

# Legal aid policy of the International Criminal Court

Amendment proposal

## **1 Introduction**

1. The International Criminal Court (ICC) Legal Aid Policy (LAP) provides for the allocation of sufficient resources to defence counsel and legal representatives of victims acting for indigent clients allowing them an effective and efficient representation in the proceedings before the Court.
2. The LAP is based on the applicable legal provisions governing legal aid as stipulated in the International Criminal Court's ("Court") legal instruments, internal Registry guidelines and standard operating procedures as well as relevant resolutions adopted to date by the Assembly of States Parties ("Assembly") on the question of legal aid.

### **1.1 Principles of the LAP**

3. The following principles govern the application of the Court's legal aid system and related decisions of the Registrar:
  - a) Equality of arms: The legal aid system must allow defence counsel, as well as legal representatives of victims where appropriate, to present their case before the Chamber under conditions which do not place them at substantial disadvantage vis-à-vis their opponents.
  - b) Objectivity: The legal aid system is based on objective criteria for calculating both the means at the disposal of the person requesting payment of legal assistance by the Court and the scale of admissible expenses. This ensures the reduction of the risk of error in the assessment of either element. In addition, pursuant to regulation 83 (1) of the Regulations of the Court (RoC) the legal aid system allocates resources on the basis of the requirements of the case, covering the costs necessary for effective and efficient defence as determined by the Registrar and not on the basis of subjective requirements.
  - c) Transparency: The legal aid system complies with the requirements of budgetary oversight and auditing in the management of public funds without interfering with

the confidentiality of the work undertaken or the autonomy of counsel or legal team members.

- d) **Continuity and flexibility:** The legal aid system adapts to situations as they arise in order to preclude any paralysis prejudicial to the interests of the due administration of justice. It is also flexible in compliance with the requirements of fairness, by allowing account to be taken of any changes in the financial status of the person and his or her dependants.
  - e) **Economy:** Public international organisations are under the obligation to manage the funds allocated to them in the most cost-effective and efficient manner possible.
4. Counsel are not staff of the Court. The Registry shall establish legal services contracts with counsel in which {TO BE DETERMINED} shall be regulated.
  5. Persons assisting counsel in the framework of the LAP shall enter into a legal services contract with the Court, that shall respect the role of counsel as established in article 7(4) of the Code of Professional Conduct for Counsel]. Particular conditions agreed between counsel and team members are not subject to the supervision of the Court, save for exceptions to the general remuneration scheme, which shall respect the limit set in paragraph 50, must be agreed in writing and communicated to the Registry before they can have any effects.

## **1.2 Legal framework**

6. Pursuant to article 43(1) of the Statute, the Registry is the organ responsible for the non-judicial aspects of the administration and servicing of the Court. Accordingly, the management of the legal aid scheme of the Court falls within the ambit of the Registrar. Beneficiaries of the legal aid system of the Court have recourse to judicial review of administrative decisions concerning legal aid made by the Registrar.
7. The Chambers and the Presidency of the Court have confirmed that it is “the Registrar in whom primary responsibility for managing the legal assistance scheme of the Court is vested, including overseeing the scheme of legal assistance by the Court [...]”.

8. The right to legal assistance, or, if the person does not have legal assistance, for it to be assigned to him or her in any case where the interests of justice so require, and without payment by the person if he or she does not have sufficient means to pay for it, is recognised in article 55(2)(c) of the Rome Statute (Statute) where there are grounds to believe that a person has committed a crime under the jurisdiction of the Court and she is about to be questioned by the Prosecutor or by national authorities under Part 9 of the Statute, and article 67(1)(d) for the accused. The second article applies also to every person subject to a warrant of arrest or a summons to appear pursuant to rule 121(1) of the Rules of Procedure and Evidence (RPE).
9. Rule 21(1) of the RPE stipulates that the criteria and procedures for assignment of legal assistance shall be established in the Regulations, as referred to in rule 20(3) of the RPE, based on a proposal by the Registrar, following consultations with any independent representative body of counsel or legal associations.
10. Regulation 83 of the RoC stipulates that:
  - a) Legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances.
  - b) The scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate. [...]
11. Pursuant to regulation 84 of the RoC, the Registrar assesses whether the person requesting legal assistance is indigent.
12. Regulation 85 of the RoC specifies the procedure for the Registrar to decide on a legal aid application.
13. Regulations 130 to 136 of the Regulations of the Registry (RoR) provide additional legal bases and guidance to the Registry on management of the Court's legal aid system.

14. As regards victims' legal aid entitlements, while the Statute does not expressly provide for legal assistance to be paid by the Court as a matter of right for victims, rule 90(5) of the RPE provides that "a victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance." Legal aid for legal representation of victims is thus not a right as it is for the defence. Nevertheless, experience before the Court has demonstrated that the Court must ensure that legal aid resources are made available to indigent victims in order to ensure the effective exercise of the rights afforded to victims under the Court's legal framework.
15. Common legal representatives of victims chosen by the Court and their teams shall receive remuneration from the Court pursuant to the LAP.

### **1.3 Amendments to the LAP**

16. The Registrar shall adopt amendments to the LAP upon proposal of the Counsel Support Section.
17. Any amendment proposals shall be subject to a consultation process, including with the legal profession, as determined by the Registrar.
18. Where amendments have a financial impact, the Registrar shall adopt them only after they have been endorsed by the Assembly of States Parties.
19. Amendments that adversely affect defendants, victims, their counsel or team members shall not be applied retroactively.

## **2 Determination of Indigence**

### **2.1 Introduction**

#### 20. Terms and Definitions:

- a) Indigence: When a person does not have the sufficient means to pay for his or her legal assistance.

- b) Means of the applicant: include means of all kinds in respect of which the applicant has direct or indirect enjoyment or power freely to dispose, including, but not limited to, direct income, bank accounts, real or personal property, pensions, stocks, bonds or other assets held, but excluding any family or social benefits to which he or she may be entitled. In assessing such means, account shall also be taken of any transfers of property by the applicant which the Registrar considers relevant, and of the apparent lifestyle of the applicant. The Registrar shall allow for expenses claimed by the applicant provided they are reasonable and necessary.
- c) Estimated Monthly Rent (EMR): EMR is the potential cost of renting the residence should it be offered in the market. It is determined by the relevant housing authority of the place where the residence is located, or by an independent expert.
- d) Monthly Subsistence Allowance (MSA): MSA is the total of the monthly obligations of the person claiming indigence to her dependants, based on cost-of-living statistics (CLS) made available by any official authority of the relevant country or other relevant sources of information.
- e) Monthly Disposable Means (MDM): MDM are the resources that the person claiming indigence can dispose of after deducting her monthly obligations. It is calculated by subtracting the obligations of the person claiming indigence from the monthly value of assets.

## **2.2. The Financial Information Form (FIF)**

- 21. Upon transfer to the Court or at the earliest possible opportunity to communicate with a person entitled to legal assistance, the Registry transmits the Financial Information Form (FIF) prepared by the Registry and approved by the Presidency as mandated by regulation 23(2) of the RoC.
- 22. The applicant shall fill in the FIF as far as possible and return it to the Registry. The Financial Investigator of the Registry shall examine the FIF and check its veracity using all possible means and shall advise the Registrar on the pertinent actions to be taken.

23. Applicants shall provide all requested information in good faith and transparently, including any further information that the Registry or its Financial Investigator might request further to the submission of the FIF. The Court shall pursue all possible avenues to recover sums unduly paid, including where a person declared indigent is found not to be so by the Registrar.<sup>1</sup>
24. The information provided in the FIF shall be used exclusively for the purposes of determining indigence and, where appropriate, to recover unduly paid sums.

### **2.3. Calculation of the financial means of the person claiming indigence**

#### *A. Assets of the Applicant*

25. Upon submission of the application form in order to determine the person's disposable means an estimation of the value of assets needs to be made. The value of assets that are deemed necessary for the normal living expenses of the person and his or her dependants excludes:
- a) The applicant's residence to the extent that it is her property and its EMR is lower than the estimated needs of the dependants living in it. Where the rent is higher than the needs of those persons, the difference is treated as a disposable asset of the applicant.
  - b) The furnishings contained in the principal family home, and the property of the person claiming indigence. Luxury items of extraordinary value, including but not limited to art and antiques are not excluded from the calculation of indigence. The value of these items will be estimated by a certified expert.
  - c) The motor vehicles that are the property of the person claiming indigence, up to a maximum of two. The value of vehicles considered as disposable means is estimated according to any available official scale, or with the help of a certified expert.

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<sup>1</sup> Sentence added in the present version.

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Vehicles of lavish or ostentatious nature, as assessed by the Registry, are not excluded from the calculation of indigence.

- d) Family or social benefits to which indigence is claimed by the person.
26. All other assets, including real estate, owned by the person claiming indigence, as well as assets transferred to another person for the purpose of concealment, will be included among the person's disposable means. These assets include, among others, stocks, bonds or bank accounts.
27. The determination of the monthly value of all assets is the following:
- a) Real estate: EMR.
  - b) Other assets: Assessed total value divided by 120.
28. Assets owned by dependants will only be taken into account to determine the existence and extent of the obligations to such dependants of the person claiming indigence. Assets owned by dependants cannot be considered as disposable means, subject to paragraph 26.

### *B. Obligations of the Applicant*

29. The obligations of the person claiming indigence to dependants is calculated on a monthly basis. The needs of the persons dependent on the applicant are calculated based on the following sources in the following order:
- a) Official statistics relating to living expenses in the State of residence of each dependent.
  - b) Official statistics published by the International Civil Service Commission.
  - c) Other statistics relating to living expenses in the dependants' place of residence.
  - d) Any other means of proof of the needs of the dependants as considered reasonable by the Registrar.

30. Where any of the applicant's dependants owns a residence, its EMR shall be deducted from the MSA of that dependant. If applicable, the monthly rent may be deducted from the MSA of any other dependant living in the same residence up to a maximum of 100 per cent of the MSA.

#### **2.4 Determination of the legal costs to be paid by the Court**

31. The determination of indigence shall be done at every change of phase in the proceedings, and the person will be deemed not indigent and his or her request will be refused when the MDM is higher than the monthly cost of defence for the phase in question.
32. The applicant is considered totally indigent where her MDM is less than zero. The Court shall then pay all the costs of the legal assistance pursuant to the present policy.
33. The applicant is deemed partially indigent where her MDM is higher than zero and lower than the cost of representation during the phase at stake. The Court shall then pay the members of the defence team the appropriate proportion of their fees and expenses pursuant to the present policy.

### **3 Standard composition of teams**

#### **3.1. Defence teams**

34. Counsel is required to act alone from the start of the investigation phase until the first appearance before the Pre-Trial Chamber.
35. During the rest of the proceedings, counsel operating under the Court's legal aid scheme is provided resources for a core team composed of one trial lawyer and one case manager.
36. An associate counsel intervenes on a full-time basis during the trial phase, that is from the moment where a definite decision has been taken relating to the confirmation of charges until the conclusion of the closing statements of the case, and for a maximum of 150 hours during the appeals phase.

37. A field assistant joins the team after the first appearance before the Pre-Trial Chamber until the end of the closing arguments before the Trial Chamber, and during the reparations phase until the end of the submissions by the parties and participants, to assist counsel with investigative and other tasks.
38. A professional investigator admitted to the list managed by the Registry intervenes for a maximum of 150 hours per year to assist counsel with the preparation and supervision of the investigative strategy.
39. The Court's legal aid entitlements do not extend to proceedings before national jurisdictions on the basis of Article 59 of the Statute.
40. Counsel may make use of the flexibility principle to manage the resources provided in a manner that both best serves the interests of the indigent client and is compatible with the judicious financial use of legal aid funds. For instance, counsel can agree with team members that they intervene on a part-time basis, and thus with a lower remuneration than the system has foreseen.
41. Following the end of a case or the order of the Chamber establishing the principles and procedures to be followed in the phase of reparations, defence counsel shall be allowed to work for an additional period to be determined by the Registry depending on the necessary work to close the case file. This period shall in no case be longer than three months.
42. In the case of offences against the administration of justice, the Registry ensures the reasonably necessary funds for an effective and efficient defence on the basis of counsel acting half-time and a case manager acting full-time. Additional resources can be requested by counsel where necessary.
43. Where any assistance is required during the enforcement of sentences and the State of enforcement does not provide legal aid, the Registry shall appoint duty counsel to assist the sentenced person; where possible, the Registry shall seek to appoint the counsel who had represented the sentenced person during the case.

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	Team composition	Per month	Per year	Per phase
<b>Investigation</b>	1 counsel	11,187		
<b>Pre-trial</b>	1 counsel 1 trial lawyer 1 case manager 1 field assistant	23,100		9,543
<b>Trial</b>	1 counsel 1 associate counsel 1 trial lawyer 1 case manager 1 field assistant	32,643		
<b>Appeals</b>	1 counsel 1 trial lawyer 1 case manager	21,379		9,543
<b>Reparations</b>	1 counsel 1 trial lawyer 1 case manager 1 field assistant	23,100		
<b>Investigations</b>			30,000	
<b>Professional investigator</b>			9,043	
<b>Reduced activity*</b>		11,187		

\*Reduced activity phases are, in addition to any determination by the Registrar in this regard, between the end of the submissions in pre-trial phase until the issuance of the decision, between the end of the closing arguments until the issuance of the art. 74 decision, between the end of the submissions by parties and participants on appeals and the issuance of the decision by the Appeals Chamber and after the end of submissions in the reparations phase.

**Table 1 – Defence team composition in the different phases**

### 3.2. Composition of victim teams

44. The only reference to legal aid for victims in the texts of the Court is placed in rule 90(5) of the RPE, limiting its possibility to the case of common legal representatives appointed by a Chamber.

45. Legal representation of victims involves two elements: the representation of clients' interests before the Court, through personal appearance at hearings and the filing of written documents and contact with clients, including keeping them informed of developments, taking instructions, and ascertaining their interests in order to be able to represent them effectively before the Court.

46. From the appointment of the common legal representative in a case by the Chamber, the Registry allocates the resources to recruit a field assistant and a case manager. This core team is supplemented during the reparations phase by a trial lawyer.

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	Team composition	Per month	Per year	Per phase
<i>Core team (pre-trial, trial, appeals)</i>	1 counsel 1 case manager 1 field assistant	17,478		9,543
<i>Reparations</i>	1 counsel 1 trial lawyer 1 case manager 1 field assistant	23,100		
<i>Field activities</i>			30,000	
<i>Reduced activity*</i>		11,187		

\*Reduced activity phases are, in addition to any determination by the Registrar in this regard, between the end of the submissions in pre-trial phase until the issuance of the decision, between the end of the closing arguments until the issuance of the art. 74 decision, between the end of the submissions by parties and participants on appeals and the issuance of the decision by the Appeals Chamber and after the end of submissions in the reparations phase.

**Table 2 – Victims team composition in the different phases**

47. Following the end of a case or the order of the Chamber establishing the principles and procedures to be followed in the phase of reparations, the common legal representative shall be allowed to work for an additional period to be determined by the Registry depending on the number of victims, their geographical location, etc. This period shall in no case be longer than six months.

## 4 Remuneration

### 4.1. Remuneration of counsel and team members

48. The remuneration of counsel and team members will be calculated on the basis of the following table:

Post	Equivalence	Fees	Charges/Taxes	Option 1	Option 2
<b>Counsel</b>	P5/05	8,221	2,466	10,687	11,187
<b>Associate counsel</b>	P4/05	6,956	2,087	9,043	9,543
<b>Trial lawyer</b>	P2/05	4,889	733	5,622	5,622
<b>Case manager</b>	P1/05	3,974	596	4,570	4,570
<b>Field assistant</b>	P1/05 at average local rate	1,721	-	1,721	1,721

**Table 3 – Monthly remuneration of team members (in euros)**

Option 1: Current system of €3,000/month (for pre-trial, trial preparation and appeals) plus a maximum possible uplift to cover period from opening statements until trial closing arguments.

Option 2: €500 per month to counsel and associate counsel (alternative to paragraph 69) for the entire trial.

49. This table applies to all counsel and team members who are paid on a monthly lump-sum basis, except where counsel and team member have agreed on part-time work or a different remuneration at a lower level. Any such agreement must be concluded in writing and transmitted to the CSS.
50. Remuneration agreements shall in any case respect the minimum wage as adjusted by the government of the Netherlands every 1<sup>st</sup> of January and every 1<sup>st</sup> of July.

Age	Per month	Per week	Per day
<b>22 and older</b>	€ 1.594,20	€ 367,90	€ 73,58
<b>21</b>	€ 1.355,05	€ 312,70	€ 62,54
<b>20</b>	€ 1.115,95	€ 257,55	€ 51,51
<b>19</b>	€ 876,80	€ 202,35	€ 40,47
<b>18</b>	€ 757,25	€ 174,75	€ 34,95
<b>17</b>	€ 629,70	€ 145,30	€ 29,06
<b>16</b>	€ 550,00	€ 126,95	€ 25,39
<b>15</b>	€ 478,25	€ 110,35	€ 22,07

**Table 4. Minimum wage in the Netherlands on 1<sup>st</sup> July 2018.**

Source: <https://www.government.nl/topics/minimum-wage/amount-of-the-minimum-wage> (7 August 2018).

51. Counsel is paid on a monthly lump-sum basis between the beginning of the mandate and until the end of the confirmation of charges hearing, between the issuance of the confirmation decision and the end of the closing arguments at trial and between the delivery of the article 70 judgment and the end of the submissions before the Appeals Chamber. During the rest of the case, counsel is paid on an hourly basis.
52. Associate counsel is paid on a monthly lump-sum basis between the issuance of the confirmation decision and the end of the closing arguments at trial. During the rest of the case, associate counsel is paid on an hourly basis.
53. Trial lawyer, case manager and field assistant (where intervening) are paid on a monthly lump-sum basis except during phases of reduced activity.
54. The present section is also applicable in the case of offences against the administration of justice.

#### 4.2. Hourly remuneration rates

55. Where counsel (including duty and *ad hoc* counsel) or team members are paid on an hourly basis, the following table shall be applicable:

	Monthly	Daily	Hourly
<b>Counsel</b>	€10,687	€491.36	€65.51
<b>Associate counsel</b>	€9,043	€415.77	€55.44
<b>Trial Lawyer</b>	€5,622	€258.48	€34.46
<b>Case-manager</b>	€4,570	€210.11	€28.02
<b>Field assistant</b>	€1,721	€79.13	€10.55

Table 5 – Remuneration of team members on hourly basis

#### 4.3. [Remuneration in the case of several mandates

56. Where counsel or team members are retained for a second mandate to represent an indigent client before the Court, their remuneration for the second case will be reduced by half.

57. Before acknowledging a second mandate to the same counsel, the Registry checks whether there is a possibility of conflicts of interest or any other impediment to the representation.

58. In the event that proceedings in one case end prior to those in the second one, then remuneration in the second case will be restored to the full level.]

#### 4.4. Remuneration during phases of reduced activity

59. In instances where activity in the proceedings of the Court is considerably reduced, the payment of lump-sum remuneration of team members under the Court’s legal aid system ceases.

60. Such phases include, among others:

- a) Between closing statements rendered at trial and the decision of the Chamber.
- b) During stay, suspension or other protracted delays in the proceedings.
- c) After the end of submissions before the Appeals Chamber.

61. In instances of reduced activity, remuneration of counsel and each team member in all situations is determined on the basis of hourly remuneration rates up to a monthly ceiling of €11,437, unless otherwise decided by the Registrar on the basis of actual work requirements.

#### **4.5. Procedures for payment of legal fees**

62. Counsel shall establish an action plan for the approval for the Registrar before each phase of the proceedings, or every six months. Counsel may consult the legal aid commissioners to establish the action plan.

63. The action plan details all the activities counsel deems most appropriate in order to represent his/her client(s) efficiently and effectively at each phase of the proceedings. This information is restricted to the Registry's internal use in the management of the legal aid scheme and is treated with the utmost confidentiality.

64. At the end of each month, counsel fills in a statement of monthly services [FORM], on the basis of the work performed during the period. Team members paid on a monthly lump-sum basis do not need to provide any additional document. Team members paid on an hourly basis shall provide a time-sheet for the work performed during the month, countersigned by counsel.

65. At the end of each phase of the proceedings or every six months, whichever occurs first, counsel submits a report on implementation of the action plan to the Registry.

66. Duty and *ad hoc* counsel are provided with time-sheets, expenses reimbursement and bank information forms in order that payment may be effected on completion of their intervention.

## **5 Expenses**

67. The Registry shall consider the following categories of expenses and approve them where they are deemed reasonable necessary:

- a) Office supplies (other than those already provided by the Court).

- b) Translation costs related to material in a foreign language generated as part of investigations, where the services of the Court cannot provide them.
- c) Solicitation of preliminary expert advice or opinions in the legal representation.
- d) Other reasonable expenses of the team directly linked to their mandate before the Court.

68. In respect of the intervention of duty and *ad hoc* counsel, the LAP covers the costs of travel, accommodation, terminal expenses, visa and vaccination or prophylactic costs when required.

69. [OPTION 1: Counsel and associate counsel will receive compensation for travel to and stay in The Hague in the following manner:

- a) At the time of the opening statements, each of them shall receive an installation indemnity of €17,000 as the sole compensation for travel to and stay in The Hague until the end of the closing arguments.
- b) During the rest of the phases, the Court shall apply the standard travel policy to their travel to and stay in The Hague.]

[OPTION 2: Counsel and associate counsel will receive €500 per month as compensation for the cost of their travel to and stay in The Hague.]

## **6 Defence investigations budget**

70. The Court's legal aid system provides each defence team with an investigation budget in the amount of [€150,000 per case] [€30,000 per year, with no possibility of carrying over any savings to the following year]. This budget, which is held in trust by the Registry for the benefit of the team, is managed by counsel.

71. Costs covered by this budget include the travel and the daily subsistence allowance of team members based in The Hague in connection with investigation work in the field, as determined in the ICC travel policy.

72. The investigation budget may be increased with additional means allocated pursuant to regulation 83(3) of the RoC, where justified. To approve such requests, the Registry shall consider all relevant factors in the case.
73. In particular, for each witness called by another participant exceeding the baseline of thirty, the investigations budget will be increased by a one-off sum of €550.

## **7 Field budget for victim teams**

74. The field budget allocated to victim teams is €30,000 per year, with no carrying over to the next of any remaining funds. This budget is held in trust by the Registry for use by the legal representative of victims.
75. Costs covered by this budget include the travel and the daily subsistence allowance of team members based in The Hague in connection with field work, as determined in the ICC travel policy.

## **8 Additional means**

76. Defence counsel, or the legal representative of victims may apply to the Registrar for additional resources by submitting a specific, substantiated request to the Registrar.
77. Additional resources are granted on the basis of any parameters which might appear to the Registrar as reasonably necessary for the legal representation.
78. The Registry has estimated and quantified a number of parameters that warrant the allocation of additional resources, by assessing the average incidence of certain factors in the work of the team.

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Parameter	FTE	€/month
For each count submitted by the Prosecutor	0.025	281.10
For each person submitting an application for participation in the proceedings	0.005	28.11
For each victim or group of victims whose application for participation in the case is accepted by the Chamber	0.02	112.44
For every 3000 pages added to the case file by other participants	0.1	562.20
For every 3000 pages submitted by the Prosecutor	0.1	562.20

**Table 6 – Additional resources parameters**

79. Upon request by counsel, the Registry will compile all the information mentioned above and calculate the entitlement to additional resources.
80. When assessing a request for additional resources, the Registry shall also consider other factors influencing the workload of the team such as:
- a) The position of the accused within the political/military hierarchy.
  - b) The nature of charges presented or confirmed.
  - c) The nature and scope of the participation of victims.
  - d) Whether the case raises any novel legal or factual issues.
  - e) The complexity of legal and factual arguments involved.
  - f) The type of evidence relied upon during proceedings.
81. When additional resources are requested for investigations, the Registrar will particularly take into account:
- a) The geographical scope of the charges.
  - b) The geographical scope of the evidence disclosed by the Prosecution, indicated by factors such as the residence of interviewed witnesses or the origin of material evidence.
82. Additional resources are granted for a duration of three months.
83. Victims, through their legal representative(s), may also make a request for additional resources pursuant to regulation 83(3) of the RoC.

84. The Registrar will review and consider such requests on a case by case basis and on the basis of objective criteria and the actual needs of the team in question. The possibility of providing additional resources for the legal representation team could be considered in the following non-exhaustive cases, for instance:

- a) When the number of victims in the group is high or the victims are scattered over a big territory;
- b) When the reparation proceedings involve the need to request protective measures pursuant to Article 93(1) of the Statute;
- c) When the Chamber has decided that it will determine the extent of any damage; costs associated with consulting their clients during the trial with a view to keeping them informed and seeking their instructions.

85. The principle of variability of additional resources according to the above parameters presupposes that these resources will be reconsidered when the parameters are reduced or cease to have an impact on the workload at a particular stage of the proceedings.

86. Pursuant to regulation 83(4) of the RoC the Registrar's decisions on requests for additional resources can be appealed before the relevant Chamber through an application of judicial review.

## **9 Legal Aid Commissioner**

87. The Registrar appoints three Legal Aid Commissioners to serve for a non-renewable period of three years.

88. The Legal Aid Commissioners provide the Registrar with advice regarding the management of the funds allocated by the Assembly to legal assistance paid by the Court, by:

- a) Evaluating the performance of the LAP.
- b) Proposing amendments to the system.

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- c) Assessing, at the request of either counsel or the Registrar, whether the means requested are reasonably necessary for the effective and efficient representation of their client(s).
89. The advice or recommendations provided by the Commissioner(s) are not binding on the Registrar of the Court.
90. Commissioners perform their tasks with complete independence and with due regard to confidentiality.
91. Commissioners are not staff of the Court and are called upon to perform their functions as required on an *ad hoc* basis. They receive no remuneration for their work.

**ANNEX: Cost comparison**

	Current	Option 1	Option 2 <sup>2</sup>
<b>Counsel</b>	€10,687	€10,687	€11,187
<b>Associate counsel</b>	€9,043	€9,043	€9,543
<b>Trial lawyer</b>	€5,622	€5,622	€5,622
<b>Case-manager</b>	€4,570	€4,570	€4,570
<b>Expenses</b>	€3,000		
<b>Field assistant</b>		€1,721 <sup>3</sup>	€1,721

**Table 1: Fee level comparison**

Defence teams	Current	Option 1	Option 2
<b>Pre-trial/Appeals</b>	€23,879	€23,879	€23,100
<b>Trial</b>	€32,922	€29,922	€32,643
<b>Reduced/Reparations2</b>	€13,687	€13,687	€11,187
<b>Victims teams</b>			
<b>Pre-trial/Trial</b>	€18,257	€18,257	€15,757
<b>Reparations</b>	€23,879	€20,879	€21,379
<b>Reduced/Reparations2</b>	€13,687	€13,687	€11,187

**Table 2: Monthly cost per phase – Comparison**

N.B.: The cost in option 1 would be increased by a one-off payment of €34,000 per case as installation grant at the beginning of the trial.

<sup>2</sup> Adding €500/month to the fees of counsel and associate counsel to cover for travel to and stay in The Hague.

<sup>3</sup> Average gross remuneration of a G6/V in all places where the Court has field activities (March 2018).

## ICC Draft Legal Aid Policy

<b>DEFENCE</b>				
<b>Team</b>	<b>Assumption</b>	<b>Current</b>	<b>Option 1</b>	<b>Option 2</b>
<b>Gbagbo</b>	12m Trial	€ 607,456.00	€ 591,456.00	€ 624,108.00
<b>Blé Goudé</b>	12m Trial	€ 594,832.00	€ 578,832.00	€ 611,484.00
<b>Banda</b>	12m Reduced	€ 164,244.00	€ 164,244.00	€ 164,244.00
<b>Lubanga</b>	12m Reparations <sup>2</sup>	€ 164,244.00	€ 164,244.00	€ 134,244.00
<b>Katanga</b>	12m Reparations <sup>2</sup>	€ 164,244.00	€ 164,244.00	€ 164,244.00
<b>Ntaganda</b>	3m Trial	€ 131,766.00	€ 123,498.00	€ 131,661.00
	9m Reduced	€ 123,183.00	€ 123,183.00	€ 100,683.00
<b>Al-Mahdi</b>	12m Reparations <sup>2</sup>	€ 164,244.00	€ 164,244.00	€ 134,244.00
<b>Al Hassan</b>	12m Trial	€ 425,064.00	€ 389,064.00	€ 421,716.00
<b>Ongwen</b>	12m Trial	€ 750,664.00	€ 722,429.28	€ 761,081.28
<b>Kilolo</b>	6m Sentencing	€ 82,122.00	€ 82,122.00	€ 67,122.00
<b>Mangenda</b>	6m Sentencing	€ 82,122.00	€ 82,122.00	€ 67,122.00
<b>Total</b>		<b>€ 3,454,185.00</b>	<b>€ 3,349,682.28</b>	<b>€ 3,381,953.28</b>

**Table 3: Comparison of the legal aid for defence in the 2019 PPB**

N.B.: Calculation does not take into account certain reductions made in the budget requisition. The cost in option 1 would be increased by a one-off payment of €34,000 per case as installation grant at the beginning of the trial.

<b>VICTIMS</b>				
<b>Team</b>	<b>Assumption</b>	<b>Current</b>	<b>Option 1</b>	<b>Option 2</b>
<b>Lubanga</b>	12x Reparations <sup>2</sup>	€ 164,244.00	€ 164,244.00	€ 170,244.00
<b>Katanga</b>	12x Reparations <sup>2</sup>	€ 164,244.00	€ 164,244.00	€ 170,244.00
<b>Al-Mahdi</b>	12x Reparations <sup>2</sup>	€ 164,244.00	€ 164,244.00	€ 134,244.00
<b>Al Hassan</b>	12x Trial	€ 219,084.00	€ 213,084.00	€ 219,084.00
<b>Ongwen</b>	12x Trial	€ 344,548.00	€ 321,852.00	€ 309,012.00
<b>Total</b>		<b>€ 1,056,364.00</b>	<b>€ 1,027,668.00</b>	<b>€ 1,002,828.00</b>

**Table 4: Comparison of the legal aid for victims in the 2019 PPB**

N.B.: Calculation does not take into account certain reductions made in the budget requisition. The cost in option 1 would be increased by a one-off payment of €34,000 per case as installation grant at the beginning of the trial.

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<b>Pensionable</b>	<b>Hourly rate</b>	<b>Daily ceiling</b>	<b>Monthly ceiling</b>
<i>Counsel</i>	118.72	890.39	19,366.03
<i>Associate Counsel</i>	98.26	736.92	16,027.95
<i>Associate Trial Lawyer</i>	63.64	477.32	10,381.77
<i>Case Manager</i>	49.41	370.59	8,060.34
<i>Field Assistant</i>	10.55	79.15	1,721.46
<i>Professional investigator</i>	98.26	736.92	16,027.95
<i>Rule 74 Adviser</i>	98.26	736.92	16,027.95
<b>Gross</b>	<b>Hourly rate</b>	<b>Daily ceiling</b>	<b>Monthly ceiling</b>
<i>Counsel</i>	71.33	534.95	11,635.22
<i>Associate Counsel</i>	58.98	442.32	9,620.40
<i>Associate Trial Lawyer</i>	38.32	287.42	6,251.32
<i>Case Manager</i>	29.69	222.68	4,843.33
<i>Field Assistant</i>	10.55	79.15	1,721.46
<i>Professional investigator</i>	58.98	442.32	9,620.40
<i>Rule 74 Adviser</i>	58.98	442.32	9,620.40
<b>Net</b>	<b>Hourly rate</b>	<b>Daily ceiling</b>	<b>Monthly ceiling</b>
<i>Counsel</i>	55.68	417.60	9,082.81
<i>Associate Counsel</i>	46.94	352.05	7,657.14
<i>Associate Trial Lawyer</i>	31.24	234.33	5,096.63
<i>Case Manager</i>	24.64	184.83	4,019.95
<i>Field Assistant</i>	10.55	79.15	1,721.46
<i>Professional investigator</i>	46.94	352.05	7,657.14
<i>Rule 74 Adviser</i>	46.94	352.05	7,657.14

**Table 5: Potential remunerations according to the different possibilities (March 2018)**