

1 April 2010

Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused

The Remuneration Scheme for Defence Teams of Indigent Self-Represented Accused (“Remuneration Scheme”) was established to facilitate the participation of a detained, self-represented accused in proceedings against him in accordance with Article 21(4)(b) of the Statute (“Statute”) of the International Criminal Tribunal for the Former Yugoslavia (“Tribunal”).

This Remuneration Scheme is based on the Appeal Chamber’s decision in the *Prosecutor v. Krajišnik*¹ in which it was held that an indigent accused who chooses to exercise his right to represent himself in proceedings before this Tribunal may receive, *inter alia*, funding for legal associates whom the Registry has authorized to assist him in the preparation of his case and to facilitate his participation in the proceedings. It further takes into consideration the President’s decision in *Prosecutor v. Karadžić*.²

This Remuneration Scheme does not purport to create any rights or entitlements beyond those enshrined in Article 21 of the Statute. Furthermore, to the extent that procedural matters are not expressly regulated by the Remuneration Scheme, the Directive on the Assignment of Defence Counsel (“Directive”) and any other applicable Registry policy, in particular the Defence Travel and DSA Policy, shall apply as appropriate.

This policy shall be the authoritative version of the Remuneration Scheme as previously issued on 28 September 2007 and amended on 24 July 2009. In case of any inconsistency between this policy and any previous information disseminated, this policy shall prevail.

The present Remuneration Scheme shall apply as of 1 April 2010.

¹ *Prosecutor v. Momčilo Krajišnik*, (IT-00-39-A), Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007.

² *Prosecutor v. Radovan Karadžić* (IT-95-5/18-T), Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010.

Table of contents

A.	Basic Eligibility Requirement	page 1
B.	Payment Scheme	page 1
C.	Assessment of the Complexity of a Case	page 1
D.	Allocation of Resources	page 2
E.	Invoicing	page 4
F.	Qualification Requirements and Outline of Tasks	page 5
G.	Assignment and Recognition of Defence Team Members	page 7
H.	Final Provisions	page 8

A. BASIC ELIGIBILITY REQUIREMENT

- 1) Only detained self-represented accused who are found to be indigent or partially indigent are eligible for remuneration of their defence teams by the Tribunal. Therefore, the Registry directives and policies with respect to the determination of the financial status of a self-represented accused apply. The requirements for indigency determination and funding are set forth in Articles 8 and 10 of the Directive.

B. PAYMENT SCHEME

- 2) The Registrar shall provide remuneration for persons who discharge the following functions, subject to the qualification requirements in Section F hereof and the allocation of hours determined per stage of the proceedings as set forth below:
 - a) legal associate,
 - b) case manager,
 - c) investigator, and
 - d) language assistant.
- 3) The maximum allotment of remunerable hours and the maximum number of remunerated defence team members shall be dependent on the level of complexity attributed to the case for each stage of the proceedings, as outlined in Section C below.
- 4) Within the maximum number of remunerated defence team members, the accused may determine the actual composition of his defence team, provided that at least one person carries out the function of a case manager. The Remuneration Scheme offers flexibility to the accused in selecting members of his defence team, subject to the proper qualification of proposed candidates under Section F.
- 5) Upon a reasoned request of the accused in accordance with paragraph 24 below, the Registrar may also assign defence expert(s) to a self-represented accused, to the extent permitted under Article 23(B)(iii) and 23(B)(iv) of the Directive. A total maximum of 150 hours for experts can be allocated for each phase of the proceedings. The Registrar may reallocate expert hours from another stage or increase the maximum allotment of hours for experts in relation to a particular phase of the proceedings if the self-represented accused demonstrates exceptional circumstances warranting the need for additional hours.
- 6) The defence team members and experts assigned by the Registrar shall be remunerated at the hourly rates for support staff and experts set out in Annex I to the Directive.³

C. ASSESSMENT OF THE COMPLEXITY OF A CASE

- 7) The level of complexity shall be determined by the Registrar for each stage of the proceedings, after reviewing a written submission of the accused regarding the matter and consulting with the Chamber seized of the case. The Registrar may also consult the

³ Annex A.

Prosecution if he deems necessary or where requested by the self-represented accused. The determination of the level of complexity shall be based, *inter alia*, on the following factors:

- the position of the accused within the political/military hierarchy;
 - the number and nature of counts in the indictment;
 - whether the case raises any novel issues;
 - whether the case involves multiple municipalities (geographical scope of case);
 - the complexity of legal and factual arguments involved; and
 - the number and type of witnesses and documents involved.
- 8) A case may be ranked differently during the pre-trial, trial and appeal stages, since the ranking reflects the complexity of legal and factual issues raised during a particular stage, and not during the case in general.
- 9) On the basis of the above factors, the Registrar will rank the cases as being either Level 1 (difficult), Level 2 (very difficult), or Level 3 (extremely difficult/leadership).

D. ALLOCATION OF RESOURCES

- 10) The Remuneration Scheme is based on a maximum allocation of hours during each stage of the proceedings to the accused's defence team, including all hearing hours for one defence team member (provided the accused has obtained leave from the Chamber for that person to attend the hearings), which depends on the complexity of the case. The maximum monthly hours per team member may be adjusted upon a reasoned and justified request detailing the requirement for one or more defence team members to work in excess of the monthly maximum during any given month. However the total maximum, per month or over all, shall not be affected notwithstanding the distribution of monthly hours among team members pursuant to such a request.

a. Pre-trial

- 11) For the pre-trial stage of the proceedings the Remuneration Scheme is based on a maximum allocation of hours to the accused's defence team to cover the entire stage, as follows:
- i) Complexity Level One: A maximum of 150 hours per month per team member for up to two (2) team members, for a total maximum of up to 3,000 hours for the entire pre-trial phase.
 - ii) Complexity Level Two: A maximum of 150 hours per month per team member for up to three (3) team members, for a total maximum of up to 4,500 hours for the entire pre-trial phase.
 - iii) Complexity Level Three: A maximum of 150 hours per month per team member for up to five (5) team members, for a total maximum of up to 6,000 hours for the entire pre-trial phase.

b. Trial

12) For the trial stage of the proceedings, the Remuneration Scheme is based on a maximum allocation of hours to the accused's defence team per team member per month for the duration of the stage, depending on the level of complexity, as follows:

- i) Complexity Level One: A maximum of 150 hours per month per team member for up to two (2) team members, for a total maximum of up to 300 hours per month.
- ii) Complexity Level Two: A maximum of 150 hours per month per team member for up to three (3) team members, for a total maximum of up to 450 hours per month.
- iii) Complexity Level Three: A maximum of 150 hours per month per team member for up to five (5) team members, for a total maximum of up to 750 hours per month.

c. Appeal

13) For the appeal stage of the proceedings the Remuneration Scheme is based on a maximum allocation of hours to the accused's defence team to cover the entire stage, depending on the complexity of a case, as follows:

- i) Complexity Level One: A maximum of 100 hours per month per team member, for up to two (2) team members, for a total maximum of 600 hours for the entire stage.
- ii) Complexity Level Two: A maximum of 100 hours per month per team member, for up to three (3) team members, for a total maximum of 750 hours for the entire stage.
- iii) Complexity Level Three: A maximum of 100 hours per month per team member, for up to four (4) team members, for a total maximum of 900 hours for the entire stage.

d. Allocation of additional hours and/or defence team members

14) The Registrar may increase the maximum allotments of hours per team member or stage (while maintaining the level of complexity) if the self-represented accused demonstrates unforeseeable circumstances beyond the control of the self-represented accused or defence team members, which substantially impact upon the preparation reasonably required.

15) The Registrar may increase the maximum number of defence team members (while maintaining the existing level of complexity and the maximum allotment of hours) if the self-represented accused demonstrates circumstances requiring such an increase. Such circumstances can include but are not limited to an increase in the allotment of hours pursuant to paragraph 14 of the Remuneration Scheme, or the need for a team member to perform additional functions, such as translation or investigation.

- 16) In deciding upon a request for an increase of the maximum allotments of hours based on unforeseeable circumstances, the Registrar shall request and take into account information from the Pre-Trial Judge, or the Trial or Appeals Chamber, as the case may be, on the nature of the circumstances and their impact on the preparation of the case for the self-represented accused. Information requested will include whether the circumstances can be attributed fully or in part to the manner in which the Prosecution or the self-represented accused and/or his defence team members conducted their preparation, including their planning and organization.

E. INVOICING

- 17) Each assigned defence team member and expert shall submit detailed hourly invoices specifying the work performed and the time taken to perform each task, in accordance with the guidelines attached to this Remuneration Scheme. The accused is required to certify that the work described in the invoices submitted to the Registry was carried out on his instructions and is directly related to the preparation of the case.
- 18) If the Registrar is satisfied that the work performed was reasonable and necessary for the facilitation of the accused's participation in the proceedings, and that the hours invoiced have been allocated pursuant to Section D hereof, he shall authorize payment directly into the private bank account of the respective team member or expert.
- 19) As a general principle, while a case is on trial, team members may not invoice for scheduled court recess periods, such as the summer and winter recess, and case specific recesses for periods of six (6) or more consecutive days. However, team members may be remunerated for work performed in these periods in accordance with the following:
- a) Invoices for periods of 6 or more consecutive non-sitting days, including days of scheduled court recess, may be paid provided the self-represented accused submits a written request to the Registry for the remuneration of work performed during such recess periods, with justification detailing reasons why the work had to be performed during the recess. The Registry must be satisfied that (i) the work performed during the recess was reasonable and necessary for the preparation of the case, and (ii) the work could not have been performed outside the recess period.
 - b) Such recess payment submission pursuant to this Paragraph 19) shall be evaluated by the Registry upon consultation with the Trial Chamber where necessary, and is subject to the monthly and hourly maximums set forth in Section D above.

F. QUALIFICATION REQUIREMENTS AND OUTLINE OF TASKS⁴

- 20) While the accused who acts as his own counsel should have the maximum flexibility possible to determine the composition of his or her legal team, there are certain minimum qualifications required of defence team members remunerated by the Tribunal. These standards are to ensure the integrity of the payment process, but of primary concern is that legal assistance to the self-represented accused is provided by

⁴ The "typical tasks" outlined for each of the following positions are not exhaustive. The defence team member in each category may need to carry out additional duties as necessary and appropriate.

qualified individuals in furtherance of the proper administration of justice. Minimum qualifications are outlined as follows.

a) Legal Associate

i) Basic Qualification Requirements

To be eligible for assignment as a legal associate to an indigent self-represented accused, the candidate must prove that he/she

- is admitted to the practice of law in a State, or is a university professor of law, or has an advanced university degree in law and sufficient relevant work experience in law;
- has not been found guilty in any criminal proceedings;
- has not been found guilty in relevant disciplinary proceedings against him/her where he/she is admitted to the practice of law;
- has not engaged in conduct whether in pursuit of his/her profession or otherwise which is dishonest or otherwise discreditable, prejudicial to the administration of justice, or likely to diminish public confidence in the Tribunal or the administration of justice, or otherwise bring the Tribunal into disrepute;
- has not provided false or misleading information in relation to his/her qualifications and fitness to practice where applicable or failed to provide relevant information;
- has written and oral proficiency in one of the two working languages of the Tribunal, unless the Registrar deems it in the interests of justice to waive this requirement. One of the factors the Registrar will consider in deciding to waive the language requirement is whether a case manager with written and oral proficiency in one of the working languages of the Tribunal has been assigned; and
- undertakes to comply with the standards of professional conduct and ethics as specified in the Code of Professional Conduct for Counsel Appearing before the Tribunal, including without limitation the requirement that a legal associate hereunder must advise the Registry should there be a change in any of the foregoing information provided.

ii) Typical tasks

A legal associate to a self-represented accused facilitates the management of the accused's case through coordinating work and related legal consultation. The typical tasks of a legal associate include conducting legal research and drafting memoranda, selecting, analysing and classifying documents as requested by the accused and attending working sessions with the accused at the United Nations Detention Unit ("UNDU"). The legal associate may also assist the accused in the preparation of evidence and the interviewing of witnesses on the accused's instructions. Legal associates have no right of audience before the Court unless the Chamber seised of the case decides otherwise.

b) Case Manager

i) Basic Qualification Requirements

A case manager for a self-represented accused should hold at least a high school diploma or equivalent, be computer literate and proficient in all applications relevant to the work of the Tribunal, and possess sufficient clerical experience and skills, including the ability to manage a large number of documents. Proficiency in one of the working languages of the Tribunal is required.

ii) Typical tasks

A case manager assists the self-represented accused with the overall administration of the defence case file. In particular, he/she liaises on behalf of the accused with various organs of the Tribunal and third parties as necessary to ensure the smooth running of the case, which includes the coordination of tasks performed by different team members as requested by the self-represented accused. He/She maintains the defence filing system by recording and classifying evidence and disclosure material. In addition, the defence case manager submits defence documents for translation through the Tribunal's Translation Tracking System and receives translations upon their completion, scans defence exhibits and uploads them to the e-Court system used in trial, or otherwise ensures that all the relevant documents are available for trial, and organises and provides assistance to the accused in all logistical matters related to the accused's access, including the distribution and management of case-related material. If a language assistant has not been assigned, the case manager may also act as a language assistant for the accused as necessary.

c) Investigator

i) Basic Qualification Requirements

An investigator for a self-represented accused shall hold a relevant university degree or a diploma in criminal investigation from a national police or law enforcement academy or have undergone a combination of relevant training courses in related fields and possess substantive investigative experience. He/She should have demonstrated ability to analyse and administrate voluminous sets of records, and possess experience in preparing witnesses and documents for official proceedings.

ii) Typical tasks

The investigator conducts appropriate intelligence and evidence gathering related duties, interviews (prospective) defence witnesses, registers information and evidence and performs analysis of the gathered information to assist the accused in the preparation of his case.

d) Language Assistant

i) Basic Qualification Requirements

A language assistant to a self-represented accused should hold at least a high school diploma or equivalent. He/She must demonstrate oral and written proficiency in one of the working languages of the Tribunal and the language of the accused.

ii) Typical tasks

The language assistant assists the accused with interpretation and translation of case-related material, as required to supplement the interpretation and translation services normally provided by the Tribunal to a self-represented accused in accordance with the relevant Rules and Policies.

e) Family members of the accused are not eligible for assignment as defence team members.

f) A maximum of three (3) Legal associates assigned pursuant to this Remuneration Scheme (and recognized by the Registry for the purpose of privileged communication) may have privileged access to the accused.

G. ASSIGNMENT AND RECOGNITION OF DEFENCE TEAM MEMBERS

21) An indigent, self-represented accused who wishes to have a defence team member assigned to his defence team shall submit a written request to the Registry, indicating in which capacity the candidate is to be assigned. In order to enable the Registrar to evaluate the eligibility of the candidate for assignment in the requested position, the accused or the candidate shall submit:

- The candidate's detailed *Curriculum Vitae*;
- A letter expressing the candidate's willingness and availability to be assigned in the requested capacity;
- A certificate issued by the relevant authority of the state(s) in which the candidate resides or similar evidence showing that the candidate has not been found guilty in criminal proceedings;
- A current certificate of good standing with a professional body indicating whether the candidate has a disciplinary record (where applicable);
- A copy of the candidate's passport or other travel document;
- Any other documentation proving that the candidate fulfills the basic qualification requirements for the position as outlined above.

22) The Registrar reserves the right to deny the assignment of a candidate who does not meet the basic qualification requirements, or where there is an indication that such an

assignment would be prejudicial to the administration of justice, or likely to diminish public confidence in the Tribunal or the administration of justice, including where the candidate has a conflict of interest or a scheduling conflict.

- 23) Depending on their position and the terms of their assignment, defence team members may be permitted to have access to confidential materials in the accused's case and/or the relevant Tribunal IT-network. To gain such access, eligible defence team members must sign and adhere to the relevant protocols and confidentiality undertakings.
- 24) Should the accused wish to have an expert assigned, he must make a reasoned request to the Registrar, outlining the purpose of the assignment, the scope of the required expertise, the manner in which the expertise is expected to further the accused's case, as well as an estimate of the number of hours needed to provide such expertise. The accused must provide the proposed expert's *Curriculum Vitae* and any additional information proving that he possesses the necessary qualifications to provide the requested expertise. After evaluating the request and the qualifications of the expert, the Registrar shall decide on the expert's assignment and a maximum allotment of hours.

H. OFFICE SPACE DURING TRIAL

- 25) The Registrar shall provide office space for defence teams assisting self-represented accused during trial, as determined appropriate by the Registrar.

I. RESOLUTION OF DISPUTES

- 26) Any disputes over remuneration or reimbursement of expenses arising from the application of this Remuneration Scheme shall be settled in accordance with Article 31 of the Directive.

J. FINAL PROVISIONS

- 27) The Registrar may, at any time during the proceedings, request information and perform checks into the work performed by any and all members of the Defence team. The self-represented accused shall, for this purpose, retain all Defence files for a period of, at least, five years after the end of the proceedings or may make a request to the Registry to delegate such retention to a privileged Legal Associate assigned to the defence team of the self-represented accused, which request shall not be reasonably refused provided such Legal Associate signs an appropriate undertaking agreeing to retain the records and be bound by the Code of Ethics with respect to such retention.



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Judicial Support
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Registry

Tribunal Pénal
International pour
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Division des
services d'appui
judiciaire
Greffé

OFFICE FOR LEGAL AID AND DETENTION MATTERS (OLAD)

Guidelines on the Submission of Invoices and the Activities of Assistants to Self-Represented Accused which may be Remunerated

General Invoicing Policies

Assistants to self-represented accused who have been assigned by the Registrar pursuant to the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused (“Remuneration Scheme”) are required to submit detailed monthly invoices to OLAD in order to claim remuneration. Such invoices must be accompanied by a completed “Cover Sheet for Hourly Invoices of Assistants to Self-represented Accused”,¹ signed by the assistant in question, and counter-signed by the self-represented accused, who certifies that the work invoiced for has been requested by him/her for the preparation of his/her defence, and has indeed been performed.

Invoices must be submitted to the Registry within the first two weeks of the month following the month for which remuneration is sought. The Registry reserves the right to refuse to accept invoices submitted after this deadline.

Payment is made into each team member’s individual bank account, as designated in the Bank Information Form.²

The Registry is responsible for ensuring that the administration of Tribunal funding for a defence team of a self-represented accused results in a rationalized system which minimizes potential for inefficiency or abuse, while at the same time ensuring that the accused is given quality assistance. The Registry thus requires that work performed by assistants to self-represented accused is necessary and reasonable to facilitate the accused’s participation in the proceedings and that there is no duplication of work. In order to make a determination in this regard, the Registry reserves the right to request additional details and perform checks into the work performed which may require the production of the Defence files for verification by both internal and external auditors. The invoices of a Defence team will be kept confidential by the Registry. Under no circumstances will they or any of their contents be shared with the Office of the Prosecutor (OTP) or any other third party.

Invoices must include a detailed description of work, which would allow both a jurist and non-jurist to assess the reasonable and necessary character of the claimed work. General descriptions such as “reading disclosure materials” and “interviewing potential witnesses” are not considered sufficiently detailed. In addition, each invoice should demonstrate the time spent *per* separate activity *per* day, and the hours of the day in which the activity was performed (e.g. 9:00 – 11:15 meeting with the accused, 2:15 hours).

Details that must be provided include, but are not limited to:

¹ Electronic copies are available through OLAD staff and on the ICTY website.

² Electronic copies are available through OLAD staff and on the ICTY website.

- the type of documents that have been reviewed, read, researched or analysed, (including disclosure batch numbers, titles, and where applicable filing dates and names/initials/pseudonyms of witnesses);
- the approximate number of pages of documents that have been reviewed, read or analysed, (e.g. 50 pages out of 250 read);
- the general subject matter of material drafted, and the number of pages drafted;
- the names, pseudonyms or initials of (potential) witnesses located, met or interviewed;
- the work product or result of the conducted task (such as: number of pages of notes that have been taken during a meeting, providing members of the defence team with tasks upon reviewing their work report etc);
- the subject of meetings and correspondences (except those with the accused) (general indications may suffice);
- the relevance of each activity to the preparation of the defence case (if not apparent from the task itself).

An invoice may be refused in whole or in part if it includes non-remunerable work. The Registry may also return the invoice to the team member in order to obtain further details. In both cases, a routing slip will be sent to the team member with an indication of the reasons for refusal, the number of hours that are refused and the required follow-up. The team member has 14 days to provide the requested information. The Registry reserves the right to refuse payment if sufficient information is not provided by the deadline.

A. Remunerated Activities

i. General

Working sessions between team members may be remunerated if it is demonstrated that time spent on work was reasonable and necessary for each team member concerned.

The defence team is encouraged to limit their participation in meetings with third parties (potential witnesses, OTP, etc...) to one appropriate team member. A second will be remunerated for his/her attendance only where necessity and reasonableness is demonstrated.

The following lists include the items that the Registry may remunerate. These lists are not considered exhaustive.

ii. Legal Associates/Legal Assistants

- Assist the accused in drafting motions and submissions
- Review OTP submissions
- Confer with the accused
- Assist in the preparation for hearings
- Attend court hearings (in accordance with para. 10 of the Remuneration Scheme)
- Research case law and doctrine
- Study of disclosure material and witness statements
- Prepare summary of disclosure material for the accused
- Review OTP submissions and witness statements
- Summarise witness statements
- Study transcripts

- Prepare invoices (max. 2 hours per month)

iii. Investigators

- Locate potential witnesses
- Interview witnesses
- Draft witness statements
- Search and collect evidence
- Draft mission reports
- Study OTP witness statements
- Prepare summary of witness statements
- Prepare invoices (max. 2 hours per month)

iv. Case Managers

- Organize exhibits
- Perform searches in transcripts, defence databases and disclosure material
- Prepare invoices (max. 2 hours per month)
- Maintaining the defence filing system by recording and classifying the evidence and disclosure material.
- Scanning defence exhibits and uploading them to the e-Court system used in trial, or otherwise ensuring that all the relevant documents are available for trial.

v. Language Assistant

- Translation of case related material
- Interpretation for the accused

B. Non-Remunerated Activities

- Travel time
- Breaks
- Administrative correspondence with OLAD
- Reading books or articles³
- Recruitment of team members

³ Except books that are submitted as evidence or exhibit or that demonstrate a direct link to the case, where specific relevant portions are identified.