



## Assembly of States Parties

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## Registry's biannual report on legal aid (January – June 2015)\*

### *Executive summary*

This biannual report covers the activities relating to the permanent monitoring and assessment of the implementation performance of the revised legal aid scheme, as adopted by the Decision of the Bureau of 22 March 2012;<sup>1</sup> and three aspects of the proposals contained in the “Supplementary report of the Registry on four aspects of the Court’s legal aid system”<sup>2</sup> and follows on from the previous reports submitted on the basis of resolution ICC-ASP/11/Res.1.<sup>3</sup>

Upon the comparison of the payments that were actually made under the revised legal aid system and the payments that would have been made under the legal aid system that was in force before the revision, the savings achieved for the period 1 January 2015 to 30 June 2015 stand at €433,260.89.

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\* Previously issued as CBF/25/2.

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

<sup>2</sup> ICC-ASP/11/43.

<sup>3</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., para. 4.

1. This biannual report is prepared pursuant to resolution ICC-ASP/11/Res.1,<sup>4</sup> and ICC-ASP/13/5,<sup>5</sup> which invites the Registry to permanently monitor and assess the implementation specifically: (a) of the revised legal aid system as adopted by the Decision of the Bureau of 22 March 2012; and (b) three aspects of the proposals contained in the “Supplementary report of the Registry on four aspects of the Court’s legal aid system”.

2. The present report covers the period from 1 January to 30 June 2015 and reflects the savings generated during this period.

3. The savings resulting from changes to the legal aid system include the difference in payments made under the revised legal aid system and the payments that would have been made under the legal aid system that was in force before the revision. Where fees were still paid under the old legal aid system, no savings were generated and have therefore not been reflected in this report.

4. During the period covered by this report, Appendix I, Part C was implemented 27 times in relation to appointments of duty counsel.

5. Savings in the proceedings in case ICC-01/09-01/13 were calculated using the method applied in the preparation of the previous report on legal aid.<sup>6</sup> This method assumes that the legal aid in this case had been calculated in accordance with the same parameters applied to proceedings brought under article 5 of the Rome Statute during the Pre-Trial phase.

6. The Registry hereby informs the Bureau and the Committee that its permanent oversight and evaluation activities involving the Court’s legal aid scheme, as amended by the Bureau in its Decision of 22 March 2012, and amended with the implementation of the proposals included in the Supplementary Report, allowed savings of €433,260.89 to be achieved between 1 January and 30 June 2015. A breakdown is provided in the table below.

**Table: Savings generated over the period 1 January to 30 June 2015**

<i>Aspects of the legal aid scheme</i>	<i>Savings (euros)</i>
Teams appointed after 1 April 2012	114,279.95
Changes in teams	5,960.76
Individual instances of representation	21,051.88
Appointment of duty counsel	29,977.51
Deferred implementation of the revised remuneration scheme	21,606.69
Gradual implementation of the revised remuneration scheme	16,734.98
Compensation for professional charges	3,133.20
Multiple mandates	44,180.87
Legal aid in article 70 proceedings	176,335.05
<b>Total</b>	<b>433,260.89</b>

7. The Registry recalls that the savings achieved as a result of changes to legal aid for the period 1 April 2012 to 31 December 2014 stood at €2,250,518.14. Overall savings for the period 1 April 2012 to 30 June 2015 stand at €2,683,779.03.

8. The Registry will continue to monitor and assess the implementation of the legal aid system in the light of experience and lessons learnt from the proceedings before the Court, to ensure not only that funds actually contribute to effective and efficient legal representation for the recipients of the system, but also that the legal aid financed by public funds is carefully managed.

<sup>4</sup> *Idem*.

<sup>5</sup> *Official Records ... Thirteenth session ... 2014* (ICC-ASP/13/20), vol. II, part B.1, para. 74.

<sup>6</sup> ICC-ASP/13/2.

9. The Registry refers to the considerations set out in its previous reports on the need to strengthen the capabilities of the Counsel Support Section which is facing an increased additional workload resulting from the implementation, monitoring and assessment of changes to the legal aid scheme.

## Annex

### Reimbursement of debt arising from the advance of legal aid

1. At its twenty-third session, the Committee recommended that the Court establish a procedure to deal with the issues of reimbursing any debt arising from the advance of legal aid and the financing of legal aid when the Court receives assets from defendants during its judicial procedure, taking into account the existing regulations and rules of the Court, any legal and judicial considerations that might be relevant, and lessons learned from the Bemba case.<sup>1</sup>

#### A. Background information

2. Mr Jean-Pierre Bemba is a defendant in pending cases ICC-01/05-01/08 and ICC-01/05-01/13 before the Court. He was found not eligible for legal aid, based on his considerable wealth. However, since he was apparently facing temporary difficulties in accessing the funds for the payment of his legal fees in case ICC-01/05-01/08, Trial Chamber III ordered the Registrar to advance the required funds, subject to reimbursement by Mr Bemba (ICC-01/05-01/08-567-Red, paras. 106-108 and 110-111; ICC-01/05-01/08-596-Red, para. 16; ICC-01/05-01/08-1007-Red, para. 39 (viii)). Mr Bemba signed a document agreeing to reimburse the Court. Accordingly, the Court has been advancing the funds for the payment of Mr Bemba's legal fees since March 2009. The advance of funds was paid from the Court's legal aid budget. In 2014, the Presidency issued a similar order regarding the advance of legal fees to Mr Bemba in the article 70 proceedings in case ICC-01/05-01/13 (ICC-01/05-01/13-Corr-Red, paras. 76-77). In May 2014, the Court received €2,067,982.25 from a State Party which had executed a seizure order against a bank account held by Mr Bemba ("the Seized Funds"). In accordance with the orders of Trial Chamber III and the Presidency, this money was to be used to reimburse the advanced funds.

3. In July 2014, the Registry proposed to the Committee that the Seized Funds be used to finance the continued advance of funds to Mr Bemba in both cases. To this end, the Court proposed that the Assembly establish a special account pursuant to regulation 6.5 of the Financial Regulations and Rules. It was anticipated that the Seized Funds would cover all advances of fees to Mr Bemba from 2015. Thus, the legal fees would not have been advanced from the legal aid budget.

4. In its Resolution ICC-ASP/13/Res.1<sup>2</sup> of 17 December 2014, the Assembly rejected the Registry's proposal and decided "that the funds from Mr Bemba for the reimbursement of defence costs amounting to €2,068,000 be treated as miscellaneous income to be returned to States Parties".

#### B. Proposed procedure

5. Taking note of the Assembly decision on this matter mentioned in the above paragraph, the Registry will proceed accordingly in the future, should further moneys or assets be seized from defendants for the purpose of reimbursing the advance of Defence fees. Any such funds will be considered as miscellaneous income and, pursuant to regulation 7.1 of the Financial Regulations and Rules, will be credited to the Court's General Fund. Such funds will be reflected in the final accounts for the financial period pursuant to regulation 11.1(a) of the Financial Regulations and Rules.

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth session, New York, 8-17 December 2014 (ICC-ASP/13/20)*, vol. II, part B.2, para. 144.

<sup>2</sup> *Official Records ... Thirteenth session ... 2014 (ICC-ASP/13/20)*, volume I, part III, ICC-ASP/13/Res.1, section D., para. 1.