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Registry's seventh quarterly report on legal aid¹

Summary

This report for the benefit of the Bureau of the Assembly of States Parties and the Committee covers the permanent monitoring and assessment activities for the implementation performance of the following in particular:

- a) the revised legal aid scheme, as adopted by the Decision of the Bureau of 22 March 2012;² and
- b) the proposals adopted from the Supplementary report of the Registry on four aspects of the Court's legal aid system³ with regard to three aspects, namely: (A) remuneration in the case of multiple mandates; (B) legal aid expenses policy; and (C) remuneration during phases of reduced activity.

Application of resolution ICC-ASP/11/Res.1 (paragraph 4) inviting the Court to monitor and assess the implementation of proposals on the revision of the Court's legal aid system and to report thereon to the Bureau on a quarterly basis pursuant to resolution ICC-ASP/11/20.⁴ This is the seventh quarterly report submitted by the Registry. In accordance with this report, the Court will present its first half-yearly report pursuant to resolution ICC-ASP/13/5 of 11 June 2014 (draft version, para. 74) in which the Committee recommended that reports on the changes to the legal aid scheme should no longer be submitted to it quarterly but rather that it should receive half-yearly reports at the two sessions it holds each year.

This report covers the period from 1 July to 30 September 2014. For the period from 1 April 2012 to 31 December 2013, the savings generated stood at €750,473.22. From 1 April 2012 to 31 March 2014 they stood at €1,056,035.52. From 1 April 2012 to 30 June 2014, they stood at €1,462,999.68 and from 1 January to 30 June 2014, they stood at €712,526.46. These savings amount to **€393,868.04** for the period 1 July to 30 September 2014. From 1 April 2012 to 30 September 2014 the savings stood at **€1,856,867.72**.

¹ Received by the Secretariat of the Assembly of States Parties on 1 December 2014.

² ICC-ASP/11/2/Add.1.

³ ICC-ASP/11/43.

⁴ *Official documents 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.

Table showing savings achieved over the period 1 July to 30 September 2014

<i>Aspects of the legal aid scheme</i>	<i>Savings (euros)</i>
Teams appointed after 1 April 2012	61,341.00
Changes in teams	9,993.83
Individual instances of representation	15,666.00
Appointment of permanent counsel	16,768.76
Deferred implementation of the revised remuneration scheme	35,253.00
Gradual implementation of the revised remuneration scheme	22,875.70
Compensation for professional charges	1,122.75
Multiple mandates	35,343.00
Expenses and other costs	69,000.00
Legal aid in Article 70 proceedings	126,504.00
Total	393,868.04

I. Introduction

1. Noting the Registry's six previous quarterly reports⁵ and pursuant to resolution ICC-ASP/11/Res.1 (paragraph 4) inviting the Court to monitor and assess the implementation of proposals on the revision of the Court's legal aid system and to report thereon to the Bureau of the Assembly of States Parties (the "Bureau") on a quarterly basis,⁶ the Registry presents this Seventh quarterly report to the Bureau and the Committee on its permanent monitoring and assessment activities: a) of the revised legal aid system as adopted by the Decision of the Bureau of 22 March 2012 ("the Decision");⁷ 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" ("the Supplementary Report")⁸ which have been adopted, namely: (A) remuneration in the case of multiple mandates; (B) expenses policy; and (C) remuneration during phases of reduced activity.

2. In Resolution ICC-ASP/13/5 of 11 June 2014, the Committee recommended that reports on the changes to the legal aid scheme should no longer be submitted to it quarterly but rather that it should receive half-yearly reports at the two sessions it holds each year.⁹ The first half-yearly report in accordance with this Resolution will be submitted by the Court in December 2014.¹⁰

3. This report covers the period from 1 July to 30 September 2014. The savings reported include estimates because some time-sheets have yet to be submitted

II. Implementation of the Decision of the Bureau

4. The Decision was notified on 23 March 2012, for implementation with effect from 1 April 2012. It was implemented as indicated below.

⁵ CBF/20/2, 27 February 2013; CBF/21/2, 10 July 2013; CBF/21/19, 20 August 2013; CBF/22/2, 10 February 2014; CBF/22/17, 17 April 2014; CBF/23/3, 28 July 2014.

⁶ ICC-ASP/11/20, vol I, part IIIA, ICC-ASP/11/Res.1, Section H, paras 3 and 4.

⁷ ICC-ASP/11/2/Add.1.

⁸ Supplementary report of the Registry on four aspects of the Court's legal aid system, ICC-ASP/11/43, 1 November 2012.

⁹ ICC-ASP/13/5, draft version, para. 74

¹⁰ Registry's Sixth Quarterly Report on Legal Aid, CBF/23/3, 28 July 2014, para. 2.

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

1. Teams appointed after 1 April 2012

5. On 4 April 2013, a suspect¹¹ applied for legal aid, which was granted on a provisional basis on 12 April 2013.¹² The Registry formalized the appointment of his counsel on 26 April 2013. A core team was then established, supplemented by an additional legal assistant remunerated in accordance with the Decision's scale of fees up until 18 June 2014. With the confirmation of the charges the case moved to the trial phase which justified the allocation of funds to remunerate an associate counsel.¹³ The savings achieved for this team stand at €21,450.¹⁴

6. On 2 December 2013 the Chamber appointed the Office of Public Counsel for Victims ("OPCV") to represent the victims in the *Ntaganda* case.¹⁵ The OPCV is supported by two legal assistants in the field who were appointed on 2 January 2014. Rules governing multiple mandates have been applied to one assistant who is also acting as counsel in the *Lubanga* case. The savings achieved in this instance stand at €7,344.¹⁶

7. The OPCV was also appointed in the *Gbagbo* case to represent victims.¹⁷ A legal assistant paid in accordance with the revised system was appointed in June 2012. The resultant savings for the reporting period stand at €7,344.

8. In the *Blé Coudé* case,¹⁸ the suspect applied for legal aid, which was granted on a provisional basis by the Decision of 24 April 2014. He has selected his counsel, who will be assisted by a legal assistant and a case manager, all paid in accordance with the revised scale. From 01 July to 30 September 2014 the savings achieved stand at €14,199. The OPCV was appointed in the same case to represent the victims¹⁹ and is assisted at present by a legal assistant whose appointment took effect from 7 July 2014 and who is acting in the context of multiple mandates. Between that date and 30 September 2014, the savings achieved as a result of the multiple mandates (€7,332) and the implementation of the old and new payment systems (€3,672) stand at €11,004.

9. Thus the savings achieved during the period covered by this report stand at €61,341.00.

2. Changes in legal teams

10. Sub-paragraph 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 individual members or of whole teams being replaced, and where new members are appointed.

11. Following the decision confirming the charges against Mr Gbagbo, the Defence has had additional resources to pay an associate counsel since 12 June 2014. Between that date and 30 September 2014, the savings achieved stand at €7,299.83.²⁰ On 30 September 2014

¹¹ *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06.

¹² ICC-01/04-02/06-48.

¹³ The savings associated with the Associate Counsel for the reporting period covered stand at €6,027.

¹⁴ This amount includes the savings associated with the core team (€14,199.00), the associate counsel (€6,027.00) and a legal assistant who was acting in the context of multiple mandates (€1,224.00). Since the legal assistant left the team on 9 July 2014, the only savings recorded are due to the application of the Bureau's Decision on fees (in other words the difference between the old payment system [€6,113] and the new one [€4,889]).

¹⁵ ICC-01/04-02/06-160, 2 December 2013.

¹⁶ The application of the revised system generates monthly savings of €1,224 for each of the legal assistants, a total of €7,344 for the reporting period. The savings achieved by the appointment of the OPCV in the various cases where the Chamber has made this decision are considerably greater but these calculations do not form part of the remit of this report.

¹⁷ ICC-02/11-01/11-138, 4 June 2012, para. 44.

¹⁸ *The Prosecutor v. Charles Blé Coudé*, ICC-02/11-02/11.

¹⁹ ICC-02/11-02/11-83, 11 June 2014.

²⁰ For June 2014, the savings were calculated in proportion to the days for which the mandate was valid (19) and by taking into account the monthly payments under the old system [€8,965] compared to the new one [€6,956], which results in a total of €1,272.83 (€5,677.83 - €4,405.00). To this amount must be added €6,027 which

the Defence was informed that from the date of the first trial hearing, the revised remuneration system would apply to all the members of the team who had previously been remunerated on the basis of the old payment system.

12. Appendix I, Part C was also applied to the case manager (paid in accordance with the revised system)²¹ for a team representing victims in the Katanga case. The savings associated with this post stood at €2,694 as at 30 September 2014.²²

13. From 7 July 2014 and after consultation with Mr Katanga's counsel, the Registry reviewed the resources²³ by withdrawing the funds for the associate counsel and by applying to the team the payment system based on activities actually carried out in the case rather than the lump sum paid up previously, for an initial period of three months. At the end of that period, the matter was reviewed in light of subsequent developments in the case. There are no savings to report.

14. Consequently, the savings achieved as a result of the revised system being applied due to changes to teams stand at €9,993.83

3. Individual instances of representation

15. Mr. Saif Al-Islam Gaddafi was granted legal aid on a provisional basis until his means could be assessed and a decision on his indigency status could be rendered. For the period covered by this report, the application of the Decision resulted in savings of €7,833.

16. Madame Simone Gbagbo also received legal aid on a provisional basis subject to certain conditions set out in the Registrar's Decision of 6 April 2014, which set professional fees at €8,221. The savings achieved in this case stood at €7,833.

17. These individual instances of representation generated €15,666 in savings during the period covered by the report.

4. Appointment of duty and *ad hoc* counsel

18. The forecast savings²⁴ associated with the appointment of an independent counsel for the proceedings brought under article 70 stand at €7,833.00.

19. During the period covered by the report, part C of appendix I was implemented for the nine duty counsel, generating €8,111.76 in savings.²⁵ For the previous quarter's reporting period, the missing time sheets were finalised. The resulting savings stand at €824. The Registry will provide details of any additional savings in its next report if applicable.

20. The savings associated with the appointment of duty counsel stand at €16,768.76.²⁶

B. Implementation of appendix I, part D: Deferred implementation of the revised system of remuneration

21. Paragraph 1, Part A, of appendix I²⁷ and paragraph 5, part D²⁸ of the Decision of the Bureau, were applied to the Defence team of Mr Sang and to two teams tasked with representing victims in the Kenya situation. Savings achieved for the current reporting period total €35,253.²⁹

represents the savings from July to September 2014, calculated on the basis of the difference between the old system [€8,965] and the new one [€6,956], which amounts to €2,009 multiplied by three (number of months).

²¹ The person was appointed on 21 November 2013 following the post vacancy on 20 December 2013.

²² The move from the old to the revised remuneration system generated €898 in monthly savings

²³ This decision was taken subsequent to the withdrawal of an Appeal by the Defence (Defence Notice of Discontinuance of Appeal against the 'Jugement rendu en application de l'article 74 du Statut' rendered by Trial Chamber II on 7 April 2014, ICC-01/04-01/07-3497, 25 June 2014) and another by the Office of the Prosecutor (Notice of Discontinuance of the Prosecution's Appeal against the Article 74 Judgment of Conviction of Trial Chamber II dated 7 March 2014 in relation to Germain Katanga, ICC-01/04-01/07-3498, 25 June 2014).

²⁴ Some time sheets have not yet been submitted by the counsel. Any additional savings associated with the appointment of an independent counsel which might be achieved will be set out in the next report.

²⁵ This amount may vary slightly once the only pending time sheet has been received and processed. The Registry will clarify this situation in the next report if applicable.

²⁶ This amount corresponds to both actual and potential savings achieved due to the fact that some timesheets have yet to be submitted.

C. Implementation of appendix I, part E: Gradual implementation of the revised system of remuneration

22. Pursuant to the Decision with respect to teams that, as of 1 April 2012, are allocated to cases where the trial is ongoing, the Court's existing remuneration system will apply until such time as proceedings before the Trial Chamber have been completed and the case is at the appeal phase. Once the proceedings enter the appeal phase, the arrangements for remuneration as set out in appendix I, part E of the Decision of the Bureau will apply.

23. In the previous report, the Registry provided details of the gradual implementation of the revised system of remuneration for another Defence team in the situation in the DRC³⁰ and the overpayment of €22,875.70 which was due to be paid back by the team. This sum has been recovered in full. The situation of the two teams responsible for representing the victims in the *Lubanga* case will be covered in the next report.

D. Implementation of the Decision of the Bureau in respect of compensation for professional charges

24. The payment of such compensation is conditional on strict eligibility criteria³¹ and requires supporting documentation to be produced. Four applications were examined during the reporting period. Two were rejected and one counsel filed an appeal against the Registry's decision before the Chamber. Updated information in this regard will be provided in the next report. The third application, which required additional information, remains pending, whereas the processing of the fourth has been finalised. The resulting savings stand at €1,122.75.³²

III. Implementation of the Supplementary Report

25. The Assembly also asked the Court to include in its quarterly reports its assessment of the implementation performance of the changes arising from the Supplementary Report.³³ namely: a) remuneration in the case of multiple mandates, b) legal aid expenses policy and c) remuneration during phases in which activities are considerably reduced.

A. Remuneration in the case of multiple mandates

26. Various cases of multiple mandates have been outlined in previous reports. The first involved a counsel who asked the Registry to formalize the appointment of a new team member³⁴ who was already acting as legal assistant in another Defence team.³⁵ As previously stated, there are no savings to report since the rules governing multiple mandates ceased to apply as at 9 July 2014. The second case involved the appointment of a duty

²⁷ This paragraph 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".

²⁸ This paragraph 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".

²⁹ 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.

³⁰ *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

³¹ Registry's single policy document on the Court's legal aid system, ICC-ASP/12/3, 4 June 2013, paras 129-138.

³² This amount is obtained by calculating the difference in the payment of professional fees under the old payment system and the revised scale, taking into account the same percentage (just over 21%) of the reimbursement applied to the counsel in the present case.

³³ See Supplementary report, *supra*, footnote 7.

³⁴ *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06.

³⁵ *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

counsel to assume a second mandate.³⁶ Since the mandate of this counsel has been terminated there are no savings to report in this regard either.

27. A third case of multiple mandates involved an associate counsel in the Kenya situation³⁷ who was already acting as legal assistant to another team in the situation in the Democratic Republic of the Congo.³⁸ Given the payment arrangements decided upon in the present case (100% of the fees in the case arising from the situation in Kenya³⁹ and 50% in the second case), the savings achieved stand at €15,196.50.

28. A further case of multiple mandates has also occurred following the appointment by the OPCV (acting as joint representative for the victims in a case arising from the situation in the DRC) of one legal assistant also acting as counsel in another team.⁴⁰ Remuneration was set as follows: 100% of the fees for the role of counsel in the first case⁴¹ and 50% of the fees for acting as a legal assistant in the second case.⁴² The savings generated stand at €7,333.50.

29. Finally, the applicable system for multiple mandates was also applied to two members of a team in case ICC-01/09-01/13, generating savings of €12,813.00. The Registry will report on any further savings arising from multiple mandates in the same case.

30. The revision generated €35,343.00 in savings for multiple mandates.

B. Legal aid expenses policy

31. The Registry has implemented the measures relating to the flat-rate allowance⁴³ to cover the expenses of the 23 legal teams acting under the legal aid system apart from those in case ICC-01/09-01/13⁴⁴ for whom the savings are given below. The reduction in the allowance allowed savings of €69,000⁴⁵ to be made during the reporting period.

C. Remuneration during periods of reduced activity

32. There have been no judicial developments to trigger implementation of this aspect of the Supplementary report.

IV. Savings made in proceedings brought under article 70 of the Rome Statute

33. In the context of the proceedings in case ICC-01/09-01/13, the scale of legal aid per team has been set at €8,542 per month (fees excluding professional charges) plus €1,000 per month for expenses. Four suspects have received legal aid in this case. If legal aid in this case had been calculated in accordance with the parameters applied to proceedings brought under article 5 of the Rome Statute during the Pre-Trial phase, defence costs for each team would stand at €20,084 per month; €17,084⁴⁶ for fees and €3,000 for expenses.

³⁶ *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07, and *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08.

³⁷ *The Prosecutor v. Joshua Arap Sang*, ICC-01/09-01/11.

³⁸ *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07 and *The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06.

³⁹ The Decision stipulates that the maximum monthly remuneration applicable to the associate counsel is €6,956.

⁴⁰ *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

⁴¹ In this case the maximum remuneration applicable to the two legal representatives from the same team is €10,832 per month (excluding professional fees) under the old system.

⁴² The maximum remuneration applicable to the legal assistant in this case is €4,889 per month pursuant to the Decision. The Supplementary Report reduces remuneration for the second case by 50%.

⁴³ The monthly allowance allocated to each team under the old system was €4,000. It was reduced to €3,000 per month per team in the Supplementary Report.

⁴⁴ For these teams the total allowance stands at €1,000 per month whereas that applied to the other teams for proceedings brought under article 5 is set at €3,000 in accordance with the Supplementary Report.

⁴⁵ Since one team was established in June 2014, the monthly allowance will only apply to it from that point. The savings achieved are calculated as follows: $([€1,000 \times 22] \times 3) + €1,000$.

⁴⁶ This amount corresponds to the Defence costs for proceedings brought under article 5 during the Pre-Trial phase and pursuant to the Decision: one counsel (€8,221), one legal assistant (€4,889) and a case manager (€3,974).

Therefore, during the period covered by the report, the savings achieved stand at €126,504.⁴⁷

34. The Registry wishes to point out that in a Decision dated 20 May 2014, the Presidency⁴⁸ ordered the Registrar to pay advances to Mr Bemba's Defence team in the context of proceedings brought under article 70,⁴⁹ for four months, which are managed in accordance with legal aid and of an amount which is deemed appropriate, to be reimbursed in full. The team was thus allocated the same funds as those allocated to each of the aforementioned teams in the case. Given that these funds constitute advances, the Registry has not included them in the report. It should be noted, however, that these advances were suspended by the Registry on 20 September 2014.

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

35. 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 2014 and amended with the implementation of the proposals included in the Supplementary Report, allowed savings of **€393,868.04** to be achieved between 1 July and 30 September 2014. A breakdown is provided in the table below.

Table showing savings achieved over the period 1 July to 30 September 2014

<i>Aspects of the legal aid scheme</i>	<i>Savings (euros)</i>
Teams appointed after 1 April 2012	61,341.00
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Gradual implementation of the revised remuneration scheme	22,875.70
Compensation for professional charges	1,122.75
Multiple mandates	35,343.00
Expenses and other costs	69,000.00
Legal aid in Article 70 proceedings	126,504.00
Total	393,868.04

36. The savings achieved by implementing the various aspects of the Decision and the Supplementary Report stand at €750,473.22 for the period from 1 April 2012 to 31 December 2013. For the period from 1 April 2012 to 31 March 2014 they stood at €1,056,035.52. From 1 April 2012 to 30 June 2014, amendments generated total savings of **€1,462,999.68**. For the period 1 January to 30 June 2014 these savings stood at €712,526.46. The savings stood at **€393,868.04** for the period 1 July to 30 September 2014. From 1 January to 30 September 2014 the savings stood at €1,106,394.50. For the period from 1 April 2012 to 30 September 2014 they stood at **€1,856,867.72**.

37. The Registry is continuing to monitor and assess the implementation of the legal aid system in light of experience and lessons learned from the proceedings before the Court, to ensure not only that funds actually contribute to effective and efficient legal representation

⁴⁷ The monthly Defence costs applied to the four teams in case ICC-01/09-01/13 stand at €38,168, in other words: 4 x [€8,542 + €1,000]. This amount will be €114,504 for the three months covered by this report. If the Decision and Supplementary Report were to be applied, the amount would be €80,336 per month for the four teams, €241,008 for the three months covered by this report in other words.

⁴⁸ ICC-RoC85-01/13-21-Corr-Red 12 June 2014.

⁴⁹ ICC-01/09-01/13.

for the recipients of the system but also that the legal aid financed by public funds is carefully managed.

38. Finally, the Registry wishes to reiterate the same considerations regarding the need to strengthen the Counsel Support Section which is dealing with an increased workload resulting from the implementation, monitoring and assessments of the amendments to the legal aid scheme with already very limited human resources.
