

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

Adopted on 21 March 2016

Revised on 4 January 2019

PREAMBLE

The Registrar of the International Residual Mechanism for Criminal Tribunals;

**CONSIDERING** Article 19 of the Statute of the IRMCT, as adopted by the Security Council under Resolution 1966 (2010) of 22 December 2010;

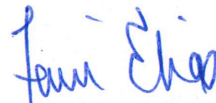
**CONSIDERING** the Rules of Procedure and Evidence of the IRMCT, as adopted on 8 June 2012 pursuant to Article 13 of the Statute;

**CONSIDERING** the Directive on the Assignment of Defence Counsel, issued on 14 November 2012;

**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;

**CONSIDERING** the purpose of this lump sum is to administer the legal aid system efficiently at the appeal stage by providing the Lead Counsel with flexibility in managing resources;

**HEREBY ADOPTS** this revised Policy, pursuant to Article 25 of the Directive.<sup>1</sup>



Olufemi Elias  
Registrar

Dated this 4<sup>th</sup> day of January 2019  
At The Hague  
The Netherlands.

---

<sup>1</sup> This Policy supersedes the Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the International Residual Mechanism for Criminal Tribunals, which was adopted on 2 March 2013.

**TABLE OF CONTENTS**

**A. DEFINITIONS .....3**

**B. GENERAL PROVISIONS .....6**

**C. PHASE ONE – NOTICE OF APPEAL .....7**  
*Invoicing and Payment ..... 7*

**D. PHASE TWO – APPEAL BRIEFS .....8**  
*Assessing the Complexity Level ..... 8*  
*Distribution of the Phase Two Lump Sum ..... 9*  
*Invoicing and Payment .....9*  
*Adjustment in the Complexity Level..... 10*  
*End-of-Phase Report..... 10*

**E. PHASE THREE – APPEAL HEARING .....11**  
*Invoicing and Payment ..... 12*

**F. SENTENCING APPEAL.....12**

**G. ADJUSTMENT OF THE LUMP SUM .....12**

**H. TRAVEL.....13**

**I. FINAL PROVISIONS.....14**

---

## A. DEFINITIONS

For the purpose of this Policy, the following definitions shall apply:

<b>Accused:</b>	A person indicted by the ICTR, the ICTY, or the IRMCT, in accordance with Article 1 of the Statute.
<b>Appeal:</b>	A proceeding before the IRMCT pursuant to Article 23 of the Statute.
<b>Association of Counsel:</b>	An Association of Defence Counsel practicing before the IRMCT, recognised by the Registrar in accordance with Rule 42(A)(iii) of the Rules.
<b>Branch:</b>	The relevant branch of the IRMCT in Arusha or in The Hague.
<b>Chamber:</b>	The Appeals Chamber of the IRMCT, or a Single Judge, in accordance with Article 12 of the Statute.
<b>Code of Conduct:</b>	The Code of Professional Conduct for Defence Counsel Appearing before the IRMCT, issued by the Registrar on 14 November 2012, and as subsequently amended.
<b>Counsel:</b>	A person assigned to represent an indigent or partly indigent Accused pursuant to Rules 43 and 44 of the Rules and Article 16(B) or 16(C) of the Directive.
<b>Co-Counsel:</b>	A person assigned to assist Lead Counsel with the defence of an Accused, pursuant to Rules 43 and 44 of the Rules and Article 16(C) of the Directive.
<b>CPI:</b>	Consumer Price Index for the Netherlands as determined by the International Civil Service Commission.
<b>Defence Team:</b>	Counsel assigned by the Registrar to represent an indigent or partly indigent Accused and any other person assigned or approved by the Registry to assist Counsel in this task, including Co-Counsel, Consultants, Legal Assistants, Case Managers, Investigators, Interpreters/Translators, as applicable.
<b>Directive:</b>	The Directive on the Assignment of Defence Counsel, issued by the Registrar on 14 November 2012, in accordance with Rule 43 of the Rules, and as subsequently amended.
<b>DSA:</b>	Daily Subsistence Allowance pursuant to Article 28 of the Directive.

<b>End-of-Phase Payment</b>	The portion of the Phase Two lump sum, amounting to twenty per cent (20%) of this sum, that is withheld and paid after approval by the Registry of the Defence End-of-Phase Report.
<b>Hearing:</b>	Appeal hearing, conducted pursuant to Rule 141 of the Rules.
<b>ICTR:</b>	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.
<b>ICTY:</b>	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.
<b>Lead Counsel:</b>	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.
<b>IRMCT:</b>	The International Residual Mechanism for Criminal Tribunals, as established by Security Council resolution 1966 of 22 December 2010.
<b>Notice of Appeal:</b>	The filing made by a party pursuant to Rule 133 of the Rules.
<b>Policy:</b>	The present Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the IRMCT.
<b>President:</b>	The President of the IRMCT appointed pursuant to Article 11 of the Statute.
<b>Prosecutor:</b>	The Prosecutor of the IRMCT appointed pursuant to Article 14(4) of the Statute.
<b>Registrar:</b>	The Registrar of the IRMCT appointed pursuant to Article 15 of the Statute.

- Registry:** The organ of the IRMCT responsible for the administration and servicing of the IRMCT pursuant to Article 15 of the Statute, and, for purposes of this Policy, Registry staff specifically tasked with administering legal aid.
- Rules:** The Rules of Procedure and Evidence adopted by the IRMCT pursuant to Article 13 of the Statute, adopted on 8 June 2012, and as subsequently amended.
- Sentencing Appeal:** An appeal limited to consideration of the sentence imposed by the Trial Chamber.
- Statute:** The Statute of the IRMCT annexed to Security Council resolution 1966 of 22 December 2010, and as subsequently amended.
- Support Staff:** Any person providing support to Counsel pursuant to Article 16(E) of the Directive.

In this Policy, the masculine shall include the feminine and *vice versa*.

## 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 available resources. A lump sum is linked to the completion of each particular phase of the Appeal, as set out below. It is not contingent on the number of hours actually worked per month or the actual duration of the phase. This means in particular that Lead Counsel can retain the services of Support Staff as he sees fit in the course of the Appeal, depending on the needs of the case in any phase of the Appeal. However, only Defence Team members who have been assigned by the Registry 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 Assistant fees; Consultant fees; Investigator fees; Case Manager fees; interpretation and translation costs (*see* paragraph 5); office costs; and administrative expenses.<sup>2</sup>
5. Included in the lump sum are all interpretation and translation costs, except: (a) those related to the translation of documents to be tendered as evidence (which documents shall be translated by the IRMCT); and (b) interpretation and translation costs incurred for the purpose of facilitating client-counsel communication as provided for in Article 19(4) (a), (b), and (f) of the Statute. Language assistants assigned to the Defence Team may invoice separately for such costs, up to a maximum of \$1500 per month. Language Assistants must submit detailed invoices to the Registry specifying the number of working hours and the tasks performed.<sup>3</sup> Those invoices must be submitted through Lead Counsel who must also sign the invoice. Invoices must be submitted within 60 days of the last day of work performed.
6. 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 during the twelve-month period from November of the preceding year.
7. For the purpose of this Policy, the IRMCT shall recognise the determination of indigency of an Accused made by the ICTR and the ICTY, unless new information is obtained,

---

<sup>2</sup> The amounts set out in the Policy are derived from the maximum allotments of hours applied by the ICTR and the ICTY 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.

<sup>3</sup> For this type of work, Language Assistants are remunerated at hourly rates established by the Registry.

which establishes that the Accused has sufficient means to remunerate Counsel. Where the ICTR and the ICTY have made no determination on indigency, the IRMCT will assess the financial means of the Accused in accordance with the Directive.

8. 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.

### **C. PHASE ONE – NOTICE OF APPEAL**

9. Phase One is applicable only if the Accused files a Notice of Appeal. In such cases, 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 Accused pursuant to Rule 133 of the Rules.
10. The lump sum for Phase One is \$27,500.
11. The lump sum allocated for Phase One covers any and all work to be performed by Counsel and 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 Office of the Prosecutor and the Registry. The lump sum for Phase One is not contingent on the duration of the phase.
12. While it is considered that Phase One requires preparation by Lead Counsel and one Support Staff member, Lead 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. Should the convicted person decide not file a Notice of Appeal, Lead Counsel may submit a detailed request for the allocation of a lump sum to cover work including, but not limited to: review and analysis of the trial judgement; consideration of possible grounds of appeal; consulting with and advising the Accused; motions and responses to motions; legal research; review of new disclosure material; intra-team meetings; and communications with counsel for co-Accused, if any, as well as with the Office of the Prosecutor and the Registry. The request must indicate an estimate of the time required for the performance of these tasks. The maximum lump sum to be allocated by the Registry in this circumstance is \$9,500.

---

### **Invoicing and Payment**

14. The Phase One lump sum shall be paid in a single stipend upon submission of a *pro forma* invoice following the filing of the Notice of Appeal by the Accused. If no Notice of Appeal has been filed, the lump sum under paragraph 13 shall be paid in a single stipend 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 Accused, Counsel may request the Registry to disburse the Phase One lump sum in two or more equal monthly stipends, as deemed appropriate by the Registry.

15. The *pro forma* invoice shall be signed by Lead Counsel, who shall advise the Registry how to distribute the stipend between the Defence Team members assigned by the Registry. 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 or as allocated pursuant to paragraph 13. 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 Registry to determine that the work performed by each Defence Team member was reasonable and necessary, that it was performed, and justifies the payment of the lump sum. Payments shall be made in accordance with paragraph 8.

**D. PHASE TWO – APPEAL BRIEFS**

16. Phase Two shall commence the day after the conclusion of Phase One, or, absent a Notice of Appeal by the Accused, the day after the filing of the Notice of Appeal by the Office of the Prosecutor. Phase Two 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 expiration of the time limit for filing such briefs.

17. The lump sum for Phase Two is based on the complexity of the case as determined by the Registry as follows:

<b>Complexity</b>	<b>Lump Sum</b>
Level 1 (difficult)	<b>\$111,250</b>
Level 2 (very difficult)	<b>\$159,150</b>
Level 3 (extremely difficult)	<b>\$255,050</b>

18. 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 Office of the Prosecutor and the Registry. The lump sum for Phase Two is not contingent on the duration of the phase.

**Assessing the Complexity Level**

19. At the end of Phase One, Lead Counsel shall make a written submission to the Registry regarding the complexity of the case. Based on Lead Counsel’s submission and after consultation with the Appeals Chamber, the Registry shall rank the complexity level of the case. In making this determination, the Registry shall consider, *inter alia*:

- (a) The position of the Accused, including within the political or military hierarchy;
- (b) the number and nature of the grounds of appeal;



- (c) whether the Office of the Prosecutor 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 Registry's decision.
20. Pending the complexity determination pursuant to paragraph 19, the Registry shall rank each case provisionally at Level 1 (difficult) to ensure the continuous funding of the case. The Registry may decide to provisionally rank the case Level 2 (very difficult), should Lead Counsel so request either in the complexity submission or earlier, and evidence before the Registry *prima facie* indicates that the Appeal is likely to warrant a higher complexity determination than Level 1. Should the case be subsequently ranked at a complexity level higher or lower than the provisional ranking, the Registry shall adjust the lump sum for Phase Two accordingly.
21. Decisions on provisional ranking under paragraph 20 are not subject to review.

22. The Registry shall consult with the Appeals Chamber within twenty (20) days of the complexity submission by Lead Counsel. The Registry will determine the complexity within 10 days of receipt of the views of the Appeals Chamber pursuant to paragraph 19.

### **Distribution of the Phase Two Lump Sum**

23. Eighty per cent (80%) of the Phase Two lump sum shall be disbursed in monthly stipends while the remaining twenty per cent (20%) shall be paid as an End-of-Phase Payment after approval by the Registry of the End-of-Phase Report (*see* paragraphs 29-34).
24. 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 per cent (80%) of the Phase Two lump sum shall therefore be normally disbursed in five equal monthly stipends, unless a different distribution schedule is determined by the Registry, in consultation with Lead Counsel. In deciding on a different distribution schedule, the Registry may take into account any extension of time granted by the Chamber and the reasons thereof.

### **Invoicing and Payment**

25. Eighty per cent (80%) of the Phase Two lump sum shall be paid in monthly stipends upon submission of a *pro forma* invoice at the end of each month of Phase Two. The End-of-Phase Payment shall be paid following approval by the Registry of the End-of-Phase Report (*see* paragraphs 29-34).
26. The *pro forma* invoice shall be signed by Lead Counsel, who shall advise the Registry how to distribute the stipend between the Defence Team members assigned by the

Registry. Should the case be subsequently ranked at a complexity level higher than the provisional ranking, Lead Counsel may also request disbursement of funds to present and former Defence Team members assigned by the Registry for work performed before the increase in ranking took place. The *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. Payments shall be made in accordance with paragraph 8.

### **Adjustment in the Complexity Level**

27. In the event of a change in the complexity indicators specified in paragraph 19, which has emerged after the initial ranking of the case and which affects the preparation reasonably required of the Defence Team, 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.
28. In deciding upon a request for an upgrade in the complexity level based on paragraph 27, the Registry shall seek information from the Appeals Chamber on the nature of the circumstances and their impact on the preparation of the defence case. The Registry may also consider whether the circumstances can be attributed fully or in part to the manner in which the Defence Team conducted their preparation, including their planning and organisation.

### **End-of-Phase Report**

29. 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 Registry of the End-of-Phase Report. Lead Counsel must submit the End-of-Phase Report within 60 days of the end of Phase Two.
30. 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 each;
  - (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 Registry to verify that the work was 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.
31. In the review of the End-of-Phase Report, the Registry shall verify that:
  - (a) All information requested in paragraph 30 is included;

- (b) The work of each Defence Team member is sufficiently described to satisfactorily establish that it was accomplished for purposes of the Appeal;
  - (c) The work reported by all members of the Defence Team was reasonable and necessary, 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 Registry, as requested by Lead Counsel.
32. The Registry may request Lead Counsel to provide additional information or documentation to enable the Registry to assess the work performed by the Defence Team. Based on the End-of-Phase Report and any additional information received from Lead Counsel, the Registry shall disburse the remainder of the Phase Two lump sum. The Registry may reduce payment *pro rata* if insufficient or no additional information is received, and the Registry is therefore not in a position to verify the factors outlined above.
33. In addition, the Registry may refuse to pay part or all of the End-of-Phase Payment if it has reason to believe that irregularities have occurred in the work or conduct of the Defence Team, or that a substantial amount of work was unreasonable or unnecessary. However, such reduction may only be initiated after the Registry has either:
- (a) Consulted with and obtained written agreement from Lead Counsel;
  - (b) Consulted with the Appeals Chamber and/or the Association of Counsel; or
  - (c) Referred the matter to the Disciplinary Panel set forth in Article 40 of the Code of Conduct, and given Lead Counsel an opportunity to respond.

The Registry may also, if instructed by the Appeals Chamber, deduct any fees associated with the production of a motion which has been declared frivolous or an abuse of process, in accordance with Rule 80(D) of the Rules.

34. Should Lead Counsel disagree with the Registry's decision not to pay all or part of the Phase Two lump sum, Lead Counsel may request a review of the Registry's decision in accordance with the procedure set forth in Article 32 of the Directive.

## **E. PHASE THREE – APPEAL HEARING**

35. Phase Three shall commence the day after the completion of Phase Two and shall end with the rendering of the appeal judgement.
36. The lump sum for Phase Three is \$33,000.
37. 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 Hearing; 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 Office of the Prosecutor and the Registry. The lump sum for Phase Three is not contingent on the duration of the phase.
38. 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 Hearing. Counsel is not expected to work regularly, if at all, until the Hearing is scheduled, and the bulk of the work performed during Phase Three will typically take place in the month preceding the Hearing. It is recognised that preparation for the 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. While 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 equal monthly stipends.

### **Invoicing and Payment**

39. The Phase Three lump sum shall be paid in two equal monthly stipends of \$16,500 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 Hearing. The second *pro forma* invoice for Phase Three shall be submitted after the Hearing. If the date of the Hearing is set in less than two months from the scheduling order, Lead Counsel may request the Registry to disburse the entire Phase Three lump sum in a single stipend.
40. The *pro forma* invoice shall be signed by Lead Counsel, who shall advise the Registry how to distribute the stipend between the Defence Team members assigned by the Registry. 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 Team’s activities during Phase Three and to allow the Registry to determine that the work performed by each Defence Team member was reasonable and necessary, that it was performed, and justifies the payment of the lump sum. Payment shall be made in accordance with paragraph 8.

## **F. SENTENCING APPEAL**

41. In case of a Sentencing Appeal, the provisions of sections B through E shall apply *mutatis mutandis* except for the following provisions.
42. 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 Registry and Lead Counsel have agreed on a different distribution schedule. In deciding on a different distribution schedule, the Registry may take into account any extension of time granted by the Chamber and the reasons thereof.
43. The total lump sum for a Sentencing Appeal is \$82,000, divided per phase as follows:

<b>Phase One</b>	<b>Phase Two</b>	<b>Phase Three</b>	<b>TOTAL</b>
<b>\$19,500</b>	<b>\$53,150</b>	<b>\$9,350</b>	<b>\$82,000</b>

## **G. ADJUSTMENT OF THE LUMP SUM**

44. Exceptionally, in the event of unforeseeable circumstances beyond the control of the Defence Team which lead to a substantial increase or decrease in the reasonable and necessary work to be performed during a given phase of the Appeal, the Registry 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 review of newly disclosed

material are not unforeseeable circumstances *per se*. The exhaustion of resources, without more, shall not constitute a basis for an adjustment.

45. A request for an increase of the lump sum needs to be submitted by Lead 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 the Defence Team's work, as well as a detailed description of the additional work required and the estimated time needed for each task.
46. The Registry will not adjust the lump sum *proprio motu* without giving Lead Counsel an opportunity to be heard.
47. In deciding upon a request for the adjustment of the lump sum, the Registry may seek information from the Appeals Chamber on the nature of the circumstances and their impact on the preparation of the defence case. The Registry may also give consideration to the use of resources by the Defence Team throughout the duration of a given phase of the Appeal.

## H. TRAVEL

48. Payment for travel-related expenses shall be made pursuant to Articles 27 and 28 of the Directive.
49. The Registry 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 Accused's 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 days of DSA for either Lead Counsel or Co-Counsel; or
    - (ii) One trip every two months for up to seven days of 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 days of DSA for either Lead Counsel or Co-Counsel; or
    - (ii) One trip every four months for five days of DSA for either Lead Counsel or Co-Counsel.
50. The IRMCT 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, taking into account the geographical distance and travel time required, shall grant up to three days of DSA, unless Counsel's presence at the Branch of the IRMCT is required for a longer period. The IRMCT shall also bear the expenses related to travel for the Hearing for both Lead Counsel and Co-Counsel, and shall grant DSA for the duration of the hearing and up to three additional days. The Registry may authorise, on a case-by-case basis, travel for a

Legal Assistant to attend the Hearing, upon a demonstration of reasonableness and necessity of the travel.

51. The Registry 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 Appeals Chamber. Where this is impossible, travel to either Lead Counsel or Co-Counsel's place of work or, if it is more economical, one of the seats of the IRMCT, and up to three days of DSA may be authorised upon a reasoned request.
52. The Registry may authorise, on a case-by-case basis, travel for investigation-related purposes, upon a demonstration of reasonableness and necessity of the travel.

## **I. FINAL PROVISIONS**

53. Where the Appeals Chamber is to be consulted or otherwise asked to provide information pursuant to this Policy, the Appeals Chamber may decline to provide its views or information concerning the case, may request that any such consultation by the Registry be copied to Lead Counsel, or may take any further steps deemed appropriate. If the Appeals Chamber declines to provide its views or information concerning the case to the Registry, all applicable timelines in this Policy shall run from the Registry's receipt of the Appeals Chamber's indication to that effect.
  54. The Registry 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.
  55. The Registry shall treat documents submitted by Lead Counsel pursuant to this Policy with due respect to the appropriate level of confidentiality.
  56. In instances where a deadline under this Policy falls on a non-working day, it shall be extended to the next working day.
  57. Any disputes arising from the application of this Policy shall be settled in accordance with Article 32 of the Directive, with the exception of disputes related to a decision on provisional ranking pursuant to paragraph 20.
-