

INTRODUCTORY NOTE TO INTERNATIONAL CRIMINAL COURT CODE OF CONDUCT
FOR THE OFFICE OF THE PROSECUTOR
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Introduction

On September 5, 2013, the Code of Conduct for the Office of the Prosecutor (OTP Code) adopted by the Office of the Prosecutor (OTP) at the International Criminal Court (Court or ICC) entered into force,¹ a little over a year after the commencement of the term of the current Prosecutor, Mrs. Fatou Bensouda.² Though the Code fills an important void in the regulation of OTP ethical conduct, its provenance and content mean that much will depend on the manner in which it is applied in the future.

Background

Prior to the OTP Code's entry into force, no ethical document specifically regulated the conduct of members of the OTP, in contrast with the Judges and counsel practicing before the Court other than within the OTP.³ Some viewed this difference as unjustified and undesirable.⁴ The International Association of Prosecutors and the Coalition for the International Criminal Court prepared a draft code in 2002, but the OTP did not adopt it.⁵ The lack of such a code at the ICC also contrasted with other international criminal courts and tribunals; for example, the Prosecutors at the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) adopted ethical codes for members of the prosecution in the tribunals' early days,⁶ whereas a code applicable to all counsel appearing before the Special Court for Sierra Leone (SCSL) was adopted in 2005⁷ and a code applicable to all counsel appearing before the Special Tribunal for Lebanon (STL) was adopted in 2011.⁸

Although members of the OTP were not bound by an ethical code of conduct prior to the adoption of the OTP Code, they were bound by a number of provisions of the Rome Statute of the International Criminal Court (Rome Statute), the Rules of Procedure and Evidence, the Regulations of the Court, the Prosecution Regulations, and the Staff Rules and Regulations that related to professional conduct and ethics. In this regard, Trial Chamber V(B), in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, recently identified these provisions as "including Articles 42(2), 44, 54(1), 70 and 71, Rule 6 of the Rules, Regulation 29 of the Regulations, Regulation 17 of the Prosecution Regulations, Rules 101.9(a) and 110.1 of the Staff Rules, Articles I and X and Regulations 1.1, 1.2, 1.3 and 1.4 of the Staff Regulations."⁹ To take an example, the Staff Rules, which bind members of the OTP and entered into force in 2005, contain provisions dealing with independence;¹⁰ conflicts of interest;¹¹ honors, gifts and remuneration;¹² and confidentiality;¹³ issues on which codes of conduct often focus. However, many of the above provisions are general in scope and not tailored to apply to the specific role that the OTP plays at the ICC and the specific obligations and duties which that role entails. Indeed, Trial Chamber V(B) went on to hold that in its view, "the Code of Professional Conduct for Counsel should, where applicable and to the extent possible, also apply to members of the Prosecution," indicating that in spite of the numerous provisions applicable to the prosecution, a gap nevertheless existed.¹⁴

The adoption of the OTP Code, therefore, appears to fill a lacuna which had existed for a number of years. However, the OTP Code is a document that the OTP itself prepared and adopted and contains no provisions providing for independent external enforcement. It is only the Prosecutor, under Chapter 5, Section 2, paragraphs 75 and 76, who may impose "appropriate disciplinary measures" in accordance with the Staff Rules. While an internally prescribed and enforced document may provide more coherence and clarity with respect to the OTP's position on ethical issues, it could be argued that externally prescribed and enforced rules should regulate members of the OTP, a criticism which has been levelled at the codes that ICTY and ICTR Prosecutors adopted.¹⁵ In contrast, it was the Assembly of States Parties that adopted the Code of Professional Conduct for Counsel at the ICC (other than within the OTP) and the code contains a detailed disciplinary regime enforced by a Commissioner, appointed by the Presidency of the Court, and a Disciplinary Board.¹⁶ Similarly, the Code of Professional Conduct for Counsel with the Right of Audience before the SCSL, adopted by its Registrar, and the STL's "A Code of Professional Conduct for Counsel

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Appearing Before the Tribunal,” issued by then-president Judge Antonio Cassese,¹⁷ both contain disciplinary regimes enforced by external bodies.¹⁸

The Content of the OTP Code

Turning to the content of the OTP Code, it is noteworthy at the outset that it comprises eighteen pages of substantive provisions, rendering it significantly longer and more detailed than the codes applicable to prosecutors at the ICTY, ICTR or STL, and comparable to the Code of Professional Conduct for Counsel at the ICC (other than within the OTP) and the SCSL code of conduct.

Further, the OTP Code covers a lot of the same ground as the ICC Code of Professional Conduct for Counsel, including issues such as independence,¹⁹ impartiality,²⁰ confidentiality,²¹ and conflict of interest.²² However, the OTP Code covers a number of additional areas of unique or particular relevance to members of the OTP, for example “Objective truth-seeking”,²³ handling of information and evidence,²⁴ and disclosure.²⁵ The common ground covered by the two codes will help to address any perception of inequality between members of the OTP and other counsel, while the provisions specific to the OTP appear to provide guidance that was previously lacking even by comparison as a result of the important differences between the role of the prosecution at the ICC and at other tribunals.²⁶

Analysis

With respect to its impact, the new OTP Code of Conduct endeavors to provide prosecutors with more detailed guidance regarding ethical aspects of their work than was available prior to its adoption. Consequently, the OTP Code of Conduct can only succeed if it in fact provides substantive guidance that was hitherto absent. However, some of the new provisions appear to largely repeat already applicable rules verbatim and, as such, might represent little in the way of progress.

By way of example, though Section 3 of Chapter 3 purports to provide guidance with respect to the disclosure obligations incumbent on the prosecution—an area which has drawn criticism as lacking sufficient ethical guidance²⁷—the OTP Code does not appear to provide much substance beyond that already provided in the Rome Statute and the Rules of Procedure and Evidence. Paragraph 52 of Section 3, for instance, is couched in very general terms: members of the prosecution must comply with the applicable rules “in a manner that facilitates the fair and expeditious conduct of the proceedings” while also respecting the rights of the accused and paying due regard to victims and witnesses. In light of such generalities, it is unlikely that this paragraph provides any useful clarity or guidance to members of the OTP to aid their interpretation of the Statute. Moving through the remaining provisions related to disclosure, paragraph 53(a) repeats Article 67(2) of the Statute almost word for word, whereas paragraph 54 repeats what is contained in Rule 77 of the Rules, with neither paragraph providing any further guidance. Paragraph 53(b), which states that disclosure shall include “any documents or information by order of the Chambers,” appears to be a reformulation of Article 67(2), which states that “[i]n case of doubt as to the application of this paragraph, the Court shall decide,” but could be seen as an indication of a policy choice on the part of the OTP in response to criticisms arising out of events in the *Lubanga* case.²⁸ Given these observations, the OTP Code may represent less progress than some would have hoped.

On the other hand, provisions such as Section 8 of Chapter 2, relating to public expression and association, provide guidance in areas which have given rise to controversy in the past;²⁹ in such areas greater guidance will be welcomed.

Conclusion

The significance of the OTP Code will be borne out in the situations it is called upon to address and its success in doing so. In such situations, while more detailed guidance should reduce the possibility for disagreement among members of the OTP, room for interpretation and discretion will always remain, particularly in relation to controversial matters such as disclosure, where little new guidance appears to have been provided. In the end, given that the OTP has itself written and adopted the Code and taking into account that the code does not provide for oversight by any independent organ, its success will depend heavily on the OTP’s attitude to it. It thus remains to

be seen whether the OTP Code will prove sufficient to quiet calls for an externally prescribed and enforced code for members of the OTP.

ENDNOTES

- 1 INTERNATIONAL CRIMINAL COURT, CODE OF CONDUCT FOR THE OFFICE OF THE PROSECUTOR (2013) [hereinafter OTP CODE], <http://www.icc-cpi.int/iccdocs/PIDS/docs/Code%20of%20Conduct%20for%20the%20office%20of%20the%20Prosecutor.pdf>.
- 2 INTERNATIONAL CRIMINAL COURT, BIOGRAPHY OF MRS. FATOU BENSOUDA, ICC PROSECUTOR (2014), http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/Pages/theprosecutor2012.aspx.
- 3 Code of Professional Conduct for Counsel, Res. ICC-ASP/4/Res.1 (Dec. 2, 2005) [hereinafter ICC Code], http://www.icc-cpi.int/NR/rdonlyres/BD397ECF-8CA8-44EF-92C6-AB4BEBD55BE2/140121/ICCASP432Res1_English.pdf; International Criminal Court, Code of Judicial Ethics (2005), http://www.icc-cpi.int/NR/rdonlyres/A62EBC0F-D534-438F-A128-D3AC4CFDD644/140141/ICCBD020105_En.pdf.
- 4 ARMAN SARVARIAN, PROFESSIONAL ETHICS AT THE INTERNATIONAL BAR 203 (2013).
- 5 The Code of Professional Conduct for Prosecutors of the International Criminal Court, <http://amicc.org/docs/prosecutor.pdf> (draft prepared by the secretariats of the International Association of Prosecutors and the Coalition For The International Criminal Court for consultation and peer review).
- 6 INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, STANDARDS OF PROFESSIONAL CONDUCT FOR PROSECUTION COUNSEL (1999), http://www.icty.org/x/file/Legal%20Library/Miscellaneous/otp_regulation_990914.pdf; INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, PROSECUTOR'S REGULATION No. 2 (1999), http://www.unict.org/Portals/0/English%5CLegal%5CProsecutor%5Creg_05.pdf.
- 7 SPECIAL COURT FOR SIERRA LEONE, CODE OF PROFESSIONAL CONDUCT FOR COUNSEL WITH THE RIGHT OF AUDIENCE BEFORE THE SCSL (2006) [hereinafter SCSL CODE], <http://www.sc-sl.org/LinkClick.aspx?fileticket=IbTonPmXLHk%3D&tabid=176>.
- 8 SPECIAL TRIBUNAL FOR LEBANON, CODE OF PROFESSIONAL CONDUCT FOR COUNSEL APPEARING BEFORE THE TRIBUNAL (2011) [hereinafter STL CODE], <http://www.stl-tsl.org/en/documents/code-of-conduct-for-counsel/code-of-professional-conduct-for-counsel-appearing-before-the-tribunal>.
- 9 The Prosecutor v. Uhuru Muigai Kenyatta, Case No. ICC-01/09-02/11-747, Decision on the Defence application concerning professional ethics applicable to prosecution lawyers, ¶ 10 (May 31, 2013) [hereinafter Decision on Defence Application], <http://www.icc-cpi.int/iccdocs/doc/doc1599174.pdf>.
- 10 INTERNATIONAL CRIMINAL COURT, STAFF RULES OF THE INTERNATIONAL CRIMINAL COURT Rule 101.3(a)–(b) (2005), http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/staff%20rules%20of%20the%20international%20criminal%20court%20%20annex%20to%20icc%20ai%202005%20003.aspx.
- 11 *Id.* at Rule 101.6.
- 12 *Id.* at Rule 101.5.
- 13 *Id.* at Rule 101.4.
- 14 Decision on Defence Application, *supra* note 9, at ¶ 16.
- 15 SARVARIAN, *supra* note 4, at 203.
- 16 ICC Code, *supra* note 3, at ch. 4.
- 17 STL CODE, *supra* note 8, at 1.
- 18 SCSL CODE, *supra* note 7, at arts. 27, 35; STL CODE, *supra* note 8, ¶ 54.
- 19 OTP CODE, *supra* note 1, at ch. 2, Section 2.
- 20 *Id.* at ch. 2, Section 6.
- 21 *Id.* at ch. 2, Section 7.
- 22 *Id.* at ch. 2, Section 9.
- 23 *Id.* at ch. 3, Section 1.
- 24 *Id.* at ch. 3, Section 2.
- 25 *Id.* at ch. 3, Section 3.
- 26 Note for instance the duty incumbent upon the Prosecutor at the ICC, pursuant to Article 54(1)(a) of the Rome Statute, to “investigate incriminating and exonerating circumstances equally”, a duty not applicable to Prosecutors at, for example, the ICTY and ICTR. *See also, e.g.*, Milan Markovic, *The ICC Prosecutor's Missing Code of Conduct*, 47 TEXAS INT'L L. J. 201, 211 (2011).
- 27 *See, e.g.*, Markovic, *supra* note 26, at 212-22.
- 28 *See id.* at 222-28.
- 29 *See* INTERNATIONAL BAR ASSOCIATION, COUNSEL MATTERS AT THE INTERNATIONAL CRIMINAL COURT: A REVIEW OF KEY DEVELOPMENTS IMPACTING LAWYERS PRACTISING BEFORE THE ICC 17 (2012) <http://www.ibanet.org/Document/Default.aspx?DocumentUid=156FBA79-7A9D-4BD2-93D6-A81A91A4FFBA>. *See also* Markovic, *supra* note 26, at 229-35.

INTERNATIONAL CRIMINAL COURT CODE OF CONDUCT
FOR THE OFFICE OF THE PROSECUTOR*

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**Cour
Pénale
Internationale**

**International
Criminal
Court**

Le Bureau du Procureur
The Office of the Prosecutor

**CODE OF CONDUCT FOR THE OFFICE OF THE
PROSECUTOR**

Date of entry into force: 5 September 2013

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Introduction: Five Fundamental Rules

1. Respect, regard and adhere to the Rome Statute and the Rules of Procedure and Evidence;
2. Conduct yourself in a manner befitting the status of international civil servants, displaying the highest standards of integrity, independence, impartiality professionalism and confidentiality;
3. Be conscious of the purpose of the Court and the crucial role the Office plays in investigating and prosecuting international crimes, and in the administration of justice;
4. Respect human rights and fundamental freedoms, the principle of equality before the law, the presumption of innocence and right to a fair trial;
5. Be respectful, courteous and considerate towards victims and witnesses, all staff members and elected officials of the Court and all counsel.

Chapter 1. General provisions

Section 1. Scope of application

1. This Code shall apply to all Members of the Office as well as interns, visiting professionals, gratis personnel and staff members of other organisations on secondment or otherwise made available to the Office.
2. Unless indicated otherwise in their contracts, this Code shall not apply to consultants, contractors and special advisers of the Office.
3. The standards of this Code are applicable at all times, to the extent that professional and personal conduct and associations of Members of the Office may adversely affect the integrity, independence and impartiality of the Office.

Section 2. Use of terms

4. Unless otherwise defined in this Code, all terms used are defined as in the Statute, the Rules of Procedure and Evidence, the Regulations of the Court and the Regulations of the Office of the Prosecutor.
5. In this Code:
 - (a) 'article' refers to the articles of the Rome Statute;
 - (b) 'Code' is the Code of Conduct for the Office of the Prosecutor;
 - (c) 'Court' refers to the International Criminal Court;
 - (d) 'counsel' refers to defence counsel, counsel acting for States, *amicus curiae* and counsel or legal representatives for victims and witnesses, practising at the Court;
 - (e) 'Office' refers to the Office of the Prosecutor of the Court;
 - (f) 'Members of the Office' refers to the Prosecutor, Deputy Prosecutor(s) and Staff members of the Office;
 - (g) 'Regulations' refers to the Regulations of the Office of the Prosecutor;
 - (h) 'rule' refers to a rule of the Rules of Procedure and Evidence;
 - (i) 'Staff members' refers to all Staff members of the Office within the meaning of article 44;
 - (j) 'Statute' refers to the Rome Statute of the Court.

Section 3. Purpose of this Code

6. The provisions of this Code shall establish a set of minimum standards of conduct applicable to all Members of the Office of the Prosecutor, as a supplement to the general standards of conduct as promulgated in the Code

of Conduct for Staff Members, the Staff Regulations, the Staff Rules, the Code of Conduct for Investigators and any other document that may be relevant to the performance of their duties.

Section 4. General principles

7. The Office upholds and respects the principles embodied in the Statute, the Rules of Procedure and Evidence and the Regulations of the Court. It also adheres to the Financial Regulations and Rules, Staff Regulations and Rules, the Regulations of the Office of the Prosecutor and all policies of the Court that are relevant to the Office.

8. The Office and all its members are primarily guided by the following principles:

- (a) independence of the Office;
- (b) professional ethics and integrity;
- (c) fair, impartial, effective and expeditious investigation and prosecution;
- (d) respect for confidentiality of investigations and prosecutions;
- (e) respect for human rights and fundamental freedoms recognised by international law in conformity with the Statute, and non-discrimination against any individual or groups of individuals; and
- (f) a shared culture rooted in the principles and purposes of the Statute, without bias for the rules and methods of any national system.

Section 5. Relation to other normative texts

9. This Code shall be read subject to the provisions of the Statute, the Rules of Procedure and Evidence, the Financial Regulations and Rules and the Staff Regulations and Rules, and in conjunction with the Regulations of the Court, the Regulations of the Office of the Prosecutor, the Regulations of the Registry, the Code of Conduct for Investigators, the Code of Conduct for Staff Members and other administrative issuances.

10. Where there is any inconsistency between this Code and any other code of ethics or professional responsibility which Members of the Office are bound to honour outside the applicable legal regime established at the Court, the provisions of this Code shall prevail in respect of the professional conduct of Members of the Office when working for or practising before the Court.

Section 6. Solemn undertaking and oath of office

11. Members of the Office shall, prior to commencing employment, make and subsequently adhere to the following solemn undertaking: 'I solemnly undertake that I will perform my duties and exercise my powers as [title] of the Office of the Prosecutor honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions.'

Section 7. Compliance

12. Staff members shall respect, uphold and adhere to the principles and standards of conduct established in this Code, and, to the best of their ability, prevent and actively oppose any departure therefrom. When given reason to believe that a departure from these standards has occurred or is about to occur, Staff members shall report the matter to their supervisors or the Prosecutor.

13. Adherence to this Code is mandatory and shall be taken into account during yearly performance appraisals of Members of the Office.

14. The Legal Advisory Section shall assist the Prosecutor in promoting awareness of and compliance with this Code.

Chapter 2. Standards of conduct

Section 1. General standards of professional conduct

15. The Prosecutor and the Deputy Prosecutor(s) shall set an impeccable example of conduct for Staff members and provide, *inter alia*, appropriate direction, guidance and support in the promotion and cultivation of the standards expected of the Office as set out in this Code.
16. The basic rights and obligations of Staff members shall be governed by the Court's Staff Regulations and Rules, with particular regard to Chapter I of the Staff Rules, article I of the Staff Regulations, the Court's Code of Conduct for Staff Members, the Code of Conduct for Investigators where appropriate, and all other Administrative Instructions pertaining to their conduct.
17. Members of the Office shall refrain from any conduct which would adversely reflect on the Office and/or the Court, and shall not engage in any activity that is incompatible with the aims, objectives and interests of the Office and the Court, or with the exercise of their functions as persons working for the Court.
18. Members of the Office shall not participate or engage in any illegal activities or corrupt practices.
19. Members of the Office shall refrain from using illegal substances, including narcotics or other unlawful drugs, or consume alcohol in a quantity sufficient to interfere with their official functions.
20. In their dealings within the Office and the Court, including with counsel, and externally, with governments, organisations and individuals, members of the Office shall, *inter alia*:
 - (a) conduct themselves honourably, professionally, faithfully, impartially and conscientiously;
 - (b) abstain from any conduct which may be directly or indirectly in conflict with the discharge of their official duties; and
 - (c) uphold the highest standards of integrity and relevant standards on confidentiality, fairness, honesty and truthfulness in all matters affecting work and status.

Section 2. Independence

21. In accordance with article 42, the Office of the Prosecutor acts independently as a separate Organ of the Court in the execution of its mandate. Members of the Office shall exercise their functions free of any external influences, inducements, pressures, threats or interference, direct or indirect.
22. The Prosecutor shall ensure that Staff members maintain their full independence.
23. In particular, Members of the Office shall, *inter alia*:
 - (a) not seek or act upon instructions from any external source;
 - (b) remain unaffected by any individual or sectional interests and, in particular, by any pressure from any State, or any international, intergovernmental or non-governmental organisation or the media;
 - (c) refrain from any activity which is likely to negatively affect the confidence of others in the independence or integrity of the Office;
 - (d) refrain from any activity which may lead to any reasonable inference that their independence has been compromised;
 - (e) refrain from the exercise of other occupations of a professional nature without the prior approval of the Prosecutor; and
 - (f) refrain from any activity which is likely to interfere with the performance of duties and the exercise of functions as Members of the Office.
24. Staff members who are confronted with an attempt by any source to induce them to violate their obligation of loyalty and independence shall promptly report this to a Head of Division or Section, the Prosecutor or the Deputy Prosecutor(s), who shall provide guidance on how to proceed.

Section 3. Honourable conduct

25. In the exercise of their duties and powers, the Members of the Office shall at all times act honourably and regulate their conduct with the interests of the Court only in view.
26. Honourable conduct encompasses the embodiment of the dignity of the Office, which includes, *inter alia*:
- (a) dignified and courteous conduct in all relations with the Chambers and judges of the Court, the Registrar and the Deputy Registrar of the Court, State officials, and other dignitaries that befits a high institution of international criminal justice;
 - (b) dignified, courteous, collegial and supportive conduct towards all persons working for the Office and the Court;
 - (c) dignified and courteous conduct towards the persons under investigation or the accused;
 - (d) dignified, courteous and sensitive conduct towards all victims and witnesses, in particular children, elderly persons, persons with disabilities and victims of sexual and gender violence; and
 - (e) dignified and courteous conduct towards counsel and their team members.

Section 4. Faithful conduct

27. Faithful conduct encompasses the fulfilment of the trust reposed in the Office of the Prosecutor. Faithful conduct includes, *inter alia*:
- (a) loyalty to the aims, principles and purposes of the Court;
 - (b) acting within the boundaries of inherent or delegated powers and functions;
 - (c) due deference to the authority of the Prosecutor, the Deputy Prosecutor(s), the Executive Committee of the Office, superiors and relevant authorities, including Chambers, acting within the scope of their powers; and
 - (d) respect for the principles of this Code, and a concerted effort to prevent, oppose and address any departure therefrom.

Section 5. Conscientious conduct

28. Conscientious conduct encompasses the diligent and systematic pursuit of goals established by the Office. Conscientious conduct includes, *inter alia*:
- (a) understanding of and due compliance with the standards established by this Code, the Operations Manual, guidelines, policies, procedures and recommendations of the Office; and
 - (b) compliance with arrangements and agreements binding the Office.

Section 6. Impartiality

29. Impartiality is one of the core principles governing the work of the Office. Impartial conduct encompasses the fair-minded and objective treatment of persons and issues, free from any bias or influence.
30. Impartial conduct includes, *inter alia*:
- (a) respect for the presumption of innocence. In particular, Members of the Office shall not publicly express an opinion on the guilt or innocence of a person under investigation or the accused outside the context of the proceedings before the Court;
 - (b) refraining from expressing an opinion that could, objectively, adversely affect the required impartiality, whether through communications media, in writing or public addresses, or through any other actions outside the context of the proceedings before the Court;

(c) full conformity with the applicable rules on disclosure of evidence.

31. Members of the Office shall not participate in any matter in which their impartiality might reasonably be doubted on any ground, and shall request to be excused from any matter as soon as grounds for disqualification arise, especially those indicated in article 42(7) and rule 34(1).

Section 7. Confidentiality

32. Members of the Office shall uphold the highest standard of confidentiality in the discharge of their duties, respect and actively exercise all care to ensure respect for the confidentiality of information.

33. Members of the Office shall not disclose any privileged material or any material deemed confidential by the Court, unless authorised to do so.

34. In addition, Staff members who accidentally encounter confidential material or information shall immediately take all measures necessary to avoid or minimise a possible negative impact on the operations of the Office and the Court and notify their superiors.

35. Confidentiality includes, *inter alia*:

- (a) full conformity with policies and procedures regarding confidentiality of correspondence, documents, proceedings, information and other matters. Members of the Office shall pay particular attention to the provisions set out in the Information Security Manual, the Administrative Instructions on the ICC Information Protection Policy and the Computer and Network Services Policy;
- (b) upholding the obligations stipulated in the Confidentiality Undertaking and the Oath of the Office;
- (c) discernment and vigilance regarding all communications that may raise issues of confidentiality, particularly communications with persons outside the Office;
- (d) immediate reporting of suspected breaches of confidentiality where such suspected breaches would pose a danger to the safety, well-being or privacy of staff, victims, witnesses, persons under investigation, the accused and their families;
- (e) containment of reported breaches of confidentiality by refraining from unnecessary discussion thereof in any context; and
- (f) secure maintenance and storage of any material obtained by members of the Office in the course of their official functions.

36. The obligations of Members of the Office regarding confidentiality shall not cease upon separation from service.

Section 8. Public expression and association

37. Members of the Office shall exercise their freedom of expression and association in a manner that is compatible with their office and that does not affect or appear to affect the independence and/or impartiality of the Office.

38. Members of the Office shall not, either officially or unofficially, make any public comments that detract from the role of the Office and the Court.

39. Members of the Office shall refrain from making any public pronouncements, outside the context of the proceedings before the Court, that they know, or reasonably ought to know, may be disseminated by means of public communication, and may have a substantial likelihood of prejudicing the judicial proceedings or the rights of any person in the proceedings before the Court.

40. In accordance with Staff Rule 101.7 and Staff Regulation 1.2(n)-(o), except where authorised in the normal course of their official duties, Staff members of the Office shall not issue statements to the press, radio or other public information agencies; accept any outside speaking engagements; take part in film, theatre, radio or video

productions; or submit any articles, books or other material for publication without the prior approval of, or on behalf of, the Prosecutor.

41. Without prejudice to their obligations of, *inter alia*, confidentiality, nothing in this Code shall prevent the Members of the Office from responding to or taking action in good faith against slanderous statements or statements amounting to defamation of their good character or reputation.

Section 9. Conflict of interest and other impediments

42. Members of the Office shall abstain from any conduct which may, directly or indirectly, be in conflict with the discharge of their official duties during terms of service or may compromise the independence and trust reposed in the Office following separation of service. These conflicts may arise, *inter alia*, from:

- (a) personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties; and
- (b) circumstances in which Members of the Office appear to benefit, directly or indirectly, from financial or other involvement with the activities of any enterprise that engages in any business or transaction with the Court.

43. In the event of any conflict of interest, whether financial or otherwise, Staff members shall immediately disclose the nature of that interest to the head of the Division or Section, or to the Prosecutor, who shall decide whether the conflict is of such a nature as to require that the Staff member concerned participate no further in the matter concerned.

44. Upon separation from service for whatever reason, Staff members shall refrain from accepting engagement or appointment as defence counsel or member of a defence team in any of the proceedings before the Court, for a period of 12 months from the day of separation, unless specifically authorised by the Prosecutor. This applies only to those who have made a declaration to that effect.

Section 10. Non acceptance of gifts, remunerations and favours from external sources

45. The Prosecutor and Deputy Prosecutor(s) shall not directly or indirectly accept any gift, advantage, privilege or reward that could reasonably be perceived as intended to influence the independent performance of their functions.

46. Acceptance by Staff members and the Deputy Prosecutor of any honour, decoration, favour, gift or remuneration from any Government or from any non-governmental source shall require the prior approval of, or on behalf of, the Prosecutor. However, Staff members may occasionally accept, without prior approval, minor gifts of essentially nominal value, provided that all such gifts are promptly disclosed to the Staff member's Head of Division or Section or the Prosecutor, as applicable, who may direct that the gift be accepted by the Staff member, entrusted to the Court or returned to the donor. Any gifts accepted shall be recorded in the Gift Register.

47. Members of the Office shall neither offer nor promise any favour, gift, remuneration or any other personal benefit to another Staff member or to any third party with a view to causing him or her to perform, fail to perform or delay the performance of any official act. Similarly, Members of the Office shall neither seek nor accept any favour, gift, remuneration or any other personal benefit from another Member of the Office or from any third party in exchange for performing, failing to perform or delaying the performance of any official act.

48. Unless otherwise provided for, Staff members are not permitted to accept remuneration from any external source for any publication, outside speaking engagement or other act that is related to the purpose, activities or interests of the Court, such as a lecture fee, stipend or other allowance.

Chapter 3. Specific duties

Section 1. Objective truth-seeking

49. In compliance with the duty to establish the truth under article 54(1)(a) of the Statute, the Office shall investigate incriminating and exonerating circumstances equally in all steps involved in the planning and conduct of investigative and prosecutorial activities. In particular, Members of the Office shall:

- (a) conduct investigations with the goal of establishing the truth, and in the interests of justice;
- (b) consider all relevant circumstances when assessing evidence, irrespective of whether they are to the advantage or the disadvantage of the prosecution;
- (c) ensure that all necessary and reasonable enquiries are made and the results disclosed in accordance with the requirements of a fair trial, whether they point to the guilt or the innocence of the suspect.

50. Staff members shall report to the Prosecutor concerns which, if substantiated, would tend to render a previous conviction made by the Court unsafe, bring the administration of justice into disrepute or constitute a miscarriage of justice.

Section 2. Effective investigation and prosecution

51. In accordance with article 54(1)(b), Members of the Office shall ensure that the standards of effective investigation and prosecution are upheld and shall:

- (a) act with competence and diligence, make impartial judgments based on the evidence and consider foremost the interests of justice in determining whether or not to proceed;
- (b) fully respect the rights of persons under investigation and the accused and ensure that proceedings are conducted in a fair manner;
- (c) refrain from prosecuting any person whom they believe to be innocent of the charges;
- (d) refrain from proffering evidence reasonably believed to have been obtained by means of a violation of the Statute or internationally recognised human rights if the violation casts substantial doubt on the reliability of the evidence or the admission of evidence would be antithetical to and would seriously damage the integrity of the proceedings.

Section 3. Disclosure

52. Members of the Office shall comply with the applicable rules on disclosure of evidence and inspection of material in the possession or control of the Office in a manner that facilitates the fair and expeditious conduct of the proceedings and fully respects the rights of the person under investigation or the accused, with due regard for the protection of victims and witnesses.

53. Disclosure shall include:

- (a) evidence that shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence; and
- (b) any documents or information by order of the Chambers.

54. Inspection shall include any books, documents, photographs or any other tangible object in the possession or control of the Office which are material to the preparation of the defence or are intended for use by the Office as evidence for the purposes of the confirmation hearing or at trial or were obtained from or belonged to the suspect or accused.

Section 4. Handling of information and evidence

55. Members of the Office shall, in order to ensure an uninterrupted chain of custody:

- (a) preserve the integrity of information and evidence;
- (b) not compromise the effective retention, storage and security of information and evidence; and
- (c) handle and maintain securely any material obtained in the course of their official functions.

Section 5. Security

56. Members of the Office shall not engage in any deliberate conduct, or make any disclosure, which places or is likely to place the security of any person at risk.

57. Members of the Office shall take appropriate measures to protect the physical and psychological well-being, dignity and privacy of any person at risk as a direct result of his or her interaction with the Office.

Chapter 4. Working relations

Section 1. Equal treatment, non-discrimination and non-harassment

58. Staff members shall be recruited, hired, transferred, trained and compensated on the basis of merit and without regard for characteristics such as race, marital status, pregnancy or potential pregnancy, religion, ethnicity, colour, sexual orientation, disability, political belief or responsibilities as a caregiver.

59. Members of the Office shall treat their colleagues, and other persons encountered in the context of their work, with courtesy and respect, and abstain from treating individuals less favourably because they have a particular characteristic or belong to a particular group as specified in paragraph 58 above.

60. Members of the Office shall not engage in any covert or overt behaviour that reasonably has the effect of violating someone else's dignity or creating an intimidating, degrading, hostile, humiliating or offensive work environment, and avoid behaviour that, although not rising to the level of harassment or abuse, may nonetheless create an atmosphere of hostility or intimidation.

61. Staff members shall pay particular attention to the rules set out in the *Administrative Instructions on Sexual and other Forms of Harassment and on Equal Employment Opportunity and Treatment*.

Section 2. Relations with other organs of the Court

62. Members of the Office shall not engage in direct or indirect *ex parte* communication with judges, Chambers or any Staff members of the Chambers on the merits of trial or appeal proceedings during the course of those proceedings, unless authorised under the Statute or the Rules of Procedure and Evidence, or so instructed by the relevant Chamber or the judges.

63. In the course of their duties, Members of the Office shall not:

- (a) present evidence knowing it to be false or forged;
- (b) knowingly make an untrue statement of material fact to a judge, the Chamber, the Presidency, counsel or the Registry;
- (c) transmit evidence, notes or documents to a judge or Chamber except through the Registry, unless authorised by the judge or Chamber.

64. Staff members shall cooperate with colleagues in other organs of the Court. In so doing, they shall duly respect all applicable instructions as defined by the Office.

65. Should a Member of the Office become aware that a statement made to the judge or the Chamber is incorrect, or that evidence presented to the judge or the Chamber is false, he or she shall inform the Prosecutor as soon as possible.

Section 3. Relations with victims and witnesses

66. The Office aims to establish a relationship of trust and respect with victims and witnesses. Members of the Office shall conduct themselves in a manner that limits risks to witnesses, victims and others who are at risk on account of testimony given by such witnesses, respect their confidentiality and privacy and minimise the potential for harm.

67. Members of the Office shall, *inter alia*:

- (a) not harass, intimidate or pressure victims and witnesses to testify before the Court or to have any dealings with the Court;
- (b) consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Statute and the Rules;
- (c) engage constructively with the legal representatives of victims in order to promote the efficient conduct of proceedings;
- (d) where appropriate, fully explain the rights of witnesses pursuant to article 55(1), including the right against self-incrimination or the incrimination of family members.

68. Members of the Office shall not abuse or misuse their status and the authority of the Office, and shall not engage in any conduct that is likely to bring the Court into disrepute. This includes, but is not limited to:

- (a) any deliberate conduct resulting in physical, sexual or psychological harm or suffering to members of any locality, especially women and children, in which an investigation is being conducted;
- (b) any abusiveness, coercion or threats to any person with whom Members of the Office have dealings;
- (c) corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, or retaliating against a witness for giving testimony;
- (d) any sexual relationship with witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses, or a person engaged by a Member of the Office in relation to a situation under investigation.

Section 4. Relations with persons under investigation and accused persons

69. In their relations with persons under investigation or accused persons, Members of the Office shall, *inter alia*:

- (a) respect their rights and ensure that proceedings are conducted in a fair manner;
- (b) inform them of their rights under article 55(2);
- (c) not communicate directly with a represented person, except through, or with the permission of, that person's legal representative, unless such contact is authorised by the relevant judge or Chamber; and
- (d) inform unrepresented persons of their right to assistance from counsel and, if applicable, of their right to legal assistance.

Section 5. Relations with counsel

70. Members of the Office shall:

- (a) in dealing with counsel and their team members, act fairly, in good faith and courteously;
- (b) cooperate with counsel and their team members as reasonably as possible, with a view to ensuring that proceedings are fair and expeditious; and
- (c) not communicate directly with a represented person, except through, or with the permission of, that person's legal representative, unless such contact is authorised by the relevant judge or Chamber.

Section 6. Conduct in Court

71. Without prejudice to the standards of conduct applicable to all Staff members, those representing the Prosecutor at hearings before the Chambers of the Court shall, in particular:

- (a) uphold the highest standards of integrity, confidentiality, fairness, honesty and truthfulness;

- (b) act with independence and in the interest of justice, and assist the Court in arriving at a just decision;
- (c) ensure, to the best of their abilities, that a just verdict is reached at the end of the trial process and not strive for a conviction at all costs;
- (d) conduct themselves in an honourable, professional, dignified and courteous manner towards all parties and participants to the proceedings, as well as witnesses giving testimony;
- (e) act with due deference to the authority of Chambers;
- (f) not participate in any matter in which their impartiality might reasonably be doubted on any ground, and request the Prosecutor to excuse them from any matter as soon as grounds for disqualification arise, especially those indicated in article 42(7) and rule 34(1);
- (g) not deceive or knowingly mislead the Court, judge, counsel, or the Registry and take all necessary steps to correct an error or inaccuracy as soon as possible after it has been discovered;
- (h) not present evidence knowing it to be false or fabricated;
- (i) disclose, unless the Chamber authorises otherwise, all evidence that shows or tends to show the innocence of a person under investigation or an accused, or to mitigate their guilt, or which may affect the credibility of prosecution evidence, as well as any other documents or information by order of the Chambers.

Chapter 5. Discipline

Section 1. Offences and misconduct against the administration of justice

72. Members of the Office shall not engage in any conduct that is likely to harm the administration of justice as set forth in articles 70 and 71.

73. Members of the Office shall cooperate with any investigations of alleged offences against the administration of justice under article 70 or alleged misconduct before the Court under article 71, and comply with any measures imposed by the Court.

Section 2. Unsatisfactory Conduct

74. Staff members shall not engage in any conduct that is not compatible with the standards set forth in this Code, considered unsatisfactory in accordance with Staff Rule 110.1, or listed as unsatisfactory in Section 5(3) of the *Code of Conduct for Staff Members*. Investigators shall, in addition, also refrain from any conduct that is not compatible with the standards set forth in the *Code of Conduct for Investigators*.

75. Any unsatisfactory conduct may result in the Prosecutor imposing appropriate disciplinary measures in accordance with Chapter X of the Staff Rules.

76. Members of the Office shall cooperate with any investigations into an alleged breach of this Code, and comply with any measures that may be imposed by the Prosecutor.

Chapter 6. Privileges and immunities

Section 1. Purpose of privileges and immunities

77. The privileges and immunities enjoyed by the Court, its officials and its Staff members by virtue of article 48 of the Statute, the *Agreement on Privileges and Immunities of the Court* and *ad hoc* agreements with States, and the *Headquarters Agreement between the International Criminal Court and the Host State* are granted in the interests of the good administration of justice and not for the benefit of the individuals themselves. Those privileges and immunities may be waived in accordance with the applicable procedures and there is a duty to do so in any particular case where they would impede the course of justice and can be waived without prejudice to the purpose for which they were accorded.

78. The privileges and immunities enjoyed by the Court are in no way intended to derogate from the obligations of Members of the Office to observe their private legal obligations.

Section 2. Waiver of privileges and immunities

79. In any case where an issue arises regarding the application of those privileges and immunities, the Deputy Prosecutor or Staff member shall immediately report the matter to the Prosecutor, who may decide whether such privileges and immunities exist and whether they shall be waived in accordance with the relevant Court instruments.

80. If a Staff member or a Deputy Prosecutor engages in conduct which constitutes a crime punishable by deprivation of liberty or other penalty under the national law of the State(s) with jurisdiction to investigate and prosecute, the Prosecutor may waive the privileges and immunities of such alleged offender upon request of the State(s) concerned. In the case of the Prosecutor, the privileges and immunities may be waived by an absolute majority of the judges.

Chapter 7. Final provisions

Section 1. Entry into force

81. This Code and any amendments thereto shall enter into force on the date of their adoption by the Prosecutor.

82. Any proposal for amendments to this Code shall be referred to the Legal Advisory Section. The Legal Advisory Section shall present proposed amendments to the Prosecutor for consideration.

Section 2. Publication

83. The Code shall be published in English and French on the official website of the Court.