

PUBLIC ANNEX I

Karim Khan QC, President of the ICC Bar Association

Esteban Peralta Losilla Chief, Counsel Support Section

1 March 2018

Dear Mr. President, Dear Mr. Peralta,

This letter is written in reference to the 19th February 2018 letter respectfully submitted to your attention by Counsel Melinda Taylor and Mylene Dimitri regarding the inapplicability of the ICC Administrative Instruction on Sexual and Other Forms of Harassment (ICC/AI/2005/005) to ICC Counsel, following the Disciplinary Board decision dated 6 September 2017.

Current and previous support staff of ICC external teams welcome the position taken by the Counsel for Mr. Bemba in the Article 70 case, and agree on the importance to take immediate action to resolve the gap in regulations concerning sexual harassment and abuse amongst external legal teams as a matter of urgency.

As you are aware, the Disciplinary Board concluded that the Administrative Instruction on Sexual and Other Forms of Harassment (ICC/AI/2005/005) does not apply to ICC Counsel, bound by the Code of Professional Conduct. It can be reasonably expected that, based on this decision, the Board might find that the provisions of ICC/AI/2005/005 would equally not be applicable to external counsel's team members or support staff.

Accordingly, as a temporary measure, the signatories of this letter voluntarily undertake to be bound by Sections 1 to 4 of ICC/AI/2005/00 as of the date of signature of this letter: concretely, we consent for this letter to be used in any Code of Conduct proceedings as evidence of our agreement to comply with the provisions set out in Sections 1 to 4 of ICC/AI/2005/00 of ICC/AI/2005/00. We respectfully invite our colleagues to consider doing the same.

Moreover, as rightly noted in Mrs. Taylor and Mrs. Dimitri's letter, and provided this is not disconfirmed by the Registry, it can be extrapolated from the Board's decision that other forms of staff regulation and related protections do not apply to external teams, including:

- The existence of minimum monthly wages/hourly rates for support staff;
- The right to annual leave/medical leave/emergency leave;
- The right to maternity/paternity leave; and

- Notice periods for support staff on paid contracts.

In this respect, we note that Regulation 6.2 of the ICC Staff Regulations provides that

“The Registrar, in consultation with the Prosecutor, shall establish a scheme of social security for the staff, including provision for health protection, sick leave and maternity leave and reasonable compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the Court, in conformity with United Nations common system standards.”

Although support staff are not currently considered to be “ICC staff”, given that many of us are appointed on cases for several years, we also cannot be considered to be temporary contractors, and it is concerning to us that currently, there are no explicit provisions which regulate basic rights, such as the right to paid annual leave and medical leave, the right to reasonable compensation should we be injured in the course of Defence missions, the right to adequate notice concerning termination of contracts of appointment, and the right for such contracts not to be terminated unless there is good cause.

According to official ICC documents concerning the development of the ICC legal aid scheme, the underlying idea of the scheme was to ensure “equality of arms”, concretely:¹

“The payment system must contribute to maintaining equilibrium between the resources and means of the accused and those of the prosecution. In this respect, the fees of the members of the defence team are based on the salaries paid in the Office of the Prosecutor (OTP) of the ICC and at the ad hoc Tribunals, increased by 40% to compensate for the increment in professional charges resulting from an appointment.”

Although specific modalities of the legal aid scheme have changed over the years, to our knowledge, the Registry has not renounced its pledge to ensure equality of arms, and to base Defence fees on those of the equivalent Prosecution staff member. It follows that the basic plank of such equality must be that Defence support staff should be entitled to enjoy at least the basic rights that are afforded to all ICC staff, including the Prosecution. We are convinced that the protection of these rights will ensure a healthier, and more effective working environment, which will benefit the judicial process as a whole.

Henceforth, the signatories of this letter join the request of Counsel Taylor and Dimitri and trust that the Registry and the ICCBA Executive Council will give the above issues the attention they deserve, with a view to ensuring that the fundamental rights of support staff are not adversely impacted by the absence of an appropriate legal and financial framework.

We would like to express our sincere appreciation for your consideration of these issues.

¹ ICC-ASP/3/16, para. 16.

Yours sincerely,

Mr. Noah Al-Malt (Legal Assistant, Kilolo Defence; Associate Legal Consultant, ECCC Case 003 Defence)

Ms. Sarah Bafadhel (former Defence pro bono assistant, Saif Al-Islam Gaddafi admissibility proceedings, currently STL Counsel)

Mr. Tibor Bajnovič (Case Manager, Ongwen Defence and Arido Defence)

Mr. Seun Bakare (Former VP, VPRS of the ICC)

Mr. Joshua Bishay (Former Defence Case Manager and Legal Consultant, STL and ICC)

Ms. Abigail Bridgman (Assistant to Counsel, Ongwen Defence)

Ms. Marion Carrin (Case Manager and Legal Assistant, Blé Goudé Defence)

Ms. Eléonore Coeuret (Case Manager, Gbagbo Defence)

Ms. Sandrine De Sena (Case Manager, Ntaganda Defence)

Ms. Emilie Derpion (former Case Manager, Lubanga and Al Mahdi cases)

Ms. Antonina Dyk (Case Manager, Blé Goudé Defence)

Ms. Lydia El Halw (Case Manager, Bemba Victims, former Case Manager on the Al Mahdi Victims)

Ms. Clara Gérard-Rodriguez (former Case Manager, Ruto Defence and Al Mahdi Victims)

Ms. Chloé Grandon (Legal Assistant, Ntaganda Defence)

Ms. Lueka Grogg (former Defence Case Manager, Article 70 case)

Ms. Coralie Klipfel (former Defence Case Manager, Article 70 case)

Ms. Léa Kulinowski (former Legal Assistant on the Gbagbo Defence team and the Arido Defence team (Art. 70))

Ms. Pascale Langlais (Case Manager, Gbagbo Defence)

Ms. Fiona Lau (former Defence pro bono Legal Assistant, Ruto Defence; currently Case Manager, STL)

Ms. Barbara Le Guennec (former Legal Assistant, Gbagbo case)

Ms. Natacha Lebaindre (former Case Manager and Legal Assistant, Bemba Defence)

Ms. Cécile Lecolle (Case Manager and Legal Assistant, Bemba Defence)

Ms. Lauren Lederle (former Defence Legal Consultant, Blé Goudé Defence)

Ms. Yuqing Liu (former Case Manager and Legal Consultant, Bemba Defence)

Ms. Chiara Loiero (former Pro Bono Legal Assistant, Bemba Defence, currently Legal Assistant, Amnesty International CIJ)

Ms. Adriana-Maria Manolescu (Defence Case Manager)

Ms. Elsa Marguet (Case Manager, Gbagbo Defence)

Mr. James Mawira (Case Manager, Legal Representative for Victims, Ongwen Case)

Ms. Khady Rosalie Mbengue (Case Manager, Kilolo Defence)

Mr Thomas John Obhof, (Assistant to Counsel, Ongwen Defence, former consultant for Mr. Charles Blé Goudé, Senior Investigating Attorney for President Uhuru Kenyatta and Case Manager for General Ali)

Ms. Phoebe Oyugi (former case manager, Blé Goudé Defence)

Ms. Ines Pierre de la Brière (Case Manager, Bemba Defence)

Ms. Margaux Portier (Legal Assistant, Ntaganda Defence)

Ms. Marie-Hélène Proulx (former ICC Chambers Legal Officer, currently STL Defence team)

Mr. Antoine Robert (former Case Manager, Babala Defence)

Mr. Geoffrey Roberts (former Case Manager, Lubanga case, currently Counsel, STL)

Mr. Michael Rowse (Case Manager, Ongwen Defence and Arido Defence)

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Ms. Emeline Swiderski (Case Manager, Gbagbo Defence)

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Ms. Marlene Yahya Haage (Legal Assistant, Ntaganda Defence)

Ms. Rita Yip (former Case Manager, Mangenda Defence)

Mr. Mohamed Youssef (Defence Legal Consultant)

Signatories after March 1, 2018:

Ms. Dignité Bwiza (Former Ntaganda Defence and Blé Goudé Defence, Legal Assistant for the Arido Defence) added her signature on 20 June 2018.

Ms. Isabelle Martineau (Legal Consultant, Ntaganda Defence) added her signature on 19 June 2018.