

**UNITED
NATIONS**



International Residual Mechanism for Criminal Tribunals

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**CODE OF PROFESSIONAL CONDUCT FOR DEFENCE COUNSEL
APPEARING BEFORE THE MECHANISM
AND OTHER DEFENCE TEAM MEMBERS**

(MICT/6/Rev.1)

PART I: DEFINITIONS 3

PART II: GENERAL PROVISIONS 5

ARTICLE 1 APPLICATION OF THE CODE 5

ARTICLE 2 ENTRY INTO FORCE AND AMENDMENT TO THE CODE 5

ARTICLE 3 FUNDAMENTAL PRINCIPLES 6

PART III: OBLIGATIONS OF COUNSEL 6

SECTION 1: OBLIGATIONS OF COUNSEL TO CLIENTS 6

ARTICLE 4 SCOPE OF REPRESENTATION 6

ARTICLE 5 DECLINING, TERMINATING OR WITHDRAWING REPRESENTATION 7

ARTICLE 6 COMPETENCE, INTEGRITY AND INDEPENDENCE 8

ARTICLE 7 DILIGENCE..... 8

ARTICLE 8 COMMUNICATION 8

ARTICLE 9 CONFIDENTIALITY 8

ARTICLE 10 CONFLICT OF INTEREST 9

ARTICLE 11 SEXUAL ACTIVITY WITH CLIENTS 11

ARTICLE 12 CLIENT WITH DIMINISHED CAPACITY 11

ARTICLE 13 FEE-SPLITTING..... 11

ARTICLE 14 GOOD FAITH IN ACCOUNTING 12

ARTICLE 15 COMPENSATION FOR COUNSEL NOT ASSIGNED BY THE REGISTRAR 12

SECTION 2: CONDUCT BEFORE THE MECHANISM 13

ARTICLE 16 RULES OF THE MECHANISM..... 13

ARTICLE 17 COMMUNICATIONS WITH CHAMBERS 13

ARTICLE 18 CANDOUR TOWARD THE MECHANISM..... 13

ARTICLE 19 INTEGRITY OF EVIDENCE 14

ARTICLE 20 FRIVOLOUS CLAIMS 14

ARTICLE 21 COUNSEL AS WITNESS..... 14

SECTION 3: OBLIGATIONS OF COUNSEL AND DEFENCE TEAM MEMBERS TO OTHERS..... 15

ARTICLE 22 FAIRNESS AND COURTESY 15

ARTICLE 23 VICTIMS AND WITNESSES..... 15

ARTICLE 24 UNREPRESENTED PERSONS..... 15

ARTICLE 25 PROSPECTIVE CLIENTS 16

ARTICLE 26 PROHIBITION OF REFERRAL FEES 16

SECTION 4: SUPERVISORY AND SUBORDINATE CONDUCT 16

ARTICLE 27 RESPONSIBILITIES OF COUNSEL FOR THE DEFENCE TEAM 16

SECTION 5: MAINTENANCE OF THE INTEGRITY OF THE DEFENCE..... 17

ARTICLE 28 PROHIBITED CONDUCT 17

ARTICLE 29 PROFESSIONAL MISCONDUCT 18

ARTICLE 30 DUTY TO REPORT 18

PART IV: DISCIPLINARY REGIME..... 19

ARTICLE 31 PURPOSES OF DISCIPLINARY REGIME 19

ARTICLE 32 INHERENT POWERS OF THE MECHANISM 19

ARTICLE 33 FILINGS, DECISIONS AND ORDERS 19

ARTICLE 34 DISCIPLINARY PANEL 19

ARTICLE 35 SUBMISSION OF COMPLAINTS 20

ARTICLE 36 WITHDRAWAL OF COMPLAINTS..... 21

ARTICLE 37 SUMMARY DISMISSAL OF COMPLAINTS..... 21

ARTICLE 38 INVESTIGATION OF ALLEGED PROHIBITED CONDUCT AND/OR PROFESSIONAL MISCONDUCT 22

ARTICLE 39 INTERIM SUSPENSION FROM PRACTICE..... 23

ARTICLE 40 CHARGES AGAINST COUNSEL OR OTHER DEFENCE TEAM MEMBERS AND INSTITUTION OF PROCEEDINGS AND HEARINGS 23

ARTICLE 41 DISCIPLINARY PANEL HEARING 24

ARTICLE 42 FINDINGS AND SANCTIONS	24
ARTICLE 43 DISCIPLINARY BOARD	26
ARTICLE 44 APPEAL TO DISCIPLINARY BOARD.....	26
ARTICLE 45 SUMMARY DISMISSAL OF APPEALS	27
ARTICLE 46 REVIEW OF APPEALS	27
ARTICLE 47 FINDINGS AND SANCTIONS ON APPEAL	28
ARTICLE 48 COSTS.....	28
ARTICLE 49 <i>NON BIS IN IDEM</i>	29

PART I: DEFINITIONS

For the purpose of this Code, the following definitions shall apply:

- Advisory Panel:** The body established to assist the President and the Registrar in all matters relating to Defence Counsel under Rule 42(D).
- Association of Counsel:** An Association of Defence Counsel practicing before the Mechanism recognised by the Registrar in accordance with Rule 42(A)(iii).
- Chamber:** A Chamber of the Mechanism, or a Single Judge, in accordance with Article 12 of the Statute.
- Client:** An accused, suspect, convicted person, detainee, witness or other person who has engaged Counsel or has been assigned Counsel by the Registry for the purposes of legal representation before the Mechanism.
- Code:** The present Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism and Other Defence Team Members.
- Complainant:** Any person or entity who submits a complaint under the disciplinary regime pursuant to Article 35 of the Code.
- Counsel:** A legal professional in communication with a prospective Client or engaged to represent a Client and who is or was assigned, appointed or recognised by the Registrar.
- Co-Counsel:** A second counsel, engaged by Lead Counsel, and assigned by the Registrar pursuant to Article 16(C) of the Directive, or otherwise appointed or recognised by the Registrar to assist in the defence of a Client.
- Defence Team:** Lead Counsel, Co-Counsel and other persons who perform services for Counsel for the purpose of representing a Client before the Mechanism, or in the case of a self-represented accused, their recognised legal associates and other persons who assist a self-represented accused in their defence.
- Directive:** The Directive on the Assignment of Defence Counsel, issued by the Registrar on 14 November 2012, in accordance with Rule 43, and as subsequently amended.

Firm:	A private law firm or a legal services organisation.
ICTR:	The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Security Council resolution 955 of 8 November 1994.
ICTY:	The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993.
Lead Counsel:	A Counsel engaged by a Client and assigned by the Registrar pursuant to Article 16(B) of the Directive, or, in case of appointment or recognition by the Registrar, a person so designated by the Registrar following instruction from the Client.
Mechanism:	The International Residual Mechanism for Criminal Tribunals established by Security Council Resolution 1966 of 22 December 2010.
Parties:	The Prosecution and the Defence Team, including the Client, collectively.
President:	The President of the Mechanism appointed pursuant to Article 11 of the Statute.
Professional Misconduct:	Any conduct defined by Article 29 of the Code.
Prohibited Conduct:	Discrimination, harassment, including sexual harassment, and abuse of authority, as further defined in Article 28 of the Code.
Registrar:	The Registrar of the Mechanism appointed pursuant to Article 15(3) of the Statute.
Respondent:	Counsel or Defence Team member subject to a disciplinary complaint.

- Rules: The Rules of Procedure and Evidence adopted by the Mechanism on 8 June 2012, and as subsequently amended.
- Statute: The Statute of the Mechanism annexed to Security Council resolution 1966 of 22 December 2010, and as subsequently amended.
- Tribunals: The ICTR and the ICTY jointly.
- Unrepresented Person: A person not represented by any legal counsel.

In this Code, the singular shall include the plural, and *vice versa*.

PART II: GENERAL PROVISIONS

Article 1

Application of the Code

- (A) The English and French texts of this Code shall be equally authentic. In case of discrepancy, the version that is more consonant with the spirit of the Statute, the Rules, the Directive and this Code shall prevail.
- (B) In the event of any inconsistency between this Code and the Statute, the Rules, and/or the Directive, the terms and provisions of the Statute, the Rules, and/or the Directive, respectively, shall prevail.
- (C) Any term not defined in this Code has the same meaning given to it by the Statute or by the Rules.
- (D) If there is any inconsistency between this Code and any other codes of practice and ethics governing Counsel and Defence Team members, the terms of this Code shall prevail in respect of Counsel and Defence Team members' conduct before the Mechanism.
- (E) This Code applies to all Counsel and other Defence Team members representing a Client before the Mechanism, as indicated herein.

Article 2

Entry into Force and Amendment to the Code

- (A) Subject to approval by the President, the Registrar may amend this Code, following consultation with the Advisory Panel, the Association of Counsel and the Prosecutor.

- (B) Any amendment of this Code shall enter into force upon adoption pursuant to paragraph (A), and shall be rendered public by the Registrar within seven days of adoption. An amendment shall not operate to prejudice the rights of Counsel or Clients in any pending case.

Article 3 Fundamental Principles

This Code is based, in particular, on the fundamental principles that:

- (i) the role of Counsel as advocates in the administration of justice requires them to act honestly, independently, fairly, skilfully, diligently, efficiently and courageously;
- (ii) Counsel have a duty of loyalty to their Clients consistent with their duty to the Mechanism to act with independence in the administration of justice;
- (iii) Counsel and other Defence Team members shall take all necessary steps to ensure that their actions do not bring proceedings before the Mechanism into disrepute;
- (iv) Counsel and other Defence Team members shall maintain high standards of professional conduct; and
- (v) Counsel and other Defence Team members may be subject to disciplinary proceedings and should be informed of the circumstances under which such proceedings may take place and their rights and obligations in those proceedings.

PART III: OBLIGATIONS OF COUNSEL

Section 1: Obligations of Counsel to Clients

Article 4 Scope of Representation

- (A) Counsel shall advise and represent a Client until a final judgement is rendered in their Client's case, or until the representation is terminated by the Client or Counsel or withdrawn by the Registrar.
- (B) When representing a Client, Counsel shall:
- (i) abide by the Client's decisions concerning the objectives of representation;
 - (ii) consult with the Client about the means by which those objectives are to be pursued, but is not bound by the Client's views; and

- (iii) seek or accept only those instructions which emanate from the Client and which are not given as the result of an inducement from any person, organisation or State.
- (C) Counsel shall not advise nor assist a Client to engage in conduct which Counsel knows is criminal or fraudulent, in breach of the Statute, the Rules, this Code or any other applicable law. However, Counsel may discuss the legal consequences of any proposed course of conduct with a Client and may advise or assist a Client in good faith to determine the validity, scope or meaning of the applicable law.

Article 5
Declining, Terminating or Withdrawing Representation

- (A) Counsel shall decline to represent a Client if:
- (i) representation will result in conduct which is criminal, fraudulent or in violation of the Statute, the Rules, this Code or any other applicable law; or
 - (ii) Counsel's physical or mental condition materially impairs Counsel's ability to represent the Client.
- (B) Counsel may terminate or, where the Directive is applicable, request withdrawal of their representation of a Client if such termination or withdrawal can be accomplished without material adverse effect on the interests of the Client, or if:
- (i) the Client has used Counsel's services to perpetrate a crime or fraud, or persists in a course of action involving Counsel's services that Counsel reasonably believes is criminal or fraudulent;
 - (ii) the Client insists upon pursuing an objective that Counsel considers repugnant or imprudent;
 - (iii) the Client fails to substantially fulfil an obligation to Counsel regarding Counsel's services and has been given reasonable warning that Counsel will terminate or request withdrawal of their representation unless the obligation is fulfilled; or
 - (iv) other good cause for termination or withdrawal exists.
- (C) If representation by Counsel is to be terminated or withdrawn, Counsel shall continue to represent the Client until replacement Counsel is engaged by the Client or assigned by the Registrar, or the Client has notified the Registrar in writing of their intention to conduct their own defence, unless the Chamber grants leave for Counsel to discontinue the representation immediately.

- (D) Upon termination or withdrawal of representation, Counsel shall take steps, to the extent reasonably practicable, to protect the Client's interests, such as giving sufficient notice to the Client, surrendering papers and property to which the Client or the Mechanism is entitled and refunding any advance payment of fees that has not been earned.

Article 6

Competence, Integrity and Independence

In the course of providing representation to a Client, Counsel shall:

- (i) act with competence, skill, care, honesty and loyalty;
- (ii) exercise independent professional judgement and render open and honest advice;
- (iii) preserve their own integrity and that of the legal profession as a whole; and
- (iv) never permit their independence, integrity and freedom from external pressures to be compromised.

Article 7

Diligence

Counsel shall represent a Client diligently and promptly in order to protect the Client's best interests. Unless the representation is terminated or withdrawn, Counsel shall carry through to conclusion all matters undertaken for a Client within the scope of their legal representation.

Article 8

Communication

Counsel shall keep the Client informed about the status of a matter before the Mechanism in which the Client is an interested party and must promptly comply with all reasonable requests for information.

Article 9

Confidentiality

- (A) Whether or not Counsel continues to represent a Client, Counsel shall preserve the confidentiality of the Client's affairs. Counsel shall not reveal to any other person information which has been entrusted to them in confidence, with the exception of members of their Defence Team who need such information for the performance of their duties. Counsel shall not use such information to the Client's detriment or to their own or another Client's advantage.

- (B) If other Defence Team members are privy to confidential information in accordance with paragraph (A), such Defence Team members shall be equally bound by the requirements of confidentiality set forth therein.
- (C) Notwithstanding paragraph (A), Counsel may reveal information which has been entrusted to them in confidence under the following circumstances:
 - (i) when the Client has been fully consulted and knowingly consents;
 - (ii) when the Client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure;
 - (iii) when essential to establish a claim or defence on behalf of Counsel in a controversy between Counsel and the Client, to establish a defence to a criminal or disciplinary charge or other claim formally instituted against Counsel based upon conduct in which the Client was involved, or to respond to allegations in any proceeding concerning Counsel's representation of the Client;
 - (iv) for Counsel assigned by the Registrar pursuant to the Directive, when necessary to comply with that Counsel's obligations under Article 18 of the Directive; or
 - (v) to prevent an act which Counsel reasonably believes:
 - (a) is, or may be, criminal within the territory in which it may occur or under the Statute or the Rules; or
 - (b) may result in death or substantial bodily harm to any person unless the information is disclosed.

Article 10
Conflict of Interest

- (A) Counsel and other Defence Team members owe a duty to the Court and the Client to act at all times with independence in the interests of justice. Counsel and other Defence Team members shall put the interests of justice before their own interests or those of any other person, organisation or State.
- (B) Counsel shall exercise all care to ensure that no conflict of interest arises.
- (C) Counsel shall not represent a Client in connection with a matter in which Counsel participated personally and substantially as an official or staff member of the Tribunals or Mechanism or in any other capacity. However, the Registrar may grant an exception if he determines, after

consultation with the Parties and taking into account the views of the Chamber, that there is no real possibility that a conflict exists between the former and present assignment.

(D) Counsel shall not represent a Client with respect to a matter if:

- (i) such representation will be, or may reasonably be expected to be, adversely affected by representation of another Client by Counsel or a member of their Firm;
- (ii) representation of another Client by Counsel or a member of their Firm will be, or may reasonably be expected to be, adversely affected by such representation;
- (iii) the matter is the same or substantially related to another matter in which Counsel or a member of their Firm had formerly represented another Client, and the interests of the Client are materially adverse to the interests of the formerly represented Client;
or
- (iv) Counsel's professional judgement on behalf of the Client will be, or may reasonably be expected to be, adversely affected by:
 - (a) Counsel's responsibilities to, or interests in, a third party; or
 - (b) Counsel's own financial, business, property or personal interests.

(E) Where a conflict of interest could arise, Counsel shall:

- (i) promptly and fully inform the Registrar as well as each potentially affected present and former Client of the nature and extent of the possible conflict; and
- (ii) either:
 - (a) take all steps necessary to remove the conflict; or
 - (b) obtain the full and informed consent of all potentially affected present and former Clients to continue the representation unless such consent is likely to irreversibly prejudice the administration of justice.

(F) Paragraphs (B) to (E) apply equally in connection with Counsel's representation of current and former clients before the Tribunals, the Mechanism and other international or national courts.

Article 11
Sexual Activity with Clients

Counsel shall not:

- (i) require or demand any form of sexual activity with a Client as a condition of professional representation;
- (ii) employ coercion, intimidation or undue influence in any form of sexual activity with a Client; or
- (iii) represent or continue to represent a Client with whom Counsel has or had any form of sexual activity.

Article 12
Client with Diminished Capacity

When a Client's ability to make adequately considered decisions about their representation reasonably appears to Counsel to be diminished, whether due to minority or mental or other impairment, Counsel shall:

- (i) inform the Chamber hearing the matter, if any, of the Client's diminished capacity; and
- (ii) take such steps as are necessary to ensure the adequate legal representation of that Client.

Article 13
Fee-splitting

- (A) Fee-splitting arrangements, including, but not limited to, financial arrangements between Counsel, or another Defence Team member, and a Client or relatives and/or agents of a Client are prohibited.
- (B) Where Counsel or another Defence Team member are requested, induced or encouraged by their Client or relatives and/or agents of a Client to enter into fee-splitting arrangements, they shall advise their Client on the prohibition of such practice and shall report the incident to the Registrar forthwith.
- (C) Consistent with Article 30, Counsel and other Defence Team members shall inform the Registrar of any suspected fee-splitting arrangement by any member of their or any other Defence Team.

- (D) Following receipt of information regarding possible fee-splitting arrangements between Counsel, or another Defence Team member, and a Client or relatives and/or agents of a Client, the Registrar shall investigate such information in order to determine whether it is substantiated.
- (E) Where Counsel or another Defence Team member is found to have entered into a fee-splitting arrangement with a Client or relatives and/or agents of a Client, the Registrar shall consider taking action in accordance with the Disciplinary Regime under Part IV of this Code and the Directive.
- (F) It will not be considered fee-splitting where the Registrar has granted leave to Counsel to provide their Client with equipment and materials necessary for the preparation of their defence.

Article 14
Good Faith in Accounting

Counsel shall account in good faith for the time spent working on a case and maintain and preserve detailed records of time spent. This does not alleviate the responsibility of Defence Team members to maintain and preserve in good faith detailed records of time spent.

Article 15
Compensation for Counsel not Assigned by the Registrar

- (A) Counsel, other than Counsel assigned by the Registrar, shall provide to a Client, in writing and before Counsel is engaged to represent a Client, a statement of costs of representation, including:
 - (i) the basis for calculating the costs;
 - (ii) the billing arrangements; and
 - (iii) the Client's right to receive a bill of costs.
- (B) Counsel, other than Counsel assigned by the Registrar, shall not accept compensation for representing a Client from a source other than that Client unless:
 - (i) that Client consents in writing after being fully informed by Counsel of the source and any other information relevant to the interests of the Client; and
 - (ii) there is no interference with Counsel's independence of professional judgement, or with the Client-Counsel relationship.

- (C) Counsel, if assigned by the Registrar, shall not accept compensation for representing a Client except as provided for under the Directive.

Section 2: Conduct before the Mechanism

Article 16

Rules of the Mechanism

Counsel and other Defence Team members shall at all times comply with the Statute, the Rules, this Code or any other applicable law, including such rulings as to conduct and procedure as may be issued by the Mechanism in its proceedings. Counsel shall at all times have due regard to the fair conduct of proceedings.

Article 17

Communications with Chambers

Unless permitted by the Rules, this Code or the Chamber assigned to hear the matter, neither Counsel nor any other Defence Team member shall:

- (i) make contact with a Chamber in relation to the merits of a particular case, except within the proper context of the proceedings in the case;
- (ii) submit exhibits, notes and/or documents to a Chamber without transmitting them through the Registry, except in an emergency or when at the same time transmitted to the Registry; or
- (iii) submit a judicial filing before a Chamber that has not been assigned to the underlying matter.

Article 18

Candour Toward the Mechanism

- (A) Counsel owes a duty of candour to the Mechanism and shall be personally responsible toward the Mechanism for the conduct and presentation of a Client's case.
- (B) Counsel shall not knowingly:
- (i) make an incorrect statement of material fact or law to the Mechanism; or
 - (ii) offer evidence which Counsel knows to be incorrect.

- (C) Notwithstanding paragraph (B)(i), Counsel will not have made an incorrect statement of material fact or law to another party to the proceedings or to the Mechanism simply by failing to correct an error on any matter stated to Counsel or to the Mechanism during proceedings.
- (D) Counsel shall take all necessary steps to correct an incorrect statement of material fact or law by Counsel in proceedings before the Mechanism as soon as possible after Counsel becomes aware that the statement was incorrect.
- (E) Counsel may refuse to offer evidence if Counsel makes a reasoned determination that the material in question is irrelevant or lacks probative value.

Article 19
Integrity of Evidence

- (A) Counsel and other Defence Team members shall at all times maintain the integrity of evidence, whether in written, oral or any other form, which is or may be submitted to the Mechanism.
- (B) If Counsel's representation of a Client terminates for any reason, Counsel shall return evidence and other materials, in accordance with Article 22(B) of the Directive.

Article 20
Frivolous Claims

Counsel shall not make frivolous or vexatious claims, nor submit frivolous or vexatious filings in proceedings before the Mechanism. Further, Counsel shall not make repetitive claims nor submit repetitive filings, without sufficient cause, in proceedings before the Mechanism.

Article 21
Counsel as Witness

Counsel shall not represent a Client in a proceeding in which Counsel is likely to be a necessary witness except where:

- (i) the testimony relates to an uncontested issue;
- (ii) the testimony relates to the nature and value of legal services rendered in the case; or
- (iii) substantial hardship would be caused to the Client otherwise.

Section 3: Obligations of Counsel and Defence Team members to Others

Article 22

Fairness and Courtesy

- (A) Counsel and other Defence Team members shall demonstrate respect, integrity and courtesy for officials and staff members of the Mechanism, and for all other persons who facilitate or participate in the proceedings.
- (B) Counsel and other Defence Team members shall recognise the representatives of the Parties as professional colleagues and shall act fairly, honestly and courteously towards them.
- (C) Counsel shall not communicate with the Client of another Counsel without authorisation of the latter unless permitted under the Rules, this Code or any other applicable law.

Article 23

Victims and Witnesses

- (A) Counsel or any other Defence Team member shall not use any means that embarrass, delay or unduly burden victims and witnesses, or use coercive or other methods of obtaining evidence that violate the Statute, the Rules, or this Code.
- (B) Counsel or any other Defence Team member shall not make any payments in monies or assets to witnesses or potential witnesses for the purpose of influencing or inducing such witnesses or potential witnesses.

Article 24

Unrepresented Persons

- (A) Counsel or any other Defence Team member, communicating on behalf of a Client, with an Unrepresented Person, shall not:
 - (i) knowingly mislead the Unrepresented Person, to the prejudice of that person, concerning the identity and interests of Counsel's Client;
 - (ii) coerce, harass or threaten the Unrepresented Person or their relatives;
 - (iii) make other statements prohibited by applicable law;
 - (iv) fail to disclose information required by applicable law; or

- (v) give advice to the Unrepresented Person, except to retain Counsel and in relation to matters specified under paragraph (B), if the interests of that person are or may reasonably be expected to be in conflict with the interests of their Client.
- (B) Counsel or any other Defence Team member shall inform the Unrepresented Person of:
- (i) the role they play in the matter as a representative of a Client;
 - (ii) the person's right to Counsel under the Rules, where applicable; and
 - (iii) the nature of legal representation in general.

Article 25
Prospective Clients

- (A) Counsel shall not contact or solicit work from a prospective Client directly or indirectly, unless the prospective Client, their relatives or acquaintances have made known to Counsel a desire to be contacted.
- (B) In any contacts made in compliance with paragraph (A), such contact or solicitation may not involve behaviour such as fraud, undue influence, coercion, duress or harassment.
- (C) Counsel shall not make false, misleading or deceptive communications to a prospective Client, their relatives or acquaintances about the Counsel or another Counsel's services.

Article 26
Prohibition of Referral Fees

- (A) Counsel shall not demand or accept from another Counsel or any other person a fee, commission or any other compensation for referring or recommending the Counsel to a Client.
- (B) Counsel shall not pay any person a fee, commission or any other compensation as a consideration for referring a Client to the Counsel.

Section 4: Supervisory and Subordinate Conduct

Article 27
Responsibilities of Counsel for the Defence Team

- (A) Lead Counsel has direct supervisory authority over all members of their Defence Team and shall make reasonable efforts to ensure that all such members adhere to this Code.

- (B) Counsel shall be responsible for a Defence Team member’s violation of this Code if:
- (i) Counsel orders or, with knowledge of the specific conduct, approves the conduct involved; or
 - (ii) Counsel has direct supervisory authority over the Defence Team member, and knew or had reason to know of the conduct at a time when its consequences can be avoided or mitigated, but fails to take reasonable remedial action.
- (C) This Article shall not preclude individual responsibility of Defence Team members to adhere to the applicable provisions of this Code.
- (D) Members of Defence Teams acting in accordance with a Counsel’s reasonable resolution of an arguable question of professional duty shall not be considered to have violated this Code.

Section 5: Maintenance of the Integrity of the Defence

Article 28 Prohibited Conduct¹

- (A) Counsel and other Defence Team members shall not engage in Prohibited Conduct in connection with their work before the Mechanism. Further, Counsel shall have a zero-tolerance policy on Prohibited Conduct within their Defence Team and shall take adequate action if faced with allegations of Prohibited Conduct.
- (B) In line with paragraph (A), Counsel and other Defence Team members shall not engage in:
- (i) Discrimination, i.e., any unfair treatment or arbitrary distinction based on a person’s race, sex, gender, sexual orientation, gender identity, gender expression, religion, nationality, ethnic origin, disability, age, language, social origin, or other similar shared characteristic or trait;
 - (ii) Harassment, i.e., any unwelcome conduct towards any other person that might reasonably be expected or be perceived to cause offence or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile, or offensive work environment;

¹ This provision incorporates relevant aspects of the Secretary-General’s bulletin (ST/SGB/2019/8, 10 September 2019) titled “Addressing discrimination, harassment, including sexual harassment, and abuse of authority”.

- (iii) Sexual harassment towards any other person with unwelcome conduct of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile, or offensive work environment; or
- (iv) Abuse of their authority against any other person with an improper use of a position of influence, power or authority, particularly with regards to career or employment conditions.

Article 29

Professional Misconduct

It shall be Professional Misconduct for Counsel or another Defence Team member, *inter alia*, to:

- (i) violate or attempt to violate the Statute, the Rules, this Code or any other applicable law, or to knowingly instruct, assist or induce another person to do so, or to do so through the acts of another person;
- (ii) commit a criminal act which reflects adversely on their honesty, trustworthiness or fitness to act in their position;
- (iii) engage in conduct involving dishonesty, fraud, deceit or misrepresentation related to the proceedings before the Mechanism;
- (iv) engage in conduct which is prejudicial to the proper administration of justice before the Mechanism; or
- (v) provide inaccurate information or fail to disclose information regarding their qualifications to practice before the Mechanism as set out in the Rules and, where Counsel has been assigned to a Client, the Directive.

Article 30

Duty to Report

In accordance with the disciplinary regime set out in Part IV of this Code, Counsel and Defence Team members shall inform the Disciplinary Panel if they know that another Counsel or Defence Team member has breached this Code or has otherwise engaged in Prohibited Conduct and/or Professional Misconduct.

PART IV: DISCIPLINARY REGIME

Article 31

Purposes of Disciplinary Regime

The purposes of this Part are:

- (A) to protect Clients and other individuals, particularly witnesses, from Counsel and other Defence Team members who have not discharged, will not discharge or are unlikely to discharge their professional responsibilities appropriately, and to provide every person whose rights or interests could be substantially affected by an alleged misconduct the right to submit a complaint about the conduct of Counsel and other Defence Team members;
- (B) to ensure compliance by individual Counsel and other Defence Team members with the necessary standards of professionalism, competence, diligence, and honesty, and to maintain at a significantly high level the ethics and practice of the legal system operated by the Mechanism; and
- (C) to guarantee that any disciplinary proceedings against Counsel or any other Defence Team member are procedurally fair.

Article 32

Inherent Powers of the Mechanism

This Part shall not affect the inherent powers of the Mechanism to deal with conduct which interferes with the administration of justice under the Statute, the Rules, or any other applicable law.

Article 33

Filings, Decisions and Orders

Unless otherwise provided for in this Part, all filings, decisions and orders in relation to the disciplinary regime shall be submitted confidentially and in a working language of the Mechanism to the Registry (via e-mail, to: DisciplinaryRegime@IRMCT.org), which shall transmit them to the appropriate recipients. The Registry shall maintain all records of this disciplinary regime and may provide decisions of a previous Disciplinary Panel or Board to the current Disciplinary Panel or Board, upon their request.

Article 34

Disciplinary Panel

- (A) A Disciplinary Panel shall deal with all matters relating to alleged Prohibited Conduct and Professional Misconduct. The Disciplinary Panel shall consist of:

- (i) a member of the Association of Counsel to be appointed in accordance with the Association's statute;
 - (ii) a member of the Advisory Panel having practised at the Tribunals or the Mechanism to be appointed by the President of the Advisory Panel; and
 - (iii) the Registrar of the Mechanism, or a senior Registry legal official designated by him or her.
- (B) At its first meeting, the members of the Disciplinary Panel shall select a Chairperson from amongst its members. The Chairperson shall be appointed for a term of two years and is eligible for re-election.
- (C) Except as otherwise provided by this Code, the Disciplinary Panel may determine its own procedure for the filing of briefs and presentation of argument. Nonetheless, and if a Complainant anonymously submits a complaint, the Disciplinary Panel's anticipated procedure shall respect the intended non-disclosure of the Complainant's identity.

Article 35

Submission of Complaints

- (A) A Client, the Registrar, a party to proceedings before the Mechanism, or any other person, organisation or State whose rights or interests could be substantially affected by alleged Prohibited Conduct and/or Professional Misconduct may submit a complaint. Where the Disciplinary Panel itself has reasonable grounds to suspect that Counsel or a Defence Team member has engaged in such conduct, it may commence, *proprio motu*, an investigation into the matter.
- (B) The complaint shall be in writing, shall identify the Counsel or Defence Team member against whom the complaint is made, shall describe in sufficient detail the alleged Prohibited Conduct and/or Professional Misconduct, and may be submitted confidentially or anonymously, as follows:
- (i) A Complainant may submit a complaint directly to the Registry of the Mechanism, by way of the e-mail address in Article 33 above; or
 - (ii) A Complainant may submit a complaint by way of regular mail, to the Registry of the Mechanism at either branch, for the attention of the Disciplinary Panel, as follows: a) Haki Road, Plot No. 486 Block A, Lakilaki Area, Arumeru District, P.O. Box 6016, Arusha, Tanzania; or, b) Churchillplein 1, 2517JW, The Hague, The Netherlands.

If a Complainant submits a complaint anonymously, the Complainant is responsible for ensuring that no self-identifying information is included therein. Anonymous Complainants are encouraged to provide as much detail as possible, and to consider providing an anonymised address (electronic or physical) when submitting the complaint, to allow further contact from the Disciplinary Panel, as may be necessary, without the Complainant's identity becoming known. Any Registry official who inadvertently becomes aware of an anonymous Complainant's identity shall not disclose it further, without the consent of the Complainant.

- (C) The Complainant shall submit the complaint within twenty-four months after the alleged Prohibited Conduct and/or Professional Misconduct is brought to the attention of the Complainant or within twenty-four months after the Complainant should have reasonably known about the existence or occurrence of the alleged Prohibited Conduct and/or Professional Misconduct. The Disciplinary Panel may, nonetheless, pursue complaints submitted after these deadlines if it considers this to be in the interests of justice.

Article 36

Withdrawal of Complaints

- (A) By notice in writing, the Complainant may withdraw a complaint. Any withdrawal shall be transmitted to the Chairperson of the Disciplinary Panel, by the Registry. The withdrawal of a complaint does not impact upon the Disciplinary Panel's competency under Article 35(A) to investigate the matter raised in the complaint *proprio motu*.
- (B) The withdrawal of the complaint does not prevent a further complaint being made under this Part by the same or any other Complainant with respect to the subject matter of the withdrawn complaint.

Article 37

Summary Dismissal of Complaints

- (A) The Disciplinary Panel may dismiss a complaint if it is vexatious, misconceived, frivolous, lacking in substance or submitted after the deadline set out in Article 35(C) has expired. Additionally, and where the requested anonymity of a Complainant's identity effectively undermines the ability of the Disciplinary Panel to meaningfully investigate the alleged Prohibited Conduct and/or Professional Misconduct, the complaint may be dismissed, without prejudice.
- (B) The Disciplinary Panel shall provide a copy of the summary dismissal to the Registry, in accordance with Article 33, which shall transmit the same to the: i) Respondent; ii) Complainant, where possible; iii) Registrar; and, iv) Association of Counsel.

Article 38

Investigation of Alleged Prohibited Conduct and/or Professional Misconduct

- (A) The Disciplinary Panel shall conduct, as soon as possible, an investigation into the alleged Prohibited Conduct specified in Article 28 and/or the Professional Misconduct specified in Article 29. Any such investigation shall have due regard for a Complainant's request that his, her, or its identity remain anonymous.
- (B) If the Disciplinary Panel opens an investigation into a Defence Team member, the Disciplinary Panel shall inform Lead Counsel promptly of the existence of a disciplinary investigation against the Defence Team member. Counsel and Defence Team members shall co-operate with the investigation.
- (C) In the investigation of the conduct at issue, the Disciplinary Panel:
 - (i) shall, in accordance with Article 33, send particulars of the conduct to the Respondent in a language they understand, and invite them to submit a written explanation in response to the complaint;
 - (ii) may order, by notice served in writing in accordance with Article 33, the Respondent, the Registrar, the Client or other parties to the disciplinary proceedings to:
 - (a) produce, at any time and place specified in the notice, any books, documents, papers, accounts or records that are in their possession or under their control and that relate to the subject-matter of the complaint; or
 - (b) otherwise assist in, or co-operate with, the investigation of the complaint in a specified manner; and
 - (iii) may interview potential witnesses.
- (D) The Disciplinary Panel may inspect any book, document, paper, account or record produced in accordance with paragraph (C)(ii)(a) and may retain it for such period as it deems necessary for the purposes of the investigation. For the purpose of investigating an alleged misconduct involving allegations of fee-splitting, the Disciplinary Panel may request the Registrar to provide information on their related inquiries into the financial status of an accused, if any.
- (E) The Disciplinary Panel may fine any person who, without reasonable justification or excuse, refuses or fails to comply with any order or requirement of the Disciplinary Panel under this Article with a penalty of up to 10,000 USD.

Article 39
Interim Suspension from Practice

- (A) If there are reasonable grounds to conclude that the alleged Prohibited Conduct and/or Professional Misconduct is likely to cause immediate and irreparable harm to the interests of justice, a party to the proceedings, a witness, the Client or any other prospective Client, the Disciplinary Panel may issue a reasoned order suspending the Respondent from working on a case before the Mechanism until the charge has been heard and disposed of. The Disciplinary Panel can order such suspension without prior notice to the Respondent, at any time after the filing of a complaint or after the Disciplinary Panel has commenced an investigation *proprio motu*.
- (B) If the Respondent is a Counsel representing a Client at the time the Disciplinary Panel considers an order for suspension, the Disciplinary Panel must obtain approval from the Chamber before which such Counsel appears, before issuing the order.
- (C) Counsel suspended by the Disciplinary Panel in accordance with paragraph (B), or by their Client, may apply to the President of the Mechanism for the revocation of the order. The President of the Mechanism shall decide on such application as soon as practicable, or, at the latest, within seven days after it has been received, unless the interests of justice require otherwise.

Article 40
Charges against Counsel or other Defence Team Members and Institution of Proceedings and Hearings

- (A) The Disciplinary Panel shall investigate each particularised allegation, and if there are reasonable grounds to conclude that the Respondent has committed Prohibited Conduct and/or Professional Misconduct, formulate charges.
- (B) The Disciplinary Panel may order, if it is in the interest of justice, the joinder of:
 - (i) more than one charge against the same Respondent; or
 - (ii) a charge against one or more Respondents if all the charges are founded on the same, or closely related, alleged acts or omissions.
- (C) During the course of the investigation, the Respondent shall be provided the opportunity to file a response, in accordance with Article 33, to the allegation(s) in the charge.

Article 41
Disciplinary Panel Hearing

- (A) If there are any material issues of fact raised in the pleadings or if the Respondent requests the opportunity to be heard in mitigation, the Disciplinary Panel shall hold a public hearing at the seat of the Mechanism unless it decides, *proprio motu*, or upon application by the Respondent or Complainant, to exclude the public. In the event that a hearing is held, and in the context of a complaint where the Complainant has requested anonymity, the Disciplinary Panel shall implement any appropriate measures to accommodate said request, in the event that the Complainant will participate in said hearing (e.g., hearing from the Complainant, as may be required, by way of video-link with image and voice distortion).
- (B) During the hearing, the Respondent shall have the right to be represented by counsel, to examine evidence submitted by the Complainant or gathered by the Disciplinary Panel, cross-examine witnesses and to present evidence. The Complainant, if any, shall be permitted to address the Disciplinary Panel concerning the Respondent's alleged Prohibited Conduct and/or Professional Misconduct and its effect on them.
- (C) The Disciplinary Panel may admit any evidence which is relevant or which has probative value, whether oral or written, whether direct or hearsay and whether or not the same would be admissible in a court of law.
- (D) Every witness appearing before the Disciplinary Panel shall, before giving evidence, make the solemn declaration as set out in the Rules. The provisions of the Rules relating to false testimony under solemn declaration shall apply, *mutatis mutandis*, to witnesses appearing before the Disciplinary Panel.

Article 42
Findings and Sanctions

- (A) The Disciplinary Panel shall render its findings on each charge by the majority of its members, accompanied by a reasoned opinion in writing, in accordance with Article 33, to which separate or dissenting opinions may be appended.
- (B) The Disciplinary Panel may conclude its proceedings without a finding of Prohibited Conduct and/or Professional Misconduct, or dismiss any charge. The Disciplinary Panel may suspend or dismiss a complaint, before, during or after the investigation of the complaint, if the Disciplinary Panel does not find reasonable grounds to conclude that the Respondent committed the alleged Prohibited Conduct and/or Professional Misconduct.
- (C) The Disciplinary Panel may impose the following sanctions upon a Respondent against whom a charge of Prohibited Conduct and/or Professional Misconduct has been found proved beyond a reasonable doubt, either concurrently or cumulatively:

- (i) admonition by the Disciplinary Panel;
 - (ii) advice by the Disciplinary Panel as to their future conduct;
 - (iii) public reprimand by the Disciplinary Panel;
 - (iv) a fine payable to the Mechanism of an amount not exceeding 50,000 USD;
 - (v) suspension from working on a case before the Mechanism for an appropriate fixed period of time not exceeding two years;
 - (vi) banishment from working on a case before the Mechanism.
- (D) In addition to any of the sanctions imposed under paragraph (C), the Disciplinary Panel may order the Respondent to make monetary restitution by reimbursing the Mechanism, or the privately paying Client, in whole or in part, for expended funds or fees paid where the Disciplinary Panel finds, beyond a reasonable doubt, that the Respondent's Prohibited Conduct and/or Professional Misconduct has resulted in:
- (i) the loss or misuse of the Mechanism's legal aid funds, or the need to expend additional legal aid funds as a result of such conduct; or
 - (ii) a financial loss on the part of the Client in the event where the Complainant is a privately paying Client.

In determining the amount to be reimbursed, the Disciplinary Panel shall consider the amount which the Respondent may reasonably retain for services actually rendered.

- (E) In determining the sanctions imposed, the Disciplinary Panel must take into account any aggravating and mitigating factors it considers relevant, including, *inter alia*, the fact that the Respondent was acting pursuant to a provision of another code of practice and ethics which governs their conduct and that such provision is inconsistent with this Code. A sanction must be proportionate in view of the misconduct.
- (F) The Disciplinary Panel shall notify its decision, in writing in accordance with Article 33, to the: i) Complainant, where possible; ii) Registrar; and, iii) Respondent.
- (G) The decision of the Disciplinary Panel shall be rendered in English or French and provided to the Respondent and Complainant, where possible, in a language that they understand, in accordance with Article 33.

- (H) If applicable, the Registry shall provide a copy of the decision to the Association of Counsel as well as the professional body regulating the conduct of the respondent in their State of admission, or to the governing body of the university where Counsel is a law professor.
- (I) The Registry shall take such action as may be required to enforce any sanction(s).

Article 43
Disciplinary Board

- (A) The Disciplinary Board shall consist of:
 - (i) three Judges to be appointed by the President of the Mechanism; and
 - (ii) two members of the Association of Counsel, to be appointed for a two year period, and in accordance with the Association of Counsel's constitution.
- (B) No member of the Disciplinary Panel shall be a member of the Disciplinary Board at the same time.
- (C) No Judge who sat as a member of the Chamber on a case on which the Respondent worked shall be eligible to sit as a member of the Disciplinary Board on the hearing or determination of any charge against the Respondent for Prohibited Conduct and/or Professional Misconduct.
- (D) The members of the Disciplinary Board shall, at its first meeting, select a Chairperson from amongst its members.
- (E) Except as otherwise provided by this Code, the Disciplinary Board may determine its own procedure for the filing of briefs and presentation of argument. As is the case with the Disciplinary Panel, and if a Complainant requested anonymity when submitting a complaint, the Disciplinary Board's anticipated procedure shall respect such a request.

Article 44
Appeal to Disciplinary Board

- (A) An appeal to the Disciplinary Board may be filed by:
 - (i) the Respondent, where one or more charges of Prohibited Conduct and/or Professional Misconduct have been proved;
 - (ii) the Complainant, where one or more charges have not been proved; and/or
 - (iii) the Registrar, if he or she considers this to be in the interests of justice.

- (B) A notice of appeal must be filed within fourteen days of notification of the decision of the Disciplinary Panel. The Disciplinary Board may accept the filing of a notice of appeal after the fourteen day deadline if it considers this to be in the interest of justice.
- (C) Notice of an appeal to the Disciplinary Board shall be submitted in accordance with Article 33, and transmitted to the Chairperson of the Disciplinary Panel by the Registry. Upon receipt of a notice of appeal, the Chairperson of the Disciplinary Panel shall, within fourteen days, notify the President and the President of the Association of Counsel of the need to constitute the Disciplinary Board. Once constituted, the Chairperson of the Disciplinary Panel shall forward the notice of appeal, and all relevant material, to the Disciplinary Board.

Article 45

Summary Dismissal of Appeals

- (A) The Disciplinary Board may summarily dismiss an appeal if it is vexatious, misconceived, frivolous, lacking in substance or submitted after the deadline as set out in Article 44(B) has expired.
- (B) The Disciplinary Board shall provide a copy of the summary dismissal to the Registry, in accordance with Article 33, which shall transmit the same to the: i) Respondent; ii) Complainant, where possible; iii) Registrar; and, iv) Association of Counsel.

Article 46

Review of Appeals

- (A) The Disciplinary Board shall not receive nor consider any evidence that was not presented to the Disciplinary Panel, unless it considers that the interests of justice so require.
- (B) Any Respondent who, without reasonable justification or excuse, refuses or fails to comply with any order or requirement of the Disciplinary Board may be fined by the Disciplinary Board with a penalty of up to 10,000 USD.
- (C) In any case in which the Respondent has given notice of appeal to the Disciplinary Board, the sanctions set out in Article 42(C) and monetary restitution set out in Article 42(D) shall be deferred until the Disciplinary Board has disposed of the appeal with or without a hearing. The Disciplinary Board may at any time after it has been seized of the matter order a measure in accordance with Article 39(A).

Article 47
Findings and Sanctions on Appeal

- (A) The Disciplinary Board may affirm, reverse or modify the decision on appeal by the majority of its members. Its decision shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.
- (B) The decision of the Disciplinary Board is final. It shall not be subject to any remedy before the President or a Chamber of the Mechanism.
- (C) The Disciplinary Board shall notify its decision, in writing, to the: i) Complainant, where possible; ii) Registrar; and, iii) Respondent.
- (D) The decision of the Disciplinary Board shall be rendered in English or French and provided to the Respondent and Complainant, where possible, in a language that they understand, in accordance with Article 33.
- (E) If applicable, the Registry shall provide a copy of the decision to the Association of Counsel as well as the professional body regulating the conduct of the Respondent in their State of admission, or to the governing body of the university where Counsel is a law professor.
- (F) The Registry shall take such action as may be required to enforce any sanction(s).

Article 48
Costs

- (A) If the Disciplinary Panel or the Disciplinary Board sanctions a Respondent and those sanctions are final, the Disciplinary Panel or the Disciplinary Board may decide that the Respondent shall bear the costs of the procedure. These costs consist of necessary and reasonable travel costs of the Disciplinary Panel and/or the Disciplinary Board members in accordance with the Mechanism's practice for travel of Defence Counsel, and an office expense lump sum of up to 1,000 USD, to be determined by the Disciplinary Panel or the Disciplinary Board.
- (B) If the Disciplinary Panel or the Disciplinary Board dismisses a proceeding or complaint, and that dismissal is final, the Mechanism bears the costs of the proceedings, unless, under exceptional circumstances, the Disciplinary Panel or the Disciplinary Board decides that it is in the interests of justice that the Respondent should bear up to fifty per cent of the costs.
- (C) All costs shall be paid to the Registrar.

Article 49
Non bis in idem

Once a complaint has been finally adjudicated no further action shall be taken by the Disciplinary Panel or Disciplinary Board against the Respondent with respect thereto, except as provided in Article 48.