



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 15th session. At its 16th session the ASP further welcomed the enhanced dialogue between the Court, States Parties, ICCBA and civil society in the area of cooperation.¹ 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:

I view the ICCBA as an essential pillar in the promotion of the interests of the Defence and Victims, and an invaluable partner to the Registry.

The respect for the rights of the accused and those of the victims is a cornerstone of the ICC and one that both the Registry and ICCBA work to ensure. It is keeping in mind this shared, broader goal, that each within their respective roles and comparative strengths, can every day turn issues into solutions and serve as a global model for the promotion of the rights of both the accused and the victims.

Based on my previous experience as the ICTY and MICT Registrar, I have learned that strengthening the respect of the rights of the accused also means strengthening the Association of Defence Counsel practicing before the tribunals (ADC/ADC-ICT), establishing and continuously nurturing an open, positive and honest relationship. Together, over the years, through continuous dialogue and feedback, we ensured the highest possible legal representation for the accused, we established a remuneration scheme which gave flexible and adequate resources to the Defence, ensured oversight and minimised litigation over fees, integrated the Defence into the day-to-day and the institutional life of the ICTY and MICT, and continuously enhanced the Registry services to accused and Defence.

I envision the ICCBA playing a similar, if not stronger, role and the cooperation with the Registry being equally, if not more, successful.

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



Question 2: Legal Aid

Context: At its 12th 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”.² 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 ICC has been engaged in a review of its current legal aid remuneration system and submitted an update report to the ASP at its 16th session. This update did “not contain concrete proposals for adjustments to the Court’s legal aid system” which were explained as still in development.³

Should I be elected as Registrar, I would build on the work to date and lessons learned, bringing my experience of a successful implementation of a legal aid system first with the ICTY, and then with the MICT, with the same active engagement with counsel through the ICCBA to the unique setting at the ICC.

The ICTY lumpsum remuneration scheme, whose development and implementation I was actively involved in as Deputy Registrar and then Registrar, attracted and, most importantly, retained throughout lengthy cases highly qualified attorneys from multiple jurisdictions. This remuneration scheme: 1) offered adequate resources and flexibility to the Defence teams; 2) increased predictability and transparency in both the payments to counsel and the overall Defence budget; and 3) ensured the necessary Registry oversight without requiring cumbersome administration and minimising litigation on remuneration. With about 90% of the ICTY’s accused having benefited from full or partial legal aid, this scheme had a remarkable impact at the ICTY. Further, to those accused who chose not to be represented by a lawyer, we provided extensive facilities so that their self-representation was effective and meaningful.

I believe that relevant aspects of this experience, adapted to the different context of the ICC and in partnership with the ICCBA, could further enhance the provision of legal aid at the ICC. In particular, some of the basic philosophies of the ICTY legal aid scheme, such as regular monthly payments to counsel, less detailed accounting of hours but work plans and periodic reports by counsel of the work done, and end-of-stage payment which reconciles the payments made with the

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

³ See https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-24-ENG.pdf



overall amount due, etc. which have proven to be functioning well, could contribute to a new ICC legal aid policy.

Further as Registrar, I would ensure that funding decisions made by the Registry are transparent and based on written policies. I would strive to simplify remuneration procedures to ensure that they are clear, promote streamlining and consistency, as well as reduce ambiguity to prevent unnecessary litigation, which may detract counsel time from their cases and Registry resources from other competing priorities. I would seek to enhance the role of the Registry as a service provider, ensuring that staff dealing with counsel are responsive, foster and maintain a polite and appropriate relationship, and are capable of offering reliable and correct advice in a prompt manner.

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”.⁴ 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”.⁵

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?

⁴ 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).

⁵ *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.



What forms should any such consultation take? Please briefly set out your reasons for their inclusion / non-inclusion in the process.

Answer:

As was considered in the cited decision in *Prosecutor v. Ruto and Sang*, the Protocol puts in place a consultation mechanism and divides tasks between the Prosecution and Registry for their respective mandates for the protection of victims and witnesses. The Trial Chamber further noted that “it is a matter of common sense and efficiency that some of the principles and mechanisms provided for in the Protocol could be applied and adapted in order to protect Defence witnesses.... Ideally, of course, it is desirable that the Registry.... makes similar agreements, if possible, with the Defence teams and legal representatives for victims.”⁶

The *Prosecutor v. Ruto and Sang* decision was issued on 14 November 2013 prior to the establishment of the ICCBA, with the public redacted version issued on 11 December 2017. The Trial Chamber itself recognised the desirability of such a protocol for the Defence and legal representatives for Victims. In bringing such a protocol to fruition, as Registrar I would lead this process with the same transparent and constructive engagement with the ICCBA, Defence teams and Victims representatives as I did with similar such processes at the ICTY and MICT including with the ADC/ADC-ICT, recognising and truly valuing the mutual benefit that comes from collegial, engaged consultation with all relevant stake holders.

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.
- B. Do you see a role for the ICCBA in the ICC’s Outreach, and if so, what?

⁶ *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, 11 Dec. 2017, para 27.



Answer:

Defence and Victims representatives, as well as ICCBA, should be involved in ICC Outreach activities, in a coordinated fashion.

I am firmly committed to the importance of outreach for international criminal tribunals and courts. When I became the ICTY Registrar, I revamped and modernised the ICTY's Outreach Programme through the development and implementation of a new strategy which was able to more widely and effectively translate our work across geographical distances, language barriers, different legal systems and competing narratives, which is necessary for raising awareness and helping promote peace in affected communities.

I am all the more committed to a broad outreach which encompasses all aspects of the work of a court. At the ICTY and MICT I am proud that we worked together with the Defence to ensure that they became active participants of our Outreach activities where they made an invaluable contribution to those activities, alongside the Chambers, Registry and Prosecution.

As Registrar of the ICC, I would bring with me that positive experience and be supportive of an active engagement of both Defence and Victims representatives, following necessary internal consultations and discussions on the modalities and practicalities of such participation.

In this regard, I would see the ICCBA playing a central role in liaising with the Registry on various Defence and Victims issues, including potential participation in outreach activities, as well as having a role in representing the importance of the work of international criminal bar associations in international criminal courts and tribunals at outreach events.

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 Practicing 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:

As I am an outsider to the ICC, I would need to engage thoroughly with the ICCBA to better understand the current set-up, its strengths, what works, what could be improved, and what should be more radically transformed.

I am accustomed to a system of compulsory membership of counsel to the Association of Defence Counsel which served well the ICTY/MICT, the association's members and the Registry, as outlined in my response to question 1. However, I would consider to what extent any benefits brought by the ICTY/MICT ADC-ICT system might be available even without compulsory membership and in the different context of the ICC. Mindful of any positive experiences, I would adopt an open mind and engaged interest in identifying and helping implement a structure that would benefit the accused and victims, the ICCBA, and, ultimately, the ICC.

Extensive consultations would be required, and set timelines established, mindful that should any amendment to the Rules of Procedure and Evidence be proposed, this would ultimately require a decision by the ASP.

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:

At the ICTY and MICT, the Registry provided the ADC with dedicated office space within the premises. Beneficial to both the Defence teams and the tribunals, this space enabled the ADC/ADC-ICT to adequately represent the interests of its members, while being available on short notice to participate in various meetings and events with the tribunals officials, and, ultimately, further promote the integration of the Defence into the day to day life of the ICTY and the MICT.

Given my commitment to ensuring strong promotion of the rights of the accused and the victims, I would therefore, as ICC Registrar, consult internally and look at the distribution of current office space to identify any possible arrangements. As with my responses above, I would actively engage



with the ICCBA throughout this process, as I would work with the Registry's building management services to ensure that all viable options are explored, costed and analysed. I believe that, should it not already exist, this preliminary analysis could be performed rather expeditiously.

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