

**Twelfth session**

The Hague, 20-28 November 2013

**Registry's first quarterly report on monitoring and assessing the implementation performance of legal aid\*****I. Introduction**

1. The Registrar presents this report pursuant to resolution ICC-ASP/11/Res.1<sup>1</sup>, adopted by the Assembly of States Parties (hereinafter "the Assembly") at its eleventh session, wherein the Assembly, *inter alia*:

(a) Called on the International Criminal Court (hereinafter "the Court") to continue implementing the revised remuneration policy as adopted by the Bureau<sup>2</sup> (hereinafter "the Bureau") on 23 March 2012 (hereinafter the "decision of the Bureau");

(b) Decided to adopt the proposals as contained in the "Supplementary report of the Registry on four aspects of the Court's legal aid system" (hereinafter the "Supplementary Report")<sup>3</sup> with regard to (A) remuneration in the case of multiple mandates; (B) legal aid travel (expense) policy; and (C) remuneration during phases of reduced activity, and requested the Court to take all the necessary steps with a view to implementing those proposals as expeditiously as possible, and to report to the Committee on Budget and Finance (hereinafter "the Committee") in advance of its twentieth session; and

(c) Invited the Court to monitor and assess the implementation performance of the proposals mentioned in (a) and (b) above, and to report thereon to the Bureau on a quarterly basis.

2. In accordance with that resolution, more specifically points (b) and (c) above, the Registry hereby reports on the assessment and implementation of the decision of the Bureau and the Supplementary Report. This first quarterly report covers the timeframe from adoption of the decision of the Bureau to the end of February 2013.

**II. Implementation of the decision of the Bureau on legal aid**

*Reporting period: 1 April 2012 to 28 February 2013*

3. The decision of the Bureau was notified to the Registrar on 23 March 2012; for implementation on 1 April 2012. The Registry notified the decision to all legal teams operating under the Court's legal aid scheme and undertook to inform the relevant teams whenever specific aspects of the decision would become applicable to them. Over the

\* Previously issued as CBF/20/2.

<sup>1</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. 3-4.

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

<sup>3</sup> Supplementary report of the Registry on four aspects of the Court's legal aid system (ICC-ASP/11/43).

reporting period, the decision of the Bureau has been implemented in five (5) cases currently before the Court, as indicated below.

#### **A. Implementation of appendix I, part C, revised fees**

4. The decision of the Bureau stipulated that the revised remuneration system should have immediate effect with respect to teams appointed before the Court after 1 April 2012 and to changes in legal teams during any stage of proceedings, either as a result of the replacement of individual members or of whole teams, as well as in the event of the appointment of additional teams. This aspect of the decision of the Bureau was implemented in respect of two (2) legal teams.

5. In the situation of Côte d'Ivoire, the revised fee system was applied to one Legal Assistant appointed in June 2012 in the context of legal representation of victims, resulting in cost savings of €8,568.00 (from 4 June 2012 to 31 December 2012) as well as additional savings of €2,448.00 in January and February 2013.

6. Additional savings were made as a result of applying the amendments in the same situation, where a successful application under Regulation 83(3) of the Regulations of the Court resulted in additional resources being granted to the defence team in the form of an extra Legal Assistant on 6 June 2012. The revised system was applied to the monthly remuneration of that newly appointed team member, resulting in savings of €8,568.00 in 2012. An additional saving of €2,448.00 was generated in January and February 2013.

#### **B. Implementation of appendix I, part D, deferred implementation of revised fees**

7. In accordance with Part A, paragraph 1 of appendix I of the decision of the Bureau, "... [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." Part D, paragraph 5 of appendix I of that decision emphasised 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."

8. Those specific aspects of the decision of the Bureau applied and were implemented in the situation in Kenya in respect of one defence team and two common legal representatives for victims' teams.

9. For the defence team, implementation in 2012 resulted in savings of approximately €61,257.00. The cost savings arising out of implementation of this aspect in respect of the defence team in question for January and February 2013 amount to approximately €13,466.00.

10. For the two common legal representatives of victims' teams, total savings for 2012 amounted to approximately €66,626.00. In addition, implementation of the revised system generated savings of €7,018.00 for January and February 2013.<sup>4</sup>

#### **C. Implementation of appendix I, part E, gradual implementation of revised fees**

11. Pursuant to the decision of the Bureau, with respect to teams which, as of 1 April 2012, are assigned to cases where the trial is on-going, the existing remuneration regime of the Court will apply until such time as proceedings before the Trial Chamber have been

<sup>4</sup> The decision of the Bureau was implemented twice in respect of the common legal representatives of victims' teams. Firstly, both teams progressed to trial, resulting in implementation of the revised legal fees with effect from 11 June 2012, generating savings in 2012 from both teams of approximately €66,626.00. It was implemented for the second time as a result of decisions of Trial Chamber V, which established unprecedented modalities and effectively appointed two new common legal representatives for victims (their teams being put together at a later date) to be assisted in part by the Office of Public Counsel for Victims.

completed and the case is before the Appeals Chamber. Once proceedings before the Appeals Chamber commence, transitional remuneration arrangements as set out in appendix I, Part E to the decision of the Bureau will apply.

12. During the reporting period, only one defence team in the situation of the Democratic Republic of the Congo was subject to the first ‘segment A’ fee schedule as set for the gradual implementation of revised fees in proceedings before the Appeals Chamber. In accordance with the terms of the decision, the payment of fees for the period of time in segment A would be subject to the fees rate established under the legal aid system before the entry into force of the decision. Consequently, at this stage, implementation of the decision has resulted in no savings. It is anticipated that savings will be made in respect of this case as the team progresses to segments B and C in the payment schedule established for proceedings before the Appeals Chamber. Any such amounts will be reported accordingly in future quarterly reports.

#### **D. Implementation of the revised scheme for compensation for professional charges**

13. As noted by the decision of the Bureau, the fees of defence and victims’ team members were calculated on the basis of a gross rate under the then applicable “Report on the operation of the Court’s legal aid system and proposals for its amendments,” (ICC-ASP/6/4), also known as “the Adjustments.” Furthermore, while working at the Court, team members operating a professional practice, alone or in association with others, received an additional amount to compensate for professional charges, which was paid subject to certain conditions and up to a maximum of 40 per cent of fees. In practice, most counsel and associate counsel were eligible for and received compensation for professional charges. The decision of the Bureau established net monthly payments for team members and decided to continue to pay a specific percentage of professional charges and extend this to eligible counsel, associate counsel, duty and *ad hoc* counsel, as well as to legal assistants and case managers. Counsel and associate counsel may receive up to a maximum of 30 per cent of their fees in respect of compensation for professional charges actually incurred, while legal assistants and case managers may receive up to a maximum of 15 per cent of their fees.

14. This amendment to remunerate eligible recipients’ net fees and consider compensation for professional charges at year-end at reduced percentages is currently implemented for all new victims and defence teams operating under the revised remuneration scheme. These entitlements are not automatic and will only be paid once the Registry, having reviewed the request and supporting documentation at the end of the year in respect of which compensation is claimed, has confirmed that compensation is payable. To date, the Registry has received no requests for compensation for professional charges from team members operating under the revised system. In future reports, the Registry will provide an update on this matter, including comparative figures for compensation paid and savings generated as against the old system.

### **III. Implementation of the Supplementary Report**

*Reporting period: 1 January 2013 to 28 February 2013*

15. In response to the Registry’s proposal, entitled “Proposal for a review of the legal aid system of the Court in accordance with resolution ICC-ASP/10/Res.4 of 21 December 2011”, dated 15 February 2012, the Bureau, in its decision and recommendations of 22 March 2012, requested the Court to present a report to the Committee, for consideration at its nineteenth session, on the following matter, *inter alia*:

- (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.

16. The Registry presented the Supplementary Report<sup>5</sup> on the aspects outlined above and on the enhanced role of the Office of Public Counsel for Victims (“OPCV”) to the Committee, following consultation with legal associations and external partners. The Supplementary Report was adopted at the eleventh session of the Assembly in November 2012. The Assembly also asked the Court to include in its quarterly report its assessment of the implementation performance of the changes arising from the Supplementary Report.<sup>6</sup> The Registry is pleased to provide the following observations in response to that specific request.

17. On 21 December 2012, the Registry informed all counsel and their team members currently engaged in the proceedings of the Court that the Supplementary Report had been adopted by the Assembly at its eleventh session. All necessary details were provided, in the same communication, concerning the changes implemented to the Court’s legal aid system which will come into effect on 1 January 2013.

#### **A. Remuneration in the case of multiple mandates**

18. This aspect of the Supplementary Report was implemented for the first time when a defence counsel asked the Registry to appoint a team member already appointed to two defence teams benefiting from the Court’s legal aid scheme, to start work in January 2013 as a Legal Assistant to a third team engaged in proceedings before the Court. The request was turned down by the Registry in accordance with the relevant amendments made by the Supplementary Report and the associated rationale and reasoning so as to limit the intervention of team members to no more than two cases concurrently.

#### **B. Legal Aid Expenses Policy**

19. Similarly, the Registry fully implemented the new legal aid expenses policy in respect of all 17 defence and victims’ teams currently active in proceedings before the Court. In the reporting period between 1 January and 28 February 2013 alone, cost savings of €34,000.00 were made in the Court’s legal aid system a consequence of the reduction in monthly expenses granted to legal teams from €4,000.00 to €3,000.00. The reduction in the monthly allotment will result in savings of €204,000.00 for 2013.

20. On 1 January 2013, the Registry also abolished automatic payment of the Daily Subsistence Allowance (DSA) out of the monthly expenses budget for missions to The Hague.<sup>7</sup> A maximum of €3,000.00 will be payable in respect of accommodation and other expenses associated with visits to The Hague by counsel and associate counsel on official business and deemed reasonably necessary by the Registrar, upon submission of evidence that such costs have actually been incurred. The Registry is currently finalising internal guidelines specifying precisely which items will be covered and how much will be payable under the new system where automatic DSA payments are no longer applicable. In future quarterly reports, the Registry will outline any savings actually generated by this new aspect of the Court’s legal aid system and will make other relevant observations.

#### **C. Remuneration during phases in which activities are considerably reduced**

21. The Registry notes that since 1 January 2013 and to date, there has been no relevant judicial activity or other triggering mechanism. Accordingly, there is nothing to report on this aspect of the Supplementary Report at this stage.

22. The implementation of all aspects of the Court’s legal aid system is subject to strict control and vetting by the Registry.

<sup>5</sup> ICC-ASP/11/43.

<sup>6</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eleventh session, The Hague, 14-22 November 2012* (ICC-ASP/11/20), vol. I, part III.A, ICC-ASP/11/Res.1, section H.4.

<sup>7</sup> Excluding pending reimbursement applications submitted by existing teams, to which the previous system will apply.

23. The Registry continues to monitor and assess the application of the legal aid system in light of experiences and lessons learned from proceedings before the Court, and will report accordingly on its findings to the Committee and to the Assembly.

#### **IV. Reinforcing related capacity of the Registry**

24. As stated during the Registry presentations to The Hague Working Group on discussions relating to legal aid, implementation of the proposals contained in the Supplementary Report (and the decision of the Bureau) will have a significant impact on the already overstretched resources of the Counsel Support Section. Consideration should be given to increasing the Section's human resources so as to meet the growing demands placed upon it to ensure both continued robust management of the Court's legal aid system and optimal service delivery.

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