

Question 1: ICCBA as Independent Representative Body of Counsel.

Context: The ICCBA was established as the independent representative body of Counsel before the Court, pursuant to Rule 20 (3) of the Rules of Procedure and Evidence (“RPE”). It was formally acknowledged as such by the Assembly of State Parties (“ASP”) at its 15th session. At its 16th session, the ASP further welcomed the enhanced dialogue between the Court, State Parties, ICCBA and civil society in the area of cooperation¹. As set out in the Vacancy Announcement for the Registrar position, “liaising and cooperating with the ICC Bar Association” forms part of the core functions of the ICC Registrar with respect to the Court services.

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

Answer:

The ICCBA is an indispensable partner for the Registry and for the Court as a whole. Some may be disappointed by the fact that the Defence is not a fully integrated organ of the Court as the OTP is, according to the Rome Statute. For this reason, I support the establishment of the International Criminal Court Bar Association (ICCBA), even if I would have preferred the format of a proper international criminal bar association.

The ICCBA must be a partner involved in the discussions leading to the creation of the Court’s policies, participating in the Court’s outreach activities, in the promotion of the budget, and in the amendment of legal texts, etc.

The ICCBA’s participation may also be envisaged in relation to the management of a disciplinary entity for Counsels, as it is customary in other Bar Associations, as well as in training the Counsels practicing before the ICC, and in the administration of the List of Counsels by adopting the necessary changes in the current basic legal texts.

In the context of requests for cooperation, the ICCBA could work together with the Registry in order to strengthen the chances of receiving support from the States or even from International Organizations.

A discussion with the Presidency and the Judges of the Court about the enhanced participation of the ICCBA is essential to the aim of maximising the chances of success of this new approach.

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

Question 2: Legal aid

Context: At its 12th session (November 2013), and at every session thereafter, the ASP has instructed the Registry to review the legal aid scheme. The external consultant hired by the ICC Registrar for that purpose issued in January 2017 a first report entitled “Assessment of the ICC’s Legal Aid System”². One of the major conclusions of that Report (pp. 15-20) is that the Counsels and Support Staff before the ICC are by far the least paid compared to other international criminal tribunals, in particular following the last revision of the legal aid scheme in 2012.

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

Answer:

The Court must guarantee a defence of quality to an indigent suspect or accused person and a representation of quality to a victim, ensuring a fair and expeditious trial. This requires guaranteeing an effective participation of victims both in the proceedings and during the implementation of reparations, where applicable.

In this context, the respect for certain principles is essential to me. First of all, a team of Counsels acting before the ICC must be able to face the challenges arising from the different phases of the proceedings. In order to achieve this, flexibility is required in the composition of the teams and depending on the complexity of the case, the number of accusations, the number of victims, etc.

Nonetheless, this flexibility cannot take place at the expense of the rights of team members. It is essential that the right to an equal pay is effective according to the correspondent salary levels of each member’s function in the team [principle of equal pay for work of equal value], especially regarding women occupying junior positions in the teams. I am a strong supporter of the recognition of staff status to team members, which would allow for a stronger protection during field missions and solve the issue of taxation.

It is also necessary to review the status of Counsels regarding privileges and immunities by making efforts and liaising with the Host State.

It is also necessary to allow the Defence teams to have more autonomy by favouring a direct and simple communication with the Registry services. Too often teams have to spend precious time for their administration to the detriment of their main goal: the representation of their clients and the defence of their client’s rights.

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

Partnerships with universities and law clinics may also be envisaged, subject to taking the appropriate measures to preserve confidentiality.

Question 3: Protection of Victims and Witnesses

Context: In March 2011, the ICC Office of the Prosecutor and the Registry signed the non-public “Prosecution-Registry Joint Protocol on the Mandate, Standards and Procedure for Protection” (“Joint Protocol”). According to publicly available information in the record of ICC proceedings, the purpose of the Joint Protocol is “to improve coordination between the [Victims and Witnesses Section] and the OTP and clarify responsibilities for each other on issues of witness protection”. Additionally, according to the Office of the Prosecutor, the Joint Protocol is to apply *mutatis mutandis* to persons who are placed at risk on account of their interaction with defence or victims teams, “and may be the basis for an analogous Protocol to be established between the Registry and Defence [and Victims] teams”. To date, the Registry has not enacted a protocol analogous to the Joint Protocol with respect to Defence and Victims teams.

Questions:

- A. Do you consider that there should be such a Protocol for Defence and Victims teams? If so, please briefly set out your reasons.**

Answer:

At the beginning of our work, we wanted to benefit from the lessons learned from the *ad hoc* Tribunals and to create a procedure allowing an intervention as soon as a party (Prosecutor or Defence) identifies a potential witness/victim, provided that the latter meets the specific criteria assessed by a neutral and qualified entity, namely the Victims and Witnesses Section (“VWS”). Moreover, in the Court, this possibility must be extended to the Legal Representative of Victims. This approach has been supported by the judges consulted by the Registry.

The “Prosecution-Registry Joint Protocol on the Mandate, Standards and Procedure for Protection” is inspired by the “One Court Principle” and, concretely, delineates the role of the Registry and of the OTP regarding the protection of witnesses and victims. The Protocol has also allowed the establishment of a legal framework for the Prosecutor’s interventions by replacing the “preventive relocation”, rejected by the judges, with the concept of “assisted move”, being the latter more flexible and in respect to which the Registry plays a decisive role in view of its expertise in this area.

This Protocol therefore contributes to ensuring a fair trial as well as to the respect for the rights of the defence. Depending on the type of protection provided by VWS, there are repercussions on the disclosure of evidence (redaction of statements, belated disclosures), or even on the type of protection granted to a witness/victim in the courtroom.

As indicated above, this type of protocol must exist both for the Defence and for the Victims, within the framework of their participation, following the recommendations set forth in the *Corporate Governance Statement of the International Criminal Court* (ICC-ASP/9/34, Annex I).

In case it becomes necessary, with the support of both the President and the Presidency, and after consulting with the judges, I am prepared to pursue a specific service within VWS, as prescribed by the applicable legal texts (Rule 18, RPE), ensuring a service of protection that will not suffer the slightest criticism regarding the Registry's impartiality.

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

Answer:

Evidently, it seems obvious to me that the professional category, therefore the ICCBA, the Defence and the Victim's representatives, as well as the NGO's fighting for human rights must be fully involved in order to ensure a fair and expeditious trial.

[Please note that this question is different in the French version of the Questionnaire]

Question 4: Outreach

Context: The Registrar has a first-hand responsibility with the ICC's outreach towards the Countries whose Situation is under investigation. It is widely recognized that one of the most critical working aspects of the ICC is its outreach, activities which are coordinated by the Public Information and Outreach Section ("PIOS"). The Office of the Prosecutor ("OTP"), also participates on a regular basis on outreach activities, as well as the Victims Participation and Reparations Section ("VPRS") and the Office of Public Counsel for Victims ("OPCV") when the outreach activities implicate issues regarding victims. The independent Office for Public Counsel of the Defence ("OPCD"), the Counsels registered in the ICC list, the defence counsels currently advocating for the Defence and Victims before the ICC as well as their Assistants are not associated nor consulted regarding outreach affairs of the ICC.

Questions:

A. If the Victims and Defence Representatives were to play a role in the outreach activities of the ICC, what should their role be?

Answer:

First and foremost, I must clarify that both the Victims and the Defence Counsels have been fully involved in certain outreach activities. Nonetheless, this question leads me, without a

doubt, to acknowledge that more efforts can be made so that the Counsels are involved in outreach activities in a more structured manner.

Depending on the targeted audience, the outreach's purpose, and the required time frame for the project, the representatives of the Defence and of the Victims not only could but also should participate in the project. The latter is especially true when the outreach project revolves around the framework of a specific situation or affair before the ICC. The mentioned representatives' role is extremely important in such cases, especially when affected communities, women victims of violence and/or children are concerned.

It would also be interesting to involve the Counsels in matters such as the funding of family visits to detainees, the approach regarding the enforcement of sentences, or even regarding the reduction of sentence.

I believe that when developing an outreach project and its concept, and taking as a current example the upcoming events for the 20th anniversary, the participation of both Defence and Victims Counsels would be extremely interesting, necessary and fruitful.

As previously indicated, the Court's outreach activities could be designed and carried out to include or enhance participation via interviews in existing programmes, participation in conferences, training, external and internal events, always taking into account the deployment of new technologies (holograms, etc.) and social media.

The involvement of Counsels in outreach activities will result in wider awareness raising, influencing the States to have a more efficient approach towards the work of Counsels and their needs when discussing the legal aid policy.

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

Answer:

Of course, the ICCBA must perform a leading, strategic and operational role in the ICC's outreach, which will vary depending on the specific type of outreach activity, the targeted audience, the outreach's object and the resources that will be used, as previously explained. The role of the ICCBA concerning the Court's outreach must be equivalent to the one of the OTP.

Question 5: ICCBA membership

Context: Unlike the ICTY and the MICT, where List Counsel were and are currently obliged to become members of the Association of Defence Counsel Practicing before International Criminal Tribunals (ADC-ICT), there is no compulsion or requirement for ICC List Counsel, or their Assistants, to become members of the ICCBA. The ICTY/MICT requirements have provided significant assistance for the ADC-ICT in recruiting paying members and in creating a self-regulating, self-financed and Independent community of Counsel, which has helped it

to develop as a Bar Association and provide professional training and services for its Members.

Question 5: What is your view about ICCBA membership becoming compulsory for all current ICC List Counsel and applicants to the List, as well as their Assistants? If you are in favour of this course of compulsory ICCBA membership, and you are appointed to the position of ICC Registrar, explain how you would bring this about.

Answer:

We must ensure a system that allows all the Counsels and their respective assistants to work without any financial constraint with the Court. Access to the Court cannot be limited by any payment. Furthermore, nothing in the current core legal texts of the Court authorizes the Registrar to condition the inclusion in the List of Counsels on the satisfaction of any financial contribution [rule 21(2) RPE].

It is important that all the Counsels that are qualified can aspire to practice before the ICC, independent of their willingness to eventually join the ICCBA.

On the one hand I understand that it is important for the ICCBA to finance and regulate itself; but on the other hand there are multiple ways of funding, such as through partnerships with existing organizations in which the majority of members of the List of Counsel currently belong or contribute to. The Registrar could, in this matter, facilitate the creation of a space for dialogue with said organizations, and explore further possibilities of collaboration with the States.

It is also part of the Registrar's duties to promote the Court's budget, as a whole, and in the case that the ICCBA would benefit from resources allocated by the States, the Registrar could promote a budget presented to him by the ICCBA. This would allow the ICCBA to achieve its requests for more autonomy.

However, the ICCBA is independent and, as such, the Registrar cannot decide nor interfere in the day-to-day management of the ICCBA's resources and projects. A mechanism of control could be established within the existing structures of the Court, in addition to the structures reporting to the States.

Question 6: ICCBA presence at the ICC Permanent Premises

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

Question: Do you believe the ICCBA should be provided with permanent office space at the ICC Permanent Premises? Please briefly state the reasons for your position. If your answer is in the affirmative, presuming there is limited office space available within the ICC

Permanent Premises, what level of priority would you attach to providing the ICCBA with its own office space and what types of measures would you be ready to take to speed-up the process of assigning office space to the ICCBA?

Answer:

The ICC's permanent premises must be able to face an increase in the number of employees without suffering any modifications, as it was required in the building's design under the notion of "flexibility". Additionally, the building must comply with the notion of "scalability", which implies that it must be capable of extending its capacity in a significant manner by means of new construction projects, without interrupting the functioning of the Court.

Currently, in virtue of the "flexibility" notion, the building is capable of offering an office or an office space to the ICCBA.

However, in order to allow the ICCBA to enjoy a strategic position, as well as to benefit from security and protection measures particularly regarding archives and computer networks, a study and an implementation plan are necessary. It is highly possible that in order to achieve this, efforts regarding time and resources will be necessary.

Nonetheless, in order to allow the ICCBA to fulfil their minimum objectives, a temporary working and meeting area could be established immediately within the ICC's headquarters.

I consider it to be completely normal for the ICCBA to be able to be present, accessible and functioning within the Court.

Given that the ICCBA is recognized as an independent body deeply and directly involved in the Court's activities by the ASP (ASP Sixteenth Session, ICC-ASP/16/30), and considering that there is an effort from my part in the role of Registrar to establish an effective working space for the ICCBA, I believe that a simple consultation with the Presidency and the OTP, especially on security impacts, is the only required measure that I envisage at this given time in order to set this out.