

REMUNERATION OF DEFENCE TEAM MEMBERS UNDER THE LEGAL AID PROGRAM OF THE ICTR

MANUAL FOR PRACTITIONERS

The present Manual is intended – for the benefit of Defence Team Members (and especially Lead Counsel) - to set out comprehensively:

A] which *Activities* performed by such Defence Team Members will be remunerated under the Tribunal's Legal Aid Program;

B] which *Expenditures* incurred by such Defence Team Members will be reimbursed under the Tribunal's Legal Aid Program;

C] which *Forms* require to be completed when claims for payment – whether for duties performed or reimbursement of expenditures - from the Tribunal's Legal Aid Program are submitted; the time limits for submitting such claims;

D] which *Proofs of expenditures incurred* are required to be submitted with claims for reimbursement thereof.

A - Activities which may be Remunerated:

1. Once an ICTR detainee has been accepted by the Registrar as having insufficient financial means to pay (whether in whole or in part) for his own defence the detainee is assigned a Lead Counsel from the Approved List maintained by the Registrar.

2. That Lead Counsel, once assigned, is expected to meet with his client at the seat of the Tribunal in Arusha and commence the preparation of his client's defence strategy, both as to the facts alleged by the Prosecutor and as to the applicable law.

3. To assist him or her, during both case preparation and substantive trial proceedings, Lead Counsel may request the Defence Counsel Management Section to approve the appointment of both Legal Assistants and Investigators (up to three individuals in total, that is either two Legal Assistants and one Investigator or two Investigators and one Legal Assistant.) Lead Counsel may also request the appointment of a Co-Counsel (it should be noted that particular restrictions are imposed on the work for which Co-Counsel will be remunerated – see below for details).

4. For the purposes of the Tribunal's Legal Aid system the various stages of proceedings are distinguished thus (clearly, depending on the outcome of the proceedings not all stages may be applicable):

Preparation for Trial (or Pre-Trial) ;
In-Trial (or substantive trial proceedings);
Sentencing proceedings;
Appeal proceedings;
Review proceedings.

Different amounts are (N.B. *potentially*) claimable by different members of the Defence Teams at each stage.

Preliminary Points to Note:

5. The precondition for payment of fees and expenses is that such are agreed by the Registrar as being both *necessary and reasonable* (Article 17 of the *Directive on the Assignment of Defence Counsel*) for the conduct of the

accused's defence. In addition, the statement of fees submitted by the Counsel must be in conformity with Article 24 of the Directive. Thus it must clearly indicate:

the name(s) of suspect or accused;
the registration number in the Record Book;
the present stage of the procedure;
the date on which the work was carried out;
the time spent;
the nature of the activity performed, *including sufficient information to evidence the necessity and reasonableness for the preparation of the case as stipulated by article 17 of the Directive*. The proper form "Request of payment of fees and reimbursement of expenses" [ANNEX A] must be submitted together with the statement of fees.

6. Lead Counsel is responsible for the case and thus for the claims of all members of his Team, whether for work performed or for expenses. He must ensure that the team functions as such and that the members of the team complement each other and do not duplicate work.

7. Working sessions between Team members can also be remunerated when the time spent has been shown by Lead Counsel to be reasonable and necessary. Meetings with third parties, such as potential witnesses, should be limited, as far as possible, to one team member. Meetings attended by more than one member of the team with a third party may however be remunerated when Lead Counsel has shown the necessity and reasonableness thereof.

Other restrictions on payment, additional to the essential precondition set out above, also apply, thus:

At Pre-Trial Stage:

LEAD COUNSEL

8. In each calendar month **Lead Counsel** may be remunerated for a maximum of 175 billable hours worked; [Some Counsel in practice choose to devote greater numbers of hours to their work in the knowledge that such cannot be reimbursed.] The hourly rate covers time spent in the *direct preparation of the case* and any court appearances. Direct preparation is understood, for example, to mean preparation of a motion, close study of a prosecution

witness statement or taking a statement from a defence witness. More general study / preparation, such as may be necessary to master the relevant case, treaty and Tribunal law is not remunerated as all Counsel who have requested registration on the Tribunal's Approved List are assumed thereby to hold themselves out as learned in all aspects of the law applicable in the Tribunal.

The hourly rate applicable to Lead Counsel is commensurate with their years of experience as follows:

From 10 to 14 years of experience	US \$ 90 per hour
From 15 to 19 years of experience	US \$ 100 per hour
More than 20 years of experience	US \$ 110 per hour

9. Co-Counsel [if appointment of such has been duly authorized] may be remunerated for up to a total maximum of 250 billable hours as follows:

Reading the general history of Rwanda.....maximum 50 hours

Reading the case file of the accusedmaximum 200 hours

10. After this familiarization period, the cost of Co-Counsel's representation shall be remunerated under the legal assistance program only following the commencement of the substantive trial proceedings. For the avoidance of doubt, please note that Co-Counsel are paid at the hourly rate of US\$80 (that is, irrespective of seniority in practice) with a maximum of 175 billable hours per month.

Engagement of Legal Assistant / Investigator

11. Counsel must seek, using the proper form "Request for an assistant /investigato", [ANNEX B (i)(ii)(iii)(iv)] written authorization from the Registrar prior to the recruitment of a Legal Assistant or an Investigator. Such a request should provide reasons and include *inter alia*, the specific assignment for which the person is recruited as well as the estimated time of duration of the work. Thus at the pre-trial stage request for the appointment of Investigators / Legal Assistants shall have as a prerequisite the submission of a Defence Plan of Action.

12. The remuneration for an Assistant or an investigator is a flat hourly rate of U.S.\$25 (twenty-five), within an overall maximum of one hundred (100) billable

hours per calendar month. The flat hourly rate covers time spent in the *direct preparation of the case*. Additional study and research that is not linked to the direct preparation of the case is not separately remunerable.

At Trial stage

13. Lead Counsel and Co-Counsel may each be remunerated in each calendar month for a maximum of 175 billable hours worked at their respective fixed hourly rate. The hours charged should be those spent in the direct preparation of the case, and conduct of the case before the Trial Chamber.

14. Assistants and Investigators may be remunerated at the flat hourly rate of U.S.\$25 (twenty-five), with a maximum of one hundred (100) billable hours per month. The flat hourly rate remunerates time spent in the direct preparation of the case.

At the Appeal stage

15. Lead Counsel may be remunerated in each calendar month for a maximum of 175 billable hours worked.

16. Co-Counsel will not be allowed automatically at the Appeal stage. Lead Counsel must re-apply for the assistance of Co-Counsel giving reasons why such requires to be appointed for the conduct of the Appeal.

17. In the event of **Co-Counsel** being reassigned for the Appeal s/he may normally expect to be remunerated for an overall maximum of 350 hours work. However, hours additional to these 350 hours may be remunerated in the event that the Registrar is persuaded that such additional hours are reasonable and necessary in all the circumstances of the case. Application for an allotment of time for Co-Counsel greater than the standard 350 hours must be made prior to those hours being worked, otherwise remuneration cannot be expected.

18. Similarly, during the appeal phase, one Legal Assistant and one Investigator may again be assigned if the request submitted by Lead Counsel is considered justified by the Registrar. Such request must include, *inter alia*, the specific assignment for which the person is recruited as well as a workplan including time estimates. Again, a maximum of 100 billable hours in each

calendar month is permitted in respect of each Legal Assistant / Investigator appointed.

B - Expenditures which may be Re-imbursed;

19. Where Counsel has been assigned, the costs and expenses related to legal representation necessarily and reasonably incurred are met by the Legal Aid Program, subject to availability of funds, applicable United Nations rules and regulations and compliance with the procedures established by the Registrar.

20. Such costs and expenses (that is, as distinct from remuneration for work done, as set out at **A** above) shall include: costs related to travel for hearing or investigation purposes; measures taken for the production of evidence to assist or support the Defence; expenses for ascertainment of facts; consultancy and expert opinion; translation of documents to be filed before the Tribunal by external translators [see "Guidelines on the Remuneration of external translators/self-revisers for the International Criminal Tribunal for Rwanda"],[**ANNEX C**] transportation and accommodation of witnesses; registration / visa fees, taxes or similar duties.

21. Written authorization from the Registrar shall be obtained prior to any official travel. Requests should be made using the proper form "Work schedule", [**ANNEX D**] and be submitted A MINIMUM OF ONE MONTH PRIOR TO THE PROPOSED COMMENCEMENT OF TRAVEL to allow for adequate assessment and processing by the DCMS. In accordance with article 27 of the **Directive on the Assignment of Defence Counsel** travel expenses are reimbursed on the basis of one economy class round-trip air ticket by the shortest available route. Necessary travel by train or car can also be re-imbursed at applicable United Nations rates.

22. A Daily Subsistence Allowance is paid [at a rate which varies in relation to the city where the mission is carried out] every time a Defence Team member carries out a mission out of his place of residence with the prior approval of the Registry. When the mission of the Defence Team Member outside his place of residence lasts more than two weeks, a provisional payment of the daily Subsistence Allowance may be paid. Request for Advance of Daily Subsistence Allowance advance should be made using the proper form "Request for Advance DSA" [**ANNEX E**]"

23. During the pre-trial phase, either the Lead Counsel or the Co-Counsel shall be allowed to travel for in-court proceedings such as the hearing of preliminary motions, in the event that the Trial Chamber requires her / his presence (most such decisions are now rendered on the basis of written submissions, rather than in-court oral argument). Other than for such proceedings Counsel shall be re-imbursed, in principle, the cost of travel to

Arusha on a maximum of 3 occasions, prior to the commencement of the substantive trial.

24. During the Pre-trial stage, Lead Counsel may convene up to 2 co-ordination meetings with all members of the team in Arusha if the Registrar considers the request is justified.

C - REQUIRED FORMS / FORMALITIES / TIME LIMITS

25. U.N. financial rules require that all requests for payment of fees for work done or for reimbursement of expenses must be submitted **with an original signature** on the form “Request for payment of fees and / or reimbursement of expenses” [ANNEX A] which is available on the Tribunal’s website. A signature is treated as original if on a document received by fax, as well as through post / DHL. As at this writing an e-mailed document cannot – under UN rules -be accepted as an original signature. However, once the original claim has been submitted with Lead Counsel’s signature via (eg) fax, the DCMS may make inquiries of Lead Counsel and receive answers to such inquiries via e-mail in an effort to reduce administrative delays. Lead Counsel are therefore requested to ensure that their office checks e-mail daily in case of communications of this nature from the Defence Counsel Section.

26. The Statement of Fees / Expenses Claimed must be submitted in respect of work done / expenses incurred by all Defence Team Members on a monthly basis no later than one calendar month following the month in respect of which the Claim is being submitted. [Thus, eg for all work done by all Defence Team Members between 1st. and 31st. January, the consolidated Claim must be submitted under Lead Counsel’s signature no later than (and preferably well before) 28 February. It must be sufficiently detailed so as to enable the Registry to assess the necessity and the reasonableness of each activity charged by each of the Defence Team members. Claims for Fees / Expenses will not be processed unless such are received comprehensively in respect of all Defence Team Members for the month in question.

27. The **Lead Counsel must – by his / her own signature certify** all requests for payments of fees or reimbursement of expenses in respect of all his Defence Team Members.

The DCMS Office Procedure:

28. The statement of fees and/or expenses as submitted by Lead Counsel each month is reviewed by DCMS. It is then submitted by DCMS to Finance Section of ICTR for processing with DCMS's indications as to which items should be remunerated/reimbursed as being "reasonable and necessarily". Frequently however DCMS considers some claims or part thereof to be unacceptable or at best as requiring further and better particulars by way of justification. In such cases DCMS may return a copy of the submitted Claim to the Lead Counsel concerned with a note particularizing the disallowed portion or drawing attention to the further particulars required. Reference may be made by DCMS to the list of standard abbreviations, [ANNEX F] informing Lead Counsel, where applicable, of the grounds on which additional justification is required, payment is disallowed, hours claimed reduced, etc.. A copy of the reviewed statement is sent to Lead Counsel (normally this will be by e-mail unless Counsel has stated a preference for fax) for his information, for *his* dispatching to the relevant Team Member and in case Lead Counsel should wish to submit to DCMS a request for re-consideration.

29. In the latter case such reasoned requests for re-consideration should be submitted no later than ten (10) working days from the date on which the reviewed statement has been returned to Lead Counsel by DCMS. If no request for reconsideration has been received at DCMS within that time DCMS (if it has not already done) will forward the claim – ***as already revised and approved by DCMS*** – to Finance Section for payment. It follows that any request for re-consideration received *after the revised Claim has been submitted to Finance Section* will not be given the priority which the Section seeks to apply to Claims delivered within the timescale herein set out. Please assist the Section to reduce administrative delays by submitting Claims in accordance with the time limits. Even if no work has been done by any Defence Team member in a particular month Lead Counsel should submit a nil return in the normal Form "Request of payment of fees and reimbursement of expenses" [ANNEX A] at the beginning of the following calendar month to enable the Section to maintain its ongoing record of expenditure.

30. Requests for payment of fees and reimbursement of expenses must be submitted on a **monthly basis**. Failure to comply with this requirement may result in non-payment.

D - Proofs of Expenditure Required

For all requests for reimbursement of expenses the following must be submitted with any claims:

- [i] Copies of work schedules (as previously approved by DCMS) for all DSA claims;
- [ii] Original Air / Train / Bus / Boat tickets used;
- [iii] Original receipts for ticket purchases;
- [iv] Original boarding passes;
- [v] Copies of relevant passport pages for proof of entry and exit (please highlight the relevant stamps).

As UN rules require the production of original documentation at (ii), (iii) and (iv) above, it follows that fax / e-mail attachment may not be used for these documents. Ordinary mail or DHL must be used for their transmission to the Section. Nevertheless Lead Counsel is advised to ensure his office retains photocopies of all such documentation submitted.

Issued July 2003 Defense Counsel Management Section

This document is a compendium of the "Guidelines for settlement of Defence accounts" of September 1, 1998 the Circular of September 13, 2000 reviewing the measures relative to the enforcement of the Directive on the assignment of Defence counsel, and the Circular of January 26, 2001 regulating the assignment of Co-Counsel under the legal aid program of the Tribunal. It will be updated/modified from time to time with the latest version being available on the Tribunal website (www.ictj.org). Suggestions for improvement are welcome.