

**UNITED  
NATIONS**

---



International Residual Mechanism for Criminal  
Tribunals

MICT/6

14 November 2012

Original: English

---

**CODE OF PROFESSIONAL CONDUCT FOR  
DEFENCE COUNSEL APPEARING BEFORE THE MECHANISM**

**(MICT/6)**

**PART I: GENERAL PROVISIONS..... 3**

ARTICLE 1 DEFINITIONS..... 3

ARTICLE 2 ENTRY INTO FORCE ..... 4

ARTICLE 3 BASIC PRINCIPLES ..... 4

ARTICLE 4 CONFLICTS ..... 5

ARTICLE 5 AUTHENTIC TEXTS ..... 5

ARTICLE 6 AMENDMENT TO CODE..... 5

**PART II: OBLIGATIONS OF COUNSEL ..... 6**

ARTICLE 7 PURPOSE..... 6

SECTION 1: OBLIGATIONS OF COUNSEL TO CLIENTS ..... 6

ARTICLE 8 SCOPE OF REPRESENTATION ..... 6

ARTICLE 9 DECLINING, TERMINATING OR WITHDRAWING REPRESENTATION ..... 6

ARTICLE 10 COMPETENCE, INTEGRITY AND INDEPENDENCE ..... 7

ARTICLE 11 DILIGENCE ..... 8

ARTICLE 12 COMMUNICATION ..... 8

ARTICLE 13 CONFIDENTIALITY..... 8

ARTICLE 14 CONFLICT OF INTEREST..... 9

ARTICLE 15 SEXUAL RELATIONS WITH CLIENTS ..... 10

ARTICLE 16 CLIENT UNDER A DISABILITY ..... 10

ARTICLE 17 FEE-SPLITTING ..... 11

ARTICLE 18 GOOD FAITH IN ACCOUNTING..... 11

ARTICLE 19 COMPENSATION FOR COUNSEL NOT ASSIGNED BY THE REGISTRAR..... 11

SECTION 2: CONDUCT BEFORE THE MECHANISM ..... 12

ARTICLE 20 RULES OF THE MECHANISM ..... 12

ARTICLE 21 DISCRIMINATORY CONDUCT..... 12

ARTICLE 22 COMMUNICATIONS WITH CHAMBERS..... 12

ARTICLE 23 CANDOUR TOWARDS THE MECHANISM..... 13

ARTICLE 24 INTEGRITY OF EVIDENCE ..... 13

ARTICLE 25 MERITORIOUS PROCEEDINGS AND CLAIMS ..... 13

ARTICLE 26 COUNSEL AS WITNESS ..... 14

SECTION 3: OBLIGATIONS OF COUNSEL TO OTHERS..... 14

ARTICLE 27 FAIRNESS AND COURTESY ..... 14

ARTICLE 28 VICTIMS AND WITNESSES ..... 14

ARTICLE 29 UNREPRESENTED PERSONS ..... 15

ARTICLE 30 PROSPECTIVE CLIENTS..... 15

ARTICLE 31 REFERRAL FEES ..... 16

SECTION 4: SUPERVISORY AND SUBORDINATE CONDUCT..... 16

ARTICLE 32 RESPONSIBILITIES OF SUPERVISORY COUNSEL..... 16

ARTICLE 33 RESPONSIBILITIES OF SUBORDINATE COUNSEL..... 16

ARTICLE 34 RESPONSIBILITY FOR OTHER TEAM MEMBERS..... 16

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

ARTICLE 35 PROFESSIONAL MISCONDUCT ..... 17

ARTICLE 36 REPORTING MISCONDUCT..... 17

**PART III: DISCIPLINARY REGIME..... 18**

ARTICLE 37 PURPOSES OF DISCIPLINARY REGIME..... 18

ARTICLE 38 INHERENT POWERS OF THE MECHANISM..... 18

ARTICLE 39 FILINGS, DECISIONS AND ORDERS..... 18

ARTICLE 40 DISCIPLINARY PANEL..... 18

ARTICLE 41 SUBMISSION OF COMPLAINTS..... 19

ARTICLE 42 SUMMARY DISMISSAL OF COMPLAINTS ..... 19

ARTICLE 43 WITHDRAWAL OF COMPLAINTS ..... 19

ARTICLE 44 INVESTIGATION OF ALLEGED MISCONDUCT..... 20

ARTICLE 45	INTERIM SUSPENSION FROM PRACTICE .....	20
ARTICLE 46	CHARGES AGAINST COUNSEL AND INSTITUTION OF PROCEEDINGS AND HEARINGS .....	21
ARTICLE 47	DISCIPLINARY PANEL HEARING .....	21
ARTICLE 48	FINDINGS AND SANCTIONS .....	22
ARTICLE 49	APPEAL TO DISCIPLINARY BOARD .....	23
ARTICLE 50	COSTS .....	24
ARTICLE 51	NON BIS IDEM.....	25

## **PART I: GENERAL PROVISIONS**

### **Article 1 Definitions**

(A) In this Code, unless the context otherwise requires, the following terms shall mean:

- Advisory Panel:** The body established to assist the President and the Registrar in all matters relating to defence counsel under Rule 42(D) of the Rules;
- Association of Counsel:** An Association of Defence Counsel practicing before the Mechanism recognised by the Registrar in accordance with Rule 42(A)(iii);
- Client:** An accused, suspect, 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 Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism in force;
- Counsel:** Any person who is or has been engaged by a client and has filed a power of attorney with the Registrar; who is or has been assigned by the Registrar to represent a client; or who is in communication with a prospective client;
- Directive:** The directive entitled “Directive on the Assignment of Defence Counsel”, adopted on 14 November 2012;
- Firm:** Persons belonging to a private firm, a legal department of an organisation 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;

Mechanism: The International Residual Mechanism for Criminal Tribunals established by Security Council Resolution 1966 of 22 December 2010;

Parties: The Prosecution and the Defence;

Rules: The Rules of Procedure and Evidence of the Mechanism adopted on 8 June 2012, as subsequently amended;

Statute: The Statute of the International Residual Mechanism for Criminal Tribunals established by Security Council Resolution 1966 of 22 December 2010;

Team: Counsel, co-counsel, legal and non-legal associates and other persons who perform services for counsel for the purpose of representing a client before the Mechanism;

Tribunals: A term used to refer to the ICTY and the ICTR jointly.

- (B) In the event of any inconsistency between this Code and the Directive, the terms and provisions of the Directive prevail.
- (C) Any term not defined in this Code has the same meaning given to it by the Statute or by the Rules.
- (D) General provisions of this Code should not be read or applied in a restrictive way by reason of any particular or illustrative provisions.
- (E) In this Code, the masculine shall include the feminine and the singular the plural, and vice versa.

**Article 2**  
**Entry into Force**

This Code of Conduct shall enter into force on 14 November 2012.

**Article 3**  
**Basic Principles**

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

- (i) clients have the right to legal assistance of their own choosing;

- (ii) as legal practitioners, counsel shall maintain high standards of professional conduct;
- (iii) the role of counsel as advocates in the administration of justice requires them to act honestly, independently, fairly, skilfully, diligently, efficiently and courageously;
- (iv) 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;
- (v) counsel shall take all necessary steps to ensure that their actions do not bring proceedings before the Mechanism into disrepute; and
- (vi) counsel may be subject to disciplinary proceedings and should be informed of the circumstances under which such proceedings may take place and his rights and obligations in those proceedings.

#### **Article 4 Conflicts**

If there is any inconsistency between this Code and any other codes of practice and ethics governing counsel, the terms of this Code prevail in respect of counsel's conduct before the Mechanism.

#### **Article 5 Authentic Texts**

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.

#### **Article 6 Amendment to 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. Any amendment shall not operate to prejudice the rights of counsel or clients in any pending case.

## **PART II: OBLIGATIONS OF COUNSEL**

### **Article 7**

#### **Purpose**

The purpose of this Part is to provide for standards of conduct for counsel in the interests of the fair and proper administration of justice.

### **Section 1: Obligations of Counsel to Clients**

#### **Article 8**

##### **Scope of Representation**

- (A) Counsel shall advise and represent a client until his representation is terminated by the client 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 decision; 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 or 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 and, where counsel has been assigned to the client, the Directive. 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 9**

##### **Declining, Terminating or Withdrawing Representation**

- (A) Counsel shall not represent a client if:
  - (i) representation will result in conduct which is criminal, fraudulent or a violation of the Statute, the Rules, this Code or any other applicable law;
  - (ii) counsel's physical or mental condition materially impairs counsel's ability to represent the client; or

- (iii) counsel's representation is terminated by the client or withdrawn by the Registrar.
- (B) Counsel may terminate or request, if applicable, subject to the provisions of the Directive, withdrawal of his 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 his representation unless the obligation is fulfilled; or
  - (iv) other good cause for termination or withdrawal exists.
- (C) Subject to leave from the Chamber, if representation by counsel is to be terminated or withdrawn, counsel shall not do so until a replacement counsel is engaged by the client or assigned by the Registrar, or the client has notified the Registrar in writing of his intention to conduct his own defence.
- (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 fee that has not been earned.

## **Article 10**

### **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) never be influenced in the matter of his representation;
- (iv) preserve his own integrity and that of the legal profession as a whole;



- (v) never permit his independence, integrity and standards to be compromised by external pressures.

### **Article 11**

#### **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 his legal representation.

### **Article 12**

#### **Communication**

Counsel shall keep a 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 13**

#### **Confidentiality**

- (A) Whether or not counsel continues to represent a client, counsel shall preserve the confidentiality of the client's affairs and shall not reveal to any other person, other than to members of his team who need such information for the performance of their duties, information which has been entrusted to him in confidence or use such information to the client's detriment or to his own or another client's advantage.
- (B) Notwithstanding paragraph (A), counsel may reveal information which has been entrusted to him in confidence under the following circumstances:
  - (i) when the client has been fully consulted and knowingly consents; or
  - (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; or
  - (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; or
  - (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; and
  - (b) may result in death or substantial bodily harm to any person unless the information is disclosed.

**Article 14**  
**Conflict of Interest**

- (A) Counsel owes a duty of loyalty to a client. Counsel also has a duty to the Mechanism to act with independence in the interests of justice and shall put those interests before his 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, unless the Registrar determines, after consultation with the parties and taking into account the views of the Chamber, that there is no real possibility shown that a conflict between the former and present assignment exists.
- (D) Counsel or his firm 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;
  - (ii) representation of another client 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 his firm had formerly represented another client (“former client”), and the interests of the client are materially adverse to the interests of the former 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 does arise, counsel shall:

- (i) promptly and fully inform each potentially affected present and former client of the nature and extent of the 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.

**Article 15**  
**Sexual Relations with Clients**

Counsel shall not:

- (i) require or demand sexual relations with a client as a condition of professional representation;
- (ii) employ coercion, intimidation or undue influence in sexual relations with a client; or
- (iii) represent or continue to represent a client with whom counsel has or had sexual relations if such sexual relations may reasonably be expected to result in violations of this Code.

**Article 16**  
**Client under a Disability**

When a client's ability to make adequately considered decisions in connection with his representation is affected because of a mental disability, his status as a minor or any other reason, counsel shall:

- (i) inform the Judge or Chamber hearing the matter, if any, of the client's mental disability or status as a minor; and
- (ii) take such steps as are necessary to ensure the adequate legal representation of that client.

**Article 17**  
**Fee-splitting**

- (A) Fee-splitting arrangements, including but not limited to financial arrangements, between assigned counsel and their clients, relatives and/or agents of their clients are prohibited by the Mechanism.
- (B) Where assigned counsel are being requested, induced or encouraged by their clients to enter into fee-splitting arrangements, they shall advise their clients on the prohibition of such practice and shall report the incident to the Registrar forthwith.
- (C) Counsel shall inform the Registrar of any alleged fee-splitting arrangement by any member of his or any other defence team.
- (D) Following receipt of information regarding possible fee-splitting arrangements between assigned counsel and their clients, the Registrar shall investigate such information in order to determine whether it is substantiated.
- (E) Where assigned counsel is found to have engaged in a practice of fee-splitting or to have entered into a fee-splitting arrangement with his client, the Registrar shall consider taking action in accordance with the Directive.
- (F) Where the Registrar has granted leave, counsel may provide their clients with equipment and materials necessary for the preparation of their defence.

**Article 18**  
**Good Faith in Accounting**

Counsel should account in good faith for the time spent working on a case and maintain and preserve detailed records of time spent.

**Article 19**  
**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 nor 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 20**

#### **Rules of the Mechanism**

Counsel 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 21**

#### **Discriminatory Conduct**

Counsel shall not engage directly or indirectly in discriminatory conduct in relation to any other person because of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion.

### **Article 22**

#### **Communications with Chambers**

Unless permitted by the Rules, this Code or the Judge or Chamber hearing the matter, counsel shall not:

- (i) make contact with a Judge or Chamber in relation to the merits of a particular case, except within the proper context of the proceedings in the case; or
- (ii) submit exhibits, notes or documents to a Judge or Chamber without transmitting them through the Registry, except in an emergency or when at the same time transmitted to the Registry.

**Article 23**  
**Candour Towards the Mechanism**

- A) Counsel 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 24**  
**Integrity of Evidence**

- (A) Counsel 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 25**  
**Meritorious Proceedings and Claims**

Counsel shall not bring or defend a proceeding or action unless there is a basis for doing so that is not frivolous. It shall not be considered frivolous for counsel to defend a proceeding so as to require that every element of the case be established.

**Article 26**  
**Counsel as Witness**

Counsel shall not act as an advocate 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 if that counsel does not so act.

**Section 3: Obligations of Counsel to Others**

**Article 27**  
**Fairness and Courtesy**

- (A) Counsel shall demonstrate respect, integrity and courtesy for officials and staff members of the Mechanism and for all persons who facilitate and participate in the proceedings.
- (B) Counsel shall not seek to influence or communicate with a Judge, official, or staff member of the Tribunals or Mechanism by means prohibited by the Statute, Rules, this Code or any other applicable law.
- (C) Counsel shall recognise the representatives of the parties as professional colleagues and shall act fairly, honestly and courteously towards them.
- (D) Counsel shall not communicate with the client of another counsel without the authorisation of that client's counsel unless permitted under the Rules, this Code or any other applicable law.

**Article 28**  
**Victims and Witnesses**

- (A) Counsel shall not use any means that have no substantial purpose other than to embarrass, delay or burden victims and witnesses, or use coercive or other methods of obtaining evidence that violate the Statute, the Rules or this Code.
- (B) Counsel shall not make any payments in monies or assets to witnesses or potential witnesses for the purpose of unduly influencing or inducing such witnesses or potential witnesses.

**Article 29**  
**Unrepresented Persons**

- (A) Counsel communicating, on behalf of a client, with a person who is not represented by counsel (“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 his 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 his client.
- (B) Whether or not a conflict exists or may exist with the interests of counsel’s client, counsel shall inform the unrepresented person of:
- (i) the role counsel plays in the matter as a representative of a suspect or accused;
  - (ii) the person’s right to counsel under the Rules; and
  - (iii) the nature of legal representation in general.

**Article 30**  
**Prospective Clients**

- (A) Counsel shall not contact or solicit work from a prospective client directly or indirectly, unless the prospective client, his relatives or acquaintances have made known to counsel a desire to be contacted.
- (B) In any contacts made in compliance with paragraph (A) hereof, 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, his relatives or acquaintances about the counsel or another counsel’s services.



**Article 31**  
**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 32**  
**Responsibilities of Supervisory Counsel**

- (A) Counsel having direct supervisory authority over another counsel in his team shall make reasonable efforts to ensure that the other counsel adheres to this Code.
- (B) Counsel shall be responsible for another counsel'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 other counsel, 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.

**Article 33**  
**Responsibilities of Subordinate Counsel**

- (A) Counsel is bound by this Code notwithstanding that counsel acted at the direction of another counsel.
- (B) Counsel reasonably acting in accordance with a supervisory counsel's reasonable resolution of an arguable question of professional duty shall not be considered to have violated this Article.

**Article 34**  
**Responsibility for Other Team Members**

- (A) Counsel having direct supervisory authority over other members of his team shall make reasonable efforts to ensure that such members' conduct is compatible with the professional obligations of counsel.

(B) Counsel shall be responsible for the conduct of other members of his team who provide services for counsel that would be a 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 team member, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

## **Section 5: Maintenance of the Integrity of the Profession**

### **Article 35**

#### **Professional Misconduct**

It shall be professional misconduct for counsel, *inter alia*, to:

- (i) violate or attempt to violate the Statute, the Rules, this Code or any other applicable law, or to knowingly 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 counsel's honesty, trustworthiness or fitness as counsel;
- (iii) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (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 counsel's qualifications to practice before the Mechanism as set out in the Rules and, where counsel has been assigned to a client, the Directive.

### **Article 36**

#### **Reporting Misconduct**

In accordance with the disciplinary regime set out in Part Three of this Code, counsel shall inform the Disciplinary Panel if counsel knows that another counsel has breached this Code or has otherwise engaged in professional misconduct.

## **PART III: DISCIPLINARY REGIME**

### **Article 37**

#### **Purposes of Disciplinary Regime**

The purposes of this Part are:

- (A) to protect clients and other individuals, and particularly witnesses from counsel who have not discharged, will not discharge or are unlikely to discharge their professional responsibilities and to provide every person the right to submit a complaint about the conduct of counsel;
- (B) to ensure compliance by individual counsel 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 procedural fairness is applied to any disciplinary proceedings taken against counsel.

### **Article 38**

#### **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 39**

#### **Filings, Decisions and Orders**

Unless otherwise provided in this disciplinary regime, all filings, decisions and orders in relation to the disciplinary regime shall be submitted in confidence to, or transmitted by, the Registry in a working language of the Mechanism. The Registry shall maintain all records for the purposes of this disciplinary regime.

### **Article 40**

#### **Disciplinary Panel**

- (A) A Disciplinary Panel shall deal with all matters relating to counsel ethics. The 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;

- (iii) the Registrar of the Mechanism, or a senior Registry legal official designated by him.
- (B) The members of the Panel shall select at its first meeting a counsel chairperson from amongst its members. The chairperson shall be appointed for a term of two years.
- (C) Except as otherwise provided by this Code, the Panel may determine its own procedure for the filing of briefs and presentation of argument.
- (D) Complaints concerning the conduct of a counsel or a member of his team relating to matters before the Mechanism and specified in Article 35 shall be submitted to the Chairperson of the Panel in accordance with Article 39. Where the Panel itself has reasonable grounds to suspect that counsel or a member of his team has engaged in such conduct, it may commence, *proprio motu*, an investigation into the matter.

#### **Article 41** **Submission of Complaints**

- (A) Complaints may be submitted by a client, a party to proceedings before the Mechanism, or any other person, organisation or State whose rights or interests could be substantially affected by an alleged misconduct.
- (B) The complaint, which shall be in writing and submitted in accordance with Article 40, shall identify the complainant and the counsel against whom the complaint is made, and describe in sufficient detail the alleged misconduct of the counsel.
- (C) The complaint shall be submitted within twelve months after the alleged misconduct is brought to the attention of the complainant or within twelve months after the complainant should have reasonably known about the existence or occurrence of the alleged misconduct. The Disciplinary Panel may pursue complaints after these deadlines if the matter is of general importance for the Mechanism or in the interests of justice in a pending case.

#### **Article 42** **Summary Dismissal of Complaints**

In consultation with the Duty Judge of the Mechanism, the Disciplinary Panel may dismiss a complaint if it is vexatious, misconceived, frivolous, lacking in substance or out of time.

#### **Article 43** **Withdrawal of Complaints**

- (A) By notice in writing served on the Chairperson of the Disciplinary Panel, a complaint may be withdrawn by the complainant in writing. The withdrawal of a complaint does not impact

upon the Panel's competencies under Article 40(D) to investigate the matter raised in the complaint.

- (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; or action being taken on any other complaint made with respect to that matter.

#### **Article 44**

##### **Investigation of Alleged Misconduct**

- (A) The Disciplinary Panel shall conduct, as soon as possible, an investigation into the alleged misconduct specified in Article 35, provided that a complaint is not summarily dismissed.
- (B) In the investigation of the conduct, the Panel:
  - (i) shall send particulars of the conduct to the respective counsel or team member ("respondent") in a language he understands, and invite him to submit a written explanation in response to the complaint;
  - (ii) may order, by notice served in writing, the respondent to:
    - (a) produce, at any time and place specified in the notice, any books, documents, papers, accounts or records that are in his possession or under his 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.
- (C) The Disciplinary Panel may inspect any book, document, paper, account or record produced in accordance with paragraph (B)(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 of counsel involving allegations of fee-sharing, the Panel may request the Registrar to provide information on his related inquiries into the financial status of an accused, if any.
- (D) Any respondent who, without reasonable justification or excuse, refuses or fails to comply with any order or requirement of the Disciplinary Panel under this Article may be fined by the Disciplinary Panel with a penalty of up to 10,000 USD.

#### **Article 45**

##### **Interim Suspension from Practice**

- (A) At any time after a complaint against a respondent has been filed or the Disciplinary Panel has commenced an investigation *proprio motu*, if there are reasonable grounds to conclude that

the alleged misconduct is likely to cause immediate and irreparable harm to the interests of justice, a party to the proceedings, a witness, the respondent's client or any other prospective client, the Panel may, without prior notice to the respondent, issue a reasoned order that the respondent be suspended from practising before the Mechanism until the charge has been heard and disposed of.

- (B) If counsel is representing a suspect or accused while the Disciplinary Panel considers an order for suspension, the Panel must obtain approval from the Presiding Judge of the Chamber in front of which counsel appears before issuing an order.
- (C) The respondent, or his client, may at any time apply to the President of the Mechanism for the revocation of the order. The President of the Mechanism shall review such application within seven days after it has been received and may grant or refuse the application as he deems fit.

#### **Article 46**

##### **Charges against Counsel and Institution of Proceedings and Hearings**

- (A) The Disciplinary Panel shall inquire into each particularised allegation, and if there are reasonable grounds that the counsel has committed misconduct, formulate charges against counsel.
- (B) The Disciplinary Panel may order, if it is in the interests 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, acts or omissions.
- (C) During the course of the inquiry, the respondent shall be provided the opportunity to file a reply to the allegation in the charge in accordance with the rules of the Disciplinary Panel.

#### **Article 47**

##### **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 hearing in public at the seat of the Mechanism unless it decides, *proprio motu* or upon application by the respondent, to exclude the public.
- (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 misconduct and its effect on him.

- (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 48**

#### **Findings and Sanctions**

- (A) The findings of the Disciplinary Panel on each charge shall be rendered, in consultation with the Duty Judge of the Mechanism, by the majority of its members and shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.
- (B) The Disciplinary Panel may conclude its proceedings without a finding of misconduct, or dismiss any charge. The Panel may suspend or dismiss a complaint, before, during or after the investigation of the complaint, if it is in the interests of justice to do so or it fails to find reasonable grounds to conclude that the respondent committed the alleged misconduct.
- (C) A respondent against whom a charge of professional misconduct has been found proved beyond a reasonable doubt may be sentenced by the Disciplinary Panel to be, either alternatively or cumulatively:
  - (i) admonished by the Disciplinary Panel;
  - (ii) given advice by the Disciplinary Panel as to his future conduct;
  - (iii) publicly reprimanded by the Disciplinary Panel;
  - (iv) ordered to pay a fine of up to 50,000 USD to the Mechanism;
  - (v) suspended from practising before the Mechanism for an appropriate fixed period of time not exceeding two years;
  - (vi) banned from practising before the Mechanism.
- (D) In addition to any of the sanctions imposed under paragraph (C), where the Disciplinary Panel finds, beyond a reasonable doubt that the respondent's misconduct has resulted in:

- (i) the loss or misuse of the Mechanisms' legal aid funds, or that additional legal aid funds must be expended as a result of such misconduct; or
- (ii) where the complainant is a privately paying client, a financial loss on the part of the client

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 such expended funds or fees paid. In determining the amount to be reimbursed, the Disciplinary Panel shall have regard to the amount of compensation for services actually rendered by the respondent that the Panel considers reasonable for the respondent to retain.

- (E) In determining the sentence imposed, the Disciplinary Panel must take into account any 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 his conduct and that provision is inconsistent with this Code. A sentence must be proportionate in view of the misconduct.
- (F) The decision of the Disciplinary Panel shall be notified in writing to the complainant, if any, and to the respondent in a language the respondent understands.
- (G) A copy of the decision shall be communicated to the Association of Counsel as well as the professional body regulating the conduct of the respondent in his State of admission, or to the governing body of the university where counsel is a law professor.
- (H) The Registry shall take such action as may be required to enforce the sentence.

#### **Article 49**

#### **Appeal to Disciplinary Board**

- (A) In cases where one or more charges of professional misconduct have been proved, the respondent may file an appeal with the Disciplinary Board within fourteen days of notification of the decision of the Disciplinary Panel.
- (B) In cases where the Disciplinary Panel has decided that a charge has not been proved, the Registrar may file an appeal with the Disciplinary Board within fourteen days of notification of the decision to the respondent.
- (C) The Disciplinary Board may hear appeals filed by the respondent or the Registrar after the fourteen day deadline if the matter is of general importance for the Mechanism or in the interests of justice in a pending case.



- (D) The Disciplinary Board shall consist of:
- (i) three Judges to be appointed by the President of the Mechanism;
  - (ii) two members of the Association of Counsel, to be appointed for a two year period, and in accordance with the Association's statute. No member of the Disciplinary Panel shall be a member of the Disciplinary Board at the same time.
- (E) No Judge who sat as a member of the Chamber before which the respondent appeared shall be eligible to sit as a member of the Disciplinary Board on the hearing or determination of any charge against the respondent for professional misconduct.
- (F) The members of the Disciplinary Board shall, at its first meeting, select a chairperson from amongst their number.
- (G) Except as otherwise provided by this Code, the Disciplinary Board may determine its own procedure for the filing of briefs and presentation of argument. During its review, however, the Disciplinary Board shall not receive or consider any evidence that was not presented to the Disciplinary Panel, unless it considers that the interests of justice so require.
- (H) The Disciplinary Board may dismiss an appeal if it is vexatious, misconceived, frivolous, lacking in substance or out of time.
- (I) Any respondent who, without reasonable justification or excuse, refuses or fails to comply with any order or requirement of the Disciplinary Board under this Article may be fined by the Board with a penalty of up to 10,000 USD.
- (J) The Disciplinary Board may confirm, reverse or modify the decision on appeal.
- (K) In any case in which the respondent has given notice of appeal to the Disciplinary Board, the actions set out in Article 48(G) shall be deferred until the appeal has been disposed of by the Disciplinary Board with or without a hearing. The Board may at any time after it was seized order a measure in accordance with Article 45(A). Article 45(B) does not apply.
- (L) The decision of the Disciplinary Board is final, and shall in particular not be subject to any remedy before the President or a Chamber of the Mechanism.

## **Article 50**

### **Costs**

- (A) If a respondent is sentenced by the Disciplinary Panel, and an appeal is not filed, or by the Disciplinary Board, the respondent shall bear the costs of the procedure. These costs consist of necessary and reasonable travel costs of the Panel or Board members in accordance with

the Mechanism's practice for travel of defence counsel, if any, and an office expenses lump sum of up to 1,000 USD to be determined by the Disciplinary Panel or Board.

- (B) If a proceeding or complaint is dismissed by the Disciplinary Panel, and an appeal is not filed, or by the Disciplinary Board, the Mechanism bears the costs of the proceedings, unless, under exceptional circumstances, the Panel or Board decides that it is in the interests of justice that the respondent should bear up to fifty percent of the costs.
- (C) All costs shall be paid to the Registrar.

**Article 51**  
**Non bis idem**

Once a proceeding or complaint has been finally adjudicated by:

- (i) the Disciplinary Panel, and an appeal has not been filed to the Disciplinary Board within fourteen days of notification, save as provided by Article 49(C); or
- (ii) the Disciplinary Board;

no further action shall be taken by the Disciplinary Panel or Disciplinary Board against the respondent with respect to the subject matter of the proceeding or complaint.