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## First quarterly report of the Registry on legal aid\*

### I. Introduction

1. The Registry, noting the previous quarterly reports on monitoring and assessing the implementation performance of legal aid (hereinafter the “First Quarterly Report”,<sup>1</sup> “Second Quarterly Report”,<sup>2</sup> “Third Quarterly Report”<sup>3</sup> and “Fourth Quarterly Report”<sup>4</sup>), and pursuant to resolution ICC-ASP/11/Res.1, section H, paragraph 4, which invites the Court to monitor and assess the implementation performance of the proposals concerning review of the legal aid scheme, and to report quarterly thereon to the Bureau of the Assembly of States Parties (hereinafter, “the Bureau” and “the Assembly” respectively),<sup>5</sup> now presents its first quarterly report (the “First Quarterly Report”), and reports to the Bureau and the Committee on its continuous work of monitoring and assessment, inter alia, of the implementation performance of:

- a) the revised legal aid scheme, as adopted by the Decision of the Bureau of 22 March 2012 (hereinafter “Decision of the Bureau”);<sup>6</sup> and
- b) the proposals adopted from the “Supplementary report of the Registry on four aspects of the Court’s legal aid system (the “Supplementary Report”)<sup>7</sup> with regard to three aspects, namely : (A) remuneration in the case of multiple mandates; (B) legal aid expense policy; and (C) remuneration during phases of reduced activity.

2. This quarterly report on assessment and implementation of the Decision of the Bureau and the Supplementary Report covers the period 1 January to 31 March 2014. The figures given for savings on legal aid, by comparison with those under the old scheme, include estimates where team members and permanent or *ad hoc* counsel remunerated under the revised scheme have not yet submitted their relevant hourly statements; it should be noted that these statements must in principle be submitted to the Registry by the end of the month to which they relate.

3. This report also provides information on the savings generated by management of the legal aid scheme in respect of the defence teams involved in proceedings under Article 70 of the Rome Statute in *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*.<sup>8</sup>

\* Previously issued as CBF/22/17.

<sup>1</sup> CBF/20/2, 27 February 2013.

<sup>2</sup> CBF/21/2, 10 July 2013.

<sup>3</sup> CBF/21/19, 20 August 2013.

<sup>4</sup> CBF/22/2, 10 February 2014.

<sup>5</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eleventh session, The Hague, 4-22 November 2012* (ICC-ASP/11/20), vol. I, part III.A, ICC-ASP/11/Res.1, section H, paras 3 and 4.

<sup>6</sup> ICC-ASP/11/2/Add.1.

<sup>7</sup> *Supplementary report of the Registry on four aspects of the Court’s legal aid system*, ICC-ASP/11/43, 1 November 2012.

<sup>8</sup> ICC-01/09-01/13.

## II. Implementation of the Decision of the Bureau

### Reporting period: 1 January to 31 March 2014

4. The Decision of the Bureau was notified to the Registrar on 23 March 2012, to take effect on 1 April 2012. Its application to the teams concerned is as described below.

### A. Implementation of part C of appendix I to the Decision of the Bureau : revised remuneration system

5. Part C of appendix I to the Decision of the Bureau provides that, as of 1 April 2012, the revised remuneration system shall have immediate effect with respect to the following situations under the legal aid system.

#### 1. Teams appointed after 1 April 2012

6. As stated in previous quarterly reports, an individual named in a warrant of arrest voluntarily surrendered in March 2013.<sup>9</sup> On 4 April 2013 the suspect asked for his costs of representation to be paid for under the Court's legal aid scheme. On 12 April 2013 the Registrar rendered a provisional decision on the subject's indigence,<sup>10</sup> in accordance with regulation 85.1 of the Regulations of the Court and regulation 132.3 of the Regulations of the Registry.

7. The suspect appointed counsel to represent him in proceedings before the Court, and the Registry formalized the appointment on 26 April 2013. A defence team was subsequently constituted to represent the suspect during the pre-trial phase of the case. The Committee is reminded that, for purposes of Court-assisted legal aid, the basic composition of a defence team during the pre-trial phase is as follows: one counsel, one legal assistant and one case manager. The Registry notes that, pursuant to a decision of 6 June 2013 on a request by counsel for additional resources, the defence team was granted resources equivalent to payment for an additional legal assistant under the revised scale in the Decision of the Bureau. The savings achieved in this regard were not included in the Fourth Report, but the Registry can now report that they amounted, for the period from June 2013 to March 2014, to a total of €12,240.

8. It should moreover be noted that one of the team's two legal assistants also acts for a second defence team paid for under the Court's legal aid scheme (*Lubanga* case<sup>11</sup>). This assistant's remuneration accordingly takes account of the Decision of the Bureau, which sets the remuneration of a legal assistant at €4,889, and of the provisions of the Supplementary Report on multiple mandates, which reduces by 50 per cent the remuneration received in the second case. During the current reporting period, total savings on fees amounted to €21,532.50.<sup>12</sup>

9. In the same case, as regards victims, Pre-Trial Chamber II, in its Decision of 2 December 2013, appointed the Office of Public Counsel for Victims ("the Office of Public Counsel") as counsel responsible for common legal representation of the groups of victims authorized to participate in the confirmation of charges hearing and associated proceedings in *The Prosecutor v. Bosco Ntaganda*.<sup>13</sup> The Chamber further decided that the Office of Public Counsel should be assisted by two field assistants. Pursuant to that decision, the Office of Public Counsel appointed two legal assistants, such appointments to take effect from 2 January 2014. Their payments fall within the terms of the revised scheme. Similarly, since one of these assistants acts as counsel in another case (*Lubanga*), the rules governing multiple mandates have accordingly been applied to him. During the current reporting period, the total savings on fees thus achieved amounted to €7,344.<sup>14</sup>

<sup>9</sup> *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06.

<sup>10</sup> *Ibid.*, *Décision du Greffier sur la demande d'aide judiciaire aux frais de la Cour déposée par M. Bosco Ntaganda*, ICC-01/04-02/06-48, 12 April 2013.

<sup>11</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

<sup>12</sup> The monthly cost of defence professional fees (one counsel, one associate counsel and one case manager) during the pre-trial phase under the old legal aid scheme is €21,817 (excluding professional charges). The Decision of the Bureau has reduced this to €17,084.

<sup>13</sup> ICC-01/04-02/06-160.

<sup>14</sup> Implementation of the revised system engenders monthly savings of €1,224 for each legal assistant, namely €7,344 of savings for the current reporting period.

10. Thus, total savings achieved for teams appointed since 1 April 2012 amount to €41,106.

## 2. Changes in teams

11. Paragraph 3(b), part C, to appendix I invites the Court to implement the revised scheme in the event of any changes in legal teams during any stage of proceedings, for example by means of replacement of individual members or of whole teams, as well as in case of appointment of new members.

12. During the current reporting period, this aspect of the Decision of the Bureau was implemented in respect of a team providing legal representation to victims in the *Katanga* case (DRC), following the departure on 20 December 2013 of its case manager, who was being paid under the old scale. This person was replaced by another individual with effect from 21 December 2013, who is remunerated in accordance with the revised scheme. It not having been possible to finalize payments by the date of the Fourth Report, the Registry now reports that the savings engendered as a result of this change amounted, as at 31 March 2014, to €3,295.97.<sup>15</sup>

13. Furthermore, on 11 March 2014 the Katanga defence team submitted a request for additional resources, which was approved by the Registry on 28 March 2014, under a decision granting, with effect from 13 March 2014, additional funds to cover the costs of an assistant counsel, to be remunerated in accordance with the scale established by the Decision of the Bureau. The Registry will report on the savings achieved in this regard in its next quarterly report.

## 3. Individual instances of representation

14. The situation in regard to the representation of Mr. Saif Al-Islam Kadhafi was described in previous reports, which explained why the Registry had decided, in light of the circumstances, and on an exceptional basis, temporarily to cover the suspect's defence costs, pending an assessment of his means and a decision on his indigency status.

15. It has been calculated that implementation of the Decision of the Bureau in this case has resulted in savings over the current reporting period amounting to €7,833 in the fees of an external counsel representing the suspect.

16. Furthermore, on 6 January 2014, through her counsel, Madame Simone Gbagbo submitted a request for legal aid to cover the cost of her representation before the Court. By a decision of 6 February 2014 the Registrar decided, in light of the current proceedings, which require the defence to submit written pleadings on the issue of admissibility, and of the fact that the Registry is not in a position to approach the suspect in order to carry out the necessary checks for an informed assessment of her request for legal aid, to take responsibility, on an exceptional and temporary basis, for the costs of the suspect's legal representation pending an assessment of her means and a decision on her indigency status. That decision, in accordance with the Decision of the Bureau and the Supplementary Report, apportions the defence costs as follows: a maximum of €8,221 for professional fees and an amount of €3,000 for expenses or other costs. The resultant savings on fees for the reporting period amount to €7,833. However, given that counsel has not yet submitted all relevant hourly statements, it is possible that further savings may be identified. The Registry will report any changes in this regard in its future quarterly reports.

17. Finally, following the death, on 16 January 2014, of one of the legal representatives in *The Prosecutor v. Jean-Pierre Bemba Gombo*,<sup>16</sup> the Chamber authorized the Registry to give the second legal representative a legal mandate to represent all of the victims authorized to participate in the case.<sup>17</sup> Since deceased counsel's hourly statements, payment of which is governed by the old system, have not yet been submitted to the department

<sup>15</sup> For the month of December 2013, implementation of the revised system produced a saving of €601.97. Transition from the old to the revised system has produced a monthly saving of €898.

<sup>16</sup> *Report concerning the status of the legal representation of victims represented in the case by the late Mr Assingambi Zarambaud*, 5 February 2014, ICC-01/05-01/08-2961.

<sup>17</sup> *Order on the legal representation of victims previously represented by Me Assingambi Zarambaud*, ICC-01/05-01/08-2964.

concerned, the Registry is unable at the present time to calculate potential savings. The matter will be dealt with in future quarterly reports.

18. It follows from the foregoing that, for the current reporting period, total savings achieved in individual instances of representation amount to €15,666.

#### **4. Appointment of permanent and *ad hoc* counsel**

19. During the current reporting period, part C of appendix I has been implemented in respect of seven permanent counsel. Savings achieved total €6,485.58.

20. To this amount there should be added the savings that could not be included in the Fourth Quarterly Report, because the Registry was not at that time in possession of the hourly statements following the appointment of seven permanent counsel in late December 2013 in the proceedings in case ICC-01/05-01/13. Those savings amount to €5,980.

21. Finally part C of Appendix I was also implemented during the current reporting period in respect of one *ad hoc* counsel (hereinafter “independent counsel”) and one legal assistant in Article 70 proceedings. At the time of preparation of this report, the Registry is not yet in receipt of the necessary information to enable it to calculate the savings in respect of these appointments. These figures will be provided in subsequent reports.

22. It follows from the foregoing that savings in respect of the appointment of permanent counsel for the current reporting period, and of appointments which could not be included in previous reports, amount to €12,465.59. The Registry would point out that this figure represents both savings actually achieved and those potentially achievable, given that certain hourly statements have not yet been submitted to the competent Registry department.

#### **B. Implementation of part D of Appendix I: Deferred implementation of revised fees**

23. Paragraph 1, part A, of Appendix I to the Decision of the Bureau provides that “[t]he revised system of remuneration will apply to those teams whose case progresses to the confirmation of charges hearing or the hearing of the trial. Any new teams or changes thereof will be subject to the immediate implementation of the revised system of remuneration”.

24. Paragraph 5, part D, explains that “[w]ith respect to teams, which as of 1 April 2012, are allocated to a case where the hearing of the trial has not yet commenced the revised fees will only apply once the hearing of the trial has started. Up until such time the hearing of the trial has not commenced, the teams in such a case will be subject to the existing remuneration regime of the Court”.

25. As explained in the Fourth Quarterly Report, these specific aspects of the Decision of the Bureau were implemented in regard to the defence team of Mr. Sang and of the two teams constituted to represent victims in the Kenya situation. Savings achieved for the current reporting period total €35,253 for the defence<sup>18</sup> (excluding savings in respect of the remuneration of associate counsel) and the two victims’ teams.

#### **C. Implementation of part E of Appendix I: Gradual implementation of revised fees**

26. The existing remuneration regime continues to apply until proceedings before a Chamber seized of a case have been completed and the case enters the appeal phase, in accordance with provisions of the Decision of the Bureau relating to teams which, on 1 April 2012, are assigned to cases where the trial is ongoing. The rules governing

<sup>18</sup> Defence savings have been calculated on the basis of a team composed of one counsel, one legal assistant and one case manager. Calculation of the difference between the old system of payment and the revised scale shows a monthly saving of €4,733, giving €14,199 for the current reporting period. This amount does not take account of savings in the remuneration of associate counsel, which will be included in the part of this report dealing with multiple mandates. As regards savings on the two teams representing victims (each consisting of one counsel and one case manager), these amount to €7,018 per month, namely €21,054 for the current reporting period. This figure is obtained by calculating, for these two teams, the difference between the old payments system and the revised scale.

remuneration set out in part E of Appendix I of the Decision of the Bureau will apply once the proceedings have entered the appeal phase.

27. As stated in the First and Third Quarterly Reports, a defence team acting in the DRC situation was initially remunerated in accordance with the regime applicable to the initial “segment A” of the appeal procedure. After taking the necessary measures and notifying the team concerned of the implementation of part E of the Appendix, the Registry, as explained in the Fourth Report, consulted the Presidency regarding the estimated length of the proceedings before the Appeals Chamber and estimated the corresponding payments.

28. Lead counsel for the team concerned filed an application with the Appeals Chamber, challenging the Registry’s implementation of the new fee scales. The Registry submitted its observations on the matter. By a decision dated 11 February 2014,<sup>19</sup> the Appeals Chamber dismissed the defence application. The resultant savings amount to €3,155.12. This sum, which represents the total amount overpaid, is to be repaid to the Court by team members on the basis of the Registry’s estimates;<sup>20</sup> from 1 April 2014, the revised scales apply to all team members, and, according to the exact or actual duration of the appeal proceedings, the Court will make up the difference between payments made and those actually due. Similarly, amounts overpaid will have to be repaid to the Court by each team member concerned.

29. Furthermore, the Registry has taken the necessary measures, after consulting the Presidency, to notify gradual implementation of the revised fee scales to a defence team acting in another case in the DRC situation.<sup>21</sup> The team has been informed of the Registry’s estimates, based on the estimated duration of the appeal proceedings:<sup>22</sup> phase A (from 5 February to 25 July 2013), phase B (from 26 July 2013 to 11 January 2014) and phase C (from 12 January to 30 June 2014). The figures show a total over-payment of €22,875.70<sup>23</sup> (including professional charges), which will have to be repaid to the Court by the defence team. Since, at the time of writing of this report, this amount has not yet been recovered, the Registry will inform the Assembly of the precise savings made in this regard in its next quarterly report.

30. Finally, it should be noted that letters informing the teams representing victims in the *Lubanga* case of the gradual implementation of the revised scales are currently being drafted at the time of writing of this report. The Registry will also report in its next quarterly report on the precise savings achieved in this regard, on the basis of its estimate of the duration of the appeal phase applied to the defence team, as set out above.

#### **D. Implementation of the Decision of the Bureau as regards compensation for professional charges**

31. The Registry reminds the Committee that requests for compensation in respect of professional charges are dealt with according to the individual situation of each individual team member concerned, and a decision is reached in light of the supporting documents provided by applicants in order to determine whether the conditions are met for payment of compensation under paragraphs 129 to 138 of the “Registry’s single policy document on the Court’s legal aid system”.<sup>24</sup>

32. As stated in previous reports, the Registry has received a request from an external counsel in the Kenya situation for compensation in respect of professional charges. Since this request falls under the revised scheme, counsel can claim compensation up to a maximum of 30 per cent of the fees applicable under the Court’s legal aid scheme. The Registry has recently received additional information, which is being evaluated in order to determine whether the necessary conditions for reimbursement of professional charges are met in this case, and, if so, to calculate the amounts payable. The Registry will provide the Assembly in future quarterly reports with updated information on this matter.

<sup>19</sup> ICC-01/04-02/12-159.

<sup>20</sup> The Registry’s estimates of repayments for each category are as follows: counsel (€1,740.66), associate counsel (€222.46), the two legal assistants (€1,192).

<sup>21</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

<sup>22</sup> This estimate does not take account of pending appeal proceedings against the decision on reparations.

<sup>23</sup> This amount is not included as a saving in this report.

<sup>24</sup> ICC-ASP/12/3.

33. During the current reporting period, the Registry has also settled a request for reimbursement of professional charges of a counsel in the Libya situation for the period April to November 2013. This request was duly evaluated on the basis of supporting documents produced by the applicant. The Registry considers that these establish that the necessary conditions for payment of legal aid are met, such that compensation should be paid in respect of a proportion of counsel's charges directly connected with his Court mandate, in an amount corresponding to 21.5 per cent of the fees paid to him during the above period. Implementation of the Decision of the Bureau has thus generated savings amounting to €20,899.80<sup>25</sup> for the period April to November 2013.

### III. Implementation of the Supplementary Report

#### Reporting period: 1 January to 31 March 2014

34. In accordance with the Assembly's request for quarterly reports to include an evaluation of the implementation of the changes resulting from the Supplementary Report,<sup>26</sup> the Registry has also implemented the following aspects of the Supplementary Report:

- a) Remuneration in the case of several mandates for legal team members;
- b) Legal aid travel policy; and
- c) Remuneration during phases in which activities are considerably reduced.

#### A. Remuneration in the case of several mandates

35. This aspect of the Supplementary Report was implemented for the first time when a defence counsel asked the Registry to approve the assignment to his team of a new member already working for two other defence teams receiving legal aid from the Court. The request was refused by the Registry in accordance with the relevant amendments to the Supplementary Report and with its underlying logic and reasoning, which seek to limit multiple mandates of team members to a maximum of two cases.

36. The Second Quarterly Report noted two other cases of multiple mandates. The first one was where a defence counsel asked the Registry to approve the assignment to his team of a new member<sup>27</sup> who was already acting as legal assistant in another defence team receiving legal aid from the Court.<sup>28</sup> During the current reporting period this multiple mandate engendered savings of €7,333.50.<sup>29</sup> In the second case, a permanent counsel responsible for assisting witnesses in connection with Rule 74 of the Rules of Procedure and Evidence was appointed to a second mandate.<sup>30</sup> This has not engendered any savings during the current reporting period, as the Registry has not yet received any statements for purposes of calculating payment.

37. The third instance of multiple mandates occurred in a case in the Kenya situation,<sup>31</sup> as a result of the appointment, on 1 September 2013, of a new associate counsel (replacing a former member who had left the team) who was already acting as legal assistant for a defence team in the DRC situation.<sup>32</sup> Since 1 November 2013, this associate counsel has been receiving for the Kenya case the full amount of his fee as associate counsel in accordance

<sup>25</sup> This figure is obtained by adding together the two types of savings over the period in question (April to November 2013): the savings from applying the 21.5 percentage for professional charges in place of the 30 per cent maximum in accordance with the Decision of the Bureau amount to €5,965.40, while those resulting from the transition from the old payment system to the revised scheme total €14,934.40.

<sup>26</sup> See Supplementary Report, *supra*, footnote 7.

<sup>27</sup> *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06.

<sup>28</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

<sup>29</sup> The maximum full-time rate applicable in this case to the legal assistant is €6,113 per month. The maximum full-time rate applicable to legal assistance in the second case is €4,889 per month pursuant to the Decision of the Bureau. In accordance with the provisions of the Supplementary Report on multiple mandates, the amount payable in the second case has been reduced by 50 per cent.

<sup>30</sup> *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07, and *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08.

<sup>31</sup> *The Prosecutor v. Joshua Arap Sang*, ICC-01/09-01/11.

<sup>32</sup> *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07, and *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

with the Decision of the Bureau<sup>33</sup> and 50 per cent of his fees for the DRC case. This change was found to be reasonable because, in the first case, the team member concerned was not receiving the salary of a full-time legal assistant, but remuneration corresponding to one third of that payable to a legal assistant under the old system.<sup>34</sup> For the current reporting period, the savings achieved as a result of this change amount to €5,094.15. It should be noted that the change affects the savings recorded in the Fourth Quarterly Report regarding the months of November and December 2013, and requires adjustment to reflect the exact extent of the savings. Thus adjusted, the actual saving is €175.81.<sup>35</sup>

38. Further, the Office of Public Counsel has been appointed to represent the victims in a case in the DRC situation, assisted by two field-based assistants,<sup>36</sup> whose appointments took effect from 2 January 2014. One of these legal assistants had previously been appointed in another case as counsel.<sup>37</sup> As already explained above, the Registry applied to this individual the payment rules for multiple mandates in the following proportions: he receives 100 per cent of his remuneration as counsel in the first case<sup>38</sup> and 50 per cent of his fees as legal assistant in the second case.<sup>39</sup> The result is that, during the current reporting period, application of this aspect of the Supplementary Report has generated savings for this team amounting to €7,333.5.

39. Finally, the multiple mandate regime has also been applied to three defence team members in proceedings in case ICC-01/09-01/13, but at the time of writing this report, the Registry did not yet have all the information that would enable it to calculate the savings achieved in this regard. Figures for these will be given in the next quarterly report.

40. Thus, implementation of the multiple mandate regime has produced total savings of €14,842.81.

## B. Policy on expenses under the legal aid scheme

41. The Registry has fully implemented the measures relating to the flat-rate monthly allowance<sup>40</sup> intended to cover general expenses of the 21 legal teams<sup>41</sup> currently in receipt of legal aid, with the exclusion of the defence teams in case ICC-01/09-01/13,<sup>42</sup> for which particulars of savings will be given in Part III of this report. Implementation of the reduction in this flat-rate allowance for these teams has enabled savings of €64,000<sup>43</sup> to be identified in respect of the current reporting period.

<sup>33</sup> The Decision of the Bureau sets the maximum remuneration payable to associate counsel at €6,956 per month.

<sup>34</sup> As a result of the oral decision of Trial Chamber II (ICC-01/04-01/07-T-341-ENGET WT) of 18 June 2012, and of the flexibility exercised by defence counsel in allocating the resources assigned to his team, the legal assistant concerned was paid an amount not to exceed €2,037, equivalent to one third of the salary of a legal assistant under the old scale of remuneration.

<sup>35</sup> This amount represents the difference [€4,918.34] resulting from the change from the multiple mandates regime applied in the Fourth Report (100 per cent payment as legal assistant working one-third time (€2,037.66) plus 50 per cent of salary as associate counsel (€3,478)) to the arrangement considered in this report (100 per cent of associate counsel's salary (€6,956) plus 50 per cent of legal assistant's salary working one-third time (€1,018.83)). In the first case the multiple mandate generates savings of €6,956. In the second, the saving is €2,037.

<sup>36</sup> *Decision Concerning the Organisation of Common Legal Representation of Victims*, ICC-01/04-02/06-160, 2 December 2013.

<sup>37</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

<sup>38</sup> In this case, the maximum remuneration applicable to two legal representatives in the same team is €10,832 per month (excluding professional charges) in accordance with the old system.

<sup>39</sup> The maximum full-time remuneration payable under the legal scheme in this case pursuant to the Decision of the Bureau is €4,889 per month. The Supplementary Report rules on multiple mandates reduce remuneration by 50 per cent in the second case.

<sup>40</sup> Each team's monthly allowance under the old scheme was €4,000. It was reduced to €3,000 in the Supplementary Report.

<sup>41</sup> This figure does not include the team dissolved in January 2014 in consequence of Order ICC-01/05-01/08-2964.

<sup>42</sup> For these teams, the allowance for expenses is €1,000 per month, by contrast with that for the other 21 teams, for which the allowance has been set at €3,000 pursuant to the Supplementary Report.

<sup>43</sup> This amount includes the saving of €1,000 (for the month of January 2014) in respect of the team dissolved pursuant to the above-mentioned Order ICC-01/05-01/08-2964.

42. As a result of implementation of the provisions of the Supplementary Report, and specifically of the termination of automatic payment of the daily subsistence allowance, reimbursement of accommodation and other related costs in respect of professional visits to The Hague by counsel and associate counsel has remained within the budget set for teams' expenses. Reimbursement is calculated by reference to costs actually incurred, on production of the requisite supporting documents.

### **C. Remuneration during phases of reduced activity**

43. The Registry reports that, for the current reporting period, the current state of judicial activity has not, in its view, justified implementation of this aspect of the Supplementary Report.

## **IV. Savings achieved in the proceedings under Article 70 of the Rome Statute**

44. In the proceedings instituted in case ICC-01/09-01/13, Messrs. Jean-Jacques Mangenda Kabongo, Fidèle Babala and Aimé Kilolo<sup>44</sup> have requested legal assistance paid by the Court. They have provisionally been declared totally indigent by individual decisions of the Registrar given on 20 December 2013 and 29 January 2014 respectively. In those decisions the Registrar determined, after considering all pertinent aspects of the case, including its particular nature and the state of the proceedings, that the overall legal aid envelope for each defence team in respect of professional fees should consist of a global sum, excluding professional charges, of €8,542 per month, plus a monthly allowance of €1,000 to cover general expenses. An appeal to the Presidency by one of the defence counsel against this decision on the overall envelope has been dismissed. On 20 February 2014, another counsel submitted to Pre-Trial Chamber II an application challenging the Registrar's decision in relation specifically to his client. The Registrar submitted his observations on 27 February 2014. As at the time of writing of this report, the Chamber had not yet ruled on that application.

45. The Registry notes that, if the amount of the legal aid envelope in case ICC-01/09-01/13 were to be aligned on the parameters applicable under the Court's legal aid scheme (Decision of the Bureau and Supplementary Report) to individuals prosecuted for Article 5 crimes at the pre-trial stage, defence costs for each team would amount to €20,084 per month, namely €17,084<sup>45</sup> in respect of professional fees (excluding professional charges) and €3,000 on account of general expenses. Hence, savings achieved in case ICC-01/09-01/13 presently amount to €94,878<sup>46</sup> for the current accounting period.

## **V. Savings achieved since the entry into force of the amendments**

46. The Registry informs the Bureau and the Committee that its continuous work of monitoring and assessment of the Court's legal aid scheme, as amended by the Bureau in its Decision of 22 March 2012 and modified through implementation of the proposals set out in the Supplementary Report, have enabled it to achieve, over the period 1 January to 31 March 2014, savings totaling €305,562.30, as shown in the following table.

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<sup>44</sup> Given the Registrar's very short statutory deadlines for deciding on a request for legal aid, and in order to ensure that, in the circumstances of the case, Mr. Kilolo has access to an effective defence, he has temporarily been awarded legal aid, pending completion of the enquiry into his property and assets. The Registrar has taken the necessary action in this regard.

<sup>45</sup> This figure represents defence costs in proceedings under Article 5 in the pre-trial phase and taking account of the Decision of the Bureau: one counsel (€8,221), one legal assistant (€4,889) and one case manager (€3,974).

<sup>46</sup> The total monthly cost for the three teams in case ICC-01/09-01/13 amounts to €28,626, calculated as follows: 3 x [€8,542 + €1,000]. This will give a total of €85,878 for the current three-month reporting period. If the Decision of the Bureau and the Supplementary Report were applied, that figure would be €60,252 per month for the three teams, amounting to €180,756 for the three months covered by this report.

**Table showing savings achieved over the period 1 January to 31 March 2014**

<i>Aspects of the legal aid scheme</i>	<i>Savings (euros)</i>
Teams appointed after 1 April 2012	41,106
Changes in teams	3,295.97
Individual instances of representation	15,666
Appointment of permanent counsel	12,465.59
Deferred implementation of the revised remuneration scheme	35,253
Gradual implementation of the revised remuneration scheme	3,155.12
Compensation for professional charges	20,899.8
Multiple mandates	14,842.81
Expenses and other costs	64,000
Legal aid in Article 70 proceedings	94,878

47. It is apparent from the Fourth Quarterly Report that savings achieved over the period 1 April 2012 to 31 December 2013 as a result of implementation of the various aspects of the Decision of the Bureau and the Supplementary Report amounted to €750,473.22. It follows that, for the period 1 April 2012 to 31 March 2014, total savings of €1,056,035.52 have been achieved as a result of the amendments to the legal aid scheme.

48. The Registry will continue to monitor and assess implementation of the legal aid scheme in light of the experience and lessons derived from the Court's proceedings, with a view to ensuring not only that funds contribute effectively to effective and efficient legal representation, but also that legal aid financed out of public funds is managed judiciously, and will report thereon to the Committee and to the Assembly.

## VI. Strengthening the Registry's capacity

49. The impact on the resources of the Counsel Support Section of implementing, monitoring and assessing the amendments to the legal aid scheme has on several occasions been brought to the attention of the Hague Working Group, and highlighted in the Registry's previous quarterly reports.

50. Implementation of these amendments does indeed have massive consequences for the work of this section and for its already very limited human resources. If the section is to achieve optimum performance, its capacity needs to be significantly strengthened. Such enhancement of staffing resources is further justified by the fact that the number of defence teams and teams legally representing victims has shown a marked increase, with significant effects on the heavy workload of the Counsel Support Section, which currently assists 46 teams<sup>47</sup> and duty and *ad hoc* counsel, in addition to the various other activities for which it is responsible.

51. Furthermore, the Registry notes that, very recently, the Counsel Support Section has received requests for legal assistance filed by two suspects in cases ICC-01/09-01/13 and ICC-02/11-02/11, which were submitted to the Court during the period covered by this report. Those requests are currently being evaluated by the section. In its next quarterly report, the Registry will provide the Assembly with further information on the possible impact on the Court's legal aid scheme of the formation of two new teams.

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<sup>47</sup> This figure includes government counsel and teams not acting under the Court's legal aid system, as well as those active in situations. It should be noted that in 2009 there was one team per staff member, whereas in 2014 that figure is 4.88; the same applies to the number of individuals (team members) potentially requiring assistance: from four in 2009, this has risen to 20 in 2014.