



DIRECTIVE ON THE ESTABLISHMENT AND FUNCTIONING OF THE ICCBA HOTLINE AND COMPLAINT MECHANISM FOR HARASSMENT AND SEXUAL HARASSMENT

Section 1 – Terms

1. In this Directive:

- “Code of Conduct” refers to the Code of Professional Conduct for counsel adopted by the Assembly of States Parties;
- “Commissioner” refers to the Commissioner responsible for investigating complaints of misconduct pursuant to Article 33 of the Code of Conduct;
- “Complaint Mechanism” refers to the internal ICCBA mechanism established by this Directive to receive, consider, and act upon complaints of alleged harassment or sexual harassment as further defined in this Directive;
- “Constitution” refers to the Constitution of the International Criminal Court Bar Association;
- “Executive Council” refers to the Executive Council of the ICCBA;
- “Hotline” refers to the ICCBA mechanism established by this Directive to receive informal complaints of alleged harassment or sexual harassment as further defined in this Directive and provide relevant basic advice to the complaining party;
- “ICC” refers to the International Criminal Court;
- “ICCBA” refers to the International Criminal Court Bar Association;
- “ICCBA Declaration” refers to the ICCBA Declaration on Obligations under the Code of Conduct for Counsel and Proposed Amendments thereto dated 2 March 2018;
- “Independent Oversight Mechanism” or “IOM” refers to the body established by the Assembly of States Parties pursuant to Article 112(4) of the Rome Statute to provide meaningful oversight of the Court through its mandate to conduct internal Court inspections, evaluations and investigations;
- “Legal Team Member” refers to any individual appointed to a legal team representing a defendant or victim(s) before the ICC, or appointed to represent a witness before the ICC;
- “Membership Committee” refers to the Membership Committee of the ICCBA;
- “Professional Standards Advisory Committee” refers to the Professional Standards Advisory Committee of the ICCBA.
- “Retaliation” means undertaking one or more acts that are harmful to a person who contacted the Hotline, filed a complaint with the Complaint Mechanism, and/or otherwise took steps to report harassment or sexual harassment, primarily on the basis that the person took such actions.

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Section 2 – Purpose

1. The Preamble to the Constitution expresses, *inter alia*, the conviction that there is a “need for Counsel practising before the ICC and their Support Staff to have an independent association to uphold professional standards of conduct and ethics”. Article 2 of the Constitution establishes as one of the ICCBA’s objectives the promotion and upholding of the highest professional standards and ethics of Counsel, relevant to their duties, responsibilities and obligations pursuant to the Rome Statute, the Rules of Procedure and Evidence, the Code of Professional Conduct, and all related directives and regulations.
2. The ICCBA Declaration expresses the unanimous determination of the Executive Council and Professional Standards Advisory Committee that acts of harassment and sexual harassment, as defined in the United Nations Secretary General’s Bulletin of 11 February 2008 on the Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5), fall below the ‘respectful and courteous’ relations standard set out in Article 7(1) of the Code, in particular that:
 - a. Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment; and
 - b. Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment.
3. The Executive Council hereby establishes the Hotline and Complaint Mechanism to address:
 - a. any allegations of harassment or sexual harassment, as defined in Section 2(2), that may impact upon or are otherwise related to the work of Legal Team Members engaged in proceedings before the ICC; or
 - b. claims that a person has been subject to retaliation for contacting the Hotline, submitting a complaint to the Complaint Mechanism, or otherwise taking steps to report harassment or sexual harassment allegations falling within sub-section (a) above.

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Section 3 – Scope

1. Any person may contact the Hotline or submit a complaint to the Complaint Mechanism if:
 - a. the person believes he or she has been subject to, or has witnessed, harassment or sexual harassment committed by a Legal Team Member engaged in proceedings before the ICC and the conduct in question took place in the context of a professional setting related to the ICC;
 - b. the person is a Legal Team Member who believes he or she, or another Legal Team Member, has been subject to harassment or sexual harassment committed by an individual who is not a Legal Team Member and the conduct in question took place in the context of a professional setting related to the ICC; or
 - c. the person believes they have suffered retaliation arising from having previously contacted the Hotline and/or submitted a complaint to the Complaint Mechanism, and/or having otherwise taken steps to report harassment or sexual harassment allegations falling within Section 2(3)(a).

Section 4 – Hotline Establishment and Procedure

1. The Executive Council shall appoint a suitable number of persons to staff the hotline taking into account the following criteria: language (in particular French and English); gender; ethnicity; cultural background; geographical origin. Persons appointed to the Complaint Mechanism and members of the Professional Standards Advisory Committee and Membership Committee may not be concurrently appointed to the Hotline.
2. The ICCBA shall request the ICC Registry to assign a dedicated ICC phone extension for the Hotline, or the ICCBA will otherwise purchase a mobile phone for the Hotline. The ICCBA shall establish a page on its website where requests for advice from the hotline may be submitted as well as a dedicated email address for the Hotline.
3. The Hotline shall provide relevant information and basic advice to persons who contact the hotline on the following subjects: (i) the strict confidentiality of any information imparted to the Hotline, subject to the relevant provisions of Dutch law or valid judicial orders, as stipulated in Section 6 of this Directive; (ii) legal and procedural avenues that may be available to the person should they wish to pursue a formal complaint or seek recourse related to the alleged harassment or sexual harassment suffered by the person; and (iii) resources that the person may wish to access for counselling and health-related advice and care.

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4. The members of the Hotline shall draft internal guidelines for the day-to-day functioning of the Hotline in conformity with the applicable provisions of this Directive, and submit the guidelines to the Executive Council for approval.
5. The Hotline shall, in coordination with the Executive Council, establish a list of experienced counsel who are willing and able to provide, on a *pro bono* basis, initial legal advice to a person who contacts the Hotline regarding the person's legal rights and avenues for seeking redress for harm they may have suffered arising from being the victim of harassment or sexual harassment.

Section 5 – Complaint Mechanism Establishment and Procedure

1. The Executive Council shall appoint a suitable number of ICCBA members to sit on the Complaint Mechanism, taking into account the following criteria: language (in particular French and English); gender; ethnicity; cultural background; geographical origin; years of relevant practice experience as a lawyer; experience in dealing with matters of ethics, professional responsibility and/or investigating or representing clients in harassment or sexual harassment claims. Persons appointed to the Hotline and members of the Professional Standards Advisory Committee and Membership Committee may not be concurrently appointed to the Complaint Mechanism. The Executive Council shall appoint one member of the Complaint Mechanism as Chair of the Complaint Mechanism.
2. The ICCBA shall establish a page on its website where persons who fall within Section 3 of this Directive may submit a complaint alleging that he or she or a third party has been the subject of harassment, sexual harassment, and/or retaliation. The ICCBA shall establish a dedicated email address for the Complaint Mechanism.
3. Following receipt of the complaint the Complaint Mechanism will expeditiously evaluate the complaint to determine whether the complaint may be submitted to one or more of the following entities or officials:
 - a. the ICCBA Membership Committee for its consideration and action, which may include possible suspension or termination of ICCBA membership in accordance with Part XIV of the Constitution;
 - b. the Registrar of the ICC pursuant to Article 34(4) of the Code of Conduct for purposes of the Registrar, on his or her own initiative, submitting a complaint to the Commissioner;
 - c. the Registrar of the ICC if the person alleged to have committed the act(s) of harassment, sexual harassment, and/or retaliation is a staff member of the Registry, Chambers, Presidency, Secretariat of the Assembly of States Parties, Secretariat of the Trust Fund for Victims, or the ICC Office of Internal Audit;

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- d. the Prosecutor of the ICC if the person alleged to have committed the act(s) of harassment, sexual harassment, and/or retaliation is a staff member of the Office of the Prosecutor;
 - e. the Independent Oversight Mechanism where submission to the IOM is deemed appropriate.
4. The Complaint Mechanism may communicate with the person who has submitted the complaint in order to verify or obtain further information related to the complaint, or to consult with the person regarding the Complaint Mechanism's determination pursuant to Section 5(3) of this Directive or the mediation process outlined in Section 5(5).
 5. In circumstances where a complaint is levied against a Legal Team Member, and where deemed appropriate and feasible, the Complaint Mechanism may, prior to proceeding to a determination under Section 5(3), enter into a mediation process involving the person who submitted the complaint and the Legal Team Member against whom the complaint has been submitted with a view to addressing the circumstances and behaviour that led to the complaint being filed and ensuring that the behaviour and acts that are the subject of the complaint are not repeated. The mediation process may include, but is not limited to, the issuance of written recommendations by the Complaint Mechanism to the Legal Team Member against whom the complaint was filed.
 6. The members of the Complaint Mechanism shall draft internal guidelines for the day-to-day functioning of the Complaint Mechanism in conformity with the applicable provisions of this Directive, and submit the guidelines to the Executive Council for approval.

Section 6 – Confidentiality, Consent and Privileges and Immunities

1. All communications with the Hotline or Complaint Mechanism as well as complaints submitted to the Complaint Mechanism shall be kept strictly confidential by the members of the Hotline and Complaint Mechanism and shall not be shared with persons or parties outside of the Hotline or Complaint Mechanism unless the person initiating the communication or submitting the complaint provides written consent permitting the information in question to be shared with specified third parties.
2. Notwithstanding the provisions of Section 6(1), any person who contacts the hotline or submits a complaint shall be advised of the possibility that the Hotline or Complaint Mechanism may be required to disclose information, without the consent of the information provider, where required by Dutch law (subject to applicable privileges and immunities) or a valid judicial order. Unless it would be contrary to the terms of a judicial order, the information provider shall be notified in advance of such disclosure, and afforded an opportunity to raise any issues concerning privileges and immunities,

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legal privilege and confidentiality, protective measures, or the security and welfare of persons that might be impacted by the disclosure.

Section 7 – Complaints Against Members of the Hotline or Complaint Mechanism

1. Any complaint against a member of the Hotline or Complaint Mechanism falling under Section 3 of this Directive or arising from the member’s duties as a member of the Hotline or Complaint Mechanism shall be submitted to the ICCBA President and ICCBA Executive Director. The President, in consultation with the Executive Council, shall decide on the appropriate procedure to be followed in such circumstances, including whether the member of the Hotline or Complaint Mechanism in question should be suspended from their position on the Hotline or Complaint Mechanism.
