

**Cour
Pénale
Internationale**



Le Greffe

**International
Criminal
Court**

The Registry

ANNEX 2

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Overview of the Legal Aid System of the Court

The initial version of the ICC's legal aid system was devised with a view to revisit the functioning of the system after having acquired tangible indicators from the first proceedings before the Court. After two years of operational practice, the Registrar of the Court *proprio motu* initiated a first revision and project of adjustment of the legal aid system. The Registry consulted experts and representatives of the legal profession, including defence counsel and international legal associations, in its legal aid reform project, and consultation were held at the Seat of the Court on 23 February 2007. The proposals submitted to the CBF, took into account and incorporated many of the suggestions received from participants in the consultation, which included, *inter alia*, representatives from the International Criminal Bar, Office of Legal Aid and Detention Matters of the ICTY, the Association of Defence Counsel practicing before the ICTY, International Bar Association, Coalition for the International Criminal Court, and Fédération internationale des droits de l'homme. The adjustments to the system implemented the following non-exhaustive changes:

1. higher salaries for all members of legal teams (see table below);
2. a substantial increase in the investigation budget afforded to each defence team;
3. additional staff member added to the pre-trial phase team structure under the Court's legal aid system, and
4. establishment of a detailed module system, which counsel must use to justify requests for additional resources based on objective criteria and case-specific needs of the team.

The above changes were implemented as of January 2008. The full details of the adjustments can be found in the "Report on the operation of the Court's legal aid system and proposals for its amendment" (ICC-ASP/6/4) dated 31 May 2007 available online on the Court's official website.

The Court's legal aid system is based on a monthly lump-sum payment system, where all members of the legal team – pre-structured based on the three different phases of proceedings before the Court – are paid a set salary (for professional services rendered) individually and directly from the Court based on the posts they occupy within the team. Payments are made to team members even if there is a delay in the proceedings and protracted phases equally have no bearing on payment and team members will be paid from month to month.

The table reproduced below and derived from the "Report on the operation of the Court's legal aid system and proposals for its amendment" (ICC-ASP/6/4) dated 31 May 2007, illustrates the composition of legal teams as envisaged by the Court's legal aid system for each phase of the proceedings. The column entitled: "Proposed system", is the structure currently in place and implemented by the Registry of the Court.

CURRENT SYSTEM					
CURRENT SYSTEM	Counsel P5 12410 €	Counsel P5 1994 €	38500 €	Counsel P5 12410 €	Counsel P5 20451 €
	Until the first status conference before Trial Chamber				
	Until the first appearance before the Pre-Trial Chamber	2	Until the issuance of the indictment	5	Decision on appeal
PROPOSED SYSTEM	Counsel P5 15193 €	Counsel P5 25150 €	38701 €	Counsel P5 15193 €	Counsel P5 26180 €
	From the moment where the decision on confirmation of charges becomes final				

The basic team before the Court during the pre-trial and appeals phases of the proceedings have the following composition:

- One counsel (remuneration equivalent to that of a Senior Trial Attorney of the Office of the Prosecutor, P5)
- One legal assistant (remuneration equivalent to that of an Associate Legal Officer of the Office of the Prosecutor, P2)
- One case manager (remuneration equivalent to that of a Case Manager of the Office of the Prosecutor, P1, "assistant" in the Current System).

This basic defence team structure is complemented with the addition of additional staff/human resources for the trial phase of the proceedings with one associate counsel (remuneration equivalent to that of a Trial Lawyer of the Office of the Prosecutor, P4, "legal adviser" in the Current System), who will join the team once the decision on confirmation of charges becomes final.

Under the existing system, the rate of legal fees/salaries paid for each member constituting the legal team is outlined in the following table:

Role within Legal Team	Equivalent category Office of the Prosecutor	Remuneration of Legal Team members under the Current Legal Aid System
Counsel	Senior Trial Attorney (P-5)	10,832 € / month
Associate Counsel	Trial Lawyer (P-4)	8,965 € / month
Legal assistant	Associate Legal Officer (P-2)	6,113 € / month
Case Manager	Case Manager (P-1)	4,872 € / month
Investigator	Investigator (P-4)	8,965 € / month
Resource person	Assistant investigator (GS-OL)	4,047 € / month

The salaries of legal team members have been calculated in accordance with gross pensionable remuneration of an international civil servant of the relevant/corresponding category, set at level V, as established by the tables of salaries of the UN. This is an important fact to highlight as this approach has been adopted by the Registry in view of the recognition that legal team members have to declare their incomes for tax purposes, will have to obtain their own private insurance, amongst other considerations which are specific to the status of team members acting before the Court.

1 - Payment of salaries/fees

The payment of fees of the team is effected on a monthly basis upon the presentation of the original copy of the time-sheet, which will be countersigned by counsel if the statement relates to support staff. Although team members are not paid based on an hourly basis, the time-sheet are in essence, a record or itemized statement of activity for each team member for the duration of the month that payment is being sought. This record keeping enables the Registry to ensure that team members are effectively providing professional services in their respective capacities as members of the legal team before payment is effected. Moreover, time-sheets are required for internal auditing and record keeping purposes of the Registry. In the ordinary course, moneys owed are transferred into the bank accounts of team members within two weeks of the time-sheets being provided and having been processed by the relevant sections of the Registry.

It must equally be mentioned that the counsel appointed must provide a detailed "action plan." Every six months thereafter or at the end of each phase of the proceedings, whichever occurs first, counsel must prepare a report detailing activities that have been carried out in line with the action

plan and submits the report to the Registrar for her review and approval in accordance with regulation 134 of the Regulations of the Registry. The action plan does not reveal confidential information or the legal team's strategy, but contains rather a general objective and tasks the team will engage in and all the activities counsel deems appropriate for an effective and efficient legal representation of his or her client before the Court. The information in the action plan is restricted to the Registry's internal use and is treated with utmost respect for confidentiality. The action plan and the time-sheets are pre-requisites to payments being made under the legal aid system.

2 - Compensation of professional charges

Team members who, at the time of their intervention before the Court, are managing a professional office on an individual basis or in partnership and as a result of their intervention before the Court incur professional charges are entitled to be compensated for such actual losses. This compensation is paid during the trial phase and during the other phases of the proceedings if the constraints of the scheduling of judicial activities justify the presence of counsel at the Seat of the Court for a period of more than 15 days. Professional charges comprise expenses related to the legal contributions imposed by the competent national authorities upon lawyers as part of their professional practice. Other professional charges, include, *inter alia*, office (located in the counsel's home jurisdiction) operating costs (stationery, photocopier, fax, telephone, documentation, mail, procedural costs), payment of clerks by means of a fixed or hourly rate, payment of outside associates where necessary to step in to take on counsel's obligation in the absence of the latter due to intervention before the Court. Compensation for professional charges can be set by the Registrar up to a maximum of 40% of the total monthly remuneration of the relevant team member's fees. In setting the percentage, the Registry takes into account any objective information submitted, including the supporting documentation as proof of the charges counsel personally and actually incurred in the course of his or her professional practice directly linked to the work of the Court.

3 - Expenses

Each team will equally receive a flat-rate monthly allotment in the amount of € 4,000 to cover the expenses of the team. Funds not used in one month are carried over to the next month(s) to be used for the expenses of the team. This fund covers items such as, *inter alia*, official long distance telephone calls of the team, office supplies, the purchase of additional equipment (e.g. necessary for field mission purposes), or other requirements of the team linked to their official functions.

Counsel and associate counsel are entitled to receive daily subsistence allowance for their stay at the Seat of the Court as well as the costs of travel to and from The Hague can have such costs deducted from the € 4,000 monthly allotment. Additionally, they are entitled to receive

compensation for terminal expenses, which are in essence the costs of travel/commuting from the airport/train station to the Seat of the Court and back upon furnishing original receipts of actual costs incurred. Such costs are equally deducted from the monthly €4,000 allotment provided to the team. *On exceptional basis*, other members of the team may receive compensation for travel costs for their first mission to the Seat of the Court to commence their mandates, provided counsel has specifically authorized the reimbursement against the monthly expenses allotment. All costs deducted from the 4,000 monthly allotment must be "reasonably necessary as determined by the Registrar for an effective and efficient defence" in accordance with Regulation 83.1 of the Regulations of the Court.

4 - Investigations Budget

Under the Court's legal aid budget each defence team is provided with an investigation budget in the amount of €73,006, which can be used from the date of the appointment of counsel in the pre-trial phase to the end of the proceedings. The budget, which is retained by the Registry but managed by counsel, exists to provide the legal team the financial resources to conduct effective investigations in the field. All expenses related to investigation needs of the team are deducted from this budget, including the fees to be paid to the Professional investigator and/or resource person(s) working for the team. The costs of travel and daily subsistence of all team members when they conduct investigations in the field will equally be deducted from this budget.

The defence investigation budget allocated has been determined on the basis of 90 days of remuneration of an investigator, the remuneration of a resource person during the same period, the daily subsistence allowance corresponding to this same period (€20,970 euros) and €13,000 for travel costs.

5 - Payment for Professional Investigators and Resource Persons

The salaries of professional investigators and resource persons are paid in accordance with the information provided in the following table.

<i>Professional Investigator</i>	<i>Resource Person</i>
38 euros/hour, a maximum of	17 euros/hour, a maximum of
299 euros/day, a maximum of	135 euros/day, a maximum of
8,965 euros/month	4,047 euros/month

6 - Requests for additional resources

A person entitled to receive legal assistance paid by the Court may *proprio motu* or through his or her counsel make a formal and reasoned application to the Registrar for additional means under Regulation 83.3 of the Regulations of the Court. Additional resources will only be granted if the Registrar is satisfied that under the specific circumstances of the case at hand it is reasonably necessary for an effective and efficient legal representation (see *e.g.* Regulation 83 of the Regulations of the Court).

The request for additional resources must be made formally in writing and sufficiently detailed and supported so as to elicit a positive response from the Registrar. Decision of the Registrar on the scope of legal aid granted may be reviewed by the relevant Chamber seized of the case on an application made by a person receiving legal assistance or through his or her counsel (Regulation 83.4 of the Regulations of the Court). The CBF endorsed "Report on the operation of the Court's legal aid system and proposals for its amendment" (ICC-ASP/6/4) dated 31 May 2007, outlines in great detail the modules in place that should guide a counsel's application for additional resources.