency

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ See Annex A.

as dictated by the Single Legal Aid Policy which intends to safeguard against the very problem which has arisen in this case.

34. Even if for some reason the rate for legal assistance was variable, there is no reasonable basis as to why the variable factor would be language assistance.
35. The application of a variable rate is both unfair and discriminatory. Ms. Bafadhel should not be expected to complete work without knowing how much she will be paid for that work at any given moment. She should be paid at the Registry Rate for all legal assistance she provides, up until the monthly remuneration hits the €2,500.00 per month cap.

b) The Registrar's decision is unreasonable in so far as it fails to provide a breakdown of monthly payments

36. The Registrar's Decision unreasonably fails to address the repeated requests for a breakdown of monthly payments for both language and legal assistance provided by Ms. Bafadhel. The requests were made in an effort to understand and verify the approach taken to remunerate Ms. Bafadhel.
37. The breakdown of payments was particularly necessary in light of the dispute over which activities were considered to be 'relevant' by CSS and deemed eligible for remuneration.²⁴ Despite being seized of this dispute, the Registrar failed to make any mention of this in his Decision.
38. First, although the dispute concerning relevance of language assistance was resolved on 16 September 2014, without a breakdown of payments it is impossible to ascertain whether remuneration has been made for language assistance initially deemed to be irrelevant.

²⁴ *Ibid.*

39. Second, the breakdown is necessary in order to be able to ascertain how the Registrar reached his decision that Ms. Bafadhel's remuneration was underestimated by €3,506.33.
40. Even when the dispute of relevance of activities is not taken into account, the Registrar's calculation does not equate to the number of hours billed and accepted by CSS²⁵ when using the Registry's Rate and bearing in mind the applicable € 2,500.00 per month cap.
41. As set out in the Defence Request of 11 December 2014, Ms. Bafadhel had by then received a total of €6,182.74 – this was the total for both language and legal assistance provided.²⁶ The total amount billed by Ms. Bafadhel for language services provided between January 2014 and October 2014 was 162 hours,²⁷ amounting to €4,019.22.²⁸ Consequently, this meant €2163.52 was paid by CSS for legal services provided by Ms. Bafadhel between January 2014 and October 2014.²⁹ The additional underestimated amount as provided for in Registrar's Decision would theoretically bring this figure up to €5669.85.³⁰
42. However, the number of hours billed, and accepted by CSS at the time, for legal services provided between January 2014 and October 2014 was 511 hours.³¹ Using the Registry Rate and bearing in mind the applicable € 2,500.00 per month

²⁵ For legal assistant hours completed in January 2014 to May 2014, the CSS accepted hours are those marked by CSS on timesheets sent to Ms. Bafadhel on 14 July 2014. For legal assistant hours completed in June 2014 to April 2015, the CSS accepted hours are the same as the hours originally submitted by Ms. Bafadhel.

²⁶ The lack of breakdown of payments is discussed further below.

²⁷ [Redacted].

²⁸ The calculation being **162** (Number of hours billed for language assistance) x €24.81 per hour (Hourly rate for language assistance) = **€4,019.22** (Amount payable for language assistance).

²⁹ The calculation being **€6,182.74** (Amount paid) - **€2,294.93** (Amount billed for language assistance) = **€3,887.81** (Total paid for legal assistance).

³⁰ For the purpose of these calculations, it is noted that the time of filing, the additional €3,506.33 has not been notified or paid to Ms. Bafadhel.

³¹ [Redacted].

cap, this meant that Ms. Bafadhel should have been paid €17,562.11 for legal services provided.

43. In light of the time taken for the Registrar to issue his decision, the matter has further prolonged and now also concerns timesheets for language and legal services submitted for work completed between November 2014 and April 2015. This consideration was not addressed in the Registrar's Decision.
44. As of 11 December 2014, Ms. Bafadhel has been paid €3,225.08 split into 6 payments with the last made on 20 April 2015.³² Between November 2014 and April 2015, Ms. Bafadhel completed 88 hours of work³³ as language assistance which amounted to €2,183.28.³⁴ This meant that of the €3,225.08 paid between December 2014 and April 2015, €1,041.80 was paid in remuneration of legal services completed over the same period. However, Ms. Bafadhel billed for 128 hours of legal work.³⁵ Using the Registrar's hourly rate, and bearing in mind the €2,500.00 monthly cap, this amounted to €4,391.70.
45. In the absence of any breakdown, the Registrar has grossly miscalculated the total for which Ms. Bafadhel has not been remunerated for legal services completed between January 2014 and April 2015. As a result, using the hours billed for legal services accepted by CSS, Ms. Bafadhel has been underpaid a total of €15,212.44 over a period of sixteen months of work.³⁶

³² [Redacted].

³³ [Redacted].

³⁴ The calculation being 88 (Number of hours billed for language assistance) x €24.81 per hour (Hourly rate for language assistance) = €2,183.28 (Amount payable for language assistance).

³⁵ [Redacted].

³⁶ This total figure takes into account the amount to be paid to Ms. Bafadhel as per the Registrar's Decision even though as of the date of this filing, payment has not been received.

Calculation being: €21,924.09 (Total of legal services billed: 639 (Total of legal hours accepted by CSS) x €34.31 (Registry Rate)) – €6,711.65 (Total payment approved for legal services completed, including €3,506.33 awarded in Registrar's Decision) = € 15,212.44 (Total underestimated payment for legal services completed between January 2014 to April 2015).

c) The legal services provided by Ms. Bafadhel were intrinsic and necessary to Mr. Gaddafi's defence

46. [Redacted]. This work was necessary even after the Appeals Chamber's decision upholding the admissibility of the case before the ICC.³⁷ Libya has repeatedly indicated its intention to launch a second admissibility challenge in the case against Mr. Gaddafi both in submissions before the Chamber³⁸ and in representations before the United Nations Security Council.³⁹
47. The work completed by Ms. Bafadhel was also directly relevant to the substantive case against Mr. Gaddafi before the ICC and conducted within the Defence's obligation to pursue Mr. Gaddafi's interests with due diligence and as part of the scope of Mr. Jones' mandate.⁴⁰
48. The legal research completed by Ms. Bafadhel continues to be integral to the effective defence of Mr. Gaddafi, who remains detained in Libya and subject to domestic proceedings without any legal representation concerning ICC-related allegations.⁴¹ In order to continue these proceedings in the absence of Mr. Gaddafi's presence, the Libyan authorities have implemented amendments to Libyan law in order to be able to prosecute Mr. Gaddafi on Libyan soil and away from the ICC's grasp.⁴² The proceedings have also been the subject of a number of due process violations contrary to international and Libyan standards in order to usher in a conviction against Mr. Gaddafi.⁴³

³⁷ ICC-01/11-01/11-547-Conf-Exp.

³⁸ ICC-01/11-01/11-553.

³⁹ See for example, Statement of Libya's Representative before the UNSC at Ninth Report of Prosecutor of the International Criminal Court to the UN Security Council pursuant to UNSCR 1970(2011) on 12 May 2015 see press release at <http://www.un.org/press/en/2015/sc11887.doc.htm>

⁴⁰ ICC-01/11-01/11-390-Conf-Exp, paras 33-35.

⁴¹ ICC-01/11-01/11-341-Conf-Exp.

⁴² ICC-01/11-01/11-533-Conf.

⁴³ A/HRC/28/51, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs, 12 January 2015.

49. By agreeing to the *ad hoc* arrangement, the Registrar has accepted that the legal research undertaken by Ms. Bafadhel was necessary for the defence of Mr. Gaddafi and could not have been undertaken by counsel alone. The arrangement therefore allowed for Ms. Bafadhel to be remunerated out of the discretionary and flexible assistance budget afforded to Counsel with the monthly amount to be determined by Mr. Jones. However in reality no such flexibility was afforded, with unexplained or contradictory determinations being made by CSS and the Registrar.

d) Compelling reasons exist which warrant intervention by the Chamber

50. At the outset of the Registrar's Decision, it is stated that the agreement for Ms. Bafadhel to conduct legal research was made on an *ad hoc* basis. This is not in dispute. However, the Registrar then goes on to state that Ms. Bafadhel's appointment "therefore warrants the calculation of the hourly rate using the same method of calculation as used for all calculations under the legal aid system for appointments on an ad hoc basis (emphasis added)".
51. The very fact that an *ad hoc* arrangement was entered into necessarily means that there is no such policy which governs such an arrangement. This illogical position is emblematic of the issues at hand with regard to Ms. Bafadhel's remuneration.
52. It is clear from the Registrar's Decision that he has both: (i) failed to provide full and complete justification for his decision; and (ii) failed to fully consider each of the submissions made by the Defence. In similar circumstances, Trial Chamber VI considered that such failures were enough to render a decision by the

Registrar to be unreasonable, evince signs of arbitrariness and amount to a misuse of discretion.⁴⁴

53. When reviewing determinations made by the Registrar, Pre-Trial Chamber I held it that it “should only interfere where there are compelling reasons for doing so, taking into consideration the right to legal assistance as enshrined in the Statute”.⁴⁵ Trial Chamber VI has most recently stated that such “compelling reasons exist, *inter alia*, if the accused's right to an effective defence is infringed.”⁴⁶
54. The Chamber has already acknowledged its duty to uphold Mr. Gaddafi’s rights as enshrined under article 67(1) of the ICC Statute.⁴⁷ Therefore, in light of the unreasonable approach taken by the Registrar, the Chamber is warranted to intervene to correct the infringement to Mr. Gaddafi’s right to an effective defence.⁴⁸
55. The Registry has been seized of this dispute for almost one year during which Ms. Bafadhel has undertaken work to her detriment without knowing whether she would be remunerated. The fact that the Registrar enjoys a degree of discretion in administering the available legal aid budget does not mean that he should be allowed to hide behind this discretion to arbitrarily pluck numbers from the air.

IV. Relief sought

⁴⁴ ICC-01/04-02/06-389, para. 41.

⁴⁵ ICC-01/11-01/11-390-Conf-Exp, para. 30.

⁴⁶ ICC-01/04-02/06-389, para. 28.

⁴⁷ ICC-01/11-01/11-577, para. 30. See also ICC-01/11-01/11-129, para. 11 and ICC-01/11-01/11-390-Conf-Exp, para. 33.

⁴⁸ ICC-01/04-01/07-3277, para.9; ICC-01/04-01/06-2800, paras 53 – 54; ICC-01/04-02/06-389, para, 28 and ICC-01/11-01/11-390-Conf-Exp, paras 30-31.

56. For the reasons set out above, the Defence for Mr. Saif Al-Islam Gaddafi respectfully requests the Honourable Pre-Trial Chamber to:

- a. **REVERSE** and **REMIT** the Registrar's Decision; and
- b. **ORDER** the Registrar to apply the Registry Rate to all of Ms. Bafadhel's legal research remuneration from January 2014 onwards.



John R.W.D. Jones QC, Counsel for Mr. Saif Al-Islam Gaddafi

Dated this, 21st Day of September 2015

At The Hague, The Netherlands