

**Remuneration Policy for Persons Representing Indigent Accused  
in Pre-Trial Proceedings before the Mechanism for International Criminal Tribunals**

Adopted on 22 March 2016

PREAMBLE

The Registrar of the Mechanism for International Criminal Tribunals;

**CONSIDERING** Article 19 of the Statute of the MICT, as adopted by the Security Council under Resolution 1966 (2010) of 22 December 2010;

**CONSIDERING** the Rules of Procedure and Evidence of the MICT, as adopted on 8 June 2012 pursuant to Article 13 of the Statute;

**CONSIDERING** the Directive on the Assignment of Defence Counsel, issued on 14 November 2012;

**CONSIDERING** the principles, policies and procedures governing the remuneration policies at the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia;

**HEREBY ADOPTS** this Policy, pursuant to Article 25 of the Directive.



John Hocking  
Registrar

Dated this 22<sup>nd</sup> day of March 2016  
At The Hague,  
The Netherlands.

**TABLE OF CONTENTS**

**A. DEFINITIONS..... 3**

**B. GENERAL PROVISIONS..... 6**

**C. PHASE ONE – INITIAL APPEARANCE AND PLEA ..... 8**

**D. PHASE TWO ..... 9**

**E. WORK PLAN..... 10**

**F. ASSESSING THE COMPLEXITY LEVEL..... 11**

**G. PHASE THREE..... 11**

**H. TRAVEL ..... 15**

    TRAVEL TO THE SEAT OF THE MICT..... 15

    TRAVEL FOR MEETINGS BETWEEN LEAD COUNSEL AND CO-COUNSEL ..... 16

    TRAVEL TO FAMILIARISE LEAD COUNSEL, CO-COUNSEL AND DEFENCE INVESTIGATOR(S) WITH THE CRIME  
    SCENES IN THE INDICTMENT ..... 16

    TRAVEL FOR INVESTIGATIVE PURPOSES ..... 16

    CASE PREPARATION BEFORE THE COMMENCEMENT OF THE TRIAL ..... 16

**I. FINAL PROVISIONS ..... 17**

## A. DEFINITIONS

For the purpose of this Policy, the following definitions shall apply:

- Accused:** A person indicted by the ICTR, the ICTY, or the MICT, in accordance with Article 1 of the Statute.
- Association of Counsel:** An Association of Defence Counsel practicing before the Mechanism, recognised by the Registrar in accordance with Rule 42(A)(iii) of the Rules.
- Branch:** The relevant branch of the MICT in Arusha or in The Hague.
- Chamber:** The Trial Chamber of the MICT composed in accordance with Article 12 of the Statute.
- Code of Conduct:** The Code of Professional Conduct for Defence Counsel Appearing before the MICT, issued by the Registrar on 14 November 2012, and as subsequently amended.
- Counsel:** A person assigned to represent an indigent or partly indigent Accused pursuant to Rules 43 and 44 of the Rules and Article 16(B) or 16(C) of the Directive.
- Co-Counsel:** A person assigned to assist Lead Counsel with the defence of an Accused, pursuant to Rules 43 and 44 of the Rules and Article 16(C) of the Directive.
- CPI:** Consumer Price Index for The Netherlands as determined by the International Civil Service Commission.
- Defence Team:** Lead Counsel assigned by the Registrar to represent an indigent or partly indigent Accused and any other person assigned or approved by the Registry to assist Lead Counsel in this task, including Co-Counsel, Consultants, Legal Assistants, Case Managers, Investigators and Interpreters/Translators, as applicable.
- Directive:** The Directive on the Assignment of Defence Counsel, issued by the Registrar on 14 November 2012, in accordance with Rule 43 of the Rules, and as subsequently amended.
- DSA:** Daily Subsistence Allowance pursuant to Article 28 of the Directive.

<b>End-of-Phase Payment:</b>	The portion of the Phase Three lump sum, amounting to twenty percent (20%) of this sum, that is withheld and paid after approval by the Registry of the Defence End-of-Phase Report.
<b>ICTR:</b>	The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Security Council resolution 955 of 8 November 1994.
<b>ICTY:</b>	The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993.
<b>Lead Counsel:</b>	A person assigned to represent an indigent or partly indigent Accused pursuant to Rules 43 and 44 of the Rules and Article 16(B) of the Directive.
<b>MICT:</b>	The International Residual Mechanism for Criminal Tribunals, as established by Security Council resolution 1966 of 22 December 2010.
<b>Policy:</b>	The present Remuneration Policy for Persons Representing Indigent Accused in Pre-Trial Proceedings before the MICT.
<b>President:</b>	The President of the MICT appointed pursuant to Article 11 of the Statute.
<b>Pre-Trial:</b>	The phase of proceedings taking place before a Chamber, from the time of the initial appearance of the Accused until the first day of trial.
<b>Pre-Trial Judge:</b>	The member of the Trial Chamber designated to be responsible for Pre-Trial proceedings, pursuant to Rule 70 of the Rules.
<b>Prosecutor:</b>	The Prosecutor of the MICT appointed pursuant to Article 14(4) of the Statute.
<b>Registrar:</b>	The Registrar of the MICT appointed pursuant to Article 15 of the Statute.

- Registry:** The organ of the MICT responsible for the administration and servicing of the MICT pursuant to Article 15 of the Statute, and, for purposes of this Policy, Registry staff specifically tasked with administering legal aid.
- Rules:** The Rules of Procedure and Evidence adopted by the MICT pursuant to Article 13 of the Statute, adopted on 8 June 2012, and as subsequently amended.
- Statute:** The Statute of the MICT annexed to Security Council resolution 1966 of 22 December 2010, and as subsequently amended.
- Support Staff:** Any person providing support to Lead Counsel pursuant to Article 16(E) of the Directive.

In this Policy, the masculine shall include the feminine and *vice versa*.

## B. GENERAL PROVISIONS

1. This Policy provides for the remuneration of reasonable and necessary work performed by the Defence Team of an indigent or partly indigent Accused during Pre-Trial proceedings. The Policy is based on a lump sum payment system, which is designed to give Lead Counsel maximum flexibility in the use of the available resources. This means in particular that Lead Counsel can retain the services of Support Staff as he sees fit in the course of Pre-Trial proceedings, depending on the needs of the case during this stage. However, only Defence Team members who have been assigned or approved by the Registry can receive remuneration from the lump sum.
2. This Policy does not purport to create any rights or entitlements beyond those established in Article 19 of the Statute, and is without prejudice to the Rules and the Directive. In cases of conflict, the provisions of the Statute, Rules or Directive shall prevail.
3. This Policy follows a scheme fixing the amount of payment to one of three complexity levels in each case: Level 1 (difficult); Level 2 (very difficult); Level 3 (extremely difficult). For the purpose of this Policy, the Pre-Trial stage consists of three Phases. The lump sum is distributed in monthly stipends and, for Phase Three, an End-of-Phase payment. The monthly stipends do not represent a monthly allotment of hours, nor are they a monthly salary. Rather, the monthly stipends are advance payments of the lump sum, which would otherwise be due at the end of the Pre-Trial stage, once all work has been performed and approved by the Registry.
4. The Pre-Trial lump sums are as follows:<sup>1</sup>

Complexity	Phase I	Phase II	Phase III	Allotment for interpretation and translation <sup>2</sup>	Total <sup>3</sup>
Level 1	\$4,000	\$64,500	\$149,182	\$1,500 per month	\$217,682 (+DSA & Travel)
Level 2	\$4,000	\$64,500	\$304,560	\$1,500 per month	\$373,060 (+DSA & Travel)
Level 3	\$4,000	\$64,500	\$537,885	\$1,500 per month	\$606,385 (+DSA & Travel)

5. The amounts set out in this Policy shall be adjusted by reference to the movement of the CPI. Such adjustment shall be effective as of 1 January of each year and will be based upon the movement of the CPI during the twelve-month period from November of the preceding year.
6. All aspects of representation are to be covered by the lump sum, except for necessary travel, DSA and costs listed in paragraphs 7 to 10. These include, but are not limited to:

- Lead Counsel fees;

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<sup>1</sup> The amounts set out in the Policy are derived from the maximum allotments of hours and/or lump sum amounts applied by the ICTR and the ICTY during the Pre-Trial stage. All amounts are set in United States Dollars, but payments may be made in Euros applying the official United Nations exchange rate for the month in which the payment is made.

<sup>2</sup> See *infra*, para. 8.

<sup>3</sup> Totals do not include DSA and travel, which are covered separately in accordance with Section I, *infra*.

- Co-Counsel fees;
  - interpretation and translation costs (*see* paragraphs 7 and 8);
  - Legal Assistant fees;
  - Investigator fees;
  - office costs;
  - administrative expenses; and
  - Consultant fees.
7. Included in the lump sum are all interpretation and translation costs, except those related to the translation of documents to be tendered as evidence. Such documents shall be translated by the MICT.
  8. Moreover, interpretation and translation costs incurred for the purpose of facilitating client-counsel communication as provided for in Article 19(4) (a), (b), and (f) of the Statute are not included in the lump sum. Language assistants assigned to the Defence Team may invoice separately for those costs, up to a maximum of \$1,500 per month. Language Assistants must submit detailed invoices to the Registry specifying the number of working hours and the tasks performed.<sup>4</sup> Those invoices must be submitted through Lead Counsel who must also sign the invoice. Invoices must be submitted within 60 days of the last day of work performed.
  9. Fees for Defence experts providing expert reports are not included in the lump sum. A total maximum of 150 remunerable expert hours<sup>5</sup> may be allocated by the Registry for the provision of expert reports in addition to the lump sum. Lead Counsel may request the assignment of experts to provide advice on a particular area of fact or law on an *ad hoc* basis by submitting a request to the Registry detailing the expertise to be provided, a CV of the proposed expert and the number of hours needed to complete the specific assignment.
  10. As a general rule, the MICT does not cover the costs of experts' travel unless Lead Counsel has established, and the Registry is satisfied, that it is necessary to fulfil the scope of their assignment. Defence experts must submit a detailed invoice to the Registry specifying the number of working hours and the nature of the work performed. The invoice must be submitted through Lead Counsel who must also sign the invoice. Invoices must be submitted within 60 days of the last day of work performed.
  11. Lump sum payments shall be made, in principle, within 30 calendar days of the submission of a valid and accurate *pro forma* invoice or other documentation prescribed below, and shall be deposited directly into the bank accounts of the respective Defence Team members.
  12. For the purpose of this Policy, the MICT shall recognise the determination of indigency of an Accused made by the ICTR and the ICTY, unless new information is obtained, which establishes that the Accused has sufficient means to remunerate Counsel. Where the ICTR and the ICTY have made no determination on indigency, the MICT will assess the financial means of the Accused in accordance with the Directive.

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<sup>4</sup> For this type of work, Language Assistants are remunerated at hourly rates established by the Registry.

<sup>5</sup> Experts are remunerated at hourly rates established by the Registry.

### **C. PHASE ONE – INITIAL APPEARANCE AND PLEA**

13. Counsel will be assigned to represent an Accused for his initial appearance. Phase One begins with the assignment of Counsel and ends one day following the entering of a plea by the Accused, pursuant to Rule 64 of the Rules.
14. Counsel will be paid a standard lump sum of \$4,000 for the initial appearance in addition to the DSA and travel allowance, if applicable.
15. The lump sum allocated for Phase One covers any and all work to be performed by the Defence Team during the phase, including but not limited to:
  - review of the indictment;
  - review of supporting material;
  - consultations with the client;
  - communications with the Office of the Prosecutor and the Registry;
  - attendance at hearings;
  - entering of a plea; and
  - presence during any questioning of the Accused.
16. Duty Counsel assigned pursuant to Rule 43(C)(iii) of the Rules to represent the Accused for the purposes of the initial appearance in accordance with Rule 64 of the Rules will be paid the same amount.
17. The lump sum for this phase is not contingent on the complexity level of the case.

#### **Invoicing and Payment**

18. The Phase One lump sum shall be paid in a single stipend upon submission of a *pro forma* invoice following the entering of a plea pursuant to Rule 64 of the Rules.
19. The *pro forma* invoice shall be submitted to the Registry no later than 60 days after the completion of Phase One, and shall be signed by Counsel, who shall advise the Registry how to distribute the stipend between the Counsel and other Defence Team members, if any. Payments shall be made in accordance with paragraph 11.
20. The *pro forma* invoice need not detail the work performed. However, all members of the Defence Team must keep a record of the work performed and the time spent on particular tasks or assignments, as Counsel is required to account for all the work performed in the End-of-Phase Report, as described in paragraphs 52 to 57 below.

#### **Adjustment of the Phase One Lump Sum**

21. The standard lump sum for Phase One may only be adjusted in the event of compelling factual and legal circumstances or developments in the course of the initial appearance that lead to a substantial and unexpected increase in the work necessary during Phase One. The occurrence of more than one initial appearance is not a sufficient reason for an adjustment.
22. A request for adjustment of the standard lump sum must be submitted for the Registry's consideration in writing as soon as the respective development occurs, but in any case

within 15 days following the end of the phase. The request needs to detail the reasons for the substantial and unexpected additional work, the specific tasks that need to be performed and the time needed to perform each task.

#### **D. PHASE TWO**

23. In the event that Counsel assigned for the initial appearance continues to represent the Accused beyond the plea, Phase Two shall commence the day following the date on which a plea is entered either by or on behalf of the Accused. Where a new Counsel is assigned following the plea, Phase Two will begin on the day of assignment. Phase Two concludes 90 days from its commencement or upon submission of the Work Plan (*see* paragraph 32 to 36) whichever is later.
24. Counsel will be paid a standard lump sum of \$64,500 for Phase Two in addition to the DSA and travel allowance, if applicable.
25. The lump sum allocated for Phase Two covers any and all work to be performed by the Defence Team during the phase, including but not limited to:
  - review of the indictment;
  - review of supporting material;
  - review of material disclosed by the Prosecution pursuant to Rules 71 and 73 of the Rules;
  - filing of (preliminary) motions;
  - filing of responses and replies to Prosecution filings; and
  - preparation of a Work Plan for the Defence (*see* paragraphs 32 to 36).
26. The lump sum for this phase is not contingent on the complexity level of the case.

#### **Invoicing and Payment**

27. The Phase Two lump sum shall be paid in three equal monthly stipends of \$21,500. The first two stipends will be paid upon submission of a *pro forma* invoice at the end of each month. The last monthly stipend will be paid upon submission of both a *pro forma* invoice and the Work Plan for Phase Three of the Pre-Trial stage (*see* paragraphs 32 to 36).
28. The *pro forma* invoice shall be signed by Lead Counsel, who shall advise the Registry how to distribute the stipend between the Lead Counsel and other Defence Team members, if any. Payments shall be made in accordance with paragraph 11.
29. The monthly *pro forma* invoices need not detail the work performed. However, all members of the Defence Team must keep a record of the work performed and the time spent on particular tasks or assignments, as Lead Counsel is required to account for all the work performed in the End-of-Phase Report, as described in paragraphs 52 to 57.

## **Adjustment of the Phase Two Lump Sum**

30. The standard lump sum for Phase Two may only be adjusted in the event of compelling factual and legal circumstances or developments in the course of Phase Two that lead to a substantial and unexpected increase in the work necessary during Phase Two.
31. A request for adjustment of the standard lump sum must be submitted for the Registry's consideration in writing as soon as the respective development occurs, but in any case within 15 days following the end of the phase. The request needs to detail the reasons for the substantial and unexpected additional work, the specific tasks that need to be performed and the time needed to perform each task.

## **E. WORK PLAN**

32. Lead Counsel shall submit a Work Plan for Phase Three of the Pre-Trial proceedings within 90 days of the plea or the date of the assignment of Lead Counsel, whichever comes later. The plan should detail all activities that Lead Counsel deems necessary to efficiently and economically represent the Accused, and shall include, but is not limited to:
  - the names of members of the Defence Team assigned or approved, or whose assignment Lead Counsel intends to request, and the capacity in which each member will work;
  - the projected distribution of work among Defence Team members;
  - the location of the Defence Team offices and material/documents;
  - a timeline for completion of Pre-Trial Phase Three;
  - significant actions to be undertaken (including planned motions to be filed, the number of witness statements to be taken and documents to be gathered and studied);
  - a Defence investigation plan, including the number and location of sites to be visited, in general terms, and the estimated time to be spent at each location, specifying where possible the concrete tasks to be undertaken (including obtaining documents, visiting the crime scene, and identifying, interviewing and preparing potential Defence witnesses and expert witnesses);
  - the estimated number and names or pseudonyms of Defence and Prosecution witnesses to be interviewed and prepared and their location;
  - the work required or estimated to be required to review and analyse the material disclosed by the Prosecution pursuant to Rules 71 and 73 of the Rules;
  - a travel plan for Counsel and Support Staff, where applicable; and
  - the estimated number of status conferences, Pre-Trial meetings held pursuant to Rule 70(G), meetings with the Prosecution and working sessions with the Accused.
33. The Work Plan is solely a judicial management document. Its purpose is to provide the Registry with objective information related to the planning and preparation of the case for the Defence. It also aims at allowing the Registry to monitor the preparation of the case for trial while at the same time providing a reference for the allocation of resources to Defence Teams under paragraphs 42 and 43. As such, the Work Plan will be considered in conjunction with the Progress Reports (*see* paragraph 49).
34. The Registry shall treat the Work Plan as a confidential work-product of the Defence and access will be restricted accordingly. Under no circumstances will it or any of its contents be shared with the Prosecution.

35. Lead Counsel bears the responsibility to prepare a reasonable and meaningful Work Plan without disclosing information subject to counsel-client privilege.
36. Any invoice for Phase Three will be paid only after the Registry has accepted the Work Plan. The Registry shall consider and decide upon the Work Plan within 30 days of its submission.

#### **F. ASSESSING THE COMPLEXITY LEVEL**

37. At the time the Work Plan is submitted, Lead Counsel shall also make a reasoned written submission to the Registry regarding the complexity of the case. Lead Counsel's submission should address each of the case complexity factors listed in paragraph 38.
38. Based on Lead Counsel's submission and after consultation with the Pre-Trial Judge and/or the Chamber seized of the case, the Registry shall make a determination as to the complexity level of the case at the Pre-Trial, and accordingly rank the case at Level 1 (difficult), Level 2 (very difficult), or Level 3 (extremely difficult). The complexity level is indicative of the amount of work reasonably required for the phase rather than on its duration, and will be determined based on, but not limited to, the following factors:
  - the position of the Accused, including within the political/military hierarchy;
  - the number and nature of counts in the indictment;
  - whether the case raises any novel issues;
  - whether the case involves multiple sites (geographical scope);
  - the complexity of legal and factual arguments involved;
  - the number and nature of Pre-Trial motions to be filed; and
  - the number and type of witnesses and documents involved.
39. The Registry will determine the case complexity level within 30 days upon receiving input from the Pre-Trial Judge and/or the Chamber seized of the case or the first business day thereafter, pursuant to paragraph 38.
40. Pending the complexity determination pursuant to paragraph 38, the Registry shall rank each case provisionally at Level 1 to ensure the continuous funding of the case. Should the case be subsequently ranked at a higher complexity level, the Registry shall adjust the lump sum for Phase Three accordingly.

#### **G. PHASE THREE**

41. Phase Three shall commence the day after the completion of Phase Two and shall last until the first day of trial.

##### **Calculation of the Lump Sum**

42. The lump sum for Phase Three is calculated based on the complexity level of the case as determined by the Registry.

43. The Phase Three Pre-Trial lump sums are as follows:

<b>Complexity Level</b>	<b>Lump Sum</b>
Level 1 (difficult)	\$149,182
Level 2 (very difficult)	\$304,560
Level 3 (extremely difficult)	\$537,885

### **Invoicing and Payment**

44. The Phase Three lump sum shall be paid in monthly stipends upon submission of a *pro forma* invoice. The first *pro forma* invoice for Phase Three shall be submitted at the end of the first month of the phase. Payment will commence only after the Registry accepts the Work Plan.
45. Eighty percent (80%) of the Phase Three lump sum will be paid in monthly stipends, while the remaining twenty percent (20%) will be paid once the Registry approves the Defence End-of-Phase Report, filed in compliance with paragraphs 52 to 57. The stipend for this phase is calculated by dividing 80% of the lump sum by the estimated number of months in the phase, as estimated by the Registry after consulting Lead Counsel, Prosecution and Chambers. In the absence of a clear estimate of the duration of Phase Three, the figures below apply for the purpose of distributing the lump sum:

Level 1: 12 months  
Level 2: 15 months  
Level 3: 18 months

46. In the event that a clearer estimate of the number of months in this phase becomes available, the Registry and Lead Counsel may agree on a different distribution schedule, if Lead Counsel submits a written request to this effect. In deciding on a different distribution schedule, the Registry may take into account any extension of time granted by the Pre-Trial Judge and/or the Chamber and the reasons therefor.
47. The *pro forma* invoice shall be signed by Lead Counsel, who shall advise the Registry how to distribute the stipend between the Defence Team members. Payments shall be made in accordance with paragraph 11.
48. The monthly *pro forma* invoices need not detail the work performed. However, all members of the Defence Team must keep a record of the work performed and the time spent on particular tasks or assignments, as Lead Counsel is required to account for all the work performed in the End-of-Phase Report (*see* paragraphs 52 to 57).

### Progress Reports

49. At the end of every four months within Phase Three, Lead Counsel shall submit a Progress Report with the *pro forma* invoice. The Progress Report must summarise the work performed by the Defence Team, including the progress made on the items included in the Work Plan. On its own initiative or on request of Lead Counsel, the Registry may organise a meeting to discuss a Progress Report.

### Upgrade in the Level of Complexity

50. In the event of a change in the complexity indicators specified in paragraph 38 which emerge after the initial ranking of the case and which affects the preparation reasonably required of the Defence, Lead Counsel may request an upgrade in the complexity level of the case. Such request shall be submitted in writing and shall include a description of the change in the complexity indicators and the manner in which that change affects the preparation of the case.
51. In deciding upon a request for an upgrade in the complexity level based on paragraph 50, the Registry may consider seeking information from the Pre-Trial Judge and/or the Chamber seised of the case on the nature of the circumstances and their impact on the preparation of the Defence case. The Registry may also consider whether the circumstances can be attributed fully or in part to the manner in which the Defence conducted their preparation, including their planning and organisation.

### **End-of-Phase Report**

52. At the end of Phase Three, the End-of-Phase Payment shall be made upon the Registry's approval of the Defence End-of-Phase Report. Lead Counsel must submit the End-of-Phase Report within 60 days of the first day of trial.
53. The End-of-Phase Report must contain a formal accounting of hours covering the Pre-Trial proceedings, details on the type of work performed during Phase Three, as well as details of the work performed by each Defence Team member. More specifically, the End-of-Phase Report shall include the following information:
  - (a) for each month, the name of each Defence Team member and a detailed description of the work performed by them;
  - (b) for each month, the number of hours worked per assignment/task and a detailed description of the work performed by each member of the Defence Team;
  - (c) for the entire Phase Three a recapitulation of the total number of hours worked by each member of the Defence Team and by category of work; and
  - (d) for the entire Pre-Trial proceedings, a recapitulation of the work performed and its output<sup>6</sup> with sufficient specificity to allow the Registry to verify that the work was performed. The End-of-Phase Report will include information such as the number and names/pseudonyms of witnesses met and interviewed, amount of research done, the number of filings prepared, filings submitted and documents reviewed, including disclosure, and the number of pages of such documents.
54. In review of the End-of-Phase Report, the Registry shall verify that:
  - (a) all information requested in paragraph 53 is included;
  - (b) the work of each Defence Team member is sufficiently described to satisfactorily establish that it was accomplished for the purpose of preparing the case for trial;
  - (c) the work reported by all members of the Defence Team was reasonable and necessary; and

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<sup>6</sup> The output of the work performed will in no way be judged upon the success or failure of the Defence Team's performance.

(d) all legal aid funds were paid to authorised members of the Defence Team duly assigned or approved by the Registry, as requested by Lead Counsel.

55. The Registry may request Lead Counsel to provide additional information or documentation to enable the Registry to assess the work performed by the Defence Team. Based on the End-of-Phase Report and any additional information received from Lead Counsel, the Registry shall disburse the remainder of the Phase Two lump sum. The Registry may reduce payment *pro rata* if insufficient or no additional information is received, and the Registry is therefore not in a position to verify the factors outlined above.

56. In addition, the Registry may refuse to pay part or all of the End-of-Phase Payment, if it has reason to believe that irregularities have occurred in the work or conduct of the Defence Team, or that a substantial amount of work was unreasonable or unnecessary. However, such reduction may only be initiated after the Registry has either:

- (a) consulted with and obtained written agreement from Lead Counsel;
- (b) consulted with the Pre-Trial Judge, the Chamber seised of the case, and/or the Association of Counsel; or
- (c) referred the matter to the Disciplinary Panel set forth in Article 40 of the Code of Conduct, and given Lead Counsel an opportunity to respond.

The Registry may also, if instructed by the Pre-Trial Judge or Chamber, deduct any fees associated with the production of a motion which has been declared frivolous or an abuse of process, in accordance with Rule 80(D) of the Rules.

57. Should Lead Counsel disagree with the Registry's decision not to pay all or part of the Phase Three lump sum, Lead Counsel may request a review of the Registry's decision in accordance with the procedure set forth in Article 32 of the Directive.

### **Progress Meetings**

58. At any time during Phase Three of the Pre-Trial proceedings, the Registry may invite Lead Counsel, or a representative designated by Lead Counsel, to attend a meeting to discuss the progress made in the preparation of the Defence case.

### **Adjustment of the Phase Three Lump Sum**

59. Exceptionally, in the event of unforeseeable circumstances beyond the control of the Defence which lead to a substantial increase or decrease in the reasonable and necessary work to be performed by the Defence during Phase Three of the Pre-Trial proceedings, the Registry may, at the request of Lead Counsel or *proprio motu*, adjust the lump sum without a change in the level of complexity. The extended duration of a phase does not in itself justify additional allotments; the relevant consideration is the amount of work reasonably required.

60. Lead Counsel must submit a request for an increase of the lump sum in writing, within 30 days following the occurrence of the unforeseeable circumstances, but in any case within 30 days following the end of Phase Three.

61. The request must specify the factual and/or legal circumstances that have resulted in a substantial increase in the Defence Team's work, as well as a detailed description of the additional work required and the estimated time needed for each task.
62. The Registry may, *proprio motu*, after having provided Lead Counsel with an opportunity to be heard, and with the consent of the Pre-Trial Judge and/or the Chamber seised of the case, downgrade the complexity level of the case or decrease a lump sum, if the circumstances so demand. In consulting with the Pre-Trial Judge or Chamber, the Registry shall seek information on the nature of the circumstances and their impact on the preparation of the Defence case.

## **H. TRAVEL**

63. Payment for travel-related expenses shall be made pursuant to Articles 27 and 28 of the Directive and in accordance with United Nations travel rules and regulations.
64. The following principles will govern the travel of members of the Defence Team: (1) travel and DSA will be authorised where it is deemed reasonable and necessary in the particular circumstances of a case; and (2) the need to make the most efficient use of public funds at the lowest possible cost to the MICT, while ensuring full respect for the rights of the Accused and their legal representatives. In practice, this means whenever it is possible to combine different objectives in one trip, this should be done.
65. Taking into consideration the geographical distance and travel time required, the Registry may authorise the following travel.

### **Travel to the Seat of the MICT**

66. The MICT may bear the costs of one trip for up to three days of DSA in the case of Duty Counsel assigned pursuant to Rule 43(C)(iii) of the Rules to represent the Accused for the purposes of an initial appearance and other pre-plea appearances, in accordance with Rule 64 of the Rules, where Duty Counsel does not live in the same city as the seat of the respective Branch of the MICT.
67. Once permanent Counsel has been assigned, the Registry may authorise one trip for up to seven days of DSA for Lead Counsel to travel to the seat of the respective Branch of the MICT to meet the Accused for the first time.
68. Following the initial trip described in paragraph 67, the Registry may authorise the equivalent of one trip per month for up to three days of DSA for either Lead Counsel or Co-Counsel, based on the anticipated length of Pre-Trial proceedings, as estimated by the Registry after consulting Lead Counsel, Prosecution and Chambers. For example, should Pre-Trial proceedings be estimated to take six months, the Defence Team would be granted a total of six trips and up to eighteen days of DSA. In the event that the Pre-Trial proceedings last longer than estimated, the Registry may authorise additional trips and DSA based on the revised timeline, and based upon the same guideline of one trip per month for up to three days of DSA.
69. At the request of Lead Counsel, the Registry may authorise one of the trips allowed for in paragraph 66 for the travel of an assigned or approved Legal Assistant.

70. Trips for attendance at status conferences and Rule 70(G) hearings are included in the lump sum of trips allotted under paragraph 68, and may only be utilised by Lead Counsel and/or Co-Counsel. Where possible, trips to attend status conferences and Rule 70(G) hearings should be combined with trips to visit the Accused. In the case of such combined trips, the Registry may authorise additional days of DSA.
71. During Phase Three, requested trips should be in line with the Work Plan prepared by Lead Counsel pursuant to paragraphs 32 to 36.

#### **Travel for Meetings between Lead Counsel and Co-Counsel**

72. The Registry may authorise one trip every two months for one Counsel for communication between Lead Counsel and Co-Counsel who reside in different jurisdictions upon demonstration of the reasonableness and necessity of the travel. Such travel should be combined with a status conference, a working visit to the client and/or hearings before the Chamber. Where this is impossible, travel to one Counsel's place of work or, if it is more economical, one of the seats of the MICT, and up to three days of DSA may be authorised upon a reasoned request.

#### **Travel to Familiarise Lead Counsel, Co-Counsel and Defence Investigator(s) with the Crime Scenes in the Indictment**

73. The Registry may authorise one joint trip for Lead Counsel, Co-Counsel and Defence Investigator(s) to familiarise themselves with the crime scenes in the indictment during Pre-Trial proceedings for up to three days of DSA each. If the nature of local travel and the geographical remoteness of the municipalities in the indictment are such that this period is insufficient to visit the crime scenes in the indictment, the Registry may consider granting additional days of DSA. For this purpose, Lead Counsel shall submit a detailed mission plan.

#### **Travel for Investigative Purposes**

74. The Registry may authorise investigative travel during the Pre-Trial proceedings for the purpose of meeting witnesses, searching archives and engaging in other investigative tasks. This travel will primarily be undertaken by Investigators, occasionally by Lead Counsel or Co-Counsel (*e.g.* to interview key witnesses and witnesses that are scheduled to testify in the case), and exceptionally by Legal Consultants/Assistants acting on behalf of Counsel or Investigator (*i.e.* where the Counsel or Investigator(s) are unable to travel for objective reasons).
75. Such travel and the accompanying DSA shall be considered on a case-by-case basis, taking into account the reasonableness and necessity of the travel, the nature and amount of the work to be undertaken, and the efficient use of public funds.

#### **Case Preparation before the Commencement of the Trial**

76. The MICT shall bear the travel expenses related to final preparation for trial. During the two weeks prior to the commencement of the trial, Lead Counsel and Co-Counsel are authorised to be at the seat of the relevant Branch of the MICT, and DSA shall be paid to both Lead Counsel and Co-Counsel for the entire period.

77. The MICT shall also cover the cost of travel of a Defence Case Manager (or another Support Staff member designated by Lead Counsel) to the seat of the relevant Branch one week prior to the commencement of the trial for final preparation for trial and familiarisation with relevant court management procedures.

## **I. FINAL PROVISIONS**

78. Where a Chamber or Pre-Trial Judge is to be consulted or otherwise asked to provide information pursuant to this Policy, the Chamber or Pre-Trial Judge may decline to provide its views or information concerning the case, may request that any such consultation by the Registry be copied to Lead Counsel, or may take any further steps deemed appropriate. If the Chamber or Pre-Trial Judge declines to provide its views or information concerning the case to the Registry, all applicable timelines in this Policy shall run from the Registry's receipt of the a Chamber or Pre-Trial Judge's indication to that effect.

79. The Registry may, at any time during the proceedings, request information and perform checks into the work performed by any and all members of the Defence Team. Lead Counsel shall, for this purpose, retain all Defence files for a period of at least five years after the issuance of the final judgement or a decision terminating the proceedings.

80. The Registry shall treat documents submitted by Lead Counsel pursuant to this Policy with due respect to the appropriate level of confidentiality.

81. In instances where a deadline under this Policy falls on a non-working day, it shall be extended to the next working day.

82. If additional work is required because of the replacement of the Lead Counsel during Phases Two or Three, as approved by the Registry, the newly appointed Counsel shall not be disadvantaged for this reason. Such issues will be addressed on a case-by-case basis.

83. Any disputes arising from the application of this Policy shall be settled in accordance with Article 32 of the Directive.