

 **CHAPTER V**

# LEGAL REPRESENTATION

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**Unless otherwise specified:**

*“Article”*: refers to the Rome Statute  
*“Rule”*: refers to the Rules of Procedure and Evidence  
*“Regulation”*: refers to the Regulations of the Court  
*“Regulation (RR)”*: refers to the Regulations of the Registry  
*“Regulation (VTF)”*: refers to the Regulations of the Trust Fund for Victims

## INTRODUCTION

In order to participate and to seek reparation before the ICC, victims can have legal representation.

There are very few provisions relating to the specific issue of legal representation for victims within the Rome Statute and the Rules of Procedure and Evidence of the ICC. This absence is explained by the history of the negotiations of these texts.



At the time of drafting the Rome Statute the whole issue of organising legal representation, for both defendants and victims was almost entirely overlooked, the challenge at that stage being to ensure that the very principle of victims' participation was accepted. However, during negotiations of the Rules of Procedure and Evidence several associations of defence lawyers effectively lobbied for the inclusion of provisions on legal representation for the defence and on the criteria to be fulfilled by defence counsel. It was only at a later stage that interested states and civil society took up the issue of the need to organise legal representation for victims.

For this reason several of the provisions subsequently included on victims' legal representation simply refer back to the provisions relating to counsel for the defence and state that those provisions shall also apply to victims' legal representatives. For example, according to Rule 90 (6), victims' legal representatives are required to have the same qualifications as a counsel for the defence, as set out in Rule 22 (1), whereas Rule 22 itself makes no mention of victims' legal representation<sup>1</sup>.

As a consequence, the RPE do not take account of the fact that victims' legal representatives will have to work in a very different way from counsel for the defence. The defendant will very often be in custody at the seat of the Court and will therefore be easy to reach for legal consultations and information. Defence counsel will generally only have one client. In contrast, victims will often be located far from where their lawyers are based. In addition victims' legal representatives will often represent large groups of victims who may be dispersed over different regions, or even countries. Many victims are likely to be based in remote areas without access to easy means of communication and many will be on the move. A major part of the work of victims' legal representatives will therefore be making contact with their clients, seeking instructions from them and notifying them of procedures and developments before the Court. They will have to do this taking special precautions regarding the safety of victims. Protection

<sup>1</sup> Rule 90 (6), "A legal representative of a victim or victims shall have the qualifications set forth in Rule 22, sub-Rule 1" Rule 22 is entitled *Appointment and qualifications of Counsel for the defence*.

will be a major issue of concern for all victims' legal representatives. In order to ensure that their interests are adequately represented, members of the legal representation team will need to be based in close proximity to victims' groups<sup>2</sup>. This has implications for the organisation of victims' legal representation generally, and in particular for the budget which needs to be allocated to victims' legal representation.

### Why choose to be represented?

The general principle, under Rule 90 (1), is that victims are free to choose whether to be legally represented<sup>3</sup>.

However, the Rome Statute and the Rules of Procedure and Evidence set out a number of incentives for victims to choose to be represented. There are **two main reasons for encouraging victims to have legal representation**: firstly, because victims are unlikely to have experience in criminal proceedings, in particular at the international level, or to have a full understanding of their rights; and secondly, due to the very nature of the crimes within the jurisdiction of the ICC there will potentially be a large number of victims applying for participation.

**Encouraging victims to appoint legal representatives is intended to make the exercise of the rights conferred upon them more effective, and to avoid undue delay in proceedings.**

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<sup>2</sup>. See Coalition for the International Criminal Court, *Comments on the organization and resources of legal representation for victims and defendants at the ICC*, November 2005, p. 6, available at [http://www.iccnw.org/documents/LR\\_teampaper\\_Nov05.pdf?PHPSESSID=b24d332496b04a2f928c953459ea8d44](http://www.iccnw.org/documents/LR_teampaper_Nov05.pdf?PHPSESSID=b24d332496b04a2f928c953459ea8d44).

<sup>3</sup>. Rule 90 (1): "A victim shall be free to choose a legal representative". According to Article 68 (3), victims are not required to have legal representation in order to be able to take part in proceedings: "Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court..." This provision further states that victims' views and concerns "*may* be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence", (emphasis added).

## I. CHOOSING A LEGAL REPRESENTATIVE: INDIVIDUAL OR COMMON LEGAL REPRESENTATION?

### 1. The general principle: victims' freedom to choose a legal representative

Under Rule 90 (1), the general principle is that, **“a victim shall be free to choose a legal representative”**.

However, freedom of **choice is not absolute**. The general principle is subject to two important qualifications: firstly legal representatives are required to meet certain criteria and be admitted to the Registry's list of counsel (see section IV below); secondly, in certain specified circumstances, the Court can require victims to form groups with a common legal representative (see section I (2) below).

#### *Assistance to victims in choosing a legal representative*

Many victims are likely to have difficulties in finding appropriate legal representatives, in particular those who meet the necessary qualification criteria. There will also be situations in which victims request to participate in the proceedings without having considered whether to be legally represented. In such cases, victims can obtain assistance from the **Victims Participation and Reparation Section (VPRS)**. Under Rule 16 (1) (b), the VPRS is responsible for:

*“Assisting [victims] in obtaining legal advice and organising their legal representation...”*

The VPRS can refer victims to the ICC's list of counsel and should provide them with details of the legal representatives appearing on the list<sup>4</sup>. Victims can also request to see the curricula vitae of legal representatives<sup>5</sup>.

There may be a possibility of obtaining legal representation from the Court's **Office of Public Counsel for Victims** (see further section II below).

### 2. Limitations to victims' freedom of choice: the concept of common legal representation

**During the negotiation of the Rules of Procedure and Evidence, it was recognised that, in view of the potentially large number of applications for participation, it would sometimes be necessary to group victims together in order to make victim participation possible in practice.** The participation of large numbers of victims undeniably slows down the proceedings, and the Court must ensure that it does not do so to the extent that the right of the accused to be tried within a reasonable time and the effectiveness of proceedings are jeopardised. Common legal representation was the solution found to make participation of victims possible, whilst ensuring that the proceedings are effective and defendants' rights are respected.

In accordance with the general principle, groups of victims may *choose* to be represented together by a common legal representative. However, where there are large numbers of victims applying to participate, the Court can *require* victims to form a group with common legal representation.

The only reason that can justify a decision of the Chamber to request victims to choose a common legal representation is to ensure the **effectiveness of the proceedings**<sup>6</sup>. Ensuring that proceedings are effective is also in the interests of victims themselves. The greater the number of victims participating in proceedings, the more difficult it will be for the Court to hear them all, and the more likely it is that common legal representation will be required.

<sup>4</sup>. Regulation (RR) 112.

<sup>5</sup>. *Ibid.*

<sup>6</sup>. Rule 90 2).

There are no restrictions within the Rules and Regulations on when such a decision can be made, although Regulation 79 (1) expressly authorises the Chamber to consider making a requirement of common legal representation **at the same time as the decision on the application of a victim or victims to participate in the proceedings.**

## **2.1. How are common legal representatives chosen?**

### **2.1.1. The victims' choice of common legal representative**

The general principle is that the choice of common legal representative should be, as far as possible, that of the victims. Choices will have to be made in consultation with victims of the same group. The Registry can offer assistance in defining groups of victims and identifying an appropriate legal representative or representatives<sup>7</sup>.

### **2.1.2. The Court's choice of common legal representative**

**It is only when victims fail to reach agreement on the choice of a common legal representative that the Court can choose one on their behalf.** In order to guarantee the right of the accused to a fair trial within a reasonable time, the Chamber can set a **time limit** within which the group must choose its legal representative. If they have not chosen within this period, the Chamber can ask the Registrar to choose a common legal representative for the given group<sup>8</sup>.

### **2.1.3. Objecting to the Registrar's choice of counsel**

Victims can ask the relevant Chamber to review the Registrar's choice of a common legal representative. The request must be made **within 30 days** of receiving notification of the Registry's decision<sup>9</sup>.

## **2.2. Defining groups of victims and avoiding conflicts of interest**

The most difficult task with respect to common legal representation will be to define groups of victims. The Chamber and the Registry have a duty to **"take all reasonable steps to ensure that [...], the distinct interests of the victims [...] are represented and that any conflict of interest is avoided"**<sup>10</sup>.

### **2.2.1. Defining groups of victims**

There is **no provision within the Rules or the Regulations governing how groups are to be constituted** for the purpose of common legal representation or suggesting how conflicts of interest can be avoided. It would be **impossible to establish Rules containing definitive criteria to govern every potential situation, and this issue is likely to have to be dealt with on a case-by-case basis.**

In some cases, victims may naturally group themselves according to their needs, interests and backgrounds. However, in application of the obligation to ensure that there is no conflict of interest within a group, the Court will have to check the composition of groups and where conflicts of interest do exist, will need to modify the composition of the group accordingly.

In certain circumstances, it may be possible for a common legal representative represent the interests of "sub-groups" as part of a larger group that he or she represents. This is feasible where the range of views is consistent though different<sup>11</sup>. Every effort should be made to encourage such arrangements.

7. Rule 90(2).

8. Rule 90(3).

9. Regulation 79(3).

10. Rule 90(4).

11. See CCPC, Article 16, conflict of interest, § 2.

### 2.2.2. Avoiding conflicts of interest

Conflicts may arise in respect of differing views amongst victims on who can be considered to be a “victim”:

*“Competition between victims often occurs in these kinds of massive crimes and human rights violations and it [is] often the case that a specific category of victims consider themselves to be the only victims worth considering... They will not accept for one counsel to argue that the other group also need be considered as victims by the court”<sup>12</sup>.*

A striking example of this is the war crime of conscripting and enlisting children under the age of fifteen years and using them to participate actively in hostilities<sup>13</sup>, where victims will include the child soldiers, but may also include the victims of the crimes perpetrated by those children. Conflicts of interest may arise from the political, ethnic, or religious identity of victims, who may see one group as bearing responsibility for violations and may not accept that there are also victims within that group.

Victims may also have very opposing views on the strategy that should be adopted by a legal representative, for example in relation to the scope of charges contained in an arrest warrant, the scope of the investigation and the challenge of the prosecutorial strategy with regards to levels of responsibility or the cross-examination of witnesses.

Conflicts are also likely to arise during the reparations procedure<sup>14</sup>: “It is foreseeable that victims will have different views on the categorization of harm for the purpose of setting levels of compensation and differing perspectives on the form and content of any reparation award”<sup>15</sup>.

Conflicts may arise in the course of representation. In order to avoid costly and time-consuming procedures, it is imperative that as far as possible potential conflicts are anticipated and avoided at the point of defining groups and appointing legal representation.

### 3. Urgent legal representation: duty counsel

If a victim requires urgent legal representation and has not yet appointed a legal representative, or his or her legal representative is unavailable, the Registrar can appoint **duty counsel** to represent the victim<sup>16</sup>. Duty counsel are legal representatives who are “available at any time to represent a person before the Court”<sup>17</sup>.

### 4. Appointing a legal representative in the “interests of justice”

Under Regulation 8o (1), a Chamber, after consulting the Registrar, can decide to appoint a legal representative for a victim where the “interests of justice” so require. It will be for the judges to interpret the term “interests of justice”. This provision may be interpreted to allow the Chambers to appoint ad hoc counsel to represent the general interests of victims in proceedings<sup>18</sup>.

<sup>12</sup>. Coalition for the International Criminal Court, Comments on the organization and resources of legal representation for victims and defendants at the ICC, November 2005, p.8, available at [http://www.iccnw.org/documents/LR\\_teampaper\\_Novo5.pdf?PHPSESSID=b24d332496b04a2f928c953459ea8d44](http://www.iccnw.org/documents/LR_teampaper_Novo5.pdf?PHPSESSID=b24d332496b04a2f928c953459ea8d44).

<sup>13</sup>. Article 8 (2)(b)(xxvi) and (2)(e)(vii); see case 01/04-01/06, Prosecutor v. Thomas Lubanga Dyilo.

<sup>14</sup>. See Chapter VII, Reparations and the Trust Fund for Victims.

<sup>15</sup>. *Victim Participation at the International Criminal Court – Summary of issues and recommendations*, Victims Rights Working Group, November 2003, p. 12.

<sup>16</sup>. Regulation 73(2).

<sup>17</sup>. On the potential role of the Office of Public Counsel for Victims, see section II below.

<sup>18</sup>. On the potential role of the Office of Public Counsel for Victims, see section II below.

## II. THE OFFICE OF PUBLIC COUNSEL FOR VICTIMS

*“The establishment of the Office [of Public Counsel for Victims]...is a new step in international criminal justice which seeks to ensure effective participation of victims before the Court. It is an important precedent which should enhance the system of representation for victims”<sup>19</sup>.*

**The Office of Public Counsel for Victims (OPCV) was established under the Regulations of the Court. Although the OPCV is situated within the Registry, for administrative purposes, carries out its functions independently.**

The staff of the Office includes persons meeting the necessary qualification criteria to offer legal representation to victims<sup>20</sup>.



### **TO CONTACT THE OFFICE OF PUBLIC COUNSEL FOR THE VICTIMS (OPCV):**

ICC - International Criminal Court  
Office of Public Counsel for Victims  
Maanweg 174 2516 AB The Hague  
The Netherlands  
Fax: +31 (0)70 515 88 55  
Email: OPCV@icc-cpi.int

### 1. Functions of the OPCV

The functions of the OPCV are to provide legal advice and assistance to victims and their legal representatives, and where necessary to act as legal representatives for victims.



Under Regulation 80 (2) “the Chamber may appoint counsel from the Office of Public Counsel for Victims” as a legal representative of victims.

Under Regulation 81 (4), the role of the OPCV is to:

“[P]rovide support and assistance to the legal representative for victims and to victims, including, where appropriate:

- (a) Legal research and advice;
- (b) Appearing before a Chamber in respect of specific issues”.

#### **1.1. Advice and assistance**

In fulfilling its duty to provide support and assistance to legal representatives, the OPCV is required to produce **basic general information** on legal cases and issues before the Court as well as **specific advice on issues concerning victims**.

The OPCV fulfills its duty to provide advice and assistance by producing:

- (a) **Factual background documents** on the situations before the Court;
- (b) **Research papers** and advice on selected aspects of international criminal law, in particular on law relevant **to victims’ participation and reparations**;
- (c) **A bibliography on international criminal law**.

<sup>19</sup>. ICC official website, <http://www.icc-cpi.int/victimissues/victimscounsel/OPCV.html>.

<sup>20</sup>. Regulation 81(3).



The OPCV has produced a form which is intended to make it easier for legal representatives of victims and victims to ask for legal research or advice. A copy of the form is provided in the additional documents section of this chapter.



**THE REQUEST FORM OF LEGAL RESEARCH AND ADVICE IS AVAILABLE ON THE ICC WEBSITE:**

[http://www.icc-cpi.int/victimsissues/victimscounsel/OPCV/OPCV\\_research.html](http://www.icc-cpi.int/victimsissues/victimscounsel/OPCV/OPCV_research.html)

According to the official information provided by the OPCV, as of July 2006, the Office is able to provide effective support and assistance to legal representatives who could require the assistance of members of the Office during the entire proceeding before the Court and is in the process of setting up a library of legal materials to which victims' legal representatives will have access.

### 1.2 Legal representation

Several provisions of the Regulations of the Court and of the Registry make reference to the OPCV's function in providing legal representation. There are a range of possible interpretations of the legal representation function of the OPCV and it will be for the Office itself and the Chambers to determine how it can best fulfil its mandate.

- Regulation 80 (1) provides that “[a] Chamber, following consultation with the Registrar may appoint a legal representative of victims where the interests of justice so require”.
- Regulation 80 (2) provides that “the Chamber may appoint counsel from the Office of Public Counsel for Victims” as legal representatives of victims.
- Regulation 81 (4) (b) provides that members of the Office may “**appear before a Chamber in respect of specific issues**”.

Therefore, the OPCV could provide legal representation by acting in the following capacities :

- As **duty counsel**. According to Regulation 73 (2) duty counsel must be appointed to any person who requires urgent legal assistance and has not yet secured legal assistance, or where his or her counsel is unavailable. Although no specific Regulation makes express reference to the possibility to appoint the OPCV as duty counsel, nothing would prevent the Chamber from doing so. For example, the OPCV could be appointed as duty counsel when, after an application for participation has been filed by a victim without a legal representative, the Chamber requires the applicant to provide additional information<sup>21</sup>. Appointment of the OPCV as duty counsel would be consistent with Regulation 81 (4) (b).
- As **ad hoc counsel**. Regulation 80 (1) could be used to appoint an ad hoc legal representative for victims to represent the general interests of victims, for example when issues of disclosure are raised between the Prosecution and the Defence.
- As the **permanent legal representative of a group of victims**, in accordance with Regulation 80 (2).

Nothing in the provisions would seem to prevent victims from **choosing legal representatives from the OPCV** in accordance with the general principle that “[a] victim shall be free to choose its legal representative”<sup>22</sup>.

21. According to Regulation 86 (7) “Before deciding on an application, the Chamber may request [...] additional information from, *inter alia*, [...] the victims [...]”.

22. Rule 90(1).

Members of the OPCV are bound by the Code of Professional Conduct of Counsel (see section V below), in discharging all their tasks<sup>23</sup>.

## 2. Independence of the OPCV

The OPCV is situated within the Registry. However, under Regulation 81 (2) it is a “**wholly independent office**”, and comes within the remit of the Registry only for administrative purposes. The Registry also carries out a monitoring activity in relation to the Office: the OPCV is required to report on administrative issues related to its activities to the Registrar on a regular basis, and to submit an annual report of its work<sup>24</sup>.

It is clear that in order to fulfil their duties towards victims, acting in their interests as their legal advisor and representatives, **it is vital that the counsel and assistants within the OPCV act entirely independently of the Court.**

Regulation (RR) 115 (1) provides that members of the OPCV “shall not receive any instructions from the Registrar in relation to the conduct of the discharge of their tasks as referred to in Regulation 80 and 81 of the Regulations of the Court”.

*“...independence is a prerequisite for carrying out its mandate of assisting and representing legal representatives of victims and victims. Such independence will allow the Office to work without being subject to pressure of any kind and will preserve the privileged relationship between victims and their legal representatives”<sup>25</sup>.*

## III. FINANCIAL LEGAL ASSISTANCE FOR VICTIMS

Many victims will not have the means to pay for legal representation before the ICC. The possibility of granting financial legal assistance aid to victims is fundamental to implement the rights of victims' recognised in the provisions of Court.

At the time of writing, the system for financing victims' legal representation has not been fully defined.



It should be noted that victims in areas where the Court conducts investigations will often be extremely vulnerable. As a result of the conflicts and crimes the Court will investigate, large numbers may have been displaced. Poverty and deprivation will often be widespread. The Court's system of financial legal assistance must take all these factors into consideration in order to respond to the reality of victims' situations. If the Court fails to adequately consider the vulnerable conditions of victims, it is highly likely that victims will be discouraged from applying for legal aid and as a consequence, will also be discouraged from applying to participate in the proceedings. The Victims' Rights Working Group (VRWG) has made proposals on matters to be considered in devising the legal aid system for victims<sup>26</sup>.

<sup>23</sup>. Regulation (RR) 115(2).

<sup>24</sup>. Regulation (RR) 117.

<sup>25</sup>. OPCV, Explanatory Note, 2006, at p. 2.

<sup>26</sup>. See *VRWG Submission to the ICC Regarding its Application Forms for Indigent Victims*, April 2006, available at <http://www.vrwg.org/Publications/1.html>.

### ***Financing common legal representation***

In the case of a legal representative chosen by the Court, the issue of funding is particularly relevant. Although, financial assistance towards the costs of legal representation can also be obtained in other circumstances, Rule 90 (5) highlights the necessity of considering this issue in the case of common legal representatives chosen by the Court:

***“A victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance”.***

## **1. Procedure for applying for legal assistance**

Under Regulation (RR) 113 (1), **“for the purposes of participation in the proceedings, the Registry shall inform victims that they may apply for legal assistance paid by the Court, and shall supply them with the relevant form(s)”.**

Victims or their legal representatives must complete the approved standard form<sup>27</sup> produced by the Registry<sup>28</sup>.

Under Regulation (RR) 113 (2), in determining whether to grant such assistance, the Registrar will take into account factors including:

- **the means of the victims;**
- **the factors mentioned in Article 68(1)** (age, gender, health and nature of the crime);
- **any special needs of the victims;**
- **the complexity of the case;**
- **the possibility of asking the Office of Public Counsel for Victims to act; and**
- **the availability of pro bono legal advice and assistance.**

## **2. Determination of victims' financial means**

In order to qualify for legal assistance, victims are assessed as to their means. Under Regulation 84 (1), “where a person applies for legal assistance to be paid by the Court, the Registrar shall determine the applicant's means”. Regulation 84 (2) defines the term “means”.

The Victims' Rights Working Group has recommended that there should be a presumption that victims do not have the means to pay for legal representation (*'presumption of indigence'*)<sup>29</sup>.

## **3. The scope of legal assistance**

The Registrar will determine whether the applicant shall be provided with **full or partial payment** of legal assistance<sup>30</sup>.

Any assistance granted to victims is not guaranteed to cover the full costs of representation. Under, Regulation 83, legal assistance for an accused “shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants [...] and staff, expenditure in relation to the gathering of evidence, administrative costs,

<sup>27</sup>. At the time of writing, the standard application form for victims to request legal aid had not yet been finalised by the Registry.

<sup>28</sup>. In accordance with Regulation (RR) 131(1).

<sup>29</sup>. See VRWG, *Submission to the ICC Regarding its Application Forms for Indigent Victims*, op. cit.

<sup>30</sup>. Regulation 84(1).

translation and interpretation costs, travel costs and daily subsistence allowances”<sup>31</sup> In contrast, when legal assistance is provided to victims, “[t]he scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate”<sup>32</sup>.

Regulation 84 (2) provides that the Registrar “shall allow for expenses claimed by the applicant provided they are reasonable and necessary”.

The fees paid to legal representatives consist of a scheme of payment based on a fixed fee system, comprising a maximum allocation of funds for each phase of the proceedings<sup>33</sup>. Details on the payment scheme can be found in the reports of the Committee of Budget and Finance to the Assembly of States Parties<sup>34</sup>.

#### 4. Decisions on payment of legal assistance

On receipt of the application for legal assistance to be paid by the Court, the Registry is required to immediately acknowledge receipt<sup>35</sup>. The Registrar undertakes an assessment of the application to establish whether the applicant has provided all the required details. The applicant must then be informed, as soon as possible if, and to what extent, such materials are incomplete and specifies a time period to provide the missing materials<sup>36</sup>.

Under Regulation (RR) 132 (3) “The Registrar should make a decision as to whether legal assistance should be paid in full or in part by the Court **within 30 calendar days** of the submission by the person concerned of all the documentation required”<sup>37</sup>. The decision must then be notified to the victim together with the reasons for the decision and instructions on how to apply for review<sup>38</sup>.

Victims can apply to the Presidency for **review of the decision**. This must be done **within 15 days** of notification of the relevant decision. The decision of the Presidency final<sup>39</sup>.

Regulation 85 (1) provides that in “appropriate circumstances”, the Registrar can decide to make a **provisional payment of legal assistance**, before the final decision has been made. There is still uncertainty about what appropriate circumstances means. However, Regulation (RR) 132 (3) states that during the 30-day decision making period, “[l]egal assistance **shall** be provisionally paid by the Court during that period”.

The Registry may investigate the means of the victim if legal assistance has been provisionally granted<sup>40</sup>.

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31. Regulation 83(1).

32. Regulation 83(2).

33. Regulation (RR) 133.

34. See *Report to the Assembly of States Parties on the options for ensuring adequate defense counsel for accused persons*, ICC/ASP/3/16, para. 14. For further details see also: *Report to the Assembly of States Parties on options for ensuring adequate defense counsel for accused persons*, ICC-ASP/3/6, 17 August 2004; *Report to the Assembly of States Parties on options for ensuring adequate defense counsel for accused persons* (ICC-ASP/3/CBF.2/3) – *Update to Annex 2: Payment details of the ICC legal aid scheme*, ICC-ASP/4/CBF.1/8, 15 March 2005.

35. Regulation (RR) 131(2).

36. Regulation (RR) 131(2).

37. Under Regulation 85 (1), “the Registrar shall decide within one month of the submission of an application or, within one month of expiry of a time limit set in accordance with the Regulations of the Registry, whether legal assistance should be paid by the Court”.

38. Regulation 85(1).

39. Regulation 85(3).

40. Regulation (RR) 132(5).

## 5. Reconsideration of the decision to grant legal assistance

The Registrar will reconsider the decision to grant payment of legal assistance if “the financial situation of the person receiving such legal assistance is found to be different than indicated in the application, or if the financial situation of the person has changed since the application was submitted”<sup>41</sup>.

A person who has applied for or has been granted legal assistance has a duty to communicate “any **change in his or her financial situation** that might affect eligibility for legal assistance paid by the Court”<sup>42</sup>. The Registry can also undertake random checks to verify whether any changes have occurred<sup>43</sup>.

If there are grounds to believe that the information provided in the application for legal assistance is **inaccurate**, the Registry can carry out an investigation into the matter: “in doing so, it may request information and/or documents from any person or body that it deems appropriate”<sup>44</sup>.

If **false information** on means has been provided, the Court can make an order to recover the money paid. Rule 21 (5) provides that if “a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order of contribution to recover the cost of providing counsel”. In such a case Regulation 85 (4) also allows the Registrar to seek an order from the Presidency for recovery of the funds paid from the person who received legal assistance paid by the Court.

Any revised decision must be notified to the victim together with the reasons for the decision and instructions on how to apply for review<sup>45</sup>.

## IV. QUALIFICATIONS AND ADMISSION OF VICTIMS' LEGAL REPRESENTATIVES

### 1. Qualifications of victims' legal representatives

#### 1.1 General qualifications of legal representatives

According to Rule 90 (6), victims' legal representatives are required to have the same qualifications as counsel for the defence, as set out in Rule 22 (1).

**Rule 22 (1) provides:**

*“A counsel for the defence shall have **established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel for the defence shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court**”.*

41. Regulation 85(2).

42. Regulation (RR) 132(4).

43. Ibid.

44. Regulation (RR) 132(2)

45. Regulation (RR) 85(2).

Regulation 67 further elaborates on the qualifications of counsel. In total there are four specific criteria to be fulfilled by a legal representative:

1. **Established competence international and national criminal law and procedure:** this can be shown by providing copies of certificates;
2. The necessary **relevant experience in criminal proceedings**, whether as a judge, prosecutor, advocate or in another similar capacity. This must amount to **at least ten years**<sup>46</sup>. Experience could be demonstrated by providing copies of work contracts or reference letters etc. It is not yet clear how the terms “in another similar capacity” are to be interpreted;
3. **Excellent knowledge of and fluency in at least one of the working languages of the Court:** the working languages of the ICC are English and French;
4. Counsel **must not have been convicted of a serious criminal or disciplinary offence**, “considered to be incompatible with the nature of the office of counsel before the Court”.

The Victims Rights Working Group considers that, “the requirement to be fluent in one of the working languages of the Court is onerous and efforts should be made to ensure that victims’ representatives are not excluded on this basis alone. Where counsel do not have good language skills, they could either act as an assistant as provided in Rule 22 (1) [see below, Section IV (3)], and/or Rule 41 should be interpreted so as to enable them to act as counsel with an assistant who does have the required language skills”<sup>47</sup>.

Rule 41 concerns the *Working languages of the Court*. Under this provision, “the Presidency shall authorise the use of an official language of the Court, [Arabic, Chinese, English French, Russian and Spanish<sup>48</sup>], as a working language, when that language is understood and spoken by the majority of those involved in a case before the Court and any of the participants in the proceedings so requests”, and **may** authorise the use of an official language of the Court as a working language “if it considers that it would facilitate the efficiency of the proceedings”. This should be the case when the Court is dealing with a situation in which neither English nor French are official languages.



#### CRIMINAL AND DISCIPLINARY CONVICTIONS

It is not yet clear how the fourth requirement will be applied, although concerns have been raised that it could be an obstacle to legal representatives who have been convicted as a result of work conducted in defence of human rights and from countries where national bar associations do not exist or are not independent. Records of convictions for criminal or disciplinary offences under national law should be closely examined by the Registrar to ensure that they have not been received in response to activities undertaken in the field of human rights.

### 1.2 Particular requirements for victims’ legal representatives

As explained above, under Rule 22, victims’ legal representatives must meet the same requirements as counsel for the defence. **However, due to the particular needs of victims, the skills required of victims’ legal representatives differ significantly from counsel for the defence.**

<sup>46</sup>. Regulation 67(1).

<sup>47</sup>. *Strategy meeting in the development of structures and procedures for victims at the International Criminal Court – Summary of recommendations*, Victims Rights Working Group, January 2003, available at [http://www.vrwwg.org/Publications/01/VRWG\\_jan2003.pdf](http://www.vrwwg.org/Publications/01/VRWG_jan2003.pdf).

<sup>48</sup>. Article 50(1).

In general, the interests of victims will be wider than those of the accused:

*“Victims may want to be in a position to give evidence in a safe space, to narrate their stories, at times in ways different from what the prosecution may seek to elicit from them. More broadly, they may have interest in seeing certain crimes dealt with, and recognised by, the Court that give meaning to the specific forms of their victimisation. They may want to be kept informed, to be participants in justice and to present their views and concerns. They may want both the process to be reparative as well as to receive forms of reparation that coincide in a very real way to the specifics of the harm they suffered as well as the manner in which they were victimised”<sup>49</sup>.*

In many cases, counsel representing victims will need to **have particular experience in dealing with vulnerable victims**.



At the time of drafting the Rules of Procedure and Evidence, some States argued for the introduction of a Rule specific to victims' legal representatives, under which they should have qualifications specifically relevant to victims, in particular, experience relating to sexual violence, children and persons with disabilities<sup>50</sup>. However, given that the necessary legal experience of legal representatives is usually gained through involvement in national criminal proceedings, and that national systems differ radically in terms of the degree of participation afforded to victims, it was considered that imposing specific requirements for victims' legal representatives would unnecessarily restrict the choice of legal representatives available. In particular, experience of victims' issues may be hard to obtain for legal counsel from common law systems, in which victims generally do not have a participatory role<sup>51</sup>. It was further noted that, “there has not to date been much of a need for specialised victims' counsel in international criminal tribunals, and most lawyers with experience in practising in such courts are inevitably defence attorneys”<sup>52</sup>. It was therefore decided that the requirements should be the same for both victims' legal representatives and counsel for the defence.

**Although experience relevant to victims is not a condition for counsel to legally represent victims**, the Code of Professional Conduct for Counsel (CPC)<sup>53</sup>, requires legal representatives to **take into account the special needs of their clients**. Article 9 (2) of the CPC states:

*“In his or her relations with the client, counsel shall take into account the client's personal circumstances and specific needs, in particular where counsel is representing victims of torture or of physical, psychological or sexual violence, or children the elderly or the disabled”.*

Moreover, under Rule 86 the Court has a general obligation, “to take into account the needs of all victims and witnesses in accordance with Article 68, in particular, children, elderly persons, persons with disabilities and victims of sexual or gender violence.” In accordance with this provision, when verifying

<sup>49</sup>. Redress, *Ensuring the effective participation of victims before the International Criminal Court, Comments and recommendations regarding legal representation for victims*, May 2005, p. 2., available at <http://www.redress.org/publications/REDRESS%20-%20Legal%20Representation%20for%20Victims%2023%20May%202005.pdf>.

<sup>50</sup>. Preparatory Commission for the International Criminal Court, *Proceedings the preparatory Commission at its fourth session*, PCNICC/2000/WGRPE(6)/DP.6 (23 March 2000), available at [http://www.iccnw.org/documents/Proceedings\\_11\\_rev1e.pdf?PHPSESSID=1ac6f5c80829395b6b5e9179b37e6ce4](http://www.iccnw.org/documents/Proceedings_11_rev1e.pdf?PHPSESSID=1ac6f5c80829395b6b5e9179b37e6ce4).

<sup>51</sup>. See Chapter I, *The Evolution of Victims' Access to Justice*.

<sup>52</sup>. See *Comments of the Steering Committee Regarding the Draft Constitution of the International Criminal Bar*, Victims' Rights Working Group (VRWG), 27 September 2002, available at <http://www.iccnw.org/documents/ICBVRWGProposalConst.pdf?PHPSESSID=oda3970e5f27fceb5fa6f22f32bb8e21>.

<sup>53</sup>. See Section V below and the additional documents section of this chapter.

that a given legal representative meets the requirements of Rule 22 (1), the Court should pay particular attention to the legal representative's knowledge and experience of victims' needs and interests. Under Rule 22 (1), assistants can be appointed to provide support to legal representatives<sup>54</sup>. Legal assistants could be chosen with the additional experience necessary to meet the needs of victims.

### 1.3 Training of Counsel

The Registry is required to promote the specialisation and training of lawyers. To this end, the Registry must ensure access to the **database of case law** of the Court and provide **comprehensive information** on the Court<sup>55</sup>.

To fulfil this obligation, the Court has designed a very elaborate resource, "**legal tools**", which is accessible on the ICC website.



#### THE LEGAL TOOLS

*"The Legal Tools Project aspires to equip users with the legal information, commentaries and software required to work effectively with international criminal law. It seeks to serve as a complete virtual library on international criminal law and justice. The Tools comprise at present over 25000 documents and legal commentaries. Some 13 collections and databases of legal documents are included, together with four legal research and reference tools developed by the Court: the Case Matrix, the Elements Commentary, the Proceedings Commentary and the Means of Proof document.*

*The ICC aims to provide a set of services which is useful to the work of the Court and of other jurisdictions and organisations, and which is also available for free to researchers, students and any other person interested in international criminal law and justice."*

[http://www.icc-cpi.int/legal\\_tools.html](http://www.icc-cpi.int/legal_tools.html)



#### THE CASE MATRIX

*"This tool is a unique, law-driven case management application representing a significant innovation in how to approach the investigation and prosecution of core international crimes. First, it provides an overview of elements of crimes and modes of liability for all offences under the ICC Statute. Each element or requirement is hyperlinked to the Elements Commentary. Second, it provides a comprehensive list of means of proof for every element of crime and mode of liability. Each means of proof is hyperlinked to a document providing legal authority. Third, it provides a database service to keep track of and organise evidence relevant to each legal requirement.*

*If you would like to use the Case Matrix's database service to organise and present potential evidence in a case, please provide the ICC with a short statement explaining how the Matrix may be useful to you".<sup>56</sup>*

*Statements should be sent to: [case.matrix@icc-cpi.int](mailto:case.matrix@icc-cpi.int)*

Although the Registry is not required to provide training directly to legal representatives, it is required to identify and publish the names of persons carrying out relevant training, provide training materials, and offer training to persons who will themselves train counsel<sup>57</sup>. The Registry is also required to develop a standard for training programmes, to be promoted amongst organisations which can offer training to legal representatives<sup>58</sup>.

<sup>54</sup>. See Section IV (3) below.

<sup>55</sup>. Regulation (RR) 140.

<sup>56</sup>. [http://www.icc-cpi.int/legal\\_tools/LT1.html](http://www.icc-cpi.int/legal_tools/LT1.html).

<sup>57</sup>. Regulation (RR) 140.

<sup>58</sup>. Regulation (RR) 141.



The Registrar has a duty to take “all necessary steps” to encourage equal access to training<sup>59</sup>. These steps include making efforts to raise funds to support participants in training programmes, in order to assist those who would otherwise be prevented from attending due to insufficient financial resources. The Registry will need to have a budget allocated to such activities and therefore will need to request funding from the Assembly of States Parties. Regulation 142 (1) highlights the particular need for training in situation countries, ie. those in which the Court is conducting investigations or prosecutions.

A number of civil society organisations and professional associations organise, on a regular basis, training for lawyers who will participate before the ICC or generally on international justice issues.



**TRAINING PROGRAMMES FOR LAWYERS ARE ORGANISED BY THE FOLLOWING GROUPS, FOR EXAMPLE:**

**FIDH** has organised numerous regional and national workshops on the ICC and conducts specific training on victims and the ICC, both at the national level and at the Hague, in order to facilitate contact between ICC representatives and lawyers.

International Federation for Human Rights (FIDH):

17, passage de la Main-d'Or

75011 Paris

Tel: +33 (1) 43 55 25 18

Fax: +33 (1) 43 55 18 80

fidh@fidh.org

<http://www.fidh.org>

**Avocats Sans Frontières Belgique (ASF)** organises training for national lawyers, in particular in DRC.

Avocats Sans Frontières Belgique:

Chaussée de Haecht, 159, Haachtsesteenweg B-1030

Brussels

Belgium

Tel: +32 (0) 2 223 36 54

Fax: +32 (0) 2 223 36 14

infa@asf.be

<http://www.asf.be/>

**The Paris Bar Association** organises training on international justice and the ICC for trainee lawyers.

Service des Affaires Européennes et Internationales

11, place Dauphine

75001 Paris, France

Tel: + 33 (0) 1 44 32 49 43

<http://www.avocatparis.org/new/index.asp>

<sup>59</sup>. Regulation (RR) 142.

**The International Bar Association (IBA)** has an ICC programme within their Human Rights Division in addition to their monitoring programme of ICC jurisprudence. The IBA organises training in countries where the ICC has ongoing investigations.

The International Bar Association (IBA):  
 10<sup>th</sup> Floor, 1 Stephen Street, London W1T 1AT, United Kingdom  
 Tel: +44 (0) 20 7691 6868  
 Fax: +44 (0) 20 7691 6544  
[http://www.ibanet.org/humanrights/icc\\_outreach.cfm](http://www.ibanet.org/humanrights/icc_outreach.cfm)

**Check with your local bar associations and the Coalition for the ICC ([www.iccnw.org](http://www.iccnw.org)) to find out if they provide or have any information on any of such training in your country.**

In addition, the VPRS and the OPCV regularly organise training at the national level for lawyers in countries under investigation.



**TO CONTACT THE OFFICE OF PUBLIC COUNSEL FOR VICTIMS (OPCV)**

**ICC - International Criminal Court**

Office of Public Counsel for Victims  
 Maanweg 174 2516 AB The Hague  
 The Netherlands  
 Tél: + 31 (0)70 515 85 15  
 Fax: +31 (0)70 515 88 55  
 Email: [OPCV@icc-cpi.int](mailto:OPCV@icc-cpi.int)

**TO CONTACT THE VICTIMS PARTICIPATION AND REPARATION SECTION**

**ICC - International Criminal Court**

Victims Participation and Reparation Section  
 Maanweg 174 2516 AB The Hague  
 The Netherlands  
 Tél: + 31 (0)70 515 85 15  
 Fax: +31 (0)70 515 85 55  
 Email: [vprs@icc-cpi.int](mailto:vprs@icc-cpi.int)

## 2. Procedure for admission to the Registrar's list of counsel

In order to be able provide legal representation before the ICC, a legal representative must be included in the Registrar's list of counsel:

*"The Registrar shall create and maintain a list of counsel who meet the criteria set forth in Rule 22 and the Regulations. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list"<sup>60</sup>.*

The aim of this list is to avoid poor quality counsel, by identifying in advance those lawyers who possess the necessary qualifications.

As of October 2006, 168 applicants had been admitted to the list and are therefore eligible to act as counsel before the ICC. Only 27 women were on the list.

<sup>60</sup>. Rule 21(2).



**THE LIST OF REGISTERED COUNSELS CAN BE CONSULTED ON LINE AT**

<http://www.icc-cpi.int/defence/defcounsel.html>

### **2.1 Application to be included in the list of counsel**

Legal representatives who wish to be included in the list must apply to the Registry. Applications are dealt with by the Division of Victims and Counsel. The Court specifically encourages applications from women candidates, as well as from candidates practising in countries in which a situation has been brought before the Court.

Candidates seeking to be added to the list of counsel are required to complete the **standard application form** produced by the Registry<sup>61</sup>.

**A copy of the application form is provided in the additional documents section of this chapter.**



**THE STANDARD APPLICATION FORM CAN BE ACCESSED ON THE WEBSITE OF THE COURT**

[http://www.icc-cpi.int/library/defence/Defence\\_counsel\\_form\\_E.doc](http://www.icc-cpi.int/library/defence/Defence_counsel_form_E.doc)

In addition to the application form, counsel must send the following documents<sup>62</sup>:

- Certificate of good standing: containing details of any disciplinary sanctions or ongoing disciplinary proceedings<sup>63</sup>;
- Original or certified copy of registration with governing bodies: applicants must provide a certificate issued by each Bar association that the person is registered with, and/or each relevant controlling administrative authority;
- Valid practising certificate;
- Certificate issued by the relevant authority of each State of which the person is a national or where the person is domiciled stating the existence, if any, of criminal convictions;
- Detailed curriculum vitae, allowing for appraisal of the candidate's competence and experience;
- Valid copy of professional insurance policy;
- Legible copy of birth certificate;
- Legible copy of identity card;
- Legible copy of passport/travel document;
- Two passport size photographs.



**THESE DOCUMENTS MUST BE SENT TO THE FOLLOWING ADDRESS:**

Registry of the International Criminal Court  
Division of Victims and Counsel (Ref: List of Counsel)  
PO Box 19519  
2500 CM The Hague  
The Netherlands

On receipt by the Registry, the application is verified to establish that all the required documents have been included. The Registry then acknowledges receipt of the application and if necessary requests missing information from the applicant<sup>64</sup>. On the basis of the information submitted, an assessment

<sup>61</sup>. In accordance with Regulation (RR) 122(1).

<sup>62</sup>. See standard application form and Regulation 69.

<sup>63</sup>. A copy of the form is provided in the additional documents section of this chapter. The form is also available at [http://www.icc-cpi.int/library/defence/certificate\\_goodstanding.doc](http://www.icc-cpi.int/library/defence/certificate_goodstanding.doc).

<sup>64</sup>. Regulation 70(1).

is undertaken to establish whether counsel fulfils the necessary criteria. The decision whether or not to include the applicant in the list of counsel must be notified to that person<sup>65</sup>.

If the applicant is included in the list, the Registrar is required to acknowledge this in writing, and to notify the applicant, the person who appointed legal representative (if the applicant has already been appointed), the relevant Chamber and the “competent authority exercising regulatory and disciplinary powers over counsel in the national order”<sup>66</sup>, for example the national bar association.

Once admitted to the list, under Regulation (RR) 122 (2), unless otherwise indicated by counsel, the Registry can publish the following information:

- Counsel’s full name;
- The name, place and country of the bar association to which counsel is affiliated, or if Counsel is not a barrister or an attorney, his or her profession, including the name of the institution for which he or she works;
- The languages spoken by Counsel; and
- Whether counsel prefers to represent victims or accused, or both.

Legal representatives who have applied to be included in the list have a continuing obligation to notify the Registry of any changes to the information submitted that are “more than *de minimis*”, including the initiation of any criminal or disciplinary proceedings against him or her. The Registry can take steps at any stage to check that the information provided is accurate<sup>67</sup>.

### 2.2 Refusal of applications and review

If the application is refused, **the applicant can apply to the Presidency for a review of the decision**<sup>68</sup>. Applications must be filed with the Presidency **within 15 days** of notification of the Registrar’s decision refusing the application<sup>69</sup>.

The Registrar can file a response to the request for review within 15 days of receiving notification that the application for review has been made<sup>70</sup>. The decision of the Presidency is final<sup>71</sup>.

## 3. Requirements for other members of the legal representation team

Under Rule 22 (1), **legal representatives can be assisted by “other persons, including professors of law, with relevant experience”**. The Regulations specify the required qualifications and the procedure for admission to the Registrar’s lists.

### 3.1 Assistants

#### 3.1.1 Qualifications

Under Regulation 68, assistants may include “persons who can assist counsel in the presentation of the case before a Chamber”. The qualifications required of assistants to legal representatives are specified in the Regulations of the Registry. Under Regulation (RR) 124, in order to assist counsel in the presentation of the case before the Chamber, assistants are required to have **“either five years of relevant experience in criminal proceedings or competence in international or criminal law and procedure”**.

65. Regulation 70(2).

66. Regulation (RR) 123.

67. Regulation 69 (3) and (4).

68. Regulation 72(1)(a).

69. Regulation 72(2).

70. Regulation 72(3).

71. Regulation 72(4).

### **3.1.2. Procedure for admission to the Registrar's list of assistants**

The Registry is required to create and maintain a list of assistants<sup>72</sup>, similar to the list of counsel. To this end the Registry is required to produce a standard application form for assistants seeking to be included in the list<sup>73</sup>. A copy of the form is provided in the additional documents section of this Chapter.

## **3.2. Professional investigators**

### **3.2.1. Qualifications**

The qualifications required of investigators are specified in Regulation (RR) 137 (2):

- Established competence in international or criminal law and procedure;
- At least ten years of relevant experience in investigative work in criminal proceedings at national or international level;
- Excellent knowledge of and fluency in at least one of the working languages of the Court;
- Subject to exceptional circumstances, he or she shall speak at least one of the languages of the country in which the investigation is being conducted.

### **3.2.2. Procedure for admission to the Registrar's list of professional investigators**

The Registry is required to create and maintain a list of professional investigators<sup>74</sup>. To this end the Registry is required to produce a standard application form for investigators seeking to be included in the list<sup>75</sup>. The Registry is required to make the form available, including on the ICC website and upon request.

If the victim has been granted legal aid which provides for the fees of a professional investigator, the legal representative is obliged to select the professional investigator from this list.

### **3.2.3. Other resource persons**

Under Regulation 139 (2), exceptionally and after confirmation by the Registrar that the person meets the specified qualifications, “[a] person not included in the list of investigators but who has relevant experience with regard to investigations in criminal proceedings, is fluent in at least one of the working languages of the Court and speaks at least one of the languages of the country in which the investigation is being conducted..., can be selected by counsel as a resource person in a given case”.

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**72.** Regulation (RR) 125(1).

**73.** Regulation (RR) 125(2).

**74.** Regulation (RR) 137(1).

**75.** Regulation (RR) 137(3).

## V. THE CODE OF PROFESSIONAL CONDUCT FOR COUNSEL

A Code of Professional Conduct for Counsel (CPCC) applies to all counsel appearing before the ICC. The CPCC was adopted at the fourth session of the Assembly of States Parties, 2005<sup>76</sup>.

A copy of the CPCC is provided in the additional documents section of this Chapter<sup>77</sup>.

### 1. General principles

#### *Scope of application*

Article 1 CPCC provides:

*“This Code shall apply to defence counsel, counsel acting for states, amici curiae and counsel or legal representatives for victims and witnesses practising at the International Criminal Court”.*

The use of the term ‘counsel’ as opposed to ‘lawyers’ is to include those who are not qualified as lawyers in their own country but possess the necessary expertise to act as representatives before the ICC.

Under Article 4 CPCC, in the case of inconsistency, the CPCC takes precedence “over any other code of ethics or professional responsibility which counsel are bound to honour” in proceedings before the ICC.

#### *Independence of counsel*

Article 6 CPCC provides that counsel “shall act honourably, independently and freely” and shall not “permit his or her independence, integrity or freedom to be compromised by external pressure” or “do anything which may lead to any reasonable inference that his or her independence has been compromised”.

#### *Confidentiality*

Article 8 CPCC concerns the duties of counsel to respect professional secrecy and the confidentiality of information. In relation to protected victims and witnesses counsel is prohibited from revealing their identity or “any confidential information that may reveal their identity and whereabouts”<sup>78</sup>, unless authorised to do so by the Court.

#### *Professional conduct*

Article 7 CPCC requires counsel to be “**respectful and courteous in his or her relations with organs of the Court, the client, opposing counsel, accused persons, victims, witnesses and any other person involved in the proceedings**”<sup>79</sup>. Counsel is expressly required to **participate in training initiatives** to ensure that he or she maintains a high level of competence in the law applicable before the Court. Counsel is responsible for supervising the work of his or her assistants and other staff, including investigators, clerks and researchers, to ensure that they comply with the CPCC.

### 2. The representation agreement

Under Article 11 CPCC, a “representation agreement is established when counsel accepts a request from a client seeking representation or from the Chamber.”

<sup>76</sup>. ICC-ASP/4/32, adopted on 2 December 2005.

<sup>77</sup>. An electronic version is also available at [http://www.icc-cpi.int/library/about/officialjournal/ICC-ASP-4-32-Res.1\\_English.pdf](http://www.icc-cpi.int/library/about/officialjournal/ICC-ASP-4-32-Res.1_English.pdf).

<sup>78</sup>. Article 8, CPCC.

<sup>79</sup>. Article 7 CPCC.

Once the legal representation agreement has been concluded counsel is required to advise and represent his or her client until the case before the Court has been finally determined, including all appeals<sup>80</sup> or until the counsel has withdrawn from the agreement, with the prior consent of the Chamber.

### ***Refusal of legal representation***

Counsel always has the right to refuse to be the legal representative of victims without providing reasons for the refusal. In specified cases, counsel has a duty to refuse legal representation<sup>81</sup>. This is the case where there is conflict of interest<sup>82</sup>, if counsel is “incapable of dealing with the matter diligently”<sup>83</sup> or when counsel “does not consider that he or she has the requisite expertise”<sup>84</sup>.

### ***Withdrawal of legal representation***

Counsel can request the authorisation of the Chamber to withdraw representation where a conflict of interest arises<sup>85</sup>; “the client insists on pursuing an objective that counsel considers repugnant”<sup>86</sup>; or “the client fails to fulfil an obligation to counsel regarding counsel’s services and has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled”<sup>87</sup>.

If Counsel is authorised to withdraw legal representation, he or she nevertheless remains bound by the obligations of confidentiality<sup>88</sup>.

## **3. Remuneration of counsel**

Article 20 CPCC provides:

*“Prior to establishing an agreement, counsel shall inform the client in writing of the rate of fees to be charged and the criteria for setting them, the basis for calculating the costs, the billing arrangements and the client’s right to receive a bill of costs”.*

Legal representatives cannot make fees contingent on the outcome of a case<sup>89</sup> and **fee-splitting is prohibited**<sup>90</sup>. If a client proposes a fee-splitting arrangement, counsel has a duty to reject it.



In the draft version of the CPCC, Article 22 imposed a duty on counsel to report to the Registrar any proposal made to him or her by a client to split fees. This formed an exception to the confidentiality requirements of Article 8. NGOs and lawyers’ associations lobbied delegates at the 4th Assembly of States Parties in 2005 for this provision to be amended to remove this obligation to disclose fee-splitting proposals, on the basis that it undermined the necessary relationship of trust between counsel and client and would present an irresolvable conflict between counsels’ national ethical standards, which would prohibit such disclosure, and the ICC’s Code of Professional Conduct. These arguments prevailed and the final version of the CPCC contains no such requirement.

**80.** Article 17(1) (a) CPCC.

**81.** Article 13 of the CPCC.

**82.** As defined in Article 16 CPCC.

**83.** Article 13 (2) CPCC.

**84.** Ibid.

**85.** Article 16 CPCC.

**86.** Article 18 CPCC.

**87.** Article 18 CPCC.

**88.** Articles 18 (2) and 8 CPCC.

**89.** Article 21 CPCC.

**90.** Article 22 CPCC.

#### 4. Relationship with the client and other victims and witnesses

In his or her **relationship with clients**, counsel is prohibited from engaging in any discriminatory conduct on grounds of race, colour, ethnic or national origin, nationality, citizenship, political opinions, religious convictions, gender, sexual orientation, disability, marital status or any other personal or economic status<sup>91</sup>. Counsel is specifically prohibited from engaging in improper conduct, such as demanding sexual relations, coercion, intimidation, or exercising any other undue influence in his or her relations with a client<sup>92</sup>.

Counsel is required to take into consideration the client's **personal circumstances and specific needs**, in particular where counsel is legally representing **victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled**<sup>93</sup>.

Counsel is required to abide by the client's decisions concerning the objectives of his or her legal representation as long as they are not inconsistent with counsel's duties, consult the client on the means by which the objectives of his or her legal representation are to be pursued<sup>94</sup> and provide the client with all explanations reasonably needed to make informed decisions regarding his or her legal representation<sup>95</sup>.

In his or her relationship with **witnesses and other victims** whom he or she is not representing, **"counsel must refrain from intimidating, harassing or humiliating witnesses or victims or from subjecting them to disproportionate or unnecessary pressure within or outside the courtroom"**<sup>96</sup>.

#### 5. The disciplinary regime

Chapter 4 of the CPCC sets out the disciplinary regime. Under Article 31 CPCC:

Counsel commits misconduct when he or she:

- (a) **Violates or attempts to violate** any provisions of this Code, the Statute, the Rules of Procedure and Evidence and the Regulations of the Court or of the Registry in force imposing a **substantial ethical or professional duty** on him or her;
- (b) **Knowingly assists or induces another person to commit any misconduct**, referred to in paragraph (a) of this Article, or does so through the acts of another person; or
- (c) **Fails to comply with a disciplinary decision** rendered pursuant to this chapter.

**Complaints** regarding misconduct must be submitted to the Registry. Complaints can be brought by the Chamber dealing with the case, the Prosecutor or any person or group of persons whose rights or interests may have been affected by the alleged misconduct<sup>97</sup> or directly by the Registry.

An investigation into the allegations is conducted by a Commissioner appointed by the Presidency<sup>98</sup>. At the end of the investigation, the Commissioner either dismisses the complaint without further investigation or submits a report to a Disciplinary Board<sup>99</sup>.

<sup>91</sup>. Article 9(1) CPCC.

<sup>92</sup>. Article 9(4) CPCC.

<sup>93</sup>. Article 9(2) CPCC.

<sup>94</sup>. Article 14 CPCC.

<sup>95</sup>. Article 15(1) CPCC.

<sup>96</sup>. Article 29 CPCC.

<sup>97</sup>. Article 34 CPCC.

<sup>98</sup>. Article 33 CPCC.

<sup>99</sup>. Article 37 CPCC.



The Disciplinary Board, composed of three members, holds a public hearing, unless a decision is taken to organize a closed session. The Commissioner and counsel subject to the disciplinary procedure must be called to give evidence. Counsel has the right to legal representation in such proceedings<sup>100</sup>.

The **sanctions** that may be imposed by the Disciplinary Board are listed in Article 42 CPCC:

- Admonishment;
- Public reprimand with an entry in counsel's personal file;
- Payment of a fine of up to €30,000;
- Suspension of the right to practise before the Court for a period not exceeding two years; and
- Permanent ban on practising before the Court and striking off the list of counsel.

Sanctioned counsel and the Commissioner have the right to appeal the decision of the Disciplinary Board to the Disciplinary Appeals Board, composed of 5 members including three judges of the Court<sup>101</sup>. Appeals can be made to the Disciplinary Appeals Board on factual or legal grounds<sup>102</sup>.

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**100.** Article 40 CPCC.

**101.** Article 44 CPCC.

**102.** Article 43 CPCC.



 **CHAPTER V**

## RELEVANT PROVISIONS

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*“Article”*: refers to the Rome Statute  
*“Rule”*: refers to the Rules of Procedure and Evidence  
*“Regulation”*: refers to the Regulations of the Court  
*“Regulation (RR)”*: refers to the Regulations of the Registry  
*“Regulation (VTF)”*: refers to the Regulations of the Trust Fund for Victims



## RELEVANT PROVISIONS

### GENERAL

#### Article 68 (3)

Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

#### Rule 90 (1) and (6)

1. A victim shall be free to choose a legal representative.
6. A legal representative of a victim or victims shall have the qualifications set forth in Rule 22, sub-Rule 1.

#### Rule 91

1. A Chamber may modify a previous ruling under Rule 89 [Application for participation of victims in the proceedings].
2. A legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Chamber and any modification thereof given under Rules 89 and 90. This shall include participation in hearings unless, in the circumstances of the case, the Chamber concerned is of the view that the representative's intervention should be confined to written observations or submissions. The Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative for victims.
3. When a legal representative attends and participates in accordance with this Rule, and wishes to question a witness, including questioning under Rules 67 and 68, an expert or the accused, the legal representative must make application to the Chamber. The Chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the Prosecutor and, if appropriate, the defence, who shall be allowed to make observations within a time limit, set by the Chamber.
4. The Chamber shall then issue a ruling on the request, taking into account the stage of the proceedings, the rights of the accused, the interests of witnesses, the need for a fair, impartial and expeditious trial and in order to give effect to Article 68, paragraph 3. The ruling may include directions on the manner and order of the questions and the production of documents in accordance with the powers of the Chamber under Article 64. The Chamber may, if it considers it appropriate, put the question to the witness, expert or accused on behalf of the victim's legal representative.
5. For a hearing limited to reparations under Article 75, the restrictions on questioning by the legal representative set forth in sub-Rule 2 shall not apply. In that case, the legal representative may, with the permission of the Chamber concerned, question witnesses, experts and the person concerned.

### ASSISTANCE FOR VICTIMS AND THEIR LEGAL REPRESENTATIVES

#### Rule 16 (1)

##### *Responsibilities of the Registrar relating to victims and witnesses*

1. In relation to victims, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules:

- (a) Providing notice or notification to victims or their legal representatives;
- (b) Assisting them in obtaining legal advice and organizing their legal representation, and providing their legal representatives with adequate support, assistance and information, including such facilities as may be necessary for the direct performance of their duty, for the purpose of protecting their rights during all stages of the proceedings in accordance with Rules 89 to 91;
- (c) Assisting them in participating in the different phases of the proceedings in accordance with Rules 89 to 91;
- (d) Taking gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.

## APPOINTMENT OF LEGAL REPRESENTATIVES

### Regulation 80

#### *Appointment of legal representatives of victims by a Chamber*

1. A Chamber, following consultation with the Registrar, may appoint a legal representative of victims where the interests of justice so require.
2. The Chamber may appoint counsel from the Office of Public Counsel for victims.

### Regulation 82

#### *Withdrawal of legal representatives of victims*

Prior to withdrawal from a case, legal representatives of victims shall seek the leave of the Chamber.

### Regulation (RR) 112

#### *Assistance to victims in choosing legal representatives*

In order to assist victims in choosing a legal representative or representatives, the Registry may provide victims with the list of counsel provided for in Regulation 122 and information regarding counsel or assistants to counsel, including, at the request of a victim, the curriculum vitae of counsel appearing on that list, and take measures to ensure that the victim understands such information.

### Regulation (RR) 128

#### *Assistance by the Registry*

1. The Registry shall provide a person entitled to legal assistance in the framework of the proceedings before the Court with the list of counsel, along with the curricula vitae of counsel appearing on that list.
2. The Registry shall provide assistance when a person entitled to legal assistance under the Statute and the Rules is to be questioned pursuant to Article 55, or in any other case where legal assistance is needed by a person entitled to it.

## COMMON LEGAL REPRESENTATIVES

### Rule 90 (2-6):

2. Where there are a number of victims, the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives. In facilitating the coordination of victim representation, the Registry may provide assistance, *inter alia*, by referring the victims to a list of counsel, maintained by the Registry, or suggesting one or more common legal representatives.

3. If the victims are unable to choose a common legal representative or representatives within a time limit that the Chamber may decide, the Chamber may request the Registrar to choose one or more common legal representatives.
4. The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in Article 68, paragraph 1, are represented and that any conflict of interest is avoided.
5. A victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance.
6. A legal representative of a victim or victims shall have the qualifications set forth in Rule 22, sub-Rule 1.

### **Regulation 79**

#### ***Decision of the Chamber concerning legal representatives of victims***

1. The decision of the Chamber to request the victims or particular groups of victims to choose a common legal representative or representatives may be made in conjunction with the decision on the application of the victim or victims to participate in the proceedings.
2. When choosing a common legal representative for victims in accordance with Rule 90, sub-Rule 3, consideration should be given to the views of the victims, and the need to respect local traditions and to assist specific groups of victims.
3. Victims may request the relevant Chamber to review the Registrar's choice of a common legal representative under Rule 90, sub-Rule 3, within 30 days of notification of the Registrar's decision.

## **THE OFFICE OF PUBLIC COUNSEL FOR VICTIMS**

### **Regulation 80**

#### ***Appointment of legal representatives of victims by a Chamber***

1. A Chamber, following consultation with the Registrar, may appoint a legal representative of victims where the interests of justice so require.
2. The Chamber may appoint counsel from the Office of Public Counsel for victims.

### **Regulation 81**

#### ***Office of Public Counsel for victims***

1. The Registrar shall establish and develop an Office of Public Counsel for victims for the purpose of providing assistance as described in sub-Regulation 4.
2. The Office of Public Counsel for victims shall fall within the remit of the Registry solely for administrative purposes and otherwise shall function as a wholly independent office. Counsel and assistants within the Office shall act independently.
3. The Office of Public Counsel for victims may include a counsel who meets the criteria set out in Rule 22 and Regulation 67. The Office shall include assistants as referred to in Regulation 68.
4. The Office of Public Counsel for victims shall provide support and assistance to the legal representative for victims and to victims, including, where appropriate:
  - (a) Legal research and advice; and
  - (b) Appearing before a Chamber in respect of specific issues.

### **Regulation (RR) 114**

#### ***Appointment of members of the Office***

The members of the Office of Public Counsel for Victims are appointed in accordance with the Rules and Regulations governing the recruitment of the staff of the Court. A representative of the legal profession shall sit on the selection panel.

**Regulation (RR) 115*****Independence of the members of the Office***

1. The members of the Office of Public Counsel for Victims shall not receive any instructions from the Registrar in relation to the conduct of the discharge of their tasks as referred to in Regulations 80 and 81 of the Regulations of the Court.
2. In discharging their responsibilities under sub-Regulation 1, the members of the Office shall be bound by the Code of Professional Conduct of counsel adopted pursuant to Rule 8.
3. For issues other than the conduct of the representation of a person entitled to legal assistance under the Statute and the Rules or assistance to legal representatives of victims, members of the Office shall be bound by the provisions applicable to all staff members.
4. Where a member of the Office is representing a victim or a group of victim, Regulation 113 shall apply mutatis mutandis.
5. The Registry shall ensure that the confidentiality necessary for the performance of the functions of the Office be respected.

**Regulation (RR) 116*****Information provided by the Registrar to the Office***

Where members of the Office act as duty counsel or as legal representatives of victims or appear before a Chamber on behalf of a victim or victims in respect of specific issues, the Registrar shall, having regard to confidentiality, provide them with such information received in the applications sent by victims and such further information and documents as necessary for the fulfillment of those functions.

**Regulation (RR) 117*****Report on administrative issues relating to the Office***

The Office shall report on administrative issues related to its activities to the Registrar on a regular basis and submit an annual report of its work to the Registrar having regard to confidentiality.

**Regulation (RR) 129*****Appointment of duty counsel***

1. In accordance with Regulation 73, sub-Regulation 2, of the Regulations of the Court, the Registry shall guarantee the availability of counsel at the place and the time indicated by the Prosecutor or the Chamber.
2. When requested by a person entitled to legal assistance, the Prosecutor or the Chamber, the Registry shall contact the duty counsel and provide him or her with all the information available.

**FINANCIAL LEGAL ASSISTANCE****Regulation 83*****General scope of legal assistance paid by the Court***

1. Legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in Regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances.
2. The scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate.
3. A person receiving legal assistance paid by the Court may apply to the Registrar for additional means which may be granted depending on the nature of the case.
4. Decisions by the Registrar on the scope of legal assistance paid by the Court as defined in this Regulation may be reviewed by the relevant Chamber on application by the person receiving legal assistance.



**Regulation 84*****Determination of means***

1. Where a person applies for legal assistance to be paid by the Court, the Registrar shall determine the applicant's means and whether he or she shall be provided with full or partial payment of legal assistance.
2. The means of the applicant shall include means of all kinds in respect of which the applicant has direct or indirect enjoyment or power freely to dispose, including, but not limited to, direct income, bank accounts, real or personal property, pensions, stocks, bonds or other assets held, but excluding any family or social benefits to which he or she may be entitled. In assessing such means, account shall also be taken of any transfers of property by the applicant which the Registrar considers relevant, and of the apparent lifestyle of the applicant. The Registrar shall allow for expenses claimed by the applicant provided they are reasonable and necessary.

**Regulation 85*****Decisions on payment of legal assistance***

1. In accordance with the procedure set out in the Regulations of the Registry, the Registrar shall decide within one month of the submission of an application or, within one month of expiry of a time limit set in accordance with the Regulations of the Registry, whether legal assistance should be paid by the Court. The decision shall be notified to the applicant together with the reasons for the decision and instructions on how to apply for review. The Registrar may, in appropriate circumstances, make a provisional decision to grant payment of legal assistance.
2. The Registrar shall reconsider his or her decision on payment of legal assistance if the financial situation of the person receiving such legal assistance is found to be different than indicated in the application, or if the financial situation of the person has changed since the application was submitted. Any revised decision shall be notified to the person together with the reasons for the decision and instructions on how to apply for review.
3. Persons as referred to in sub-Regulations 1 and 2 may seek review of the decisions described in those provisions by the Presidency within 15 days of notification of the relevant decision. The decision of the Presidency shall be final.
4. Subject to Rule 21, sub-Rule 5, where legal assistance has been paid by the Court and it is subsequently established that the information provided to the Registrar on the applicant's means was inaccurate, the Registrar may seek an order from the Presidency for recovery of the funds paid from the person who received legal assistance paid by the Court. The Registrar may seek the assistance of the relevant States Parties to enforce that order.

**Rule 21 (5)**

Where a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order of contribution to recover the cost of providing counsel.

**Rule 90 (5)**

A victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance.

**Regulation (RR) 113*****Legal assistance paid by the Court***

1. For the purposes of participation in the proceedings, the Registry shall inform victims that they may apply for legal assistance paid by the Court, and shall supply them with the relevant form(s).
2. In determining whether to grant such assistance, the Registrar shall take into account, inter alia, the means of the victims, the factors mentioned in Article 68, paragraph 1, any special needs of the victims,

the complexity of the case, the possibility of asking the Office of Public Counsel for Victims to act, and the availability of pro bono legal advice and assistance.

3. Regulations 130 - 139 shall apply *mutatis mutandis*.

### **Regulation (RR) 130**

#### ***Management of legal assistance paid by the Court***

1. The Registrar shall manage the legal assistance paid by the Court with due respect to confidentiality and the professional independence of counsel.
2. The Registry staff responsible for managing the funds allocated to legal assistance paid by the Court shall treat all information known with the utmost confidentiality. They shall not communicate such information to any person, except the Registrar, or to the legal aid commissioners where required for the performance of the tasks specified in Regulation 136.
3. The Registrar may transmit to the auditors the necessary information to perform their tasks. They are responsible for ensuring the confidentiality of such information.

### **Regulation (RR) 131**

#### ***Procedure for applications for legal assistance paid by the Court***

1. As soon as the Registry contacts a person entitled to legal assistance under the Statute and the Rules in order to assist him or her in accordance with Regulation 128, it shall provide him or her with the relevant form(s) in order to submit an application for legal assistance paid by the Court.
2. When an application for legal assistance paid by the Court as described in sub-Regulation 1 has been received, the Registry shall immediately acknowledge receipt. The Registrar shall then establish whether or not the applicant has provided the requisite supporting materials as described in Regulation 132. He or she shall inform the applicant as soon as possible if, and to what extent, such materials are incomplete and shall direct him or her to provide the missing materials within a specified time period.

### **Regulation (RR) 132**

#### ***Proof of indigence***

1. A person applying for legal assistance paid by the Court must fill out the approved standard forms and provide the information necessar[y] to support their request.
2. Where there are grounds to believe that an application for legal assistance paid by the Court and the supporting evidence are not accurate, the Registry may carry out an investigation into the matter. In doing so, it may request information and/or documents from any person or body that it deems appropriate.
3. The Registrar should make a decision as to whether legal assistance should be paid in full or in part by the Court within 30 calendar days of the submission by the person concerned of all the documentation required. Legal assistance shall be provisionally paid by the Court during that period.
4. The person shall communicate any change in his or her financial situation that might affect eligibility for legal assistance paid by the Court. The Registry may carry out random checks to verify whether any changes have occurred.
5. If legal assistance paid by the Court has been granted provisionally, the Registry shall investigate the person's means. The person shall cooperate with the Registry in its investigation.

### **Regulation (RR) 133**

#### ***Fees paid to counsel***

The fees paid to counsel and team shall consist of a scheme of payment based on a fixed fee system comprising of a maximum allocation of funds for each phase of the proceedings, including, where applicable, fees for assistance to counsel as referred to in Regulation 68 of the Regulations of the Court, and for professional investigators as referred to in Regulation 137.

**Regulation (RR) 134*****Action plan and modalities of payment***

1. Before each phase of the proceedings, or every six months, counsel shall establish an action plan . The action plan shall be approved by the Registrar who may consult the legal aid commissioner appointed pursuant to Regulation 136, sub-Regulation 1.
2. At the end of every month, the Registry shall issue an order for payment in accordance with the action plan referred to in sub-Regulation 1.
3. Every three months, or at the end of each phase of the proceedings, the Registry shall review the action plan and the remaining fees, if any, shall be paid to counsel.
4. When a mission has been carried out in accordance with the action plan, the relevant funds shall be paid upon presentation of the appropriate travel request, as approved by the Registry, together with any supporting documentation.

**Regulation (RR) 135*****Disputes relating to fees***

1. The Registrar shall take any decision on any dispute concerning the calculation and payment or the reimbursement of expenses at the earliest possible juncture and notify counsel accordingly.
2. Within 15 calendar days of notification, counsel may request the Chamber to review any decision taken under sub-Regulation 1.

**QUALIFICATIONS OF VICTIMS' LEGAL REPRESENTATIVES****Qualifications of Counsel****Rule 90 (6):**

A legal representative of a victim or victims shall have the qualifications set forth in Rule 22, sub-Rule 1.

**Rule 22*****Appointment and qualifications of Counsel for the defence***

1. A counsel for the defence shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel for the defence shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. Counsel for the defence may be assisted by other persons, including professors of law, with relevant expertise.
2. Counsel for the defence engaged by a person exercising his or her right under the Statute to retain legal counsel of his or her choosing shall file a power of attorney with the Registrar at the earliest opportunity.
3. In the performance of their duties, Counsel for the defence shall be subject to the Statute, the Rules, the Regulations, the Code of Professional Conduct for Counsel adopted in accordance with Rule 8 and any other document adopted by the Court that may be relevant to the performance of their duties.

**Regulation 2*****Use of terms***

1. In these Regulations:  
[..] "counsel" refers to a defence counsel and a legal representative of a victim;

**Regulation 67*****Criteria to be met by counsel***

1. The necessary relevant experience for counsel as described in Rule 22 shall be at least ten years.
2. Counsel should not have been convicted of a serious criminal or disciplinary offence considered to be incompatible with the nature of the office of counsel before the Court.

**Regulation 68***Assistants to counsel*

Persons assisting counsel as described in Rule 22, sub-Rule 1, may include persons who can assist counsel in the presentation of the case before a Chamber. The criteria to be met by these persons shall be determined in the Regulations of the Registry.

**Training of Counsel****Regulation (RR) 140***Role of the Registrar*

For the purpose of promoting the specialisation and training of lawyers in the law of the Statute and the Rules, and subject to availability of resources, the Registrar shall, inter alia:

- (a) Ensure access to a database of the case law of the Court;
- (b) Provide comprehensive information on the Court;
- (c) Identify and publish the names of persons and organisations carrying out relevant training;
- (d) Provide training materials; and
- (e) Offer training with the aim of qualifying persons to train counsel.

**Regulation (RR) 141***Training programmes*

1. The Registry shall develop a standard for training programmes aimed at fostering knowledge of the law of the Statute and the Rules.
2. To this end, the Registry may make a survey of existing training programmes on a regular basis, and consult with any independent body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties.
3. Where training programmes receive the Registrar's approval, the organisation offering training may expressly refer to it in its promotional material and in any certificates issued.
4. The Registry shall promote the standard programme amongst organisations offering training, and shall, as appropriate, and in consultation with any independent body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties, review the standard programme according to the practical experience of such training and the performance of counsel before the Court.

**Regulation (RR) 142***Equal access and geographical distribution*

1. The Registrar shall take all necessary steps to encourage an equal geographical and gender distribution of training opportunities. Training should especially be made available in countries where the infrastructure does not allow for regular training, or where a situation has been brought before the Court.
2. In view of the limited financial capacities of lawyers in various countries, the Registrar shall support programmes for training of counsel in such countries. For this purpose, the Registrar may in particular address the relevant States and their bar associations or ask the relevant organisation to provide the training free of charge.

**THE REGISTRAR'S LIST OF COUNSEL****Rule 21 (2)***Assignment of legal assistance*

The Registrar shall create and maintain a list of counsel who meet the criteria set forth in Rule 22 and the Regulations. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list.

**Regulation 69*****Proof and control of criteria to be met by counsel***

1. A person seeking to be included in the list of counsel shall complete the forms provided by the Registrar for this purpose.
2. A person referred to in sub-Regulation 1 shall also provide:
  - (a) A detailed curriculum vitae;
  - (b) A certificate issued by each Bar association the person is registered with, and/or each relevant controlling administrative authority confirming his or her qualifications, the right to practise and the existence, if any, of disciplinary sanctions or ongoing disciplinary proceedings; and
  - (c) A certificate issued by the relevant authority of each State of which the person is a national or where the person is domiciled stating the existence, if any, of criminal convictions.
3. A person referred to in sub-Regulation 1 or counsel already included in the list of counsel shall immediately inform the Registrar of any changes to the information he or she has provided that are more than de minimis, including the initiation of any criminal or disciplinary proceedings against the person.
4. The Registrar may at any stage take steps to verify the information provided by any person referred to in sub-Regulation 1 and by counsel already included in the list of counsel.

**Regulation 70*****Inclusion in the list of counsel***

1. On receipt of an application by a person seeking to be included in the list of counsel, the Registrar shall establish whether the person has provided the information required under Regulation 69. Thereafter, the Registrar shall acknowledge receipt of the application and, where relevant, direct the person to submit additional information.
2. The decision as to whether a person shall be included in the list of counsel shall be notified to that person. If the application is refused, the Registrar shall accordance with Regulation 72.

**Regulation 71*****Removal and suspension from the list of counsel***

1. The Registrar shall remove a counsel from the list of counsel where he or she:
  - (a) No longer meets the criteria required for inclusion in the list of counsel;
  - (b) Has been permanently banned from practising before the Court as a result of disciplinary proceedings held in accordance with the Code of Professional Conduct for counsel;
  - (c) Has been found guilty of an offence against the administration of justice as described in Article 70, paragraph 1; or
  - (d) Has been permanently interdicted from exercising his or her functions before the Court in accordance with Rule 171, sub-Rule 3.
2. The Registrar shall suspend a counsel from the list of counsel where he or she has been:
  - (a) Temporarily suspended in a disciplinary proceeding according to the Code of Professional Conduct for counsel; or
  - (b) Temporarily interdicted from exercising his or her functions before the Court for a period exceeding 30 days in accordance with Rule 171, sub-Rule 3.
3. The Registrar shall notify the relevant counsel of his or her decision under sub-Regulations 1 or 2. The Registrar shall provide reasons and information on how to apply for review of that decision in accordance with Regulation 72.

**Regulation 72*****Review of decisions of the Registrar***

1. Application may be made to the Presidency for review of:
  - (a) A decision under Regulation 70, sub-Regulation 2, refusing to include a person in the list of counsel;
  - (b) A decision under Regulation 71, sub-Regulation 1, removing counsel from the list of counsel; or
  - (c) A decision under Regulation 71, sub-Regulation 2, suspending counsel from the list of counsel.

2. Applications as described in sub-Regulation 1 shall be set out in accordance with Regulation 23 and be filed within 15 days of notification of the relevant decision of the Registrar.
3. The Registrar may file a response within 15 days of notification of the application as referred to in sub-Regulations 1 and 2.
4. The Presidency may ask the Registrar to provide any additional information necessary to decide on the application. The decision of the Presidency shall be final.

### **Regulation 73**

#### ***Duty counsel***

1. The Registrar shall establish and maintain a roster of counsel included in the list of counsel who are available at any time to represent any person before the Court or to represent the interests of the defence.
2. If any person requires urgent legal assistance and has not yet secured legal assistance, or where his or her counsel is unavailable, the Registrar may appoint duty counsel, taking into account the wishes of the person, and the geographical proximity of, and the languages spoken by, the counsel.

### **Regulation (RR) 122**

#### ***List of counsel***

1. The Registry shall produce a standard form for counsel seeking inclusion in the list. The form shall be available on the website of the Court, as well as through other appropriate means, and shall also be provided upon request.
2. Unless counsel requests otherwise, the Registry may publish the following data:
  - (a) Counsel's full name;
  - (b) The name, place and country of the bar association to which counsel is affiliated or, if counsel is not a barrister or attorney, his or her profession, including the name of the institution for which he or she works;
  - (c) The language(s) spoken by counsel; and
  - (d) Whether counsel would prefer to represent the accused, victims, or both.

### **Regulation (RR) 123**

#### ***Acknowledgment of appointment***

The Registrar shall acknowledge the issuance of power of attorney or the appointment of counsel in writing, stating the fact that he or she is included in the list. This acknowledgment shall be notified to the person who has chosen the counsel, to counsel, to the Chamber and to the competent authority exercising regulatory and disciplinary powers over counsel in the national order.

## **OTHER MEMBERS OF THE LEGAL REPRESENTATION TEAM**

### **Regulation (RR) 124**

#### ***Assistants to counsel***

Persons who assist counsel in the presentation of the case before a Chamber, as referred to in Regulation 68 of the Regulations of the Court, shall have either five years of relevant experience in criminal proceedings or competence in international or criminal law and procedure. The name of these persons are on the list of assistants to counsel created and maintained by the Registry.

### **Regulation (RR) 125**

#### ***List of assistants to counsel***

1. The Registry shall create and maintain a list of persons who may assist counsel in the presentation of a case before a Chamber and who meet the requirements set out in Regulation 124.

2. The Registry shall produce a standard form for assistants seeking inclusion in the list. The form shall be available on the website of the Court as well as through other appropriate means, and shall also be provided upon request.

### **Regulation (RR) 127**

#### ***Appointment of assistants***

Persons who assist counsel in the presentation of a case before a Chamber shall be appointed by counsel and selected from the list maintained by the Registrar.

### **Regulation (RR) 137**

#### ***List of professional investigators***

1. The Registry shall create and maintain a list of professional investigators.
2. A professional investigator shall have established competence in international or criminal law and procedure and at least ten years of relevant experience in investigative work in criminal proceedings at national or international level. A professional investigator shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. Subject to exceptional circumstances, he or she shall speak at least one of the languages of the country in which the investigation is being conducted.
3. The Registry shall produce a standard form for professional investigators seeking inclusion in the list. The form shall be available on the website of the Court, as well as through other appropriate means, and shall also be provided upon request.
4. A person seeking to be included in the list of professional investigators shall complete the standard form and provide the following documentation:
  - (a) A detailed curriculum vitae;
  - (b) An indication of competence in the relevant field in accordance with sub-Regulation 2; and
  - (c) Where applicable, a statement of whether he or she is included in any list of investigators acting before any national court, or whether he or she is registered with any association of investigators.
5. The decision on whether a person shall be included in the list shall be notified to that person. If the application is refused, the Registrar shall provide reasons and information on how to apply to the Presidency for review of that decision within 15 calendar days of notification.
6. The Registrar may file a response within 15 calendar days of notification of the application for review.
7. The Presidency may ask the Registrar to provide any additional information necessary to decide on the application. The decision of the Presidency shall be final.
8. Professional investigators included in the list shall immediately inform the Registrar of any change in the information provided by them in accordance with this Regulation. The Registrar may take steps to verify the information provided by a professional investigator included in the list at any time.

### **Regulation (RR) 138**

#### ***Removal from the list of professional investigators***

1. The Registrar shall remove a person from the list of professional investigators if the person:
  - (a) No longer meets the criteria required in accordance with Regulation 137, sub-Regulation 2;
  - (b) Has been found guilty of an offence against the administration of justice as described in Article 70, paragraph 1;
  - (c) Has been permanently interdicted from exercising his or her functions before the Court in accordance with Rule 171, sub-Rule 3; or
  - (d) Has solicited or accepted a bribe from a person entitled to legal assistance paid by the Court.
2. The Registrar shall notify the relevant person of his or her decision under sub-Regulation 1 and shall provide the reasons therefor.
3. The Registrar shall inform the investigator on how to apply to the Presidency for review of that decision within 15 calendar days of its notification.

4. The Registrar may file a response within 15 calendar days of notification of the application for review.
5. The Presidency may ask the Registrar to provide any additional information necessary to decide on the application. The decision of the Presidency shall be final.

### **Regulation (RR) 139**

#### ***Selection of professional investigators***

1. Where legal assistance is paid by the Court and includes the fee of a professional investigator, counsel shall select the professional investigator from the list referred to in Regulation 137.
2. A person not included in the list of investigators but who has relevant experience with regard to investigations in criminal proceedings, is fluent in at least one of the working languages of the Court and speaks at least one of the languages of the country in which the investigation is being conducted, exceptionally and after confirmation by the Registrar that the above criteria have been met, can be selected by counsel as a resource person in a given case. That resource person shall not be related to the person entitled to legal assistance, to the counsel or any person assisting him or her.





**CHAPTER V**

## ADDITIONAL DOCUMENTS

**Standard application form to be included on the list of Counsel**

**Standard application form to be included on the list of Assistant to Counsel**

**Certificate of Good Standing**

**Code of Professional Conduct for Counsel**

**Request Form of Legal Research and Advice**





## Candidate application form list of counsel

Candidates are requested to fill in the form below and answer all the questions. The form and the required documents should be sent to the following address:  
Registry of the International Criminal Court, Division of Victims and Counsel, P.O. Box 19519, 2500 CM The Hague, The Netherlands, quoting “Reference: list of counsel”.

<p><b>Surname of candidate:</b></p> <p><b>First name(s):</b></p> <p><b>Sex:</b>      <input type="checkbox"/> M                      <input type="checkbox"/> F</p> <p><b>Other names used now or in the past (e.g. maiden name):</b></p> <p><b>Date of birth:</b></p> <p><b>Place and country of birth:</b></p> <p><b>Present nationality/nationalities:</b></p> <p><b>Candidate's father's full name:</b></p> <p><b>Candidate's mother's full name:</b></p> <p><b>Do you have any connection whatsoever with a member of the list of counsel and/or any investigator?</b> <input type="checkbox"/> Yes (please provide details)  <input type="checkbox"/> No</p>	<p><b>Candidate's home address:</b></p> <p><b>Candidate's office address:</b></p> <p><b>Other addresses:</b></p> <p><b>Telephone number (home):</b></p> <p><b>Telephone number (office):</b></p> <p><b>Mobile phone number:</b></p> <p><b>Fax number (home):</b></p> <p><b>Fax number (office):</b></p> <p><b>E-mail address:</b></p> <p><b>Do you or any member of your family have any connection whatsoever with a person seeking representation before the Court?</b> <input type="checkbox"/> Yes (please provide details)  <input type="checkbox"/> No</p>
--	--

<p><b>Do you have any connection whatsoever with a person seeking legal assistance from the Court?</b></p> <p><input type="checkbox"/> Yes (please provide details)</p> <p><input type="checkbox"/> No</p>	<p><b>Do you have any connection whatsoever with a staff member of the Court?</b></p> <p><input type="checkbox"/> Yes (please provide details)</p> <p><input type="checkbox"/> No</p>
--	---

<b>Language proficiency</b>				
<b>What is your mother tongue?</b>				
<b>Other languages</b> (Please indicate your level in each skill as follows: Basic/Intermediate/Advanced)				
<b>Language</b>	<b>Written comprehension</b>	<b>Oral comprehension</b>	<b>Writing</b>	<b>Speaking</b>

<b>Knowledge of law:</b>	
<p><b>How would you describe your knowledge of the common law system?</b></p> <p><input type="checkbox"/> Excellent  <input type="checkbox"/> Good  <input type="checkbox"/> Quite good  <input type="checkbox"/> Basic</p> <p>(please provide details)</p>	<p><b>How would you describe your knowledge of international law and procedure?</b></p> <p><input type="checkbox"/> Excellent  <input type="checkbox"/> Good  <input type="checkbox"/> Quite good  <input type="checkbox"/> Basic</p> <p>(please provide details):</p>
<p><b>How would you describe your knowledge of the civil law system?</b></p> <p><input type="checkbox"/> Excellent  <input type="checkbox"/> Good  <input type="checkbox"/> Quite good  <input type="checkbox"/> Basic</p> <p>(please provide details)</p>	<p><b>How would you describe your knowledge of criminal law and procedure?</b></p> <p><input type="checkbox"/> Excellent  <input type="checkbox"/> Good  <input type="checkbox"/> Quite good  <input type="checkbox"/> Basic</p> <p>(please provide details)</p>

<b>Education</b>	
<p>Secondary and university education. Please give details of diplomas, degrees and merits obtained, specifying the year, university, institute or other institution attended, and area of specialisation.</p>	<p>Other studies:</p>

<p>Please provide the full address and contact details of the institutions attended, specifying the name of a contact person in each case.</p>	<p>Other significant information:</p>
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**Computer skills**

<p><b>How would you describe your computer skills?</b></p> <p><input type="checkbox"/> Excellent  <input type="checkbox"/> Good  <input type="checkbox"/> Quite good  <input type="checkbox"/> Basic</p> <p><b>Have you ever used computer tools for document management?</b></p> <p><input type="checkbox"/> Yes (please provide details)</p> <p><input type="checkbox"/> No</p> <p><b>Would you describe your knowledge of computerised case management systems as:</b></p> <p><input type="checkbox"/> Excellent  <input type="checkbox"/> Good  <input type="checkbox"/> Quite good  <input type="checkbox"/> Basic          (please provide details)</p>	<p>Please list the computer tools or computer equipment that you use in your work:</p>     <p>Please list any computer programs you use:</p>
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**If you are a judge, lawyer or prosecutor, please indicate:**

<p><b>Years of experience in criminal proceedings:</b></p>     <p><b>Your field of expertise and years of experience in that field:</b></p>     <p><b>Total number of years of experience:</b></p>	<p><b>Have you worked or are you currently working for an international criminal court?</b></p> <p><input type="checkbox"/> Yes (please provide details)  <input type="checkbox"/> No</p>     <p><b>Have you ever appeared before a court as an expert witness?</b></p> <p><input type="checkbox"/> Yes (please provide details)  <input type="checkbox"/> No</p>
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<p><b>Other activities related to criminal proceedings:</b></p>	<p><b>Have you ever appeared before a court as <i>amicus curiae</i>?</b>  <input type="checkbox"/> Yes (please provide details)  <input type="checkbox"/> No</p> <p><b>Have you ever appeared before a court as a legal representative of a victim or victims?</b>  <input type="checkbox"/> Yes (please provide details)  <input type="checkbox"/> No</p>
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If you are an academic in law, please indicate:	
<p><b>Your field of expertise:</b></p>    <p><b>Total number of years of experience:</b></p>   <p><b>Please list any significant publications relating to international criminal law, international humanitarian law or human rights of which you are the author:</b></p>	<p><b>Have you ever appeared before a court as an expert witness?</b>  <input type="checkbox"/> Yes (please provide details)  <input type="checkbox"/> No</p> <p><b>Have you ever appeared before a court as <i>amicus curiae</i>?</b>  <input type="checkbox"/> Yes (please provide details)  <input type="checkbox"/> No</p> <p><b>Have you ever appeared before a court as</b></p>

<p><b>Other activities related to criminal proceedings:</b></p>	<p><b>a legal representative of a victim or victims?</b></p> <p><input type="checkbox"/> Yes (please provide details)</p> <p><input type="checkbox"/> No</p>
---	--

<b>Additional information</b>	
<p><b>Name, telephone number, fax number, e-mail address of the bar association(s) and/or the controlling administrative authority with which you are registered:</b></p>	<p><b>Have you ever been the subject of a disciplinary sanction by the bar association(s) or the controlling administrative authority with which you are registered or by an international criminal court?</b></p> <p><input type="checkbox"/> Yes (please provide details)</p> <p><input type="checkbox"/> No</p> <p><b>Are you eligible for appointment as counsel at an international criminal court?</b></p> <p><input type="checkbox"/> Yes (please provide details)</p> <p><input type="checkbox"/> No</p> <p><b>Have you ever been convicted of a criminal offence, excluding minor traffic violations?</b></p> <p><input type="checkbox"/> Yes (please provide details)</p> <p><input type="checkbox"/> No</p>



	<p><b>Are any criminal proceedings currently being brought against you?</b></p> <p><input type="checkbox"/> Yes (please provide details)</p> <p><input type="checkbox"/> No</p>
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Please enclose the following with this form:

1. Detailed *curriculum vitae*,
2. Original or certified copy of the certificate issued by the bar association and/or the controlling administrative authority with which you are registered,
3. Completed "certificate of good standing for candidates to the list of counsel",
4. A certificate issued by the relevant authority of the State(s) in which you are domiciled, stating the existence, if any, of criminal convictions,
5. Valid practicing certificate,
6. Copy of your professional insurance policy,
7. Legible copy of your birth certificate,
8. Legible copy of your passport/travel document,
9. Two passport-size photographs (colour).

**N.B.:** The original version of all these documents must be submitted. If the original version is in neither English nor French, it must be accompanied by a certified translation.

In the event that you are admitted to the list of counsel, would you object to the list being published, inter alia on the Court website?

- Yes  
 No

If your answer to the previous question is negative, would you object to your contact information also being posted on the "list of counsel" page of the Court website.

- Yes  
 No

Please specify if you have ever been or are a member of a disciplinary body or if you have specific responsibilities relating to ethics.

Please specify if you have any preferences in respect of an eventual appointment.

Preferences:

None	Defence	Victims	Other
<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> (please provide details)

**In the event that you are appointed, would you be willing to use an electronic signature?**

- Yes  
 No (please provide additional information)

**Would you object to the Registry contacting the professional authority with which you are registered, and/or the institutions and persons mentioned on this form?**

- Yes  
 No (please provide additional information)

**Please provide below any information that you consider ought to be brought to the attention of the International Criminal Court.**

**I certify on my honour that I have verified the information in this form and that it is true and correct. I hereby undertake to inform the Court in the event of a change in my circumstances.**

**I understand that any decision to appoint me at the Court will be based on the information provided herein. I also understand that, should any item of information herein prove to be incorrect or false, the Court would be at liberty to terminate my appointment without notice. I hereby undertake to inform the Court of any future criminal proceedings that may be initiated against me.**

**I undertake not to enter into any fee-splitting arrangement with any person seeking representation or relative, friend or associate of the same.**

**Date:**

**Signature:**



**List of Assistants to Counsel  
Candidate Application Form**

The candidate is requested to fill in the form below and answer all questions. The form and the required documents should be sent to the following address:

**Registry of the International Criminal Court, Division of Victims and Counsel  
PO Box 19519, 2500 CM The Hague, The Netherlands**

<b>Personal Information</b>	
<b>Surname:</b>	<b>Candidate's full home address:</b>
<b>First name(s):</b> <b>Sex:</b> <input type="checkbox"/> M <input type="checkbox"/> F	<b>Candidate's full office address:</b>
<b>Other names used now or in the past:</b> (e.g. maiden name)	<b>Other Addresses:</b>
<b>Date of birth:</b>	<b>Telephone (home):</b>
<b>Town and country of birth:</b>	<b>Telephone (office):</b>
<b>Present nationality:</b>	<b>Telephone (mobile):</b>
<b>Your father's full name:</b>	<b>Fax (home):</b>
<b>Your mother's full name:</b>	<b>Fax (office):</b>
<b>Your mother's maiden name:</b>	<b>E-Mail address:</b>

<p><b>Are you related to any other member of the list of counsel and/or investigators and/or assistants?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes (Please provide with details)</p> <p><b>Are you related to any person seeking representation before the ICC?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes (Please provide with details)</p>	<p><b>Is any member of your family related to any person seeking representation?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes (Please provide with details)</p> <p><b>Are you related to any staff member of the ICC?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes (Please provide with details)</p>
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<b>Language Proficiency</b>				
<b>What is your mother tongue?</b>				
<b>Other languages</b> (Please indicate level: Fluent/Very good/Good/Basic)				
Language(s)	Read	Write	Speak	Understand

**What is your level of knowledge of:**

**The Common Law System?**

- Excellent
- Very good
- Good
- Basic

(Please provide details):

**International law and procedure?**

- Excellent
- Very good
- Good
- Basic

(Please provide details):

**The Civil Law System?**

- Excellent
- Very good
- Good
- Basic

(Please provide details):

**Criminal law and procedure?**

- Excellent
- Very good
- Good
- Basic

(Please provide details):

**Education (university diplomas only)**

**Secondary School and University:**  
[diplomas, degrees obtained (years, university, institute, other), and specialization].

**Please provide the complete address and contact details of the institutions where you have studied and/or are currently studying:**

**Other studies or related information:**

**Level of Experience | Please indicate:**

**Years of experience in criminal proceedings:**

**Your field of expertise and years of experience:**

**Total number of years of experience:**

**List significant publications relating to international or criminal law and procedure, international humanitarian law or human rights law you have written:**

**Have you worked or are you currently working for a United Nations *ad hoc* tribunal or Special Court?**

- No
- Yes (Please provide details)

**Have you ever been an expert witness?**

- No
- Yes (Please provide details)

**Other activities related to criminal trials:**

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<b>Computer Skills</b>	
<p><b>How would you describe your computer skills?</b></p> <p><input type="checkbox"/> Excellent</p> <p><input type="checkbox"/> Very good</p> <p><input type="checkbox"/> Good</p> <p><input type="checkbox"/> Basic</p> <p><b>Have you ever used computerized document management tools?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes (Please provide details)</p> <p><b>Would you describe your knowledge of computerized case management system as:</b></p> <p><input type="checkbox"/> Excellent</p> <p><input type="checkbox"/> Very good</p> <p><input type="checkbox"/> Good</p> <p><input type="checkbox"/> Basic</p> <p>(Please provide details)</p>	<p><b>Please list the computer tools or computer equipment your use in your work:</b></p>     <p><b>Please list any computer programs you use:</b></p>



**Additional Information**

(please answer questions where applicable)

**Has your bar association(s) and/or controlling administrative authority with which you are registered ever taken any disciplinary action against you?**

- No
- Yes (Please provide details)

**Name, telephone number, fax number, e-mail address of the bar association(s) and/or controlling administrative authority with which you are registered:**

**Have you ever been convicted of a criminal offence, excluding minor traffic violations?**

- No
- Yes (Please provide details)

**Are any criminal proceedings currently being brought against you?**

- No
- Yes (Please provide details)

**Have you any objections to the Registrar of the International Criminal Court contacting one or more of the above-mentioned Governing body, Institutions and persons?**

- No
- Yes (Please provide reasons)

Please attach the following documentation, for your request to be processed:

1. Detailed *curriculum vitae*
2. A certificate issued by the relevant authority of the State(s) in which you are domiciled, stating the existence, if any, of criminal convictions
3. Legible copy of birth certificate
4. Legible copy of passport / travel document
5. 2 passport size pictures

Where available, please attach also the following documents:

6. Original or certified copy of the certificate issued by the bar association and/or the controlling administrative authority with which you are registered
7. an official letter issued by the institution where you are acting as an adjunct-, part-, or fulltime- professor, certifying your tenure and specialty as an instructor
8. Completed Certificate of good standing

**N.B.:** All documents shall be submitted, in original, in English or French, or accompanied by a certified translation.

Please indicate if you would have any preferences in respect of an eventual appointment.

Preferences:

Defense	Victims	Others	None
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> (Please provide details)	<input type="checkbox"/>

In case you are admitted to the list of assistants, would you object to your name being included in the List of Assistants posted on, *inter alia*, the Court's website?

- No  
 Yes

In the space below, please provide any information that you consider relevant and ought to be brought to the attention of the International Criminal Court.

I certify on my honour that the above information is true and correct to the best of my knowledge and belief, and that I have verified its contents. I understand that the information I have given herein forms the basis of admission to the List of Assistants and I agree that, should any of the matters I have stated herein prove to be incorrect or false or if is subsequently discovered that I have withheld relevant information, the International

**Criminal Court will be at liberty to terminate this appointment without notice. In the event that criminal or disciplinary proceedings are commenced against me following today's date, I hereby undertake to provide full details to the Registrar of the Court.**

**I undertake not to enter into any fee-splitting arrangement with any person seeking representation or relative, friend or associate of the same.**

**Date:**

---

**Candidate's Signature:**



**Certificate of good standing for  
candidates to the list of counsel**

Bar Association / Administrative Authority	Representative person	Position	
Name of member / employee			Registration number
Condition of the member / employee		Prior conditions, if applicable	
Complete address	Telephone	Fax	e-mail address
Date of entry / admission / swearing in	Interruptions, if any		
Disciplinary proceedings against member / employee			
<b>I certify on my honour that the above information is true and correct to the best of my knowledge and belief and that I have verified its contents.</b>			
Date	Signature	Seal	

**This Certificate is not valid without the seal.**

**Part III**  
**Resolutions adopted by the Assembly of States Parties**

## **Resolution ICC-ASP/4/Res.1**

*Adopted at the 3<sup>rd</sup> plenary meeting on 2 December 2005, by consensus*

### **ICC-ASP/4/Res.1**

#### **Code of Professional Conduct for counsel**

*The Assembly of State Parties,*

*Having regard to* rule 8 of the Rules of Procedure and Evidence;

*Having regard to* rule 20, sub-rule 3;

*Having regard to* the consultations conducted by the Registrar with independent representative bodies of counsel or legal associations;

*Recognizing* the general principles governing the practice and ethics of the legal profession;

*Recalling* resolution ICC-ASP/3/Res.3, of 10 September 2004, whereby the Assembly of States Parties requested the Bureau of Assembly of States Parties to prepare an amended draft Code for adoption by the Assembly at its fourth session;

*Having regard to* the Report of the Bureau on the draft Code of Professional Conduct for counsel,<sup>1</sup> submitted pursuant to the above resolution;

*Decides* to adopt the Code of Professional Conduct for counsel, the text of which is annexed hereto.

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<sup>1</sup> ICC-ASP/4/21.

## Annex

### Code of Professional Conduct for counsel

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## Code of Professional Conduct for counsel

### Chapter 1 General provisions

#### Article 1 Scope

This Code shall apply to defence counsel, counsel acting for States, *amici curiae* and counsel or legal representatives for victims and witnesses practising at the International Criminal Court, hereinafter referred to as “counsel”.

#### Article 2 Use of terms

1. Unless otherwise defined in this Code, all terms are used as defined in the Statute, the Rules of Procedure and Evidence and the Regulations of the Court.
2. In this Code:
  - “Court” refers to the International Criminal Court;
  - “associate” refers to lawyers who practise in the same law firm as counsel;
  - “national authority” refers to the bar association of which counsel is a member or any other organ competent to regulate and control the activity of lawyers, judges, prosecutors or professors of law, or other qualified counsel according to rule 22, paragraph 1, of the Rules of Procedure and Evidence;
  - “client” refers to all those assisted or represented by counsel;
  - “defence team” refers to counsel and all persons working under his or her oversight; and
  - “agreement” refers to the oral or written legal relationship which binds counsel to his or her client before the Court.

#### Article 3 Amendment procedure

1. States Parties, judges, the Registrar, counsel and independent organizations representing lawyers’ associations and counsel may submit proposals for amendments to this Code. Any proposal for amendments to this Code shall be submitted to the Registrar, together with explanatory material, in one or both working languages of the Court.
2. The Registrar shall transmit the proposals to the Presidency, together with a reasoned report prepared after consultation with the Prosecutor and, as appropriate, with any independent organization representing lawyers’ associations and counsel.
3. Any proposal to amend this Code, submitted by one or more States Parties, shall be transmitted by the Presidency to the Assembly of States Parties together with any comments the Presidency may have, taking into account the report of the Registrar.

4. Any proposal to amend this Code, other than one submitted by one or more States Parties, shall be transmitted by the Presidency to the Assembly of States Parties together with any comments the Presidency may have, taking into account the report of the Registrar. In such circumstances, the Presidency shall provide the Assembly of States Parties with the Presidency's reasoned recommendations as to whether or not any such proposal should be adopted. If the Presidency recommends adoption, it shall submit a draft amendment in relation to that proposal to the Assembly of States Parties for the purpose of adoption.

5. Amendments to this Code shall be adopted by the Assembly of States Parties in accordance with article 112, paragraph 7, of the Statute.

**Article 4**  
**Primacy of the Code of Professional Conduct for counsel**

Where there is any inconsistency between this Code and any other code of ethics or professional responsibility which counsel are bound to honour, the terms of this Code shall prevail in respect of the practice and professional ethics of counsel when practising before the Court.

**Article 5**  
**Solemn undertaking by counsel**

Before taking office, counsel shall give the following solemn undertaking before the Court: "I solemnly declare that I will perform my duties and exercise my mission before the International Criminal Court with integrity and diligence, honourably, freely, independently, expeditiously and conscientiously, and that I will scrupulously respect professional secrecy and the other duties imposed by the Code of Professional Conduct for Counsel before the International Criminal Court".

**Article 6**  
**Independence of counsel**

1. Counsel shall act honourably, independently and freely.
2. Counsel shall not:
  - (a) Permit his or her independence, integrity or freedom to be compromised by external pressure; or
  - (b) Do anything which may lead to any reasonable inference that his or her independence has been compromised.

**Article 7**  
**Professional conduct of counsel**

1. Counsel shall be respectful and courteous in his or her relations with the Chamber, the Prosecutor and the members of the Office of the Prosecutor, the Registrar and the members of the Registry, the client, opposing counsel, accused persons, victims, witnesses and any other person involved in the proceedings.
2. Counsel shall maintain a high level of competence in the law applicable before the Court. He or she shall participate in training initiatives required to maintain such competence.
3. Counsel shall comply at all times with the Statute, the Rules of Procedure and Evidence, the Regulations of the Court and such rulings as to conduct and procedure as may be made by the Court, including the enforcement of this Code.

4. Counsel shall supervise the work of his or her assistants and other staff, including investigators, clerks and researchers, to ensure that they comply with this Code.

### **Article 8**

#### **Respect for professional secrecy and confidentiality**

1. Counsel shall respect and actively exercise all care to ensure respect for professional secrecy and the confidentiality of information in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court.

2. The relevant provisions referred to in paragraph 1 of this article include, inter alia, article 64, paragraph 6 (c), article 64, paragraph 7, article 67, paragraph 1 (b), article 68, and article 72 of the Statute, rules 72, 73, and 81 of the Rules of Procedure and Evidence and regulation 97 of the Regulations of the Court. Counsel shall also comply with the relevant provisions of this Code and any order of the Court.

3. Counsel may only reveal the information protected under paragraphs 1 and 2 of this article to co-counsel, assistants and other staff working on the particular case to which the information relates and solely to enable the exercise of his or her functions in relation to that case.

4. Subject to paragraph 3 of this article, counsel may only disclose the information protected under paragraphs 1 and 2 of this article, where such disclosure is provided for by a particular provision of the Statute, the Rules of Procedure and Evidence, the Regulations of the Court or this Code or where such disclosure is ordered by the Court. In particular, Counsel shall not reveal the identity of protected victims and witnesses, or any confidential information that may reveal their identity and whereabouts, unless he or she has been authorized to do so by an order of the Court.

### **Article 9**

#### **Counsel-client relationship**

1. Counsel shall not engage in any discriminatory conduct in relation to any other person, in particular his or her client, on grounds of race, colour, ethnic or national origin, nationality, citizenship, political opinions, religious convictions, gender, sexual orientation, disability, marital status or any other personal or economic status.

2. In his or her relations with the client, counsel shall take into account the client's personal circumstances and specific needs, in particular where counsel is representing victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled.

3. Where a client's ability to make decisions concerning representation is impaired because of mental disability or for any other reason, counsel shall inform the Registrar and the relevant Chamber. Counsel shall also take the steps necessary to ensure proper legal representation of the client according to the Statute and the Rules of Procedure and Evidence.

4. Counsel shall not engage in any improper conduct, such as demanding sexual relations, coercion, intimidation, or exercise any other undue influence in his or her relations with a client.

### **Article 10**

#### **Advertising**

Counsel may advertise provided the information is:

- (a) Accurate; and
- (b) Respectful of counsel's obligations regarding confidentiality and privilege.

**Chapter 2**  
**Representation by counsel**

**Article 11**  
**Establishment of the representation agreement**

The agreement is established when counsel accepts a request from a client seeking representation or from the Chamber.

**Article 12**  
**Impediments to representation**

1. Counsel shall not represent a client in a case:
  - (a) If the case is the same as or substantially related to another case in which counsel or his or her associates represents or formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation; or
  - (b) In which counsel was involved or was privy to confidential information as a staff member of the Court relating to the case in which counsel seeks to appear. The lifting of this impediment may, however, at counsel's request, be ordered by the Court if deemed justified in the interests of justice. Counsel shall still be bound by the duties of confidentiality stemming from his or her former position as a staff member of the Court.
2. In the case of paragraph 1 (a) of this article, where consent has been obtained after consultation, counsel shall inform the Chamber of the Court seized with the situation or case of the conflict and the consent obtained. Such notice shall be provided in a manner consistent with counsel's duties of confidentiality pursuant to article 8 of this Code and rule 73, sub-rule 1 of the Rules of Procedure and Evidence.
3. Counsel shall not act in proceedings in which there is a substantial probability that counsel or an associate of counsel will be called to appear as a witness unless:
  - (a) The testimony relates to an uncontested issue; or
  - (b) The testimony relates to the nature and value of legal services rendered in the case.
4. This article is without prejudice to article 16 of this Code.

**Article 13**  
**Refusal by counsel of a representation agreement**

1. Counsel has the right to refuse an agreement without stating reasons.
2. Counsel has a duty to refuse an agreement where:
  - (a) There is a conflict of interest under article 16 of this Code;
  - (b) Counsel is incapable of dealing with the matter diligently; or
  - (c) Counsel does not consider that he or she has the requisite expertise.

**Article 14****Performance in good faith of a representation agreement**

1. The relationship of client and counsel is one of candid exchange and trust, binding counsel to act in good faith when dealing with the client. In discharging that duty, counsel shall act at all times with fairness, integrity and candour towards the client.
2. When representing a client, counsel shall:
  - (a) Abide by the client's decisions concerning the objectives of his or her representation as long as they are not inconsistent with counsel's duties under the Statute, the Rules of Procedure and Evidence, and this Code; and
  - (b) Consult the client on the means by which the objectives of his or her representation are to be pursued.

**Article 15****Communication between counsel and the client**

1. Counsel shall provide the client with all explanations reasonably needed to make informed decisions regarding his or her representation.
2. When counsel is discharged from or terminates the agreement, he or she shall convey as promptly as possible to the former client or replacement counsel any communication that counsel received relating to the representation, without prejudice to the duties which subsist after the end of the representation.
3. When communicating with the client, counsel shall ensure the confidentiality of such communication.

**Article 16****Conflict of interest**

1. Counsel shall exercise all care to ensure that no conflict of interest arises. Counsel shall put the client's interests before counsel's own interests or those of any other person, organization or State, having due regard to the provisions of the Statute, the Rules of Procedure and Evidence, and this Code.
2. Where counsel has been retained or appointed as a common legal representative for victims or particular groups of victims, he or she shall advise his or her clients at the outset of the nature of the representation and the potential conflicting interests within the group. Counsel shall exercise all care to ensure a fair representation of the different yet consistent positions of his or her clients.
3. Where a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either:
  - (a) Withdraw from the representation of one or more clients with the prior consent of the Chamber; or
  - (b) Seek the full and informed consent in writing of all potentially affected clients to continue representation.

**Article 17****Duration of the representation agreement**

1. Counsel shall advise and represent a client until:
  - (a) The case before the Court has been finally determined, including all appeals;

- (b) Counsel has withdrawn from the agreement in accordance with article 16 or 18 of this Code; or
  - (c) A counsel assigned by the Court has been withdrawn.
2. The duties of counsel towards the client continue until the representation has ended, except for those duties which subsist under this Code.

**Article 18**  
**Termination of the representation**

1. With the prior consent of the Chamber, counsel may withdraw from the agreement in accordance with the Regulations of the Court if:
- (a) The client insists on pursuing an objective that counsel considers repugnant; or
  - (b) The client fails to fulfil an obligation to counsel regarding counsel's services and has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled.
2. Where counsel withdraws from the agreement, he or she remains subject to article 8 of this Code, as well as any provisions of the Statute and the Rules of Procedure and Evidence relating to confidentiality.
3. Where counsel is discharged by the client, counsel may be discharged in accordance with the Regulations of the Court.
4. Where counsel's physical or mental condition materially impairs his or her ability to represent the client, counsel may be withdrawn by the Chamber at his or her request or at the request of the client or the Registrar.
5. In addition to complying with the duties imposed by article 15, paragraph 2, of this Code, counsel shall convey to replacement counsel the entire case file, including any material or document relating to it.

**Article 19**  
**Conservation of files**

Following the termination of the representation, counsel shall keep files containing documents and records of work carried out in fulfilment of the agreement for five years. Counsel shall allow the former client to inspect the file unless he or she has substantial grounds for refusing to do so. After this time counsel shall seek instructions from the former client, his or her heirs or the Registrar on the disposal of the files, with due regard to confidentiality.

**Article 20**  
**Counsel's fees**

Prior to establishing an agreement, counsel shall inform the client in writing of the rate of fees to be charged and the criteria for setting them, the basis for calculating the costs, the billing arrangements and the client's right to receive a bill of costs.

**Article 21**  
**Prohibitions**

1. Notwithstanding article 22, counsel shall not accept remuneration, in cash or in kind, from a source other than the client unless the client consents thereto in writing after consultation and counsel's independence and relationship with the client are not thereby affected.
2. Counsel shall never make his or her fees contingent on the outcome of a case in which he or she is involved.
3. Counsel shall not mix funds of a client with his or her own funds, or with funds of counsel's employer or associates. Counsel shall not retain money received on behalf of a client.
4. Counsel shall not borrow monies or assets from the client.

**Article 22**  
**Remuneration of counsel in the framework  
of legal assistance**

1. The fees of counsel where his or her client benefits from legal assistance shall be paid exclusively by the Registry of the Court. Counsel shall not accept remuneration in cash or in kind from any other source.
2. Counsel shall neither transfer nor lend all or part of the fees received for representation of a client or any other assets or monies to a client, his or her relatives, acquaintances, or any other third person or organization in relation to which the client has a personal interest.
3. Counsel shall sign an undertaking to respect the obligations under this article when accepting the appointment to provide legal assistance. The signed undertaking shall be sent to the Registry.
4. Where counsel is requested, induced or encouraged to violate the obligations under this article, counsel shall advise the client of the prohibition of such conduct.
5. Breach of any obligations under this article by Counsel shall amount to misconduct and shall be subject to a disciplinary procedure pursuant to this Code. This may lead to a permanent ban on practising before the Court and being struck off the list of counsel, with transmission to the respective national authority.

**Chapter 3**  
**Relations with the Court and others**

**Article 23**  
**Communications with the Chambers and judges**

Unless the judge or the Chamber dealing with a case permits counsel to do so in exceptional circumstances, counsel shall not:

- (a) Make contact with a judge or Chamber relative to the merits of a particular case other than within the proper context of the proceedings; or
- (b) Transmit evidence, notes or documents to a judge or Chamber except through the Registry.

**Article 24**  
**Duties towards the Court**

1. Counsel shall take all necessary steps to ensure that his or her actions or those of counsel's assistants or staff are not prejudicial to the ongoing proceedings and do not bring the Court into disrepute.
2. Counsel is personally responsible for the conduct and presentation of the client's case and shall exercise personal judgement on the substance and purpose of statements made and questions asked.
3. Counsel shall not deceive or knowingly mislead the Court. He or she shall take all steps necessary to correct an erroneous statement made by him or her or by assistants or staff as soon as possible after becoming aware that the statement was erroneous.
4. Counsel shall not submit any request or document with the sole aim of harming one or more of the participants in the proceedings.
5. Counsel shall represent the client expeditiously with the purpose of avoiding unnecessary expense or delay in the conduct of the proceedings.

**Article 25**  
**Evidence**

1. Counsel shall at all times maintain the integrity of evidence, whether in written, oral or any other form, which is submitted to the Court. He or she shall not introduce evidence which he or she knows to be incorrect.
2. If counsel, while collecting evidence, reasonably believes that the evidence found may be destroyed or tampered with, counsel shall request the Chamber to issue an order to collect the evidence pursuant to rule 116 of the Rules of Procedure and Evidence.

**Article 26**  
**Relations with unrepresented persons**

1. When required in the course of representation, counsel may communicate with and meet an unrepresented person in the client's interest.
2. When counsel communicates with unrepresented persons he or she shall:
  - (a) Inform them of their right to assistance from counsel and, if applicable, to their right to legal assistance; and
  - (b) Without infringing upon the confidentiality of counsel-client privilege, inform them of the interest that counsel represents and the purpose of the communication.
3. If counsel becomes aware of a potential conflict of interest in the course of a communication or meeting with an unrepresented person, he or she shall, notwithstanding paragraph 1 of this article, refrain immediately from engaging in any further contact or communication with the person.

**Article 27**  
**Relations with other counsel**

1. In dealing with other counsel and their clients, counsel shall act fairly, in good faith and courteously.



2. All correspondence between counsel representing clients with a common interest in a litigated or non-litigated matter and who agree on exchanging information concerning the matter, shall be presumed confidential and privileged by counsel.

3. When counsel does not expect particular correspondence between counsel to be confidential, he or she shall state clearly at the outset that such correspondence is not confidential.

#### **Article 28**

##### **Relations with persons already represented by counsel**

Counsel shall not address directly the client of another counsel except through or with the permission of that counsel.

#### **Article 29**

##### **Relations with witnesses and victims**

1. Counsel shall refrain from intimidating, harassing or humiliating witnesses or victims or from subjecting them to disproportionate or unnecessary pressure within or outside the courtroom.

2. Counsel shall have particular consideration for victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled.

#### **Chapter 4**

##### **Disciplinary regime**

#### **Article 30**

##### **Conflict with other disciplinary regimes**

Subject to article 38 of this Code, the present chapter is without prejudice to the disciplinary powers of any other disciplinary authority that may apply to counsel subject to this Code.

#### **Article 31**

##### **Misconduct**

Counsel commits misconduct when he or she:

- (a) Violates or attempts to violate any provisions of this Code, the Statute, the Rules of Procedure and Evidence and the Regulations of the Court or of the Registry in force imposing a substantial ethical or professional duty on him or her;
- (b) Knowingly assists or induces another person to commit any misconduct, referred to in paragraph (a) of this article, or does so through the acts of another person; or
- (c) Fails to comply with a disciplinary decision rendered pursuant to this chapter.

#### **Article 32**

##### **Liability for conduct of assistants or other staff**

1. Counsel shall be liable for misconduct under article 31 of this Code by his or her assistants or staff when he or she:

- (a) Orders or approves the conduct involved; or
- (b) Knows or has information suggesting that violations may be committed and takes no reasonable remedial action.

2. Counsel shall instruct his or her assistants or staff in the standards set by this Code.

**Article 33**  
**The Commissioner**

1. A Commissioner responsible for investigating complaints of misconduct in accordance with this chapter shall be appointed for four years by the Presidency. The Commissioner shall be chosen from amongst persons with established competence in professional ethics and legal matters.
2. The Commissioner shall not be eligible for re-appointment. A Commissioner who is involved in an investigation when his or her mandate expires shall continue to conduct such an investigation until it is concluded.

**Article 34**  
**Filing a complaint of misconduct**

1. Complaints against counsel regarding misconduct as referred to in articles 31 and 32 of this Code may be submitted to the Registry by:
  - (a) The Chamber dealing with the case;
  - (b) The Prosecutor; or
  - (c) Any person or group of persons whose rights or interests may have been affected by the alleged misconduct.
2. The complaint shall be made in writing or, if the complainant is unable to do so, orally before a staff member of the Registry. It shall identify the complainant and the counsel against whom the complaint is made and shall describe in sufficient detail the alleged misconduct.
3. The Registrar shall transmit the complaint to the Commissioner.
4. The Registrar may, on his or her own initiative, make complaints to the Commissioner regarding the misconduct referred to in articles 31 and 32 of this Code.
5. All complaints shall be kept confidential by the Registry.

**Article 35**  
**Limitation period**

The right to file a complaint against counsel for misconduct shall lapse five years after the termination of the representation agreement.

**Article 36**  
**Composition and management of the Disciplinary Board**

1. The Disciplinary Board shall comprise three members, two of whom shall be permanent and one *ad hoc*.
2. The members of the Disciplinary Board shall perform their functions under this Code in an independent and impartial manner.
3. The Registry shall make appropriate arrangements for the elections, provided for in paragraph 4 of this article, in consultation with counsel and, as appropriate, national authorities.
4. The two permanent members, as well as one alternate member who may serve as a replacement in accordance with paragraph 10 of this article, shall be elected for four years by all counsel entitled to practise before the Court. They shall be chosen from amongst persons with established competence in professional ethics and legal matters.

5. The *ad hoc* member shall be a person appointed by the national authority competent to regulate and control the activities of counsel subject to the disciplinary procedure.
6. The permanent members shall not be eligible for re-election.
7. Notwithstanding paragraph 4 of this article, at the first election one of the permanent members shall be selected by lot to serve for a term of six years.
8. After each election and in advance of the first meeting of the newly-elected Disciplinary Board, the permanent and alternate members shall elect one of the permanent members as a chairperson.
9. All members of the Disciplinary Board shall have the same rights and votes. The Disciplinary Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph 10 of this article shall have the same rights and votes as permanent and *ad hoc* members serving on the same case.
10. If one of the permanent members is unavailable to deal with the case or serve on the Disciplinary Board, the chairperson or, where the chairperson is the permanent member concerned, the other permanent member, shall request the alternate member to serve as a replacement on the Disciplinary Board.
11. Permanent members or the alternate member whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined including all appeals.
12. The Registrar shall appoint a staff member of the Registry who will render secretariat services to the Disciplinary Board. Once appointed, the relevant staff member of the Registry shall act at arm's length from the Registry and, subject to article 44, paragraph 12 of this Code, solely as the secretariat of the Disciplinary Board.

**Article 37**  
**Preliminary procedures**

1. If the complaint filed meets the requirements in article 34 of this Code, the Commissioner shall forward it to counsel subject to the disciplinary procedure, who shall submit a response within sixty days from the date the complaint is forwarded.
2. The response shall indicate whether the alleged misconduct has been or is the subject of a disciplinary procedure before the national authority. If so, it shall include:
  - (a) The identity of the national authority deciding on the alleged misconduct; and
  - (b) A certified communication by the national authority stating the alleged facts that are the basis of the disciplinary procedure before it.

**Article 38**  
**Complementarity of disciplinary measures**

1. The disciplinary procedure in this Code shall be applied by the Disciplinary Board.
2. The *ad hoc* member of the Disciplinary Board shall serve as the contact point with the relevant national authority for all communication and consultation regarding the procedure.

3. Counsel subject to the disciplinary procedure shall request the national authority dealing with the matter to inform the Disciplinary Board of the progress of any national disciplinary procedure concerning the alleged misconduct and of its final decision, and shall take all measures necessary to facilitate such communication.
4. When the alleged misconduct is the basis of a disciplinary procedure which has already been initiated before the relevant national authority, the procedure before the Disciplinary Board shall be suspended until a final decision is reached regarding the former procedure, unless:
  - (a) the national authority does not respond to communications and consultations in accordance with paragraph 2 of this article within a reasonable time;
  - (b) the Disciplinary Board considers that the information received is not satisfactory; or
  - (c) the Disciplinary Board considers that, in the light of the information received, the national authority is unable or unwilling to conclude the disciplinary procedure.
5. As soon as it receives the decision of the national authority, the Disciplinary Board shall:
  - (a) declare the procedure closed, unless the decision adopted does not adequately address a complaint of misconduct under this Code; or
  - (b) declare that the decision of the national authority does not cover or only partially covers the misconduct brought before the Disciplinary Board and that therefore the procedure is to be continued.
6. In the case of paragraphs 3 and paragraph 4 (b) of this article, the Disciplinary Board may ask counsel subject to the disciplinary procedure to provide detailed information about the procedure, including any minute or evidence which might have been submitted.
7. A decision by the Disciplinary Board based on this article may be appealed before the Disciplinary Appeals Board.

### **Article 39** **Disciplinary procedure**

1. The Commissioner conducting the investigation may dismiss a complaint without any further investigation if he or she considers on the basis of the information at his or her disposal that the allegation of misconduct is unfounded in fact or in law. He or she shall notify the complainant accordingly.
2. Should the Commissioner consider otherwise, he or she shall promptly investigate the counsel's alleged misconduct and decide either to submit a report to the Disciplinary Board or to bring the procedure to an end.
3. The Commissioner shall take into consideration all evidence, whether oral, written or any other form, which is relevant and has probative value. He or she shall keep all information concerning the disciplinary procedure confidential.
4. The Commissioner may try to find an amicable settlement if he or she deems it appropriate. The Commissioner shall report the outcome of any such efforts to reach an amicable settlement to the Disciplinary Board, which may take it into consideration. Any amicable settlement shall be without prejudice to the competence or powers of the Disciplinary Board under this Code.
5. The report of the Commissioner shall be submitted to the Disciplinary Board.
6. The Disciplinary Board hearing shall be public. However, the Disciplinary Board may decide to hold a hearing or parts of it in closed session, in particular to safeguard the confidentiality of information in the report of the Commissioner or to protect victims and witnesses.

7. The Commissioner and the counsel subject to the disciplinary procedure shall be called and heard. The Disciplinary Board may also call and hear any other person deemed useful for the establishment of the truth.

8. In exceptional cases, where the alleged misconduct is of such a nature as to seriously prejudice the interests of justice, the Commissioner may lodge an urgent motion with the Chamber before which the counsel who is the subject of the complaint is appearing, so that it may, as appropriate, declare a temporary suspension of such counsel.

#### **Article 40**

##### **Rights of counsel subject to the disciplinary procedure**

1. Counsel subject to the disciplinary procedure shall be entitled to assistance from other counsel.
2. Counsel shall have the right to remain silent before the Disciplinary Board, which may draw any inferences it deems appropriate and reasonable from such silence in the light of all the information submitted to it.
3. Counsel shall have the right to full disclosure of the information and evidence gathered by the Commissioner as well as the Commissioner's report.
4. Counsel shall be given the time required to prepare his or her defence.
5. Counsel shall have the right to question, personally or through his or her counsel, any person called by the Disciplinary Board to testify before it.

#### **Article 41**

##### **Decisions by the Disciplinary Board**

1. The Disciplinary Board may conclude the procedure finding no misconduct on the basis of the evidence submitted to it or finding that counsel subject to disciplinary procedure committed the alleged misconduct.
2. The decision shall be made public. It shall be reasoned and issued in writing.
3. The decision shall be notified to counsel subject to the disciplinary procedure and to the Registrar.
4. When the decision is final, it shall be published in the Official Journal of the Court and transmitted to the national authority.

#### **Article 42**

##### **Sanctions**

1. When misconduct has been established, the Disciplinary Board may impose one or more of the following sanctions:
  - (a) Admonishment;
  - (b) Public reprimand with an entry in counsel's personal file;
  - (c) Payment of a fine of up to €30,000;
  - (d) Suspension of the right to practise before the Court for a period not exceeding two years; and
  - (e) Permanent ban on practising before the Court and striking off the list of counsel.

2. The admonishment may include recommendations by the Disciplinary Board.
3. The costs of the disciplinary procedure shall be within the discretion of the Disciplinary Board.

**Article 43**  
**Appeals**

1. Sanctioned counsel and the Commissioner shall have the right to appeal the decision of the Disciplinary Board on factual or legal grounds.
2. The appeal shall be notified to the secretariat of the Disciplinary Board within thirty days from the day on which the decision has been delivered.
3. The secretariat of the Disciplinary Board shall transmit the notification of the appeal to the secretariat of the Disciplinary Appeals Board.
4. The Disciplinary Appeals Board shall decide on the appeal according to the procedure followed before the Disciplinary Board.

**Article 44**  
**Composition and management of the Disciplinary Appeals Board**

1. The Disciplinary Appeals Board shall decide on appeals against decisions of the Disciplinary Board.
2. The members of the Disciplinary Appeals Board shall perform their functions under this Code in an independent and impartial manner.
3. The Registry shall make appropriate arrangements for the elections provided for in paragraph 5 of this article, in consultation with counsel and, as appropriate, national authorities.
4. The Disciplinary Appeals Board shall comprise five members:
  - (a) The three judges of the Court who take precedence under regulation 10 of the Regulations of the Court, not including:
    - (i) the judges dealing with the case from which the complaint subject to the disciplinary procedure arose; or
    - (ii) any members or former members of the Presidency who appointed the Commissioner.
  - (b) Two persons elected in accordance with paragraph 5 of this article.
5. The two members of the Disciplinary Appeals Board referred to in paragraph 4 (b) of this article, as well as an alternate member who may serve as a replacement in accordance with paragraph 6 of this article, shall be elected for four years by all counsel entitled to practise before the Court. They shall be chosen from amongst persons with established competence in professional ethics and legal matters.
6. If one of the elected members is unavailable to deal with the case or serve on the Disciplinary Appeal Board, the chairperson shall request the alternate member to serve as a replacement on the Disciplinary Appeals Board.
7. The functions of members of the Disciplinary Appeals Board are incompatible with those of members of the Disciplinary Board.
8. The elected members shall not be eligible for re-election.

9. The judge who takes precedence among the three judges referred to in paragraph 4 (a) of this article shall be the chairperson of the Disciplinary Appeals Board.

10. All members of the Disciplinary Appeals Board shall have the same rights and votes. The Disciplinary Appeals Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph 6 of this article shall have the same rights and votes as other members serving on the same case.

11. Members whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined.

12. The staff member of the Registry appointed by the Registrar pursuant to article 36, paragraph 12, of this Code to provide secretariat services to the Disciplinary Board shall also act as the secretariat of the Disciplinary Appeals Board. Once appointed, the relevant staff member of the Registry shall act at arm's length from the Registry.

## **Chapter 5**

### **Final provisions**

#### **Article 45**

#### **Entry into force**

This Code and any amendments to it shall enter into force 30 days after their adoption by the Assembly of States Parties in accordance with article 112, paragraph 2, of the Rome Statute.

#### **Article 46**

#### **Publication**

The Code adopted by the Assembly of States Parties shall be published in the Official Journal of the Court.



## Request Form of Legal Research and Advice

The following form is intended to make it easier for legal representatives of victims and victims to ask for legal research or advice.

Please note that this form is meant for specific issues. For comprehensive research, including decisions of the Court on victims' issues, please refer to the [Judicial Legal Tools](#).

Please send this form via email, to: [OPCV@icc-cpi.int](mailto:OPCV@icc-cpi.int)

\* required fields

First Name*	
Last Name*	
Capacity*	Please select...
E-mail address*	
Address	
Country*	
Topic *	Please select...
<b>Your Request *</b>	