

**Assembly of States Parties**Distr.: General
22 May 2014

Original: English

Thirteenth session

New York, 8-17 December 2014

Registry's fourth quarterly report on legal aid***I. Introduction**

1. Noting the earlier quarterly reports on monitoring and assessing the implementation performance of legal aid (the "First Quarterly Report",¹ the "Second Quarterly Report"² and the "Third Quarterly Report"),³ 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,⁴ the Registry presents this Fourth quarterly report (the "Fourth Quarterly Report") and reports to the Bureau and to the Committee on the results of its continuous monitoring, assessment and implementation, *inter alia*, of:

- (a) the revised legal aid system as adopted by the Decision of the Bureau of 22 March 2012 ("the Decision of the Bureau");⁵ 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"),⁶ namely: (A) remuneration in the case of multiple mandates; (B) expenses policy; and (C) remuneration during phases of reduced activity.

2. This quarterly report on assessing and implementing the Decision of the Bureau and the Supplementary report covers the period from 1 April 2012 to 31 December 2013. Legal aid savings, which are compared against the old system and set out in this report, also include estimates in cases where team members, duty counsel and *ad hoc* counsel remunerated under the revised system have not yet submitted the relevant time-sheets, bearing in mind that team members' time-sheets should, in principle, be submitted to the Registry at the end of the month in which the work is done.

II. Implementation of the Decision of the Bureau

Reporting period: 1 April 2012 to 31 December 2013

3. The 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

* Previously issued as CBF/22/2.

¹ CBF/20/2, 27 February 2013.

² CBF/21/2, 10 July 2013.

³ CBF/21/19, 20 August 2013.

⁴ *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/11Res.1, section H., paras. 3-4.

⁵ ICC-ASP/11/2/Add.1.

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

legal teams operating under the Court's legal aid system, and undertook to inform the relevant teams whenever specific aspects of the Decision became applicable to them. The Decision of the Bureau was implemented over the reporting period in several cases before the Court, as indicated below.

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

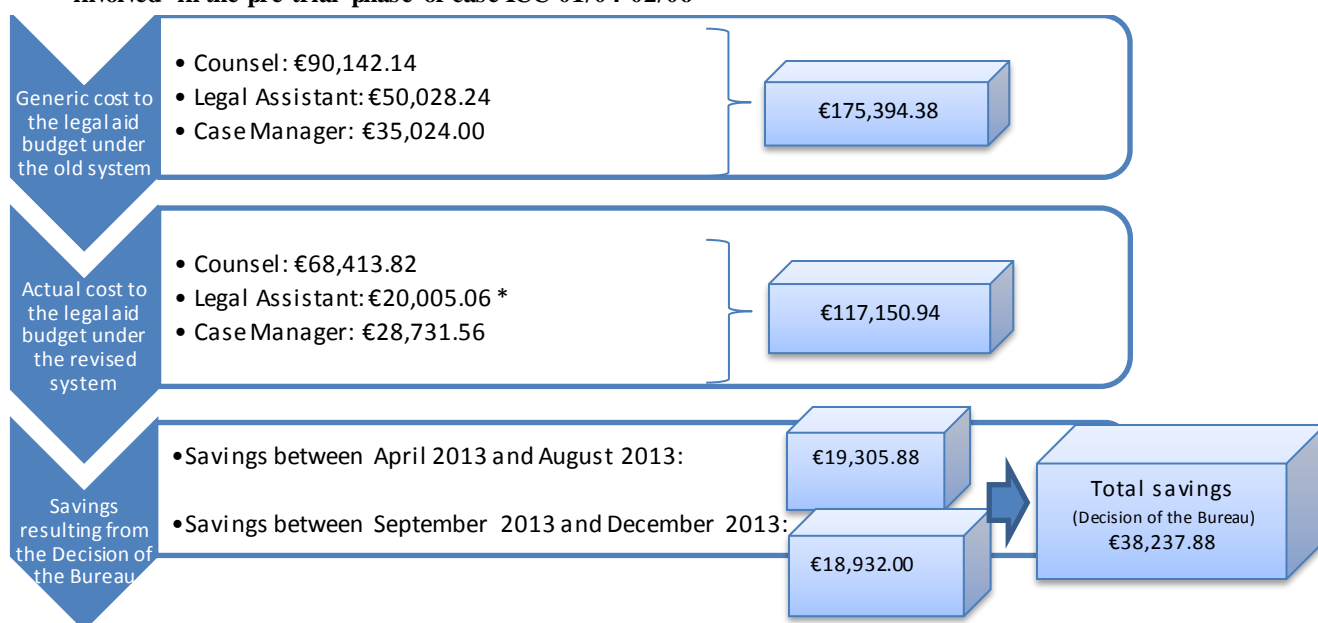
4. Appendix I, part C of the Decision of the Bureau on the revised scale of fees stipulates that as of 1 April 2012, the revised remuneration system shall have immediate effect with respect to the following situations under the legal aid system:

1. Teams appointed after 1 April 2012

5. As reported in the Second and Third Quarterly Reports, an individual subject to an outstanding warrant of arrest voluntarily surrendered in March 2013.⁷ 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 2013,⁸ in accordance with regulation 85(1) of the Regulations of the Court ("RoC") and regulation 132(3) of the Regulations of the Registry ("RoR").

6. The suspect appointed counsel to represent him in proceedings before the Court, and the Registry formalized the appointment on 26 April 2013. A legal team for the pre-trial phase of the proceedings was then constituted to ensure the suspect's legal representation. For the purposes of the Court's legal aid, the composition of the core Defence team during the pre-trial phase is as follows: one counsel, one legal assistant and one case manager. The Registrar submitted a simultaneous request to access the Contingency Fund to cover the additional costs pertaining to this new case in the 2013 fiscal year. The amount of these additional costs was reduced by applying the revised remuneration system to the newly established Defence team, resulting in the savings outlined in Figures 1 and 2 below.

Figure 1: Implementation of the revised remuneration scales for the Defence team involved in the pre-trial phase of case ICC-01/04-02/06

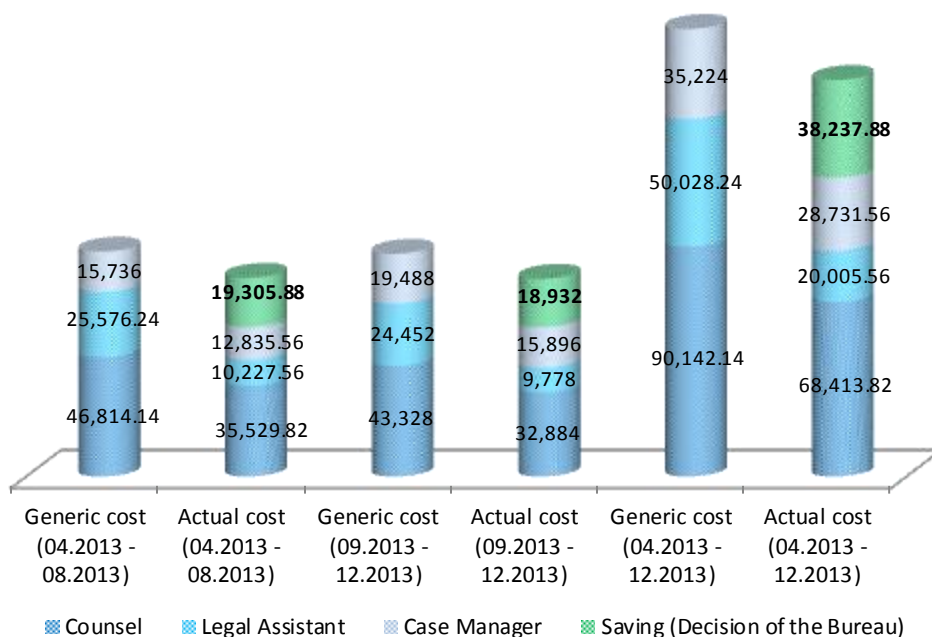


* Note: The legal assistant in question also works for a second Defence team which is likewise involved in the DRC situation and which benefits from the Court's legal aid system (Lubanga). The amount of fees paid to this legal assistant thus reflects the implementation of the Decision of the Bureau setting the remuneration of a legal assistant at €4,889, and the implementation of the Supplementary report concerning multiple mandates, which reduces the remuneration for a second case by 50 per cent (see also paragraph 32 below).

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

⁸ Enregistrement de la "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.

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



2. Changes in legal teams

7. 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 replacement of individual members or of whole teams, and in case of the appointment of new members. This aspect of the Decision of the Bureau has been implemented in respect of two teams operating in the pre-trial phase of proceedings in the situations in Côte d'Ivoire and the Democratic Republic of the Congo.

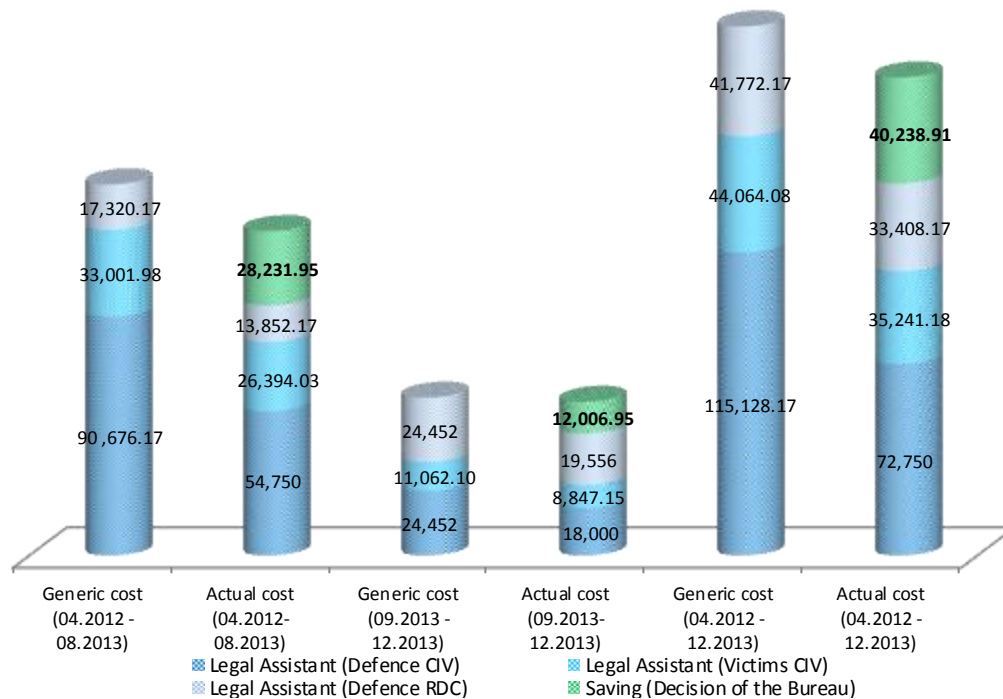
8. As stated in the First and Third Quarterly Reports, the revised fee system was first applied in the situation in Côte d'Ivoire to one legal assistant appointed in June 2012 in the context of legal representation of victims, and to another legal assistant appointed to the Defence team operating in the same context, pursuant to a decision of the Registrar in response to a request for additional means.

9. The revised fee system was also implemented on the appointment, on 6 June 2013, of an additional legal assistant to the Defence team acting in the context of the situation in the Democratic Republic of the Congo,⁹ pursuant to a decision of the Registrar in response to a request for additional means.

10. The Registry presents, in Figure 3 below, the savings made over the reporting period as a result of the application of the revised system to the three new appointments referred to above.

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

Figure 3: Implementation of the revised system in respect of changes in the Defence and victims' teams in the context of the situations in Côte d'Ivoire and the Democratic Republic of the Congo (in euros)



3. Specific legal teams

11. As noted in the Second and Third Quarterly Reports, pursuant to the Chamber decision of 17 April 2013, 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 represent him until he exercises his right to freely choose counsel under article 67(1)(d) of the Rome Statute, or until the definitive disposal of the proceedings relating to the admissibility challenge, at which point the Chamber will reconsider the question of Mr Gaddafi’s legal representation.

12. The Chamber left the question of legal assistance raised by the OPCD to be determined by the Registry. Given Mr Gaddafi’s specific circumstances and his detention in Libya, no formal request for legal assistance paid by the Court has been made by him personally. Furthermore, the Registrar has been unable to make a conclusive determination of 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 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. In practical terms, the suspect is not easily reachable, and in any event, due to freezing orders, he is unable to dispose of his means. The Court has therefore adopted the same approach as that followed in a case arising in the situation in the Central African Republic,¹⁰ where funds were advanced and guidelines adopted for the appropriate monitoring and subsequent recovery of the suspect’s assets.

13. In the case at hand, in the interests of the proper administration of justice and to ensure that Mr Gaddafi’s right to legal representation as a suspect implicated in the Court’s proceedings is safeguarded in accordance with the Statute and the Court’s applicable legal

¹⁰ *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-1007-Red.

texts, the Registry has exceptionally decided to assume the costs of Mr Gaddafi's legal representation on a provisional basis until such time as an assessment of his disposable means has been conducted and a decision on his indigence rendered.

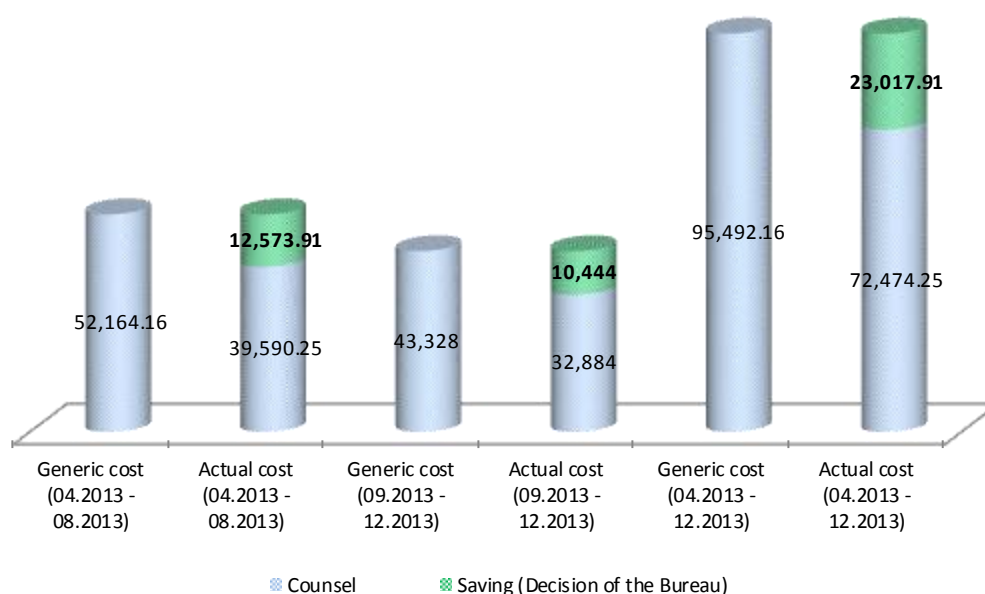
14. The Registry clarifies, in this connection, that if Mr Gaddafi is ultimately found not to be indigent within the meaning of the Court's legal texts, the guidelines applied in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*¹¹ will be implemented for the purpose of recovering the finds advanced.

15. The remuneration system arising out of the Decision of the Bureau is therefore applicable in the instant case. Counsel for Mr Gaddafi 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 the basis of work undertaken which is considered to be reasonably necessary to the case, capped monthly at €8,221 (revised fees), at the rate of €86.53 per hour and €649 per day.

16. The Registry refused counsel's request to institute a team at this stage of the proceedings on the grounds that it was not necessary for effective and efficient legal representation, a position largely endorsed by the Chamber. However, pursuant to the Chamber's 30 July 2013 decision,¹² counsel made a request for resources to remunerate a language assistant. The request was examined by the Registry which, in its decision of 19 August 2013, set out the conditions in which the funds would be made available. They will be disbursed if the OPCD and the Court Interpretation and Translation Section are unable to provide the required linguistic assistance, on the basis of the remuneration applicable to resource persons, and therefore, on the basis of work actually done, subject to a cap.

17. The implementation of the Decision of the Bureau in this case has resulted in the following savings since the appointment of external counsel.

Figure 4: Implementation of the revised system to changes made to the suspect's legal team in the context of the situation in Libya (in euros)



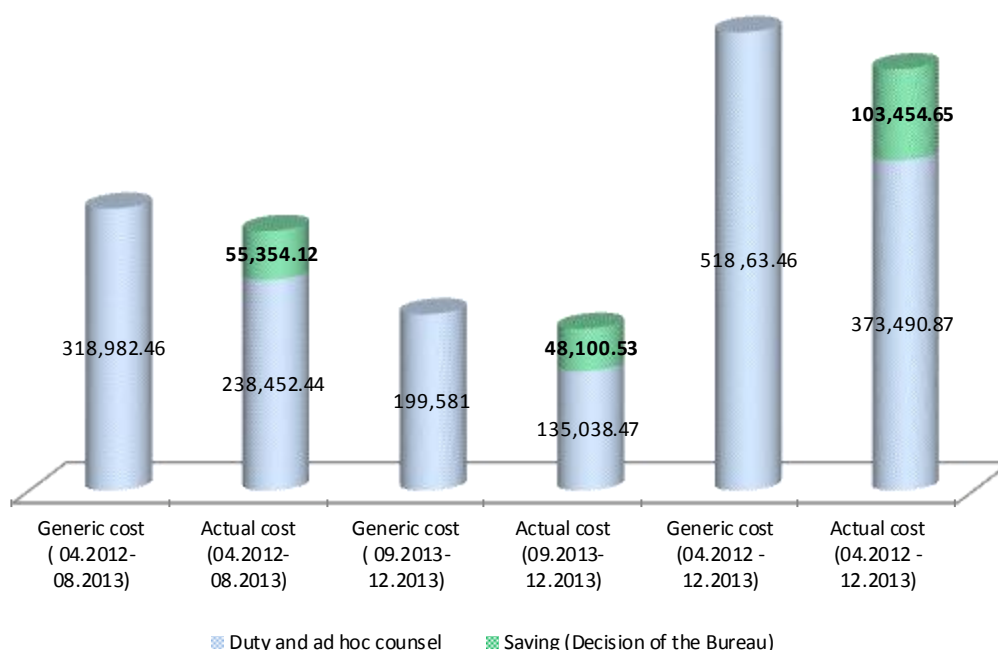
4. Duty and ad hoc counsel appointments

18. Figure 5 shows the savings achieved as a result of implementation of appendix I, part C in respect of duty and *ad hoc* counsel appointments over the course of the reporting period. It should be noted that this figure reflects actual savings plus estimated savings (where time-sheets have not been submitted to the relevant section of the Registry).

¹¹ *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08.

¹² ICC-01/11-01/11-390-Conf-Exp.

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



19. The Registry reports, lastly, that appendix I, part C was also implemented in respect of the temporary appointment of a legal assistant warranted by specific procedural requirements. The saving associated with that appointment is estimated at €1,812.93 as at the end of December 2013.

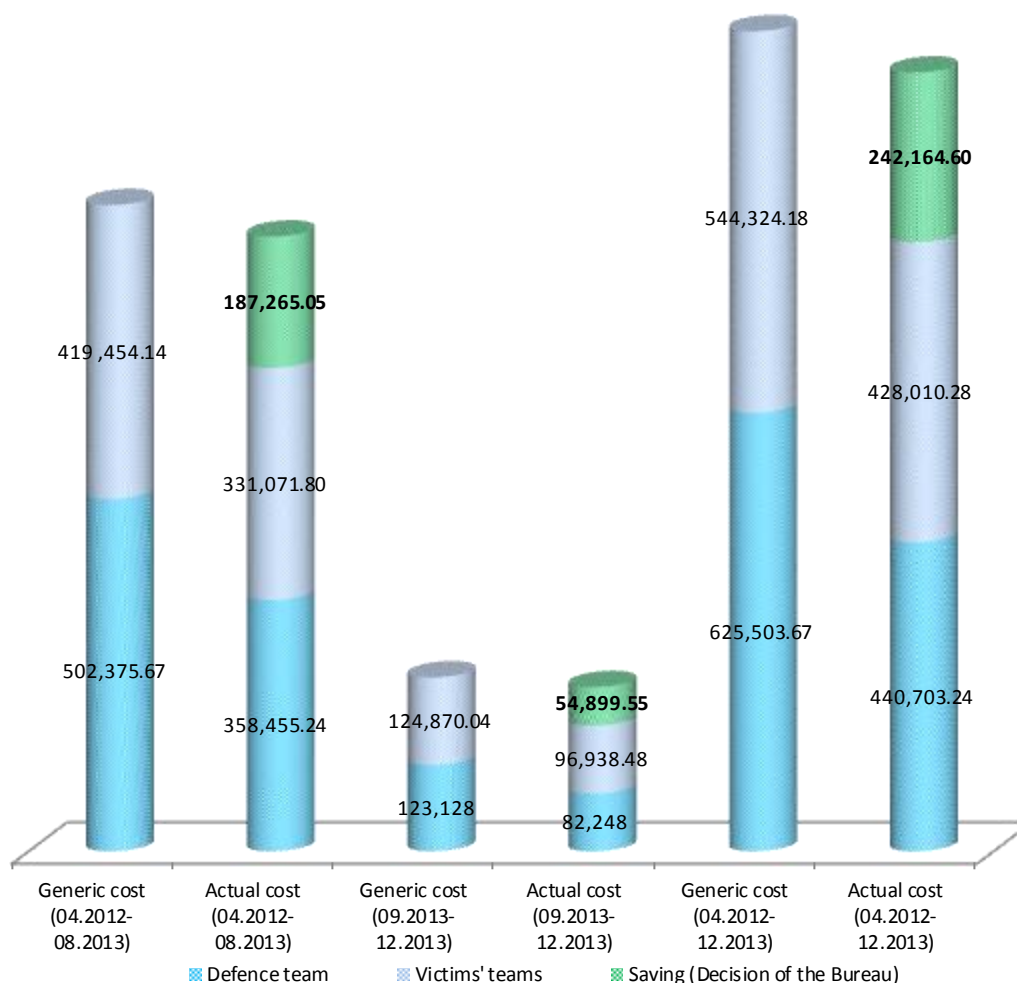
B. Implementation of appendix I, part D: Deferred implementation of the revised system of remuneration

20. In accordance with appendix I, part A, paragraph 1 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."

21. Part D, paragraph 5, provides 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 system of the Court."

22. As detailed in the previous quarterly reports, those specific aspects of the Decision of the Bureau were implemented in the context of situation in Kenya in respect of one Defence team and two teams constituted to represent victims. The savings are shown in Figure 6 below.

Figure 6: Implementation of the revised remuneration system in respect of the start of the trial in the context of the situation in Kenya (in euros)



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

23. Pursuant to the Decision of the Bureau with respect to teams that, as of 1 April 2002, 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 D of the Decision of the Bureau will apply.

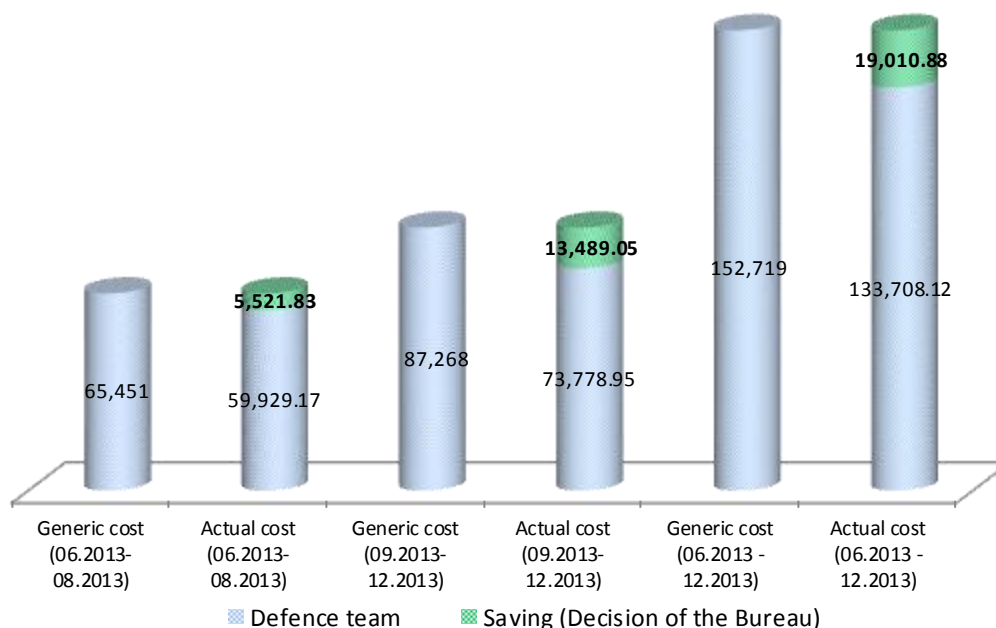
24. As explained in the First and Third Quarterly Reports, only one Defence team in the situation in the DRC¹³ has been remunerated in accordance with the system arrangements applicable to the first "segment A" of the appeal procedure. After having taken the necessary steps in January 2013, and notified the team concerned of the implementation of appendix I, part E, the Registry consulted the Presidency on the estimated length of the proceedings before the Appeals Chamber. The results of that consultation suggest that the case in question will not be completed before the first quarter of 2014, that is, 31 March 2014, at the earliest. The estimated length of each of the segments having thus been determined, the level of remuneration of that Defence team has, since 21 June 2013, been mid-way between the old and the revised remuneration systems, in accordance with paragraph 99 of the guideline document.¹⁴ The revised remuneration system in respect of

¹³ *The Prosecutor v. Mathieu Ngudjolo Chui*, ICC-01/04-01/07.

¹⁴ ICC-ASP/11/2/Add.1.

“segment C” (the appeal phase) will be implemented on 10 November 2013 and will end on 31 March 2014. The savings made in this respect are set out below.

Figure 7: Implementation of the remuneration schedule in respect of “segments B and C” for the appeal phase in the context of the situation in the DRC (in euros)



25. The lead counsel of the team concerned challenged the Registry’s implementation of the new remuneration schedule before the Appeals Chamber. The Registry filed observations. The Chamber has not yet rendered its decision on this matter. The Registry is monitoring the situation closely and will report any savings in future quarterly reports, in light of the Chamber’s decision.

26. The Registry has also taken the appropriate steps and notified a Defence team involved in another case before the Court in the context of the situation in the DRC¹⁵ of the gradual implementation of the revised remuneration system. The Registry consulted the Presidency on the estimated length of the proceedings before the Appeals Chamber before gradual implementation of the remuneration system established in the Decision of the Bureau. The results of that consultation were received only recently and the Registry will inform the Assembly of States Parties (“the Assembly”) of any savings made in its next quarterly report.

27. Accordingly, while at this stage the aspects of the Decision of the Bureau relating to that case have not yet been implemented, the Registry anticipates, subject to the result of the ongoing consultation with the Presidency, that savings will eventually be made as the team progresses to “segments B and C” of the system established in the Decision of the Bureau. The Registry will continue to monitor the situation closely and any savings will be reported in future quarterly reports.

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

28. As stated in the Second and Third Quarterly Reports, the Registry has received a request for compensation for professional charges from a counsel acting in the context of the situation in Kenya. As that request is covered by the revised system, the counsel is eligible to claim compensation for up to a maximum of 30 per cent of fees payable under the Court’s legal aid system. These entitlements are not automatic and will only be paid once the Registry has examined the request and the requisite supporting documentation and has confirmed that a certain percentage is payable by way of reimbursement of professional

¹⁵ *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

charges actually incurred. The Registry has taken the necessary measures to consider this request and will provide the relevant updated information in future reports.

29. The Registry recalls its observations as contained in paragraph 14 of the First Quarterly Report, namely that the new system for reimbursement of professional charges is currently applied for new victims' and Defence teams operating under the revised system. In this regard, it is to be noted that over the reporting period, two new cases¹⁶ were added to the list covered by the new professional charges reimbursement system. As stated previously, any request for reimbursement of professional charges is considered according to the situation of each member of the teams concerned and a decision of the Registry is issued in light of the supporting documentation furnished.

III. Implementation of the Supplementary Report

Reporting period: 1 April 2012 to 31 December 2013

30. As noted in the introduction, 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.¹⁷ The Registry continues to implement the aspects of the Supplementary report on the following matters:

- (a) Remuneration in the case of multiple 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 multiple mandates

31. This aspect of the Supplementary report was implemented for the first time when a Defence counsel asked the Registry to confirm the appointment to his team of a new member already working for two other Defence teams whose costs of legal representation were assumed under the Court's legal aid system. The request was turned down by the Registry in accordance with the relevant amendments of the Supplementary report and the associated rationale and reasoning to limit the intervention of team members to no more than two cases concurrently.

32. As detailed in the Second Quarterly Report, there have been two further cases involving multiple mandates. The first was that of a Defence counsel who asked the Registry to formalize the appointment of a new team member¹⁸ who was already acting as legal assistant in another Defence team whose legal representation costs were assumed under the Court's legal aid system.¹⁹ The second involved the appointment of a duty counsel assisting persons testifying under rule 74 of the Rules of Procedure and Evidence to assume a second mandate.²⁰ Another case of multiple mandates arose on 1 September 2013 on the appointment in a case in the Kenya situation²¹ of a new associate counsel who was already acting as legal assistant to a Defence team in the situation in the Democratic Republic of the Congo.²² The following tables and figures (8, 9, 10, 11, 12 and 13) show the savings made in connection with the remuneration conditions for multiple mandates set out in the Supplementary report.

¹⁶ *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, and *The Prosecutor v. Saif Al-Islam Gaddafi and Others*, ICC-01/11-01/11.

¹⁷ See Supplementary report, *supra*, footnote 6.

¹⁸ *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06.

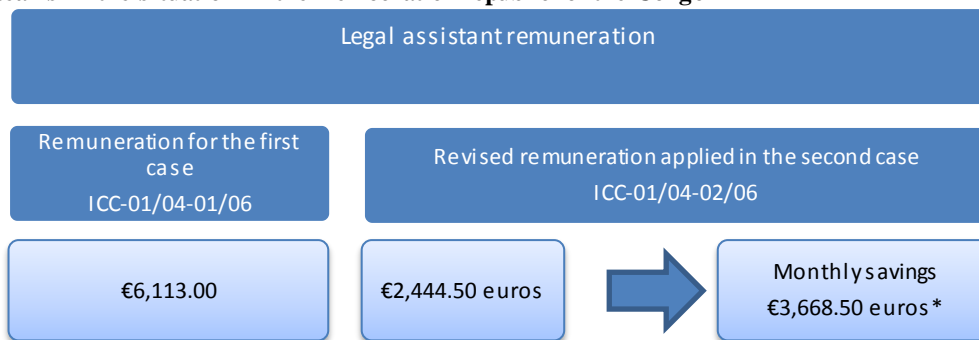
¹⁹ *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

²⁰ *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07, and *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08.

²¹ *The Prosecutor v. Joshua Arap Sang*, ICC-01/09-01/11.

²² *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07, and *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

Table 8: Appointment of a legal assistant simultaneously assigned to two Defence teams in the situation in the Democratic Republic of the Congo



* Note: The savings result from the implementation of the Decision of the Bureau setting the monthly remuneration of a legal assistant at €4,889, and of the Supplementary report on multiple mandates which reduces the remuneration for a second case by 50 per cent.

Figure 9: Graphic representation of savings resulting from the implementation of the revised remuneration system (see Table 8)

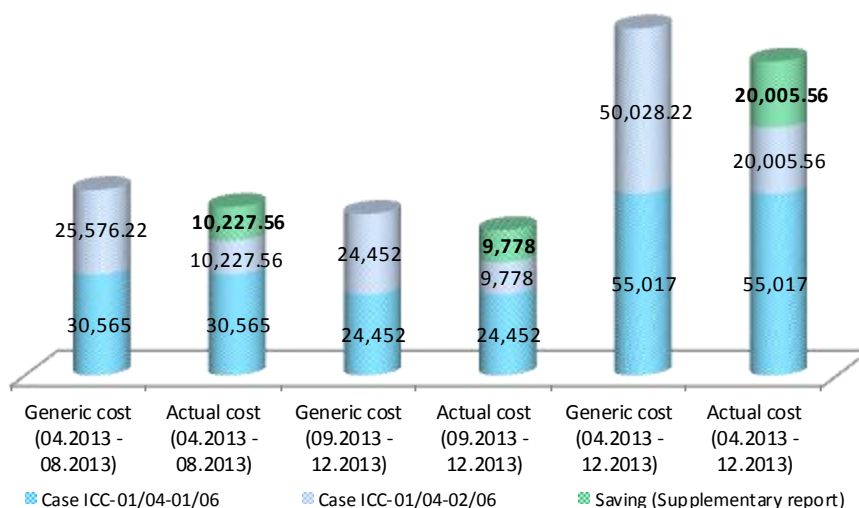
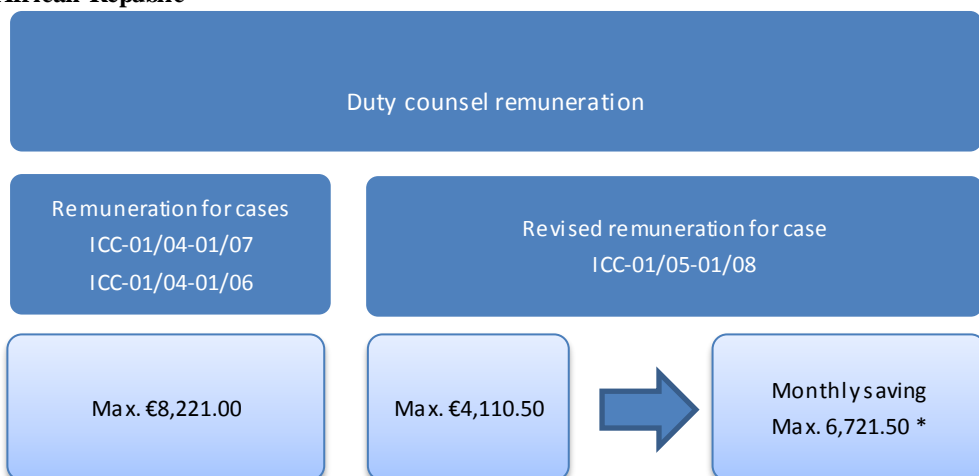


Table 10: Appointment of a duty counsel assigned to two cases in the situation in the Democratic Republic of the Congo to a third case in the situation in the Central African Republic



* Note: The savings result from the implementation of the Decision of the Bureau setting the maximum monthly remuneration payable to a duty counsel at €8,221, and of the Supplementary report on multiple mandates which reduces the remuneration for a second case by 50 per cent.

Figure 11: Graphic representation of savings resulting from the implementation of the revised remuneration system (see Table 10)

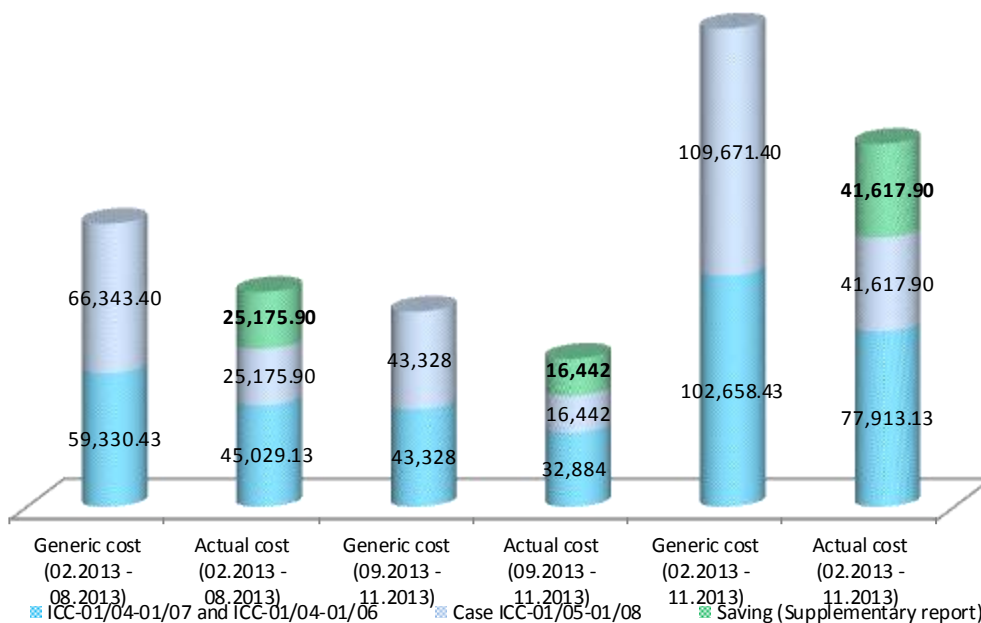
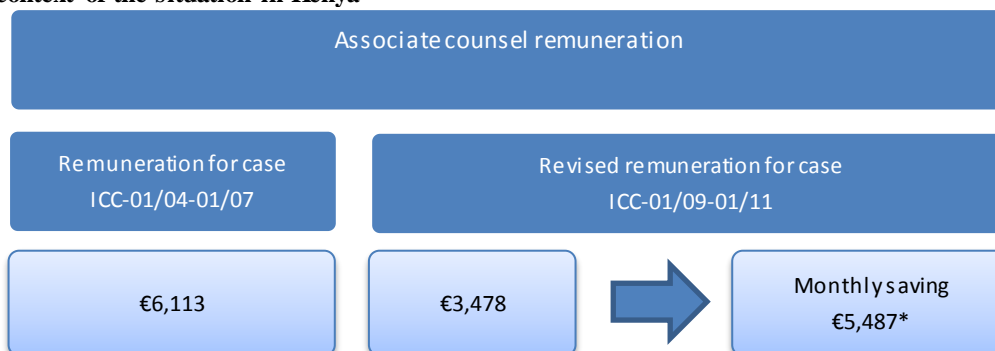
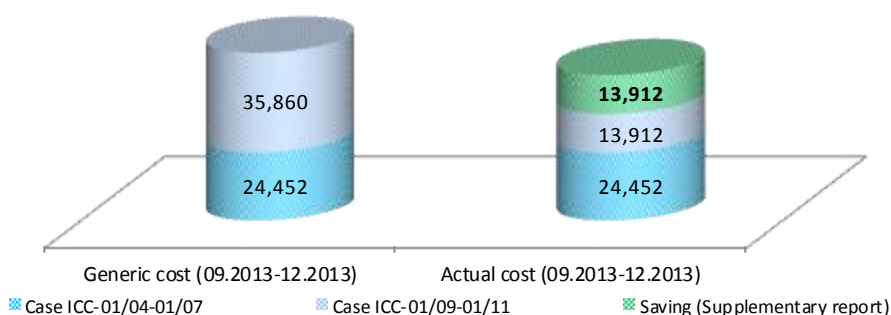


Table 12: Appointment of an associate counsel acting as legal assistant in a case in the situation in the Democratic Republic of the Congo to a second Defence team in the context of the situation in Kenya



* Note: The savings result from the implementation of the Decision of the Bureau setting the monthly remuneration of an associate counsel at €6,956, and of the Supplementary report on multiple mandates which reduces the remuneration for a second case by 50 per cent.

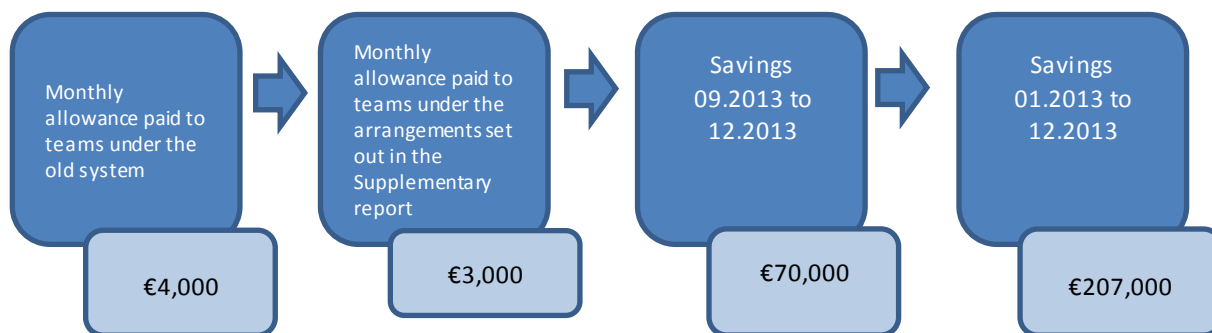
Figure 13: Graphic representation of savings resulting from the implementation of the revised remuneration system (see Table 12)



B. Legal aid expenses policy

33. The Registry has fully implemented the measures relating to the flat-rate monthly allowance to cover the expenses of the 18 legal teams which have been or are active in proceedings before the Court in 2013 (see Table 14). As stated above, two new teams have benefited from this allowance since April and May 2013,²³ while the mandate of another team ended in October 2013,²⁴ following a Chamber decision to terminate proceedings opened in 2010.²⁵ The reduction in the monthly flat-rate allowance resulted in savings of €207,000 euros in 2013.

Table 14: Savings resulting from the new travel policy



34. The Registry notes that since the implementation of the provisions of the Supplementary report and more specifically, since automatic payment of the daily subsistence allowance (DSA) was stopped, the expenses budget allocated to legal teams has not been exceeded when reimbursing accommodation and other costs associated with counsel and associate counsel visiting The Hague on official business. These costs are reimbursed upon provision of proof that such costs have actually been incurred.

35. The Registry has also finalized internal guidelines specifying the nature of the expenses that will be covered under the new system. As mentioned in the preceding paragraph, the Daily Subsistence Allowance will no longer be paid.

36. The Registrar will continue to closely monitor the implementation of this aspect of the Supplementary report, and will report on any savings made as a result of this measure in future quarterly reports, while continuing to keep a close eye on the responsiveness of this new system to the needs of the legal teams.

C. Remuneration during periods of reduced activity

37. There have been no judicial developments since 1 January 2013 which in the Registry's view would trigger implementation of this aspect of the Supplementary report.

IV. Savings made since the entry into force of the amendments

38. The Registry informs the Bureau and the Committee that its continuous monitoring and assessment of the Court's legal aid scheme, as amended by the Bureau in its Decision of 22 March 2012 and modified by the implementation of the proposals contained in the Supplementary report, have resulted in the savings shown in Figures 15,16 and 17 below.

²³ *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, and *The Prosecutor v. Saif Al-Islam Gaddafi and Others*, ICC-01/11-01/11.

²⁴ *The Prosecutor v. Saleh Mohammed Jerbo Jamus*, ICC-02/05-03/09.

²⁵ ICC-02/05-03/09-512-Red, *Public redacted Decision terminating the proceedings against Mr Jerbo*.

Figure 15: Total savings resulting from the implementation of different aspects of the Decision of the Bureau (in euros)

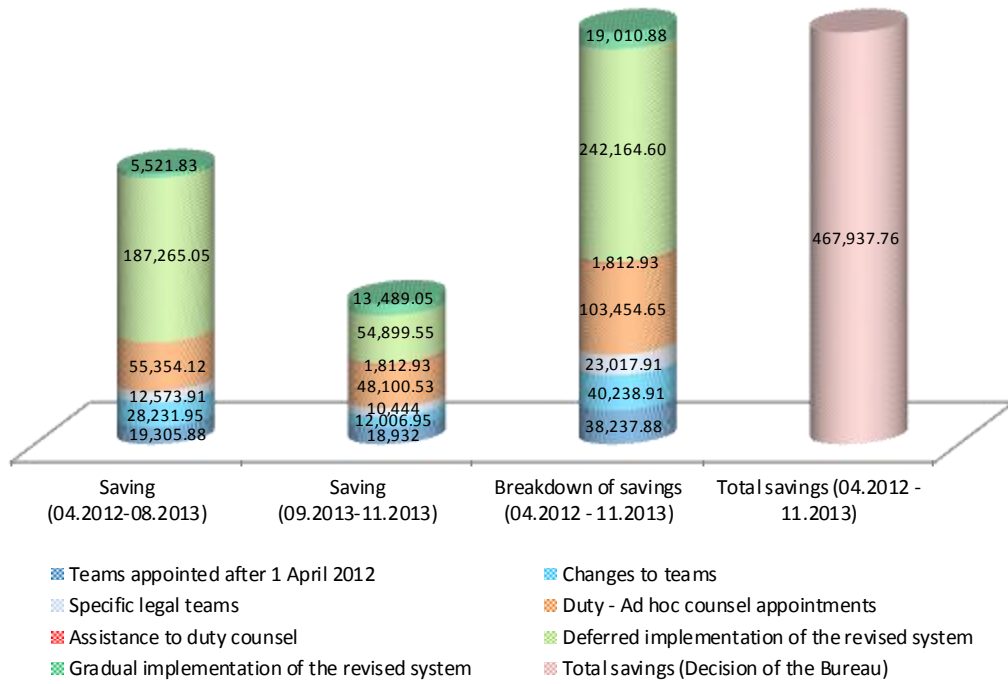


Figure 16: Total savings resulting from the implementation of the provisions of the Supplementary report (in euros)

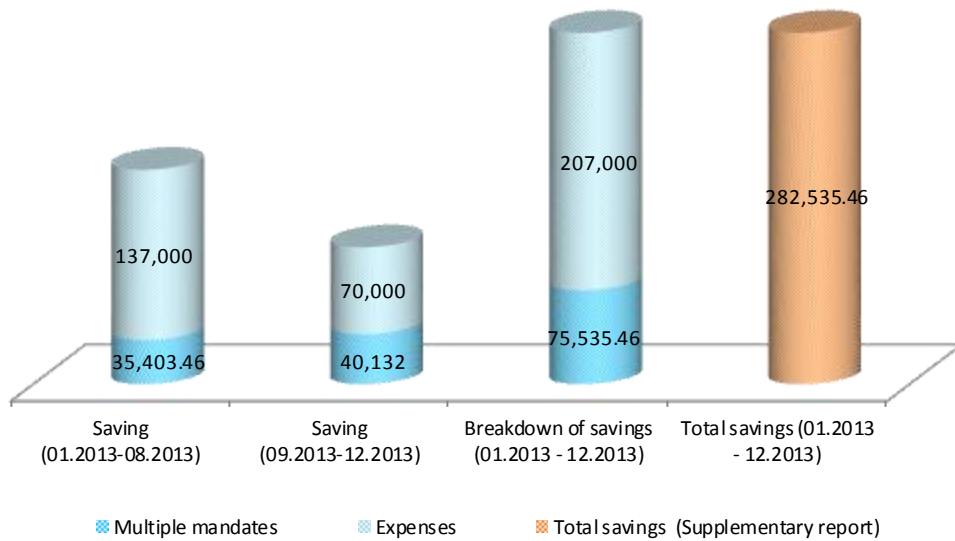
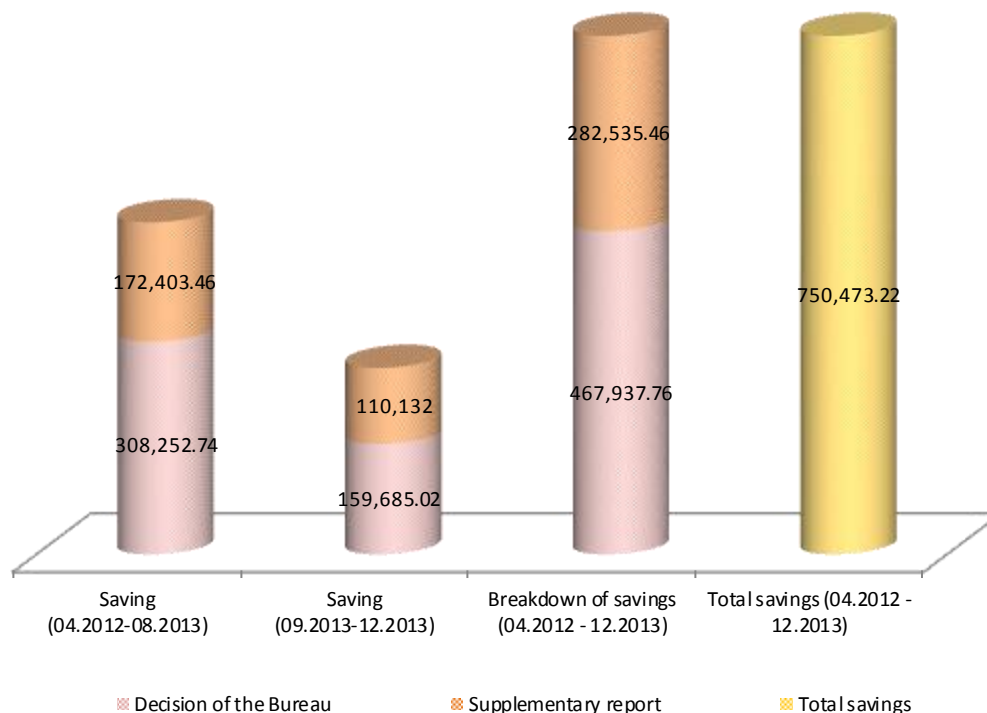


Figure 17: Total savings resulting from the implementation of the Decision of the Bureau and the provisions of the Supplementary report (in euros)



39. The Registry will continue to monitor and assess the implementation of the legal aid system in light of the experience gained and lessons learned from proceedings before the Court, not only to ensure that the funds provide for effective and efficient legal representation for the beneficiaries of the system, but also to ensure that publicly funded legal aid resources are judiciously managed. The Registry will continue to report to the Committee and to the Assembly.

V. Registry's capacity building

40. The impact of the implementation, monitoring and assessment of the changes to the legal aid scheme on the resources of the Counsel Support Section ("CSS") has been brought to the attention of The Hague Working group on several occasions and highlighted in previous quarterly reports of the Registry. The implementation of those amendments has a significant impact on the work of that section, given its limited human resources, and a there is a need to increase the capacity of the CSS on a more permanent basis so as to deal with its growing workload and ensure optimal service delivery.

41. That need is keenly felt given the considerable increase in the Court's activity, notably as a result of the proceedings brought under article 70 of the Rome Statute against Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido in case ICC-01/09-01/13, and the establishment of teams representing victims in the case of *The Prosecutor v. Bosco Ntaganda*.

42. Shortly before this report was submitted, six additional teams were established – four in the context of ICC-01/09-01/13 and two to represent the victims in the case of *The Prosecutor v. Bosco Ntaganda*. In its next quarterly report, the Registrar will provide the Assembly with a more thorough analysis of the impact of the establishment of these new teams on the Court's legal aid scheme.