



## A QUESTIONNAIRE FOR THE CANDIDATES FOR REGISTRAR OF THE INTERNATIONAL CRIMINAL COURT

*Note: please feel free to use a separate document to submit your answers.*

### **Question 1: ICCBA as Independent Representative Body of Counsel**

**Context:** The ICCBA was established as the independent representative body of Counsel before the Court, pursuant to Rule 20(3) of the Rules of Procedure and Evidence (“RPE”). It was formally acknowledged as such by the Assembly of States Parties (“ASP”) at its 15<sup>th</sup> session. At its 16<sup>th</sup> session the ASP further welcomed the enhanced dialogue between the Court, States Parties, ICCBA and civil society in the area of cooperation.<sup>1</sup> As set out in the in the Vacancy Announcement for the Registrar position, “liaising and cooperating with the ICC Bar Association” forms part of the core functions of the ICC Registrar with respect to Court Services.

**Question:** How do you envisage the place and role of the ICCBA and its interaction with the ICC Registry?

**Answer:** The ICCBA is a key and strategic partner of the ICC as a whole. In ensuring that the ends of justice are met as a recognised professional body for Defence counsel, it should be able to ensure;

- Its members provide competent and professional legal services to the Defence and hence develop the jurisprudence of the Court,
- Adequate representation of it members concerns and grievances,
- address issues of misconduct amongst its members,
- It is a barometer of society working closely with the communities in their out reach and public education programmes and hence participates in the growth and international acceptance of the Court.
- ICCBA should therefore play a positive role in its interaction with the ICC Registry.

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### **Question 2: Legal Aid**

**Context:** At its 12<sup>th</sup> session (November 2013), and at every session thereafter, the ASP has instructed the Registry to review the legal aid scheme. The external consultant hired by the ICC Registrar for that purpose issued in January 2017 a first report entitled “Assessment of the ICC’s Legal Aid System”.<sup>2</sup> One of the major conclusions of that Report (pp. 15-20) is that Counsel and



Support Staff before the ICC are by far the least paid compared to other international criminal tribunals, in particular following the last revision of the legal aid scheme in 2012.

**Question:** Present your vision regarding the current legal aid scheme and its possible enhancement pursuant to the ASP request.

**Answer:** The Roger's report as well as the various published comments and recommendations from the ICCBA, IBA as well as the OPCD are unanimous in their conclusions that the current legal aid scheme is inadequate in its *inter alia*, remuneration of Defence Counsel and provision of adequate personnel to ensure a fair trial to the Accused person. I would, should I be nominated Registrar of the ICC, give immediate priority to setting up a team with the view of adjusting the remuneration of Defence Counsel upwards, regard being had to the budgetary constraints. The issue of tax exemption and discussion with the relevant Netherlands authorities is also a priority. Key as well, is the addition of staff to the Defence from the onset of the pre-trial hearing as this affects the Accused's right to a fair trial.

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<sup>1</sup> Resolution ICC-ASP/16/Res.6, Strengthening the International Criminal Court and the Assembly of States Parties, 14 December 2017, para. 22.

<sup>2</sup> The Report is available here: <https://www.icc-cpi.int/itemsDocuments/legalAidConsultations-LAS-REP-ENG.pdf>.



### Question 3: Protection of Victims and Witnesses

#### Context:

In March 2011, the ICC Office of the Prosecutor and the Registry signed the non-public “Prosecution-Registry Joint Protocol on the Mandate, Standards and Procedure for Protection” (“Joint Protocol”). According to publicly available information in the record of ICC proceedings, the purpose of the Joint Protocol is “to improve coordination between the [Victims and Witnesses Section] and the OTP and clarify responsibilities for each other on issues of witness protection”.<sup>3</sup> Additionally, according to the Office of the Prosecutor, the Joint Protocol is to apply *mutatis mutandis* to persons who are placed at risk on account of their interaction with defence or victims teams, “and may be the basis for an analogous Protocol to be established between the Registry and Defence [and Victims] teams”.<sup>4</sup>

To date, the Registry has not enacted a protocol analogous to the Joint Protocol with respect to Defence and Victims teams.

#### Questions:

- A. Do you consider that there should be such a Protocol for Defence and Victims teams? If so, please briefly set out your reasons.
- B. If you are in favour of such a Protocol, do you consider that Defence and Victims representatives (including the ICCBA) should be consulted in the drafting of the Protocol? What forms should any such consultation take? Please briefly set out your reasons for their inclusion / non-inclusion in the process.

**Answer:** Having regard to the decision on the Ruto Defence Application for Nullification of the Prosecution-Registry Joint Protocol, in my considered view, neither the Court nor the Registrar was averse to such Protocol. The Defence, for future consideration, was invited to discuss the possibility of such Protocol or Policy, in the event that the *mutatis mutandis*, provision did not fully cater for the Defence. In my view, it is for the Defence to initiate talks with the Registrar.



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<sup>3</sup> Trial Chamber V(A), *Prosecutor v. Ruto and Sang*, Public Redacted Version of Decision on the Ruto Defence Application for Nullification of the Prosecution-Registry Joint Protocol, 14 November 2013, ICC-01/09-01/11-1097-Red, p. 9 (available at: [https://www.icc-cpi.int/CourtRecords/CR2017\\_07166.PDF](https://www.icc-cpi.int/CourtRecords/CR2017_07166.PDF)).

<sup>4</sup> *Ibid.* at p. 7, citing to *Prosecutor v. Ruto and Sang*, Prosecution response to “Defence Application for: 1) Nullification of the “Prosecution – Registry Joint Protocol on the Mandate, Standards and Procedure for Protection” and 2) Order for disclosure, 3 September 2013, ICC-01/09-01/11-901-Conf, para. 13.



#### Question 4: Outreach

**Context:** The Registry has primary responsibility for ICC Outreach in Situation countries. It is widely acknowledged that Outreach is a critical aspect of the ICC's work. Outreach activities are coordinated by the Registry Public Information and Outreach Section ("PIOS"). OTP regularly participates in Outreach activities. The Registry Victims Participation and Reparations Section ("VPRS") and Office of Public Counsel for Victims ("OPCV") are also involved in outreach activities on victims' issues. Neither the Independent Bar, the Office of Public Counsel for Defence ("OPCD"), ICC List Counsel and acting Defence and Victims' Counsel before the Court, nor their Assistants, are associated with or consulted about the ICC's Outreach.

#### Questions:

- A. What, if any, should be the role of the Defence and Victims representatives in ICC Outreach activities? Please explain your position.  
The Defence and victims is a key
- B. Do you see a role for the ICCBA in the ICC's Outreach, and if so, what?

**Answer: The Defence and Victims' representatives are key partners in the ICC outreach programmes. Their involvement in public education for example in coordination with the relevant ICC staff would provide balanced information to the public on the work and the role of the ICC. The Defence is part of the ICC that ensures there is a fair trial for Accused persons.**

**The ICCBA does have an important role to play in the ICC's outreach programmes, in that its members come from the international community, and are therefore better placed to understand the social and cultural dynamics of the key players at the ICC like the witnesses, victims and Accused persons.**

**The ICCBA's members would also be members of their local Bar Association, regional and other international Bar Associations and can assist in bringing the work of the ICC through its outreach programmes to a wider audience.**

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#### Question 5: ICCBA Membership

**Context:** Unlike the ICTY and the MICT, where List Counsel were and are currently obliged to become members of the Association of Defence Counsel Practising before International Criminal Tribunals (ADC-ICT), there is no compulsion or requirement for ICC List Counsel, or their Assistants, to become members of the ICCBA. The ICTY/MICT requirements have provided



significant assistance for the ADC-ICT in recruiting paying members and in creating a self-regulating, self-financed and independent community of Counsel, which has helped it to develop as a Bar Association and provide professional training and services for its Members.

**Question:** What is your view about ICCBA membership becoming compulsory for all current ICC List Counsel and applicants to the List, as well as their Assistants? If you are in favour of this course of compulsory ICCBA membership, and you are appointed to the position of ICC Registrar, explain how you would bring this about.

**Answer:** ICCBA is a recognized partner of the ICC. In my humble view the Defence has a stronger voice if it is represented by a body, with resources to negotiate better working conditions for its members at the ICC. Compulsory membership to a recognized body means the body is able to regulate the conduct of its members ensuring the observance of ethical practices by its members including discipline. A recognized body would ensure that its members are better qualified, better trained without be-labouring the Registry with that duty, which may not have such capacity as Defence counsel is drawn from the international community from various legal systems.

The practical application would be to require the ICCBA to affirm membership when Counsel applies for inclusion to the list of Counsel at the ICC.



### Question 6: ICCBA Presence at the ICC Permanent Premises

**Context:** At the ICTY, and now MICT, the ADC-ICT has long been provided with office space within the facilities of the ICTY / MICT in order to conduct their work, meet with their constituency, and store important files of the organisation.

**Question:** Do you believe the ICCBA should be provided with permanent office space at the ICC Permanent Premises? Please briefly state the reasons for your position. If your answer is in the affirmative, presuming there is limited office space available within the ICC Permanent Premises, what level of priority would you attach to providing the ICCBA with its own office space and what types of measures would you be ready to take to speed up the process of assigning office space to the ICCBA?

**Answer:** I am of the view that offices supporting the work of Defence Counsel should be strengthened through *inter alia*, the provision of office space and personnel. ICCBA on the other-hand should not only be independent but also appear to be independent from the ICC. On this basis the provision of permanent office space currently, would not be a priority.

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