



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**Code of Professional Conduct
for Defence Counsel and Legal Representatives of Victims
appearing before the Special Tribunal for Lebanon**

(adopted 14 December 2012)
(amended on 29 January 2019)

STL/CC/2012/03/Rev.1

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I – PREAMBLE

I, the President of the Special Tribunal for Lebanon,

Considering Rule 60(C) of the Rules of Procedure and Evidence (“Rules”), as adopted by the Plenary meeting of Judges on 20 March 2009, as amended, under which on 28 February 2011 the previous President published a Code of Professional Conduct for Counsel Appearing Before the Tribunal, enunciating the principles of professional ethics to be observed by all Counsel who address the Tribunal on behalf of the Prosecution, the accused, or victims recognised pursuant to the Rules, as well as Counsel whose work outside the courtroom directly supports the in-court representation of an accused or of victims and whose conduct may impact the integrity and fairness of the Tribunal’s proceedings (“Joint Code”);

Considering that the Joint Code establishes common professional standards which are overarching duties of all Counsel;

Considering that in relation to Defence Counsel and Legal Representatives of Victims there are specific professional standards which need to be set out in detail;

Considering further that, whereas Article 54 of the Joint Code establishes a framework for investigating and sanctioning Counsel who fail to meet these common standards, this framework requires further specificity for complaints against Defence Counsel and Legal Representatives of Victims that are referred to respectively the Head of the Defence Office or the Registrar under Article 54(b) of the Joint Code;

Considering that on 21 February 2012 a Code of Professional Conduct for Defence Counsel appearing before the Special Tribunal for Lebanon was adopted;

Considering that the Defence Code establishes professional standards and a disciplinary regime applicable only to Defence Counsel and not to Legal Representatives of Victims;

Considering that the same standards and regime should be applied *mutatis mutandis* to Legal Representatives of Victims;

Following submissions by the Head of the Defence Office and the Registrar and consultation with the Prosecutor pursuant to Rule 60(C) of the Rules;

Hereby promulgate this Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims appearing before the Special Tribunal for Lebanon.

II – GENERAL PROVISIONS

Article 1 Definitions

- A. In the Code, unless the context otherwise requires, the terms shall have the same definitions as those set out in Rule 2 of the Rules. Those terms which are not defined in Rule 2 of the Rules shall mean:

Abuse of authority:	Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority;
Client:	In respect of Defence Counsel, a detainee, suspect or accused who has been assigned or appointed Counsel by the Head of the Defence Office for the purpose of his representation before the Tribunal; and in respect of Legal Representatives of Victims, a person who has been designated one or more Legal Representatives by the Registrar pursuant to the Victims’ Directive for the purpose of his representation before the Tribunal;
Code:	The Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims appearing before the Special Tribunal for Lebanon;
Counsel:	Defence Counsel or Legal Representatives of Victims;
Defence Code:	The Code of Professional Conduct for Defence Counsel appearing Before the Special Tribunal for Lebanon, adopted by the President on 21 February 2012;
Defence Counsel:	Counsel engaged by a detainee, suspect or an accused and appointed by the Head of the Defence Office pursuant to Rule 58 of the Rules; Counsel assigned to a detainee, suspect or an accused by the Head of the Defence Office pursuant to Rule 59 of the Rules; Counsel assigned to an accused by the Head of the Defence Office

to represent the interests and rights of this accused pursuant to Article 22(2)(c) of the Statute and Rule 57(D)(viii) of the Rules for the purpose of proceedings *in absentia*; or Counsel in communication with a detainee, suspect or accused as a Prospective Client, whether as Lead Counsel, Co-Counsel or other Counsel assisting the Defence;

Defence Directive:	Directive on the Assignment of Defence Counsel, as subsequently amended;
Defence Office:	The Office provided for in Article 13 of the Statute;
Defence Team:	The group of persons conducting the representation of a detainee, suspect or accused, or representing the interests and rights of an <i>in absentia</i> accused, in the preparation and presentation of a particular case before the Tribunal including the Lead Counsel, Co-Counsel and persons assisting Counsel;
Discrimination:	Discrimination is any unfair treatment or arbitrary distinction based on a person's race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, social origin or other status. Discrimination may be an isolated event affecting one person or a group of persons similarly situated, or may manifest itself through harassment or abuse of authority;
Harassment:	Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment;
Joint Code:	The Code of Professional Conduct for Counsel Appearing before the Tribunal, published by the President on 28 February 2011;
Lead Counsel:	A person assigned or appointed by the Head of the Defence Office as Lead Defence Counsel or designated by the Registrar as Lead Legal Representative of Victims;
Legal Representative of	Legal Representative of Victims designated by the Registrar to represent victims before the Tribunal, including where designated

Victims:	under Article 18 or Article 39(C) of the Victims' Directive;
Legal Team:	Defence Team or Victims' Team;
National authority:	The professional or administrative body regulating the conduct of Counsel in the Counsel's home jurisdiction;
Office:	Collection of persons belonging to a private company, a legal department of a State or an organisation or a legal services organisation;
Participant:	A victim participating in the proceedings or a Legal Representative of Victims, the Head of the Defence Office, or the Victims' Participation Unit;
Prospective Client:	A person who either falls within, or Counsel reasonably believes in the future could fall within, the definition of a Client described in this Article and whom Counsel does not currently represent;
Sexual harassment:	Sexual harassment is any unwelcome sexual advance, request for sexual favor, verbal or physical conduct or gesture of a sexual nature, or any other behavior of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. While typically involving a pattern of behavior, it can take the form of a single incident. Sexual harassment can occur regardless of whether the offender considers the behavior to be offensive or not. Sexual harassment may also occur outside the workplace and/or outside working hours. Sexual harassment may occur between persons of the opposite or same sex. Any person can be either a victim or an offender;
Victims' Directive:	The Directive on Victims' Legal Representation, as subsequently amended;
Victims' Participation Unit:	The Victims' Participation Unit established pursuant to Rule 51 of the Rules;
Victims' Team:	The group of persons conducting the representation of victims participating in the proceedings in the preparation and presentation of a particular case before the Tribunal including the Lead Legal Representative of Victims, Co-Legal Representative of Victims and persons assisting the Legal Representatives of Victims;

Witness: A person who gives or is due to give testimony before the Pre-Trial Judge or a Chamber, excluding the accused.

- B. In this Code, the masculine shall include the feminine and the singular the plural, and vice versa.
- C. In this Code, where the phrase “Head of the Defence Office or the Registrar, as appropriate” is used, it means the Head of the Defence Office for matters concerning Defence Counsel, and the Registrar for matters concerning Legal Representatives of Victims.

Article 2

Entry into force

- A. This Code shall enter into force on 21 December 2012.
- B. This Code revokes and replaces the Defence Code.

Article 3

Authentic texts

The Arabic, 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 Defence or Victims’ Directive, as appropriate, and this Code shall prevail.

Article 4

Interpretation and application of the Code

- A. In the event of any inconsistency between any provisions of this Code and those of the following documents in relation to work carried out before the Tribunal:
 - (i) the Agreement, the Statute, the Rules or the Joint Code, the provisions of the Agreement, Statute, Rules or Joint Code shall prevail; or,
 - (ii) any other codes of practice and ethics binding Defence Counsel, the provisions of this Code shall prevail.

- B. Absent any inconsistency, this Code shall be interpreted in a manner consonant with, in order of preference: the Agreement, Statute, Rules, decisions of the Disciplinary Board and Disciplinary Appeals Board and relevant provisions and decisions from other international courts or stemming from the other codes of practice or ethics by which Counsel may be bound.

Article 5 Amendments

This Code may be amended by the President after consultation with the Head of the Defence Office, the Prosecutor and the Registrar. Any amendments made shall not apply retroactively unless they are in favour of Counsel.

Article 6 Scope

- A. Notwithstanding the reference to Counsel contained herein, the obligations in this Code shall be binding on all members of the Legal Team, unless the specific nature of the obligation means that it may only be fulfilled by Counsel.
- B. Lead Counsel is responsible for any conduct in violation of this Code by members of the Legal Team, when he:
- (i) orders or, with knowledge of the specific conduct, approves of the conduct involved; or,
 - (ii) has direct supervisory authority over such member of the Legal Team and knows, or should have known with ordinary diligence, of the conduct at a time when its consequences could be avoided or mitigated, but fails to take reasonable remedial action.
- C. Notwithstanding the reference to Client contained herein, the provisions in this Code shall be applicable *mutatis mutandis* to Defence Counsel assigned by the Head of the Defence Office to an *in absentia* accused.

III – OBLIGATIONS OF COUNSEL

Article 7 Duration of representation agreement

- A. A representation agreement is established when:
- (i) Defence Counsel is engaged by a Client and appointed by the Head of the Defence Office or is assigned by the Head of the Defence Office to represent such a person or the interests and rights of an *in absentia* accused; or
 - (ii) A Legal Representative of Victims is designated by the Registrar to represent victims.
- B. Counsel may refuse to enter into a representation agreement without giving reasons, regardless of the person requesting such representation.
- C. Counsel shall refuse a representation agreement where Counsel believes that:
- (i) representation will result in conduct which is criminal, fraudulent or in breach of the applicable law;
 - (ii) it could cause a conflict of interest as defined in Article 11 of this Code;
 - (iii) he or a member of his Office will be called to appear as a witness during these proceedings, unless:
 - (a) the testimony relates to the nature and value of legal services rendered in the case; or,
 - (b) the testimony relates to an issue which Counsel honestly and reasonably believes will not be contested by either party.
- D. Defence Counsel shall continue to act in accordance with the representation agreement until the case before the Tribunal has been finally determined, including all appeals and, where applicable, review, unless:
- (i) Defence Counsel has been withdrawn by the Head of the Defence Office in conformity with Article 34 of the Defence Directive; or,
 - (ii) Defence Counsel has terminated the representation agreement under paragraphs F and G of this Article.
- E. A Legal Representative of Victims shall continue to act in accordance with the representation agreement until the case before the Tribunal has been finally determined, including all appeals and, where applicable, review, unless:
- (i) the Legal Representative of Victims' designation has been withdrawn in conformity with Article 40 of the Victims' Directive;
 - (ii) all of the victims represented by the Legal Representative of Victims have ceased to participate in the proceedings; or,

- (iii) the Legal Representative of Victims has terminated the representation agreement under paragraph G of this Article.
- F. Defence Counsel may terminate the representation agreement if such termination may be accomplished without material adverse effect on the interests of the Client and where good cause is shown, or if his Client:
 - (i) has used Defence Counsel's services to perpetrate a crime or fraud, or persists in a course of action involving Defence Counsel's services that he reasonably believes is criminal or fraudulent; or,
 - (ii) insists upon pursuing an objective that Defence Counsel reasonably believes to be unlawful, improper, or an abuse of process; or,
 - (iii) fails to substantially fulfil an obligation to Defence Counsel regarding his fees and has been given reasonable warning that Defence Counsel will seek termination of the representation agreement unless the obligation is fulfilled.
- G. Counsel may also terminate the representation agreement if his physical or mental condition materially impairs his ability to act in accordance therewith.
- H. Defence Counsel who terminates a representation agreement under paragraphs (D) and (F) shall continue to act in accordance therewith until his request to terminate has been accepted by the Head of the Defence Office and he has been replaced. Defence Counsel's duties towards the Client continue until this replacement, except for those duties which continue to exist under this Code.
- I. Upon termination, Counsel being replaced shall take all reasonable steps to protect the Client's interests and shall prepare a document to accompany the transferred case file, describing in appropriate detail:
 - (i) ongoing work, projects and deadlines;
 - (ii) defence or case theory, as appropriate, and strategic issues;
 - (iii) a summary of the pertinent legal and factual issues in the case; and,
 - (iv) an overview of the structure of the case file.

Article 8

Scope of representation

- A. Counsel shall not advise or assist a Client to engage in conduct which he knows is criminal, fraudulent or in breach of the applicable law, but 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.
- B. Defence Counsel who represents a Client who is being tried in his presence shall:

- (i) exercise professional judgment, render open and honest advice to the Client and act at all times with fairness, integrity and candour towards the Client;
 - (ii) consult with the Client regarding all substantial aspects of his representation;
 - (iii) abide by a Client's fully informed decisions concerning the objectives of representation, which plea should be entered, whether a plea agreement should be entered into, whether to testify and whether to appeal a judgement of conviction and/or sentence; and
 - (iv) act at all times in what he perceives to be the best interests of his Client.
- C. Defence Counsel who is assigned to an *in absentia* accused pursuant to Article 22(2)(c) of the Statute and Rule 57(D)(viii) of the Rules shall set the scope of this representation, subject to the limitations that Defence Counsel:
- (i) shall not enter any plea on behalf of the accused;
 - (ii) shall undertake all necessary investigations to prepare for the defence of the accused; and
 - (iii) shall make all submissions on the law in the perceived best interest of the accused.
- D. Defence Counsel who is assigned to an *in absentia* accused shall consider the effect of any action he takes on the position of the accused in the current or future proceedings and may undertake any other action in the perceived best interests of the accused, including, but not limited to:
- (i) drawing the Trial Chamber's attention to any defence available upon the evidence as a matter of law in the relevant factual circumstances;
 - (ii) seeking from the Trial Chamber any such orders as he considers necessary to enable him to properly carry out the obligations in paragraphs (C)(ii) and (iii) of this Article;
 - (iii) calling any witnesses who he considers to be in favour of the accused; and,
 - (iv) examining witnesses against the accused.
- E. Defence Counsel who is assigned to an *in absentia* accused shall not have contact with the accused. If Defence Counsel is contacted, directly or indirectly, by the *in absentia* accused he shall, due to his awareness of the risk such contact may pose to the accused's right to a retrial, and without this act amounting to acceptance of Defence Counsel by the *in absentia* accused:
- (i) refuse to discuss any element of the case with the *in absentia* accused; and,
 - (ii) refer the accused to the Head of the Defence Office to receive independent legal advice.
- F. A Legal Representative of Victims shall:
- (i) exercise professional judgment, render open and honest advice to his Clients and act at all times with fairness, integrity and candour towards his Clients;

- (ii) consult to the extent possible with all his Clients regarding the substantial aspects of their representation and their views and concerns on questions arising in or related to the proceedings;
- (iii) faithfully express the views and concerns of all his Clients and abide by their fully informed decisions concerning the objectives of the representation, unless fundamental disagreement which leads to a potential conflict of interest exists among the Clients, and cannot be reconciled or resolved; and,
- (iv) act at all times in what he perceives to be the best interests of his Clients.

Article 9

Standards of representation

- A. Counsel shall provide effective representation of his Client before the Tribunal. Representation is ineffective where one or several acts or omissions of Counsel or of a member of the Legal Team, materially compromise, or might irreparably compromise, the fundamental interests or rights of the Client.
- B. Complaints relating to ineffective representation shall follow the Effective Representation Regime set out in Article 32 to Article 34 of this Code.

Article 10

Counsel-Client privilege

- A. Counsel shall at all times preserve the confidentiality of the Client's affairs and shall not reveal to any other person, other than members of the Legal Team, the content, existence or scope of any communications made in the context of the professional relationship with his Client.
- B. Counsel may reveal information falling within paragraph (A) for those reasons set out in Rule 163 of the Rules or where it is essential to establish a claim or defence on behalf of Counsel in a dispute with his Client or in criminal or disciplinary proceedings in which the Client and Counsel are involved, or where disclosure is required for compliance with Article 11(C)(ii) of this Code.
- C. Where a Legal Representative of Victims who represents more than one Client receives information falling within paragraph (A) from one of his Clients, he shall not communicate it to his other Clients without the consent of the Client who communicated the information. Where consent is provided and such information is communicated to

other Clients of the same Legal Representative of Victims this shall not constitute a waiver of legal professional privilege under Rule 163 of the Rules.

- D. Before meeting two or more of his Clients together, a Legal Representative of Victims shall inform and remind them of their entitlement to be met separately. The consent of two or more Clients to be met together by their Legal Representative of Victims may be inferred from the circumstances.
- E. All correspondence between two or more Defence Counsel or between two or more Legal Representatives of Victims shall be presumed confidential and privileged. Any exception to this principle shall be clearly stated at the outset.

Article 11 **Conflict of interest**

- A. Counsel owes a primary duty of loyalty to his Client and shall exercise all care to ensure that no potential or actual conflict of interest arises.
- B. Defence Counsel shall not advise, represent or act on behalf of two or more Clients in the same matter.
- C. A Legal Representative of Victims who represents more than one Client:
 - (i) shall represent the interests of all Clients equally and not provide preferential treatment to any individual or group of Clients among those represented; and,
 - (ii) shall immediately inform the Registrar if he has reason to believe that a conflict of interest exists among his Clients which relates to their participation in proceedings before the Tribunal. Where doing so with sufficient grounds requires revealing information which is protected by Counsel-Client privilege, this shall not amount to a voluntary disclosure to a third party within the meaning of Rule 163 of the Rules.
- D. Counsel shall not advise, represent or act on behalf of a Client in a matter before the Tribunal if:
 - (i) the matter is the same or substantially related to another matter in which Counsel or his Office had advised, represented or acted on behalf of a former Client and the interests of the new Client are materially adverse to the interests of the former Client; or,
 - (ii) he participated personally and substantially in the matter as an official or staff member of the United Nations International Independent Investigation Commission or Tribunal.

- E. Counsel shall not represent a Client with respect to a matter if his professional judgment on behalf of the Client will be, or may reasonably be expected to be, adversely affected by Counsel's:
- (i) responsibilities to, or interests in, a third party; or,
 - (ii) financial, business, property or personal interests.
- F. Where a potential conflict of interest arises as set out under paragraph (D) or (E) of this Article, at any stage of proceedings, Counsel shall inform his new Client and/or his former Client, as well as the Head of the Defence Office or the Registrar as appropriate of the nature and extent of the conflict, and:
- (i) promptly take all steps necessary to remove the conflict; or,
 - (ii) obtain the full and informed consent of all potentially affected Clients to continue to represent the new Client, assess whether such consent is likely to irreversibly prejudice the administration of justice including the Client's right to a fair trial, and inform the Head of the Defence Office or the Registrar as appropriate of the consent obtained and his assessment of its effect.

Article 12

Counsel-Client relationship

- A. Defence Counsel shall inform the Head of the Defence Office where he reasonably believes that a Client's ability to make decisions concerning his representation is impaired.
- B. Where a Legal Representative of Victims reasonably believes that a Client's ability to meaningfully participate in the proceedings, including his ability to assist Counsel, is impaired, the Legal Representative of Victims shall inform the Registrar.
- C. Counsel shall not engage in any improper or inappropriate conduct, coercion, intimidation or exercise any other undue influence in his relations with a Client.
- D. Where Counsel is requested, induced or encouraged to violate the obligations under this Code, Counsel shall advise the Client of the prohibition of such conduct.

Article 13 Prospective Clients

- A. Counsel shall not contact a Prospective Client, his relatives or acquaintances directly or indirectly in an attempt to solicit work.
- B. Subject to Article 8(E) of this Code, Defence Counsel may communicate with a Prospective Client with a view to entering into a representation agreement with him if the Client voluntarily requests such contact, unless Defence Counsel knows or has reason to know that the Prospective Client has entered into a representation agreement with another Defence Counsel as set out in Article 7(A) of this Code and the other Defence Counsel has not given his consent to such communication.
- C. Counsel shall not:
 - (i) give false, misleading or deceptive information to a Prospective Client, his relatives or acquaintances about the Counsel's or another Counsel's services;
 - (ii) 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; or,
 - (iii) pay any person a fee, commission or any other compensation as a consideration for referring a Client to him.

Article 13 bis Prohibition of discrimination, harassment and abuse of authority

Counsel shall not engage in or condone any conduct which would constitute discrimination, harassment, including sexual harassment, and abuse of authority in the workplace or in connection with work.

Article 14 Fees of retained Defence Counsel

- A. Defence Counsel shall inform in writing any privately retained Client, prior to establishing an agreement, of the rate of fees to be charged and the criteria for setting them, the basis for calculating the costs, the billing arrangements and the Client's right to receive a bill of costs.
- B. Defence Counsel shall not accept remuneration, in cash or in kind, from a source other than the Client unless the Client consents thereto in writing after consultation and

Defence Counsel's independence and relationship with the Client are not thereby affected.

- C. Defence Counsel shall never make his fees contingent on the outcome of a case in which he is involved.
- D. Defence Counsel shall not mix funds of a Client with his own funds, or with funds of Defence Counsel's firm. Defence Counsel shall not retain money received on behalf of a Client.
- E. Defence Counsel shall not borrow monies or assets from the Client.

Article 15 Remuneration of assigned Defence Counsel

- A. Where the Client benefits from legal aid, Defence Counsel's fees shall be paid exclusively through the Defence Office.
- B. Defence Counsel shall neither transfer nor lend all or part of the fees received for representation of a Client or any other assets or monies to a Client, his relatives, acquaintances, or any other third person or organisation in relation to which the Client has a personal interest.

Article 16 Fees and remuneration of Legal Representatives of Victims

- A. Article 14 of this Code shall apply *mutatis mutandis* to a Legal Representative of Victims who represents only non-indigent Clients.
- B. Article 15Article 15 of this Code shall apply *mutatis mutandis* to a Legal Representative of Victims who is remunerated by legal aid pursuant to the Legal Aid Policy for Victims' Participation.

IV – DISCIPLINARY REGIME

Article 17 Professional misconduct

Counsel commits professional misconduct in particular when he:

- (i) violates or attempts to violate any provisions of the Statute, the Rules, the Defence or Victims’ Directive as appropriate, the Joint Code or this Code, imposing an ethical or professional duty on Counsel;
- (ii) knowingly assists or induces another person to commit any misconduct referred to in this Article, or knowingly does so through the acts of another person; or,
- (iii) refuses or fails to conform to a disciplinary order or decision rendered pursuant to the legal instrument set out in paragraph (i) of this Article.

Article 18 Filing a complaint of professional misconduct

- A. Complaints against Counsel (the “respondent”) regarding professional misconduct may be submitted to the Head of the Defence Office or the Registrar, as appropriate, in one of the official languages of the Tribunal, by any person, organisation or State whose rights or interests could be affected by the alleged misconduct (the “complainant”). The complainant may at all times withdraw the complaint.
- B. The Head of the Defence Office or the Registrar, as appropriate, shall treat all complaints confidentially and shall maintain all documents and records of any disciplinary proceedings conducted pursuant to this Code or the Joint Code.
- C. A complaint shall be submitted no later than six months after the alleged misconduct is brought to the attention of the complainant or no later than six months after the complainant should have reasonable knowledge about the existence or occurrence of the alleged misconduct.
- D. The complaint shall be made in writing or, if the complainant is unable to do so, orally before a staff member of the Defence Office or the Victims’ Participation Unit, as appropriate, who shall put such oral complaint into writing. It shall identify the complainant and the Counsel against whom the complaint is made and shall describe in sufficient detail the alleged misconduct.
- E. The Head of the Defence Office or the Registrar, as appropriate, shall transmit a complaint fulfilling the requirements set out in paragraphs (C) and (D) of this Article to

the Pre-Trial Judge or Chamber under Article 54 of the Joint Code. Following a preliminary assessment of the complaint, the Pre-Trial Judge or Chamber may:

- (i) decide to dismiss the complaint;
- (ii) refer it to the relevant Head of Organ;
- (iii) sanction the conduct at issue pursuant to Rule 60 of the Rules; and/or,
- (iv) take any other action deemed necessary, such as establishing an investigation panel or prosecuting offences under Rule 60*bis* of the Rules.

F. If the Pre-Trial Judge or Chamber refers a complaint to the Head of the Defence Office or the Registrar, as appropriate, under Article 54(b) of the Joint Code, either as a potential violation of the Joint Code or of this Code, the Head of the Defence Office or the Registrar, as appropriate, shall submit the complaint to the Independent Commissioner provided for in Article 19 of this Code without delay, subject to any decision of the Pre-Trial Judge or Chamber establishing a deviation from this procedure.

G. The Head of the Defence Office or the Registrar, as appropriate, may submit a complaint *proprio motu* to the Pre-Trial Judge or Chamber in accordance with paragraph (E) of this Article.

Article 19 Independent Commissioner

A. The Independent Commissioner (“Commissioner”) responsible for investigating complaints of misconduct in accordance with this Code shall be appointed for two years by the President, after consultation with the Head of the Defence Office and the Registrar. The Commissioner shall be chosen from amongst persons with established competence in professional legal ethics.

B. The Commissioner shall not be eligible for re-appointment. A Commissioner who is involved in an investigation when his mandate expires shall continue to conduct such an investigation until it is concluded.

Article 20 Composition and management of the Disciplinary Board

A. The Disciplinary Board shall be appointed by the President, Head of the Defence Office and the Registrar for a period not longer than two years and shall comprise three lawyers who meet the requirements set out in Rule 59(B) of the Rules, whether or not they have

been admitted to either of the lists of counsel maintained under Rule 59(B) and Rule 51(C)(i) of the Rules, and who possess established competence in professional legal ethics. The President, Head of the Defence Office and Registrar shall each select one of these lawyers, with the lawyer selected by the President being the Chairperson.

- B. If, in a particular case, a conflict of interest arises for any member of the Disciplinary Board, that member shall recuse himself. For that particular case, a replacement member shall be appointed following the procedure used for the appointment of the member who recused himself. Where a person appointing such members has a conflict of interest, such other members shall be appointed by the person to whom his duties are delegated.
- C. All members of the Disciplinary Board shall have the same rights and votes. The Disciplinary Board shall decide by simple majority vote. Members whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are determined by the Disciplinary Board.

Article 21

Temporary suspension of the right to appear before the Tribunal

- A. At any time after having initiated an investigation, the Commissioner may lodge an urgent motion with the Pre-Trial Judge or the Presiding Judge of the Chamber before which Counsel appears, requesting a reasoned order that the respondent's right of audience be temporarily suspended until the complaint has been resolved if the alleged misconduct is likely to cause immediate and irreparable harm to the interests of justice, a party to the proceedings, a witness or the respondent's Client.
- B. This order shall remain in force until the final decision of the Disciplinary Board or Disciplinary Appeals Board as appropriate. The respondent may at any time apply to the President of the Tribunal for the revocation of the order, which shall be ruled upon within seven days.

Article 22

Consideration of the complaint

- A. Upon commencing the investigation, the Commissioner shall:
 - (i) reject the complaint if it is manifestly vexatious, misconceived, frivolous or submitted outside the time limit envisaged in Article 18(C) of this Code and inform the complainant accordingly;

- (ii) if appropriate, as an alternative to a disciplinary procedure, offer mediation to the complainant and the respondent, and appoint a suitable mediator; or,
 - (iii) send all particulars to the respondent in a language he understands, invite him to submit a written response to the complaint within 21 days of receiving the complaint and inform the respondent of his obligation under Article 31(A) of this Code to inform his national authority without delay.
- B. Upon receiving the respondent's written response to the complaint, the Commissioner shall investigate the alleged misconduct and report the results of the investigation to the Disciplinary Board. In the report the Commissioner shall establish the relevant facts, make findings as to violations of the applicable legal instruments and make recommendations as to further action, including dismissal of the case for lack of sufficient evidence or formulation of disciplinary charges.

Article 23

Preliminary decision of the Disciplinary Board

- A. Upon completion of the investigation and receipt of the report of the Commissioner under Article 22(B), the Disciplinary Board, which is not bound by the report of the Commissioner, shall:
 - (i) dismiss the case if there are no reasonable grounds to conclude that the respondent committed the alleged misconduct;
 - (ii) request the Commissioner to conduct further investigations; or,
 - (iii) confirm the disciplinary charges against the respondent and schedule a confidential hearing on the complaint and related matters for the conduct of disciplinary proceedings pursuant to Article 24 to Article 27.
- B. The Disciplinary Board shall inform the complainant and the respondent of its decision under paragraph (A) in writing, including the report of the Commissioner and any formal disciplinary charges the respondent has to answer.

Article 24

Disciplinary procedure

- A. The Disciplinary Board may admit any evidence which is relevant and probative, whether oral or written, and may make such orders for the preparation or conduct of the hearing on the complaint and any disciplinary charges as it deems appropriate.

- B. The Disciplinary Board shall give the complainant an opportunity to be heard in relation to the complaint and the respondent an opportunity to respond and present his views.
- C. The Disciplinary Board shall conduct disciplinary proceedings in the absence of the respondent if he:
 - (i) has expressly and in writing waived his right to be present; or,
 - (ii) cannot be found and all reasonable steps have been taken by the Board to inform him of the disciplinary charges.

Article 25
Rights of Counsel subject to the disciplinary procedure

- A. Counsel subject to the disciplinary procedure before the Disciplinary Board or Disciplinary Appeals Board shall have the right to:
 - (i) legal assistance;
 - (ii) refuse to make any statement which might be used against him;
 - (iii) receive all relevant information and communication in a language he understands;
 - (iv) adequate time and facilities to prepare his defence;
 - (v) examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; and,
 - (vi) examine all evidence against him.
- B. Counsel shall receive full disclosure of any information and evidence gathered by the Commissioner as well as the Commissioner's report at the earliest opportunity, and at least 21 calendar days before any hearing of the Disciplinary Board, subject to any protective measures granted by the Disciplinary Board upon request by the Commissioner.
- C. Where Counsel requires translation of information or communications in order to ensure his rights under paragraph (A)(iii) of this Article, any time period prescribed by this Code shall commence from the date on which the Tribunal provides Counsel with the required translation.

Article 26
Decision by the Disciplinary Board

- A. If the Disciplinary Board is convinced that the respondent, on the balance of probabilities, has committed the alleged misconduct, it shall make such a finding and may impose the sanctions in Article 27 of this Code.
- B. The decision of the Disciplinary Board shall be reasoned, in writing and shall inform the respondent of the procedure for appeal of this decision. The decision shall be filed with the Registry and shall be public, but without identifying the respondent, unless the Disciplinary Board issues a public decision identifying Counsel as a sanction under Article 27(A)(iv) of this Code. The decision shall be communicated by the Defence Office or the Registry, as appropriate, to the respondent, the complainant and the President.

Article 27
Sanctions

- A. When misconduct has been established, the Disciplinary Board may impose one or more of the following sanctions:
 - (i) admonishment;
 - (ii) issuance of instructions to Counsel as to his future conduct;
 - (iii) public reprimand with an entry in Counsel's personal file;
 - (iv) issuance of a public version of the decision identifying Counsel;
 - (v) repayment of fees or remuneration of Counsel;
 - (vi) temporary refusal of audience before the Tribunal; or,
 - (vii) permanent prohibition from practising before the Tribunal.
- B. The Disciplinary Board shall take into account any mitigating factors it considers relevant.

Article 28
Composition and management of the Disciplinary Appeals Board

- A. The Disciplinary Appeals Board, which shall decide on appeals against decisions of the Disciplinary Board, shall be appointed for a period not longer than two years and shall comprise:
 - (i) a Judge, selected by the President, who shall be the chairperson; and,

- (ii) two lawyers who meet the requirements set out in Rule 59(B) of the Rules, whether or not they have been admitted to either of the lists of counsel maintained under Rule 59(B) and Rule 51(C)(i) of the Rules, and who possess established competence in professional legal ethics, one of whom shall be selected by the Head of the Defence Office and one of whom shall be selected by the Registrar.
- B. If in a particular case, a potential conflict of interest arises for any member of the Disciplinary Appeals Board, that member shall recuse himself. For that particular case, a replacement member shall be appointed following the procedure used for the appointment of the member who recused himself. Where a person appointing such members has a conflict of interest, his deputy shall appoint such other members.
- C. All members of the Disciplinary Appeals Board shall have the same rights and votes. The Disciplinary Appeals Board shall decide by simple majority vote. Members whose term of appointment has expired shall continue to deal with the cases they already have under consideration until such cases are determined by the Disciplinary Appeals Board.

Article 29

Procedure of the Disciplinary Appeals Board

- A. The respondent may file with the Head of the Defence Office or the Registrar, as appropriate, an appeal against the decision referred to in Article 26 of this Code, identifying the specific matters of law and fact appealed, within 14 calendar days of receiving the decision of the Disciplinary Board. The decision of the Disciplinary Board shall be considered final after the time limit for appeals has lapsed.
- B. Appeals shall be by way of written submission and shall be based exclusively on evidence that was presented to the Disciplinary Board, unless, in the view of the Disciplinary Appeals Board, the interests of justice require the admission of additional evidence.
- C. The final decision of the Disciplinary Appeals Board shall be reasoned, in writing and may confirm, reverse or modify the decision of the Disciplinary Board. The decision shall be public, but without identifying the respondent, unless the Disciplinary Appeals Board issues a public decision identifying Counsel as a sanction under Article 27(A)(iv) of this Code. The decision shall be filed with the Registry's Court Management Services Section. It shall be communicated to the respondent, the complainant and the President through the Defence Office or the Registry as appropriate.

Article 30
Measures related to the final decisions

- A. The final decision, whether of the Disciplinary Board or the Disciplinary Appeals Board as the case may be, finding misconduct may order that the reasonable cost of the proceedings be borne by the respondent. Where no misconduct has been found, the Disciplinary Board or the Disciplinary Appeals Board, as the case may be, may order the reimbursement by the Tribunal of the reasonable costs of counsel for his defence, within the limitation of any allotted budget.
- B. The Head of the Defence Office or the Registrar, as appropriate, shall take such action as may be required to enforce the final decision. Action by the Head of the Defence Office may be taken either directly or through the Registrar.

Article 31
Relationship between disciplinary regimes

- A. Counsel against whom a complaint has been referred by the Commissioner under Article 22(A)(iii) of this Code shall inform his national authority without delay and request the national authority to inform the Commissioner within 15 days whether it will initiate a disciplinary procedure. If the national authority intends to or has already initiated its disciplinary procedure in relation to the same acts and conduct set out in the complaint, the procedure before the Commissioner shall be suspended pending the final decision by the national authority, unless:
 - (i) the national authority does not respond to communications and consultations from the Commissioner within a reasonable time;
 - (ii) the information received from the national authority is not satisfactory; or,
 - (iii) the national authority appears to be unable or unwilling to conclude the disciplinary procedure.
- B. As soon as he receives the final decision of the national authority, the Commissioner shall inform the Disciplinary Board which shall declare the procedure closed, unless the decision adopted does not adequately address a complaint of misconduct under this Code, in which case it may instruct the Commissioner to resume the investigation and possible disciplinary proceedings under this Code.
- C. Decisions under Article 26, Article 27 and Article 29 of this Code may be communicated by the Head of the Defence Office or the Registrar, as appropriate, to the relevant national authority.

- D. No Counsel shall be subject to disciplinary proceedings and sanctions under the Joint Code or this Code more than once for the same act and/or omission or the same series of acts and/or omissions.

V – EFFECTIVE REPRESENTATION REGIME

Article 32 Investigation procedure

- A. When the Head of the Defence Office or the Chief of the Victims' Participation Unit receives information, from any source, which gives rise to serious concerns about the effectiveness of the representation of a Client under Article 9 of this Code, he shall, on an initially confidential basis, advise the Lead Counsel and any other member of the Legal Team who is concerned and invite them to informally discuss these concerns with him.
- B. In the 15 days following the aforementioned advice or discussions, if he considers that it is necessary to begin monitoring the performance and work of the person concerned in accordance with Rule 57(G)(i) or Rule 51(C)(v) of the Rules, the Head of the Defence Office or the Chief of the Victims' Participation Unit, as appropriate, shall notify the Lead Counsel and, where appropriate, the Legal Team member concerned, by a reasoned written decision including the length and modalities of the monitoring.
- C. The maximum length of the monitoring period shall be 60 days. It may be extended once for a period of 30 days. Exceptionally, where the Head of the Defence Office or the Chief of the Victims' Participation Unit, as appropriate, considers that the limited nature of court proceedings during the monitoring period means that additional time is required in order for a decision on the effectiveness of the representation to be taken under Article 33 of this Code, the period may be extended for a second period of 30 days.
- D. During the monitoring period, the Head of the Defence Office or the Chief of the Victims' Participation Unit, as appropriate, or a person designated by him, may request all necessary information, except information which is subject to Counsel-Client privilege, from any source (with the exclusion of another party or participant in the proceedings) on a basis that is strictly confidential until the decision under Article 33(C) of this Code, in particular such as:
- (i) consulting and examining the Legal Team's work product;
 - (ii) consulting with the Pre-Trial Judge or Chamber, on an exceptional basis, as well as the Registry;
 - (iii) following proceedings in the courtroom;
 - (iv) reviewing transcripts of any proceedings before the Pre-Trial Judge or Chamber;
- and,

- (v) in exceptional circumstances, after considering the opinion of the Lead Counsel, inviting the Client to provide his views in writing on the adequacy and effectiveness of his legal representation and on the performance of the Counsel.
- E. During this same period, the Head of the Defence Office or the Chief of the Victims' Participation Unit, as appropriate, shall ensure that appropriate advice is given to the Lead Counsel in accordance with Rule 57(G)(iii) or Rule 51(C)(v) of the Rules, as appropriate.
- F. At least 15 days before the issuance of the decision on the monitoring, the Head of the Defence Office or the Chief of the Victims' Participation Unit, as appropriate, shall disclose to the Lead Counsel and, if appropriate, to the person concerned, a draft version of the reasoned decision accompanied by the information received, inviting them to provide him with any written or oral comments they may have.

Article 33 Decision

- A. Where monitoring is undertaken in respect of Defence Counsel, the Head of the Defence Office shall assess whether, on the balance of probabilities, the representation by Defence Counsel would be ineffective, by reference to the following criteria as well as all other relevant factors:
 - (i) Attendance at court and availability
 - (a) Dedicate sufficient time to their work before the Tribunal as is necessary at that stage of proceedings;
 - (b) Work full-time on the case starting from four months before the anticipated date of trial set by the Pre-Trial Judge in application of the provisions of Rule 91(C) of the Rules and during the whole trial phase;
 - (c) Attend all status conferences during the pre-trial phase if provided reasonable notice; and,
 - (d) Appear in person for the Client in any judicial proceedings or during a Prosecution interview.
 - (ii) Motion practice
 - (a) Comply with all deadlines for filings before the Tribunal;
 - (b) Conduct the research reasonably necessary for the purpose of any motion or response; and,
 - (c) Make focused and coherent written and oral submissions including adequate references which are in the interests of the Client and in accordance with the strategy set out in paragraph (v) of this Article.

(iii) Knowledge of the law

- (a) Keep informed of the relevant law including decisions issued by the Tribunal, other international courts and Lebanese courts which have an impact on their case; and,
- (b) Identify and inform the Legal Advisory Section of any legal issues for which Counsel requires legal assistance and seek assistance accordingly as soon as possible.

(iv) Knowledge of the facts and case against the Client

- (a) Ensure that every material piece of evidence pertaining to the case against the Client is examined, analysed and evaluated carefully; and,
- (b) Identify from the outset of the proceedings any assistance or expertise that would be useful to the Defence Team in fulfilling its task and request as soon as possible from the Defence Office or from any other relevant external organisation any assistance or expertise required.

(v) Development of the theory of the case and implementation of strategy

- (a) Choose, as soon as possible, defences that he judges to be the most appropriate to the Client;
- (b) In consultation with the Client when he is present, adopt a theory which is consistent with such a defence; and,
- (c) Decide upon and implement a strategy seeking to present this theory during trial in a coherent and effective manner.

(vi) Defence investigations

- (a) Locate and study all information that relates directly to the case and the theory of the case;
- (b) Identify and, where reasonably possible, question every potential witness who appears to have relevant evidence, in particular individuals who might be identified by the Client as important to the case;
- (c) Travel to locations where investigations are reasonably required whenever the presence of Defence Counsel is necessary; and,
- (d) When Defence Counsel does not conduct the investigations personally, instruct investigators on the manner, procedure and scope of interview.

(vii) Examination of witnesses

- (a) Examine witnesses appearing before the Tribunal efficiently and effectively whatever the mode of proceeding adopted by the Trial Chamber under Rule 145 of the Rules; and,

- (b) Select, interview and present the most appropriate witnesses in support of the theory adopted by the Defence and in accordance with the strategy selected by Defence Counsel.

(viii) Management of staff and resources

- (a) Recruit committed, able staff who have the skills and experience to contribute to an effective defence;
- (b) Ensure that members of a Defence Team are adequately managed, appraised and motivated; and,
- (c) Make the most effective use of allocated resources.

(ix) Case management

- (a) Create and keep a complete, accurate, well-organised and indexed electronic or, where necessary, hard-copy case file, which includes:
 1. all documents disclosed to the Defence during the proceedings;
 2. all legal submissions and court records in the proceedings, including motions, responses, replies and decisions, irrespective of their origin;
 3. draft submissions and/or legal research;
 4. ongoing investigative efforts;
 5. any statements, notes or recordings of interviews with (potential) witnesses;
 6. any other material gathered in the course of the preparation of the Defence case;
 7. where applicable, the file the Pre-Trial Judge provided to the Trial Chamber;
 8. any official correspondence in the case, including with the Client, the Tribunal and its organs, potential witnesses, experts, other Counsel and relevant organisations;
 9. requests or undertakings for protective measures on any of the material received;
 10. a list of all persons who have worked on the case, including their most recent contact details; and,
 11. any other preparatory work undertaken by the Defence Counsel or members of the Defence Team.

(x) Communication with the Client (not tried *in absentia*)

- (a) Advise the Client with complete candour concerning all aspects of the case, inform him objectively of the possible outcomes and keep him regularly informed of the material developments in the case;
- (b) Meet regularly with the Client;
- (c) Obtain the observations of the Client concerning any statements he might previously have made to law enforcement, government agencies, tribunals, international bodies or the media;

- (d) Consult the Client and obtain the Client's informed consent at the very least on the following decisions:
 - 1. the overall objectives of the representation;
 - 2. which plea should be entered;
 - 3. whether a plea agreement should be entered into;
 - 4. whether to testify; and,
 - 5. whether to appeal the decisions that are issued.
 - (e) Maintain a full and contemporaneous record of the substance of any oral communication with the Client and maintain a full record of all written communication; and,
 - (f) Execute the instructions of the Client in conformity with the strategy adopted.
- B. Where monitoring is undertaken in respect of a Legal Representative of Victims, the Chief of the Victims' Participation Unit shall assess whether, on the balance of probabilities, the representation by the Legal Representative of Victims would be ineffective, by reference to the following criteria as well as all other relevant factors:
- (i) Attendance at court and availability
 - (a) Work full-time on the case full-time during pre-trial and trial phases unless permitted to do otherwise by the Registrar pursuant to Article 27(B) of the Victims' Directive;
 - (b) Attend all status conferences during the pre-trial phase if permitted to do so and provided reasonable notice and unless sufficient attendance has been ensured by other Legal Representatives of Victims in the same Victims' Team;
 - (c) Appear in person for the Client in any judicial proceedings; and,
 - (d) With the consent of the Client, accompany and represent a Client in his dealings with the parties.
 - (ii) Motion practice
 - (a) Comply with all deadlines for filings before the Tribunal;
 - (b) Conduct the research reasonably necessary for the purpose of any motion or response; and,
 - (c) Make focused and coherent written and oral submissions including adequate references which are in the interests of the Client and in accordance with the strategy set out in paragraph (v) of this Article.
 - (iii) Knowledge of the law
 - (a) Keep informed of the relevant law including decisions issued by the Tribunal, other international courts and Lebanese courts which have an impact on their case; and,
 - (b) Identify and inform the Victims' Participation Unit of any legal issues for which the Legal Representative of Victims requires legal assistance and seek assistance accordingly as soon as possible.

(iv) Knowledge of the facts relevant to the case

- (a) Establish and maintain familiarity with the evidence in the case and material disclosed and analyse this evidence and material for matters potentially of relevance to the interests of the Clients;
- (b) To the extent permitted by obligations of confidentiality pursuant to relevant judicial rulings, seek the Clients' views on factual matters which may affect the interests of the Clients in respect of the case; and,
- (c) Identify from the outset of the proceedings any assistance or expertise that would be useful to the Victims' Team in fulfilling its task and request as soon as possible from the Victims' Participation Unit or from any other relevant external organisation any assistance or expertise required.

(v) Development of the theory of the case and implementation of strategy

- (a) Following consultation with the Clients, establish as soon as possible a theory of the case; and,
- (b) Decide upon and implement a strategy seeking to present this theory during trial in a coherent and effective manner.

(vi) Scrutiny of the Prosecution case

- (a) Develop and maintain an awareness of the Prosecution's case and keep under review the extent to which it upholds the interests of the Clients;
- (b) Scrutinise whether the Prosecution is competently and accurately presenting the case against the accused; and,
- (c) Respond to and/or supplement the Prosecution's case as necessary to uphold the interests of the Clients.

(vii) Investigations

- (a) Locate and study all information that relates directly to the case and the theory of the case; and,
- (b) Carry out such investigations as are necessary for the purpose of developing and presenting the theory of the case.

(viii) Examination of witnesses

- (a) When authorised to do so by the Trial Chamber, examine witnesses appearing before the Tribunal efficiently and effectively whatever the mode of proceeding adopted by the Trial Chamber under Rule 145 of the Rules; and,

- (b) When authorised to do so by the Trial Chamber, select, interview and present the most appropriate witnesses in support of the case theory and strategy adopted.

(ix) Management of staff and resources

- (a) Recruit committed, able staff who have the skills and experience to contribute to the effective representation of the Clients;
- (b) Ensure that members of the Victims' Team are adequately managed, appraised and motivated; and,
- (c) Make the most effective use of allocated resources.

(x) Case management

- (a) Create and keep a complete, accurate, well-organised and indexed electronic or, where necessary, hard-copy case file, which includes:
 1. all victim applications and related documents submitted by the Clients to the Tribunal;
 2. material provided to the Legal Representative of Victims by the Victims' Participation Unit in respect of the Clients;
 3. all documents disclosed to the Legal Representative of Victims during the proceedings;
 4. all legal submissions and court records in the proceedings, including motions, responses, replies and decisions, irrespective of their origin;
 5. draft submissions and/or legal research;
 6. ongoing investigative efforts;
 7. any statements, notes or recordings of interviews with (potential) witnesses;
 8. any other material gathered in the course of the preparation of the case;
 9. where applicable, the file the Pre-Trial Judge provided to the Trial Chamber;
 10. any official correspondence in the case, including with the Client, the Tribunal and its Organs, potential witnesses, experts, other Counsel and relevant organisations;
 11. requests or undertakings for protective measures on any of the material received;
 12. a list of all persons who have worked on the case, including their most recent contact details; and,
 13. any other preparatory work undertaken by the Legal Representative of Victims or members of the Victims' Team.

(xi) Communication with the Clients

- (a) To the extent permitted by obligations of confidentiality pursuant to relevant judicial rulings, advise the Clients with complete candour concerning all aspects of the case, inform them objectively of the possible outcomes and keep them regularly informed of the material developments in the case;

- (b) Meet regularly with the Clients;
 - (c) Obtain the observations of the Clients concerning any statements they might previously have made to the Office of the Prosecutor, the Defence, law enforcement, government agencies, tribunals, international bodies or the media;
 - (d) Consult the Clients regularly regarding the overall objectives of representation and whether they have views or concerns regarding specific issues or motions which are before, or likely to come before, the Pre-Trial Judge or Trial Chamber;
 - (e) Maintain a full and contemporaneous record of the substance of any oral communication with the Clients and maintain a full record of all written communication;
 - (f) Execute the instructions of the Clients in conformity with the strategy adopted and the interests of the Clients; and,
 - (g) Undertake all activities, including meetings, communications and other interactions with Clients, in a way which takes into account any vulnerabilities or special needs of the clients and does not prejudice the privacy, security or well-being of the Clients.
- C. At the end of the monitoring period at the latest, the Head of the Defence Office or the Chief of the Victims' Participation Unit, as appropriate, shall communicate to the Lead Counsel and, if appropriate, the person concerned a reasoned written decision through which he will find one of the following:
- (i) The monitoring did not give rise to a finding of ineffective representation;
 - (ii) The representation was not completely effective but the measures undertaken during the monitoring period have resolved the problems; or,
 - (iii) The representation was ineffective and warrants the implementation of measures in accordance with Rule 57(H), Rule 51(G)(iii) of the Rules or Part IV of this Code, as appropriate.

Article 34 Measures

- A. The maximum fee that may be withheld in accordance with Rule 57(H)(i) or Rule 51(G)(iii) of the Rules is the equivalent of one month's maximum salary of the Lead Counsel, pursuant to Chapter 9 of the Legal Aid Policy for the Defence. Payment of fees may be temporarily withheld.
- B. Representations made under Rule 57(H)(ii) by the Head of the Defence Office shall be filed *ex parte*, to the members of the Defence Team concerned.

Done in English, Arabic and French, the English version being authoritative.

Dated this 29th day of January 2019,

Leidschendam, the Netherlands.

A handwritten signature in blue ink, appearing to read 'Ivana Hrdličková', with a long, sweeping flourish extending to the right.

Ivana Hrdličková
President