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**Third quarterly report of the Registry on monitoring and assessing the implementation performance of legal aid from the time the amendments came into force to the end of August 2013\*****I. Introduction**

1. The Registrar, noting the *Registry's First and Second Quarterly Reports on monitoring and assessing the implementation performance of legal aid* ("First Quarterly Report"<sup>1</sup> and "Second Quarterly Report",<sup>2</sup> respectively), and pursuant to resolution ICC-ASP/11/Res.1, paragraph 4 of which invites the Court to monitor and assess the implementation of proposals on the Court's revised legal aid system and to report thereon to the Bureau of the Assembly of States Parties ("the Bureau") on a quarterly basis,<sup>3</sup> as well as to the request by the Committee on Budget and Finance ("the Committee") at its twentieth session,<sup>4</sup> now presents this Third quarterly report ("the Third quarterly report") and informs the Bureau and the Committee of the results of its continuous monitoring, assessment and implementation, *inter alia*, of:

(a) The revised legal aid scheme as adopted by the Decision of the Bureau on legal aid of 22 March 2012 ("the Decision of the Bureau");<sup>5</sup> and

(b) Three aspects of the proposals adopted from the "Supplementary report of the Registry on four aspects of the Court's legal aid system" ("the Supplementary Report"),<sup>6</sup> namely: (A) remuneration in the case of multiple mandates; (B) policy on expenses; and (C) remuneration during phases of reduced activity.

2. This Third quarterly report on the assessment and implementation of the Decision of the Bureau and the Supplementary Report covers the following timeframe: 1 April 2012 to 31 August 2013. Legal aid savings by comparison with the old system, as set out in this report, also include estimates in cases where, *inter alia*, team members or duty and *ad hoc* counsel remunerated under the revised system have not yet submitted time-sheets for work carried out during the reporting period.

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\* Previously issued as CBF/21/19.

<sup>1</sup> ICC-ASP/12/2.

<sup>2</sup> ICC-ASP/12/50.

<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., paras. 3-4.

<sup>4</sup> ICC-ASP/12/5, para. 84.

<sup>5</sup> ICC-ASP/11/2/Add.1.

<sup>6</sup> Supplementary report of the Registry on four aspects of the Court's legal aid system (ICC-ASP/11/43), 1 November 2012.

## II. Implementation of the Decision of the Bureau on legal aid

*Reporting period: 1 April 2012 to 31 August 2013*

3. The above Decision of the Bureau was notified to the Registrar on 23 March 2012, for implementation with effect from 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 reporting period, the Decision of the Bureau has been implemented in several cases currently before the Court, as indicated below.

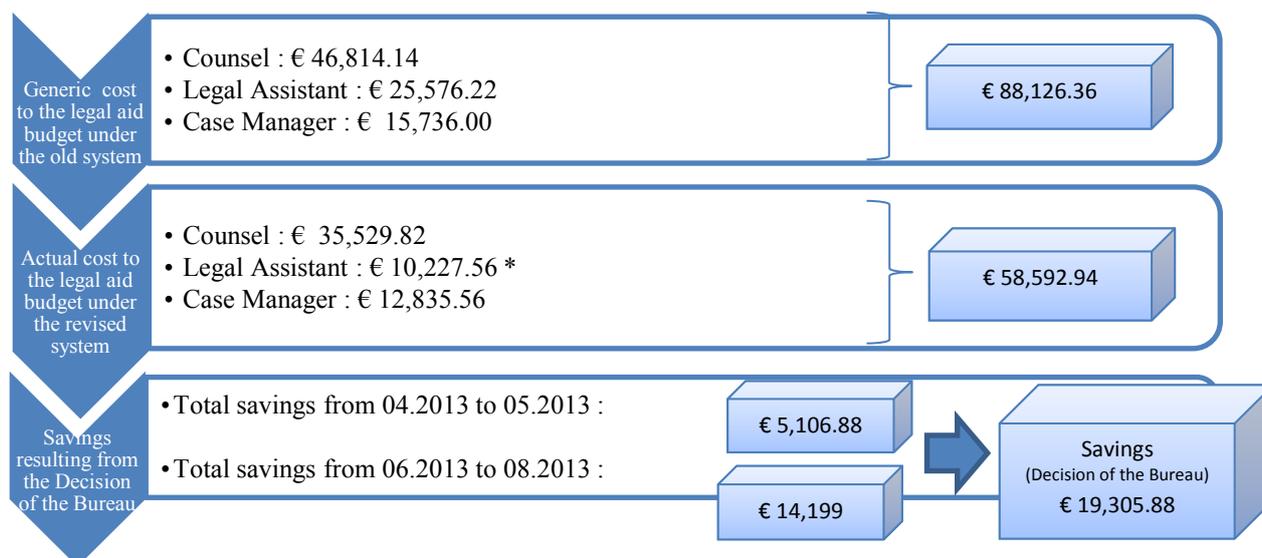
### A. Implementation of appendix I, part C, revised fees

4. Appendix I, part C, of the Decision of the Bureau, on the revised scale of fees, stipulates 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

5. As reported in the Second Quarterly Report, an individual subject to an outstanding warrant of arrest voluntarily surrendered in March 2013.<sup>7</sup> In accordance with his statutory rights, on 4 April 2013, the suspect in question requested legal assistance to be paid by the Court. The Registrar rendered a provisional decision on the suspect's indigence on 12 April 2013<sup>8</sup> in accordance with regulation 85.1 of the Regulations of the Court ("RoC") and regulation 132.3 of the Regulations of the Registry ("RoR"). The suspect appointed counsel to represent him in proceedings before the Court, and the Registry formalized the appointment on 26 April 2013. A core legal team, for the pre-trial phase of the proceedings, has since been constituted to ensure the suspect's legal representation. As a result of these developments, additional charges to the Court's legal aid budget crystallized as of 12 April 2013 and the Registry has submitted the requisite Contingency Fund notification to provide for these unforeseen legal aid costs in the 2013 fiscal year. The amount of these additional charges was reduced by application of the revised remuneration system to the newly established defence team, resulting in cost savings as outlined in Figures 1 and 2 below.

**Figure 1: Implementation of the revised remuneration scales for the defence team operating in the pre-trial phase of proceedings in the situation in the Democratic Republic of Congo**

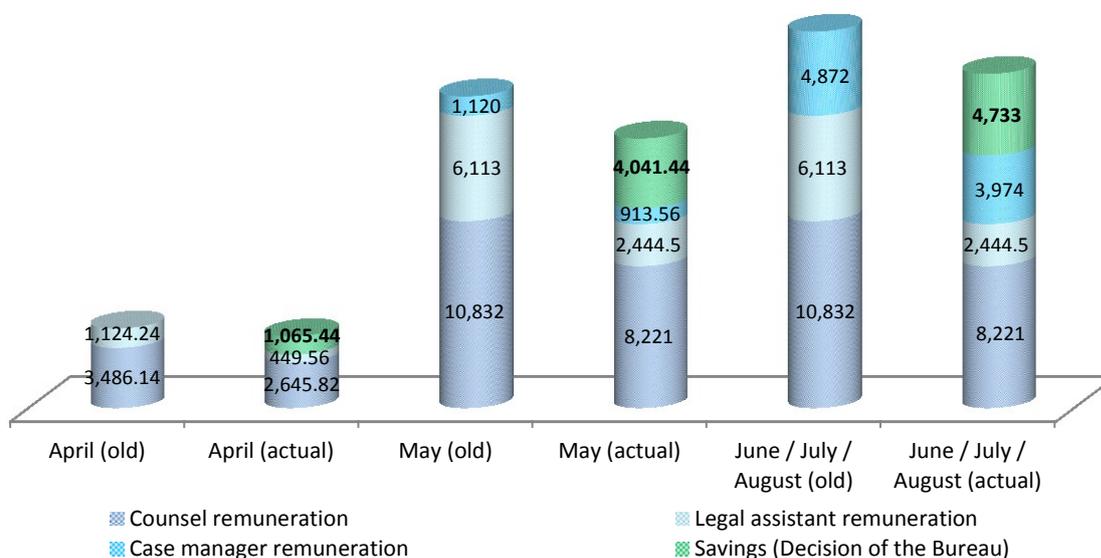


\* Note: The Legal Assistant in question (a member of the Ntaganda team) also works for a second defence team in the DRC situation benefiting from the Court's legal aid system (Lubanga). The amount of the fees paid to this Legal Assistant thus reflects the implementation of the Decision of the Bureau setting the remuneration of a Legal Assistant at €4,889, in conjunction with the implementation of the Supplementary report on multiple mandates, which reduces the remuneration for a second case to 50 per cent of the full rate otherwise payable (see also paras. 26-27 below).

<sup>7</sup> *The Prosecutor v. Bosco Ntaganda*, case no. ICC-01/04-02/06.

<sup>8</sup> *Ibid.*, « Enregistrement de la "Décision du Greffier sur la demande d'aide judiciaire aux frais de la Cour déposée par M. Bosco Ntaganda" » doc. no. ICC-01/04-02/06-48, 12 April 2013.

**Figure 2: Graphic representation of monthly savings in remuneration under the revised system as against the old system (in euros)**



## 2. Changes in legal teams

6. Subparagraph 3(b) of appendix I, part C, requires the Court to implement the revised system following any changes in legal teams during any stage of proceedings, either as a result of the replacement of individual members or of the whole teams, as well as in the event of the appointment of additional teams. This element of the Decision of the Bureau has been implemented in respect of two legal teams operating in the pre-trial phase of the proceedings in the situation in Côte d'Ivoire, and one legal team operating in the pre-trial phase of the proceedings in the situation in the Democratic Republic of the Congo.

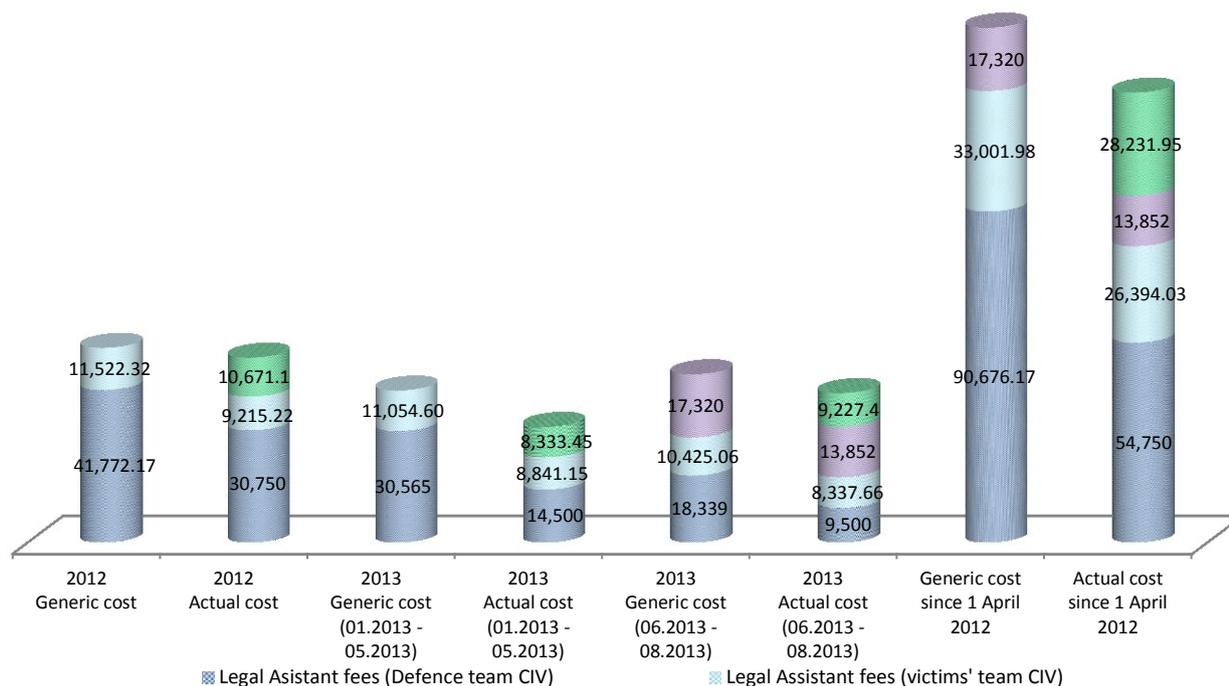
7. As stated in the First Quarterly Report, the revised fee system was first applied in the situation in Côte d'Ivoire to one Legal Assistant appointed in June 2012 in the context of legal representation of victims, and to another Legal Assistant granted to the defence team pursuant to a decision of the Registrar in response to a request for additional means.

8. The Registry further reports that an extra Legal Assistant has been granted to a defence team in the situation in the DRC<sup>9</sup> as of 6 June 2013, following a decision of the Registrar in response to a request for additional means.

9. The Registry presents, in Figure 3 below, a summary of the savings generated in the course of the reporting period by the application of the revised system to the three new appointments referred to in the two preceding paragraphs.

<sup>9</sup> *The Prosecutor v. Bosco Ntaganda*, case no. ICC-01/04-02/06.

**Figure 3: Implementation of the revised system to the changes in defence and victims' teams in the situation in Côte d'Ivoire and DRC during the course of the reporting period (in euros)**



### 3. Changes to a legal team

10. As noted in the Second Quarterly Report, pursuant to the 17 April 2013 decision of the Chamber, the Office of Public Counsel for the Defence (“OPCD”) no longer represents the suspect Mr Saif Al-Islam Gaddafi and an external counsel has been appointed to assume his legal representation until the suspect himself exercises his right to freely choose counsel under article 67(1) (d) of the Statute, or until the definitive disposal of proceedings related to the admissibility challenge, at which point the question of Mr Gaddafi’s legal representation will be revisited by the Chamber. The question of legal assistance to be paid by the Court, raised by the OPCD in its initial request, was left by the Chamber to be determined by the Registry.

11. Given the specific circumstances of Mr Gaddafi and his detention in Libya, no formal request for legal assistance paid by the Court has been made by him personally. Accordingly, the Registrar has been unable to make a conclusive determination on the suspect’s means in accordance with regulation 84 of the RoC. The Registry, however, notes the special circumstances of the case, in particular the fact that Mr Gaddafi remains *incommunicado* and that his assets are subject to freezing orders in accordance, *inter alia*, with United Nations Security Council Resolutions issued in 2011 (namely S/RES/1970, S/RES/1973, and S/RES/2009). In these circumstances, it is clear that Mr Gaddafi’s means cannot readily be determined. However, in practical terms, the suspect is not easily reachable, and in any event, due to the freezing orders, he does not at present have the power to freely dispose of his means. The same applied to Mr. Bemba Gombo,<sup>10</sup> where funds were advanced, while at the same time guidelines were adopted for the adequate monitoring and subsequent recovery of the suspect’s assets.

12. In the case at hand, in the interests of the proper administration of justice, and to ensure that the rights of Mr Gaddafi to legal representation as a suspect implicated in the Court’s proceedings are safeguarded in accordance with the Statute and applicable legal texts of the Court, the Registry has exceptionally decided to provisionally assume the costs

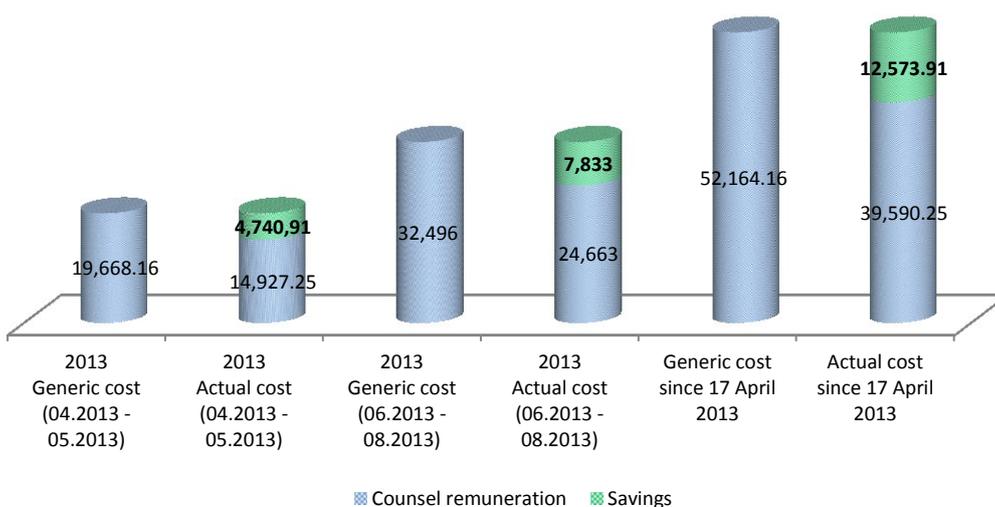
<sup>10</sup> See, *The Prosecutor v. Jean-Pierre Bemba Gombo*, case. no. ICC-01/05 -01/08-1007-Red.

of Mr Gaddafi's legal representation until such time an assessment of his disposable means has been conducted and a decision on his indigence can be rendered.

13. Further, the Registry reports that, in the event that Mr Gaddafi is ultimately found not to be indigent, the same regime applied in case of *The Prosecutor v. Jean-Pierre Bemba Gombo*<sup>11</sup> shall be implemented for the purpose of the recovery of funds.

14. The remuneration scheme under the Decision of the Bureau is therefore applicable to the provisional decision granting legal assistance paid by the Court to Mr Gaddafi. As the latter's counsel was appointed by the Chamber pursuant to regulation 76 of the RoC, in accordance with the Court's legal aid system, he is remunerated on an hourly basis for work undertaken up to a maximum monthly cap of €8,221 (revised fees), calculated according to the applicable rates of €86.53 per hour and €649 per day. The Registry objected to counsel's subsequent request to institute a team at this stage of the proceedings, on the grounds that it was not necessary for an effective and efficient legal representation, a position that the Chamber has largely upheld. However, pursuant to the 30 July 2013 decision of the Chamber,<sup>12</sup> counsel has made a request for resources to remunerate a language assistant. At the time of writing, the Registry is studying this request in view of the Chamber's decision. The Registry will closely monitor this situation and any savings will be reported in future quarterly reports. The implementation of the decision of the Bureau in this case has resulted in the following savings since the appointment of counsel.

**Figure 4: Implementation of the revised system to the change to a legal team in the situation in Libya during the course of the reporting period (in euros)**



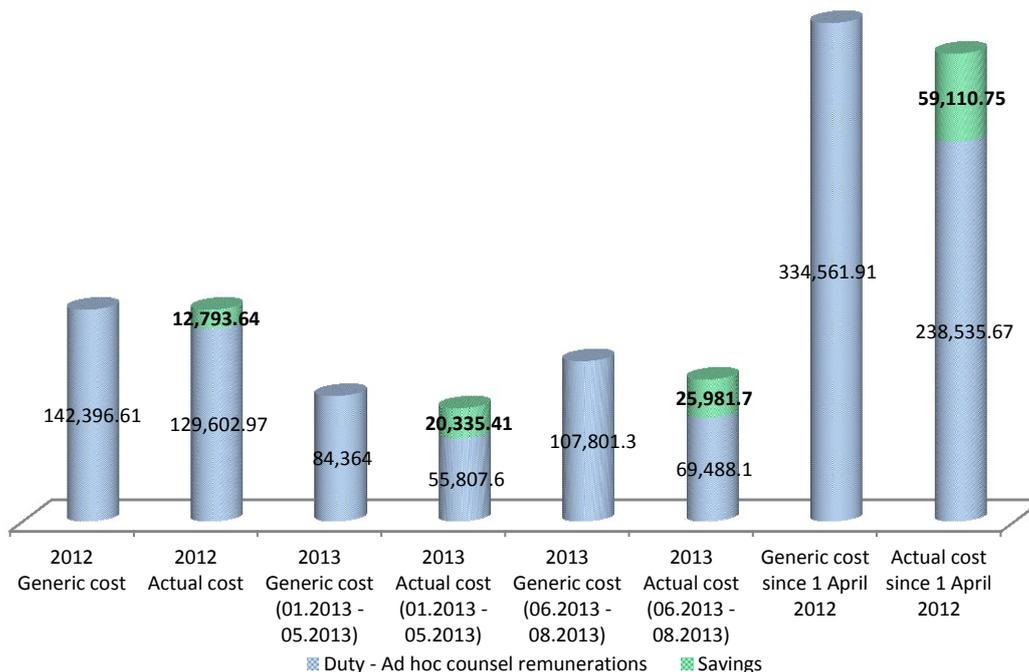
#### 4. Duty and ad hoc counsel appointments

15. Figure 5 below shows the savings achieved as a result of the implementation of appendix I, part C, concerning duty and *ad hoc* counsel appointments, during the course of the reporting period. It should be noted that this figure reflects actual savings combined with estimated savings where time-sheets have not yet been submitted.

<sup>11</sup> *The Prosecutor v. Jean-Pierre Bemba Gombo*, case no. ICC-01/05-01/08.

<sup>12</sup> ICC-01/11-01/11-390-Conf-Exp.

**Figure 5: Implementation of the revised system to duty and *ad hoc* counsel appointments during the course of the reporting period (in euros)**

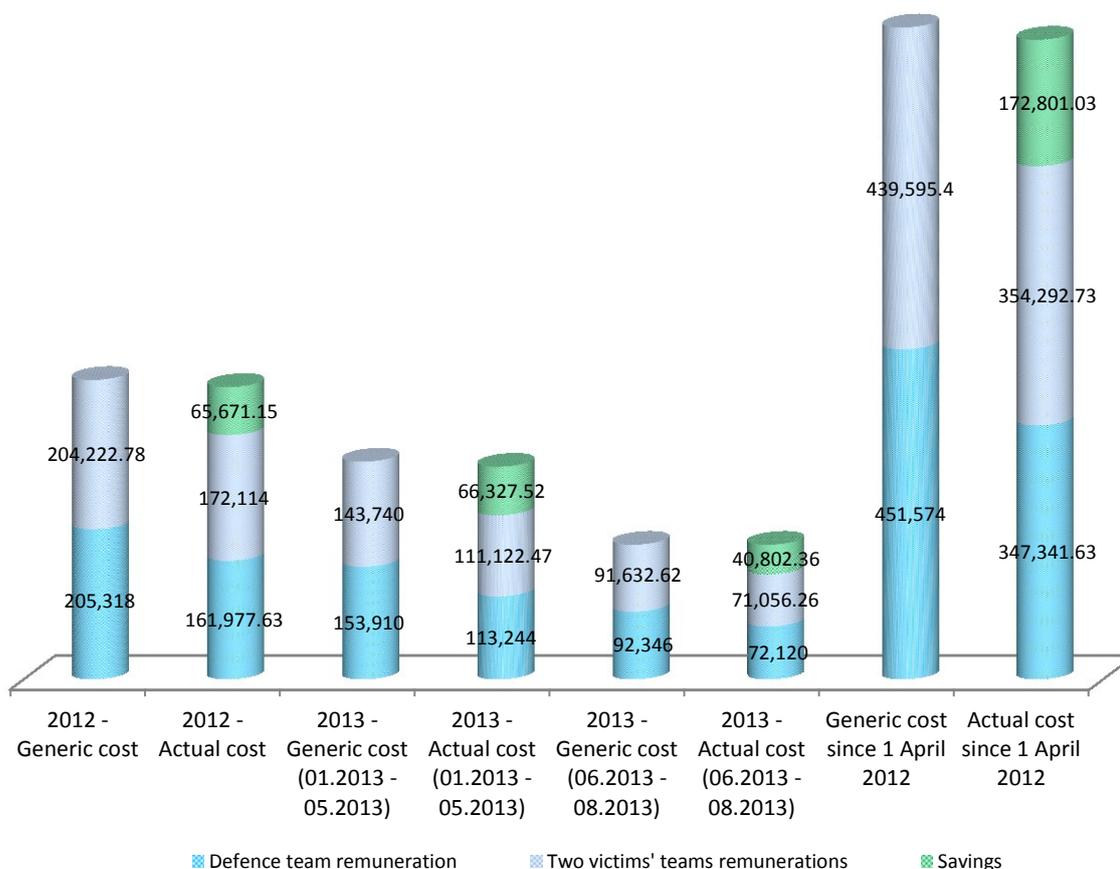


## B. Implementation of appendix I, part D, deferred implementation of revised fees

16. Under 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, states 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."

17. As detailed in the previous quarterly reports, those specific aspects of the Decision of the Bureau were implemented in the situation in Kenya in respect of one defence team and two common legal representatives of victims' teams, as shown in Figure 6 below.

**Figure 6: Progression to trial phase in the situation in Kenya – graphic representation of savings in remuneration during the reporting period under the revised system as against the old system (in euros)**



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

18. Pursuant to the Decision of the Bureau, with respect to teams that, as of 1 April 2012, are assigned to cases where the trial is ongoing, the existing remuneration regime of the Court will apply until such time as proceedings before the Trial Chamber have been 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.

19. As explained in the First Quarterly Report, only one defence team in the situation in the DRC – namely Mathieu Ngudjolo Chui's defence – is currently subject to the first 'segment A' fee schedule as set for the gradual implementation of revised fees in proceedings before the Appeals Chamber. The Registry has undertaken the necessary steps and notified the team of the implementation of appendix I, part E, and is currently in consultation with the Presidency on the estimated length of the case before the Appeals Chamber prior to implementing the gradual remuneration schemes established in the Decision of the Bureau. This determination should be settled shortly.

20. Consequently, while the implementation of the Decision of the Bureau with respect to this specific aspect has resulted in no savings at this stage, the Registry anticipates that, depending on the results of the ongoing consultation with the Presidency, savings will eventually be made as the team progresses to 'segments B and C' in the payment schedule established for proceedings before the Appeals Chamber. The Registry will continue to closely monitor this situation, and any savings will be reported in future quarterly reports.

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

21. As stated in the Second Quarterly Report, the Registry has received one request for compensation for professional charges from a Common Legal Representative in the Kenya situation operating under the revised system, who is eligible to receive up to a maximum of 30 per cent of fees payable under the Court's legal aid system as compensation for professional charges. As noted in the Decision of the Bureau and the First Quarterly Report, these entitlements are not automatic and will only be paid once the Registry has fully reviewed the request along with the requisite supporting documentation furnished, and confirms that compensation is payable on actual costs incurred. The Registry is currently in the process of assessing the request and in future reports will provide an update on this matter, including comparative figures for compensation paid and savings generated in the implementation of the new system as compared to its predecessor.

22. The Registry recalls its observations as contained in paragraph 14 of the First Quarterly Report; more specifically that the new scheme of reimbursement of compensation for professional charges at year-end is currently implemented by the Registry for all new victims and defence teams operating under the revised scheme. In this regard, it is to be noted that, in the reporting period, two new cases<sup>13</sup> have been added to the existing list falling under the new scheme for compensation for professional charges. As stated previously, compensation for professional charges will be reviewed and granted, when justified, in response to specific requests by eligible team members.

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

*Reporting period: 1 January 2013 to 31 August 2013*

23. As noted in the introductory note above, the Assembly also requested the Court to include in its reports its assessment of the implementation performance of the changes arising from the Supplementary Report.<sup>14</sup> The Registry continues to implement the adopted aspects of the Supplementary Report on the following matters:

- 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.

24. The Registry is pleased to provide the following observations in response to the implementation of these aspects of the Supplementary Report.

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

25. As reported in the First Quarterly Report, 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 Legal Assistant to a third team engaged in proceedings before the Court. The request was refused by the Registry in accordance with the relevant amendments made by the Supplementary Report and the associated rationale and reasoning, which limit the intervention of team members to no more than two cases concurrently.

26. This aspect was then triggered in two other instances, as detailed in the Second Quarterly Report. First, when a defence counsel requested the Registry to formalize the appointment of a team member already acting as Legal Assistant in a defence team benefiting from the Court's legal aid scheme to simultaneously intervene in the same capacity in a second team, also receiving legal aid funds. The second triggering event crystallized when a duty counsel assisting persons testifying under rule 74 of the Rules of Procedure and Evidence was appointed in the same capacity to simultaneously assume a second mandate.<sup>15</sup>

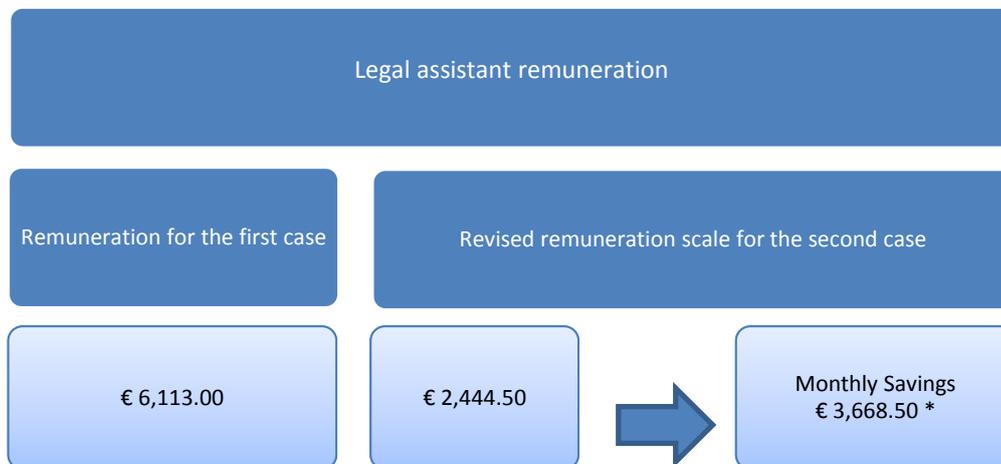
<sup>13</sup> *The Prosecutor v. Ntaganda*, case no. ICC-01/04-02/06, and *The Prosecutor v. Saif Al-Islam Gaddafi et al.*, case no ICC-01/11-01/11.

<sup>14</sup> See Supplementary Report, *supra* footnote 6.

<sup>15</sup> *The Prosecutor v. Katanga* (ICC-01/04-01/07), and *The Prosecutor v. Bemba*.

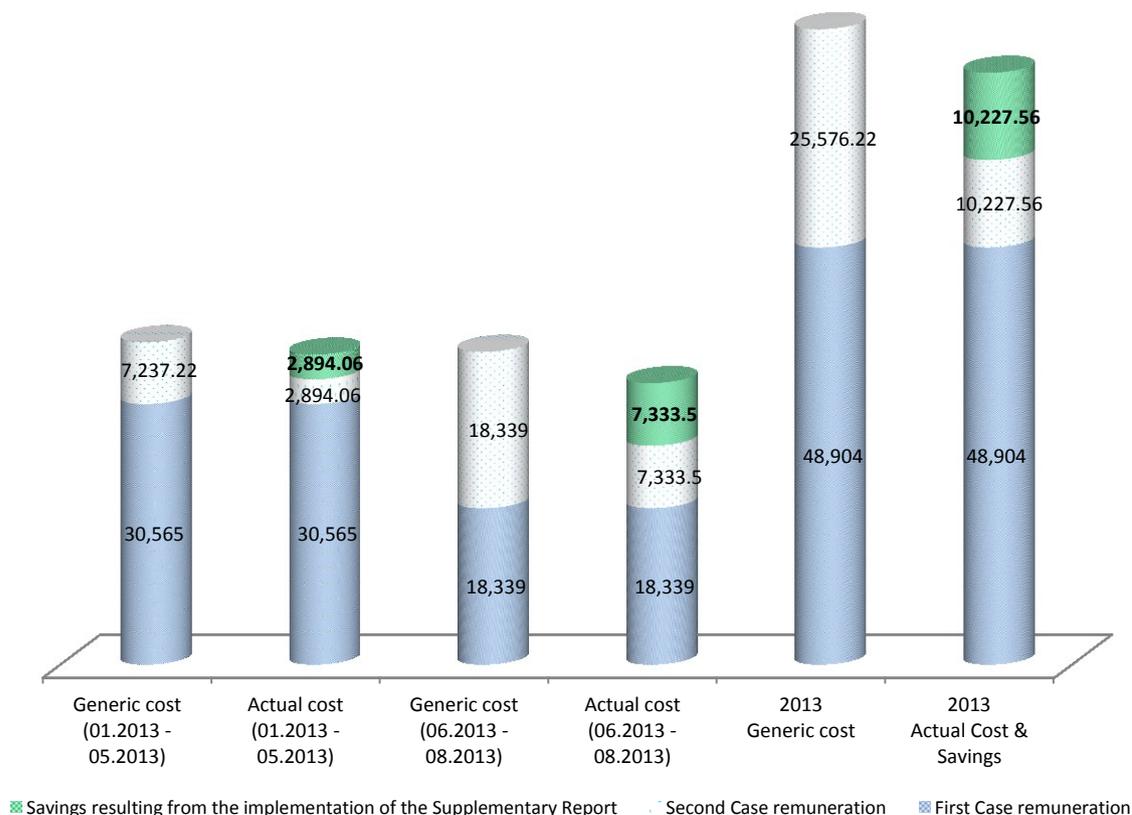
27. The Registry formalized the appointments in accordance with the Decision of the Bureau and the Supplementary Report. See Figures 7 and 8 below.

**Figure 7: Legal Assistant simultaneously assigned to two defence teams in the situation in the DRC**



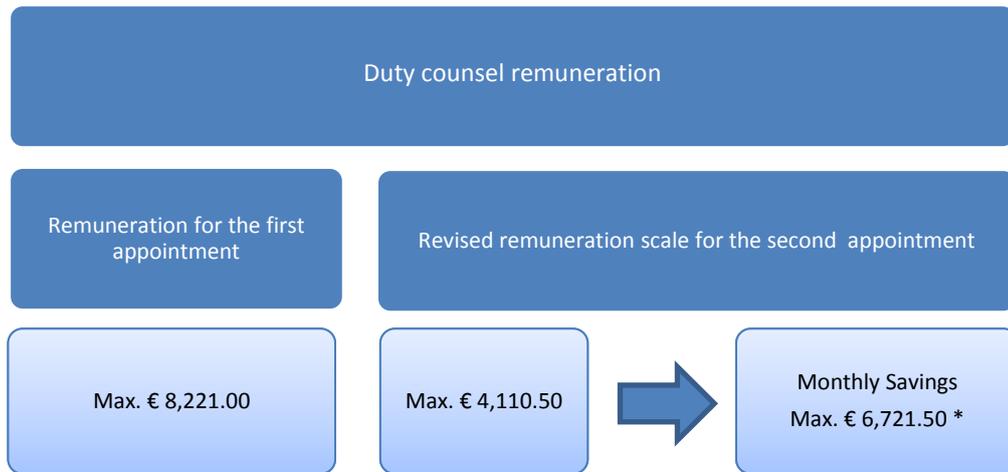
\* Monthly savings result from the implementation of the Decision of the Bureau setting remuneration of a Legal Assistant at €4,889 per month in conjunction with the implementation of the Supplementary Report on multiple mandates, which reduces the remuneration for a second case to 50 per cent of the full rate otherwise payable.

**Figure 8: Graphic representation of savings resulting from the implementation of the proposals in the Supplementary Report, in respect of remuneration of a Legal Assistant appointed to two defence teams**



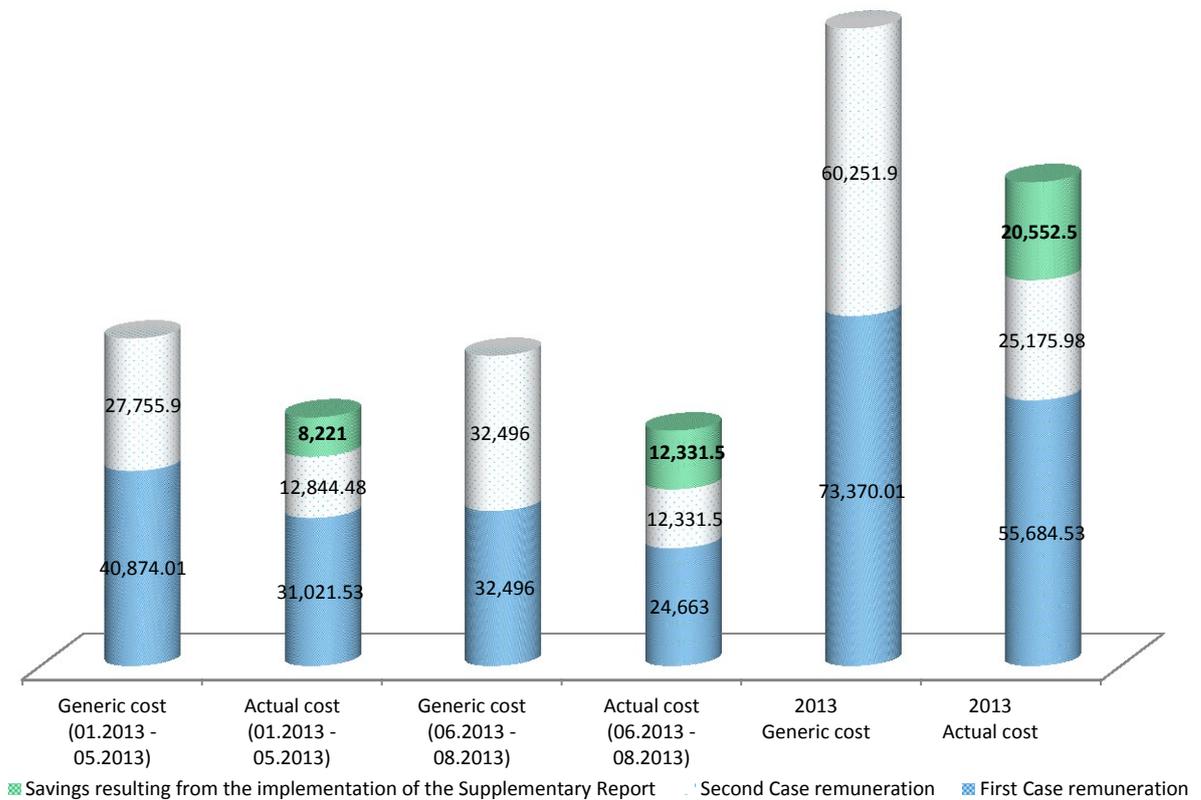
28. The policy was similarly implemented in the case of a duty counsel’s appointment and related remuneration. For further details, see Figures 9 and 10 below.

**Figure 9: Implementation of multiple mandates, duty counsel appointment and remuneration**



\* Monthly savings result from the implementation of the Decision of the Bureau setting remuneration of duty counsel at a maximum monthly cap of €8,221 (in lieu of €10,832 under the old system), in conjunction with the implementation of the Supplementary Report on multiple mandates, which reduces the remuneration for a second case to 50 per cent of the full rate otherwise payable.

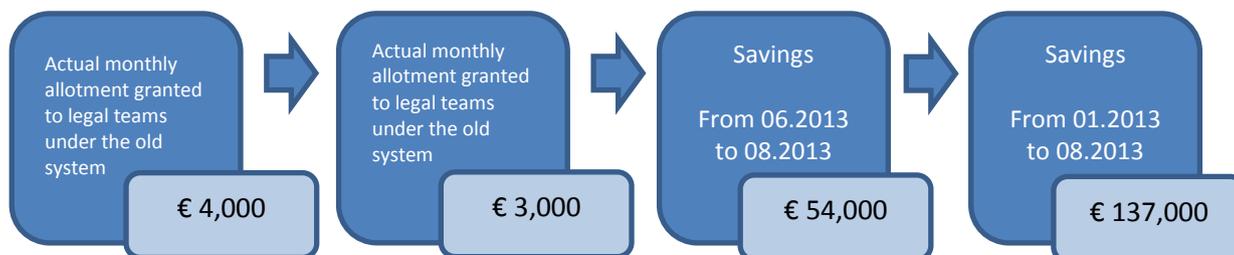
**Figure 10: Graphic representation of savings in the remuneration of duty counsel with dual mandates during the course of the reporting period**



## B. Legal aid expenses policy

29. The Registry has fully implemented the new legal aid policy on expenses in respect of all 18 defence and victims' teams currently active in proceedings before the Court, as shown in Figure 11. The reduction in the monthly allotment will result in savings of €213,000 for 2013.

**Figure 11: Savings in monthly expenses allotment granted to legal teams since 1 January 2013**



30. The Registry notes that, since the implementation of the Supplementary Report in practice, more specifically the termination of the automatic payment of Daily Subsistence Allowance (“DSA”), the maximum monthly allotment of €3,000 has not been yet exceeded by the legal teams for the purpose of reimbursing accommodation and other expenses associated with visits to The Hague by counsel and associate counsel on approved official business. Reimbursement of expenses associated with stays in The Hague of counsel and associate counsel have been processed on the basis of costs actually incurred, and upon submission of the necessary supporting documentation.

31. The Registry has also finalized internal guidelines specifying precisely reimbursable items under the new system where automatic DSA payments are no longer applicable.

32. The Registry will continue to closely monitor the implementation of the Supplementary Report as it concerns the legal aid expenses policy, with a view to reporting not only on cost savings, but also on how the new system is responsive to the expenses needs of legal teams.

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

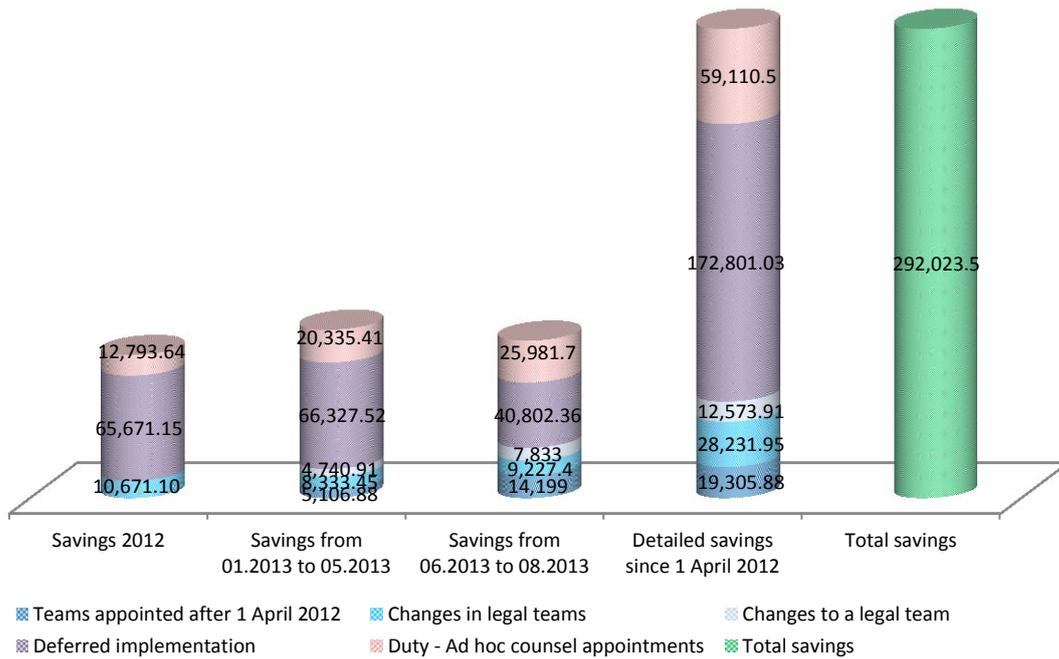
33. The Registry notes that, from 1 January 2013 to date, there has been no relevant judicial activity or other triggering mechanisms which would engage this particular aspect of the Supplementary Report. The Registry reiterates its observations concerning developments in the situation in Darfur, Republic of Sudan, where counsel for the defence has notified the relevant Chamber of the reported demise of an accused.<sup>16</sup> The Registry is currently assisting the Court in confirming the suspect’s death. The Registry continues to monitor this matter and will take the necessary decision on legal aid afforded to the team as appropriate, and will report on this matter in future notifications.

## IV. Savings realized from the time the amendments came into force

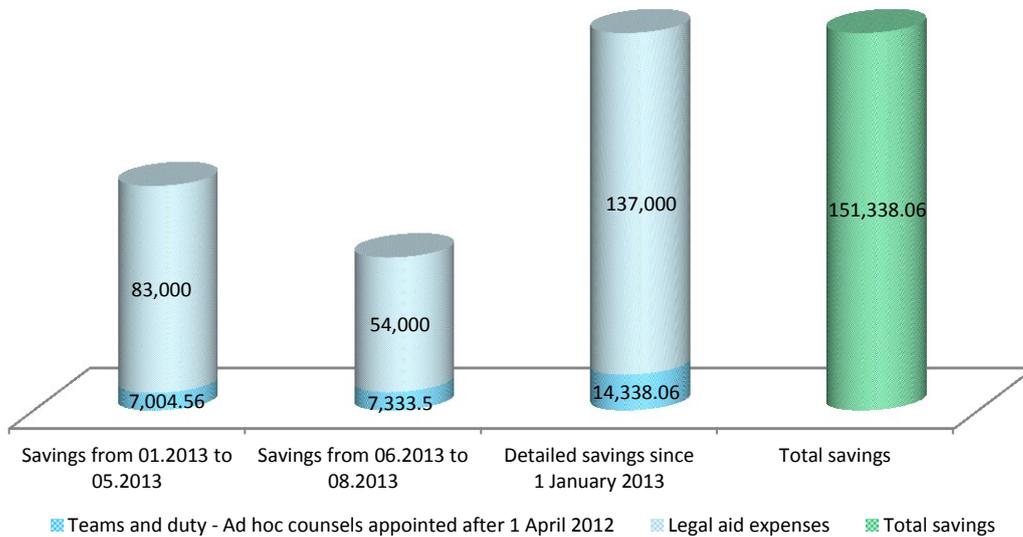
34. The Registry informs the Bureau and the Committee that its continuous monitoring, assessment and implementation of the performance, *inter alia*, of the revised legal aid scheme as adopted by the Decision of the Bureau, as well as the proposals adopted from the Supplementary Report, has resulted in total savings as outlined in Figures 12, 13 and 14 below during the course of the reporting period.

<sup>16</sup> See, “Public Redacted Version of “Defence Notification of the Death of Mr Saleh Mohammed Jerbo Jamus” submitted on 21 April 2013”, doc. no. ICC-02/05-03/09-466-Red, 23 April 2013.

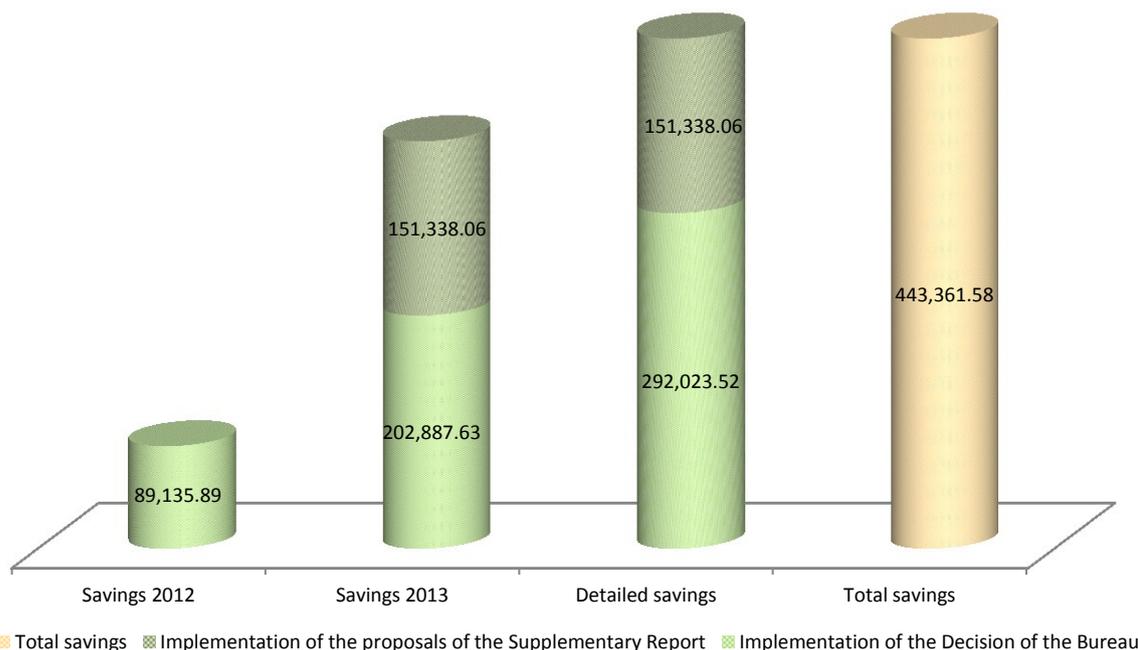
**Figure 12: Total savings resulting from the implementation of the Decision of the Bureau since 1 April 2012 (in euros)**



**Figure 13: Total savings resulting from the implementation of the proposals in the Supplementary Report since 1 January 2013 (in euros)**



**Figure 14: Total savings and additional charges resulting from the implementation of the proposals in the Decision of the Bureau since 1 April 2012 and the Supplementary Report since 1 January 2013 (in euros)**



35. The Registry continues to monitor and assess the application of the legal aid system in light of the experiences and lessons gained from proceedings before the Court – both to ensure that legal aid funds provide for effective and efficient legal representation for the beneficiaries of the system and to ensure that publicly funded resources made available are judiciously managed. The Registry will continue to report accordingly on its findings and observations to the Bureau, and to the Committee and the Assembly.

## V. Reinforcing related capacity of the Registry

36. As stated during the Registry presentations to The Hague Working Group on discussions relating to legal aid and further as highlighted in previous Quarterly Reports, implementation of the proposals contained in the Supplementary Report and in the Decision of the Bureau continues to have a significant impact on the already overstretched resources of the Counsel Support Section. The need to increase the section's human resources on a more permanent basis, so as to meet its growing daily demands and to ensure optimal service delivery to its end-users is re-emphasised in this Third quarterly report.