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**Report on the Constitution and Activities of the
International Criminal Court Bar Association (“ICCBA”)**

Content

	<i>Page</i>
Executive Summary	2
I. Background	3
II. ICCBA Constitution and Objectives	3
III. Summary of ICCBA Activities and Achievements 2022.....	4

Executive Summary

The quality of justice before the ICC depends on the ability of Counsel for Victims and the Defence to perform their respective roles effectively and independently. The overriding goal of the ICCBA is to strengthen the capacity of independent Counsel to perform this role and ensure that the views and concerns of Victims' and Defence Counsel and Support Staff are represented at the Court. The ICCBA continues to have an open dialogue with the Registrar and relevant Registry officials to discuss the views and concerns of Victims and Defence Counsel and Support Staff and seek improvements in their general conditions of work before the Court. The ICCBA has directly, and through partners, organised a variety of substantive and skills-based trainings for Counsel and Support Staff, and has launched various online training initiatives and reference tools, through its website (www.iccba-abcpi.org), to provide easier access to expert training to its globally-based membership. Externally, the ICCBA is building a worldwide network of Counsel interested in the ICC, reaching out beyond the limits of current membership to the Rome Statute, raising awareness of the ICC system in non-States Parties and supporting the Court's goal of reaching universality. Important components of this initiative include the network of Regional and National Focal Points who can explain the role and work of the ICC and the ICCBA and concluding cooperation agreements with national and regional bar associations and other relevant entities. The ICCBA is an indispensable and reliable partner of the Assembly and the Court in achieving transparent criminal justice by enhancing the quality of representation of Victims, Defendants and other persons before the Court. The ICCBA remains the only independent representative body of counsel recognised by the Assembly pursuant to the ICC Rules of Procedure and Evidence¹ and welcomes this increased recognition. The ICCBA will continue to work with the Assembly to strengthen the Court and the Rome Statute system.

¹ Operative paragraph 80 of resolution ICC-ASP/18/Res.6 entitled "Strengthening the International Criminal Court and the Assembly of States Parties", adopted by the Assembly of States Parties on 6 December 2019.

I. Background

1. Operative paragraph 87 of resolution ICC-ASP/20/Res.5 entitled “Strengthening the International Criminal Court and the Assembly of States Parties”, adopted by the Assembly of States Parties (“the Assembly”) on 9 December 2021, invited the International Criminal Court Bar Association (“ICCBA”) to report to the Assembly, through the Bureau, on its constitution and activities in advance of the nineteenth session. The present “Report on the Activities of the ICCBA” aims at providing the Assembly with information in response to this invitation.

II. ICCBA Constitution and Objectives

2. The ICCBA operates in accordance with its Constitution.

3. The ICCBA Constitution was adopted on 30 June 2016 in The Hague by Counsel registered on the List established by the International Criminal Court (“ICC”, “the Court”) pursuant to rule 22 of the ICC Rules of Procedure and Evidence (“RPE”) (“List of Counsel”). The ICCBA Constitution establishes the ICCBA as an independent representative body of Counsel pursuant to rule 20(3) of the RPE. Its establishment in June 2016 and its recognition by the Assembly in November 2016, marked the fulfillment of a long-standing goal to establish a much-needed representative association of legal practitioners focused on matters relevant to the work of List Counsel and Support Staff before the ICC.

4. The objectives of the ICCBA are set out in Article 2 of its Constitution. These include supporting the functions, efficiency and independence of Counsel practicing before the ICC (para. 1); the promotion of the highest professional standards and ethics of Counsel (para. 2) as well as their proficiency and competence in the field of advocacy, procedural and substantive criminal law and information technology systems relevant to their functions before the ICC (para. 3); the independent representation of the interests of Counsel and Support Staff (para. 7); the promotion of the rights of victims, defendants and other clients and Counsel before the Court (para. 8); the promotion of equality of arms (para. 11); and representation of interests and concerns of its members before the Assembly (para. 12).

5. The ICCBA serves as a collective voice for independent Counsel and Support Staff who represent victims, defendants and other actors (e.g. witnesses, States) before the ICC, provides a range of support and services to its membership, and acts as a forum for discussion on all matters pertaining to the ICC. As an independent body deeply and directly involved in ICC activities, it also aims to contribute to raising awareness on issues which may affect the functioning of the Court, in order to enhance the quality of justice at the ICC required under the provisions of the Rome Statute and other recognized texts pursuant to Article 2(5) of its Constitution. As the ICCBA’s constituency extends to members of the legal profession in all countries, be they States Parties or not, the ICCBA seeks to develop and solidify its relationships with international, regional and national bars and other relevant organisations in order to promote and strengthen the Rome Statute system as well as discuss issues of mutual concern, including in countries and regions where the Court itself may have difficulties accessing.

6. The ICCBA is independent of the Court and is registered as a non-profit foundation (“*Vereniging*”) under the laws of The Netherlands.

7. The ICCBA is funded primarily by membership fees. Its activities and outreach are the product of its members’ voluntary contribution of their time and energy.

III. Summary of ICCBA Activities and Achievements 2022

8. Throughout the year, the ICCBA provided training to its members. In April 2022, the ICCBA, in cooperation with the Registry, organized the two-day training for list counsel which was very well received by participants. In April 2022, the Victims Committee held a webinar on Representing Child Victims before the ICC and in October 2022, the Defence Committee held a webinar on ICC Rules of Evidence and Techniques of Cross-Examination. The ICCBA continues to expand its library of online training which covers substantive and procedural law as well as practical aspects of working on cases at the Court. The ICCBA online training portal facilitates easier access to expert training to the ICCBA's globally-based membership, some of whom are unable to be present in person in The Hague.

9. During 2022, the ICCBA has also been engaging with the Review Mechanism which was mandated to implement the recommendations of the Independent Expert Review. The ICCBA welcomed the recommendations which the Independent Expert Review included in their final report which stated that the ICCBA should be involved as one of the principal stakeholders in discussions on the review process. The ICCBA will continue work with the Review Mechanism and the Court to implement these recommendations. More specifically, the ICCBA has participated actively in many discussions organized by the facilitator on legal aid and will continue to have a leading role concerning proposed new legal aid policy and improving the working conditions of Counsel and members of legal teams.

10. The ICCBA takes the well-being of victims and defence team members seriously and has engaged in a number of initiatives and taken various steps to help ensure that legal team members are aware of their obligations and behave collegially, and fairly with each other. The ICCBA has previously issued notifications to all counsel and legal team members appointed in cases before the Court, reminding them of the standards of conduct applicable to legal team members in professional settings, and the particular responsibility of counsel to ensure a safe and inclusive work environment within their teams. The ICCBA has also established a standing Working Group on Gender Parity, Equality and Welfare to coordinate the ICCBA's work and policy in this area. The ICCBA is additionally engaging with the ICC Focal Point for Gender Equality, as well as the ICC Staff Union Council, to discuss and work on issues of mutual concern, and provided observations on the zero draft of the Court's Strategy on Gender Equality and Workplace Culture. Of significant import, the ICCBA provided observations on draft versions of the Court's Administrative Instruction Addressing Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority (ICC/AI/2022/003) (promulgated on 6 April 2022), and submitted to the Registrar detailed proposed amendments to the Code of Professional Conduct for counsel, pursuant to Article 3 of the Code, aimed at bringing the Code into alignment with the substantive provisions of the Court's Administrative Instruction.

11. At the heart of the ICCBA is the ambition to improve and solidify respect equality of treatment between all individuals intervening before the ICC, to help prevent any type of discrimination and to offer fair working conditions, protections, and benefits to all members of legal teams practicing before the ICC. The priority has been for the ICCBA, in different forums, to encourage a new legal aid policy that will ensure that these basic rights, which are guaranteed to Court staff, are also enjoyed by members of legal teams (e.g. maternity/paternity/adoption leave, minimum wages, sick leave, insurance). One of the Court's core Strategic Objectives is geographical distribution and gender balance, which is jeopardised if the Court is not in a position to help ensure these basic rights. In this context, the ICCBA advocates for a nondiscriminatory approach to working conditions for all members of legal teams. Ensuring equal working conditions between the Defence and the Prosecution is essential for ensuring, concretely the equality of arms principle, cornerstone of a fair trial. While Defense team members have the same responsibilities as their counterparts, they do benefit from official resting periods. The system, as it exists today, does not provide for these rights and benefits. Such a reality hinders the realization of the principle of the equality of arms and fair trials. Furthermore, if members of legal teams are exhausted and burned out because of the work environment created by the working conditions at the ICC (lack of leave, no real recess, lack of staff, tight deadlines, etc.) the victims and accused they represent do not profit from the means necessary. It is worth underlying that the current discussion on the improvement of the LAP is tightly intertwined with discussions about

Gender Equality and Workplace Culture at the ICC and the reform is an opportunity to act within the Court's strategy and to set an example by giving the same rights to women at all levels in the legal teams and allowing them real career prospects and a safe and healthy workplace to ensure their health, economic security, as well as a guarantee of equal opportunities and treatment in employment.

12. A major issue which is of concern to the members of the ICCBA is taxation of the fees of Counsel and Support Staff in the Host State. The Independent Expert Review had already indicated that taxation is an issue which needs to be resolved, therefore the ICCBA Legal Aid and Taxation Working Group is currently working on a strategy to engage fully with the Review Mechanism on this issue. The ICCBA participated in all meetings organized virtually in the framework of the Review Mechanism and shared the views and concerns of all members of legal teams, Counsel and their support staff, during these meetings engaging in a constructive dialogue with representatives of the ICC and State Parties. Concerning taxation, legal fees and the legal aid as a whole, the Members of the Working Group met regularly with the appointed Legal Aid Facilitator and hope that the constructive dialogue will continue in the coming months.

13. Another issue of concern for the ICCBA is the fact that the Trust Fund for Family Visits, set up by the ICC's President in 2010, had seen its resources depleted and that as a consequence, the detainees' right to family visits could not be fulfilled to the extent that is satisfactory under international human rights instruments as well as with regard to the Court's obligations in its own legal framework. The ICCBA Executive Council established a Working Group on the issue of the Trust Fund for Family Visits specifically. The mandate of the Working Group was to support the Court's efforts and to raise awareness of the international community regarding the need to replenish the resources of the Trust Fund. It is hoped that the concerted efforts of the actors involved lead this year to a renewed commitment by the States to fulfil their obligations with regard to the Fund and a resolution by the Assembly of States Parties to subsidise family visits for indigent detainees.

14. The ICCBA has been in discussions with the Registry of the Court regarding the matter of insurance for legal team members who travel on mission. Currently the ICC does not provide insurance coverage to members of defence and victims' teams and this could potentially leave these individuals in an untenable situation should there be instances where there may be medical emergencies or need for evacuation. The ICCBA has been in discussions with representatives of the Registry to explore what options could be made available to ensure that this vital insurance can be provided to legal team members.

15. Meetings between the ICCBA Presidency and the Principals of the Court took place throughout the year to discuss various ongoing issues. The ICCBA welcomes the openness of the Principals to engage in such discussions, which are proving invaluable in working towards resolving issues which are faced by Counsel and Support Staff. These issues included: services for legal representatives for victims, insurance for legal team members on mission, the aforementioned taxation issue, the Trust Fund for Family Visits and training activities. In April 2021, the ICCBA was provided an office space within the Court and extends its appreciation to the Registrar for providing a much-needed permanent base within the Court premises. The ICCBA will continue to work with the Court on the other outstanding issues and it is hoped that these can be resolved with the Registry in the near future.

16. The ICCBA also continued its outreach activities with different stakeholders and a variety of audiences. The President participated in outreach activities with representatives of affected communities or with representatives of the legal profession. For example, the President collaborated with CSS to address lawyers in Sudan. The ICCBA also organized a breakfast event on 12 September 2022 within the ICC to familiarize the staff of the Court to the work of legal teams and to share their experiences.

17. The ICCBA continues to expand its affiliation agreements with organisations for lawyers and bar association around the world and has signed agreements with the Ordine Avvocati di Roma, the Conseil national des barreaux (CNB), the African Bar Association, the Federation of European Bars, the International Association of Lawyers (UIA), the Order of Francophone and Germanophone Bars of Belgium and the Kuwait Bar Association and is also a member of the International Legal Assistance Consortium. These agreements and

memberships provide for cooperation and mutual assistance in areas of common interest as well as disseminating information regarding the Court and the Rome Statute.
