



# Registry Practice Direction

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## Legal Aid Regulations

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**Contents**

<b>CHAPTER I GENERAL PROVISIONS .....</b>	<b>4</b>
REGULATION 1 PURPOSE AND SCOPE.....	4
REGULATION 2 DEFINITIONS .....	4
REGULATION 3 AMENDMENTS TO THE REGULATIONS.....	5
REGULATION 4 AUTHORITY LANGUAGE AND ENTRY INTO FORCE .....	5
REGULATION 5 DATA PROTECTION.....	5
<b>SECTION A LEGAL AID FOR SUSPECT AND ACCUSED.....</b>	<b>5</b>
<b>CHAPTER II AWARD OF LEGAL AID.....</b>	<b>5</b>
REGULATION 6 LEGAL AID REQUEST .....	5
REGULATION 7 LEGAL AID REQUEST PROCEDURE .....	7
REGULATION 8 INDIGENCE ASSESSMENT .....	7
REGULATION 9 DECISION ON LEGAL AID REQUEST.....	7
REGULATION 10 REVIEW BY THE COMPETENT PANEL.....	8
REGULATION 11 CONDITIONAL ASSIGNMENT OF COUNSEL .....	9
REGULATION 12 REIMBURSEMENT OF LEGAL AID.....	9
<b>CHAPTER III LEGAL AID FEE .....</b>	<b>9</b>
REGULATION 13 GENERAL PRINCIPLES .....	9
REGULATION 14 LEGAL AID FEE.....	10
REGULATION 15 STAGES OF THE PROCEEDINGS .....	10
REGULATION 16 COMPLEXITY OF THE CASE.....	11
REGULATION 17 CALCULATION OF LEGAL AID FEE .....	11
REGULATION 18 DECISION ON LEGAL AID FEE .....	12
REGULATION 19 TRANSFER OF LEGAL AID FEE .....	13
<b>CHAPTER IV ASSIGNMENT OF COUNSEL .....</b>	<b>14</b>
REGULATION 20 ASSIGNMENT OF COUNSEL.....	14
REGULATION 21 ASSIGNMENT OF DUTY COUNSEL.....	14
<b>CHAPTER V CONTRACT AND OVERSIGHT .....</b>	<b>15</b>
REGULATION 22 CONTRACT FOR ASSIGNED COUNSEL .....	15
REGULATION 23 OBLIGATIONS UNDER THE CONTRACT .....	15
REGULATION 24 PROCEDURE FOR OVERSIGHT AND MONITORING .....	16
REGULATION 25 OTHER REMUNERATION OF ASSIGNED COUNSEL .....	17
REGULATION 26 ABUSE OF LEGAL AID BY ASSIGNED COUNSEL .....	18
REGULATION 27 SUSPENSION OR TERMINATION OF CONTRACT FOR ASSIGNED COUNSEL.....	18
<b>CHAPTER VI TEAM OF COUNSEL .....</b>	<b>19</b>
REGULATION 28 TEAM MEMBERS.....	19
REGULATION 29 APPROVAL PURSUANT TO SECTION 18 OF THE DIRECTIVE ON COUNSEL.....	19
REGULATION 30 CONTRACT WITH TEAM MEMBERS .....	20
<b>SECTION B LEGAL AID FOR VICTIMS.....</b>	<b>20</b>
REGULATION 31 ASSIGNMENT OF VICTIMS' COUNSEL.....	20
REGULATION 32 LEGAL AID FEE FOR VICTIMS.....	21
REGULATION 33 INDIGENCE ASSESSMENT .....	21

REGULATION 34	DETERMINATION OF LEGAL AID FEE FOR VICTIMS.....	21
REGULATION 35	CONTRACT AND OVERSIGHT .....	22
REGULATION 36	VICTIMS’ COUNSEL’S TEAM.....	22
<b>SECTION C</b>	<b>LEGAL AID FOR ANY OTHER PERSON .....</b>	<b>23</b>
REGULATION 37	ASSIGNMENT OF COUNSEL TO ANY OTHER PERSON .....	23

## CHAPTER I General Provisions

### Regulation 1 Purpose and Scope

1. These Legal Aid Regulations ('Regulations') have been adopted by the Registrar pursuant to Article 34(6) and (7) of the Law on Specialist Chambers and Specialist Prosecutor's Office, Law No. 05/L-053 ('Law'), taking into account Rule 23(5) and (6) of the Rules of Procedure and Evidence ('Rules') and the Directive on Counsel ('Directive'). They set forth the requirements and the procedure for the assignment of Counsel, including Victims' Counsel, as well as the administration of a system of legal aid for indigent or partially indigent persons before the Specialist Chambers and a system of payment for victim representation.
2. These Regulations are subject to and shall be interpreted in a manner consistent with the Law, the Rules and the Directive.

### Regulation 2 Definitions

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

Assigned Counsel	Counsel assigned pursuant to Section 12(1)(b)-(d) and 14 of the Directive, as applicable; the provisions for Assigned Counsel in Section A apply to Victims' Counsel as set forth in Section B;
Competent Panel	The Panel seised of the case, in accordance with Articles 25 and 33 of the Law;
Duty Counsel	Counsel assigned pursuant to Section 17 of the Directive;
Means	The totality of money and possessions owned by the relevant person;
Member of his or her household	Individuals with whom the suspect or Accused habitually resides;
Other financially associated persons	Any natural or legal person other than a Member of his or her household, from whom the suspect or Accused usually receives financial support or to whom he or she usually provides financial support, and/or who could reasonably be expected to financially assist in paying for his or her defence;
Supporting Documentation	Any reliable official documentation on financial means, including on direct and indirect income, bank accounts, real or personal property, stocks, bonds, investments, business operations, liabilities and expenditures;

Team The team of Assigned Counsel as referred to in Regulation 28, including Co-Counsel.

### Regulation 3 Amendments to the Regulations

1. The Registrar may amend these Regulations *proprio motu* or upon amendment proposals. Reasoned amendment proposals may be submitted to the Registrar by the President and the Independent Representative Body of Specialist Counsel. 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 the amendment procedure or parts thereof.

### Regulation 4 Authoritative Language and Entry into Force

1. The authoritative language of these Regulations is English.
2. These Regulations, its Annexes and any amendments thereto shall enter into force on the date of adoption.
3. These Regulations shall supersede the Practice Direction entitled “Interim Legal Aid Regulations – Practice Direction on Requests for Assignment of Counsel and for Legal Aid” (KSC-BD-06) adopted on 21 December 2018 and amended on 16 May 2019.

### Regulation 5 Data Protection

1. All personal data collected pursuant to these Legal Aid Regulations shall be stored and processed in line with the Specialist Chambers’ Administrative Directive on Information Asset Management and Operational Instruction on Information Asset Protection. Such personal data shall only be transferred to other authorities, including the Competent Panel, to the extent necessary for the performance of lawful, legitimate, and specific purposes, and in accordance with the above-mentioned regulations.
2. The personal data referred to in paragraph (1) shall be retained for the duration of the judicial proceedings before the Specialist Chambers and thereafter erased or destroyed in accordance with the Specialist Chambers’ retention schedules, unless otherwise provided or otherwise ordered by the Competent Panel.

## SECTION A LEGAL AID FOR SUSPECT AND ACCUSED

### CHAPTER II Award of Legal Aid

#### Regulation 6 Legal Aid Request

1. An indigent or partially indigent suspect or Accused may be awarded legal aid pursuant to Article 34(7) of the Law. The burden to prove indigence or partial indigence lies with the suspect or the Accused.

2. As soon as possible, but at least within seven (7) days of the commencement of any Stage of the Proceedings as set forth in Regulation 15, a suspect or Accused claiming indigence or partial indigence and requesting the assignment of Counsel shall complete, sign and submit:
  - a. to the Registrar, a request for the assignment of Counsel;
  - b. to the Defence Office, a Legal Aid Request Form together with a Declaration of Means Form, as well as any Consent Forms authorising the release of financial information or any other authorisations required by the Defence Office to verify the correctness of the information provided in the Legal Aid Request Form and Declaration of Means Form.
3. The Legal Aid Request Form shall contain an attestation that the suspect or Accused:
  - a. does not have sufficient means to remunerate Counsel and accordingly requests legal aid;
  - b. provides authorisations for the Specialist Chambers to verify the correctness of the information provided in the Legal Aid Request Form and Declaration of Means Form;
  - c. confirms his or her obligation to cooperate with the Specialist Chambers in the assessment of his or her indigence or partial indigence;
  - d. confirms his or her obligation to update his or her Declaration of Means Form at any time a change relevant thereto occurs, not to provide false information and not to omit relevant information;
  - e. confirms his or her obligation to reimburse the Specialist Chambers for the costs of his or her legal representation in case he or she:
    - (1) fails to cooperate in the assessment of his or her indigence or partial indigence, as required pursuant to these Regulations;
    - (2) provides false information, or intentionally omits to provide relevant information for the purpose of the assessment of his or her indigence or partial indigence;
  - f. declares that the information contained in the Legal Aid Request Form and Declaration of Means Form is true and complete to the best of his or her knowledge.

Where requested by the Head of Defence Office, the suspect or Accused shall have the Legal Aid Request Form, and/or the Consent Form, and/or any other required authorisations certified or notarised by an appropriate authority, as determined by the Head of Defence Office.

4. The Declaration of Means Form shall contain all relevant information requested concerning the means of the suspect or Accused, including:
  - a. his or her personal details, marital status, and means;
  - b. personal details of his or her spouse and children and means of his or her spouse;
  - c. personal details and means of Members of his or her household and of any other financially associated persons;
  - d. employment history;
  - e. receipt of family or social benefits and of any other monetary and in-kind benefits;
  - f. benefits based on Kosovo Law No. 05/L-054 and any other governmental or non-governmental contributions that the suspect or Accused is eligible to receive, including available contributions to the suspect's or Accused's representation and financial support to their family members;
  - g. any immovable and movable property; and
  - h. any financial commitments.

The suspect or Accused shall annex to the Declaration of Means Form any relevant Supporting Documentation to establish his or her claim of indigence or partial indigence.

### **Regulation 7 Legal Aid Request Procedure**

1. Upon receipt, the Defence Office shall evaluate the completeness of the documentation provided pursuant to Regulation 6(2)(b). If deemed incomplete, the Defence Office shall request that the suspect or Accused complete or correct the relevant information.
2. As soon as the Defence Office deems that the documentation provided is complete, it shall transmit all documentation to the Registrar.
3. In order to determine whether the suspect or Accused is indigent or partially indigent, the Registrar shall conduct an Indigence Assessment pursuant to Regulation 8.
4. Where the Registrar is unable to properly assess the claim of indigence or partial indigence due to the lack of cooperation of the suspect or Accused, or due to insufficient information provided by him or her, he or she shall be given a further opportunity to disclose relevant information and shall be advised that the request for legal aid will otherwise be rejected if the relevant information is not provided.
5. The Registrar shall conduct the Indigence Assessment pursuant to paragraph (3) and Regulation 8 in a timely manner and shall finalise it as soon as possible.

### **Regulation 8 Indigence Assessment**

1. The Indigence Assessment by the Registrar shall be based on, *inter alia*:
  - a. the documentation provided pursuant to Regulation 6; and
  - b. an inquiry into the suspect's or Accused's means, including the means of his or her spouse, of Members of his or her household, and of any other financially associated persons.
2. The inquiry shall assess the disposable means of the suspect or Accused and shall deduct from the disposable means the suspect's or Accused's estimated living expenses for the purposes of calculating the amount available to the suspect or Accused to contribute to his or her legal representation before the Specialist Chambers. This calculation shall be carried out in accordance with Annex A.

### **Regulation 9 Decision on Legal Aid Request**

1. Upon conclusion of the Indigence Assessment pursuant to Regulation 8, the Registrar shall take a decision on the request for legal aid as follows:
  - a. where the Registrar concludes that the suspect or Accused is indigent or partially indigent, the request for legal aid shall be granted, in whole or in part;
  - b. where the Registrar concludes that the suspect or Accused can fully contribute to his or her legal representation before the Specialist Chambers as referred to in Regulation 8(2), the request for legal aid shall be denied;
  - c. where the Registrar cannot assess the indigence of the suspect or Accused, the request for legal aid shall be denied, in particular if the suspect or Accused:
    - (1) fails to cooperate in the assessment of his or her indigence or partial indigence; and/or

(2) provides false information, or intentionally omits relevant information for the purpose of the assessment of his or her indigence or partial indigence.

The suspect or Accused shall, without delay, be notified of any decision under this paragraph.

2. In the decision granting legal aid, the Registrar shall inform the suspect or the Accused that the decision may be retroactively amended and that reimbursement may be requested at any time in the five (5) years after the last transfer of the Legal Aid Fee pursuant to Regulation 19.
3. Where the Registrar grants legal aid to a partially indigent suspect or Accused, the Registrar shall inform that person that he or she shall contribute to the costs of his or her Assigned Counsel, and the Registrar shall determine the periodic or total amount of that contribution pursuant to Annex A. The Registrar may review this decision at the end of each Stage of the Proceedings or on a yearly basis, whichever comes first.
4. The Registrar may review a decision pursuant to this Regulation, *proprio motu* or upon request by the suspect or the Accused, when:
  - a. the decision is significantly affected by a change of circumstances, or new relevant information comes to the Registrar's attention; or
  - b. the suspect or Accused has provided false information or intentionally omitted information of significance to the decision to award legal aid.

The Registrar may deny a request to review a decision when the conditions set forth in this paragraph are not met.

5. Should the Registrar review a decision, the Registrar may apply Regulation 6 to Regulation 8 *mutatis mutandis*. Upon review, the Registrar may confirm, amend or reverse the decision pursuant to paragraph (1) or issue a new decision pursuant to paragraph (1), including with retroactive effect, and may decide on reimbursement of legal aid.
6. The suspect or Accused shall inform the Defence Office without undue delay of any change to his or her means that could significantly affect decisions under this Regulation until five (5) years after the end of the last Stage of Proceedings for which he or she was granted legal aid.
7. To ensure a person's security and safety or in urgent matters, the Registrar may decide to deviate from the provisions of Regulations 5 to 8 and grant Legal Aid without the requirements set out in those Regulations. In particular, the Registrar may decide to conduct an Indigence Assessment at a later stage.

## **Regulation 10 Review by the Competent Panel**

1. Upon request by the suspect or Accused, any decision on legal aid pursuant to Regulation 9 may be subject to review by the Competent Panel. Any such request for review shall be filed by the suspect or Accused within seven (7) days of receiving notification of the decision.
2. Where a request for review pursuant to paragraph (1) is primarily based on new facts, not previously brought before the Registrar, the matter should first be addressed to the Registrar for review pursuant to Regulation 9(4).



## Regulation 11 Conditional Assignment of Counsel

1. Pending the assignment of Counsel pursuant to Section 14(2) of the Directive and Regulation 20, the Registrar may conditionally assign Counsel to the suspect or Accused pursuant to Section 14(3) of the Directive. Regulation 20(2) shall apply *mutatis mutandis* in this respect.
2. When conditionally assigning Counsel, the Registrar shall inform the suspect or Accused that he or she shall reimburse full or partial costs of legal representation if it is subsequently established that he or she is not indigent or only partially indigent, or if the suspect or Accused:
  - a. has failed to cooperate in the assessment of his or her indigence or partial indigence; or
  - b. has provided false information, or intentionally omitted relevant information for the purpose of the assessment of his or her indigence or partial indigence.
3. Pending decisions pursuant to Regulation 9 and Regulation 18, the Registrar shall apply *mutatis mutandis* CHAPTER III and CHAPTER V for the purpose of entering into a Contract with and remunerating Counsel conditionally assigned pursuant to Section 14(3) of the Directive.
4. Upon request by the suspect or Accused, any decision pursuant to paragraph (1) may be subject to review by the Competent Panel, pursuant to Rule 26(1) of the Rules and Section 14(2) of the Directive. Any such request for review shall be filed by the suspect or Accused within seven (7) days of receiving notification of the decision.

## Regulation 12 Reimbursement of Legal Aid

1. Where, pursuant to these Regulations, the Registrar decides that a suspect or Accused has the obligation to reimburse the Specialist Chambers for the costs of his or her legal representation, the Registrar shall notify him or her of this decision. The Registrar's decision on reimbursement shall include the amount of and the time limit for the reimbursement. Regulation 11(4) shall apply *mutatis mutandis*.
2. The Registrar and the suspect or Accused may agree on a payment scheme for the reimbursement.
3. Where the suspect or Accused does not reimburse the amount within the set time limit or payment scheme, the Registrar may take action within the applicable legal framework to recover the relevant amounts, including by addressing the Competent Panel.

## CHAPTER III Legal Aid Fee

### Regulation 13 General Principles

1. Following a decision to grant the request for legal aid pursuant to Regulation 9(1), the amount of the Legal Aid Fee shall be determined on the basis of:
  - a. the Stage of the Proceedings, as determined pursuant to Regulation 15, and its expected duration for which legal aid is granted;
  - b. if applicable, the Complexity Level of the case, as determined pursuant to Regulation 16;
  - c. the scope of services (Part-Time or Full-Time) required by Counsel and his or her Team, as set forth in Regulation 17 and in Section 1 of Annex C;
  - d. the maximum amounts of the Legal Aid Fee for crimes under Articles 13, 14, 15(1), and 16(1)-(2) of the Law, as set forth in Section 2(1) of Annex C;

- e. the maximum amounts of the Legal Aid Fee for crimes under Articles 15(2) and 16(3) of the Law, as set forth in Section 2(2) of Annex C.
2. At the latest within one (1) week of the commencement of the relevant Stage of the Proceedings, or as soon as practicable when the need for legal aid arises, Counsel conditionally assigned pursuant to Section 14(3) of the Directive, Duty Counsel or Assigned Counsel, as applicable, shall submit to the Registrar a Plan of Activities pursuant to Annex B. Any Plan of Activities shall be treated confidentially by the Registrar and shall only be disclosed to the Competent Panel, if and insofar as relevant to any judicial review under these Regulations.
3. Counsel shall be responsible for the composition of his or her Team. Each Team Member shall meet the requirements of Section 18 of the Directive and Regulation 29.
4. Pursuant to Regulation 24 and subject to Counsel-client privilege, the Head of Defence Office shall oversee the spending of the Legal Aid Fee in order to ensure the sound financial management of resources.

### Regulation 14 Legal Aid Fee

The Legal Aid Fee shall cover the following:

- a. remuneration of Counsel and members of his or her Team pursuant to the principles set forth in Regulation 13;
- b. reimbursement of costs actually incurred by Counsel and his or her Team, as allotted in accordance with Section 3(1) or Section 3(2) of Annex C, as applicable:
  - (1) costs of investigations, including remuneration of external investigators and travel costs;
  - (2) translation and interpretation costs;
  - (3) miscellaneous costs arising in connection with the representation of the suspect or Accused, where determined necessary by the Head of Defence Office.

### Regulation 15 Stages of the Proceedings

1. For the purposes of these Regulations, the Stages of the Proceedings shall be determined as follows:
  - a. the Pre-Indictment Stage shall commence with the filing of any motion or request prior to the confirmation of an indictment, and shall end with the decision to confirm or dismiss the charges, pursuant to Rule 86(5) of the Rules;
  - b. the Pre-Trial Stage shall commence with the decision to confirm the charges, and shall end with the transmission of the Case File to the Trial Panel, pursuant to Rule 98 of the Rules;
  - c. the Trial Stage shall commence with the transmission of the Case File to the Trial Panel or with the reconvening of the Trial Panel pursuant to Article 48(4)(b)(i) of the Law, as applicable, and shall end with the pronouncement of:
    - (1) a decision dismissing the charges, pursuant to Rule 130 of the Rules;
    - (2) the Trial Judgment, pursuant to Rule 159 of the Rules; or
    - (3) the Sentencing Judgment, pursuant to Rule 164;
  - d. the Second Instance Appellate Stage shall commence with the pronouncement of the Trial or Sentencing Judgment, as applicable, and shall end with the pronouncement of the Appeal Judgment by a Court of Appeals Panel, pursuant to Rule 183 of the Rules;

- e. where applicable, the Third Instance Appellate Stage shall commence with the pronouncement of the Appeal Judgment by a Court of Appeals Panel, and shall end with the pronouncement of the Appeal Judgment by a Supreme Court Panel, pursuant to Rules 183 and 186 of the Rules.
2. For the assignment of Counsel prior to the start of the Pre-Indictment Stage, the provisions relevant to the Pre-Indictment Stage shall apply *mutatis mutandis*.

## Regulation 16 Complexity of the Case

1. At the latest within two (2) weeks of the commencement of the relevant Stage of the Proceedings other than the Pre-Indictment Stage, or as soon as practicable when the need for legal aid arises, the Registrar shall determine the Complexity Level of a case in consultation with the Competent Panel and Counsel conditionally assigned pursuant to Section 14(3) of the Directive, Duty Counsel or Assigned Counsel, as applicable, in accordance with the criteria pursuant to paragraphs (3) and (4) and on the basis of:
  - a. the Work Plan of the Competent Panel, pursuant to Rules 95(2)(a) and 116(1) of the Rules, if available; and
  - b. the Plan of Activities, pursuant to Regulation 13(2) and Annex B.
2. The Complexity Level of a case shall be determined as follows:
  - a. Complexity Level 1: standard;
  - b. Complexity Level 2: difficult;
  - c. Complexity Level 3: very difficult.
3. For the purpose of determining the Complexity Level of a case, the following general factors, as applicable, shall be considered:
  - a. number and nature of charges in the indictment;
  - b. suspect or Accused's alleged position within a political or military hierarchy;
  - c. geographical and temporal scope of the case;
  - d. number and type of witnesses and documents involved;
  - e. number of victims or groups of victims expected to participate in the proceedings;
  - f. complexity of the legal and factual arguments involved;
  - g. whether the case raises any novel issues.
4. In respect of the Second and Third Instance Appellate Stages, the following additional factors shall be considered:
  - a. length and complexity of the judgment subject to appeal;
  - b. whether there is a cross-appeal;
  - c. number and nature of the expected grounds for appeal;
  - d. sentence imposed;
  - e. scope of the expected requests for additional evidence;
  - f. number and type of documents, in particular new documents, involved.

## Regulation 17 Calculation of Legal Aid Fee

1. The applicability of Full-Time and Part-Time services is set forth in Section 1 of Annex C. In the decision pursuant to Regulation 18(2), the Registrar shall determine, based on the Work Plan of

the Competent Panel, when Part-Time services will start. Part-Time services will usually be required:

- a. at the Pre-Indictment Stage for Assigned Counsel of a suspect;
  - b. at the Second and Third Instance Appellate Stages after expiry of the time limit for the filing of the last briefs of Assigned Counsel as provided for in Rules 179 and 186(3) of the Rules.
2. Any Legal Aid Fee for Part-Time services, as set forth in Section 1 of Annex C, shall be calculated in line with the maximum amount of the Part-Time Legal Aid Fee for each relevant Stage of the Proceedings, as set forth in Section 2(1) or Section 2(2) of Annex C, as applicable.
  3. Where the Registrar considers that the expected Part-Time services require a lower or higher amount than that set forth in Section 2(1) or Section 2(2) of Annex C, as applicable, he or she shall reduce or increase the amount of the Legal Aid Fee accordingly. In any case, a Legal Aid Fee based on Part-Time services shall not exceed the respective Legal Aid Fee for Full-Time services.
  4. Except where the Registrar decides to apply the Part-Time Legal Aid Fee to the Pre-Indictment Stage, the calculation of Assigned Counsel's Legal Aid Fee at the Pre-Indictment Stage shall be based on an hourly rate for Assigned Counsel. The hourly rate is set forth in Section 4 of Annex C.
  5. Upon two (2) weeks of reduced workload during periods of Full-Time services, the Registrar may proceed pursuant to Regulation 18(5) and decide to convert Full-Time services to Part-Time services prospectively until the end of the reduced workload period. In this case, the relevant Legal Aid Fee shall be calculated on the basis of half of the maximum monthly amount of the Full-Time Legal Aid Fee, as set forth in Section 2(1) or Section 2(2) of Annex C, as applicable. This paragraph shall apply to periods of reduced workload foreseeably lasting more than one (1) month and during which the amount of work by Counsel and his or her Team will be substantially reduced, including during judgment deliberations, extended translations or temporary stays of proceedings.
  6. The Legal Aid Fee shall not be dependent upon Counsel contracting more or less Team Members than indicated pursuant to Regulation 28(2).

### **Regulation 18 Decision on Legal Aid Fee**

1. At the latest within one (1) month of the commencement of the relevant Stage of the Proceedings, or as soon as practicable when the need for legal aid arises, the Registrar shall provisionally determine the amount of the Legal Aid Fee in accordance with Regulation 13(1), including separate amounts for periods of Part-Time and Full-Time services, if applicable.
2. The Registrar shall notify the amount of the provisionally determined Legal Aid Fee to Counsel conditionally assigned pursuant to Section 14(3) of the Directive, Duty Counsel or Assigned Counsel, as applicable, and with whom the Registrar may discuss the amount. Where a decision on the amount of the Legal Aid Fee is reached, the Registrar shall, as applicable:
  - a. assign Counsel to represent the suspect or Accused pursuant to Regulation 20 and Section 12(1)(b) of the Directive;
  - b. upon the assignment, award a Contract to Counsel pursuant to Regulation 22;
  - c. take any other action as required based on the decision on the amount of the Legal Aid Fee.
3. In case:
  - a. no decision on the amount of the Legal Aid Fee is reached pursuant to paragraph (2);

- b. the suspect or Accused has not selected Counsel; or
  - c. selected Counsel may not be assigned pursuant to Regulation 20(2);
- the Registrar shall consult with the Independent Representative Body of Specialist Counsel for the purpose of identifying Counsel available and willing to be assigned to the suspect or Accused.
4. Within two (2) weeks of this notification by the Registrar, Counsel interested in being assigned shall notify the Registrar accordingly. On that basis and within one (1) week, the Registrar shall provide the names of such interested Counsel to the suspect or Accused pursuant to Regulation 20. Upon the selection of Counsel by the suspect or Accused, the Registrar shall request Counsel to submit a Plan of Activities pursuant to Annex B, in order to proceed pursuant to paragraph (2)(a) and (b).
  5. Where the Registrar subsequently decides to amend the amount of the Legal Aid Fee agreed upon pursuant to paragraph (2), the Registrar shall immediately notify Assigned Counsel and provide a reasoned decision.
  6. Where, during the course of proceedings, Assigned Counsel considers that the Legal Aid Fee agreed upon pursuant to paragraph (2) is not sufficient, he or she may request that the Registrar amend the Legal Aid Fee accordingly. Within two (2) weeks of receipt of this request, the Registrar shall render a reasoned decision on the request and notify Assigned Counsel.
  7. Within seven (7) days of notification of a decision pursuant to paragraphs (5) or (6), Assigned Counsel may file a reasoned request for review of the decision before the Competent Panel.

### **Regulation 19 Transfer of Legal Aid Fee**

1. Upon submission of the documents pursuant to Regulation 23(3) and taking into account any changes to the total amount of the Legal Aid Fee during this period, Assigned Counsel shall receive after the end of each month of the relevant Stage of Proceedings:
  - a. 80 percent of the remuneration pursuant to Regulation 14(a), in monthly instalments;
  - b. 100 percent of the costs actually incurred by Counsel and his or her Team pursuant to Regulation 14(b).
2. Where a Stage of the Proceedings includes Full-Time and Part-Time services, the monthly instalments shall be calculated separately for the periods relating to each of these services.
3. At the end of each month, Assigned Counsel may submit invoices for the reimbursement of costs actually incurred by him or her or by his or her Team pursuant to Regulation 14(b), as Assigned Counsel deems necessary.
4. Upon submission of the End-of-Stage-Report pursuant to Regulation 23(4), taking into account the Head of Defence Office's advice pursuant to Regulation 24(5), the Registrar shall decide upon the final total amount of the Legal Aid Fee, based on the duration of the Stage of Proceedings, taking into account any changes to the total amount of the Legal Aid Fee during this period. The Registrar shall immediately notify Assigned Counsel of the decision pursuant to this paragraph. The total amount of the Legal Aid Fee shall be reconciled with outstanding amounts, if any, and shall be transferred to Assigned Counsel.
5. Where a Legal Aid Fee is paid based on an hourly rate in accordance with these Regulations, Counsel shall receive the final amount of the Legal Aid Fee upon provision of the documents pursuant to Regulation 23(3) and on the basis of the actual services performed.

6. Within seven (7) days of notification of the decision pursuant to paragraphs (4) or (5), Assigned Counsel may file a reasoned request for review of the decision before the Competent Panel.

## CHAPTER IV Assignment of Counsel

### Regulation 20 Assignment of Counsel

1. Upon the suspect or Accused's request pursuant to Regulation 6(2)(a), the Registrar shall assign Counsel pursuant to Sections 14(1) and (2) of the Directive, if:
  - a. the Registrar has determined that the suspect or Accused is indigent or partially indigent pursuant to Regulation 9;
  - b. the Registrar has rendered a decision on the Legal Aid Fee pursuant to Regulation 18; and
  - c. Counsel has submitted all documents necessary to be awarded a Contract pursuant to Regulation 22.

The Registrar shall immediately notify the suspect or Accused of any decision pursuant to this paragraph, including when denying a legal aid request pursuant to Regulation 9(1)(b) or (c).

2. In the decision pursuant to paragraph (1), the Registrar shall take into consideration the preferences expressed by the suspect or Accused, subject to overriding considerations for ensuring secure, independent, impartial, fair and efficient criminal proceedings before the Specialist Chambers, where the interests of justice and relevant and sufficient grounds so require.
3. Regulation 11(4) shall apply *mutatis mutandis* with respect to the assignment of Counsel under this Regulation.

### Regulation 21 Assignment of Duty Counsel

1. The Registrar shall assign Duty Counsel to the suspect or Accused under the conditions set forth in Section 17(2) of the Directive and Regulation 20(2).
2. Regulation 11(2), (3) and (4) shall apply *mutatis mutandis* with respect to the assignment and the Legal Aid Fee of Duty Counsel. Taking into account Regulation 13(1), where the Registrar determines that it is not appropriate to apply a Full-Time or Part-Time Legal Aid Fee due to the limited duration of Duty Counsel's services, the calculation of Duty Counsel's Legal Aid Fee shall be based on an hourly rate as set forth in Section 4 of Annex C.
3. Two (2) weeks after the completion of his or her services, Duty Counsel shall send a completed time-sheet, including all documentation for costs that he or she has incurred, to the Head of Defence Office for verification and approval.
4. Where Duty Counsel has been assigned pending appointment or assignment pursuant to Section 12 of the Directive, the Registrar and Duty Counsel shall take all necessary steps to ensure a smooth and efficient transfer of representation from Duty Counsel to subsequently Appointed or Assigned Counsel.

## CHAPTER V Contract and Oversight

### Regulation 22 Contract for Assigned Counsel

1. Prior to his or her assignment and for the purpose of entering into a contract with the Registrar, Counsel shall submit to the Head of Defence Office:
  - a. any relevant documentation, not older than one [1] year, demonstrating that Counsel continues to fulfil the requirements of Section 5 of the Directive;
  - b. a certificate, not older than one [1] year, issued by the competent authorities of the State(s) concerned providing that Counsel has covered all of his or her taxes and social security contributions for which Counsel is liable. Where the document described above is not issued in the State(s) concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in the State of establishment;
  - c. any relevant documentation demonstrating that Counsel has the necessary capacity to perform the Contract, in particular:
    - (1) proof of professional indemnity insurance in line with the requirements of the relevant bar association or similar institution for that year; or
    - (2) in the absence of such insurance, a recent statement of his or her professional account; and
    - (3) additional information as may be required by the Head of Defence Office.
  - d. a declaration that Counsel does not have any conflicts of interest, which may hinder the award of the Contract; and
  - e. a confidentiality undertaking provided by the Head of Defence Office.
2. Upon submission of all relevant documents pursuant to paragraph (1), Assigned Counsel shall enter into a Contract with the Registrar. Article 24 of the Host State Agreement applies to Assigned Counsel and his or her Team Members.
3. Upon signature of the Contract, the Head of Defence Office shall inform Assigned Counsel of the internal regulations applicable to the use of the premises, assets and electronic systems of the Specialist Chambers.

### Regulation 23 Obligations under the Contract

1. At all times, Assigned Counsel shall:
  - a. respect and abide by the Code of Professional Conduct, the Directive and these Regulations;
  - b. upon request, supply any information and documentation relevant to these Regulations to the Head of Defence Office, without delay and subject to the Counsel-client privilege;
  - c. account in good faith for the time and the services of his or her Team Members;
  - d. where the performance of his or her duties is substantially affected by any internal or external circumstances, immediately report it to the Head of Defence Office; and
  - e. keep any records relevant to the performance of his or her Contract for a period of five (5) years after the final payment received pursuant to Regulation 19(4) and (5).



2. Assigned Counsel shall keep the Plan of Activities submitted pursuant to Regulation 13(2) and Annex B updated and shall share it with the Head of Defence Office when submitting the End-of-Stage-Report pursuant to paragraph (4).
3. At the end of each month, Assigned Counsel shall electronically submit to the Head of Defence Office:
  - a. his or her time-sheets and those of the Team in a standardised form provided by the Defence Office for this purpose;
  - b. any invoice for costs arising pursuant to Regulation 14(b), substantiating that Assigned Counsel actually incurred and paid for these costs; and
  - c. in respect of costs arising pursuant to Regulation 14(b), time-sheets of investigators, substantiating and supporting the expenses.
4. Within one (1) month of the end of a Stage of Proceedings, Assigned Counsel shall submit an End-of-Stage-Report in a standardised form provided by the Defence Office for this purpose. This Report shall include:
  - a. for each month,
    - (1) the name of each Team Member, his or her respective tasks and a detailed description of the work he or she performed; and
    - (2) proof that each Team Member has been remunerated by Assigned Counsel.
  - b. for the entire Stage of Proceedings,
    - (1) the total number of hours worked, organised by Team Member and by category of work;
    - (2) a summary of the work performed and the output achieved by Assigned Counsel and his or her Team, with sufficient specificity to allow for an accurate and exhaustive verification that the work was performed, including number and names or pseudonyms of witnesses met and interviewed, amount of research performed, filings prepared, filings submitted, amount and length of material reviewed; and
    - (3) a summary of the costs incurred, including reference to invoices submitted pursuant to paragraph (3)(b).

## **Regulation 24 Procedure for Oversight and Monitoring**

1. For the purpose of overseeing the spending of the Legal Aid Fee and in order to ensure the sound financial management of resources, the Defence Office shall:
  - a. verify the time-sheets and invoices provided pursuant to Regulation 23(3); and
  - b. verify and approve the End-of-Stage-Report provided pursuant to Regulation 23(4).
2. Where upon verification pursuant to paragraph (1)(a), the Head of Defence Office identifies issues regarding Assigned Counsel's adherence to his or her obligations pursuant to Regulation 23 or irregularities in the work carried out by Assigned Counsel and his or her Team, the Head of Defence Office, upon consultation with the Registrar, may decide to withhold in full or in part the next monthly instalment of the Legal Aid Fee until resolution of the matter, and shall notify Assigned Counsel thereof immediately. Within seven (7) days of this notification, Assigned Counsel may file a reasoned request for review of this decision with the Registrar.



3. In conducting the verification pursuant to paragraph (1)(b), the Head of Defence Office shall ensure that:
  - a. the work performed by each Team Member is sufficiently described to establish whether it was carried out in accordance with the Competent Panel's Work Plan and Assigned Counsel's Plan of Activities;
  - b. the work reported was actually performed and justifies the receipt of the full Legal Aid Fee;
  - c. the Team Members were remunerated; and
  - d. invoices were paid.
4. Where deemed necessary by the Head of Defence Office for the purpose of the verification referred to paragraph (1)(b), the Head of Defence Office may request within one (1) month of receipt of the End-of-Stage-Report that Assigned Counsel provide additional information on any relevant matter.
5. Where, on the basis of the verification referred to paragraph (1)(b), the Head of Defence Office concludes that Assigned Counsel has delivered his or her services in accordance with his or her obligations pursuant to Regulation 23 and the decision of the Registrar pursuant to Regulation 18, the Head of Defence Office shall advise the Registrar regarding the final total amount of the Legal Aid Fee to be transferred to Assigned Counsel pursuant to Regulation 19(4).
6. Where the Head of Defence Office has reason to believe that there are irregularities in the work or conduct of Assigned Counsel or of his or her Team Members, he or she shall advise the Registrar accordingly and shall propose a course of action. Where the Head of Defence Office's advice concerns alleged manifest failures by Assigned Counsel to provide effective representation, the Registrar may, having notified Assigned Counsel, refer the matter to the Competent Panel for a decision pursuant to Rules 64 or 75(4) of the Rules or take any measure deemed appropriate under the Directive, the Code of Professional Conduct, these Regulations or the Contract for Assigned Counsel.

## **Regulation 25 Other Remuneration of Assigned Counsel**

1. The remuneration provided for in the Contract for Assigned Counsel and these Regulations shall be the only remuneration or benefit Assigned Counsel may derive in connection with or from the Contract. Assigned Counsel may not exercise any activity or receive any remuneration or benefit inconsistent with the Contract and these Regulations and shall ensure that his or her Team abide by the same principles.
2. Assigned Counsel shall not enter into a fee-splitting arrangement, including but not limited to a financial arrangement with the suspect or Accused, his or her relatives, or any other financially associated persons.
3. Assigned Counsel shall immediately disclose to the Head of Defence Office any (prospective) payments to him or her, or to his or her Team, or to any other persons assisting the suspect or Accused pursuant to Kosovo Law No. 05/L-054 or other similar provision. The Head of Defence Office shall notify the Registrar accordingly, who shall decide how to proceed, in particular whether to:
  - a. review the decision pursuant to Regulation 9; or

- b. terminate the assignment of Assigned Counsel pursuant to Regulation 27 and Section 16 of the Directive and proceed pursuant Section 13 of the Directive.

### **Regulation 26 Abuse of Legal Aid by Assigned Counsel**

1. The following shall be considered by the Registrar as abuse of legal aid by Assigned Counsel:
  - a. submission by Assigned Counsel of invoices, time-sheets or the End-of-Stage-Report pursuant to Regulation 23(3) and (4) that are false, inflated or fictitious;
  - b. knowledge that the Declaration of Means Form or Supporting Documentation submitted by the suspect or Accused pursuant to Regulation 6(4) is false or incomplete where this false information or intentional omission was relevant to the Decision on the request for legal aid pursuant to Regulation 9.
2. Where the Registrar establishes an abuse of legal aid by Assigned Counsel, the Registrar may take the necessary measures to recover the relevant amount, in particular by:
  - a. taking this amount into account in the decision pursuant to Regulation 19(4); and/or
  - b. requesting Assigned Counsel to reimburse a set amount.The Registrar shall render a reasoned decision pursuant to this paragraph and shall notify Assigned Counsel of the decision.
3. Within seven (7) days of notification of a decision that establishes an abuse of legal aid pursuant to paragraph (2), Assigned Counsel may file a reasoned request for review of the decision before the Competent Panel.

### **Regulation 27 Suspension or Termination of Contract for Assigned Counsel**

1. The contractual relationship between the Registrar and Assigned Counsel referred to Section 16(2)(d) of the Directive shall end in the following circumstances:
  - a. the suspect or Accused is not or no longer considered indigent and the legal aid is denied pursuant to Regulation 9;
  - b. Assigned Counsel is in serious breach of his or her obligations under the Contract, these Regulations or the Code of Professional Conduct;
  - c. the Registrar has established an abuse of legal aid by Assigned Counsel and rendered a decision pursuant to Regulation 26;
  - d. Assigned Counsel is for any other reason unable to perform the Contract.
2. If the Registrar ends the contractual relationship with Counsel pursuant to paragraph (1)(a)-(d), the Registrar shall proceed pursuant to Section 16(1) of the Directive.
3. A request to end representation pursuant to Section 16(2)(b) of the Directive shall be filed with the Registrar, who shall proceed pursuant to Section 16(1) of the Directive.
4. Upon approval of the Panel pursuant to Section 16(1) of the Directive, the Registrar shall issue the decision to terminate or suspend representation by Assigned Counsel pursuant to Section 16(2) to 16(4) of the Directive. The decision shall have immediate effect.
5. Upon termination or suspension of representation, the contractual relationship between the Registrar and Assigned Counsel shall terminate or be suspended upon seven (7) days written notice of the decision. The Registrar may decide to extend this period, if appropriate. Assigned Counsel shall take immediate steps in accordance with Article 25 of the Code of Professional Conduct.

## CHAPTER VI Team of Counsel

### Regulation 28 Team Members

1. In addition to Assigned Counsel, his or her Team may include Co-Counsel, Legal Associates and Support Team Members.
2. Team composition is subject to a determination by Assigned Counsel on the basis of the necessities of the case and in consultation with the Registrar. Assigned Counsel's Team for crimes under Articles 13, 14, 15(1), and 16(1)-(2) of the Law may be composed as set forth in Section 2 of Annex C.
3. In composing his or her Team, Assigned Counsel shall take into account the Accused's right to a fair trial without undue delay. Where the Registrar or the Competent Panel considers that the composition of Assigned Counsel's Team compromises the quality of its work or disrupts the fair and efficient conduct of proceedings, they may intervene to prevent such practices.
4. Any decision by the Registrar pursuant to paragraph (3) may be subject to review by the Competent Panel upon request by the suspect, Accused or Assigned Counsel, which shall be filed within seven (7) days of receiving notification of the decision.

### Regulation 29 Approval pursuant to Section 18 of the Directive on Counsel

1. Any person to be engaged by Assigned Counsel to work under his or her oversight and/or to assist him or her shall meet the requirements laid down in Section 18(3) of the Directive and shall be approved by the Registrar in accordance with this Regulation and Section 18(1) of the Directive. Where such a person is a relative of Assigned Counsel or the suspect or Accused, he or she shall request approval demonstrating good cause for this selection.
2. Assigned Counsel shall submit the request for the approval of a person referred to in paragraph (1) through the Head of Defence Office together with the material supporting the requirements set forth in this Regulation and the Directive, including, as applicable, a Team Member's contract(s) with Assigned Counsel.
3. Co-Counsel shall meet the requirements of Chapter II of the Directive. In his or her decision approving Co-Counsel, the Registrar shall take into account any determination of working languages by the Competent Panel pursuant to Article 20 of the Law and whether Co-Counsel's knowledge of working languages is complementary to that of Assigned Counsel.
4. A Legal Associate shall meet the following minimum requirements:
  - a. successful completion of university studies with a duration of three (3) years, attested by a diploma at Bachelor's level and proof of concluded studies in the field of law, criminology or similar, or as required by the case;
  - b. written and oral proficiency in at least one of the official languages of the Specialist Chambers; and
  - c. after having fulfilled the education requirements, a minimum of three (3) years of relevant professional work experience.
5. A Support Team Member shall meet the following minimum requirements:

- a. successful completion of secondary education, attested by a diploma or certificate, or equivalent attested police or military education or training or an award of an equivalent rank;
  - b. written and oral proficiency in at least one of the official languages of the Specialist Chambers; and
  - c. after having fulfilled the education requirements, a minimum of five (5) years of relevant professional work experience. The completion of university studies with a duration of three (3) years, attested by a diploma at Bachelor's level and proof of concluded studies, may be considered as a substitute for two years' working experience.
6. Before the Registrar's approval of a prospective Co-Counsel, Legal Associate or Support Team member, Assigned Counsel shall establish that he or she will receive a remuneration that respects the minimum criteria established in Regulation 30.

### **Regulation 30 Contract with Team Members**

1. Assigned Counsel shall be responsible for engaging and remunerating Team Members. This shall not create any contractual relations between a Team Member and the Specialist Chambers.
2. Assigned Counsel shall be responsible for the activities, performance and output of the Team Members.
3. Assigned Counsel, in remunerating Team Members, shall be guided by these Regulations and shall, in particular, apply the following:
  - a. for Legal Associates: at a minimum, the remuneration shall equal the salary of a third year lawyer trainee in the Host State, as annually set forth and indexed by the Dutch Bar Association ([www.advocatenorde.nl](http://www.advocatenorde.nl)) in the "Richtlijn arbeidsvoorwaarden stagiaires"; and
  - b. for Support Team Members: at a minimum, the remuneration shall equal the minimum wage of the Host State.
4. Assigned Counsel shall ensure that:
  - a. his or her professional insurance covers the activities of Team Members or that they provide their own professional insurances;
  - b. the working conditions of Team Members are in accordance with those of the State in which the Team Members primarily carry out their services for Assigned Counsel;
  - c. pursuant to Regulation 25, Team Members do not enter into any fee-splitting arrangements or are remunerated by other sources for services provided to Assigned Counsel.
5. Upon approval and engagement, Assigned Counsel shall inform the Team Members of all applicable legal provisions relevant to their services, including the internal regulations referred to in Regulation 22(3).

## **SECTION B LEGAL AID FOR VICTIMS**

### **Regulation 31 Assignment of Victims' Counsel**

1. In preparation for the assignment of Counsel to a Group of Victims pursuant to Rule 113(6) and (7) of the Rules, the Victims' Participation Office shall collect all information necessary pursuant to Section 15(1) of the Directive.

2. On the basis of Section 15(1)(b) and (c) of the Directive, having consulted the Independent Representative Body of Specialist Counsel, the Head of the Victims' Participation Office shall, insofar as possible, propose to the Registrar a Counsel from the List of Victims' Counsel for any assignment pursuant to:
  - a. Rule 113(6) of the Rules, on the first working day after the denial of participation in the proceedings; or
  - b. Rule 113(7) of the Rules, seven (7) days after the decision granting the right to participate in the proceedings.The Head of the Victims' Participation Office shall inform the relevant Counsel of this proposal and shall request that he or she submit all documentation necessary to be awarded a Contract pursuant to Regulation 22(1).
3. Taking into account this proposal and pursuant to Section 15(1) of the Directive, having received all documentation pursuant to Regulation 22, the Registrar shall:
  - a. assign Counsel to the Group of Victims as soon as practicable and inform Counsel accordingly;
  - b. enter into a Contract with Victims' Counsel, pursuant to Regulation 22 and Regulation 35; and
  - c. inform the Victims pursuant to Section 15(2) of the Directive.

### Regulation 32 Legal Aid Fee for Victims

1. Upon assignment of Victims' Counsel pursuant to Section 15 of the Directive, the Registrar may award legal aid to the Group of Victims as a whole in accordance with Regulation 34.
2. A Victim is considered indigent unless he or she has been the subject of a determination of non-indigence by the Registrar pursuant to Regulation 33.

### Regulation 33 Indigence Assessment

1. An indigence assessment may be initiated by the Registrar at any time, where the Registrar has reason to believe that a Victim has significant means.
2. The Registrar shall make an assessment pursuant to paragraph (1) by applying Annex A *mutatis mutandis*. CHAPTER II shall apply *mutatis mutandis*.
3. Where the Registrar determines that a Victim can contribute to the costs of his or her representation, the Victim shall pay a proportionate part of the costs for legal representation.

### Regulation 34 Determination of Legal Aid Fee for Victims

1. CHAPTER III shall apply *mutatis mutandis* and in line with this Regulation to the determination of the Legal Aid Fee for a Group of Victims.
2. In deviation from Regulation 18(1)-(4) and with full respect for the maximum amounts included in in Section 2(1) or Section 2(2) of Annex C, as applicable, the Head of the Victims' Participation Office shall propose the parameters for the calculation of the Legal Aid Fee for the current Stage of the Proceedings and, on that basis, a provisional total amount for the current Stage of the Proceedings to the Registrar at the time of proposing the assignment of Victims' Counsel pursuant to Regulation 31(2).
3. Upon receipt of the proposal from the Head of the Victims' Participation Office, the Registrar shall:

- a. determine the parameters for the calculation of the Legal Aid Fee for the current Stage of the Proceedings; and
  - b. determine the amount of the Legal Aid Fee for the current Stage of the Proceedings.
4. The Registrar's decision pursuant to paragraph (3)(a) shall become part of Victims' Counsel's Contract.
  5. In determining the parameters for the calculation of the Legal Aid Fee, the following criteria shall be considered in consultation with (prospective) Victims' Counsel, if any:
    - a. the envisaged modalities of participation of Victims in the proceedings, as determined by the Competent Panel, including in particular any Guidelines issued pursuant to Rule 114(4), Sentence 2 of the Rules;
    - b. a particularly high or low number of Victims in the Group of Victims;
    - c. the expected amount of time required to communicate with Victims, taking into account their education, backgrounds and/or places of residence;
    - d. any specific expertise required by Victims' Counsel and his or her Team;
    - e. whether any Victim in the relevant Group of Victims will be called as a witness; and
    - f. the expected costs for experts and/or investigators.
  6. Regulation 18(5)-(7) shall apply *mutatis mutandis* to any subsequent amendment of the Legal Aid Fee. In applying those provisions, the Registrar shall give particular consideration to a Group of Victims reaching its full size and/or to the amendments to Victims' Counsel's Plan of Activities or the Work Plan of the Competent Panel.

### Regulation 35 Contract and Oversight

1. CHAPTER V shall apply *mutatis mutandis* to any Contract between the Registrar and Victims' Counsel, to Victims' Counsel's obligations, to the transfer of the Legal Aid Fee to Victims' Counsel, and to the procedure for oversight and monitoring of the spending of the Legal Aid Fee by Victims' Counsel.
2. Pursuant to Regulation 24 and subject to the Counsel-client privilege, the Head of the Victims' Participation Office shall oversee the spending of the Legal Aid Fee in order to ensure the sound financial management of resources. Accordingly, the Head of the Victims' Participation Office shall carry out the roles and responsibilities of the Head of the Defence Office referred to in Chapters V and VI.

### Regulation 36 Victims' Counsel's Team

1. The composition of Victims' Counsel's Team shall be subject to a proposal by Victims' Counsel on the basis of the necessities of the case, as agreed to by the Registrar.
2. In composing his or her Team, Victims' Counsel shall take into account the personal interests and rights of the represented Victims as well as the criteria set forth in Regulation 34(5). Chapter VI shall apply *mutatis mutandis*.

## SECTION C LEGAL AID FOR ANY OTHER PERSON

### Regulation 37 Assignment of Counsel to Any Other Person

1. Where any other person is entitled to legal representation ('Any Other Person') pursuant to the Law, the Rules or an order of the Competent Panel (e.g., pursuant to the implementation and execution of a reparation order), he or she may request the assignment of Counsel pursuant to Section 12(3) of the Directive. CHAPTER II shall apply *mutatis mutandis* in this respect.
2. The Registrar shall assign Counsel to Any Other Person pursuant to Sections 14 and 17 of the Directive and by applying Regulation 20(2), *mutatis mutandis*.
3. The Regulations applicable to Duty Counsel under these Regulations shall apply *mutatis mutandis* to Counsel assigned to Any Other Person with respect to the determination, calculation and transfer of the Legal Aid Fee, any Contract between the Registrar and Counsel assigned to Any Other Person, and the procedure for oversight and monitoring of the spending of the Legal Aid Fee. The Legal Aid Fee of Counsel assigned to Any Other Person shall be based on an hourly rate in line with Section 4 of Annex C.
4. For the determination of the amount of the Legal Aid Fee for Counsel assigned to Any Other Person, the following criteria additional to those pursuant to paragraph (3) shall be considered:
  - a. the duration of the assignment of Counsel to Any Other Person; and
  - b. any specific expertise required by Counsel assigned to Any Other Person.

The Hague, Netherlands

22 February 2024



Dr Fidelma Donlon

Registrar