

Submission of the Working Group on Defence and Counsel Issues to the Review Mechanism on the Comprehensive Action Plan

11 June 2021

The International Criminal Court Bar Association (ICCBA), International Bar Association ICC & ICL Programme (IBA) and ICC Office of Public Counsel for Defence (OPCD), as members of the Informal Working Group on Defence and Counsel Issues in the ICC Review (Working Group), are pleased to respond to the call from the Review Mechanism regarding the second phase of its work, the comprehensive action plan, and to submit comments on the three elements of the action plan: the allocation of the IER recommendations; the prioritisation of the recommendations; and the timelines for the consideration of the recommendations.

In the attached spreadsheet, the Working Group has, as requested, indicated the recommendations, prioritisation, and timelines that it believes are essential to strengthen fairness and equality of arms in ICC proceedings. The priorities and timelines identified reflect 1) matters that are relevant to ongoing legal proceedings, where timely implementation of the recommendations will address procedural issues that affect the rights of the accused guaranteed in the Rome Statute; 2) matters relating to long-identified institutional and policy shortcomings affecting fairness and equality of arms, including institutional representation and support for defence within the Court, revision of the legal aid policy, and working conditions for counsel and teams; and 3) matters where an amendment to a Rule or Regulation is necessary to ensure consistent and fair practice during ICC proceedings.

The ICCBA, which also represents the the interests of victims' representatives and support staff, notes that the question of structures to provide institutional support for victims' participation will also necessarily need to be dealt with at the same time as considering institutional changes for the defence, since the two are currently interlinked and in some respects similar.

The Working Group thanks the Review Mechanism for the opportunity to provide input on the comprehensive action plan and looks forward to further engaging on the implementation of the review.