



**DIRECTIVE ON THE ASSIGNMENT OF  
DEFENCE COUNSEL**

**(MICT/5)**

## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>PART I – GENERAL PROVISIONS .....</b>  | <b>2</b>  |
| Article 1 Purpose and Entry into Force.....   | 2         |
| Article 2 Definitions .....   | 2         |
| Article 3 Authentic Texts.....  | 4         |
| Article 4 Amendment of Directive .....  | 4         |
| <b>PART II – RIGHT TO HAVE COUNSEL ASSIGNED .....</b>                                     | <b>4</b>  |
| CHAPTER 1: BASIC PRINCIPLES.....  | 4         |
| Article 5 Right to Counsel .....  | 4         |
| Article 6 Right to Assigned Counsel .....   | 5         |
| CHAPTER 2: PROCEDURE FOR ASSIGNMENT OF COUNSEL.....                                       | 6         |
| Article 7 Request for Assignment of Counsel and Declaration of Means .....                | 6         |
| Article 8 Burden of Proof .....   | 6         |
| Article 9 Authority to Gather Information.....  | 7         |
| Article 10 Determination of Means .....   | 7         |
| CHAPTER 3: THE DECISION.....  | 8         |
| Article 11 Decision by the Registrar.....   | 8         |
| Article 12 Notification of Decision .....   | 9         |
| CHAPTER 4: REMEDY.....  | 9         |
| Article 13 Remedy Against the Registrar’s Decision .....                                  | 9         |
| <b>PART III – PREREQUISITES FOR THE ASSIGNMENT OF COUNSEL.....</b>                        | <b>9</b>  |
| Article 14 Qualifications and Standing of Counsel .....                                   | 9         |
| Article 15 Professional Certification .....   | 11        |
| <b>PART IV – SCOPE OF ASSIGNMENT .....</b>  | <b>12</b> |
| Article 16 Basic Principles .....   | 12        |
| Article 17 Applicable Law.....  | 13        |
| Article 18 Counsel-Client Privilege.....  | 14        |
| Article 19 Assignment of Counsel Away from the Seat of the Mechanism .....                | 14        |
| <b>PART V – SUSPENSION AND WITHDRAWAL OF ASSIGNMENT .....</b>                             | <b>15</b> |
| Article 20 Ability of Suspects or Accused to Remunerate Counsel .....                     | 15        |
| Article 21 Withdrawal and Suspension of Assignment .....                                  | 15        |
| Article 22 Duties of Counsel upon Withdrawal.....   | 16        |
| Article 23 Payment Pro Rata Temporis .....  | 17        |
| <b>PART VI – COSTS OF REPRESENTATION .....</b>  | <b>17</b> |
| Article 24 Responsibility for Remuneration and Expenses .....                             | 17        |
| Article 25 Remuneration of Assigned Counsel and Assigned Members of the Defence Team..... | 18        |
| Article 26 Remuneration of duty counsel .....   | 18        |
| Article 27 Travel expenses .....  | 19        |
| Article 28 Daily subsistence allowances.....  | 19        |
| Article 29 Translation and interpretation costs.....                                      | 20        |
| Article 30 Adoption and Amendment of Policies Governing Remuneration and Expenses.....    | 20        |
| Article 31 Responsibility for Payments .....  | 20        |
| Article 32 Settlement of Disputes over Payment.....                                       | 21        |
| Article 33 Facilities.....  | 21        |
| <b>PART VII – ADVISORY PANEL .....</b>  | <b>21</b> |
| Article 34 Advisory Panel .....   | 21        |

## **PART I – GENERAL PROVISIONS**

### **Article 1**

#### **Purpose and Entry into Force**

(A) In accordance with Rule 43 of the Rules, the Registrar establishes this Directive to regulate the Mechanism's system of assignment of counsel. The Mechanism's system of assignment of counsel seeks to provide legal assistance to indigent suspects and accused in the most efficient, economical and equitable manner in order to safeguard the rights afforded to suspects and accused under the Statute and the Rules. This Directive establishes objective criteria to be used in the Registrar's determination of the eligibility of a suspect or accused for assignment of counsel and regulates the modalities of payment of assigned counsel and their support staff.

(B) This Directive shall enter into force on 14 November 2012.

### **Article 2**

#### **Definitions**

Under this Directive, the following terms shall mean:

- Accused:** A person indicted by the ICTY, the ICTR, or the Mechanism, in accordance with Article 1 of the Statute;
- Advisory Panel:** The body established to assist the President and the Registrar in matters relating to Defence Counsel under Rule 42(D) of the Rules;
- Association of Counsel:** An Association of Defence Counsel practicing before the Mechanism recognised by the Registrar in accordance with Rule 42(A)(iii);
- Code of Conduct:** The Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism as promulgated by the Registrar on 14 November 2012;
- Counsel:** A person representing or eligible to represent an accused pursuant to Rules 42, 43, 44 and 64(D) of the Rules;
- Defence Team:** Counsel assigned by the Registrar to represent an accused and other persons assigned or approved by the Registrar to assist counsel in this task;
- Directive:** Directive on the Assignment of Defence Counsel;

**ICTR:** 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;

**ICTY:** 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;

**Mechanism:** The International Residual Mechanism for Criminal Tribunals, established by Security Council resolution 1966 of 22 December 2010;

**Officer in Charge:** The Registry officer in charge at the seat of each branch of the Mechanism as provided for in Article 15(2) of the Statute;

**Parties:** The Prosecutor and the Defence Team, including the accused or suspect, collectively;

**President:** The President of the Mechanism appointed pursuant to Article 11 of the Statute;

**Prosecutor:** The Prosecutor of the Mechanism appointed pursuant to Article 14(4) of the Statute;

**Registrar:** The Registrar of the Mechanism appointed pursuant to Article 15(3) of the Statute;

**Rules:** The Rules of Procedure and Evidence adopted by the Mechanism on 8 June 2012, as subsequently amended;

**Rules of Detention:** Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, as adopted by the ICTR and ICTY, on 5 June 1998 and 5 May 1994, respectively, as subsequently amended;

**Statute:** The Statute of the Mechanism adopted by Security Council resolution 1966 of 22 December 2010;

Suspect: A person concerning whom the Mechanism possesses reliable information tending to show that the person may have committed a crime.

In this Directive, the masculine shall include the feminine and the singular the plural, and vice versa. All references in this Directive to suspects or accused shall also be understood to apply to any persons detained on the authority of the Mechanism, the ICTR or ICTY.

### **Article 3**

#### **Authentic Texts**

The English and French texts of the Directive shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute, Rules and the Directive shall prevail.

### **Article 4**

#### **Amendment of Directive**

- (A) Proposals for amendments to the Directive may be made by a Judge, the Registrar, the Association of Counsel, or the Advisory Panel. Such proposals shall be directed to the Registrar. Amendments shall be promulgated by the Registrar following the approval of Judges, as provided for in Rule 42(C).
- (B) The amendments shall enter into force upon adoption, and shall be rendered public by the Registrar within seven days of adoption.
- (C) An amendment shall not operate to prejudice the rights of the accused in any pending case.

## **PART II – RIGHT TO HAVE COUNSEL ASSIGNED**

### **Chapter 1: Basic Principles**

### **Article 5**

#### **Right to Counsel**

Without prejudice to the right of a suspect or an accused to conduct his own defence:

- (i) a suspect who is to be questioned by the Prosecutor during an investigation;
- (ii) an accused upon whom personal service of the indictment has been effected;
- (iii) any person detained on the authority of the Mechanism, including any person detained in accordance with Rule 107

shall have the right to be assisted by counsel, provided that he has not expressly waived this right.

**Article 6**  
**Right to Assigned Counsel**

- (A) A suspect or accused who lacks the means to remunerate counsel shall have the right to have counsel assigned to him and paid for by the Mechanism in accordance with this Directive. The Registrar shall inform a suspect or accused in a language which he understands of his rights and duties pursuant to this Directive.
  
- (B) A suspect or accused lacks the means to remunerate counsel if he does not have the means which would enable him to cover the costs of his defence as determined by the Registrar in accordance with Part VI of this Directive.
  
- (C) For an accused who has the means to partially remunerate counsel, the Mechanism shall pay that portion of his defence costs which the accused does not have sufficient means to cover, as determined in accordance with the Registry Policy for Determining the Extent to which an Accused is able to Remunerate Counsel.

## **Chapter 2: Procedure for Assignment of Counsel**

### **Article 7**

#### **Request for Assignment of Counsel and Declaration of Means**

- (A) Subject to the provisions of Article 19, a suspect or accused who wishes to have counsel assigned to him shall make a request to the Registrar on the form provided by the Registrar. The request shall be lodged with the Registrar, or transmitted to him, by the suspect or accused himself or by a person authorised by him to do so on his behalf.
- (B) A suspect or accused requesting the assignment of counsel is required to make a declaration of his means on the form provided by the Registrar.
- (C) A declaration must, to the extent possible, be certified by an appropriate authority, either that of the place where the suspect or accused resides or is found, or that of any other place that the Registrar considers appropriate in the circumstances.
- (D) The declaration must include an attestation by the suspect or accused that the information contained therein is true and complete to the best of his knowledge.
- (E) To ensure that the provisions of Article 8 are met, a suspect or accused must update his declaration of means at any time a change relevant to his declaration of means occurs.

### **Article 8**

#### **Burden of Proof**

- (A) The burden of proof lies on the suspect or accused to prove that he is unable to remunerate counsel.
- (B) Where the Registrar has opened an inquiry into the means of a suspect or accused pursuant to Article 9, the suspect or accused shall provide or facilitate the production of information required to establish his ability to remunerate counsel.
- (C) Where a suspect or accused fails to comply with his obligations under Article 8(A) and (B) to the extent that the Registrar is unable to properly assess the suspect or accused's ability to remunerate counsel, the Registrar may deny the request for the assignment of counsel after warning the suspect or accused and giving him an opportunity to respond.

**Article 9**  
**Authority to Gather Information**

- (A) For the purpose of establishing whether the suspect or accused is able to remunerate counsel, the Registrar may inquire into his means, request the gathering of any information, hear the suspect or accused, consider any representation, or request the production of any document likely to verify the request.
- (B) In exercising his authority under Article 9(A), the Registrar may request any relevant information at any time, including after counsel has been assigned, from any person who appears to be able to supply such information.
- (C) When communicated confidentially, information forming the basis for the Registrar's determination that an asset forms part of the suspect's or accused's means under Article 10(A), and the value of such asset, will be disclosed to the suspect or accused confidentially. The suspect or accused must be given the opportunity to respond prior to the decision being taken.

**Article 10**  
**Determination of Means**

- (A) The Registrar shall determine whether and to what extent the suspect or accused is able to remunerate counsel by taking into account means of all kinds of which the suspect or accused has direct or indirect enjoyment or freely disposes, including but not limited to direct income, bank accounts, real or personal property, pensions, and stocks, bonds, or other assets held, but excluding any family or social benefits to which he may be entitled. In assessing such means, account shall also be taken of the means of the immediate family members with whom a suspect or accused habitually resides, provided that it is reasonable to take such means into account.
- (B) For the purpose of determining whether a suspect or accused has an ownership interest in any property, the Registrar may consider the apparent lifestyle of a suspect or accused, and his enjoyment of that or other property, and whether or not he derives income from it.



## **Chapter 3: The Decision**

### **Article 11**

#### **Decision by the Registrar**

- (A) After examining the declaration of means referred to in Article 7 and any information obtained pursuant to Articles 8 and 9, and having informed the suspect or accused of his findings with respect to those means, the Registrar shall determine whether and to what extent the suspect or accused is able to remunerate counsel, and shall decide, providing reasons for his decision:
- (i) without prejudice to Article 20, to assign counsel from the list drawn up in accordance with Rule 43(B) of the Rules and Article 14; or
  - (ii) without prejudice to Article 20, that the suspect or accused possesses the means to partially remunerate counsel, and to assign counsel, in which case the decision shall indicate which costs shall be borne by the Mechanism; or
  - (iii) not to grant the request for assignment of counsel.
- (B) In the interests of justice, to ensure that the right to counsel is not affected while the Registrar examines the declaration of means referred to in Article 7 and the information obtained pursuant to Articles 8 and 9, the Registrar may temporarily assign counsel to a suspect or accused for a period not exceeding 120 days.
- (C) If a suspect or accused:
- (i) requests the assignment of counsel but does not comply with the requirements set out above within a reasonable time frame; or
  - (ii) fails to obtain or to request the assignment of counsel;
  - (iii) fails to elect in writing that he intends to conduct his own defence;

The Registrar may nevertheless, in the interests of justice, and without prejudice to Article 20, assign him counsel from the list drawn up in accordance with Rule 43(B) of the Rules.

- (D) Where the Registrar decides to assign counsel in accordance with this Article, the Registrar shall:
- (i) assign the counsel selected by the suspect or accused from the list drawn up in accordance with Rule 43(B) of the Rules, provided that there is no impediment to the assignment of that counsel; or
  - (ii) if the suspect or accused fails to select a counsel from the list drawn up in accordance with Rule 43(B) of the Rules or if the Registrar determines that there is an impediment to the assignment of the counsel selected, assign other counsel from that list after hearing the suspect or accused.

**Article 12**  
**Notification of Decision**

The Registrar shall notify the suspect or accused of his decision, and shall also notify the counsel so assigned.

**Chapter 4: Remedy**

**Article 13**  
**Remedy Against the Registrar's Decision**

- (A) The suspect whose request for assignment of counsel has been denied may, within 15 days from the date upon which he is notified of the decision, file a motion before the President for review of that decision. The President may either confirm the Registrar's decision or rule that a counsel should be assigned.
- (B) The accused whose request for assignment of counsel has been denied or who has been found to have sufficient means to remunerate counsel in part, may within 15 days from the date upon which he is notified of that decision, file a motion to the Chamber before which he is due to appear for review of the Registrar's decision. The Chamber may:
- (i) confirm the Registrar's decision; or
  - (ii) quash the Registrar's decision and rule that counsel be assigned; or
  - (iii) direct the Registrar to reconsider the extent to which the accused is able to remunerate counsel.

**PART III – PREREQUISITES FOR THE ASSIGNMENT OF COUNSEL**

**Article 14**  
**Qualifications and Standing of Counsel**

- (A) Any person may be assigned as counsel to a suspect or accused if the Registrar is satisfied that he is admitted to the list of counsel envisaged in Rule 43(B) of the Rules. A person is eligible for admission to the list if:
- (i) he is admitted to the practice of law in a State, or is a university professor of law;
  - (ii) he has written and oral proficiency in one of the two working languages of the Mechanism;
  - (iii) he possesses established competence in criminal law and/or international criminal law, international humanitarian law, international human rights law;

- (iv) he possesses at least seven years of relevant experience whether as a judge, prosecutor, attorney or in some other capacity, in criminal proceedings;
- (v) he has not been found guilty or otherwise disciplined in relevant disciplinary proceedings against him in a national or international forum, including proceedings pursuant to the Code of Conduct, unless the Registrar deems that, in the circumstances, it would be disproportionate to exclude such counsel;
- (vi) he has not been found guilty in relevant criminal proceedings;
- (vii) he has not engaged in conduct whether in pursuit of his profession or otherwise which is dishonest or otherwise discreditable to counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the Mechanism or the administration of justice, or otherwise bring the Mechanism into disrepute;
- (viii) he has not provided false or misleading information in relation to his qualifications and fitness to practice and has not failed to provide relevant information;
- (ix) he has indicated his availability and willingness to be assigned as counsel by the Registrar any accused who lacks the means to remunerate counsel, under the terms set out in this Directive; and
- (x) he is a member in good standing of the Association of Counsel practising before the Mechanism.

(B) A person is eligible for admission to the list of duty counsel, envisaged in Rule 43(C) of the Rules, if he:

- (i) fulfils all the requirements of Article 14(A); and
- (ii) has informed the Registrar that he is readily available as Duty Counsel for assignment to an accused for the purposes of the initial appearance in accordance with Rule 64 of the Rules.

(C) A person who does not have written or oral proficiency in either of the two working languages of the Mechanism but who speaks a language spoken in the territory over which the Mechanism has jurisdiction, and who fulfils all other requirements set out in Article 14(A), may be admitted to the list envisaged in Rule 43(B) of the Rules, if the Registrar deems it justified. Such person can be assigned only as co-counsel in accordance with Article 16(D).

(D) The Registrar may, after giving counsel a warning and an opportunity to respond, remove the name of counsel from the lists referred to in Rules 43(B) and (C) of the Rules:

- (i) upon a decision by a Chamber under Rule 47(A)(i) of the Rules, after consulting with the Chamber; or
- (ii) where counsel has been found to be in contempt pursuant to Rule 90 of the Rules, after consulting with the Chamber; or
- (iii) where counsel has been found guilty of a disciplinary offence under the Code of Conduct, after consulting with the Chamber; or

- (iv) where the Registrar has determined that counsel has provided false information in relation to his or her qualifications to be admitted to the list, or has failed to provide relevant information.

Counsel may seek review of the Registrar's decision before the President within 15 days from the date upon which he is notified of that decision.

- (E) The Registrar shall remove the name of counsel from the lists referred to in Rules 43(B) and (C) of the Rules:
  - (i) upon a decision by a Chamber under Rule 47(A)(ii) of the Rules;
  - (ii) upon a final decision of the Disciplinary Panel or Disciplinary Board that counsel is banned from practicing before the Mechanism pursuant to Article 49(C)(vi) of the Code of Conduct;
  - (iii) where counsel no longer satisfies the requirements of Article 14(A).
- (F) The Registrar may deny a request for the assignment of counsel where a procedure pursuant to Rule 90 of the Rules or Part III of the Code of Conduct has been initiated against that counsel. Counsel may seek review of the Registrar's decision before the President within 15 days from the date upon which he is notified of that decision.
- (G) A Counsel admitted to the list referred to in Rules 43(B) and (C) of the Rules shall:
  - (i) confirm his continued availability and qualification to be assigned to indigent suspects or accused every two years from the date of his admission of the list;
  - (ii) immediately advise the Registrar if he is no longer available or qualified to represent a suspect or accused for a period of more than 6 months.

If counsel fails to confirm his availability or qualification, the Registrar may, after giving notice to counsel, remove his name from the list.

## **Article 15**

### **Professional Certification**

- (A) An applicant for admission to the lists envisaged in Rules 43(B) and (C) of the Rules shall supply the Registrar with:
  - (i) a certificate of professional qualification issued by the competent professional or governing body, including a certificate of current practice and good standing;
  - (ii) for applicants whose native language is not English or French, a certificate from a language institute or other evidence of proficiency in English or French. The Registrar may also require such applicants to demonstrate their language ability by means of a language proficiency test;

- (iii) a resume which evidences established competence in criminal law and/or international criminal law, international humanitarian law, international human rights law and a minimum of seven years of relevant experience in criminal proceedings;
  - (iv) the names and addresses of two referees, who practice in the fields of criminal law, international humanitarian law, international human rights law or international criminal law and who are in a position to advise the Registrar as to the professional competence of the applicant in these fields;
  - (v) certification that the applicant has not been found guilty in any criminal proceeding or to indicate the acts for which he has been found guilty;
  - (vi) certification that the applicant has not been found guilty in any disciplinary proceedings or to indicate the acts for which he has been found guilty; and
  - (vii) any other documentation that the Registrar may deem necessary.
- (B) The Registrar may refer an applicant for admission to the lists referred to in Rules 43(B) and (C) of the Rules to a panel composed of senior legal officers in Chambers, and/or counsel on the Rule 43(B) list who possess a minimum of 15 years of experience in criminal proceedings, to interview the applicant and to make a recommendation to the Registrar on his application.
- (C) An applicant who has been denied admission to the lists or who has been removed from the lists pursuant to Article 14(E)(ii) may seek review of the Registrar's decision before the President within 15 days from the date upon which he is notified of that decision.

## **PART IV – SCOPE OF ASSIGNMENT**

### **Article 16**

#### **Basic Principles**

- (A) A suspect or accused shall be entitled to have one counsel assigned to him. Where suspects or accused are jointly charged or tried pursuant to the same indictment, each shall be entitled to have a separate counsel assigned.
- (B) The counsel assigned to represent a suspect or accused shall be referred to as the lead counsel and shall be responsible for all aspects of the defence of the suspect or accused before the Mechanism. Subject to Article 16(C), the lead counsel shall sign all documents submitted to the Mechanism.
- (C) In the interests of justice and at the request of lead counsel, the Registrar may assign a second counsel to assist with the defence of the suspect or accused. This counsel shall be called the co-counsel. Acting under the authority of lead counsel, the co-counsel may deal with all stages of the proceedings and all matters arising out of the defence of the suspect or accused. The co-counsel may also be authorised, in writing, to sign documents on behalf of the lead counsel.

- (D) At the request of the lead counsel and where the interests of justice so require, the Registrar may assign a co-counsel who does not speak either of the two working languages of the Mechanism but who speaks the native language of the accused. The Registrar may impose such conditions as deemed appropriate.
- (E) At the request of the lead counsel, the Registrar may assign other persons such as legal assistants, consultants, investigators and interpreters, as required, to provide support to counsel. Only persons assigned or approved by the Registrar may assist counsel with the defence of the suspect or accused. The lead counsel and the persons assisting him shall be referred to as the defence team. The lead counsel is responsible for selecting and supervising all defence team members, including co-counsel.
- (F) Members of the family or close friends of suspects, accused and counsel are not eligible for assignment under the Directive as counsel, expert, legal assistant, investigator, translator or interpreter, unless the Registrar determines that the assignment is in the interests of justice.
- (G) No counsel shall be assigned to more than one suspect or accused at a time, unless:
- (i) each suspect or accused has received independent legal advice from the Registrar and both have consented in writing; and
  - (ii) the Registrar is satisfied that there is no potential or actual conflict of interest or a scheduling conflict, and that the assignment would not otherwise prejudice the defence of either suspect or accused, or the integrity of the proceedings.
- (H) Counsel assigned pursuant to Rule 64 of the Rules shall only represent the accused for the purpose of the accused entering a plea, unless the Registrar, deems it appropriate for the duty counsel to perform work which exceeds the mandate of duty counsel but is required to protect the rights of the accused until permanent counsel is assigned by the Registrar or retained by the accused, or the accused elects in writing to conduct his own defence pursuant to Rule 43(F) of the Rules.
- (I) Lead counsel shall keep a complete and accurate case file of all documentation related to the case and of all work performed by the defence team during representation of the suspect or accused. Subject to his obligations under the Code of Conduct, lead counsel shall retain the case file for five years after the completion of proceedings relating to the suspect or accused before the Mechanism.

## **Article 17**

### **Applicable Law**

In the performance of their duties assigned counsel shall be subject to the relevant provisions of the Statute, the Rules, this Directive, the Code of Conduct, the Rules of Detention, any other rules or

regulations adopted by the Mechanism, the Host State Agreements entered into by the United Nations on behalf of the Mechanism, and the codes of practice and ethics governing the profession.

## **Article 18**

### **Counsel-Client Privilege**

(A) Notwithstanding counsel-client privilege as defined in Article 13 “Confidentiality” of the Code of Conduct, the Registrar may, if he determines that reasonable cause exists, require assigned counsel to provide information and documentation, including that which is otherwise privileged or confidential, as may be reasonably necessary for the Registrar to determine whether work for which the Mechanism legal aid funds have been claimed or paid, has been performed. For this purpose, counsel shall allow the Registrar to examine, on a strictly confidential basis, any part of the case file, in accordance with Article 18(B). Disclosure of privileged or confidential information or documentation under this article does not negate or constitute waiver of counsel-client privilege.

(B) Counsel-client privilege shall extend to the Registrar in respect of information or documentation obtained under Article 18(A).

(C) The general prohibition on the disclosure of privileged or confidential information and documentation under Articles 18(A) and 18(B) shall not apply to the Registrar where:

- (i) the Registrar initiates a disciplinary proceeding against counsel under Part III of the Code of Conduct in connection with the Mechanism’s legal aid funds which have been claimed or paid, and to which claimant or payee was not entitled;
- (ii) the Registrar initiates proceedings in a national jurisdiction in connection with the administration of the Mechanism’s legal aid system, including the misappropriation of the Mechanism’s legal aid funds; or
- (iii) disclosure is essential to establish a claim for recovery of funds from a person to whom legal aid was granted in accordance with Article 11.

## **Article 19**

### **Assignment of Counsel Away from the Seat of the Mechanism**

(A) Away from the seat of the Mechanism, and in a case of such urgency that the procedure established in Article 7 cannot be followed, a suspect who, during the investigation, requests assignment of counsel, may indicate the name of a counsel whose name does not appear on the list envisaged in Rule 43(B) of the Rules, but who may be assigned in accordance with this Directive.

(B) Where the suspect requesting assignment of counsel is unable to provide the name of a counsel in accordance with Article 19(A), the Prosecutor, or a person authorised by him or acting under his discretion shall obtain the name of a counsel who may be assigned in

accordance with the provisions of this Directive, and may contact the local bar association for this purpose.

- (C) In the situations envisaged in Articles 19(A) and 19(B), the procedure for assignment of counsel as set out in this Directive shall apply *mutatis mutandis* but shall be accelerated where necessary.

## **PART V – SUSPENSION AND WITHDRAWAL OF ASSIGNMENT**

### **Article 20**

#### **Ability of Suspects or Accused to Remunerate Counsel**

- (A) Where counsel has been assigned, the Registrar may withdraw the assignment of counsel if information is obtained which establishes that the suspect or accused has sufficient means to remunerate counsel. In such cases, the Registrar may recover the cost of providing counsel in accordance with Rule 43(E) of the Rules.
- (B) Where counsel has been assigned, the Registrar may modify his decision on the extent to which the suspect or accused is able to remunerate counsel if it is established that the means of the suspect or accused:
- (i) have changed since the Registrar issued his decision on the extent to which the accused is able to remunerate counsel; or
  - (ii) were not fully disclosed, or were otherwise not known to the Registrar, as of the date he issued his decision.
- (C) The Registrar's decision shall be reasoned and notified to the suspect or accused, in writing, and to the counsel assigned, and shall take effect from the date of notification.
- (D) The provisions of Article 13 shall apply *mutatis mutandis* where a suspect or accused seeks a review of a decision made pursuant to Articles 20(A) and 20(B).

### **Article 21**

#### **Withdrawal and Suspension of Assignment**

- (A) In the interests of justice or in exceptional circumstances, the Registrar may:
- (i) at the request of the accused, or his counsel, withdraw the assignment of counsel;
  - (ii) at the request of lead counsel withdraw the assignment of co-counsel.

Where the Registrar has withdrawn counsel pursuant to this paragraph, he shall inform the relevant Chamber of his decision.



Where a request for withdrawal has been denied, the person making the request may seek the President's review of the Registrar's decision within 15 days from the date upon which he is notified of that decision.

- (B) The Registrar may suspend the assignment of counsel for a reasonable and limited time after consulting with the Chamber if:
- (i) a disciplinary procedure under Part III of the Code of Conduct has been initiated against that counsel; or
  - (ii) contempt proceedings have been initiated against that counsel pursuant to Rule 90 of the Rules.

The counsel may seek the President's review of a decision to suspend within 15 days from the date upon which he is notified of that decision.

- (C) The Registrar shall withdraw the assignment of counsel:
- (i) upon a decision of a Chamber under Rule 47(A)(ii) of the Rules; or
  - (ii) where counsel no-longer satisfies the requirements of Article 14(A); or
  - (iii) where counsel has been found to be in contempt pursuant to Rule 90 of the Rules, unless the Chamber rules that the assignment should continue.

Where the assignment of counsel has been withdrawn pursuant to Article 21(C)(ii) above, counsel may seek review of the Registrar's decision from the President within 15 days from the date upon which his notified.

- (D) In such cases, the withdrawal or suspension shall be notified to the accused, to the counsel concerned, to the Association of Counsel of which he is a member, and to his professional or governing body.
- (E) Where the assignment of counsel is suspended, the Registrar shall immediately assign replacement counsel to suspect or accused. Where the assignment of counsel is withdrawn, the Registrar may, subject to Article 22, assign a replacement counsel. Where the assignment of counsel is withdrawn pursuant to Article 21(C), the Registrar shall assign a replacement counsel.

## **Article 22**

### **Duties of Counsel upon Withdrawal**

- (A) Assigned counsel shall continue to act until:
- (i) a replacement counsel has been assigned by the Registrar; or

- (ii) a replacement counsel has been retained by the suspect or accused pursuant to Rule 42 of the Rules; or
  - (iii) the suspect or accused has elected in writing to conduct his own defence pursuant to Rule 43(F) of the Rules and his election has been accepted by the Chamber.
- (B) Where the assignment of counsel is withdrawn by the Registrar or where the services of assigned counsel are discontinued, the counsel must deliver within 15 days of withdrawal all the original documents in the file to the counsel who succeeds him, or otherwise, to his client.
- (C) In the case of the withdrawal of the assignment of a co-counsel, such delivery of documents shall be made to the counsel within seven days.
- (D) Failure by counsel to comply with the requirements of this Article may result in withholding counsel's fees, notification to the professional body regulating the conduct of counsel in his place of admission and, if he is a professor and not otherwise admitted to the profession, to the governing body of his University.
- (E) In the interests of justice, and upon consultation with the replacement counsel, where one has been retained or assigned, the Registrar may instruct the previously assigned counsel to continue to act or to assist the replacement counsel. During this period, the costs necessarily and reasonably incurred by both assigned counsel shall be met by the Mechanism.
- (F) If lead counsel is withdrawn, co-counsel shall assume responsibility of carrying on the proceedings.

### **Article 23**

#### **Payment Pro Rata Temporis**

Where an assigned counsel is replaced by another assigned counsel, he and his replacement shall be remunerated *pro rata temporis*.

## **PART VI – COSTS OF REPRESENTATION**

### **Article 24**

#### **Responsibility for Remuneration and Expenses**

- (A) Where counsel has been assigned, the costs of legal representation of the suspect or accused necessarily and reasonably incurred shall be met by the Mechanism in accordance with the Statute, the Rules, this Directive and related policies and subject to the budgetary provisions, rules, regulations, and practice set by the United Nations. All costs are subject to prior authorisation by the Registrar. If authorisation was not obtained, the Registrar may refuse to meet the costs.

- (B) The Mechanism shall meet the following costs in so far as those costs are reasonable and necessary in the circumstances to ensure that the rights of the suspect or accused enshrined in Article 19 of the Statute are upheld:
- (i) the remuneration of assigned counsel and assigned members of the defence team;
  - (ii) expenses related to the production of evidence for the defence and the ascertainment of facts;
  - (iii) expenses related to the temporary consultancy on specific questions;
  - (iv) expenses related to the production of expert reports, which are paid at the rate established in the remuneration scheme established under Article 25 of this Directive;
  - (v) expenses related to the accommodation and transportation of witnesses testifying in court in accordance with the Policy for the Provision of Support and Protection Services to Victims and Witnesses; and
  - (vi) expenses related to travel, travel taxes and similar duties.
- (C) Other expenses, such as general office costs, are governed by the remuneration scheme, established pursuant to Article 25.
- (D) The Registrar shall pay the costs referred to in Article 24(B) upon approval of a statement of fees or expenses from lead counsel. The statement of fees or expenses must be made out in accordance with the guidelines established by the Registrar and, unless otherwise provided for, must be presented to the Registrar within 90 days from the last day of the month during which work was performed or the expense was incurred.

#### **Article 25**

##### **Remuneration of Assigned Counsel and Assigned Members of the Defence Team**

- (A) Assigned counsel and assigned members of their defence team practicing before the Mechanism shall be remunerated in accordance with the remuneration scheme adopted by the Registrar.
- (B) Without prejudice to Article 6(C), assigned counsel and assigned defence team members who receive remuneration from the Tribunal shall not accept remuneration for the assignment from any other source.

#### **Article 26**

##### **Remuneration of duty counsel**

Duty Counsel assigned pursuant to Rule 64 of the Rules shall be remunerated at a fixed rate pursuant to the remuneration scheme established under Article 25 of this Directive.

**Article 27**  
**Travel expenses**

- (A) Subject to prior authorisation by the Registrar, travel expenses of assigned counsel and where applicable, assigned members of the defence team shall be met in accordance with the remuneration scheme established pursuant to Article 25 of this Directive.
- (B) Travel expenses of assigned counsel and, where applicable, assigned members of the defence team who do not usually reside in the territory of the host country or in the country where the particular stage of the procedure is being conducted, shall be met by the Registrar on the basis of one economy class standard fixed-date round trip air ticket or one first class train ticket by the shortest route to and from the country where the procedure is being conducted and within the limits set out in the remuneration scheme established pursuant to Article 25 of this Directive.
- (C) Travel expenses of assigned counsel and, where applicable, assigned members of the defence team who usually reside in the territory of the host country but not in the town where they are acting, shall be met by the Registrar on the basis of either first class public transportation tickets or fixed rates as established by the United Nations Schedule of Rates of Reimbursement for Travel by Private Motor Vehicle applicable to different groups of Countries and Territories, per kilometre travelled on the outward and return journeys by the shortest route, within the limits set out in the remuneration scheme established pursuant to Article 25 of this Directive.
- (D) All travel authorisation requests and amendments thereof shall be submitted to the Registrar at least seven days before the proposed travel unless it can be demonstrated that circumstances beyond the control of the defence team prevented the traveller from complying with this requirement. The Registrar may refuse to cover additional costs associated with a failure to comply with this requirement. Where such a failure causes the Mechanism to incur additional costs, the Registrar may deduct those costs from payments otherwise due to the traveller.

**Article 28**  
**Daily subsistence allowances**

- (A) Subject to prior authorisation by the Registrar, daily subsistence allowance for assigned counsel and where applicable, assigned members of the defence team, shall be paid by the Registrar in accordance with the remuneration scheme established pursuant to Article 25 of this Directive.
- (B) Daily subsistence allowance paid to assigned counsel and, where applicable, assigned members of the defence team shall be calculated on the basis of fixed rates as established by the United Nations Schedule of Daily Subsistence Allowance Rates applied to the number of

days of work. Neither assigned counsel, nor assigned members of the defence team shall be entitled to daily subsistence allowance while staying at their place of residence.

- (C) Daily subsistence allowance shall be paid in accordance with the United Nations rules and regulations on the basis of the current rates applicable in the country where assigned counsel, or where applicable, assigned members of the defence team, are acting.
- (D) In accordance with United Nations regulations, the applicable rate shall be lowered by twenty-five percent when assigned counsel or, where applicable, assigned members of the defence team have spent more than 60 days in total from the date of their assignment, in a country in which they are acting.
- (E) Where appropriate in the circumstances, the Registrar may provisionally pay daily subsistence allowances in advance.

#### **Article 29**

##### **Translation and interpretation costs**

- (A) The Mechanism shall provide translation and interpretation services, or meet the cost of such services as reasonably necessary to protect the rights of a suspect or accused enshrined in Article 19 of the Statute.
- (B) The Mechanism provides translation of documents and interpretation services to the suspect or accused and his defence team as set out in a Registry translation services policy.
- (C) Translation and interpretation services other than those provided by the Mechanism in accordance with the Registry policy described in Article 29(B) shall be organised by the defence team. The cost of these services shall be met by the resources allocated to the defence team in accordance with the remuneration scheme established pursuant to Article 25 of this Directive.

#### **Article 30**

##### **Adoption and Amendment of Policies Governing Remuneration and Expenses**

The remuneration scheme referred to in Article 25 shall not be adopted or amended by the Registrar without prior consultation with the Association of Counsel, should such association exist.

#### **Article 31**

##### **Responsibility for Payments**

All sums payable to assigned counsel, and other members of the defence team, where applicable, under the provisions of this Directive shall be paid by the Registry.

**Article 32**  
**Settlement of Disputes over Payment**

- (A) Where a dispute arises over remuneration or reimbursement of expenses and where the sum involved is USD 5,000 (five thousand) or less, an aggrieved party may request the Registrar to review the matter. The Registrar shall decide on the matter personally or assign the Officer in Charge to do so on his behalf. Before reaching his decision, the Registrar or Officer in Charge shall invite submissions from the aggrieved party and the respondent and may consult with the President if necessary. The decision of the Registrar or Officer in Charge shall be final and binding upon the parties.
- (B) Where the dispute involves a sum greater than USD 5,000 (five thousand), an aggrieved party may submit a request for review with the Registrar, who shall refer the matter to the President for his determination. Before making a determination the President shall request submissions from the aggrieved party and the respondent. The President's determination shall be final and binding upon the parties.
- (C) Requests for review of decisions of the Registrar on the extent to which an accused is able to remunerate counsel shall be brought before the Chamber seized of the case in accordance with Article 13(B).

**Article 33**  
**Facilities**

Subject to the availability of space and resources, facilities and equipment, such as photocopiers, computer equipment, and other office equipment, and telephone lines, will be provided to assigned counsel.

**PART VII – ADVISORY PANEL**

**Article 34**  
**Advisory Panel**

- (A) An Advisory Panel shall be established, pursuant to Rule 42(D), to assist the President and the Registrar in matters relating to Defence Counsel. An Advisory Panel shall be set up consisting of five persons in total. The following shall each appoint one representative to serve on the Advisory Panel: the President, the Registrar, the International Bar Association, the Union Internationale des Avocats, and Association of Counsel. Each member of the Advisory Panel must have a minimum of ten years legal experience.
- (B) Panel members shall be appointed for an initial term of four years, with a possible extension of two years should the mandate of the Mechanism be extended.

- (C) Panel members shall appoint a President upon consultation with one another.
- (D) The role of the Advisory Panel is to provide advice to the President of the Mechanism and the Registrar, including but not limited to:
- (i) those Rules of Procedure and Evidence which affect the rights of suspects and accused and the work of defence counsel before the Mechanism;
  - (ii) the Directive on the Assignment of Defence Counsel;
  - (iii) the Code of Conduct; and
  - (iv) the policies and practice directions of the Mechanism.
- (E) The Advisory Panel may be consulted as and when necessary by the President of the Mechanism, the Registrar of the Mechanism, and the President of the Association of Counsel on matters referred to in Article 34(D).
- (F) The Advisory Panel may also on its own initiative address the President of the Mechanism, the Registrar or the President of the Association of Counsel on the matters referred to in Article 34(D).

Upon the invitation of the Advisory Panel, the President of the Mechanism, the Registrar, or the President of the Association of Counsel, or their representatives, may attend the meetings of the Advisory Panel.