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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Comprehensive proposal on appropriate incentives to retain staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia

Report of the Secretary-General

Summary

In its resolutions 61/241 and 61/242 of 22 December 2006, the General Assembly endorsed the recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its report on financial and any other implications resulting from the introduction of a staff retention bonus at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (A/61/591), which, inter alia, requested the Secretary-General to further explore ways and means of applying existing Staff Regulations and Rules, including annex III thereto (which deals with termination indemnities) with a view to achieving the desired objectives of retaining staff throughout the completion phases of the mandates of the Tribunals. In the same report, the Advisory Committee requested the Secretary-General to present a comprehensive proposal with the procedures to be applied, the decision required of the Assembly and a clearer

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projection of the numbers of staff required to be retained during the foreseeable phases of the completion strategy

The present report is submitted in response to General Assembly resolutions 61/241 and 61/242. It outlines a comprehensive proposal on appropriate incentives to retain staff of the Tribunals while taking into consideration, to the extent possible and with adaptations, as necessary, the application of existing Staff Regulations and Rules, including annex III.

I. Introduction

1. In his report of 22 November 2006, on financial and any other implications resulting from the introduction of a staff retention bonus at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (A/61/522), the Secretary-General presented the findings of a cost-benefit analysis carried out at the Tribunals on the costs applicable under the status quo (e.g., the projected increases in turnover rates and the implications thereof for the completion of their mandates) as compared with the costs associated with the payment of a form of retention incentive for the staff who are required to stay with the Tribunals until their posts are no longer required.

2. As set out in paragraphs 11 to 22 of that report (A/61/522), based on the cost components analysed, primarily consisting of: (a) the loss of productivity (delays in proceedings); (b) the direct costs of appointment and separation of staff (rotation costs); and (c) the actual payment of the retention incentive, the financial implications arising from the introduction of a retention incentive would far offset the additional costs related to higher rates of staff turnover. On the financing side, it is estimated that the establishment of a retention incentive payment would amount to $11.2 million and $12.1 million for the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, respectively.

3. The Advisory Committee on Administrative and Budgetary Questions, in its report on financial and any other implications resulting from the introduction of a staff retention bonus at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (A/61/591) noted that it is evident that the Tribunals need to provide incentives as a tool to allow them to retain the services of key personnel as long as they are needed by the Tribunals. The Advisory Committee recommended that the General Assembly, with a view to achieving the desired objective, request the Secretary-General to further explore ways and means of applying the existing Staff Regulations and Rules, including annex III thereto (which deals with termination indemnities).

4. In its resolutions 61/241 and 61/242 of 22 December 2006, the General Assembly endorsed the recommendations of the Advisory Committee, which, inter alia, requested the Secretary-General to prepare a comprehensive proposal with the procedure to be applied, the decisions required of the Assembly and a clearer projection of the number of staff required to be retained to achieve the stated objective, taking into account the latest updated time frame of the completion strategy. The present report is submitted pursuant to that request.

II. Retention incentive in the context of the Staff Regulations and Rules

5. The Tribunals, in consultation with the Office of Human Resources Management, have explored ways and means of applying the existing Staff Regulations and Rules, including annex III thereto, with a view to achieving the desired objective of retaining staff throughout the completion phases of their mandates.

6. In that regard, it would be recalled that the methodology for the payment of the retention incentive as suggested in the report of the Secretary-General (A/61/522) is derived by reference to the principle contained in annex III, Termination indemnity, to the Staff Regulations and Rules, which provides for overall average payments equivalent to one month of salary per year of service. In that report, it was noted that the proposed payment would be consistent with the practice followed by other public and private sector companies in applying retention policy models. The proposed incentive would apply only to the Tribunals, whose unique status is anchored in the fact that: (a) their mandate is temporary in nature; (b) a large proportion of their staff perform specialized functions not normally found in the United Nations system; and (c) they will both close down in accordance with Security Council resolutions 1503 (2003) and 1534 (2004).

7. The existing provisions contained in annex III to the Staff Regulations and Rules apply only to staff holding the following types of contracts:

(a) Permanent appointments;

(b) Temporary appointments which are not for a fixed term (e.g. indefinite appointments);

(c) Fixed-term appointments which are terminated prior to the contract expiration date.

8. Annex III excludes payment of the indemnity for staff on fixed-term contracts who separate on the expiration date of the contract. That would prevent payment of an indemnity to the staff of the Tribunals who are required to remain with the Tribunals until their services are no longer required and who have been given contracts until the end of the period when their services will be needed.

9. Furthermore, annex III to the Staff Regulations provides for a schedule of payments for staff with fixed-term appointments, which does not seem to be appropriate in the context of the incentive package under consideration. The calculation of the indemnity for staff on fixed-term appointments with less than six years of service is not based on the number of years served, but rather on the uncompleted portion of the appointment, with a minimum of six weeks and a maximum of three months of indemnity pay. The schedule applicable to permanent appointments would be more appropriate, as it is based on years of completed service, and would provide a simple formula to administer.

10. To accommodate those constraints in the application of the incentive package to the Tribunals, it is recommended that authorization be granted to the Secretary-General to apply the termination indemnities set out under the heading “Permanent appointments”, in annex III to the Staff Regulations and Rules for the specific and sole purpose of approving payments related to the retention incentive package for Tribunal staff. The special authorization should be strictly limited to staff of the Tribunals owing to the unique nature of their mandate.

11. Under the envisaged scheme, it is proposed that the retention incentive would apply only to staff who are required to remain with the Tribunals until their services and posts are no longer needed. The proposed incentive, which would only cover service with the Tribunals, would not be payable in the following situations:

(a) Separation from service or resignation prior to the cessation or need for services;

(b) Fixed-term appointment terminated or not renewed on disciplinary grounds or owing to reasons specified in staff regulation 9.1 (a) or for such other reason as may be specified in their letter of appointment;

(c) Staff with less than two years of service at the time the incentive is due;

(d) Staff who are seconded from the United Nations Secretariat and other United Nations common system organizations who have a post waiting for their release at the time of separation from the International Tribunal for the Former Yugoslavia/International Criminal Tribunal for Rwanda.

III. Completion strategy and projected downsizing of posts during the biennium 2008-2009

12. In their reports to the Security Council in the fourth quarter of 2006 (see S/2006/898 and S/2006/951), both Tribunals reported that all efforts were being made as far as possible to stay within the time frame of the completion strategy. Based on the information available at the time of writing of the present report, the Tribunals anticipate the completion of first instance trials, as follows:

(a) International Criminal Tribunal for Rwanda: It is estimated that by the end of 2008, the Tribunal could complete trials of 65 to 70 persons; and

(b) International Tribunal for the Former Yugoslavia: Three trials on first instance will be completed during the first quarter of 2009 with the remaining trials expected to be completed sometime during 2009.

13. It is evident that those projections are tentative and would be subject to review due to external factors beyond the control of the Tribunals, which may impact upon the speed at which trials will be completed, such as the timely arrest and transfer of fugitives, delays in the proceedings resulting from requests for review of cases already tried, unforeseen disclosure of materials, requests for replacement of defence counsel, illness of the accused or counsel, the availability of witnesses to certify statements and provide testimony and State cooperation. Furthermore, the successful completion of trials also depends in large part upon the retention of qualified staff up to the very closing of both Tribunals. An update on the progress made towards the implementation of the completion strategy will be submitted by the Presidents and Prosecutors of the Tribunals to the Security Council in the second quarter of 2007.

14. As at the time of the present report, the Tribunals anticipate that the completion of trials during the biennium 2008-2009 will bring about post reductions in all three organs of the Tribunals (Chambers, the Office of the Prosecutor and the Registry), and in particular in those areas and functions directly related to trial activity, such as legal staff in the Chambers; investigators, trial attorneys and analysts in the Office of the Prosecutor; interpreters/translators; witness support personnel; and court management and technical support staff in the Registry. It is expected that most, if not all judgements at first instance, will be appealed by the defence, prosecution, or both parties. In order to expedite the completion of appeals, the Tribunals will be recommending the strengthening of appellate support work in the Office of the Prosecutor and the Registry through the redeployment of post resources that will be freed with the completion of trials.

15. Even with a phased downsizing of the workforce, there remains a need to maintain staff in all three organs of the Tribunals until their functions are no longer required. As mentioned in previous reports, in all categories and occupational groups, the staff members at the Tribunals possess skills and institutional knowledge that make them essential to the daily functioning of the institutions. The retention and continuity of staff in the Professional and General Service categories is essential for the Tribunals to maintain the fast pace of trial activity required to meet the targets of the completion strategies.

16. While in the last two years the Tribunals have experienced an improvement in turnover rates, those rates are expected to peak as the dates of the completion strategy draw near and even surpass those seen in 2004 when external recruitment was suspended owing to cash flow constraints. The significant post reductions envisaged for the biennium 2008-2009 will inevitably generate high levels of anxiety and impact very negatively on staff morale, which in turn will affect staff turnover. Staff turnover responds in indirect proportion to the time left in the life of the Tribunals. Time is of the essence. As the dates of completion become closer, the rate of departure is expected to grow exponentially. The Tribunals simply cannot afford such a situation if they are expected to conclude their mandates on time and without disruption. For those reasons, it is imperative that consideration be given to the approval of an incentive package without delay.

IV. Conclusions and recommendations

17. The financial implications resulting from the application of the Staff Regulations and Rules, including annex III thereto, would be the same as those described in part III of the previous report of the Secretary-General (A/61/522, paras. 11-22). Details on the calculations of the cost estimates resulting from the implementation of a retention incentive payment are shown in the annex to the present report.

18. As indicated in paragraph 24 of the Secretary-General's report (A/61/522), the establishment of the retention incentive would not entail any financial implications for the biennium 2006-2007 given that disbursements in respect of the retention incentive would be effected towards the end of the completion strategies, mainly in 2009 and 2010. In that respect, the related requirements (total estimated payments of $11.2 million and $12.1 million for the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia) would be reflected in the context of the proposed budgets for the years from 2008 to 2010 and would be considered in accordance with established budgetary procedures.

19. **Based on the foregoing, the General Assembly is requested to authorize the Secretary-General to apply the termination indemnities set out under the heading "Permanent appointments" in annex III to the Staff Regulations and Rules for the specific and sole purpose of approving payments related to the retention incentive for staff of the Tribunals under the terms and conditions described in the present report.**

Annex

Detailed information on the financial implications resulting from the introduction of a retention incentive

1. It would be recalled that in order to determine the financial implications of the proposed retention incentive, the Tribunals carried out an analysis of the costs applicable under the status quo as compared to the costs associated with the payment of a retention incentive. The cost components included in the analysis are: (a) the direct costs of appointment and separation of staff (rotation costs); (b) the actual payment of the retention incentive; and (c) the loss of productivity (delays in the proceedings) (A/61/522, para. 11).

2. A summary of the cost-benefit analysis under the two options being considered, namely the no incentive and the retention incentive options, is presented in tables 1 and 2 below. Details on the calculations of the approach taken at arriving at the cost estimates are presented in tables 3 and 4.

3. It should be borne in mind that the figures reflected in the calculations have been derived by reference to the net salary of a staff member at the P-3, step V level, with a dependent spouse and child, as those elements are considered to be representative of the average level and step of the staff members in the Professional and higher categories at the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia.

I. Cost of rotation

A. Direct cost of appointment and separation

4. The costs of appointment include air transportation, shipment of personal effects from the place of recruitment to The Hague and Arusha as well as assignment grant. The parameters used were: (a) points of departure from five locations in Europe, North America, Australia and Africa; and (b) current daily subsistence allowance rates in The Hague and Arusha.

5. A similar calculation was performed for departing staff, in which case assignment grant was replaced by repatriation grant, with the other items remaining unchanged. As reflected in tables 3 and 4, the average cost of appointment and separation in respect of one staff member at the P-3, step V level, at the dependency rate amount to approximately $75,000. That represents roughly 91 per cent and 85 per cent of annual net salary (based on 2006 post adjustment levels) or around 11 and 10 months of annual net remuneration for the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia, respectively (see tables 3 and 4, items (b), (c) and (d)).

B. Turnover rate

6. The second step was to determine the projected rate of staff turnover in the Tribunals. As indicated in the report of the Secretary-General, should no action be taken to improve staff retention, the number of separations (and hence staff

turnover) is expected to progressively increase as the dates of the completion strategy draw near (A/61/522, para. 18). On that basis an average annual turnover rate of 20 per cent was used for the purpose of the calculations. It should be noted that that rate of staff turnover is in line with the turnover rate experienced during the 2004 recruitment freeze.

7. On the basis of an annual turnover rate of 20 per cent, over a four-year period, from 2007 to 2010, the cumulative rotation would amount to 80 per cent. The direct cost of appointment and separation for that rate of turnover is estimated at $43.2 million and $27.6 million for the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia, respectively (see tables 3 and 4, item (g)).

8. Clearly, the introduction of the retention incentive will not result in zero turnover, as it is expected that some staff will continue to leave for better and more stable career opportunities regardless of the "retention incentive" (albeit at a lower rate). Therefore, the calculation also includes the costs associated with rotation of staff after the approval of the retention incentive scheme. It is estimated that the introduction of the retention incentive will bring about a reduction of 50 per cent in staff turnover rates. Therefore, the total rotation costs under the retention incentive option have been estimated at $21.6 million and $13.8 million for the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia, respectively (see tables 3 and 4, item (g)). The difference in rotation costs between the Tribunals is due mainly to the higher number of international staff (Professional, Field Service and international General Service staff) working in the International Criminal Tribunal for Rwanda as compared to the International Tribunal for the Former Yugoslavia.

II. Cost of retention incentive

9. The third step requires the determination of the average payments resulting from the introduction of the retention incentive. The proposed retention incentive would be equivalent to one month's salary for each completed year of service. Assuming a projected average seniority of five years for staff of both Tribunals, that would translate into an average payment equivalent to five months of net salary in respect of each Professional staff. It should be noted that that is a worst case scenario, as not all staff would qualify for the payment of the incentive owing to a number of factors, such as: (a) their seniority (if less than two years); (b) voluntary departures prior to the abolition of the post; and (c) contractual status of the staff member in question.

10. After taking into account the above-listed factors, it is assumed that on average 40 per cent of internationally recruited staff and 50 per cent of locally recruited staff would qualify for the payment of the incentive at the International Tribunal for the Former Yugoslavia. With respect to the International Criminal Tribunal for Rwanda, the same assumptions would apply for internationally recruited staff. However, for locally recruited staff, a 70 per cent qualifying factor has been used.

11. Based on the above assumptions, the total retention incentive payments are estimated at $11.2 million and $12.1 million for the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, respectively (see tables 3 and 4, item (v)).

III. Loss of productivity

12. The fourth step involved the determination of the loss of productivity component. Owing to the specialized knowledge of many occupations at the Tribunals, recruitment lead times can be considerable, from six months upwards. Furthermore, the time required to bring new recruits up to speed can also be significant, from 6 to 12 months are required for staff in legal and investigative positions to familiarize themselves with the region and conflicts.

13. On that basis, it is estimated that the delays in proceedings that could be brought about by an ever-increasing rate of staff rotation could range from 6 to 12 months. For the purpose of that exercise, a six-month delay in the scheduled completion of one trial has been used in the calculations. In order to calculate the financial implications of a delay in proceedings, it was first necessary to estimate the budget obtaining in 2010; i.e., the year when the appellate process is scheduled to come to an end. It was assumed that the budget of the Tribunals in 2010 would represent some 50 per cent of the approved budget for 2006-2007. That would translate into projected annual budgets for 2010 of $65 million and $60 million for the International Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda, respectively. A six-month extension in proceedings would then yield financial implications of roughly $30 million for both Tribunals.

14. Tables 1 and 2 summarize the cost-benefit analysis under the two options being considered, namely the no incentive and the retention incentive options.

Table 1
Cost-benefit analysis for the International Criminal Tribunal for Rwanda under the two options
(Millions of United States dollars)

Cost component	*No incentive*	*Retention incentive*
Loss of productivity	30.0	—
Rotation costs	43.2	21.6
Retention incentive[a]	—	11.2
Total	**73.2**	**32.8**

[a] Detailed calculations are reflected in table 3.

Table 2
Cost-benefit analysis for the International Tribunal for the Former Yugoslavia under the two options
(Millions of United States dollars)

Cost component	*No incentive*	*Retention incentive*
Loss of productivity	30.0	—
Rotation costs[a]	27.6	13.8
Retention incentive[a]	—	12.1
Total	**57.6**	**25.9**

[a] Detailed calculations are reflected in table 4.

Table 3
Detailed calculation of cost of rotation and cost of retention incentive payment for the International Criminal Tribunal for Rwanda

I.	**Cost of rotation (Appointment and separation)**		
	Internationally recruited staff	**No incentive**	**Retention incentive**
	(a) Annual net salary P-3/V (D) plus one child		$82 000
	(b) Direct cost of appointment and separation	$75 000	$75 000
	(c) Item (b) as a percentage of annual remuneration (b/a)	91%	91%
	(d) Item (b) expressed in number of months	11	11
	(e) Projected turnover through 2010 (in per cent)	80%	40%
	(f) Number of internationally recruited assessed budget posts	720	720
	(g) Total cost of rotation (b*e*f)	**$43 200 000**	**$21 600 000**
II.	**Cost of retention incentive**		
	A. Internationally recruited staff	**No incentive**	**Retention incentive**
	(h) Annual net salary P-3/V (D) plus one child		$82 000
	(i) Monthly net salary P-3/V (D) plus one child		$6 833
	(j) Projected average seniority of staff (in years)		5
	(k) Equivalent retention incentive payment (in months)		5
	(l) Estimated percentage of staff qualifying for incentive		40%
	(m) Number of internationally recruited assessed budget posts		720
	(n) Subtotal (i*k*l*m)	**—**	**$9 839 500**
	B. Locally recruited staff	**No incentive**	**Retention incentive**
	(o) Annual net salary G-4/V (D) plus one child		$14 500
	(p) Monthly equivalent		$1 208
	(q) Projected average seniority of staff (in years)		5
	(r) Equivalent retention incentive payment (in months)		5
	(s) Estimated percentage of staff qualifying for incentive		70%
	(t) Number of locally recruited assessed budget posts		322
	(u) Subtotal (p*r*s*t)	**—**	**$1 361 400**
	(v) Total cost of retention incentive (n+u)	**—**	**$11 200 900**
III.	**Overall costs (g+v)**	**$43 200 000**	**$32 800 900**

Table 4
Detailed calculation on cost of rotation and cost of retention incentive payment for the International Tribunal for the Former Yugoslavia

I.	**Cost of rotation (Appointment and separation)**		
	Internationally recruited staff	**No incentive**	**Retention incentive**
	(a) Annual net salary P-3/V (D) plus one child	$89 700	$89 700
	(b) Direct cost of appointment and separation	$76 000	$76 000
	(c) Item (b) as a percentage of annual remuneration (b/a)	85%	85%
	(d) Item (b) expressed in number of months	10	10
	(e) Projected turnover through 2010 (in per cent)	80%	40%
	(f) Number of internationally recruited assessed budget posts	454	454
	(g) Total cost of rotation (b*e*f)	**$27 603 200**	**$13 801 600**
II.	**Cost of retention incentive**		
	A. Internationally recruited staff	**No incentive**	**Retention incentive**
	(h) Annual net salary P-3/V (D) plus one child		$89 700
	(i) Monthly net salary P-3/V (D) plus one child		$7 475
	(j) Projected average seniority of staff (in years)		5
	(k) Equivalent retention incentive payment (in months)		5
	(l) Estimated percentage of staff qualifying for incentive		40%
	(m) Number of internationally recruited assessed budget posts		454
	(n) Subtotal (i*k*l*m)	—	**$6 787 300**
	B. Locally recruited staff	**No incentive**	**Retention incentive**
	(o) Annual net salary G-4/V (D) plus one child		$47 410
	(p) Monthly equivalent		$3 951
	(q) Projected average seniority of staff (in years)		5
	(r) Equivalent retention incentive payment (in months)		5
	(s) Estimated percentage of staff qualifying for incentive		50%
	(t) Number of locally recruited assessed budget posts		536
	(u) Subtotal (p*r*s*t)	—	**$5 294 300**
	(v) Total cost of retention incentive (n+u)	—	**$12 081 600**
III.	**Overall costs (g+v)**	**$27 603 200**	**$25 883 200**