

**Fourteenth session**

The Hague, 18-26 November 2015

**Registry's first half-yearly report on legal aid  
(July-December 2014)\****Summary*

1. This first half-yearly 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;<sup>1</sup> and
  - b) The proposals adopted from the Supplementary report of the Registry on four aspects of the Court's legal aid system,<sup>2</sup> namely: (A) remuneration in the case of multiple mandates; (B) legal aid expenses policy; and (C) remuneration during phases of reduced activity.
2. This half-yearly report follows on from the quarterly reports submitted by the Registry on the basis of resolution ICC-ASP/11/Res.1 (Section H, paragraph 4), implementing the following recommendations of the Committee on Budget and Finance:<sup>3</sup>
  - (a) That reports on the changes to the legal aid scheme should no longer be submitted to it quarterly but rather it should receive half-yearly reports at the two sessions it holds each year; and
  - (b) That the Court inform it of progress on the discussions regarding the proposals contained in the Registry report on ways to improve the legal aid procedures.<sup>4</sup>
3. This report covers the period from 1 July to 31 December 2014. The savings generated during this period stand at €787,518.46, in addition to the €712,526.46 for the period 1 January to 30 June 2014, total savings of €1,500,044.92 in other words from 1 January to 31 December 2014. The Registry recalls that the savings resulting from changes to legal aid stood at €750,473.22 for the period from 1 April 2012 to 31 December 2013. From 1 April 2012 to 31 December 2014 the savings achieved stand at €2,250,518.14.
4. This report also includes a brief summary of the dialogue initiatives conducted by the Registry which were used in particular to prepare the forthcoming assessment of the legal aid system in accordance with the Assembly resolutions.

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\* Previously issued as CBF/24/2.

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

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

<sup>3</sup> ICC-ASP/13/5, para. 74.

<sup>4</sup> ICC-ASP/13/6, 22 May 2014; ICC-ASP/13/20, para. 74.

**Table showing savings achieved over the period 1 July to 31 December 2014**

<i>Aspects of the legal aid scheme</i>	<i>Savings (euros)</i>
Teams appointed after 1 April 2012	123,468.00
Changes in teams	17,442.00
Individual instances of representation	31,332.00
Appointment of duty counsel	38,349.22
Deferred implementation of the revised remuneration scheme	70,506.00
Gradual implementation of the revised remuneration scheme	22,875.70
Compensation for professional charges	23,351.54
Multiple mandates	69,186.00
Expenses and other costs	138,000.00
Legal aid in Article 70 proceedings	253,008.00
<b>Total</b>	<b>787,518.46</b>

## I. Introduction

1. Noting the Registry's seven previous quarterly reports<sup>5</sup> and pursuant, on the one hand, 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<sup>6</sup> and, on the other hand, to paragraph 74 of Resolution ICC-ASP/13/5, the Registry submits its first half-yearly report to the Bureau and to the Committee:

(a) on its permanent monitoring and assessment activities regarding the implementation specifically: a) of the revised legal aid system as adopted by the Decision of the Bureau of 22 March 2012 ("the Decision");<sup>7</sup> and b) the proposals contained in the "Supplementary report of the Registry on four aspects of the Court's legal aid system" ("the Supplementary Report"),<sup>8</sup> three aspects of which have been adopted, namely: (A) remuneration in the case of multiple mandates; (B) expenses policy; and (C) remuneration during phases of reduced activity; and

(b) The situation regarding the Registry proposals included in document ICC-ASP/13/6 of 22 May 2014.

2. This report covers the period from 1 July to 31 December 2014.

## II. Implementation of the Decision of the Bureau

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

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

#### 1. Teams appointed after 1 April 2012

4. On 4 April 2013, a suspect<sup>9</sup> applied for legal aid, which was granted on a provisional basis in a decision dated 12 April 2013.<sup>10</sup> The Registry formalized the appointment of his

<sup>5</sup> 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; ICC-ASP/13/41, 3 December 2014.

<sup>6</sup> ICC-ASP/11/20, vol I, part III.A, ICC-ASP/11/Res.1, Section H, paras 3 and 4.

<sup>7</sup> ICC-ASP/11/2/Add.1.

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

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

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.<sup>11</sup> The team was also allocated additional resources to pay the fees of an additional legal assistant pursuant to an oral decision by Trial Chamber VI on 17 October 2014.<sup>12</sup> The savings achieved for this team for the period 1 July to 30 September 2014 stand at €21,450. From 1 October to 31 December 2014, they stand at €23,898.<sup>13</sup> During the period covered by this report, the total savings therefore stand at €45,348.

5. On 2 December 2013 the Chamber appointed the Office of Public Counsel for Victims ("OPCV") to represent the victims in the *Ntaganda* case.<sup>14</sup> 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.<sup>15</sup> The savings achieved during the period covered by the previous quarterly report<sup>16</sup> stood at €7,344.<sup>17</sup> They stand at €7,344<sup>18</sup> for the period 1 October to 31 December 2014 and €14,688 for the reporting period.

6. The OPCV was also appointed in the *Gbagbo* case to represent victims.<sup>19</sup> A legal assistant paid in accordance with the revised system was appointed in June 2012. The resultant savings associated with the appointment for the period covered by the previous quarterly report stood at €7,344.<sup>20</sup> They stand at €3,762<sup>21</sup> for the final quarter of 2014 and at €1,016 for the period 1 July to 31 December 2014.

7. In the *Blé Coudé* case,<sup>22</sup> 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. From the date of the Decision confirming the charges, 11 December 2014,<sup>23</sup> and given the resignation of the previous counsel and the need to give the Defence the means to prepare for trial without undue delay, the team was allocated additional resources to cover payments for an associate counsel. All the payments to members of this team have been made in accordance with the revised scale of fees. From 1 July to 30 September 2014, the savings achieved on the resources of the core team stand at €14,199. They stand at €16,208<sup>24</sup> from 1 October to 31 December 2014 and €30,407 for the reporting period.

8. In parallel the OPCV was appointed in the same case to represent the victims.<sup>25</sup> To this end it is assisted by a legal assistant whose appointment took effect from 7 July 2014 and who is acting in the context of multiple mandates. As at 30 September 2014, the savings achieved as a result of the multiple mandates and the implementation of the old and

<sup>10</sup> ICC-01/04-02/06-48.

<sup>11</sup> The savings associated with the associate counsel during the reporting period stand at €6,027.

<sup>12</sup> The Chamber set out the reasons for its decision in the document entitled: "Reasons for Review of Registrar's Decision on Defence resources", ICC-01/04-02/06-389, 29 October 2014. Pursuant to this decision, the team was allocated the resources for an additional assistant in accordance with the new scale of fees (€4,889 per month). During the reporting period, the savings achieved in this regard stand at €3,672.

<sup>13</sup> This amount includes the savings associated with the core team (€14,199), the associate counsel (€6,027) and the additional legal assistant pursuant to the oral decision of 17 October 2014 (€3,672).

<sup>14</sup> ICC-01/04-02/06-160, 2 December 2013.

<sup>15</sup> The savings associated with the multiple mandates in this instance are taken into account in the section of the report on remuneration in the case of multiple mandates.

<sup>16</sup> Registry's seventh quarterly report on legal aid, ICC-ASP/13/41, 3 December 2014.

<sup>17</sup> 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.

<sup>18</sup> 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 period 1 October to 31 December 2014.

<sup>19</sup> ICC-02/11-01/11-138, 4 June 2012, para. 44.

<sup>20</sup> ICC-ASP/13/41, 3 December 2014, para. 7.

<sup>21</sup> The application of the revised system generates monthly savings of €1,224 for a legal assistant, a total of €3,762 for the period 1 October to 31 December 2014.

<sup>22</sup> *The Prosecutor v. Charles Blé Coudé*, ICC-02/11-02/11.

<sup>23</sup> Decision on the confirmation of charges against Charles Blé Coudé, ICC-02/11-02/11-186.

<sup>24</sup> The savings for the core team stand at €14,119, to which must be added those associated with the associate counsel, €2,009 (€8,965 - €6,956).

<sup>25</sup> ICC-02/11-02/11-83, 11 June 2014.

new payment systems stood at €1,004. They stood at €1,005<sup>26</sup> from 1 October to 31 December 2014 and at €2,009 for the reporting period.

9. The savings achieved during the reporting period therefore stand at €23,468.

## 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 additional resources to pay an associate counsel as of 12 June 2014. From that date until 30 September 2014, the savings achieved stand at €7,299.83,<sup>27</sup> including €6,027 from 1 July to 30 September 2014. They stand at €6,027<sup>28</sup> for the period from 1 October to 31 December 2014 and at €2,054<sup>29</sup> for the reporting period. The revised payment system will apply to all members of the team from the first trial hearing.

12. Appendix I, Part C was also applied to the case manager, who is paid in accordance with the revised system,<sup>30</sup> who is part of a team representing victims in the Katanga case. The savings associated with this post stood at €2,694 as at 30 September 2014.<sup>31</sup> For the last quarter of 2014 they stood at €2,964. Thus the savings achieved from 1 July to 31 December 2014 stand at €5,388.

13. From 7 July 2014 and after consultation with Mr Katanga's counsel, the Registry reviewed the resources<sup>32</sup> 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. The savings achieved as a result of the revised system being applied due to changes to teams stand at €8,721 for the period 1 July to 30 September 2014<sup>33</sup> and they also stood at €8,721 for the last quarter of 2014. Savings totalling €17,442 were achieved from 1 July to 31 December 2014.

## 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. The Registry was of the view that given the circumstances of the case, only resources intended

<sup>26</sup> Multiple mandates generated savings of €7,333.50, in other words [ $(€4,889 \times 50/100) \times 3$ ]. The savings stand at €3,672 [ $(€6,113 - €4,889) \times 3$ ] for the implementation of the old and new payment systems.

<sup>27</sup> For June 2014, the savings are calculated in proportion to the days for which the mandate was valid (19) and taking into account monthly payments under the old system (€8,965) compared with the new one [€6,956] resulting in a total of €1,272.83 (€5,677.83-€4,405). On top of which must be added €6,027 which constitute 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], a sum of €2,009 in other words, multiplied by 3 (number of months covered by the period 1 October to 31 December 2014).

<sup>28</sup> This amount is calculated on the basis of the difference between the old system [€8,965] and the new one [€6,956], an amount of €2,009 in other words, multiplied by three (number of months covered by the period 1 October to 31 December 2014).

<sup>29</sup> This amount does not take into account the savings achieved in June 2014, €1,272.83 in other words, as indicated in paragraph 11 of the Registry's seventh quarterly report (ICC-ASP/13/41).

<sup>30</sup> The person was appointed on 21 November 2013 following the post vacancy on 20 December 2013.

<sup>31</sup> The move from the old to the revised remuneration system generated €98 in monthly savings

<sup>32</sup> 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).

<sup>33</sup> In the seventh quarterly report, the sum of €9,993.83 was reported for the period 12 June to 30 September 2014. To reflect the savings achieved solely during the present reporting period (1 July to 31 December 2014), the amount proportional to the 18 days in June needs to be deducted from this amount, €1,272.83 in other words. Therefore the sum to be reported here stands at €8,721.

to cover payments to a counsel would be approved under the fees category in accordance with the new payment system. For the period 1 July to 30 September 2014, the application of the Decision resulted in savings of €7,833. These savings stand at €7,833 for the last quarter of 2014 and €15,666 for the reporting period.

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 intended to cover only, in terms of fees, the resources for a counsel remunerated at the monthly tariff under the new system, €8,221 in other words. The savings achieved in this case, which are the same as those achieved from 1 July to 30 September 2014, stand at €7,833 for the period 1 October to 31 December 2014. In total, the savings for the reporting period stand at €15,666.

17. These individual instances of representation therefore generated €31,332 in savings from 1 July to 31 December 2014.

#### 4. Appointment of duty and *ad hoc* counsel

18. The forecast savings<sup>34</sup> associated with the appointment of an independent counsel for the proceedings brought under article 70 stand at €7,833.00 for the period 1 July to 30 September 2014. The same amount of €7,833 was recorded as the amount saved during the final quarter of 2014. The savings therefore stand at €15,666 for the period 1 July to 31 December 2014 for this budget item.

19. During the period covered by the report, Appendix I, part C, was implemented for the fourteen duty counsel, generating €22,683.22 in savings: €6,425.46 from 1 October to 31 December 2014,<sup>35</sup> to be added to the €6,257.76<sup>36</sup> for the period 1 July to 30 September 2014.

20. The savings associated with the appointment of duty counsel during the reporting period stand at €38,349.22.

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

21. Paragraph 1, Part A, of appendix I<sup>37</sup> and paragraph 5, part D<sup>38</sup> 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. The savings achieved for the Defence and the victims during the period 1 July to 30 September 2014 were €35,253. The same amount was achieved (€32,253) from 1 October to 31 December 2014. Savings therefore stand at €70,506<sup>39</sup> for the period 1 July to 31 December 2014.

<sup>34</sup> Some time sheets have not yet been processed. Any additional savings associated with the appointment of an independent counsel which might be achieved will be set out in the next report.

<sup>35</sup> This amount may change slightly once the processing of a few timesheets for appointments taking effect in December 2014 has been finalised. The Registry will clarify this situation in the next report if applicable.

<sup>36</sup> In the seventh quarterly report (para. 19), an amount of €8,111.76 was reported but after processing pending timesheets, it turns out that the actual savings achieved were €6,257.76, making a difference of €1,854. This amount is deducted from the savings mentioned in this report.

<sup>37</sup> 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."

<sup>38</sup> 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."

<sup>39</sup> 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 €28,398 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 below. As regards savings on the two teams representing victims (each consisting of one counsel - €2,611 in monthly savings per counsel - and one case manager - €98 in savings per month and per person), these amount to €7,018 per month, €42,108 for the current reporting period in other words. This figure is obtained by calculating, for these two teams, the difference between the old payment system and the revised scale.

### **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 half-yearly report,<sup>40</sup> the Registry provided details of the gradual implementation of the revised system of remuneration for another Defence team in the situation in the DRC<sup>41</sup> and the overpayment of €22,875.70 and stated that the team in question had repaid this sum in full. During the current reporting period, the Registry had also made arrangements to inform the two teams of victims in the situation in the DRC that the revised remuneration system applied, which generated an overpayment of €9,880.41. As this amount had not yet been recovered at the time of drafting this report, the Registry will report on this issue in its next half-yearly report. As a result, there are no savings to report for the period 1 October to 31 December 2014. In other words, the savings achieved from 1 July to 31 December 2014 as part of the gradual application of the revised remuneration system include only those generated during the period 1 July to 30 September 2014, €22,875.70 in other words.

### **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 criteria<sup>42</sup> and requires supporting documentation to be produced. Four applications were examined between 1 July and 30 September 2014. Two were rejected and one counsel filed an appeal before the Chamber against the Registry's decision, which was dismissed. A further application, which required additional information has been finalised and the applicant has been found to meet the conditions for the reimbursement of professional fees up to just over 15% of fees. Savings resulting from professional fees for the period 1 July to 30 September 2014 stand at €1,22.75.<sup>43</sup> They stand at €22,228.79<sup>44</sup> for the period 1 October to 31 December 2014, with this amount including adjustments for previous months. Thus the savings achieved during the reporting period stand at €23,351.54.<sup>45</sup>

## **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,<sup>46</sup> namely: A) remuneration in the case of multiple mandates, B) 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 the seven previous quarterly reports produced by the Registry. The first involved a counsel who asked the

<sup>40</sup> ICC-ASP/13/24, para. 26.

<sup>41</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

<sup>42</sup> Registry's single policy document on the Court's legal aid system, ICC-ASP/12/3, 4 June 2013, paras 129-138.

<sup>43</sup> 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.

<sup>44</sup> From 1 October to 31 December 2014, the savings amounted to €6,677.99. The amount for adjustments for the period from 1 July to 30 September 2014 stood at €5,550.80

<sup>45</sup> This amount also includes the reimbursement of professional fees for one counsel for which the Registry considers, in light of the available information and the conversations it has had with the person in question, that they will reasonably be paid in the near future. Any change which subsequently occurs will be clarified in the next half-yearly report.

<sup>46</sup> See Supplementary report, *supra*, footnote 7.

Registry to formalize the appointment of a new team member<sup>47</sup> who was already acting as legal assistant in another Defence team.<sup>48</sup> As the multiple mandate ended on 9 July 2014, there are no savings to report. The second case involved the appointment of a duty counsel to assume a second mandate.<sup>49</sup> 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 situation<sup>50</sup> who was already acting as legal assistant to another team in the situation in the Democratic Republic of the Congo.<sup>51</sup> Given the payment arrangements decided upon (100% of the fees in the case arising from the situation in Kenya<sup>52</sup> and 50% in the second case), the savings from 1 July to 30 September 2014 stand at €15,196.50.<sup>53</sup> They stand at €15,196.50 from 1 October to 31 December 2014. These savings therefore stand at €30,393 for the period 1 July to 31 December 2014.

28. A further case of multiple mandates 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.<sup>54</sup> Remuneration was set as follows: 100% of the fees for the role of counsel in the first case<sup>55</sup> and 50% of the fees for acting as a legal assistant in the second case.<sup>56</sup> The savings generated during the reporting period stand at €4,667.<sup>57</sup>

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 €2,813.00 from 1 July to 30 September 2014 and €1,313<sup>58</sup> from 1 October to 31 December 2014. The savings for the reporting period stand at €4,126..

30. As a result, the changes to the legal aid system in the case of multiple mandates generated savings totalling €69,186 from 1 July to 31 December 2014.

## B. Legal aid expenses policy

31. The Registry has implemented the measures relating to the flat-rate allowance<sup>59</sup> to cover the expenses of the 23 legal teams acting under the legal aid system apart from those in case ICC-01/09-01/13<sup>60</sup> for which the savings are given below. The reduction in the allowance allowed savings of €69,000 to be made between 31 July and 30 September 2014

<sup>47</sup> *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06.

<sup>48</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

<sup>49</sup> *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07, and *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08.

<sup>50</sup> *The Prosecutor v. Joshua Arap Sang*, ICC-01/09-01/11.

<sup>51</sup> *The Prosecutor v. German Katanga*, ICC-01/04-01/07 and *The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06.

<sup>52</sup> The Decision stipulates that the maximum monthly remuneration applicable to the associate counsel is €6,956.

<sup>53</sup> The following savings were achieved: i) those generated as a result of the difference between the old system for the remuneration of associate counsel (€8,965) and the revised scale (€6,956) - €2,009 monthly savings in other words; ii) those generated as a result of the 50% difference between the old system for the remuneration of the legal assistant (€6,113/2 = €3,056.50) and the revised scale (€4,889/2 = €2,444.50) - €612 monthly savings in other words; iii) and those generated by the implementation of the arrangement for multiple mandates at the revised scale rate for the legal assistant post, €4,889/2 = €2,444.50 in other words.

<sup>54</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

<sup>55</sup> In this case the maximum remuneration applicable to the two legal representatives from the same team is €0,832 per month (excluding professional fees) under the old system.

<sup>56</sup> 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%.

<sup>57</sup> €7,333.50 from 1 July to 30 September 2014 and €7,333.50 from 1 October to 31 December 2014, given that the savings associated with the multiple mandates arrangements were taken into account here since the savings associated with the legal assistant post were taken into account in the section of the report on teams appointed after 1 April 2012.

<sup>58</sup> This amount has fallen slightly in relation to that of the previous quarter because of a change within the team (appointment of a new team member to whom the system applicable for multiple mandates does not apply).

<sup>59</sup> 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.

<sup>60</sup> 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.

and €9,000<sup>61</sup> from 1 October to 31 December 2014; €138,000 in other words 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 which are considered reasonably necessary to ensure an effective and efficient defence. Four suspects have received legal aid on a provisional basis in this case whilst awaiting the findings of the financial investigations conducted by the Registry. If legal aid in this case had been calculated in accordance with the same parameters applied to proceedings brought under article 5 of the Rome Statute during the Pre-Trial phase, defence costs for each team would stand at €20,084 per month; €17,084<sup>62</sup> for fees and €3,000 for expenses. The savings achieved during the reporting period stand at €53,008<sup>63</sup> (€26,504 from 1 July to 31 September 2014 and €26,504 from 1 October to 31 December 2014).

34. It should also be recalled that in its Decision dated 20 May 2014, the Presidency<sup>64</sup> ordered the Registrar to pay advances to the Defence team for Mr Bemba (considered not to be indigent) for four months in the context of proceedings brought under article 70;<sup>65</sup> these advances were to be for an amount which was deemed appropriate, managed in accordance with the legal aid scheme and to be reimbursed in full by the suspect. The Defence was thus allocated the same funds as those allocated to each of the afore-mentioned teams in the same case: €8,542 per month (fees excluding professional charges), plus €1,000 per month for expenses. These advances were suspended by the Registry on 20 September 2014 following a decision by the Presidency dismissing the application by the Defence for them to continue once the four-month period had elapsed. Given that these funds constitute advances which will have to be repaid to the Court at a future date, they are not taken into account in this report.

## 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 2012 and amended with the implementation of the proposals included in the Supplementary Report, allowed savings of **€787,518.46** to be achieved between 1 July and 31 December 2014. A breakdown is provided in the table below.

<sup>61</sup> The savings achieved are calculated as follows:  $([€4,000 - €3,000] \times 23) \times 3$ .

<sup>62</sup> 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).

<sup>63</sup> The monthly Defence costs applied to the four teams in case ICC-01/09-01/13 stand at €38,168, in other words:  $4 \times [€8,542 \text{ (fees)} + €1,000 \text{ (expenses)}]$ . For the period 1 July to 31 December 2014 this amount was €29,008. If the Decision and Supplementary Report were to be applied, the amount would be €30,336 per month for the four teams, €482,016 for the six months covered by this report in other words.

<sup>64</sup> ICC-RoC85-01/13-21-Corr-Red 12 June 2014.

<sup>65</sup> ICC-01/09-01/13.



**Table showing savings achieved over the period 1 July to 31 December 2014**

<i>Aspects of the legal aid scheme</i>	<i>Savings 1 July- 30 Sept 2014</i>	<i>Savings 1 Oct – 31 Dec 2014</i>
Teams appointed after 1 April 2012	61,341	62,127
Changes in teams	8,721	8,721
Individual instances of representation	15,666	15,666
Appointment of duty counsel	14,090.76 <sup>66</sup>	24,258.46
Deferred implementation of the revised remuneration scheme	35,253	35,253
Gradual implementation of the revised remuneration scheme	22,875.70	0
Compensation for professional charges	11,22.75	22,228.79
Multiple mandates	35,343	33,843
Expenses and other costs	69,000	69,000
Legal aid in Article 70 proceedings	126,504	126,504
<b>Total</b>	<b>389,917.21</b>	<b>397,601.25</b>

\*The sum of €93,868.04 was reported in the seventh quarterly report. This amount was revised downwards slightly after certain payments were adjusted. The actual savings for each aspect of legal aid are reflected in this table.

36. The Registry recalls that the savings achieved as a result of changes to legal aid stood at €750,473.22 for the period 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, they stood at €1,462,999.68. For the period 1 January to 30 June 2014 these savings stood at €12,526.46. The savings stand at €12,526.46 for the period 1 January to 30 June 2014 and **€87,518.46** from 1 July to 31 December 2014, €1,500,044.92 for the period 1 January to 31 December 2014. From 1 April 2012 to 31 December 2014 the savings achieved stand at **€2,250,518.14**.

37. The Registry will continue 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 for the recipients of the system but also that the legal aid financed by public funds is carefully managed.

## **VI. Situation regarding the registry proposals included in document ICC-ASP/13/6 of 22 May 2014**

38. Following the recommendations included in the report of the 21<sup>st</sup> Session of the Committee on Budget and Finance, to “identify ways to improve existing procedures” (ICC-ASP/12/15), para. 137), the Registrar submitted the Registry report on ways to improve legal aid procedures (ICC-ASP/13/6) in which a series of measures to achieve this aim were set out; in the report from its 22<sup>nd</sup> session, the Committee acknowledged this report, which it described as “essential preparatory work” (ICC-ASP/13/5, para. 74) and expressed reservations on some of the proposals included (para. 73).

39. Throughout 2014, the Registry continued its discussions with counsel, in particular with a view to the reassessment which was due to take place following “the completion of the first full judicial cycles” (ICC-ASP/12/Res. 8, Annex I, para. 6(c)).

40. Indeed, two crucial developments for the Registry’s work in this regard took place in 2014: the overhaul of the internal structure of the Registry, which could potentially affect

<sup>66</sup> The sum of €16,768.76 was taken into account in the seventh quarterly report. After adjustments, the actual amount to be taken into account is €14,090.76 (after the deduction of €1,854 mentioned in footnote 34 of this report and the €824 referred to in paragraph 19 of the seventh quarterly report and which correspond to the adjustment for savings not involved in the reporting period).

substantial aspects of its organisation and its services to the Defence and victims and the internal audit of the legal aid system.

41. The Office of internal audit was of the view that the implementation of the system was entirely in line with the established policy and found that, as the Court had stated in its previous reports, there was an imbalance between the intense work caused by the workload created by the system, especially following the reforms introduced in 2012, and the resources allocated to the section responsible for the management thereof in the Registry. The Office put forward certain recommendations with a view to simplifying the system, recommendations which are taken into account in the current discussions on the reorganisation of the work of the Registry and in its consultations with external partners, including counsel and other representatives from the legal profession.

42. The first sub-regional Seminar of the Legal Profession held by the Registry in Dakar (Senegal) in October 2014 was an opportunity to discuss the options presented to the Assembly in the report with counsel among others and to gather comments. The Registry also discussed the same issues with representatives of the special tribunals, counsel and NGO representatives, in particular at the seminar held at the seat of the Court on 26 November 2014 and at the meeting of Defence Offices which was held in The Hague in December 2014.

43. Furthermore, the Registry experienced the use of legal aid in the context of proceedings for offences against the administration of justice during the Pre-Trial Phase (by reconsidering the resources which are reasonably necessary for the Defence in these cases) and the arrangements for the payment of duty counsel called upon to give legal opinions where testimony involves self-incrimination in accordance with rule 74 of the Rules of Procedure and Evidence. These cases allowed the testing of certain proposals made in the report. They also highlighted other issues which require wide consultations with representatives of the ad hoc tribunals in particular when they are addressed in the context of legal aid.

44. It is clear from the discussions held with and comments from the legal profession that the proposals set out in the Report require more in-depth discussions and wider consultation to ensure that legal aid continues better to respond to the demands of high-quality legal representation and the need for effective and simplified management of the Court's legal aid system.

45. The Registry refers to the considerations set out in its quarterly reports submitted to the Assembly and the Bureau on the need to strengthen the capabilities of the Counsel Support Section which, with already limited human resources, is facing an increased additional workload resulting from the implementation, monitoring and assessment of changes to the legal aid scheme. The additional capabilities are all the more urgent as this section will need to get heavily involved in both the process, which will need to include wide consultations with counsel and members of the legal profession, and in formulating Registry proposals in the context of the planned reform of the Court's legal aid scheme.

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