



## **DIRECTIVE ON THE ASSIGNMENT OF DEFENCE COUNSEL**

20 MARCH 2009

(AMENDED ON 30 OCTOBER 2009)

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## **I - PREAMBLE**

The Head of the Defence Office of the Special Tribunal for Lebanon,

Considering the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, annexed to Security Council resolution 1757(2007),

Considering the Statute of the Special Tribunal for Lebanon, annexed to Security Council resolution 1757(2007), adopted on 30 May 2007,

Considering the Rules of Procedure and Evidence as adopted by the Plenary meeting of Judges on 20 March 2009,

Considering the Host Nation Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Special Tribunal for Lebanon, signed on 21 December 2007,

Considering the relevant provisions of international instruments pertaining to the fundamental rights of accused and suspects in criminal trials,

Issues the Directive on the Assignment of Defence Counsel as follows:

## **II – GENERAL PROVISIONS**

### **Article 1 Definitions**

Under this Directive, the following terms shall mean:

- Accused:** A person against whom one or more counts in an indictment have been confirmed in accordance with Article 18(1) of the Statute and Rule 68(H) of the Rules;
- Code of Professional Conduct:** The Code of Professional Conduct for Counsel Appearing before the Tribunal adopted pursuant to Rule 60;
- Co-counsel:** Counsel assigned to a suspect or accused in accordance with Article 22;
- Counsel:** A person representing or eligible to represent a suspect or accused pursuant to Rules 58 and 59 of the Rules;
- Chief of Detention:** The official of the Tribunal appointed by the Registrar as head of the Detention Facility and responsible for its administration;
- Defence:** The accused, and/or the accused's counsel;
- Defence team:** Counsel assigned by the Head of the Defence Office to represent a suspect or accused and other persons assigned or approved by the Head of the Defence Office to assist counsel in this task;
- Defence Office:** The Office provided for in Article 13 of the Statute;
- Directive:** Directive on the Assignment of Defence Counsel as latest amended;
- Lead counsel:** Counsel assigned to a suspect or accused in accordance with Article 21;
- Phase of procedure:** Each of the phases of procedure set out in the Rules in which a suspect or accused may be involved (investigation, pre-trial proceedings, trial proceedings including proceedings in absentia, sentencing proceedings, appellate proceedings, and review proceedings);

President:	The President of the Tribunal elected pursuant to Article 8(2) of the Statute;
Pre-Trial Judge:	The Pre-Trial Judge appointed in accordance with Article 8 of the Statute;
Prosecutor	The Prosecutor appointed pursuant to Article 11 of the Statute;
Registrar:	The Registrar appointed pursuant to Article 12(3) of the Statute;
Regulations:	The provisions adopted by the Prosecutor, the Head of the Defence Office or the Registrar for the purpose of directing the functions of their respective Offices;
Rules:	The Rules of Procedure and Evidence adopted by the Tribunal on 20 March 2009;
Statute:	The Statute of the Tribunal attached to the Agreement between the United Nations and Lebanese Republic annexed to Security Council resolution 1757 (2007) adopted on 30 May 2007;
Suspect:	A person whom the Prosecutor has reasonable grounds to believe has committed a crime;
Tribunal:	The Special Tribunal for Lebanon.

In this Directive, the masculine shall include the feminine and the singular the plural, and vice versa. All references in this Directive to suspects or accused shall also be understood to apply to any persons detained on the authority of the Tribunal.

## **Article 2**

### **Purpose and entry into force**

- (A) In accordance with Rule 59 of the Rules, the Head of the Defence Office establishes this Directive to codify the Tribunal's system of assignment of counsel. The Tribunal's system of assignment of counsel seeks to ensure the rights afforded to suspects and accused under the Statute and Rules in the fairest possible manner, also bearing in mind principles of equity, efficiency and economy. This Directive establishes objective criteria to be used in the determination of the eligibility of a suspect or accused for assignment of counsel and sets out the modalities of payment of assigned counsel and their support staff.

- (B) This Directive shall enter into force on 20 March 2009.

**Article 3**  
**Authentic texts**

The Arabic, English and French texts of the Directive shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute, the Rules and the Directive shall prevail.

**Article 4**  
**Amendment of the Directive**

- (A) Proposals for amendments to the Directive may be made by a Judge, the Head of the Defence Office, the Prosecutor or the Registrar. Such proposals shall be directed to the Head of the Defence Office. Amendments shall be promulgated by the Head of the Defence Office following the approval by the Judges as provided for in Rule 59 of the Rules.
- (B) Without prejudice to the rights of the accused in any pending case, an amendment of the Directive shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment. Any amendment shall not apply retroactively.

**III – RIGHT TO COUNSEL**

**Article 5**  
**Right to counsel**

- (A) Without prejudice to the right of a suspect or an accused to conduct his own defence:
- (i) a suspect who is to be questioned during an investigation;
  - (ii) an accused upon whom personal service of the indictment has been effected;
  - (iii) any person detained on the authority of the Tribunal, including any person detained in accordance with Rules 62 and 63 of the Rules; and
  - (iv) any person held in contempt of the Tribunal in accordance with Rule 134 of the Rules,

shall have the right to be assisted by counsel, either retained by the suspect or accused in accordance with Rule 58 of the Rules or, where a suspect or accused lacks the means to remunerate counsel, assigned by the Head of the Defence Office and paid for by the Tribunal in accordance with Rule 59 of the Rules.

- (B) Upon first arrival of a suspect or accused in the custody of the Tribunal, the Head of the Defence Office, or a member of his office designated by him, will meet with the suspect or accused as soon as practicable and no later than 24 hours after which he was placed in the Tribunal's custody, to provide information and advice, in a language the suspect or accused understands, about the right under paragraph (A), the availability of legal representation and other applicable provisions of the Statute, the Rules of Procedure and Evidence, the Code of Professional Conduct, this Directive and any other relevant documents.

### **Article 6**

#### **Right to retained counsel**

- (A) A suspect or accused who has retained counsel of his choosing shall file a power of attorney with the Head of the Defence Office at the earliest opportunity.
- (B) Where a power of attorney is filed by counsel, the Head of the Defence Office shall request the suspect or accused to confirm the power of attorney in writing.
- (C) Subject to the provisions of the Code of Professional Conduct, if counsel meets the criteria set out in Rule 58 of the Rules, the Head of the Defence Office shall appoint that counsel to represent the accused before the Tribunal, except if disciplinary proceedings have been initiated against that counsel, unless it would be disproportionate to exclude that counsel in light of the presumed disciplinary offence and the potential disciplinary measures that could be imposed.

### **Article 7**

#### **Right to assigned counsel**

- (A) A suspect or accused who lacks the means to remunerate counsel shall have the right to be assisted by assigned counsel paid for by the Tribunal in accordance with the Directive.
- (B) Subject to the provisions of Article 23 of this Directive, a suspect or accused who wishes to be assigned counsel shall submit a request to the Head of the Defence Office on the form provided to him. The request

shall be submitted to the Head of the Defence Office, or transmitted to him, by the suspect or accused himself or by a person authorised, in written form, by him to do so on his behalf.

- (C) A suspect or accused lacks the means to remunerate counsel if he does not have the means which would enable him to cover the costs of his defence, as set out in the Tribunal's legal aid policy, in accordance with Section IX of this Directive.
- (D) A suspect or accused requesting the assignment of counsel is required to make a declaration of his means on the form provided by the Head of the Defence Office in accordance with Article 13 of this Directive.
- (E) Subject to Article 17, for an accused who has the means to partially remunerate counsel, the Tribunal shall pay that portion of his defence costs which the accused does not have sufficient means to cover, as determined in accordance with the Policy for Determining the Extent to which an Accused is able to Remunerate Counsel, attached hereto as Annex I.

#### **IV - PREREQUISITES FOR ASSIGNMENT AS COUNSEL**

##### **Article 8**

##### **Prerequisites**

- (A) Any person may be assigned as counsel to a suspect or accused if the Head of the Defence Office is satisfied that he is admitted to the list of counsel envisaged in Rule 59 of the Rules.
- (B) Any person may be assigned as duty counsel to a suspect or an accused for the purpose of the initial appearance, or for any other urgent matter of a temporary nature, if the Head of the Defence Office is satisfied that he is admitted to the list of counsel envisaged in Rule 59 of the Rules, and that he is readily available for assignment as duty counsel.
- (C) Counsel seeking admission to the list envisaged in Rules 59 of the Rules shall be provided with an application form. This form will in particular, allow counsel to provide:
  - (i) a resume which evidences established competence in criminal law and/or international criminal law or other relevant competence and the number of years of relevant experience in that regard;
  - (ii) the names and addresses of two referees, with at least 10 years of experience in the fields of criminal law or international criminal law, who are in a position to advise the Head of the Defence Office as to the professional competence of the applicants in these fields; and

- (iii) a statement that the applicant is willing and available to be assigned by the Tribunal to a suspect or accused lacking the means to remunerate counsel.
- (D) The applicant shall, in addition to the application form, supply the Head of the Defence Office with the following:
- (i) a certificate of professional qualification issued by each Bar association, national or international, with which the person is registered and/or each relevant controlling administrative or academic authority confirming his qualifications, the rights to practise and the existence, if any, of disciplinary sanctions or ongoing disciplinary proceedings;
  - (ii) a certificate issued by the relevant authority of each State of which the person is a national or where the person is domiciled stating the existence, if any, of criminal convictions or ongoing criminal proceedings.
- (E) On receipt of the application, the Head of the Defence Office shall acknowledge its receipt and ensure that all required information under paragraphs (C) and (D) has been provided and, if applicable, request the applicant to provide any missing information. When the application is complete, the Head of the Defence Office shall make a prima facie determination of an applicant's qualifications under Rule 59 of the Rules. Where an applicant prima facie meets the requirements, the Head of the Defence Office shall transmit the application to the admission panel for review, in accordance with Rule 59(C) and Article 9 of this Directive.

## **Article 9**

### **Admission Panel**

- (A) The admission panel is responsible for admitting counsel to the list envisaged in Rule 59 of the Rules.
- (B) The admission panel shall be composed of the Head of the Defence Office and two defence counsel who shall meet the requirements of Rule 59 of the Rules. One defence counsel shall be appointed by the Head of the Defence Office, the other by the President, in consultation with the Lebanese Bar Associations, both for a period of one year. Their appointments may be renewed. Such defence counsel shall not be admitted to the list in Rule 59 of the Rules while serving as a member of the admission panel.
- (C) The admission panel may verify the information provided by the applicant.
- (D) The admission panel shall, as soon as possible, and in any case no later than twenty-eight days after receiving the application, conduct an interview with the applicant to verify whether the applicant meets

the requirements, in particular the requirement of experience and competence in criminal law or international criminal law. This interview may be conducted in person or by telephone or video conference. Where the admission panel requires the applicant to be interviewed in person, the Tribunal will cover the necessary costs of applicant's travel.

For applicants whose native language is not English or French, where the Admission Panel has not been able to verify an applicant's proficiency in English or French, it may require evidence of proficiency in English or French such as a certificate from a language institute.

- (E) Where necessary, the admission panel may seek additional information from the applicant in any form, including answers to written assignments, as well as any information from other sources.
- (F) Within two weeks of the interview provided for in paragraph (D) or receiving the additional information envisaged in paragraph (E), the admission panel will give its decision and inform the applicant of its decision. The panel will keep a record of its deliberations, which will remain private and confidential.
- (G) An applicant who has been denied admission to the list may request a review of this decision, in accordance with Article 12 of this Directive. Such a review is limited to a review of the applicable procedure, and shall not be a review of the merits of the decision. Where the President finds that procedural irregularities occurred, he may direct the admission panel to reconsider the application.

## **Article 10**

### **Obligations of counsel admitted to the list**

- (A) Counsel admitted to the list in Rule 59 of the Rules shall immediately inform the Head of the Defence Office of any relevant changes to the information provided, including contact details and the initiation of any criminal or disciplinary proceedings, whether at the national or international level.
- (B) Counsel admitted to the list in Rule 59 of the Rules shall:
  - (i) upon request of the Head of the Defence Office, confirm his continued availability to be assigned to indigent suspects or accused; and
  - (ii) immediately advise the Head of the Defence Office, should counsel be unavailable for the assignment to a suspect or accused for a period of more than three months.

**Article 11**  
**Removal from the list**

- (A) The Head of the Defence Office may, after giving counsel a warning and an opportunity to respond, decide to remove the name of counsel from the list referred to in Rule 59 of the Rules:
- (i) upon a decision by the Pre-Trial Judge or a Chamber under Rule 60(A)(ii) of the Rules;
  - (ii) where counsel has been found to be in contempt pursuant to Rule 134 of the Rules, after consultation with the Chamber which rendered judgment in the matter;
  - (iii) where counsel has been found guilty of a disciplinary offence under the Code of Professional Conduct, if applicable, after consulting with the Pre-Trial Judge or Chamber involved in the matter; or
  - (iv) where the Head of the Defence Office has determined that counsel has provided false information in relation to his qualifications to be admitted to the list or has not fulfilled his obligations under Article 10 above.
- (B) The Head of the Defence Office shall remove the name of counsel from the list referred to in Rule 59 of the Rules:
- (i) upon a decision by the Pre-Trial Judge or a Chamber under Rule 60(A)(iii) of the Rules;
  - (ii) upon a final decision in disciplinary proceedings that counsel is banned from practicing before the Tribunal, pursuant to the Code of Professional Conduct; or
  - (iii) where counsel no longer satisfies the requirements of Rule 59 of the Rules.
- (C) In the exercise of his functions under paragraphs (A) and (B)(iii), the Head of the Defence Office shall not remove the list counsel currently assigned to represent a suspect or accused before the Tribunal, without permission from the Pre-Trial Judge or Chamber.

**Article 12**  
**Remedy against the Head of the Defence Office's decision**

Counsel may seek review of the decision of the Head of the Defence Office under Articles 9(F), 11(A) and (B)(iii) of this Directive before the President within 15 days after the date upon which he is notified of the decision.

## V - DETERMINATION OF INDIGENCE

### Article 13

#### Declaration of means and burden of proof

- (A) A suspect or accused who requests the assignment of counsel pursuant to Article 7 of this Directive must provide adequate information regarding his inability to remunerate counsel on the form provided to him for this purpose by the Head of the Defence Office.
- (B) A declaration must, so far as possible, be certified by an appropriate authority, either that of the place where the suspect or accused resides or is found or that of any other place that the Head of the Defence Office considers appropriate in the circumstances.
- (C) The declaration must include an attestation by the suspect or accused that the information contained therein is true and complete to the best of his knowledge.
- (D) A suspect or accused must update his declaration of means at any time a change relevant to his declaration of means occurs.
- (E) Where the Head of the Defence Office has reason to believe that a suspect or accused is able to remunerate, or partially remunerate counsel, he shall request the Registrar to open an inquiry into the means of the suspect or accused.
- (F) Where the Registrar has opened an inquiry into the means of a suspect or accused, the suspect or accused shall provide or facilitate the production of information required to establish any ability to remunerate counsel.
- (G) For the purpose of establishing whether the suspect or accused is able to remunerate counsel, the Registrar, upon the request of the Head of the Defence Office or *proprio motu*, may, at any time and even after counsel has been assigned, inquire into his means, request the gathering of any information, hear the suspect or accused, consider any representation, or request the production of any documents likely to verify the means of the suspect or accused.

- (H) The Registrar may in particular exercise his authority to gather additional information if the apparent lifestyle of a suspect or accused, and/or his enjoyment of any property, movable or immovable, does not correspond to a suspect's or accused's declaration of means.

#### **Article 14**

##### **Determination of the means of suspects and accused**

- (A) In accordance with the Policy referred to in Article 7(E) of this Directive, in order to determine whether the suspect or accused is able to remunerate counsel, the Registrar shall take into account means of all kinds of which the suspect or accused has direct or indirect enjoyment or freely disposes, including but not limited to direct income, bank accounts, real or personal property, pensions, and stocks, bonds, or other assets held, but excluding any family or social benefits to which he may be entitled. In assessing such means, account shall also be taken of the means of the spouse of a suspect or accused, as well as those of persons with whom he habitually resides, provided that it is reasonable to take such means into account.
- (B) After examining the declaration of means and any relevant information obtained pursuant to article 13, the Registrar shall determine, within 120 days of the request to open the inquiry by the Head of the Defence Office, whether and to what extent the suspect or accused is able to remunerate counsel.
- (C) The Registrar shall notify the suspect or accused and the Head of the Defence Office of his determination.

#### **Article 15**

##### **Remedy against the Registrar's determination**

- (A) A suspect or accused may, within 15 days from the date upon which he is notified of the decision in Article 14(C), file a motion before the President for review of that determination. The President may:
- (i) confirm the Registrar's determination;
  - (ii) set aside the Registrar's determination and order him to make a new determination;
  - (iii) set aside the Registrar's determination and decide to what extent the suspect or accused is partially able to remunerate counsel; or
  - (iv) set aside the Registrar's determination and decide that the suspect or accused is unable to remunerate counsel.

## **Article 16**

### **Payment of contribution to the Tribunal**

- (A) Without prejudice to Article 17 below, upon the final determination by the Registrar, or where applicable the review by the President, the Registrar may request the Pre-Trial Judge or Trial Chamber to adopt provisional measures to freeze the assets of a suspect or accused, or part thereof, in accordance with Rule 82(C).
- (B) Without prejudice to paragraph (C), where a suspect or accused is partially indigent, the Tribunal will continue to pay the cost of his legal representation, in accordance with Section IX of this Directive.
- (C) In the event of a conviction pursuant to Rule 168 of the Rules, and if applicable Rule 188 of the Rules, the Tribunal may recover that part of the cost of the defence of the accused from the frozen assets that he is able to contribute, in accordance with the final determination of means of the suspect or accused.

## **Article 17**

### **Adjustment of the determination**

- (A) At any time, including where counsel has been assigned, the Registrar may modify his determination as to the extent to which the suspect or accused is able to remunerate counsel if it is established that a suspect's or accused's means relevant to the determination:
  - (i) have changed since the Registrar determined the extent to which the suspect or accused is able to remunerate counsel; or
  - (ii) were not fully disclosed by the suspect or accused before the Registrar issued his decision.
- (B) The suspect or accused and the counsel assigned shall be notified of the Registrar's decision, which shall take effect from the date of notification.
- (C) Article 15 shall apply *mutatis mutandis* to an adjustment of the determination.

## **VI - ASSIGNMENT OF COUNSEL**

**Article 18**  
**General Principles**

- (A) A suspect or accused shall be entitled to have one counsel assigned to him. Where suspects or accused are jointly charged or tried pursuant to the same indictment, each shall be entitled to have a separate counsel assigned.
- (B) The counsel assigned to represent a suspect or accused shall be referred to as the lead counsel and shall be responsible for all aspects of the defence of the suspect or accused during all phases of the proceedings and any other matters relating to the defence of the suspect or accused. Without prejudice to Article 22(A) below, the lead counsel shall sign all documents submitted to the Tribunal.
- (C) Lead counsel shall keep a complete and accurate case file of all documentation related to the case and of all work performed by the defence team during the representation of the suspect or accused and shall retain that case file for five years after the completion of proceedings relating to the suspect or accused before the Tribunal. Upon counsel's request, the Head of the Defence Office shall provide secure storage facilities for this purpose.
- (D) The Head of the Defence Office may decide to deny a suspect's or accused's request for the assignment of a specific counsel where a procedure pursuant to Rule 134 of the Rules or the Code of Professional Conduct has been initiated against that counsel.
- (E) The Head of the Defence Office may decide to deny a suspect's or accused's request for the assignment of a counsel, , where:
- (i) the assignment would lead to a conflict of interest, unless each suspect or accused has received independent advice from the Head of the Defence Office and both have consented in writing; or
  - (ii) the assignment would lead to a scheduling conflict, or clashing priorities, or it would otherwise negatively affect the defence of either suspect or accused, unless the counsel satisfies the Head of Defence Office that he has taken sufficient measures to avoid such effect.
- (F) Where, at any time after the assignment or appointment of counsel, counsel has a conflict of interest or there is the appearance of a conflict of interest, the Head of the Defence Office shall immediately take appropriate steps, which may include:
- (i) appearing before the Pre-Trial Judge or a Chamber in relation to the conflict;

- (ii) where appropriate, in consultation with counsel involved, suggesting an alternative resolution of the conflict of interest;
- (iii) appointing an independent counsel to determine whether a conflict of interest exists, and, if so, whether the counsel can continue to represent the accused; or
- (iv) referring the matter to the competent body envisaged in the Code of Professional Conduct and act in accordance with Article 34 (B).

**Article 19**  
**Duty counsel**

- (A) At the time the Head of the Defence Office or his representative meets with the suspect or accused pursuant to Article 5(B) above, he shall explain the assignment of a duty counsel and provide him with all the names of counsel admitted to the list envisaged in Rule 59 of the Rules who are available to be assigned as duty counsel.
- (B) Pursuant to the meeting in Article 5(B), unless the suspect or accused expresses his intention to be self-represented, the Head of the Defence Office shall, in consultation with the suspect or accused, assign such duty counsel as soon as practicable.
- (C) Counsel assigned pursuant to Rule 98(B) of the Rules shall represent the accused only for the purpose of the accused entering a plea or a plea of not guilty being entered on his behalf in accordance with Rule 98(A)(iv) of the Rules, unless the Head of the Defence Office, in accordance with Article 34(B) below, extends the mandate of the duty counsel until permanent counsel is assigned by the Head of the Defence Office or retained by the accused.

**Article 20**  
**Assignment of counsel pending the final determination of means**

- (A) Without prejudice to paragraph (B) and Article 24 below, where a suspect or accused fails to comply with his obligations under Section V to the extent that the Registrar is unable to properly assess the suspect's or accused's ability to remunerate counsel, the Head of the Defence Office may decide to deny the request for the permanent assignment of counsel after warning the suspect or accused and giving him an opportunity to respond.

- (B) With a view to the fairness of the proceedings and to ensure that a suspect or accused's right to counsel is not affected while the Registrar determines the ability of the suspect or accused to remunerate counsel, the Head of the Defence Office may decide to assign counsel of the suspect's or accused's choosing temporarily, from the list drawn up in accordance with Rule 59, until that determination is made, for periods not exceeding 120 days.
- (C) The Head of the Defence Office, before assigning temporary counsel, shall inform that counsel of the pending determination of means and its potential implications for the position of counsel.

### **Article 21**

#### **Assignment of permanent counsel**

In accordance with the determination of means by the Registrar, and if applicable, the President's review, the Head of the Defence Office shall decide:

- (i) where the suspect or accused is unable or partially able to remunerate counsel, without prejudice to Article 17, and where there is no impediment to the assignment of that counsel, to assign permanent counsel of the suspect's or accused's choosing from the full list drawn up in accordance with Rule 59 of the Rules; or
- (ii) if the suspect or accused is fully able to remunerate counsel, not to grant the request for the assignment of counsel and inform him with regard to the procedure for the appointment of retained counsel.

### **Article 22**

#### **Assignment of co-counsel and persons assisting counsel**

- (A) Pursuant to Rule 57(D)(v), the Head of the Defence Office may decide to assign counsel to assist with the defence of the suspect or accused. Such counsel shall be referred to as the co-counsel. Acting under the authority of lead counsel, co-counsel may deal with all phases of the proceedings and all matters arising out of the defence of the suspect or accused. Co-counsel may also be authorized, in writing, by the lead counsel to sign documents on his behalf.
- (B) At the request of the lead counsel and in accordance with the Legal Aid Policy envisaged in Article 37, the Head of the Defence Office may assign persons assisting counsel, such as legal assistants, consultants, investigators, case managers, interpreters and legal interns, to provide support to the lead counsel. Only

persons assigned or approved by the Head of the Defence Office may assist counsel with the defence of the suspect or accused. The Head of the Defence Office may impose qualification requirements for persons assisting counsel. The lead counsel, co-counsel and the persons assisting him shall be referred to as the defence team. The lead counsel is responsible for supervising all defence team members, including co-counsel.

- (C) Members of the immediate family or close friends of suspects and accused and members of the immediate family of defence counsel can only be eligible for assignment under this Directive as counsel, expert, legal assistant, investigator, translator or interpreter, if the lead counsel specifically requests the assignment of such persons where he provides justification for such assignment for the adequate preparation of the case for the Defence and where the Head of the Defence Office, with a view to the fairness of the proceedings, has no objection to the assignment.
- (D) All members of the Defence Team shall be bound by the Statute, the Rules, the Rules of Detention, the Code of Professional Conduct, this Directive and any other applicable rules or regulations.

### **Article 23**

#### **Assignment of counsel away from the seat of the Tribunal**

- (A) Away from the seat of the Tribunal, a suspect who, during questioning or the investigation, requests assignment of counsel, shall be assigned a duty counsel from the list envisaged in Rule 59 of the Rules, in accordance with Rule 57(D) (ii) and (iii). In exceptional circumstances the suspect may be assigned an additional counsel of his own choosing who does not appear on the list envisaged in Rule 59.
- (B) Where the suspect requesting assignment of counsel is unable to provide the name of counsel in accordance with paragraph (A), the Head of the Defence Office or a person acting on his behalf, or where necessary, the Prosecutor or a person acting on his behalf, shall, in consultation with the Head of the Defence Office, obtain the name of counsel who may be assigned in accordance with the provisions of this Directive and may contact a local bar association for this purpose.
- (C) In the situations envisaged in paragraphs (A) and (B), the procedure for assignment of counsel as set out in this Directive shall apply *mutatis mutandis* but shall be accelerated where necessary.

### **Article 24**

#### **Failure to elect representation**

Subject to Article 25 below, if a suspect or an accused either:

- (i) requests the assignment of counsel but fails to comply with the requirements of Section V within a reasonable time;
- (ii) fails to obtain or to request the assignment of permanent counsel;
- (iii) fails to elect in writing the intention to conduct his own defence;
- (iv) requests the assignment of counsel but fails to select a counsel from the list drawn up in accordance with Rule 59 of the Rules; or
- (v) selects a counsel whom the Head of the Defence Office determines cannot be assigned because it would be in violation of the Rules, the Code of Professional Conduct or this Directive,

the Head of the Defence Office, after giving the suspect or accused an opportunity to respond, may appear before the Pre-Trial Judge and put forward the names of three counsel, one of whom the Pre-Trial Judge shall select to represent the suspect or the accused.

#### **Article 25**

##### **Failure to elect representation for *in absentia* proceedings**

Where the Chamber determines to conduct proceedings in the absence of the accused, in accordance with Rule 106 of the Rules, and the accused refuses or fails to elect defence counsel of his own choosing, the Head of the Defence Office, with a view to ensuring full representation of the interest and rights of the accused, shall assign defence counsel and any necessary persons assisting counsel in accordance with Article 22 above.

#### **Article 26**

##### **Remedy against the decision on assignment**

The suspect or accused who disagrees with a decision pursuant to Articles 18(D), 18(E), 20(A), 21 or 22(A) may, within 15 days from the date upon which he was notified of the decision, file a motion before the Pre-Trial Judge for a review of that decision. The Pre-Trial Judge, if applicable, in consultation with the Presiding Judge of the Chamber, may:

- (i) confirm the decision;
- (ii) quash the decision and order that different counsel be assigned; or
- (iii) direct the Head of the Defence Office to take other measures.

#### **Article 27**

### **Adequacy of representation and control of legal aid funds**

- (A) The Head of the Defence Office shall, in accordance with Rule 57(D) of the Rules, be responsible for ensuring that the representation of suspects and accused is effective, meets internationally recognized standards and is consistent with the provisions of the Statute, the Rules, the Code of Professional Conduct, this Directive and other relevant provisions.
- (B) The Head of the Defence Office may require the persons admitted to the list in Rule 59 and members of a defence team to participate in continuing professional training relevant to their assignment.
- (C) The Head of the Defence Office may invite lead counsel to discuss, on a confidential basis, the work performed in the defence of a suspect or accused.
- (D) The Head of the Defence Office shall keep a confidential record of all his activities and information gathered in the exercise of his functions under Rule 57(D) of the Rules.
- (E) In the exercise of his functions under paragraph (A), the Head of the Defence Office shall at all times be mindful of, and not interfere in, the independence of counsel. Furthermore, the Head of the Defence Office shall not require counsel to disclose materials subject to the counsel-client privilege, as defined in the Code of Professional Conduct, including confidential communications between: the counsel and the persons assisting him and the client; counsel and the persons assisting him; counsel of co-accused; and any written materials, that in the counsel's determination, reflect the substance of such communications, advice given to the client, instructions received from the client or the strategy of the defence.
- (F) In the performance of his functions under Rule 57(D) and paragraph (A) above, subject to counsel-client privilege, the Head of the Defence Office may, if he determines that reasonable cause exists, require assigned counsel to allow the Head of the Defence Office, or a person designated by him, on a strictly confidential basis, to inspect and examine counsel's work product. Such an inspection is aimed at determining whether the representation meets the standards in paragraph (A) above and whether work, for which Tribunal legal aid funds have been claimed or paid, has been performed. Disclosure of confidential information or documentation under this article does not negate or constitute waiver of counsel-client privilege. All information obtained under this paragraph shall remain confidential, subject to paragraph (G).
- (G) To the extent necessary and proportionate to the intended purpose, the general prohibition on the disclosure of confidential information and documentation under paragraphs (D) and (E) shall not apply to the Head of the Defence Office or the person designated by him where:

- (i) the Head of the Defence Office's decision to withhold the payment of fees is reviewed by the President pursuant to Rule 57(H)(i) and that decision relied on observations and findings from the inspection of work product;
- (ii) the Head of the Defence Office makes representations to the Pre-Trial Judge or a Chamber for the removal of counsel or for other measures to ensure the effective representation of a suspect or accused and those representations rely on observations and findings from the inspection of work product;
- (iii) the Head of the Defence Office initiates a disciplinary proceeding against counsel under the Code of Professional Conduct, either in connection with the adequacy of the representation or with Tribunal legal aid funds which have been claimed or paid and to which the claimant or payee was not entitled;
- (iv) the Head of the Defence Office initiates proceedings in a national jurisdiction in connection with the administration of the Tribunal's legal aid system, including the misappropriation or misuse of Tribunal legal aid funds; or
- (v) disclosure is essential to establish a claim for recovery of funds from a person to whom legal aid was granted in accordance with Section V.

## **VII – PROVISION OF FACILITIES, ADVICE AND ASSISTANCE**

### **Article 28**

#### **General Principles**

- (A) To preserve the full independence and neutrality of the Defence Office, neither the Head of the Defence Office nor any of his staff shall take any instructions from a suspect or accused or adopt a stance on any factual allegations of the Prosecution or the factual position of the Defence which might raise conflicts of interest.
- (B) The Head of the Defence Office and his staff shall abide by the Code of Professional Conduct.
- (C) Where a conflict of interest or any other disciplinary issue does arise in relation to Articles 30 and 31, the Head of the Defence Office shall immediately take appropriate measures.

- (D) Any advice provided by the Defence Office shall be made available to all assigned counsel.
- (E) The Head of the Defence Office shall not be held liable or responsible for any claims in relation to the validity or appropriateness of advice given to lead counsel pursuant to Articles 30 and 31.

## **Article 29**

### **Facilities within the premises of the Tribunal**

- (A) The Head of the Defence Office, in consultation with the Registrar, shall provide to each defence team adequate facilities within the premises of the Tribunal for the preparation of the defence, including private office space and information technology (including computers, email, telephone, facsimile, photocopyers), other necessary office equipment and supplies and access to library materials and databases within the Tribunal.
- (B) The Head of the Defence Office shall liaise with the Registrar in order to ensure that adequate and reasonable facilities are provided to a suspect or accused while he is detained in the detention facility to participate in the preparation of his defence. This includes, for example, being able to receive:
  - (i) materials disclosed to him by the Prosecutor pursuant to the Rules;
  - (ii) privileged documents from his counsel; and
  - (iii) the testimony of witnesses and evidence presented at trial.

Without prejudice to the provision of adequate facilities, the Chief of Detention, in accordance with the Rules of Detention, may prohibit the receipt of electronic data carriers, including but not limited to CD-ROMs, DVDs, floppy disks and memory cards.

- (C) Where it proves impossible to provide the facilities in paragraph (A) within the premises of the Tribunal, the Tribunal shall provide reasonable and necessary general office costs, as part of the legal aid policy envisaged in Article 37, to cover the cost of similar adequate facilities, as determined by the Head of the Defence Office.
- (D) The Tribunal shall provide reasonable facilities for Lead Counsel to meet with members of the press and the media.
- (E) Where the Head of the Defence Office addresses members of the press and the media, he shall not discuss the details of any case or suspect or accused, without prior discussion with Lead Counsel. The Head of the

Defence Office shall not disclose any information that would be contrary to the interest of the Defence or in violation of the Code of Professional Conduct.

### **Article 30**

#### **Legal advice**

- (A) Upon the request of counsel, or *proprio motu*, the Head of the Defence Office shall, in accordance with Rule 57 of the Rules, provide adequate and appropriate legal advice to counsel.
- (B) Requests for advice must clearly state the matter on which advice is sought and must not disclose any information that is subject to protective measures as envisaged in Rule 133 of the Rules, or subject to counsel-client privilege, as defined in the Code of Professional Conduct.
- (C) Requests for legal advice may, for example, concern the interpretation of the Statute, the Rules of Procedure and Evidence, applicable Lebanese criminal law and procedure and applicable international instruments and customary international law.
- (D) Within one week of receipt of a request for legal advice, the Head of the Defence Office, or a person designated by him, shall acknowledge receipt and inform counsel whether the request can be complied with and what the expected course of action will be. The Head of the Defence Office, showing good cause, may refuse to comply with a request.

### **Article 31**

#### **Assistance, support and other advice**

- (A) Without prejudice to Article 27 of this Directive, upon the request of counsel, or *proprio motu*, the Head of the Defence Office shall, in accordance with Rule 57 of the Rules and within the means available to him, provide any other assistance, support or advice as may be reasonably required to ensure the rights of a suspect or accused.
- (B) Such assistance may, for example, be requested in connection with issues arising out of the defence team's investigative work, the collection of expertise in specific areas, the analysis of evidence, interviewing witnesses, information security, information technology and case management procedures.

- (C) Within one week of receipt of a request for assistance, support or other advice, the Head of the Defence Office or a person designated by him, shall acknowledge receipt and inform counsel whether the request can be complied with and what the expected course of action will be. The Head of the Defence Office, showing good cause, may refuse to comply with a request.
- (D) The Head of the Defence Office shall draw up and maintain lists of competent persons who may be assigned in accordance with Article 22 of this Directive, such as experts and expert consultants, investigators, legal consultants and assistants, case managers and interns.

### **Article 32**

#### **Applicability to suspects or accused**

Without prejudice to Rule 57(D)(vii), where no counsel has been assigned pursuant to Section VI, this section shall apply *mutatis mutandis* to a suspect or accused.

## **VIII – SUSPENSION AND WITHDRAWAL OF ASSIGNMENT**

### **Article 33**

#### **Ability of suspects or accused to remunerate counsel**

Where counsel has been assigned, the Head of the Defence Office may, with the permission of the Pre-Trial Judge or Chamber, withdraw the assignment of counsel if, pursuant to Article 17 above, a new determination of the means of the suspect or accused establishes that he has sufficient means to remunerate counsel.

### **Article 34**

#### **Withdrawal and suspension of assignment**

- (A) With a view to the fairness of the proceedings, and after consulting the Pre-Trial Judge or Chamber, the Head of the Defence Office may decide to withdraw the assignment of counsel:
- (i) at the request of the accused;
  - (ii) at the request of counsel in question; or
  - (iii) at the request of lead counsel in regard to co-counsel.

- (B) The Head of the Defence Office may, after consulting with the Pre-Trial Judge or Chamber, decide to suspend the assignment of counsel pending :
- (i) a disciplinary procedure under the Code of Professional Conduct against that counsel; or
  - (ii) contempt proceedings against that counsel pursuant to Rule 134 of the Rules.
- (C) The Head of the Defence Office shall decide to withdraw the assignment of counsel:
- (i) upon the decision of a Chamber for misconduct under Rule 60(A)(iii); or
  - (ii) subject to Article 11(C), where counsel no longer satisfies the requirements of Rule 59 of the Rules.
- (D) The Head of the Defence Office, pursuant to a decision in paragraphs (A), (B) or (C) above, shall notify the suspect or accused and the counsel concerned. Where, pursuant to paragraph (C), counsel has been removed, the Head of the Defence Office shall also notify counsel's professional or governing body of the decision.
- (E) Where the assignment of counsel is suspended in accordance with paragraph (B) above, the Head of the Defence Office shall immediately assign replacement counsel to the suspect or accused. Where the assignment of counsel is withdrawn, the Head of the Defence Office may, subject to Article 33 of this Directive, assign a replacement counsel.

### **Article 35**

#### **Duties of counsel upon withdrawal**

- (A) Assigned counsel shall continue to act until:
- (i) replacement counsel has been assigned by the Head of the Defence Office;
  - (ii) replacement counsel has been retained by the suspect or accused pursuant to Rule 58 of the Rules;  
or
  - (iii) the suspect or accused has elected in writing to conduct his own defence pursuant to Rule 59(F) of the Rules and his election has been accepted by the Chamber.

- (B) With a view to the fairness of the proceedings, the Head of the Defence Office may instruct the previously assigned counsel to assist the replacement counsel, where one has been retained or assigned, in the representation of the suspect or accused and to draw up a transfer file, as defined in the Legal Aid Policy. The previously assigned counsel may be instructed to assist for a period not exceeding 45 days from the date upon which replacement counsel is assigned or retained. During this period, the costs necessarily and reasonably incurred by both assigned counsel shall be met by the Tribunal.

### **Article 36**

#### **Payment *pro rata temporis***

Where an assigned counsel is replaced by another assigned counsel, he and his replacement shall be remunerated *pro rata temporis*.

## **IX–COSTS OF REPRESENTATION**

### **Article 37**

#### **Legal aid unit**

- (A) The Head of the Defence Office shall set up a Legal Aid Unit within the Defence Office to handle all matters regarding the remuneration of expenses under Section IX (Articles 38 - 42) and shall recruit a Head of the Unit.
- (B) All sums payable to assigned counsel and members of a defence team under the provisions of this Directive shall be authorized by the Head of the Legal Aid Unit and paid by the Financial Officer of the Registry.
- (C) Decisions taken by the Head of the Legal Aid Unit are subject to review in accordance with Article 43.

### **Article 38**

#### **Responsibility for remuneration and expenses**

- (A) Where counsel has been assigned, the necessary and reasonable costs of legal representation of the suspect or accused shall be met by the Tribunal in accordance with the Statute, the Rules, this Directive and the Legal Aid Policy, adopted by the Head of the Defence Office in accordance with Rule 57(D)(viii) of the Rules. The Legal Aid Policy aims to provide sufficient funds to defence counsel, in order to present

their case with same ability and competence as the Prosecutor. The Legal Aid Policy is subject to the budgetary restrictions established by the Management Committee of the Tribunal. Where lead counsel claims costs that are not specifically included in paragraph (B) below or in the Legal Aid Policy, the Head of the Legal Aid Unit may refuse to meet the costs if his prior authorization for the expense was not obtained from him. The Head of the Legal Aid Unit may invite lead counsel to discuss the necessity and reasonableness of work that is scheduled to be undertaken or for which costs have been claimed.

- (B) The Tribunal shall meet the following costs in so far as they are reasonable and necessary in the circumstances to ensure that the fundamental rights of the suspect or accused as laid down in Articles 15 and 16 of the Statute are upheld:
- (i) the remuneration of assigned counsel and members of the defence team;
  - (ii) expenses related to the production of evidence for the defence and the verification and discovery of facts;
  - (iii) expenses related to the production of expert reports, which are paid at the rates established in the Legal Aid Policy;
  - (iv) expenses related to the temporary consultancy necessary for the preparation of examination of expert witnesses for the Prosecution, Victims or the Chamber, in those areas of expertise that counsel cannot reasonable be required to have knowledge of, which are paid at the rates established in the Special Tribunal Legal Aid Policy;
  - (v) expenses related to the accommodation and transportation of witnesses testifying in court in accordance with the applicable Tribunal directives or policies for allowances for witnesses and expert witnesses; and
  - (vi) expenses related to travel, travel taxes and similar duties.
- (C) The legal aid policy will establish payment procedures. The Head of the Legal Aid Unit shall pay the costs referred to in Article 38(B) upon approval of a statement of fees or expenses or, if applicable, an invoice from lead counsel. These must presented to the Head of the Legal Aid Unit within 120 days from the last day of the month during which work was performed or the expense was incurred.

### **Article 39**

#### **Remuneration of assigned counsel and members of the defence team**

- (A) Counsel assigned to represent a suspect or accused, including duty counsel, and members of the defence team shall be remunerated in accordance with the Legal Aid Policy.

- (B) Counsel assigned to suspects shall be remunerated on the basis of a maximum allotment of working hours paid at a fixed hourly rate as established in the Special Tribunal Legal Aid Policy for the work reasonable and necessary to the representation of the suspect.
- (C) Without prejudice to Article 7(C) above, assigned counsel and defence team members who receive remuneration from the Tribunal shall not accept remuneration for the assignment from any other source.

**Article 40**  
**Travel expenses**

- (A) Travel expenses of counsel and, where necessary, members of the defence team shall be met in accordance with the Travel and Allowances Policy adopted by the Head of the Defence Office.
- (B) The Travel and Allowances Policy aims to provide sufficient funds to the Defence, in order to cover the necessary and reasonable cost of travel for the representation of the suspect or accused, with a view to ensuring that the Defence is able to prepare its case with the same ability and competence as the Prosecutor.
- (C) The Travel and Allowances Policy shall set procedures for travel requests of counsel and defence team members and the claiming and payment of related expenses. Lead counsel shall be responsible for the claiming of expenses for all members of the defence team. Where lead counsel claims costs that are not included in the scope of paragraph (B) above, the Head of the Legal Aid Unit may refuse to meet the costs if his prior authorization for the travel expense was not obtained. The Head of the Legal Aid Unit may deduct those costs from payments otherwise due to the traveller.
- (D) Travel expenses shall be met by the Tribunal on the basis of one economy class, or where the duration of the travel exceeds 9 hours a business class standard fixed-date round trip ticket by the shortest route to and from the place where the procedure is being conducted and within the limits set out in the Travel and Allowances Policy.
- (E) Where appropriate, the Head of the Defence Office may set fixed rates or lump sum compensation for travel expenses of counsel, and where necessary, defence team members, as part of the Travel and Allowances Policy.

**Article 41**

### **Daily subsistence allowances**

- (A) Subject to prior authorization by the Head of the Legal Aid Unit, a daily allowance for expenses of counsel and, where necessary, members of the defence team shall be paid by the Head of the Legal Aid Unit in accordance with the Travel and Allowances Policy.
- (B) Except for situations provided for in paragraph (C) below, the allowance for expenses paid under (A) shall be based on the fixed rates as established by the United Nations Schedule of Daily Subsistence Allowance Rates and shall be calculated on the basis of the current rates applicable in the country where counsel or members of the defence team are acting and the length of the stay required for the performance of the work. Neither counsel nor members of the defence team shall be entitled to receive the daily allowance while staying at their place of residence.
- (C) During ongoing proceedings in the trial phase, counsel and where necessary and appropriate, members of the defence team, are entitled to receive a fixed standard monthly rate to cover daily expenses, in accordance with the Travel and Allowances Policy.
- (D) Where appropriate in the circumstances, the Head of the Legal Aid Unit may provisionally pay daily allowances or the fixed standard monthly rate in advance.

### **Article 42**

#### **Translation and interpretation costs**

- (A) Subject to Rule 10 of the Rules, the Tribunal shall provide translation and interpretation services or meet the cost of such services if required to protect the rights of a suspect or accused enshrined in Article 15 and 16 of the Statute.
- (B) The Defence Translation Services Policy, adopted by the Head of the Defence, in consultation with the President and the Registrar, shall set out the type of documents translated and the interpretation services provided by the Tribunal in ensuring full respect for the rights of a suspect or accused.
- (C) Translation and interpretation services other than those provided by the Tribunal in accordance with the Defence Translation Services Policy shall be organized by the defence team. The cost of these services shall be met by the resources allocated to the defence team in accordance with Article 37 of this Directive.

### **Article 43**

### **Settlement of disputes**

- (A) Where a disagreement arises over remuneration or reimbursement of expenses and where the sum involved is less than US\$1,000, a party to the disagreement may request the Head of the Legal Aid Unit to reconsider and alter the decision. There is no automatic review of decision in this category by the Head of the Defence Office. The Head of the Legal Aid Unit may however defer the matter to the Head of the Defence Office. If the complainant has made repeated requests for reconsideration of similar issues involving less than US\$1,000 and these have been denied, the complainant, upon showing the similarity of the issues, may request the Head of the Defence Office to review the matter in accordance with the procedure in paragraph (B).
  
- (B) Where a disagreement arises over remuneration or reimbursement of expenses and where the sum involved is between US\$1,000 and US\$4,999, a party to the disagreement may request the Head of the Defence Office to review the matter. The Head of the Defence Office shall, after hearing the complainant, and, if he deems it appropriate, in consultation with the Pre-Trial Judge or Chamber, decide on the matter himself.
  
- (C) Where the disagreement involves a sum greater than US\$4,999, the complainant may request the Head of the Defence Office to review the decision. Should the complainant not be satisfied with the Head of the Defence Office's review, he may request the Pre-Trial Judge or a Chamber, as appropriate, to review the decision, after hearing the Head of the Defence Office and the complainant.

