



Professional Standards Advisory Committee

3 February 2026

Opinion:

Factual and Legal Implications of Admission to the ICC List of Assistants to Counsel

I. Introduction

1. This opinion of the Professional Standards Advisory Committee (PSAC) of the International Criminal Court Bar Association (ICCBA)¹ is issued further to a request from Mr Fernando Arias Zúñiga, an associate member of the ICCBA, and a Public Defender at the Public Defender's Office of the Second Judicial Circuit of San José, Republic of Costa Rica.
2. On 5 January 2026, the ICCBA's Executive Director received an email from Mr Zúñiga, in which Mr Zúñiga requested the ICCBA's assistance in responding to a national professional misconduct complaint filed against him under **case No. 25-000135-1820**, issued by Judicial Inspector Ms Natalia Porras Porras, and dated 18 December 2025 ("Complaint"). A copy of the six-page Complaint was attached to Mr Zúñiga's email. On 16 January 2026, the Executive Council of the ICCBA transmitted the Complaint to the PSAC for its attention and action.
3. Having considered Mr Zúñiga's request, the contents of the Complaint, and the mandate of the PSAC under the Constitution of the ICCBA,² the PSAC issues this opinion on the factual and legal implications arising from an individual's admission to the List of Assistants to Counsel before the International Criminal Court ("List of Assistants").
4. This opinion does not provide an interpretation of or guidance on the meaning and application of article 24 of the Reglamento para la Regulación para la Prevención, Identificación y la Gestión Adecuada de los Conflictos de Interés en el Poder Judicial ("Regulation on Judicial Conflict of Interest"),³ which the PSAC understands is the legal basis of the misconduct allegation against Mr Zúñiga under national law or regulation. Instead, as indicated above, this opinion is aimed at setting out the factual and legal implications of admission to the List of Assistants vis-à-vis practice before and any obligations towards the International Criminal Court (ICC or "Court"). It is the PSAC and ICCBA's hope that this opinion will assist in the proper determination of the national disciplinary proceedings against Mr Zúñiga.

¹ Information on the ICCBA and its activities may be found on the organisation's website: <https://www.iccba-abcpi.org/>.

² ICCBA Constitution, articles 19, 20 (available at: <https://www.iccba-abcpi.org/documents>).

³ Text of the Regulation on Judicial Conflict of Interest, accessed at: https://pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=88874&nValor3=116411&strTipM=TC.

II. Expertise of the ICC Bar Association and Professional Standards Advisory Committee

5. The ICCBA, established in July 2016, is an independent, non-profit foundation (Stichting) registered under the laws of the Netherlands. It is the only representative body of counsel recognised by the Assembly of States Parties to the Rome Statute (ASP)⁴ under Rule 20(3) of the ICC Rules of Procedure and Evidence.⁵ The ICCBA represents the interests of independent counsel and members of their team who assist victims, defendants, and other participants before the ICC. In December 2023, the ASP established a Joint Committee on Legal Aid (JCLA), which is mandated to review and provide ongoing advice on the functioning and potential amendments to the Court's Legal Aid Policy. The ASP reserved three seats on the five-member JCLA for representatives of the ICC Registry, and two seats for representatives of the ICCBA.⁶
6. Among its activities, the ICCBA provides training on the law, procedure and practice of the ICC to its members and the wider international legal community, engages with the ICC Registry and other organs of the Court on matters of general interest to the ICCBA's members, including legal aid, ethics and professional conduct, treatment of ICC detainees, and operation of the Court's policies relevant to victims' rights and participation. The ICCBA has also been granted leave by ICC Chambers to submit *amicus curiae* observations.⁷
7. Under the Constitution of the ICCBA and the practice of the PSAC,⁸ the PSAC is mandated, among other duties, to provide legal opinions at the request of ICCBA members on matters pertaining to professional conduct and ethics related to practice by independent legal professionals before the ICC, or in connection with ICC proceedings.
8. In view of the above information, the PSAC respectfully submits that the ICCBA and PSAC are well placed to provide independent expert opinion on the factual and legal implications arising from an individual's admission to the List of Assistants.

III. The national complaint against Public Defender Fernando Arias Zúñiga

9. Based on the PSAC's review and assessment of the Complaint, the PSAC understands the following facts and findings as central to the allegation in the national Complaint that Mr Zúñiga committed misconduct under article 24 of the Regulation on Judicial Conflict of Interest:
 - a. At the time relevant to the Complaint, Mr Zúñiga held, and continues to hold, the position of Public Defender at the Public Defender's Office of the Second Judicial Circuit of San José, Costa

⁴ See, e.g., ASP, 18th Session (2019), Resolution ICC-ASP/18/Res.6 on Strengthening the International Criminal Court and the Assembly of States Parties, paras 78-82 (available at: https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP18/ICC-ASP-18-Res6-ENG.pdf).

⁵ ICC Rules of Procedure and Evidence, available at: <https://www.icc-cpi.int/publications/core-legal-texts/rules-procedure-and-evidence>.

⁶ Legal aid policy of the International Criminal Court, adopted by the ASP at its 22nd Session (December 2023), paras 18-22 (available at: https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-22-9-ENG.pdf).

⁷ See, e.g., *Prosecutor v. Kony*, ICCBA observations on the process of selecting counsel to represent the rights and interests of Joseph Kony during *in absentia* confirmation proceedings, 22 April 2024, ICC-02/04-01/05-496 (available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180818f6f.pdf>).

⁸ Profiles of the five current members of the PSAC are available at the following webpage on the ICCBA's website: <https://www.iccba-abcpi.org/psac>.

Rica, and as such has the status of a judicial official whose professional conduct is governed by the Regulation on Judicial Conflict of Interest.

- b. Article 24 of the Regulation on Judicial Conflict of Interest states:

Prohibición de realizar actividades privadas incompatibles. Las personas servidoras judiciales no deberán ofrecer o desempeñar trabajos o actividades privadas, remuneradas o no, que comprometan su imparcialidad, posibiliten un conflicto de interés o contra sus deberes y responsabilidades en la función pública.⁹

- c. On 28 March 2025, the Public Defender’s Office, including its Director, became aware of Mr Zúñiga’s admission to the List of Assistants, in respect of which Mr Zúñiga had, in his private capacity, submitted an application for admission to the Counsel Support Section of the Registry of the ICC.
- d. Additional investigations and inquiries were conducted, the details of which were recorded and communicated in Official Letter No. 055-CO-OC-2025 (1 June 2025) and Official Letter No. 055-CO-OC-2025 (31 October 2025).
- e. Pursuant to the documentation and information collected, the Complaint alleges that Mr Zúñiga committed misconduct in contravention of article 24 of the Regulation on Judicial Conflict of Interest by carrying out private activities incompatible with his professional position as a judicial official. In particular, Mr Zúñiga, in his private capacity, applied to the ICC Registry for admission to the List of Assistants, thereby submitting himself to evaluation by the ICC Registry, and resulting in the ICC Registry deeming him qualified and “incluyéndolo en la lista de elegibles de asistentes de abogado –‘Assistant for Counsel’, como abogado asistente para la Corte Penal Internacional”.¹⁰
- f. The complaint accordingly alleges: “[P]or lo que usted Fernando Javier Arias Zúñiga se colocó en una situación de conflicto de interés, al realizar actividades privadas incompatibles con su puesto profesional como funcionario judicial, contraviniendo con su actuar el artículo 24 del Reglamento para la Regulación para la Prevención, Identificación y la Gestión adecuada de los Conflictos de Interés en el Poder Judicial.”¹¹

IV. Factual and legal implications of admission to ICC List of Assistants from standpoint of the Court

10. As stated above, the purpose of this opinion is not to provide an interpretation of or guidance on the meaning and application of the applicable national law or regulation – namely, article 24 of the Regulation on Judicial Conflict of Interest.

⁹ Informal English translation: “Article 24.- **Prohibition of engaging in incompatible private activities.** Judicial employees shall not offer or perform private work or activities, whether paid or unpaid, that compromise their impartiality, create a conflict of interest, or are contrary to their duties and responsibilities in public service.”

¹⁰ Complaint, page 2, point 4 (informal English translation: “including him on the list of eligible candidates for Assistant Counsel, as an assistant lawyer for the International Criminal Court”).

¹¹ Complaint, page 2, point 4 (informal English translation: “[T]herefore, you, Fernando Javier Arias Zúñiga, placed yourself in a situation of conflict of interest, by carrying out private activities incompatible with your professional position as a judicial official, contravening with your actions article 24 of the Regulation for the Prevention, Identification and Proper Management of Conflicts of Interest in the Judiciary.”).

11. The PSAC, in light of its mandate, expertise and knowledge, provides the following assessment of the factual and legal implications of an individual applying and being admitted to the List of Assistants from the standpoint of the Court, to assist in the proper determination of the domestic disciplinary Complaint against Mr Zúñiga.
12. Under the ICC's legal framework, two lists have been established that are relevant to the present discussion: **(i)** the List of Counsel before the ICC ("List of Counsel"); and **(ii)** the List of Assistants.
13. These two lists are part of a certification process managed by the ICC Registry's Counsel Support Section. The purpose of the certification process is to verify that an individual satisfies the minimum requirements established under the Court's legal framework to potentially be appointed as an independent Counsel or Associate Counsel¹² representing a defendant or victims in ICC proceedings (List of Counsel),¹³ or as an Assistant to Counsel supporting the work of Counsel and Associate Counsel in their representation of the client(s) (List of Assistants).
14. Mr Zúñiga applied and was admitted to the second of these lists – the List of Assistants. He was therefore assessed by the Registry of the Court as meeting the requirements to be appointed as an **"Assistant to Counsel"** on a legal team representing a defendant or victims in proceedings before the Court. For sake of terminological clarity, the PSAC notes that the position or title of **"Assistant Counsel"** (without the preposition **"to"**) does not exist under the Court's legal framework.
15. The effect of admission to these ICC lists is limited to the aforementioned certification process, which assesses whether an applicant possesses the relevant educational and professional credentials, the minimum required practice experience and/or knowledge, sufficient language skills, and is also in good standing (no disqualifying professional misconduct or criminal convictions) in accordance with the prerequisites set out in the Court's legal framework for appointment or assignment to these positions. The qualifications for admission to these lists, along with reference to the Court's relevant legal framework, may be found in Annex III to the Court's Legal Aid Policy.¹⁴
16. Inclusion on these ICC lists does not constitute an appointment to represent or assist in representing a defendant or victims in proceedings before the ICC or any other type of contractual relationship with the Court. Inclusion on the list does not, in and of itself, constitute advertising an individual's current availability to be appointed as Counsel, Associate Counsel or Assistant to Counsel in proceedings before the Court. Further, there is no obligation on an individual admitted to these lists to accept such an appointment should they be approached by the Court or an ICC defendant or victim.
17. The letter Mr Zúñiga received from the Counsel Support Section of the ICC Registry notifying his admission to the List of Assistants confirms this framework.¹⁵ The letter states, *inter alia*:

¹² In some national jurisdictions an Associate Counsel would be referred to as "Co-counsel".

¹³ Under the ICC's legal framework Counsel and Associate Counsel representing victims before the Court hold the title of **"Legal Representative of Victims"**.

¹⁴ The Court's Legal Aid Policy, with annexes, is available at: https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-22-9-ENG.pdf.

¹⁵ Letter from Counsel Support Section, Officer in Charge, to Mr Zúñiga, ref. CSS/2024/026, 19 January 2024 (provided to the PSAC by Mr Zúñiga upon request).

Please note that, for all intents and purposes, your inclusion in the said list signifies that you have met the qualifications necessary to be included in the list of persons who are eligible to be chosen by defence counsel or legal representative of victims to assist them in proceedings before the Court. Your inclusion in the List of Assistants to counsel in no way denotes a *de facto* appointment or assignment to assist in the representation of accused or victims before the Court.

18. Additionally, and perhaps of particular relevance for attorneys who are employees, staff or officials within their national governments or judiciaries, inclusion on the List of Counsel or List of Assistants does not imply support for, or endorsement of, any specific decisions or actions taken, or statements made by, ICC officials, organs,¹⁶ or the Court as a whole.
19. It is important to note that even individuals on these lists who accept to be appointed to a mandate in ICC proceedings do not become staff members or officials of the Court; they remain independent, external legal professionals representing, or assisting in the representation, of defendants, victims or other participants in specific ICC proceedings.
20. The Disciplinary Board of the ICC (“Disciplinary Board”),¹⁷ which was established by the ASP to hear and determine allegations of misconduct against independent Counsel and Associate Counsel pursuant to the ICC’s Code of Professional Conduct for counsel (“ICC Code of Conduct”),¹⁸ has had cause to address the distinction between an individual being admitted to the List of Counsel, and that of a Counsel or Associate Counsel on said List who has been **appointed** or **assigned** to act in particular ICC proceedings.
21. While Mr Zúñiga, who is admitted to the List of Assistants, is not subject to the ICC Code of Conduct, the relevant findings of the Disciplinary Board of the ICC are, in the PSAC’s view, equally applicable to assessing the situation of individuals on the List of Assistants.
22. In the “Decision of the Disciplinary Board as to Jurisdiction In the matter of Disciplinary Proceedings against Dr. Cyril Laucci (‘the Respondent’),”¹⁹ the Disciplinary Board was confronted with a situation in which a disciplinary complaint had been submitted under the ICC Code of Conduct against an individual who was admitted to the List of Counsel, but who was not, at the time of the alleged misconduct, appointed as a Counsel or Associate Counsel in any proceedings before the ICC. The Disciplinary Board held that it lacked jurisdiction over the accused as the Code of Conduct “relates only to the behaviour of counsel practicing before the ICC”, whereas the “conduct complained of [...] has nothing to do at all with any case before the ICC”.²⁰
23. In setting out its reasoning, the Disciplinary Board addressed the distinction between a lawyer who is admitted to the List of Counsel before the ICC, and a lawyer on this List who is acting in proceedings before the ICC:

¹⁶ The four organs of the Court are the Presidency, the Chambers (Judicial Divisions), the Office of the Prosecutor, and the Registry.

¹⁷ Information on the ICC’s disciplinary mechanisms and procedures for independent Counsel and Associate Counsel are available at the following ICC webpage: <https://www.icc-cpi.int/get-involved/disciplinary-procedure>.

¹⁸ A copy of the Code of Professional Conduct for counsel is available at the following ICC webpage: <https://www.icc-cpi.int/sites/default/files/Publications/Code-of-Professional-Conduct-for-counsel.pdf>.

¹⁹ Disciplinary Board of the ICC, ref. SDO-2021-171 DB, 1 December 2021 (“Laucci Decision”), available at: <https://www.icc-cpi.int/sites/default/files/2022-03/SDO-2021-171-DB-Decision-EN-1-12-2021.pdf>.

²⁰ [Laucci Decision](#), para. 18.

28. The Board believes a useful analogy may be drawn between what happens to a newly admitted lawyer in their “home” jurisdiction once they meet the qualifying requirements and become enrolled, and what happens to counsel who meets the ICC qualifying criteria and is placed on the list.

29. In the case of the “home” jurisdiction, an enrolled lawyer is just that: on the rolls – he/she cannot commence to practise law until they obtain a current practising certificate. Only then can they commence to practise, and that is done by them commencing legal work in that “home” jurisdiction.

30. In the case of counsel entered on the ICC list, he/she only commences to practise when he/she is either engaged by a client or appointed to a client. Otherwise, they are just on the list, not practising, and in the equivalent position of merely being on the rolls. On the rolls or list, and available to take or accept work. But, until they take or accept work before the Court, they are not in practise before the ICC. They are certainly not engaged in any way “*in proceedings before the Court*”.²¹

24. It is the PSAC’s considered view that the logic of the Disciplinary Board’s above findings applies equally to the situation of an individual, like Mr Zúñiga, who has been admitted to the List of Assistants, but who is not appointed to a legal team in proceedings before the Court or otherwise acting before the Court. From the perspective of the ICC, such an individual is neither practising before the ICC nor “engaged in any way ‘in proceedings before the Court’”.

V. Costa Rica’s status as a State Party to the Rome Statute of the International Criminal Court

25. In assessing whether the actions of Mr Zúñiga, as identified in the Complaint and discussed in this opinion, constitute misconduct under article 24 of the national Regulation on Judicial Conflict of Interest, the larger context of the Republic of Costa Rica’s relationship with the ICC may be of relevance.

26. The Republic of Costa Rica signed the Rome Statute of the ICC on 7 October 1998, ratified and adopted the text of the Rome Statute under Costa Rican law through La Ley N.º 8083 of 7 February 2001,²² and deposited its instrument of ratification of the Statute with the Secretary General of the United Nations on 7 June 2001.²³ Costa Rica was accordingly among the first group of states for whom the Rome Statute came into force on 1 July 2002, pursuant to Article 126 of the Statute.

27. Costa Rica has remained a staunch supporter of the Court for more than two decades. In his address in December 2025, during the general debate of the twenty-fourth session of the ASP, the Ambassador of Costa Rica to the Kingdom of the Netherlands underlined Costa Rica’s position on both the importance of the work of the Court and the need for States Parties to the Rome Statute to provide strong support for and to cooperate with the Court.²⁴

²¹ [Laucci Decision](#), paras 28-30 (italics in original).

²² The official text of La Ley N.º 8083 (7 February 2001), is available at: https://pgrweb.go.cr/scij/Busqueda/Normativa/normas/nrm_texto_completo.aspx?param2=1&nValor1=1&nValor2=46034&n.

²³ See United Nations Treaty Series, Status of Treaties, Rome Statute of the International Criminal Court, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=en.

²⁴ Intervención Embajador Arnoldo BRENES CASTRO, Embajador de Costa Rica ante el Reino de los Países Bajos, La Haya, diciembre 2025, available at: https://asp.icc-cpi.int/sites/default/files/asp_docs/ASP24-GD-CR-4-12-SPA.pdf (courtesy English translation available at: https://asp.icc-cpi.int/sites/default/files/asp_docs/ASP24-GD-CR-4-12-ENG.pdf).

[...]

Hoy, presenciamos con sorpresa los sostenidos embates contra la justicia penal internacional que resultan, simple y llanamente, inaceptables.

Ante este panorama, debemos tener claridad sobre lo siguiente: es de la capacidad de respuesta y de anticipación de todos nosotros, como Estados parte del Estatuto de Roma, que dependerá en gran medida que todo lo construido a lo largo de estos años no se diluya, ni se desvanezca en medio de estas agitadas aguas.

El contexto actual pone a prueba, de una manera pocas veces vista, nuestro nivel de compromiso con el Derecho Internacional y con el Estado de Derecho.

Estos son los momentos en los que más necesitamos de la Corte, y en los que la Corte más necesita de nosotros. Porque si bien es cierto la Presidencia, la Fiscalía, la Secretaría y los funcionarios de la institución han asumido con una encomiable valentía, creatividad y visión los enormes retos de esta coyuntura, que incluye tanto órdenes de arresto y sanciones a algunos de sus oficiales electos, así como sofisticados ataques cibernéticos, los Estados parte debemos decir presente, con una determinación aún mayor, en esta misión compartida de continuar asegurando que la humanidad cuente con mecanismos efectivos para prevenir y evitar la impunidad ante los crímenes más graves y reparar a las víctimas, quienes deben estar en el centro de nuestras acciones.

[...]

Esta Asamblea debe emitir un mensaje político claro en defensa de la Corte y de la justicia penal internacional. Y, más allá del mensaje político, los Estados parte debemos tomar medidas concretas en respaldo de la Corte a través de nuestro trabajo cotidiano. Por ejemplo, haciendo aún más visible nuestro apoyo político, facilitando los canales de diálogo con la Secretaría, honrando oportunamente nuestras obligaciones financieras, o brindando apoyo a la Fiscalía cuando haya requerimientos para brindar asistencia.

[...].

28. Two Costa Rican jurists have been elected to serve as Judges of the ICC – Her Excellency Judge Elizabeth Odio Benito (serving from 11 March 2003 – 31 August 2012)²⁵ and His Excellency Judge Sergio Gerardo Ugalde Godínez (term running from 11 March 2021 – 10 March 2030).²⁶
29. It should also be recalled that one of the core pillars of the Rome Statute system is the principle of complementarity, as reflected in the Preamble and Article 1 of the Rome Statute, which establishes the ICC as a court of last resort that may act only where states with primary jurisdiction over alleged Rome Statute crimes are unwilling or unable to genuinely carry out relevant investigations or prosecutions. Part 9 of the Rome Statute sets out a detailed and binding framework for cooperation and judicial assistance between the Court and States Parties.
30. The PSAC lastly notes that the Registry of the Court has made particular efforts in recent years to encourage legal practitioners from Latin America and the Caribbean to seek admission to the List of Counsel and List of Assistants, to better ensure geographic and legal diversity in the makeup of these

²⁵ See <https://www.icc-cpi.int/judges/judge-elizabeth-odio-benito>.

²⁶ See <https://www.icc-cpi.int/judges/judge-sergio-gerardo-ugalde-godinez>.

lists and foster stronger ties between the work of the Court and the legal profession in Latin America and the Caribbean.²⁷

31. Based on the above information and submissions, it is respectfully suggested that the Costa Rican judiciary, and the relevant legal authorities and bodies in all States Parties to the Rome Statute, should view the Rome Statute system and the Court not as a foreign law and institution, but instead a legal framework that is linked to national legal systems, and one that is built on foundations of cooperation, collaboration and collectivity.

VI. Conclusion

32. The PSAC issues this opinion to assist in the proper determination of the national disciplinary Complaint brought against Mr Fernando Arias Zúñiga in his capacity as a Public Defender at the Public Defender's Office of the Second Judicial Circuit of San José, Costa Rica.
33. The PSAC stands ready to provide additional information or submissions should this be of assistance.



Jens Dieckmann

Juan Carlos Manríquez



Marie-Hélène Proulx



Ingo Wamser



Anand A. Shah
PSAC Chair

3 February 2026

²⁷ See ICC, “¡Únase a la Lista CPI! Una convocatoria para Abogado/as de América Latina y el Caribe”, available at: <https://www.icc-cpi.int/get-involved/call-for-latin-american-and-caribbean-lawyers#:~:text=The%20ICC%20is%20calling%20on,to%20advancing%20international%20criminal%20justice.>