



Registry Practice Direction

Directive on Counsel

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CHAPTER I General Provisions**Section 1 Purpose and Scope**

1. This Directive has been adopted pursuant to Article 34 of the Law on Specialist Chambers and Specialist Prosecutor’s Office, Law No. 05/L-053, (“Law”) and Rule 23(3) of the Rules of Procedure and Evidence (“Rules”). The Directive and any amendments thereto shall be interpreted in a manner consistent with the Law and the Rules.
2. In accordance with Article 34(6) and (7) of the Law and pursuant to Rule 25 of the Rules, this Directive regulates the eligibility, qualifications and experience for inclusion on, as well as modalities for withdrawal and removal from a List of Counsel.
3. In accordance with Articles 21(4)(e) and 22(5) of the Law and Rule 26 of the Rules, this Directive establishes the procedure for the appointment and assignment of Counsel, as well as for their withdrawal and termination of appointment or assignment.
4. This Directive is applicable to all persons applying for admission to a List of Counsel, to all Counsel admitted to a List of Counsel and to all Counsel appointed or assigned by the Registrar. Insofar as relevant to their legal representation, this Directive also applies to suspects, Accused, victims admitted pursuant to Rule 113 of the Rules and any other person entitled to legal representation pursuant to the Law, the Rules or an order of a Panel.

Section 2 Definitions

1. For the purpose of this Directive, unless otherwise specified at Section 2.2. of this Directive, the terms employed herein shall have the meaning given to them in Rule 2 of the Rules. The singular shall include the plural, and *vice versa*.
2. In addition, the following definitions shall apply:

Applicant	A natural person applying to be included in a List of Counsel pursuant to Chapter II of this Directive;
Counsel	A person representing or eligible to represent an Accused, a suspect or a group of participating victims or other person pursuant to this Directive;
Co-Counsel	A person on the List of Counsel chosen by Counsel to act as Co-Counsel pursuant to Section 18.1. or a person eligible to be chosen as Co-Counsel pursuant to this Directive;
Defence Office	Unit of the Registry provided for in Article 34(7) of the Law and Rule 23(6) of the Rules;
Duty Counsel	A Counsel who has informed the Head of the relevant Registry Unit pursuant to Section 6.2.b. of this Directive of his or her willingness to appear on short notice and for a limited task or tasks;
Head of the relevant Registry Unit	Defence Office Coordinator or Head of Victims Participation Office, as applicable;
Legal Aid Regulations	Regulations on the assignment of Counsel for purposes of legal aid adopted by the Registrar pursuant to Article 34(6) and (7) of the Law;
List of Counsel	A list including Specialist Counsel or Victims' Counsel, as applicable;
List of Specialist Counsel	A list including Defence Counsel eligible to practice before the Specialist Chambers;
List of Victims' Counsel	A list including Victims' Counsel eligible to practice before the Specialist Chambers;
Registrar	Registrar of the Specialist Chambers, appointed pursuant to Article 34(4) of the Law;

Victims' Participation Office

Unit of the Registry provided for in Article 34(6)
of the Law and Rule 23(5) of the Rules.

Section 3 Amendments

1. The Registrar may amend this Directive *proprio motu* or upon amendment proposal pursuant to Rule 23(3). Reasoned amendment proposals may be submitted to the Registrar by a Judge, the Independent Representative Body of Specialist Counsel and, pending the latter's establishment, by any Counsel through the Head of the relevant Registry Unit. The Registrar may consult with the Independent Representative Body of Specialist Counsel regarding any amendment proposal.
2. The Registrar shall keep a record of the amendment procedure, informing those who submitted amendment proposals of the outcome. The Registrar may, as appropriate, make public (parts of) the amendment procedure.

Section 4 Authoritative Language and Entry into Force

1. The authoritative language of this Directive is English.
2. This Directive adopted by the Registrar and any amendments shall enter into force on the day of its publication.

CHAPTER II List of Counsel

Section 5 Requirements for Admission to a List of Counsel

In accordance with Rule 25(1) and (2) of the Rules, an Applicant shall fulfil the following requirements for admission to a List of Counsel:

- a. Established competence and experience in domestic criminal and/or international criminal law and procedure;
- b. At least ten (10) years, and for purposes of acting as Co-Counsel at least seven (7) years, of proven relevant experience whether as a lawyer for defence or victims, as a prosecutor, a judge or in a comparable capacity in criminal proceedings;
- c. For purposes of admission to the List of Victims' Counsel, the requirement under Section 5.b shall include at least five (5) years of proven relevant experience in criminal cases involving victims, including vulnerable victims;
- d. For the duration of the admission to a List of Counsel, the Applicant continues to be a member of a domestic bar association or similar institution, or a judge or a prosecutor subject to an oversight authority;
- e. Written and oral proficiency in one of the official languages of the Specialist Chambers as specified in Article 20 of the Law;
- f. He or she has not been found guilty in criminal proceedings or otherwise disciplined in relevant disciplinary proceedings against him or her in a national or international forum, including any proceedings pursuant to any Codes of Professional Conduct of international courts or tribunals, unless it is deemed that, in the circumstances, it would be disproportionate to deny admission on this basis; and
- g. He or she has not engaged in conduct, whether in pursuit of his or her profession or otherwise, which is dishonest or otherwise discreditable to Counsel, prejudicial to the administration of

justice, or likely to diminish public confidence in the Specialist Chambers or the administration of justice, or otherwise bring the Specialist Chambers into disrepute.

Section 6 Application for Admission to a List of Counsel

1. For the purposes of admission to the List of Counsel, the Applicant shall provide to the Head of the relevant Registry Unit:
 - a. a completed application form (Annex A);
 - b. a certification relevant to confirming the requirements of Section 5.d. of this Directive stating *inter alia* the existence, if any, of disciplinary sanctions or ongoing disciplinary proceedings;
 - c. additional certifications which confirm his or her qualifications, membership or function as a staff member, and stating *inter alia* the existence, if any, of disciplinary sanctions or ongoing disciplinary proceedings issued *inter alia* by:
 - (1) the national bar association or similar institution of which the Applicant was a member and/or by the Applicant's former oversight authority/ies;
 - (2) an international bar association or an international[ised] organisation or institution administering a list of counsel, of which the Applicant is or was a member; and/or
 - (3) a national authority or organisation, international[ised] organisation or institution, of which the Applicant is or was a staff member.
 - d. a certification issued by the relevant authority of each State of which the person is a national and/or where the person is domiciled stating *inter alia* the existence, if any, of criminal convictions;
 - e. all relevant information not covered by Sections 6.1.b to .d pertaining to disciplinary sanctions, ongoing disciplinary proceedings, or any other ongoing investigations of or inquiries into conduct falling under Section 5.g., and any ongoing criminal proceedings against the Applicant;
 - f. evidence of a language proficiency as required by Section 5.e. of this Directive, including by showing work experience and/or a certificate from a language institute;
 - g. the names and addresses of two referees, who practise in the relevant fields and who are in the position to advise as to the professional competence of the Applicant in these fields; and
 - h. any other relevant documentation, as the Applicant deems necessary.
2. In addition, the Applicant shall provide:
 - a. a statement regarding his or her availability;
 - b. a statement regarding his or her willingness to appear as Duty Counsel;
 - c. with respect to admission to the List of Specialist Counsel, a statement of his or her willingness to act as either appointed or assigned Counsel, or both;
 - d. a statement to abide by the Code of Professional Conduct for Counsel upon appointment or assignment; and
 - e. with respect to the admission to the List of Victims' Counsel, a statement of his or her willingness to represent a group of victims in criminal proceedings before the Specialist Chambers.
3. By submitting the application form pursuant to Section 6.1.a., the Applicant declares that the Registry may inquire into all statements and supporting information provided.

Section 7 Procedure and Decision on Admission

1. The Head of the relevant Registry Unit shall acknowledge receipt of any documentation submitted pursuant to Section 6 of this Directive and may, if necessary, seek additional information from the Applicant and/or from other sources.
2. The Head of the relevant Registry Unit, having consulted the Registrar, may in urgent cases conditionally admit the Applicant to the respective List pending a final decision pursuant to this Section and in particular if the Applicant is currently on a list of counsel of a court or tribunal with similar admission requirements.
3. If the Head of the relevant Registry Unit is satisfied that the Applicant fulfils the requirements pursuant to Sections 5 and 6 of this Directive, he or she shall admit the Applicant to a List of Counsel. Where proceedings, investigations or inquiries under Section 6.1 are pending against the Applicant, the Head of the relevant Registry Unit shall defer the decision on admission until such time as the outcome thereof becomes final.
4. Where the Applicant does not fulfil the requirements pursuant to Sections 5 and 6 of this Directive, the Head of the relevant Registry Unit shall issue a reasoned decision denying the Applicant's application for admission to a List of Counsel.
5. The Head of the relevant Registry Unit shall notify the Applicant of any decision pursuant to this Section.

Section 8 Review of a Decision Pursuant to Section 7.4.

1. An Applicant may seek the review of the decision pursuant to Section 7.4. of this Directive before the Registrar within fourteen (14) days of notification thereof. Within thirty (30) days of receipt of the request for review, the Registrar shall render a final reasoned decision thereon and, if applicable, shall instruct the Head of the relevant Registry Unit to admit the Applicant to a List of Counsel.
2. The Applicant may only submit a new application for admission to a List of Counsel in case of a change of circumstances with respect to the requirements of Sections 5 and 6.

Section 9 Ongoing Obligations

1. Once admitted to a List of Counsel, Counsel or Co-Counsel shall, without undue delay, notify the Head of the relevant Registry Unit of a change in contact details, the initiation of any criminal or disciplinary proceedings at the national or international level and of any change in the information provided for the admission to the List of Counsel that are more than *de minimis*. Upon assignment or appointment, Counsel shall also notify the initiation of any criminal or disciplinary proceedings at the national or international level to the person whom Counsel represents.
2. Counsel or Co-Counsel on a List of Counsel shall in any case immediately inform the Head of the relevant Registry Unit if he or she no longer fulfils the requirements pursuant to Section 5 of this Directive and if there is a change pursuant to Section 6.2. of this Directive.

Section 10 Removal or Suspension from a List of Counsel

1. The Head of the relevant Registry Unit shall remove Counsel or Co-Counsel from a List of Counsel, after having given him or her an opportunity to be heard if appropriate in the circumstances, where he or she:

- a. has been permanently banned from practicing before the Specialist Chambers as a result of disciplinary proceedings held in accordance with the Code of Professional Conduct for Counsel;
 - b. has been found to be no longer eligible to represent a suspect, an Accused or victims participating in the proceedings before the Specialist Chambers in accordance with Rules 63(1)(c) and/or 64 of the Rules;
 - c. no longer satisfies the requirements pursuant to Section 5 of this Directive; or
 - d. requests his or her removal from a List of Counsel.
2. The Head of the relevant Registry Unit shall suspend Counsel or Co-Counsel from a List of Counsel where he or she has been temporarily suspended from practicing before the Specialist Chambers as a result of disciplinary proceedings against him or her pursuant to the Code of Professional Conduct for Counsel.
 3. The Head of the relevant Registry Unit may, after having given Counsel or Co-Counsel an opportunity to be heard, remove or suspend him or her from a List of Counsel, where he or she:
 - a. has provided false information in relation to the requirements pursuant to Sections 5 and 6 of this Directive or failed to provide relevant information pursuant to Section 9 of this Directive; or
 - b. has provided false information for the purposes of assignment pursuant to the Legal Aid Regulations.
 4. Where Counsel or Co-Counsel has been found guilty of an offence against the administration of justice pursuant to Article 15(2) of the Law and the Panel has determined that Counsel or Co-Counsel shall be removed or suspended from a List of Counsel, the Head of the relevant Registry Unit shall proceed pursuant to Sections 10.1 or 10.2, as directed by the Panel.
 5. If the relevant Counsel is appointed or assigned in a case, the representation must first be terminated pursuant to Section 16 of this Directive before a Counsel be removed or suspended from a List of Counsel.
 6. Any decision pursuant to Sections 10.1. to 10.3. shall be reasoned and immediately notified to the Counsel or Co-Counsel.

Section 11 Review of a Decision Pursuant to Section 10

Counsel or Co-Counsel may request the review of the decision by the Registrar pursuant to Section 10 of this Directive within fourteen (14) days of this notification. Within thirty (30) days of receipt of the request for review, the Registrar shall render a final reasoned decision thereon.

CHAPTER III Appointment and Assignment of Counsel

Section 12 Appointment and Assignment

1. Pursuant to Rule 26(1) of the Rules, the Registrar shall appoint or assign Counsel from the List of Specialist Counsel to a suspect or Accused. The Registrar shall:
 - a. appoint chosen Counsel to a suspect or Accused who has sufficient means to retain Counsel;
 - b. assign Counsel to a suspect or Accused who fully or partially lacks the means to remunerate Counsel if proven to be fully or partially indigent in accordance with the Legal Aid Regulations;
 - c. assign Counsel to a suspect or Accused who did not choose Counsel where representation is mandatory pursuant to Article 21(5) of the Law; or
 - d. assign Counsel to a suspect or Accused to ensure effective representation.

2. Pursuant to Rule 26(2) of the Rules, the Registrar shall assign Counsel for common representation from the List of Victims' Counsel to a group of victims.
3. Where any other person is entitled to legal representation pursuant to the Law, the Rules or an order of a Panel issued thereunder, the Registrar shall apply the provisions of this Chapter *mutatis mutandis*.
4. The Registrar shall take into account any working language(s) decided upon in accordance with Article 20 of the Law in the decision on appointment or assignment of Counsel.

Section 13 Appointment of Counsel from the List of Specialist Counsel

1. A suspect or Accused who wishes to retain Counsel through his or her own means shall submit a request for appointment of chosen Counsel to the Registrar through the Defence Office.
2. In accordance with Section 12, chosen Counsel shall be appointed to represent the suspect or Accused, if he or she is on the List of Specialist Counsel and continues to meet the requirements of Section 5 of this Directive or is found to be eligible to be admitted to the List of Specialist Counsel.
3. Where the Registrar denies the request for appointment of Counsel, he or she shall notify the suspect or Accused and the chosen Counsel thereof.
4. In accordance with Rule 26(1) of the Rules, a suspect or Accused may seek a review of the Registrar's decision under Section 13.3. of this Directive before the competent Panel within fourteen (14) days from the notification of the decision.

Section 14 Assignment of Counsel from the List of Specialist Counsel

1. A suspect or Accused who fully or partially lacks the means to retain Counsel shall submit a request for assignment of Counsel to the Registrar through the Defence Office.
2. The specific procedures relevant to the Registrar's decision on the request for assignment of Counsel, including the review of that decision as required by Rule 26(1) of the Rules, shall be provided for in the Legal Aid Regulations.
3. Pending the assignment of Counsel, the Registrar may conditionally assign Counsel pursuant to the procedure laid down in the Legal Aid Regulations.
4. Where the representation of a suspect or an Accused is mandatory pursuant to Article 21(5) of the Law and:
 - a. the suspect or Accused does not make a request for assignment or appointment of Counsel, refuses to cooperate in this respect or unreasonably prolongs the selection of Counsel; or
 - b. the Registrar decides not to award legal aid to the suspect or Accused;the Registrar shall inform the competent Panel so that it may take any necessary measures.

Section 15 Assignment of Counsel to a Group of Victims

1. After the determination of the grouping by the competent Panel pursuant to Article 22(4) of the Law and Rule 113(7), (8) of the Rules, the Registrar shall, in accordance with the procedure laid down in the Legal Aid Regulation, assign Victims' Counsel from the List of Victims' Counsel to the relevant group of victims as a common representative, taking into account
 - a. the proposal of the Head of the Victims Participation Office;
 - b. the consultations with the victims participating in the proceedings, who expressed their views and interests, and
 - c. considerations of a potential conflict of interest and other relevant circumstances.

2. Upon assignment of Victims' Counsel, the Registry shall notify the victims of the decision and provide them with the relevant contact details.
3. Sections 15.1. and 15.2. shall apply *mutatis mutandis* to the assignment of Counsel from the List of Victims' Counsel pursuant to Rule 113(6) of the Rules.

Section 16 Termination of Representation

1. When considering early termination or suspension of representation pursuant to this Section, the Registrar shall have due regard to the importance of continuity of representation and must obtain the approval of any Panel seized of the matter in which Counsel is acting. The Panel may order interim measures pending any appeal against the approval.
2. The Registrar shall terminate representation by Counsel in circumstances where:
 - a. A conflict of interest pursuant to the Code of Professional Conduct preventing continuation of representation has been established;
 - b. Counsel, the suspect, the Accused or victims participating in the proceedings request withdrawal showing good cause, including where the fiduciary relationship between Counsel and his or her client has failed;
 - c. A reason for removal or suspension from the List of Counsel laid down in Section 10 of this Directive has been established, with the exclusion of Section 10.1.d. of this Directive; or
 - d. The contractual relationship between the Registry and Counsel for the purposes of assignment has ended for reasons laid down in the Legal Aid Regulations.
3. The Registrar may also suspend representation where disciplinary proceedings under the Code of Professional Conduct for Counsel have been initiated against Counsel, where the relevant Panel so orders in judicial proceedings pursuant to Article 15(2) of the Law, or where the integrity of the proceedings under the conditions set out in Article 1(2) of the Law so requires.
4. In the interest of justice, the Registrar may instruct appointed or assigned Counsel whose representation is to be terminated to continue to act or to assist replacement Counsel for a period not exceeding forty-five (45) days from the date upon which replacement Counsel is assigned or appointed. During this period, the costs necessarily and reasonably incurred by the outgoing Counsel shall be borne by the Specialist Chambers.

Section 17 Assignment of Duty Counsel

1. Each Head of the relevant Registry Unit shall maintain a List of Duty Counsel.
2. The Registrar shall assign Duty Counsel in urgent matters and for a limited period pursuant to the Legal Aid Regulations.

Section 18 Counsel's Team and Obligations

1. Counsel appointed pursuant to Section 13 of this Directive may choose members of his or her team, including Co-Counsel from a List of Counsel, subject to the approval of the Registrar. Counsel assigned pursuant to Chapter III of this Directive may choose members of his or her team in line with the Legal Aid Regulations and this Section.

2. In choosing members of his or her team, Counsel shall take into account their experience, competence and the working language(s) decided upon in accordance with Article 20 of the Law.
3. For the purposes of the Registrar's approval pursuant to Section 18.1, Counsel shall submit:
 - a. proof that chosen Co-Counsel meets the requirements of Section 5 of this Directive;
 - b. documentation demonstrating that each prospective team member meets the requirements of Section 5.f. and g. of this Directive, in particular by submitting the certifications and information required by Section 6.1.d. and e. of this Directive;
 - c. A confidentiality undertaking signed by the prospective team member, provided by the Defence Office.
4. Chosen Co-Counsel shall have the authority to sign documents and to appear in court on Counsel's behalf, dealing with all arising matters.
5. Where representation was terminated early or suspended pursuant to Section 16 of this Directive, replacement Counsel shall, for reasons of continuity and in consultation with the person represented, generally seek to continue the representation with the team members of previous Counsel. Co-Counsel may be appointed or assigned as replacement Counsel unless he or she does not satisfy the relevant requirements under Section 5, or if the person represented objects to such replacement or there are other serious reasons against such a replacement.
6. Where Counsel considers termination of the contract with Co-Counsel, he or she shall inform the Registrar accordingly and should demonstrate that the termination may be accomplished without material adverse effect on the interests of the client(s) and the duration of the proceedings. The Registrar shall inform the relevant Panel accordingly. Counsel shall, without delay, inform the Registrar of the end of service of each team member and shall ensure that all confidential and strictly confidential documents are returned to Counsel.
7. Counsel and his or her team shall conform with security and safety requirements provided for in the relevant instructions of a Panel, the President and/or the Registrar.
8. Counsel shall keep a complete and accurate case file of all documentation related to the appointment or assignment and the work performed. Subject to his or her obligations under the Code of Professional Conduct for Counsel, Counsel shall retain the file for five (5) years after the completion of the proceedings before the Specialist Chambers.

The Hague, Netherlands
6 November 2017

Fidelma Donlon
Registrar