

Public Redacted Version of

ANNEX 1 TO
Motion for Judicial Review of Legal Aid Decision
under Regulation 83(4) of the Regulations of the Court

From: OTR Counsel Support Section <[REDACTED]>
Sent: 15 December 2023 16:12
To: D31 Abd-Al-Rahman Defence Team
Cc: OTR Counsel Support Section
Subject: Announcement of complexity levels - D31 Abd-Al-Rahman Defence

[REDACTED]

Dear Counsel,

Further to the adoption of the Draft Legal aid policy of the International Criminal Court (ICC-ASP/22/9), we write to inform you of the complexity level that will be attributed to your team under the reformed legal aid system as of 1 January 2024, as well as practical matters on the transitional period.

Complexity level assessment and information for the transitional period

For teams already operating in an ongoing case before the Court before 1 January 2024, in order to reach the complexity level, and in line with the transitional measures taken according to paragraph 15 of ICC-ASP/22/9, the Registry has determined the complexity level on the basis of the existing team resources. The rationale behind this method is that resources granted under the previously applicable legal aid system (ICC-ASP/12/3) have been allocated to the team for the representation of the indigent client and are therefore indicative of the required resources.

The system of core-team resources and additional means will be replaced with an overall complexity level system with a larger team composition, whereby additional means will only be available in exceptional circumstances (see paragraphs 74-76 of ICC-ASP/22/9). The Registry considered for the determination of the complexity level:

- (a) the *de facto* team composition, *i.e.* the resources allocated as part of the core-team composition per stage of the proceedings (per diagrams 1 or 2 of ICC-ASP-12-3) and the Full-Time Equivalent ("FTE") allocated to a team per the additional means system (paras 66-76).
- (b) The time-period for which FTE have been approved by the Registry based on a justified request, particularly whether FTE had been allocated for a specific purpose; and
- (c) the working arrangements of team members (*i.e.* whether team members work full-time or part-time)

Taking this into account, the Registry came to the conclusion that the following provisional complexity level is applicable to your team: **complexity level 2 at the trial stage.**

The resources allocated to your team per this complexity level at this stage, can be taken from ICC-ASP/22/9, table 1 or 2, table 3 or 4, and table 5 as applicable to your team.

Team composition: For the team composition, please note that positions of team members must fall within the positions allocated as per table 1 (defence teams) or 2 (victims' teams) of ICC-ASP/22/9 (as applicable). The team composition per complexity level and stage of the proceedings reflects the maximum team composition.

Please note that according to the CBF decision, and the expected approved budget by States Parties, the IT position (50%) has been suspended for the year 2024 due to budgetary reasons. No resources in this regard can be requested by the teams. This does also apply to the request for a replacement of this position with another position.

Where the Registry, based on a justified request had approved resources beyond 31 December 2023, or, where your team composition exceeds the resources allocated under the complexity level and stage of the proceedings, for the transitional period, you are requested to consult with the CSS in order to ensure team stability in line with the transitional measures (per paragraph 15 of ICC-ASP/22/9).

For this purpose, and in order to process requests at the earliest possible opportunity, the Registry kindly requests Counsel to:

- a) send an overview of the team composition as of 1 January 2024 with all team members having been approved beyond 31 December 2023 including their assigned position as in line with the composition per table 1 or 2 of ICC-ASP/22/9, as applicable.
- b) Where applicable and justified, consult with the CSS on measures to ensure team stability in line with the transitional measures.

On this notice, if there are members of your team that do not fall within the designated positions of the reformed legal aid system, and you require consultation with the CSS to determine their position in order to send an overview as per a), please indicate so at the earliest convenience.

Programmes: The Programmes established under ICC-ASP/22/9 are earmarked and form annual maximum amounts that are held in trust by the Registry and are allocated upon justified request.

Where justified, Counsel can also keep team members allocated under the previous FTE-system with the budget resources allocated under programmes 1 or 2 (e.g. under programme 1 resource persons, investigators or field assistants can be appointed; under programme 2 (additional) language assistants can be appointed). Please note that this will be deducted from your annual available programme budget.

Pending requests: We note that the announcement of the complexity level and further clarifications about the available resources and information on how team members could be extended for the transitional period if not falling within the allocated resources, will respond to some outstanding requests submitted by your team. Therefore, we kindly ask to inform the CSS should your request be still valid for this year, and base any request for resources as of 1 January 2024 on the provisions of the reformed Legal Aid Policy (ICC-ASP/22/9), thereby keeping in mind the clarifications provided in this email.

Future assessment of complexity level

For an assessment of the complexity level as of the next stage of the proceedings, Counsel is required to submit a work plan in line with paragraphs 43-48 of ICC-ASP/22/9. A template for such work plan as well as information on how the parameters listed in paragraphs 50-54 are assessed, will follow in January 2024. Should you like to request a re-assessment of the complexity level before the issuing of

the template of the work-plan, we kindly ask you to do on the basis of the parameters listed in paragraphs 50-52 (or 53 to 54) of ICC-ASP/22/9.

Step-level and remuneration

We also remind all team members that have not yet done so one last time, to submit an updated CV and the completed questionnaire to [REDACTED]. Incomplete, late or no submissions **will have a negative impact on your applicable step-level**. We emphasize that all team members will go through the same assessment process. As such, a submission on the applicable step-level according to your own assessment is insufficient to make a determination.

The corresponding step-level will be announced to you before the end of January, *i.e.* before receiving your first payment in 2024. Where the assessment takes longer based on delays on the Registry's side, your payment will be adjusted retroactively. This does not apply should you have submitted your CV or questionnaire late despite reminders sent by the Registry.

Further information

We are aware and understand that the transition to the reformed system comes along with many questions and uncertainties while you are continuing to carry out your mandate. As many questions have already reached the Registry in the last weeks through various channels, we are in the process of preparing responses to the most frequent questions on the implementation of ICC-ASP/22/9. The Registry is aiming to send out this information on specific aspects as soon as possible. In order to do so, should you have questions about the general functioning of the system, keeping in mind efficiency and time resources on both sides, we kindly ask you to await these responses to the most frequent questions.

Pending the announcement at the ICC homepage, ICC-ASP/22/9 can be accessed here: https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-22-9-ENG.pdf

Kind regards,

Counsel Support Section