



14 November 2018  
The Hague Netherlands

Dear ICCBA-ABCPI Members,  
Dear Members of Legal Teams before the International Criminal Court,

**Re: Standards of conduct applicable to legal team members in professional settings**

We hope this letter finds you well.

We are immensely proud to be part of this profession of lawyers and legal professionals, who are dedicated to upholding the rule of law and justice at the International Criminal Court (ICC). Our work is challenging, time-consuming, and in many ways very different from the practice of law that exists in our respective domestic jurisdictions. But together, as a profession, we strive to uphold the notions of fairness and decency that underwrite our work.

It is in that vein that the International Criminal Court Bar Association's (ICCBA) Working Group on Workplace Harassment (Working Group)<sup>1</sup> is communicating with you in order to inform all ICCBA members and members of legal teams representing any participants in proceedings before the Court, of the ICCBA's official position on the applicable standards of appropriate conduct in professional settings for all persons appointed to legal teams before the ICC.

This letter also outlines the concrete measures the ICCBA is in the process of implementing – including a Hotline and a Complaint Mechanism – to address potential allegations of harassment and sexual harassment.

Like 'fair trial', 'harassment' is a concept that may mean different things to different persons. In the interests of clarity, we are therefore attaching a PowerPoint presentation from an expert trainer on workplace harassment prevention that provides examples of inappropriate workplace behaviour and the negative consequences of such behaviour for individuals and organisations. We urge you to carefully review this presentation and to discuss it with your colleagues.

The Working Group<sup>2</sup> underlines that, from the standpoint of the ICCBA, the obligation to conduct oneself in a professional, respectful and courteous manner extends to all members of legal teams and applies to all professional settings related to the ICC and ICCBA. These principles aim to **PROTECT YOU** and ensure that you can all fulfil your mandates in a safe and respectful environment.

We also underscore that Counsel have a particular responsibility, under Article 32(2) of the Code of Professional Conduct for counsel (Code), to oversee the conduct of all persons on his or her

<sup>1</sup> The Executive Council established the Working Group in 2017, with a mandate to consider the issue of workplace harassment as relates to legal team members practicing before the ICC, develop standards of professional conduct in this context, and propose mechanisms to address allegations of harassment for the consideration of the Executive Council.

<sup>2</sup> The current members of the Working Group are: Melinda Taylor, Co-Chair; Anand A. Shah, Co-Chair; Caroline Buisman; Marion Carrin; Marie O'Leary; Colleen Rohan.

team, and ensure that this conduct complies with the applicable legal standards. We therefore expect Counsel to adopt appropriate measures to ensure a zero tolerance policy with respect to:

- **Harassment** (including **bullying** and **abuse**) and **sexual harassment** (as further defined below) within their respective teams; and
- Acts of **retaliation** against individuals who attempt to report or complain about harassment or sexual harassment.

We stress that the policy has to be applied equally to men and women and that it is not necessary that acts falling under the above categories are committed at workplace or within working hours.

A failure to do so might engage Counsel's own responsibility under the Code.

### **I. The ICCBA's position on appropriate standards of conduct in the workplace**

On 2 March 2018, the ICCBA Executive Council and ICCBA Professional Standards Advisory Committee ("PSAC") issued a *Declaration on Obligations under the Code of Conduct for Counsel and Proposed Amendments thereto* ("Declaration").<sup>3</sup> This Declaration, *inter alia*, expressed the unanimous view of the Executive Council and the PSAC that acts of harassment (including bullying) 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) ("UN Bulletin"), do not comply with the 'respectful and courteous' relations standard set out in Article 7(1) of the Code of Professional Conduct for counsel.

The Working Group endorses the definitions of prohibited conduct provided in the Declaration and UN Bulletin, and emphasises that the obligation to refrain from these prohibited types of conduct, as set out below, apply to all persons appointed to legal teams before the ICC (counsel, legal assistants, case managers, investigators, resource persons, consultants, experts, visiting professionals, interns) and in all professional settings related to the ICC and ICCBA:

- 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;
- 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.

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<sup>3</sup> The Declaration is available on the ICCBA's website at the following address:  
[https://docs.wixstatic.com/ugd/ff5a5e\\_d2d6b8bba4ab4f1ab1a28f536401ecb2.pdf](https://docs.wixstatic.com/ugd/ff5a5e_d2d6b8bba4ab4f1ab1a28f536401ecb2.pdf).

Examples of actions and patterns of behaviour that qualify as harassment (including bullying) and sexual harassment can be found in the PowerPoint Presentation<sup>4</sup> accompanying this letter. These examples are by no means comprehensive, but include:

a. **Harassment:**

- physical or verbal threats;
- yelling or screaming;
- intimidation;
- humiliating, derogatory, offensive or abusive personal comments;
- malicious and unfounded reports or allegations against an individual.

b. **Sexual harassment:**

- Any request(s) for date(s) or private meeting(s), particularly after hours;
- Unsolicited requests for sexual contact or favours, including as a condition for employment or advancement;
- Unwanted physical contact;
- Suggestive compliments;
- Remarks, messages or jokes of a sexual nature;
- Circulating pornographic images or images displaying nudity.

*In dubio pro reo* is a favourite mantra for some of us, so in case of doubt, do not hesitate to reach out for advice, and bear in mind that we all come from different backgrounds and cultures: what may be considered to be normal or acceptable in one cultural setting, might not be in another – so always try to put yourself in the shoes of the person with whom you are interacting.

## II. Scope of application of standard of conduct obligations for legal team members

The Working Group also notes the unique context within which members of legal teams practicing before the ICC operate, in particular that:

- Legal team members may not be staff members of the Court;
- The Code of Conduct for counsel – including its ‘respectful and courteous’ relations standard (Article 7(1)), and complaint, investigations and sanctions mechanisms – applies directly to counsel only, though, as noted above, counsel shall ensure that his or her assistants and other staff comply with the Code (article 7(4) and Article 32(2) of the Code);
- While each legal team is a wholly separate entity, legal team members, and especially more junior team members, often or primarily work from the ICC Permanent Premises and interact with other legal team members, staff of the Court, and other persons who

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<sup>4</sup> See **Simon Ferrar**, Workplace Harassment, PowerPoint presentation. While the terminology and definitions provided in this PowerPoint may vary somewhat from those provided in the UN Bulletin, the Working Group considers that the examples of prohibited behaviour provided in the PowerPoint meet the definition of harassment or sexual harassment set out in the UN Bulletin and adopted by the ICCBA.

may be present at the Court on a regular basis. The *de facto* daily working environment for individual legal team members may therefore include the wider community of legal teams operating at the ICC and other persons, including Court staff, present at the ICC Permanent Premises.

In view of these specific factors, and as indicated above, the Working Group, on behalf of the ICCBA, considers that the obligation of legal team members to conduct themselves in a professional, respectful and courteous manner – including refraining from engaging in harassment and sexual harassment – extends to all members of legal teams and applies to all professional settings related to the ICC and ICCBA.

### **III. ICCBA mechanisms for addressing complaints of harassment and sexual harassment**

Pursuant to its mandate and further to the instructions of the Executive Council, the Working Group has promulgated a draft *Directive on the Establishment and Functioning of the ICCBA Hotline and Complaint Mechanism for Harassment and Sexual Harassment* (Directive).

The Directive establishes an advisory Hotline to receive informal complaints regarding alleged harassment or sexual harassment committed by a legal team member or alleged incidents where a legal team member has been subject to harassment or sexual harassment.

The Directive also establishes a Complaint Mechanism to receive, consider, and act upon formal complaints of alleged harassment or sexual harassment committed by or against legal team members. The Complaint Mechanism is empowered to collect information and determine whether a complaint alleging harassment or sexual harassment may be submitted to other entities or officials for their consideration and action, such as the ICCBA Membership Committee, the ICC Registrar, the ICC Prosecutor, or the Internal Oversight Mechanism.

Both the Hotline and Complaint Mechanism will operate on the principles of consent of the complaining party and strict confidentiality.

If you have specific suggestions concerning the Hotline and Complaint Mechanism, please let us know.

### **IV. The basis of the ICCBA's authority to address standards of conduct and conduct complaints**

The ICCBA has been recognised by the Assembly of States Parties and the Principals of the Court as the main representative of counsel before the ICC.<sup>5</sup> The Preamble to the ICCBA 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

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<sup>5</sup> The ICCBA was recognised by the ASP during its 15th session as an independent organisation with a mandate to represent the interests of Counsel before the Court. At its 16th session, the ASP further welcomed the enhanced dialogue between the Court, States Parties, the ICCBA and civil society in the area of cooperation. The ICCBA additionally presented a report on its activities to the ASP at its 16th Session, and was likewise invited by the ASP to present a report on its activities at its 17th Session. See also the Court's website: <https://www.icc-cpi.int/get-involved/Pages/legal-professionals.aspx> (bottom of page); <https://www.icccpi.int/about/victims> (bottom of page); <https://www.icc-cpi.int/about/defence> (link to ICCBA website provided).

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 for counsel, and all related directives and regulations.

In light of the ICCBA's status before the Court and the above noted provisions of the ICCBA Constitution, the Working Group considers that the ICCBA is fully mandated to establish and enforce appropriate standards of professional conduct for legal team members practicing before the ICC, as well as promote a safe working environment for all legal team members.

Sincerely,

**The ICCBA Working Group on Workplace Harassment**

cc: H.E. Chile Eboe-Osuji, President, International Criminal Court  
Mr. Peter Lewis, Registrar, International Criminal Court  
Mr. Marc Dubuisson, Director, Division of Judicial Services, ICC Registry  
Dr. Esteban Peralta Losilla, Chief, Counsel Support Section, ICC Registry  
Mr. Pieter Vanaverbeke, Head, Legal Aid Unit, Counsel Support Section, ICC Registry