

**ANNUAL REPORT 2017-2018
DEFENCE COMMITTEE - ICCBA**

Introduction

1. This Annual Report is submitted to the General Assembly of the International Criminal Court Bar Association (ICCBA) in accordance with the provisions of article 5-3-c of the ICCBA Constitution. It sets out the activities of the Defence Committee for the period from 1 July 2017 to 29 June 2018.
2. The Defence Committee is composed of the following members:

Ms Caroline Buteau, Chair
Dr Antonios Abou Kasm
Mr Emmanuel Altit
Mr Emile Aoun
Mr Michel Bourgeois
Mr Xavier-Jean Keïta
Chief Charles Taku

1. Mandate of the Defence Committee

3. The Defence Committee is mandated to take into consideration the interests of suspects and accused and, through a commentary, provide proposals to the Legal Advisory Committee and advise the Executive Council and the General Assembly on all matters affecting the Defence.

2. Working sessions

4. The Defence Committee has met regularly to discuss and reflect on Defence issues. Its members have also been in touch by phone and email. The Defence Committee met on 12 July 2017, 17 August 2017, 11 October 2017, 17 January 2018, 6 March 2018, 12 April 2018, 7 May 2018 and 4 June 2018. Meetings were held in person but some members participated by conference call. Five members of the Committee reside in The Hague for professional reasons, which facilitated the holding of meetings at the seat of the International Criminal Court (ICC).

5. The Committee met for the first time on 12 July 2017 at the headquarters of the ICC. The members of the Defence Committee were able to meet and confirm their commitment to the mandate of the Committee. The members who were also members for the previous year (Mr Bourgeois (former Chair), Mr Emmanuel Altit, Mr Xavier-Jean Keïta and Chief Charles Taku) presented a report of the work done during the course of the previous year. It was agreed that the Defence Committee should continue the work begun by the Committee during the previous year.
6. Finally, it should be noted that the Defence Committee has chosen French as its working language.

3. Work plan for the year 2017-2018

7. At the request of the ICCBA Executive Council, the Defence Committee submitted a proposed Work plan outlining the main objectives that the Committee members have set for the period from the 1st July 2017 to the 29th June 2018. This Work plan was a continuation of the efforts deployed by the members of the Defence Committee during the previous year.
8. The Defence Committee set out its main objectives, namely:
 - Establish a link between the Defence Teams and the ICCBA to collect grievances, suggestions and comments from the Teams;
 - Look for concrete solutions to the difficulties and challenges faced by the Defence Teams, in consultation with the Executive Council and other ICCBA Committees; and,
 - Participate in discussions on all matters relating to Legal aid, including the specific issue of the tax status of Counsel with respect to the income received from the Court.
9. On 15 September 2017, the Defence Committee received the Executive Council's comments on the proposed Work plan. The Executive Council confirmed that it agreed with the objectives set by the Committee. It was agreed that the Committee would work on the following points:
 - a) Creation of an Email Group;
 - b) Legal Aid;
 - c) Status of the members of Defence Teams;
 - d) Participation of the Defence to Outreach Activities;
 - e) IT issues; and

- f) Assistance to other Committees.

4. Summaries of the main achievements and activities of the Committee

a. Legal Aid

10. On 9 May 2018, at the request of the ICCBA Executive Council, the Defence Committee submitted its comments on the *Report on the progress of the development of proposals for adjustments to the legal aid remuneration system as of 2019* ("Report") presented by the Registrar of the ICC, dated 27 March 2018¹.
11. In addition to the specific comments it made on each of the Registrar's proposals, the Defence Committee expressed its concern that the Report prepared by the Registrar was based exclusively on the findings - although they were not always taken into account – of only one expert. The Committee also pointed out that the contents of this Report had not been the subject of any general consultation within the meaning of Rule 20-3 of the ICC Rules of Procedure and Evidence, and that it appeared that the ICCBA had not been formally consulted prior to its preparation, with the exception of a round-table discussion held on 19 June 2017.
12. Although it cannot restate all of the comments it made on the Report, the Defence Committee noted the two most important points on which it disagreed: the first being the proposal for the implementation of an hourly remuneration system for Counsel and the second, the absence of any proposal from the Registrar on the crucial issue of the tax exemption for Counsel and their teams on the income received from the Court.

b. Working conditions of the Counsel Support Staff

13. In February 2018, the Defence Committee has taken notice of the content of the Decision of the Disciplinary Board dated of 6 September 2017².
14. Following this, the Committee began to reflect on the issue of discrimination and harassment in the workplace³. It also focused its discussions on the working

¹ CBF/30/12/Rev.1.

² See the decision published on 13 March 2018 : <https://www.icc-cpi.int/get-involved/Pages/Disciplinary-board.aspx?ln=fr>

³ For instance, meeting of 16 March 2018.

conditions of Counsel Support Staff⁴. It also discussed the letter sent to the ICCBA Executive Council as well as to the ICC Counsel Support Section by the Defence Counsel Melinda Taylor and Mylène Dimitri, an initiative supported by the members of the Defence Committee.

15. Following this reflection, the Committee committed itself to contact the Counsel Support Staff Committee to determine if it was able to assist in its mandate. Ultimately, the Defence Committee collaborated with the Counsel Support Staff Committee by providing its comments on a paper prepared by the Counsel Support Staff Committee.
16. The Defence Committee recommends that the collaboration with the Counsel Support Staff Committee continue during the next term.

c. Taxation of Counsel and the members of their teams

17. Since 2013, several members of the Defence teams and members of Legal Representation of Victims teams have encountered difficulties with the Dutch tax authorities regarding their tax obligations in the Netherlands. To date, despite the critical nature of the situation, this problem has not been resolved. The members of the Defence Teams and the members of the Legal Representation of Victims teams affected by this problem have been, in some cases for several years, in a position of considerable insecurity regarding their financial situation.
18. The Chair of the Defence Committee is a member of the ICCBA Working Group on Tax. She ensured that the Committee was informed of the work of the Working Group, which led to interesting discussions among the Committee on this issue.
19. The Committee fully support the conclusions of the ICCBA Working Group on Tax and refers to the Report presented by the Working Group to Executive Council entitled *Income Tax Situation of Counsel and Support Staff Propositions and recommendations*, dated of 29 January 2018⁵.
20. The Defence Committee is of the view that all measures must be taken to permanently remedy this problem.

⁴ For the purposes of this report, the term "support staff" refers to any person working for the defence of an accused or a suspect before the Court, excluding Counsel. In particular, this term refers to Legal Assistants, Case Managers, Investigators, etc.

⁵ Available at: https://docs.wixstatic.com/ugd/ff5a5e_c67834ca811c42659721927282c4a6c5.pdf

d. Outreach

21. The Defence Committee was informed via *Twitter* on 7 February 2018 that a delegation of the Presidency of the ICCBA had met with the ICC President on 5 February, and that during this meeting the question of Defence involvement in outreach activities was raised. The Committee was pleased that this issue had been discussed with the President of the ICC, particularly since it was one of the topics on which the Committee had indicated in its Work plan that it wished to address.
22. Accordingly, on 9 February 2018, the Committee transmitted to the President a Discussion paper on the subject. The Defence Committee concluded that the Defence was generally absent from awareness-raising and outreach activities, particularly those in the field directed at the populations affected by the crimes falling within the jurisdiction of the Court. It also recalled that it was in the interests of justice that the Defence be consulted in this framework, and that it should, where appropriate, participate or contribute to the development of the message that would be conveyed in the context of outreach and awareness activities of the Court. Finally, the Committee concluded with six recommendations addressed to the Presidency and the Executive Council. Here is, in summary, the recommendations addressed:
 - When Outreach activities do not concern any particular case or situation, but primarily relate to the Court's mandate, role or activities in general, the Defence should be consulted in advance;
 - When Outreach activities concerns a case or a situation in particular, the Defence team concerned should be consulted and invited, if appropriate, to participate to these activities.
 - With regard to Outreach activities that take place at the seat of the Court, including visits and events organized by the Court to various audiences, including journalists, judges, students, senior officials, academics and others, at least a representative of the Defence should be invited to participate, in particular to explain the role of the Defence in international criminal trials;
 - The Defence should be invited to participate in the official court ceremonies that include all the organs;

- The Defence should have the opportunity to review the publications prepared by the Court to raise awareness to the work and activities of the Court, as is probably already done by the Prosecutor and Chambers, in order to provide input on the content of documents published by the Court from the perspective of the Defence; and
 - In the same way, Defence teams must be able to provide comments before the dissemination of information on the Court's website and social media platforms such as Twitter and Facebook when they are of direct concern to them.
23. On 26 March 2018, the Defence Committee contacted the President of the ICCBA to remind him of its willingness to work on this issue. The President of the ICCBA informed the Committee that the working document transmitted by the Defence Committee would be examined by the Executive Council at its meeting on 13 April 2018.

e. Email Group (Watch Group for Defence)

24. The Defence Committee is proud to announce that it has succeeded in implementing an idea that was proposed in 2016 by Defence Teams during a meeting with representatives of the Defence Committee. This Email Group has for focal points a member of the Committee and a designated member of each of the Defence Teams. It permits them to exchange, by email, on any specific difficulty the Defence Teams might be facing. This Email Group also allows the Committee to be in permanent contact with the Teams, and to serve as a focal point between them and the ICCBA.
25. On 25 January 2018, the Chair of the Defence Committee, on behalf of the Committee, contacted the Defence Teams to ask them if they wished to participate in the Watch Group or not and, if so, if they could determine who would be the focal point of the team.
26. On 1 March 2018, the Committee sent a reminder email to Defence teams that did not answer.
27. Finally, on 28 May 2018, the Defence Committee launched the Watch Group for Defence, which is now fully operational.
28. This Email Group is composed of a representative of each Defence team, a representative of the OPCD and the Chair of the Defence Committee (as *manager* of

the Group). Any message sent to the Email address of the Watch Group will be transmitted to all members of the Group. The members of the Group were invited to use the Email Group to communicate information that they find important for their colleagues, to ask them questions, or to share their experience regarding challenges or difficulties they are facing.

f. Commentaries et discussions

29. In addition to the comments made on the *Report on the progress of the development of proposals for adjustments to the legal aid remuneration system as of 2019* ("Report") submitted by the Registrar of the ICC, dated 27 March 2018 (*Supra*, section 4.a.), the Defence Committee commented on the following two documents:

- *Commentaries on a document following a request from the Executive Council*

30. On 7 February 2018, the Defence Committee transmitted, at the invitation of the Executive Council, its comments on a document prepared by the Victims and Witnesses Unit (VWU).

- *Commentaries on a document emanating from the Counsel Support Staff Committee*

31. Also, as discussed above, the Defence Committee collaborated with the Counsel Support Staff Committee. On 4 June 2018, the Defence Committee presented its observations on a document prepared by the Counsel Support Staff Committee.

32. In this regard, the Defence Committee reiterates its concerns for the conditions under which Counsel Support Staff works and considers it important to provide each team member with acceptable and dignified working conditions, as well as legal certainty, which stem from a solid and balanced contractual framework.

g. Varia

33. At the suggestion of the Defence Committee, an email address was created to facilitate the Committee's communication with members.

This email is: defence@iccba-abcpi.org

5. Recommendations

34. On the basis of all the above, the Defence Committee wishes to make the following recommendations:

- A. To continue to consider the Legal Aid reform, including the tax situation of Counsel and members of their teams, as a priority and to ensure that the Executive Counsel and the relevant Committees be fully involved in any reform process initiated by the Registrar;
- B. To work to ensure that Counsel Support Staff can enjoy acceptable and dignified working conditions and to this end, engage in a dialogue with the Registrar to make every effort to provide Support Staff with legal certainty within a strong contractual framework;
- C. To continue to make every effort to ensure the participation of the Defence in awareness-raising and Outreach activities, so that the message conveyed is just and fair and that the importance of the Defence in the international criminal justice system is fully recognized;
- D. To ensure the establishment of a communication and information exchange network between the Presidency, the Executive Council and the Committees, in order to maintain coherence in the governance of the ICCBA;
- E. Finally, on an individual basis, it is appropriate to remind the elected members of the Committees and of the Executive Council of the ICCBA that by joining a Committee or the Executive Council, they undertake to participate fully and actively in the work of that Committee or of the Executive Council.

Submitted on 19 June 2018 to the executive Council

Caroline Buteau, Chair of the Defence Committee
On behalf of the Defence Committee