

Questionnaire to Candidates for the Position of Registrar of the International Criminal Court

Conscious of the critical importance of the role of the Registrar of the ICC, we have prepared the following as a questionnaire for candidates for this position.

Please reply to some or all the following questions as comprehensively or concisely as you wish.

Name: Kate Mackintosh
Nationality: British

Vision for the ICC and the Registry:

1. Why do you wish to be elected as the Registrar of the International Criminal Court (ICC)?

I have spent my professional life working to support human rights and accountability for international crimes. After over two decades of broad experience in these areas, I believe I have the right vision, knowledge and skills to serve the International Criminal Court as Registrar. It would be an honour to bring my experience of international courts, human rights crises and strategic management together in support of this historic institution, to consolidate what has been achieved so far and to develop an effective, efficient and resilient Court for the future.

2. Article 43 of the Rome Statute states that the Registrar shall be a person of "*high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court*" (French and English). Please describe briefly how you meet these criteria.

I have a record of achievement in my career so far, and have been required to meet the highest standards of conduct as well as to deal with a broad range of highly sensitive information, whether as a lawyer in private practice, an official of the United Nations or when party to sensitive medical and human rights information through my work with Médecins sans Frontières.

I am a native English speaker and am fluent in French.

3. What do you believe are the most important achievements of the ICC in its first 15 years?

The ICC, its members, staff and leadership have achieved a huge amount to date. First of all, the translation of the Rome Statute into a working court is a major achievement in itself. That the Court has been integrated into the international global system of governance is evidenced by the

two Security Council referrals, and the threat of ICC jurisdiction now hangs over all mass crimes. The Prosecution strategy has highlighted relevant areas, such as sexual violence in conflict, use of child soldiers and crimes against cultural property, and the Chambers have issued important jurisprudence in these and other areas. Institutionally, the role given to the Defence and to the victims in the structure of the Court, as well as the creation of the Trust Fund for Victims, are important landmarks in international criminal justice. Finally, with 123 State Parties and staff drawn from 90 different nationalities, the Court is a global institution.

4. What do you believe are some of the major challenges confronting the ICC and Rome Statute system in the coming years?

Despite these achievements, the ICC is facing a challenge to its credibility and authority with the withdrawal of Burundi and discussions over potential withdrawal of other African states. Several indictees are still at large, and recent cases have highlighted the difficulty of witness protection. The ICC must continue its work with determination and focus, showing through its judgements that it is a relevant and necessary 21st century institution.

5. What do you believe are some of the current challenges the Registry specifically faces and how would you address them? What are some of the qualitative indicators you might consider when assessing the performance of the Registry and what would you suggest to enhance efficiencies?

The Court cannot function properly without efficient and effective Registry support. To this extent, the Registry is a part of the solution to the big picture problems noted above.

Specific challenges facing the Registry can be divided into internal and external categories. Internally, these include affirming the trust of the Assembly of States Parties, in particular with regard to the use of resources at the Court; consolidating the gains of ReVision and rebuilding staff morale after this turbulent period. As Registrar, I would pay particular attention to listening to the concerns of States Parties, ensuring full transparency in reporting and establishing a collaborative partnership to find new ways to improve efficiency. I would similarly prioritise listening to staff concerns. The staff are the key Registry asset, and I consider the creation of a positive, inspiring work environment and a culture of excellence a key priority. With regard to outstanding or future grievances and disputes, it may be that the establishment of an ombudsman or other dispute resolution mechanism within the institution should be considered to ensure fairness to staff while avoiding costly and unnecessary litigation.

Two of the Registry's outward-facing responsibilities need particular attention at this time. The first is witness protection. Some steps towards improving witness protection have been taken with the review of the role of the field offices, but much more needs to be done. While effective protection of witnesses to extremely grave crimes is a challenge in any jurisdiction, the Registry can ensure that the appropriate focus, resources and expertise are devoted to the issue, and work

to secure effective State cooperation. The second is public communication: the court, its procedures, goals and achievements, need to be made much more accessible. Smart phones are everywhere. The victim of a crime in rural DRC should be able to watch a video in her own language clearly explaining how she can access justice at the Court. An effective social media strategy and a clearer and more user-friendly website deserve immediate attention.

Enhancing the efficiency of Registry operations is naturally a demand of its funders and clients. First of all I would emphasise that a motivated and empowered staff body is the best guarantee of efficient and effective operations. My goal would be to stimulate and reward innovation in Registry staff, who are often best-placed to see how things can be done better. I would seek to combine the wisdom and experience of existing staff with the fresh insights I can bring as an outsider from a similar institution, interviewing key staff and working with senior Registry management to review workflows and Standard Operating Procedures to see where efficiency gains could be made. Standard exit questionnaires could be developed for victims and witnesses. I believe this combination of qualitative data along with the use of some quantitative indicators, such as those currently under consideration for the Court, will put me in the best position to design and implement efficiency gains.

6. All Court officials must perform their functions with full independence and should not act under the instruction of any State or external actor. Do you expect to have any difficulties in taking a position independent of, and possibly contrary to, the position of your government or any external actor?

No. In addition, I have never been in a role to take instructions from my or any other government. I have lived in outside my own country, the UK, in the Netherlands for 20 years. I believe full independence is absolutely critical to the role of Registrar.

7. The Registry is a neutral organ of the Court that provides services to all other organs so the ICC can function and conduct fair and effective public proceedings. How would you describe the relationship of the ICC Registrar with the ICC President; the Office of the Prosecutor; the ICC Chambers, and the Assembly of States Parties?

The Registrar is a service-provider to all the functions and organs mentioned and should be guided in these relationships by the principle of client-orientation. Specifically:

- The President:

The Presidency is responsible for the proper administration of the court, and the Registrar, as principal administrative officer of the court, acts under the authority of the President, so the relationship between the Registrar and President is particularly important.

- The Office of the Prosecutor:

While the Registrar is also a service-provider to the Prosecutor, the Prosecutor has independent authority over resource matters in her office. The Registrar and Prosecutor additionally cooperate over protection and support for victims and witnesses.

- The Chambers:

The Registrar has a responsibility to execute decisions of Chambers, and to ensure adequate staffing and other support. The Registrar has a particular duty to the judges as the electors of the Registrar.

- The Assembly of States Parties:

The Registrar is the custodian of funds from the ASP, and must carefully account for any and all expenditure. The key elements of that relationship must therefore be transparency, trust and receptivity to concerns expressed by States Parties, as well as partnership and collaboration on how to maximize efficiencies.

Although not mentioned in the question, two other important clients of the Registry are the Defence (the Registrar's responsibilities towards the Defence are set out in Rule 20 of the Rules of Procedure and Evidence), and the legal representatives of the Victims.

8. Please describe any specific expertise of relevance to the work of the ICC that you may have, including, but not limited to, gender equality and violence against women or children. How would you ensure that women and children have access to justice and are cognizant of what the Rome Statute is seeking to achieve?

I have over 20 years' experience in human rights and international justice. I have worked at two International Criminal Tribunals with the Judges, the Prosecution and the Defence, as well as in my current role as Deputy Registrar. I believe this gives me a uniquely rounded understanding of the functioning of an international court and the needs of the Registry's different clients. Throughout my career I have ensured attention to gender issues both in my substantive work and institutionally. At Médecins sans Frontières I recruited and oversaw the work of a gender expert to work with medical staff on developing a comprehensive response to sexual violence, including medical, legal and psychosocial aspects as well as effective referral networks. As a lawyer at the ICTY, I worked on some of the defining cases on rape and sexual violence as international crimes. In Bosnia and Herzegovina, I was Gender focal point for the OSCE mission and I served as a member of the Advisory Council to the Leadership and Empowerment Programme for ICTY Women.

With relation to access to justice, I am surprised that the question groups women and children together as target groups. Adults and children face different obstacles to justice. However, with regard to outreach and the very first step of raising awareness about the ICC and what the Rome Statute is seeking to achieve, partnerships with national organisations and civil society groups are essential, as is a targeted social media strategy. At the ICTY I oversee the Youth Outreach Programme, which supports school teachers with appropriate teaching material in local languages. Through this kind of initiative and the development of age-appropriate digital and physical materials, children can be introduced to the ICC and the concept of international justice.

Experience in Management and Budgetary Processes:

9. How would you describe your management skills and experience that would be of relevance to the effective management of the ICC's human resources, including hiring and retaining highly-qualified staff and ensuring their satisfactory performance, as well as addressing the chronic imbalance in geographical representation of its staff and that of women in higher levels?

For the last decade I have been in senior management positions, as Head of Department at MSF and Division Director / Deputy Registrar at the ICTY. I have recruited dozens of staff members up to Director level, and served on review bodies for recruitment processes. With regard to underrepresentation of women and certain geographical groups at the ICC, I note that this is a particular problem in the Registry. These imbalances have to be addressed on two levels. First generating applications from underrepresented groups. This requires targeted dissemination of vacancy announcements, for example through relevant professional bodies and groups in underrepresented geographical areas, and may require further engagement to encourage applications, such as presentations on recruitment procedures or talks from staff members who can act as role models. Second, ensuring the work environment is attractive and welcoming to all. This requires leaders to set an example of respect and tolerance, may involve adoption of flexible working arrangements, where appropriate, and certainly includes a zero-tolerance policy on all forms of discrimination, harassment, including sexual harassment and abuse of authority.

This positive working environment will also be critical in retention. I have always invested in training and professional development of staff, and would hope to both create and retain highly qualified staff by encouraging a dynamic environment of learning and innovation as well as a culture of excellence at the Court.

10. Please describe your experience preparing and being responsible for a large budget, including whether you have experience in working with a results-based budgeting system. What are the size of the budgets and staff you have supervised in past positions? What strategies would you undertake in relation to the preparation, submission and examination of the ICC budget to ensure support by the Committee on Budget and Finance and States Parties?

During my five years as Deputy Registrar at the ICTY, I worked closely with the Registrar to develop two biennial (2-year) budgets (US \$100 - \$150 US million per year and a staff of up to 750). Prior to this, for six years, I had financial and strategic responsibility for Médecins sans Frontières (MSF) Hong Kong (with an annual budget of approximately US \$50 million) as a member of the International Board. As Head of Humanitarian Affairs at MSF from 2007-2011, I was responsible for a smaller departmental budget. The United Nations uses results-based budgeting, while MSF budgets were based on logical frameworks, another tool to set performance indicators and relate activities and investment to expected results.

I believe the key to gaining CBF and State Party support for the ICC budget is thorough explanation, collaboration and transparency well in advance of consideration of the budget.

Experience in External Affairs:

11. One of the core challenges identified for the Court is obtaining a positive and effective response to its requests for cooperation. Please describe experience you may have that is relevant to address cooperation challenges for the ICC Registry.

At the ICTY, I have successfully worked with States on a wide range of issues, such as sentence enforcement agreements, relocation of witnesses, and securing arrest and transfers. I have

previous experience of negotiating with national authorities (and international organisations) on behalf of Médecins sans Frontières, for example for operational access to conflict-affected areas.

12. The Registrar has a special mandate vis-à-vis the outreach activities of the Court, especially regarding victims and affected communities. Please elaborate on any experience relevant to fulfilling this mandate, as well as your philosophy regarding the role of the ICC's field presence.

I have extensive experience in communications and outreach to and about victims of international crimes. In Rwanda one year after the genocide I worked as a human rights monitor, interviewing victims of human rights violations and liaising with survivors' groups in the precarious post-genocide period. At MSF, I myself worked with affected communities and national staff in the field, meeting for example in Sierra Leone with MSF national staff and survivors of the conflict to examine the significance of the SCSL. Later, as Head of Humanitarian Affairs, I brought together advocacy and communications staff in London, Berlin, Amsterdam and Toronto under my overall leadership to coordinate MSF's efforts on behalf of some of the world's most abused and excluded people.

As Deputy Registrar of the ICTY, I was assigned oversight of the communications and outreach programme during my first year in the role. I have had the enormous pleasure of working with this creative and dynamic team over the past five years, and learning through them about successful strategies to reach out to victims and affected communities. I would hope to bring this experience to the ICC, to learn from the experiences here and to support further innovation to make the ICC as meaningful as possible for the victims of international crimes.

Field presence for the ICC Registry is important but expensive. Minimal presence needs to be secured, as focal point for witness support and protection, as well as liaison with States and provision of information about the Court. This must be accompanied by a capacity to scale swiftly up or down in accordance with the needs of proceedings. To be really effective, the Court needs to multiply the impact of its own field presence through cooperation and collaboration with other actors, States as well as NGOs and civil society, to achieve the full range of these goals. Careful attention needs to be paid to coordination with the Office of the Prosecutor and their existing staff and relationships in situation countries.

13. The ICC has established constructive and long-term relationships with nongovernmental organizations (NGOs). Please describe any previous experience you have working with NGOs.

I had the honour to work with the International NGO Médecins sans Frontières (MSF) for eight years, first as International Law Adviser and later Head of Humanitarian Affairs. In this position and since, I have collaborated with a wide range of NGOs and served on numerous NGO advisory panels and Boards, in addition to my 6 years as Board Member of MSF Hong Kong, such as the International Committee of the Red Cross Advisory Group on Professional Standards for Protection

Work (2008-9); HERE Geneva Advisory Group for Humanitarian Priorities Project: Humanitarian Protection; Humanitarian Principles; Humanitarian Accountability (2015-16); PHAP Committee of Experts on International Legal Frameworks for Humanitarian Action, and Applying Humanitarian Principles in Practice (2016). While at MSF I led the development of policy on cooperation with the ICC for MSF and in the wider NGO sector. I have published several articles on cooperation between NGOs and international justice mechanisms, and have frequently spoken on this topic, most recently at the annual Humanitarian Congress in Berlin (October 2017).

14. How would you see your role with regards to increasing the visibility of the Court?

The role of the Registrar with regard to public information and outreach is set out in rule 13 of the Rules of Procedure and Evidence, and Regulation 5 bis of the Regulations of the Registry. As detailed in my answers to questions 5, 8 and 12, I see more effective communication about the ICC as a priority for the Registrar.

Experience in Judicial Support:

15. Please describe your experience and/or expertise in dealing with victim participation in proceedings. How would you manage the Registry's role to ensure that the statutory right of victims to participate in proceedings is achieved in the most meaningful manner whilst ensuring efficiency and expediency?

The inclusion of victim participation in the Rome Statute was a groundbreaking step in the right direction for international justice. It is also one of the most challenging areas, as the Court must struggle to develop meaningful participation for victims of mass crimes while maintaining its focus on timely delivery of justice, with no blue-print to follow.

Standardization is key to avoid raising false expectations and ensure foreseeability of the participation process. The release of the Chambers' Practice Manual is helpful in this regard, and the Registry's approach to victim participation should be adapted according to the guidance it provides. The Registry could also further explore, in consultation with Chambers and the Trust Fund for Victims, drawing on the assistance mandate of the Trust Fund in parallel to judicial proceedings. Such approach could reduce the pressure placed on victims' participation and provide access to some form of redress before the outcome of the criminal proceedings.

16. The ICC Registrar is responsible for establishing the eligibility and qualifications of defense counsel, providing support to them, and working with the Court to promote the rights of the defense. Please describe your experience with these issues, including with respect to Defense access to necessary facilities and resources in proceedings ('equality of arms'), including in addressing issues such as gaps in gender equality on ICC Defense counsel teams?

I began my legal career as a criminal Defence lawyer, and I am fully committed to making the principle of equality of arms a reality in international criminal justice. Having worked “inside” the ICTY as a legal officer in Chambers, I later worked as co-counsel on a small defence case and saw at first-hand how hard it can be to access information from the “outside”, and how crucial a support office within the Court is to an effective Defence. I was hugely impressed with the efficiency and helpfulness of staff in the ICTY Defence Office, whose work I was later to oversee as Deputy Registrar. As Deputy Registrar at the ICTY, I have supervised the Office for Legal Aid and Defence Counsel for the last five years, providing resources and administering funds to Defence teams, as well as overseeing regulation via the Code of Conduct, Disciplinary Panel, etc. Between 2012 and 2016, I also oversaw the development of the key policies for Defence support and regulation at the International Residual Mechanism for International Tribunals, involving extended consultation with the ICTY Association of Defence Counsel.

I am delighted that the issue of gender equality in Defence teams is being highlighted. As Registrar I would be hesitant to intervene directly in the defendants’ right to free choice of counsel in order to address the current imbalance. However, in consultation with the ICCBA, I believe ideas should be explored such as ensuring an equal number of women are on the list of duty Counsel, and reaching out to national bar associations to solicit applications from more women lawyers. The ICCBA may also want to look at gender representation in its management board.

I would also wish to consult with the ICCBA and OPCD on additional measures to ensure the quality of Defence representation, such as an assessment test of interview prior to admittance to the ICC list and compulsory continuing education in international criminal law.

17. Article 68(1) of the Rome Statute provides that the Court “*shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.*” Please describe the experience or vision you may have with regards to the protection of victims and witnesses, particularly women, at the ICC?

As Deputy Registrar I oversee the Victims and Witnesses Section at the ICTY and have done for the past 5 years. Without witnesses there is no criminal justice, and I have been moved by the courage and commitment of the more than 7,000 witnesses who have testified before the ICTY judges. Critical to their participation has been the support and protection offered by the Section, which has learned and modified its operations over the 24 years of the Tribunal’s life, becoming a truly witness-centred example of best practice today. Recently we carried out a follow-up survey into the experiences of 300 witnesses before the court, which gave a fascinating insight into the difficulties faced by witnesses, the value placed on different services and the impact testifying has had on their lives. Two key elements emerged: the importance of the witness-centred approach to support and protection at the court, and the necessity of a network of state and NGO support services to which witnesses can be referred for longer term assistance, where needed.

Miscellaneous:

18. Have you ever been found, after an administrative or judicial hearing, to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socio-economic status, and/or alienage or citizenship status? If yes, please describe the circumstances.

No.

19. Do you know of any factors that would adversely affect your ability to competently serve as the Registrar, to comply with ethical responsibilities, or to complete the responsibilities that the Registrar is required to assume? If yes, please explain. Are there any other issues or comments you would like to address?

No.

Thank you.