



## **THE PRESIDENCY**

**Reference: ICC-BD/01-03-11**

**18<sup>th</sup> Plenary Session of the judges**

**2 November 2011**

## **AMENDMENTS TO THE REGULATIONS OF THE COURT**

By decision of the judges of the Court, at the eighteenth plenary session, the following regulations of the Regulations of the Court were amended: regulations: 2 (Use of terms), 41 (Victims and Witnesses Unit), 44 (Experts, French version only), 67 (Criteria to be met by counsel), 68 (Assistants to counsel, French version only), 69 (Proof and control of criteria to be met by counsel), 70 (Inclusion in the list of counsel), 71 (Removal and suspension from the list of counsel), 72 (Review of decisions of the Registrar), 73 (Duty counsel), 74 (Defence through counsel), 75 (Choice of defence counsel), 76 (Appointment of defence counsel by a Chamber), 77 (Office of Public Counsel for the defence), 78 (Withdrawal of defence counsel), 80 (Appointment of legal representatives of victims by a Chamber), 81 (Office of Public Counsel for victims), 82 (Withdrawal of legal representatives of victims), 83 (General scope of legal assistance paid by the Court) and 85 (Decisions on payment of legal assistance, French text only). The titles of Chapter 4 (Counsel issues and legal assistance, French version only) and Section 3 of Chapter 4 (Legal representatives of victims) have been amended. Inserted text is marked in bold, whilst deletions are struck out. In the titles, which are all in bold, inserted text is underlined, whilst deletions are struck out.

## Regulation 2<sup>1</sup>

### Use of terms

[...]

- “counsel” refers to a defence counsel and a legal representative of a victim, **whether lead or associate counsel;**

[...]

- “list of counsel” refers to the list of counsel as described in rule 21, sub-rule 2, **and shall also include legal representatives of victims, and those counsel retained without legal assistance paid by the Court who wish to be entered in the list;**

[...]

## Regulation 41<sup>2</sup>

### Victims and Witnesses Unit

The Victims and Witnesses Unit may, pursuant to article 68, paragraph 4, draw any matter to the attention of a Chamber where protective **measures under rule 87** or special measures under **rule rules 87 and 88** require **its** consideration.

## Regulation 44<sup>3</sup>

### Experts

Amendments to regulation 44 have been made to the French text only.

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<sup>1</sup> Amended 2 November 2011, entered into force 29 June 2012 (terms “counsel” and “list of counsel” amended).

<sup>2</sup> Amended 2 November 2011, entered into force 29 June 2012.

<sup>3</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulation 1, French text only).

## **Chapter 4<sup>4</sup>**

### **Counsel issues and legal assistance**

Amendments to the title of Chapter 4 have been made to the French text only.

#### **Section 1**

##### **List of counsel and duty counsel**

##### **Regulation 67<sup>5</sup>**

###### **Criteria to be met by counsel**

1. **Subject to regulation 78, sub-regulation 2, the** ~~The~~ necessary relevant experience for counsel as described in rule 22 shall be at least ten years **for lead counsel and at least eight years for associate counsel.**
2. Counsel should not have been convicted of a serious criminal or disciplinary offence considered to be incompatible with the nature of the office of counsel before the Court.

##### **Regulation 68<sup>6</sup>**

###### **Assistants to counsel**

Amendments to regulation 68 have been made to the French text only.

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<sup>4</sup> Amended 2 November 2011, entered into force 29 June 2012 (title, French text only).

<sup>5</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulation 1).

<sup>6</sup> Amended 2 November 2011, entered into force 29 June 2012 (title and regulation, French text only).

## Regulation 69<sup>7</sup>

### Proof and control of criteria to be met by counsel

1. A person seeking to **act as** ~~be included in the list of~~ counsel shall complete the forms provided by the Registrar for this purpose.
2. A person referred to in sub-regulation 1 shall also provide:
  - (a) A detailed *curriculum vitae*;
  - (b) A certificate issued by each Bar association the person is registered with, and/or each relevant controlling administrative authority confirming his or her qualifications, the right to practise and the existence, if any, of disciplinary sanctions or ongoing disciplinary proceedings; and
  - (c) A certificate issued by the relevant authority of each State of which the person is a national or where the person is domiciled stating the existence, if any, of criminal convictions.
3. **Counsel and persons seeking to act as counsel** ~~A person referred to in sub-regulation 1 or counsel already included in the list of counsel~~ shall immediately inform the Registrar of any changes to the information he or she has provided that are more than *de minimis*, including the initiation of any criminal or disciplinary proceedings against **him or her** ~~the person~~.
4. The Registrar may at any stage take steps to verify the information provided by **counsel** ~~any person referred to in sub-regulation 1 and by counsel already included in the list of counsel~~.

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<sup>7</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulations 1, 3 and 4).

## **Regulation 70<sup>8</sup>**

### **Inclusion in the list of counsel**

1. On receipt of an application by a person seeking to be included in the list of counsel, the Registrar shall establish whether the person has provided the information required under regulation 69. Thereafter, the Registrar shall acknowledge receipt of the application and, where relevant, direct the person to submit additional information.
2. The decision as to whether a person shall be included in the list of counsel shall be notified to that person. If the application is refused, the Registrar shall provide reasons and information on how to apply for review of that decision in accordance with regulation 72.
3. **If counsel is retained without legal assistance paid by the Court, and if that person is not in the list of counsel, he or she may apply to be included in that list. Regulations 71 and 72 shall apply.**

## **Regulation 71<sup>9</sup>**

### **Removal and suspension from the list of counsel**

1. The Registrar shall remove a counsel from the list of counsel where he or she:
  - (a) No longer meets the criteria required for inclusion in the list of counsel;
  - (b) Has been permanently banned from practising before the Court as a result of disciplinary proceedings held in accordance with the Code of Professional Conduct for counsel;

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<sup>8</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulation 2 amended, French text only; new sub-regulation 3 added).

<sup>9</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulation 2; sub-regulations 1(b), 2(a), 2(b) and 3, French text only).

- (c) Has been found guilty of an offence against the administration of justice as described in article 70, paragraph 1; or
  - (d) Has been permanently interdicted from exercising his or her functions before the Court in accordance with rule 171, sub-rule 3.
2. The Registrar shall suspend a counsel from the list of counsel ~~while where~~ he or she ~~is has been~~:
- (a) Temporarily suspended in a disciplinary proceeding according to the Code of Professional Conduct for counsel; or
  - (b) Temporarily interdicted from exercising his or her functions before the Court for a period exceeding 30 days in accordance with rule 171, sub-rule 3.
3. The Registrar shall notify the relevant counsel of his or her decision under sub-regulations 1 or 2. The Registrar shall provide reasons and information on how to apply for review of that decision in accordance with regulation 72.

## **Regulation 72<sup>10</sup>**

### **Review of decisions of the Registrar**

1. ~~Application~~ **An application** may be made to the Presidency for review of:
- (a) A decision under regulation 70, sub-regulation 2, refusing to include a person in the list of counsel;
  - (b) A decision under regulation 71, sub-regulation 1, removing counsel from the list of counsel; ~~or~~

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<sup>10</sup> Amended 2 November 2011, entered into force 29 June 2012 (title amended, French text only; sub-regulations 1, 1(b), 1(c), 2, 3 and 4 amended; new sub-regulation 1(d) added).

- (c) A decision under regulation 71, sub-regulation 2, suspending counsel from the list of counsel; **or**
  - (d) **A decision by the Registrar refusing to confirm the retention of counsel where legal assistance is not paid by the Court.**
2. Applications as described in sub-regulation 1 shall be set out in accordance with regulation 23 and **shall** be filed within 15 days of notification of the relevant decision of the Registrar.
  3. The Registrar may file a response within 15 days of notification of the applications as referred to in sub-regulations 1 ~~and 2~~.
  4. The Presidency may ask the Registrar to provide any additional information necessary to decide on **an** ~~the~~ application. The decision of the Presidency shall be final.

## **Regulation 73<sup>11</sup>**

### **Duty counsel**

1. The Registrar shall **identify counsel from the list of counsel who are willing establish and maintain a roster of counsel included in the list of counsel who are available at any time to represent any person before the Court or to represent the interests of the defence as duty counsel. Duty counsel may specify the particular locations where he or she would be able to attend. Duty counsel shall have at least ten years' experience, as referred to in regulation 67, sub-regulation 1.**
2. **The Registrar may appoint duty counsel** ~~If any~~ **if a person requires urgent legal assistance and has not yet secured that legal assistance, or when** ~~where~~ **his or her counsel is unavailable and has consented to the appointment of duty counsel.**

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<sup>11</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulations 1 and 2 amended, new sub-regulations 3 and 4 added).

**The Registrar shall take, the Registrar may appoint duty counsel, taking into account the wishes of the person, the expertise of duty counsel, and the geographical proximity of, and the languages spoken by, the counsel. Decisions taken pursuant to this sub-regulation may be reviewed by the relevant Chamber.**

3. **The Chamber may appoint duty counsel in situations of urgency when the person's own counsel is unavailable or when it is necessary to appoint duty counsel in the interests of justice.**
4. **Where appropriate, counsel from the Office of Public Counsel for the defence or from the Office of Public Counsel for victims, as defined in regulation 77, sub-regulation 3, and regulation 81, sub-regulation 3, respectively, may be appointed as duty counsel. Sub-regulations 2 and 3 apply. When acting in accordance with sub-regulations 2, 3 or 4, the Registrar shall consult any prospective appointee prior to his or her appointment.**

## **Section 2**

### **Defence through counsel**

#### **Regulation 74<sup>12</sup>**

### **Defence through counsel**

1. **Defence counsel shall act in proceedings before the Court either when chosen by the person entitled to legal assistance in accordance with rule 21, sub-rule 2; retained without legal assistance paid by the Court; appointed under regulation 73; or when the Chamber has appointed counsel appointed by the Chamber in accordance with the Statute, Rules or these Regulations.**

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<sup>12</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulations 1 and 2).

2. Whenever represented by defence counsel, the person entitled to legal assistance shall, subject to article 67, paragraph 1 (h), act before the Court through his or her counsel, unless otherwise authorised by the Chamber.

## **Regulation 75<sup>13</sup>**

### **Choice of defence counsel**

1. If the person entitled to legal assistance chooses a counsel included in the list of counsel, the Registrar shall contact that counsel. If the counsel is willing and ready to represent the person, the Registrar shall facilitate the issuance of a power of attorney for this counsel by the person.
2. If the person entitled to legal assistance **applies for legal assistance paid by the Court and** chooses a counsel not ~~in~~ on the list of counsel who is willing and ready to represent him or her and to be included in the list, the Registrar shall decide on the eligibility of that counsel in accordance with regulation 70 and, upon inclusion in the list, shall facilitate the issuance of a power of attorney. Until the filing of a power of attorney, the person entitled to legal assistance may be represented by duty counsel in accordance with regulation 73.
3. **If the person entitled to legal assistance wishes to retain counsel without legal assistance paid by the Court, the Registrar shall contact that counsel to decide on his or her eligibility to act as counsel, in accordance with regulation 69. If the relevant criteria are fulfilled, the Registrar shall facilitate the issuance of a power of attorney for this counsel. Until the filing of a power of attorney, the person may be represented by duty counsel in accordance with regulation 73.**

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<sup>13</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulations 1 and 2 amended, new sub-regulation 3 added).

## Regulation 76<sup>14</sup>

### Appointment of defence counsel and standby counsel by a Chamber

1. A Chamber, following consultation with the Registrar **and, when appropriate, after hearing from the person entitled to legal assistance**, may appoint counsel in the circumstances specified in the Statute, ~~and the Rules~~ **and these Regulations** or where the interests of justice so require. **This may include the appointment of standby counsel, if appropriate.**
2. ~~Where the Chamber decides to appoint counsel in accordance with sub-regulation 1, and where the counsel considered for appointment is not included in the list of counsel, the Registrar shall first decide on the eligibility of that counsel to be included in the list in accordance with regulation 70.~~ **When acting in accordance with sub-regulation 1, the Registrar shall consult any prospective appointee prior to his or her appointment.** The Chamber may, **where the interests of justice so require**, also appoint counsel from the Office of Public Counsel for the defence **as defined in regulation 77, sub-regulation 3.**

## Regulation 77<sup>15</sup>

### Office of Public Counsel for the defence

1. The Registrar shall establish and develop an Office of Public Counsel for the defence for the purpose of providing assistance as described in sub-regulations 4 ~~and 5~~.
2. The Office of Public Counsel for the defence shall fall within the remit of the Registry solely for administrative purposes, **in accordance with article 43, paragraph 2**, and ~~it otherwise~~ shall function **in its substantive work** as a wholly

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<sup>14</sup> Amended 2 November 2011, entered into force 29 June 2012 (title and sub-regulations 1 and 2).

<sup>15</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulations 1, 2, 3, 4 and 5 amended, new sub-regulations 4(a), 4(b), 4(c), 4(d), 4(e) and 4(f) added).

independent office. Counsel and assistants within the Office shall act independently.

3. The Office of Public Counsel for the defence ~~shall may~~ include ~~a~~ **at least one** counsel who **has ten years' experience as described in** ~~meets the criteria set out in rule 22 and~~ regulation 67, **sub-regulation 1, and who fulfils the requirements for inclusion in the list of counsel.** The Office shall include assistants as referred to in regulation 68.
4. **When a conflict of interest does not arise, The the** tasks of the Office of Public Counsel for the defence shall include:
  - (a) ~~R~~**representing and protecting the rights of the defence during the initial stages of the investigation, in particular for the application of article 56, paragraph 2 (d), and rule 47, sub-rule 2. For this purpose the Office of Public Counsel for the defence may, on the instruction or with the leave of the Chamber, make submissions concerning the needs of the defence in ongoing proceedings;**
  - (b) **Providing general support and assistance to defence counsel and to the person entitled to legal assistance, including legal research and advice and, on the instruction or with the leave of the Chamber, advising on and assisting with the detailed factual circumstances of the case;**
  - (c) **Appearing, on the instruction or with the leave of the Chamber, in respect of specific issues;**
  - (d) **Advancing submissions, on the instruction or with the leave of the Chamber, on behalf of the person entitled to legal assistance when defence counsel has not been secured or when the mandate of temporary counsel is limited to other issues;**
  - (e) **Acting when appointed under regulation 73 or regulation 76; and**

**(f) Assisting or representing defence counsel or defence witnesses who are subject to article 70 proceedings or when rule 74, sub-rule 1, applies, on the instruction or with the leave of the Chamber.**

5. ~~The Office of Public Counsel for the defence shall also provide support and assistance to defence counsel and to the person entitled to legal assistance, including, where appropriate:~~

~~(a) Legal research and advice; and~~

~~(b) Appearing before a Chamber in respect of specific issues.~~

**The Office of Public Counsel for the defence shall ensure that counsel with at least ten years' experience is appointed when the Office is required to act as counsel.**

## **Regulation 78<sup>16</sup>**

### **Withdrawal of defence counsel**

1. Prior to withdrawal ~~from a case~~, defence counsel shall seek the leave of the Chamber.
2. **Where lead counsel, who is assisted by associate counsel with less than ten years' experience, withdraws, the Chamber may, subject to article 67, paragraph 1 (d), and rule 21, permit associate counsel to act as lead counsel.**

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<sup>16</sup> Amended 2 November 2011, entered into force 29 June 2012 (former regulation amended and renumbered as sub-regulation 1, new sub-regulation 2 added).

## Section 3<sup>17</sup>

### ~~Legal representatives of victims~~ Legal representation of victims through counsel

## Regulation 80<sup>18</sup>

### Appointment of legal representatives of victims by a Chamber

1. A Chamber, following consultation with the Registrar **and, when appropriate, after hearing from the victim or victims concerned**, may appoint a legal representative of victims where the interests of justice so require. **The Chamber may appoint counsel from the Office of Public Counsel for victims as defined in regulation 81, sub-regulation 3.**
2. ~~The Chamber may appoint counsel from the Office of Public Counsel for victims~~ **The Registrar shall consult any prospective appointee prior to his or her appointment.**

## Regulation 81<sup>19</sup>

### Office of Public Counsel for victims

1. The Registrar shall establish and develop an Office of Public Counsel for victims for the purpose of providing assistance as described in sub-regulation 4.
2. The Office of Public Counsel for victims shall fall within the remit of the Registry solely for administrative purposes, **in accordance with article 43, paragraph 2**, and **it otherwise shall function in its substantive work** as a wholly independent office. Counsel and assistants within the Office shall act independently.

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<sup>17</sup> Amended 2 November 2011, entered into force 29 June 2012 (title).

<sup>18</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulations 1 and 2).

<sup>19</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulations 2, 3 and 4 amended, new sub-regulations 4(a), 4(b), 4(c), 4(d), 4(e) and 5 added).

3. The Office of Public Counsel for victims **shall include at least one counsel who has ten years' experience as described in regulation 67, sub-regulation 1, and who fulfils the requirements for inclusion in the list of counsel** ~~may include a counsel who meets the criteria set out in rule 22 and regulation 67 .~~ The Office shall include assistants as referred to in regulation 68.
4. ~~The Office of Public Counsel for victims shall provide support and assistance to the legal representative for victims and to victims, including, where appropriate:~~
  - ~~(a) Legal research and advice; and~~
  - ~~(b) Appearing before a Chamber in respect of specific issues.:~~

**The tasks of the Office of Public Counsel for victims shall include:**

- (a) Providing general support and assistance to the legal representative of victims and to victims, including legal research and advice and, on the instruction or with the leave of the Chamber, advising on and assisting with the detailed factual circumstances of the case;**
- (b) Appearing, on the instruction or with the leave of the Chamber, in respect of specific issues;**
- (c) Advancing submissions, on the instruction or with the leave of the Chamber, in particular prior to the submission of victims' applications to participate in the proceedings, when applications pursuant to rule 89 are pending, or when a legal representative has not yet been appointed;**
- (d) Acting when appointed under regulation 73 or regulation 80; and**
- (e) Representing a victim or victims throughout the proceedings, on the instruction or with the leave of the Chamber, when this is in the interests of justice.**

5. **The Office of Public Counsel for victims shall ensure that counsel with at least ten years' experience is appointed when the Office is required to act as a legal representative.**

## **Regulation 82<sup>20</sup>**

### **Withdrawal of legal representatives of victims**

Prior to withdrawal ~~from a case~~, legal representatives of victims shall seek the leave of the Chamber.

## **Section 4**

### **Legal assistance paid by the Court**

## **Regulation 83<sup>21</sup>**

### **General scope of legal assistance paid by the Court**

1. 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. **Upon request, associate counsel may also be covered by legal assistance paid by the Court after the first appearance pursuant to rule 121 of a person subject to a warrant of arrest or a summons to appear under article 58.**

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<sup>20</sup> Amended 2 November 2011, entered into force 29 June 2012.

<sup>21</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulation 1; sub-regulations 2, 3 and 4, French text only).

2. The scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate.
3. A person receiving legal assistance paid by the Court may apply to the Registrar for additional means which may be granted depending on the nature of the case.
4. Decisions by the Registrar on the scope of legal assistance paid by the Court as defined in this regulation may be reviewed by the relevant Chamber on application by the person receiving legal assistance.

### **Regulation 85<sup>22</sup>**

#### **Decisions on payment of legal assistance**

Amendments to regulation 85 have been made to the French text only.

The Regulations of the Court are amended pursuant to article 52 of the Rome Statute. Pursuant to article 52, paragraph 3, of the Statute, the amendments enter into force on 29 June 2012 and shall remain in force if there are no objections from a majority of States within six months from 2 July 2012, date of the circulation to States Parties.

The text, as amended, is also published on the website of the Court at the address [www.icc-cpi.int](http://www.icc-cpi.int)

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<sup>22</sup> Amended 2 November 2011, entered into force 29 June 2012 (sub-regulations 1, 2 and 3, French text only).