

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

Adopted on 4 March 2013

PREAMBLE

The Registrar of the Mechanism for International Criminal Tribunals (“MICT”);

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

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 (“Directive”);

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

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

TABLE OF CONTENTS

A. DEFINITIONS..... 3

B. GENERAL PROVISIONS..... 5

C. PHASE ONE – NOTICE OF APPEAL..... 6

i. Invoicing and Payment..... 6

D. PHASE TWO – APPEAL BRIEFS..... 7

i. Assessing the Complexity Level..... 7

ii. Distribution of the Phase Two Lump Sum..... 8

iii. Invoicing and Payment..... 8

iv. Adjustment in the Complexity Level..... 8

v. End-of-Phase Report..... 9

E. PHASE THREE – APPEAL HEARING..... 10

i. Invoicing and Payment..... 10

F. SENTENCING APPEAL..... 11

G. ADJUSTMENT OF THE LUMP SUM..... 11

H. TRAVEL..... 12

I. FINAL PROVISIONS..... 13

A. DEFINITIONS

For the purpose of this Policy, the following shall mean:

- Accused:** A person indicted by the ICTR, ICTY, or the MICT, in accordance with Article 1 of the Statute.
- Appeal:** A proceeding before the MICT pursuant to Article 23 of the Statute.
- Association of Counsel:** An Association of Defence Counsel practicing before the Mechanism, recognized 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 Appeals Chamber of the MICT, or a Single Judge, in accordance with Article 12 of the Statute.
- Counsel/Lead 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) of the Directive.
- Co-Counsel:** Counsel assigned to assist Lead Counsel with the defence of an Accused, pursuant to Article 16(C) of the Directive.
- Code of Conduct:** The Code of Professional Conduct for Defence Counsel Appearing before the MICT, issued by the Registrar on 14 November 2012.
- CPI:** Consumer Price Index used by the International Civil Service Commission to adjust the Post Adjustment Index of UN Professional staff based in The Hague.
- Defence Team:** Counsel assigned by the Registrar to represent an indigent or partly indigent Accused and any other person assigned or approved by the Registrar to assist Counsel in this task, including Co-Counsel, Consultants, Legal Assistants, Case Managers, Investigators, Interpreters/Translators, as applicable.
- Directive:** The Directive on the Assignment of Defence Counsel, issued in accordance with Rule 43 of the Rules.
- DSA:** Daily Subsistence Allowance pursuant to Article 28 of the Directive.

End-of-Phase Payment	The portion of the Phase Two lump sum, amounting to twenty percent (20%) of this sum, that is withheld and paid after approval by the Registrar of the Defence End-of-Phase Report.
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.
MICT:	The Mechanism for International Criminal Tribunals, as established by Security Council Resolution 1966 of 22 December 2010.
Notice of Appeal:	The filing made by a party pursuant to Rule 133 of the Rules.
Policy:	The present Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the MICT.
President:	The President of the MICT appointed pursuant to Article 11 of the Statute.
Registrar:	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.
Rules:	The Rules of Procedure and Evidence adopted by the MICT pursuant to Article 13 of the Statute, adopted on 8 June 2012.
Sentencing Appeal:	The Appeal limited to sentencing.
Statute:	The Statute of the MICT annexed to Security Council Resolution 1966 of 22 December 2010.
Support Staff:	Any person providing support to Counsel pursuant to Article 16(E) of the Directive.

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 the Appeal. 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/she sees fit in the course of the Appeal, depending on the needs of the case in any of the phases of the appeal. However, only Defence Team members who have been assigned by the Registrar 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 contained in the Statute, Rules or Directive shall prevail.
3. For the purpose of this Policy, the Appeal consists of three phases: Phase One - Notice of Appeal, Phase Two - Appeal Briefs, and Phase Three - Appeal Hearing. The lump sum is distributed in monthly stipends and, for Phase Two, 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 Appeal, once all work has been performed.
4. The lump sum covers all aspects of representation on Appeal. These include, but are not limited to Lead and Co-Counsel fees, Legal Assistants fees, Consultant fees, Investigators fees, Case Managers fees, interpretation and translation costs (see para. 5), office costs, and administrative expenses.
5. 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. Further, not included are interpretation and translation costs incurred for the purpose of facilitating client-counsel communication. Lead Counsel may invoice separately for those costs, up to a maximum of \$1500 per month.
6. The amounts set out in the Policy are derived from the maximum allotments of hours applied by the ICTY and the ICTR on Appeal. 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.
7. 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 index during the twelve month period from November of the preceding year.
8. For the purpose of this Policy, the MICT shall recognise the determination of indigency of an Accused made by the ICTY and the ICTR, unless new information is obtained, which establishes that the Accused has sufficient means to remunerate Counsel. Where the ICTR and ICTY have made no determination on indigency, the MICT will assess the financial means of the Accused in accordance with the Directive.

C. PHASE ONE – NOTICE OF APPEAL

9. Phase One shall commence on the day following the rendering of the written judgement and shall end on the day on which a Notice of Appeal is filed by the Defence pursuant to Rule 133 of the Rules.
10. The lump sum for Phase One is \$26,950.
11. The lump sum allocated for Phase One covers any and all work to be performed by Counsel and the assigned Defence Team members during the phase, including but not limited to the review and analysis of the trial judgement, review of the trial record, the filing of a Notice of Appeal and any motions and responses to motions as may be necessary, legal research, review of new disclosure material, consultations with the client, intra-team meetings, communications with counsel for co-Accused, if any, as well as with the Prosecution and the Registry. The lump sum for Phase One is not contingent on the duration of the phase.
12. Whilst it is considered that Phase One requires preparation by one counsel and one support staff, Counsel may request the assignment of a Co-Counsel and/or additional support staff for Phase One or for the duration of the Appeal. Such assignments shall not, however, result in an increase of the allocated lump sum.
13. If no Notice of Appeal is filed by the Defence, the Registrar may, *proprio motu*, and after giving Counsel an opportunity to be heard, decrease the standard lump sum for Phase One. In such case, the Phase One lump sum will be \$7,500 to cover work such as review and analysis of the trial judgement, consideration of possible grounds of appeal, and consulting with and advising the Accused.

i. Invoicing and Payment

14. The Phase One lump sum shall be paid in a single monthly stipend upon submission of a *pro forma* invoice following the filing of the Notice of Appeal by the Defence or, if no Notice of Appeal has been filed, following the expiration of the time fixed for filing a Notice of Appeal under Rule 133 of the Rules. In case the Chamber has granted an extension of time for the filing of the Notice of Appeal by the Defence, Counsel may request the Registrar to disburse the Phase One lump sum in two or more equal monthly stipends, as deemed appropriate by the Registrar.
15. The *pro forma* invoice shall be signed by Lead Counsel, who shall advise the Registrar how to distribute the stipend between the Defence Team members assigned by the Registrar. The invoice must be accompanied by a recapitulation of the work performed by each Defence Team member who receives remuneration from the lump sum during Phase One. The recapitulation is not an hourly invoice and does not require the same level of detail. Rather, it is intended to provide an overview of the Defence activities during Phase One and to allow the Registrar to determine that the work performed by each Defence Team member was reasonable and necessary, that it was actually performed, and justifies the payment of the lump sum.
16. Payments shall be made upon submission of a valid and accurate *pro forma* invoice, directly into the bank accounts of the respective Defence Team members.

D. PHASE TWO – APPEAL BRIEFS

17. Phase Two shall commence the day after the conclusion of Phase One and shall end with the filing of the last brief pursuant to Rules 138, 139 or 140 of the Rules, or any sur-reply, as may be permitted by the Chamber, or the expiry of the time limit for filing such briefs.
18. The lump sum for Phase Two is based on the complexity of the case as determined by the Registrar as follows:

Complexity	Lump Sum
Level 1 (difficult)	\$110,940
Level 2 (very difficult)	\$158,840
Level 3 (extremely difficult)	\$254,640

19. The lump sum allocated for Phase Two covers any and all work to be performed by Counsel and the assigned Defence Team members during the phase, including but not limited to legal research and drafting of the Appellant's brief (Rule 138), the Respondent's Brief (Rule 139) and the Brief in Reply (Rule 140), as applicable, the research and drafting of any motions and responses to motions, including any motion for additional evidence and responses to such motions (Rule 142), review of newly disclosed material, consultations with the client, intra-team meetings, communications with counsel for co-Accused, if any, as well as with the Prosecution and the Registry. The lump sum for Phase Two is not contingent on the duration of the phase.

i. Assessing the Complexity Level

20. At the end of Phase One, Lead Counsel shall make a written submission to the Registrar regarding the complexity of the case. Based on Counsel's submission and after consultation with the Appeals Chamber, the Registrar shall rank the case at Level 1 (difficult), Level 2 (very difficult), or Level 3 (extremely difficult). In making this determination, the Registrar shall consider, *inter alia*:
- (a) the position of the Accused within the political or military hierarchy;
 - (b) the number and nature of the grounds of appeal;
 - (c) whether the Prosecution and/or any co-Accused has filed an appeal, to the extent their appeal affects the Accused;
 - (d) whether the appeal raises any novel legal issues that have not been addressed by jurisprudence, and the nature of such novel legal issues;
 - (e) the complexity of the legal and factual issues involved;
 - (f) the length of the Trial Judgement;
 - (g) the number and type of documents, exhibits and witnesses relevant to the Appeal;
 - (h) whether new evidence will be heard or admitted on Appeal;
 - (i) the sentence imposed by the Trial Chamber; and
 - (j) any other factor Lead Counsel deems relevant to facilitate the Registrar's decision.

21. Pending the complexity determination pursuant to paragraph 20, the Registrar shall rank each case provisionally at Level 1 (difficult) to ensure the continuous funding of the case. Should the case be subsequently ranked at a complexity level higher than Level 1, the Registrar shall adjust the lump sum for Phase Two accordingly.

ii. Distribution of the Phase Two Lump Sum

22. Eighty percent (80%) of the Phase Two lump sum shall be disbursed in monthly stipends while the remaining twenty percent (20%) shall be paid as an End-of-Phase Payment after approval by the Registrar of the Defence End-of-Phase Report (see paras. 34-39).
23. The monthly stipend for Phase Two shall be calculated by dividing 80% of the lump sum by the estimated number of months in the phase. According to Rules 138, 139 and 140 of the Rules, all briefs (the Appellant's brief, the Respondent's brief and any Brief in Reply) are to be filed within 130 days from the filing of a Notice of Appeal. Eighty percent (80%) of the Phase Two lump sum shall therefore be normally disbursed in five equal monthly stipends, unless the Registrar and Lead Counsel have agreed on a different distribution schedule. In deciding on a different distribution schedule, the Registrar may take into account any extension of time granted by the Chamber and the reasons thereof.

iii. Invoicing and Payment

24. Eighty percent (80%) of the Phase Two lump sum shall be paid in monthly stipends upon submission of a monthly *pro forma* invoice at the end of each month of Phase Two. The End-of-Phase Payment shall be paid following approval by the Registrar of the Defence End-of-Phase Report.
25. The *pro forma* invoice shall be signed by Lead Counsel, who shall advise the Registrar how to distribute the stipend between the Defence Team members assigned by the Registrar.
26. 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.
27. Payments shall be made in principle within one month of submission of a valid and accurate *pro forma* invoice, directly into the bank accounts of the respective Defence Team members.

iv. Adjustment in the Complexity Level

28. In the event of a change in the complexity indicators specified in paragraph 20, which has emerged 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 a 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.

29. In deciding upon a request for an upgrade in the complexity level based on paragraph 28, the Registrar shall seek information from the Appeals Chamber on the nature of the circumstances and their impact on the preparation of the case for the Defence. The Registrar shall 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.
30. The Registrar may, *proprio motu*, after consulting with the Appeals Chamber and after giving Counsel an opportunity to be heard, downgrade the complexity level of the case or allocate a lump sum lower than that for Level 1 if the circumstances so demand.

v. End-of-Phase Report

31. At the end of Phase Two, the Defence Team is entitled to receive the End-of-Phase Payment. The End-of-Phase Payment shall be made upon approval by the Registrar of the Defence End-of-Phase Report. Lead Counsel must submit the End-of-Phase Report within 60 days from the end of Phase Two.
32. The End-of-Phase Report must contain a formal accounting of all the work performed during Phase Two, 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 assigned Defence Team member and a detailed description of the work performed by them;
 - b) For the entire phase, a recapitulation of the total number of hours worked by each member of the Defence Team and by category of work; and
 - c) For the entire phase, a recapitulation of the work performed and the Defence Team's output with sufficient specificity to allow the Registrar to verify that the work was actually performed and that it was reasonable and necessary. The Report shall include information such as legal research performed, pleadings prepared and filed, documents reviewed, including disclosure, and the number of pages of such documents.
33. In the review of the End-of-Phase Report, the Registrar shall verify that:
 - a) All information requested in paragraph 32 is included;
 - b) The work of each Defence Team member is sufficiently described to establish that it was directly related to the Appeal;
 - c) The work reported by the Defence Team was actually performed, and justifies the payment of the lump sum; and
 - d) All legal aid funds were paid to authorised members of the Defence Team duly assigned or approved by the Registrar, as requested by Lead Counsel.
34. The Registrar may request Lead Counsel to provide additional information or documentation to enable the Registrar to assess the work performed by the Defence Team.
35. Based on the End-of-Phase Report and any additional information received from Lead Counsel, the Registrar shall disburse the remainder of the Phase Two lump sum, unless he

has reason to believe that irregularities have occurred in the work or conduct of the Defence Team or that some work was unreasonable or unnecessary. In such a case, the Registrar shall either: a) consult with the Appeals Chamber and/or the Association of Defence Counsel Practicing before the MICT; or b) refer the matter to the Disciplinary Panel set forth in Article 40 of the Code of Conduct. Only after such consultation or referral, and after having given Lead Counsel an opportunity to respond, may the Registrar refuse to pay all or part of the End-of-Phase Payment.

36. Should Lead Counsel disagree with the Registrar's decision not to pay all or part of the Phase Two lump sum or with the amount disbursed, Lead Counsel may request a review of the Registrar's decision in accordance with the procedure set forth in Article 32 of the Directive on the Assignment of Defence Counsel.

E. PHASE THREE – APPEAL HEARING

37. Phase Three shall commence the day after the completion of Phase Two and shall end with the rendering of the Appeal Judgement.
38. The lump sum for Phase Three is \$32,760.
39. The lump sum allocated for Phase Three covers any and all work to be performed by Counsel and the assigned Defence Team members during the phase, including but not limited to preparation for the Appeal hearing (Rule 141), participation in the hearing, the filing of any motions and responses to motions as may be necessary, review of newly disclosed material, consultations with the client, intra-team meetings, communications with Counsel for co-Accused, if any, as well as with the Prosecution and the Registry. The lump sum for Phase Three is not contingent on the duration of the phase.
40. Due to the nature of the appellate proceedings, there is typically a significant lapse of time between the filing of the briefs (end of Phase Two) and the Appeal hearing. Counsel is not expected to work regularly, if at all, until the Appeal hearing is scheduled, and the bulk of the work performed during Phase Three will usually take place in the month preceding the hearing. It is recognised that preparation for the Appeal hearing may involve – after a significant break in the proceedings – refreshing memory on parts of the record on Appeal, as well as providing written answers to questions asked by the Appeals Chamber. Whilst all the work performed during Phase Three is covered by the lump sum, for efficiency reasons the Phase Three lump sum shall be disbursed in two monthly stipends.

i. Invoicing and Payment

41. The Phase Three lump sum shall be paid in two equal monthly stipends of \$16,380 upon submission of a *pro forma* invoice. The first *pro forma* invoice for Phase Three shall be submitted 30 days after the Appeals Chamber issues an order scheduling the Appeal hearing (Rule 141). The second *pro forma* invoice for Phase Three shall be submitted after the Appeal hearing. If the date of the hearing is set in less than two months from the scheduling order, Lead Counsel may request the Registrar to disburse the entire Phase Three lump sum in a single monthly stipend.

42. The *pro forma* invoice shall be signed by Lead Counsel, who shall advise the Registrar how to distribute the stipend between the Defence Team members assigned by the Registrar. The invoice must be accompanied by a recapitulation of the work performed by each Defence Team member who receives remuneration from the lump sum during Phase Three. The recapitulation is not an hourly invoice and does not require the same level of detail. Rather, it is intended to provide an overview of the Defence activities during Phase Three and to allow the Registrar to determine that the work performed by each Defence Team member was reasonable and necessary, that it was actually performed, and justifies the payment of the lump sum.
43. Payments shall be made in principle within one month of submission of a valid and accurate *pro forma* invoice, directly into the bank accounts of the respective Defence Team members.

F. SENTENCING APPEAL

44. In case of a Sentencing Appeal, the provisions of sections B. through D. shall apply *mutatis mutandis* except for the following provisions.
45. No complexity determination is made for Phase Two of the Appeal and a standard lump sum is allocated as specified below. Furthermore, Phase Two lasts a maximum seventy days pursuant to Rules 138, 139, and 140 of the Rules. Therefore, the lump sum for Phase Two of a Sentencing Appeal is disbursed in three equal monthly stipends, unless the Registrar and Lead Counsel have agreed on a different distribution schedule. In deciding on a different distribution schedule, the Registrar may take into account any extension of time granted by the Chamber and the reasons thereof.
46. The total lump sum for a Sentencing Appeal is \$81,850, divided per phase as follows:

Phase One	Phase Two	Phase Three	TOTAL
\$19,500	\$53,050	\$9,300	\$81,850

G. ADJUSTMENT OF THE LUMP SUM

47. 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 a given phase of the Appeal, the Registrar may, at the request of Counsel or *proprio motu*, adjust the lump sum without a change in the level of complexity. The extended duration of the phase, or the presentation of additional evidence and the review of newly disclosed material are not unforeseeable circumstances.
48. A request for an increase of the lump sum needs to be submitted by Counsel in writing no later than 30 days from the occurrence of the unforeseeable circumstance but in any event no later than 30 days from the end of the relevant Phase. The request must specify the factual or legal developments that have resulted in an increase in Defence Team's work,

as well as a detailed description of the additional work required and the estimated time needed for each task.

49. The Registrar will not adjust the lump sum *proprio motu* without giving Counsel an opportunity to be heard.
50. In deciding upon a request for the adjustment of the lump sum, the Registrar shall seek information from the Appeals Chamber on the nature of the circumstances and their impact on the preparation of the case for the Defence.

H. TRAVEL

51. Payment for travel-related expenses shall be made pursuant to Articles 27 and 28 of the Directive.
52. The Registrar may authorise the following travel for communication between the Accused and Counsel, having taken into consideration the geographical distance and travel time required:
 - (a) Until the submission of the Defence Appeal Brief, Respondent's Brief or the Brief in Reply, pursuant to Rule 138, Rule 139 or Rule 140, respectively, whichever is later:
 - (i) One trip per month for up to three DSA for either Lead Counsel or Co-Counsel; or
 - (ii) One trip every two months for up to seven DSA for either Lead Counsel or Co-Counsel.
 - (b) Following the period referred to in paragraph 48(a) above:
 - (i) One trip every two months for up to two DSA for either the Lead Counsel or Co-Counsel; or
 - (ii) One trip every four months for five DSA.
53. The MICT shall bear the expenses related to travel for status conferences held pursuant to Rule 69(B) of the Rules for either Lead Counsel or Co-Counsel, and shall normally grant up to two DSA, unless Counsel's presence at the Branch of the MICT is required for a longer period. The MICT shall also bear the expenses related to travel for the Appeal hearings held pursuant to Rule 141 of the Rules for both Lead Counsel and Co-Counsel, and shall grant DSA for the duration of the hearing plus two additional days.
54. The Registrar may authorise travel for communication between Lead Counsel and Co-Counsel who reside in different jurisdictions on a case-by-case basis, upon demonstration of the reasonableness and necessity of the travel. Such travel must 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 DSA may be authorised upon a reasoned request.
55. The Registrar may authorise, on a case-by-case basis, travel for investigation-related purposes, upon demonstration of reasonableness and necessity of the travel.

I. FINAL PROVISIONS

56. The Registrar 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 end of the Appeal.
57. The Registrar shall treat documents submitted by Lead Counsel pursuant to this Policy with due respect to the appropriate level of confidentiality.
58. Any disputes arising from the application of this Policy shall be settled in accordance with Article 32 of the Directive.