

Questionnaire for candidates to the 2020 Election of the ICC Prosecutor

Civil society plays an important role in monitoring the election of International Criminal Court (ICC) officials. We promote fair, merit-based, and transparent elections.

Please answer the questions below. These questions are aimed at complementing questions posed during the public hearings held with candidates on 29-30 July 2020.

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Date: 5 October 2020

COMMITMENT AND VISION

1. What vision will animate the work of the ICC Office of the Prosecutor (OTP), if you are elected Prosecutor?

It is an honour to present my answers to the many thoughtful questions you have posed.

If elected as Prosecutor, my vision is of an Office which has gained the respect of states parties and non-parties alike, for its unswerving fidelity to the Rome Statute and the rule of law. An Office which has a credible deterrent effect, based on a solid track record of convictions, upheld on appeal. An Office that is a healthy, supportive and inclusive environment, free of harassment, bullying and toxicity. An Office staffed by highly motivated teams who enjoy their work, feel empowered to take decisions, and receive prompt and informed decisions from the Prosecutor and Deputy Prosecutor(s) on matters where decision-making cannot be delegated.

I see a diverse, multilingual Office whose staff reflect the women and men who make up the 123 States Parties. An Office with teams regularly in the field, which include a significant number of professionals from situation countries. An Office that conducts courtroom proceedings swiftly, fairly and efficiently, focused on the core issues in the case, and presents highly compelling evidence of the participation of the accused in the crimes charged.

I see an Office which upholds the rights of suspects and accused under the Rome Statute. It is only through fair procedures and strong evidence fairly obtained that convictions will be upheld on appeal.

I see an Office which promotes faster disclosure of evidence to responsible defence teams who fully respect witness security. New procedures will be designed in partnership with defence teams and judges. These can harness the power of modern evidence management technology to enable defence teams to rapidly identify genuinely useful material, so that they can carry out investigations efficiently.

I see an Office which communicates promptly and transparently, to States Parties and victims alike, progress of and obstacles to its work, while respecting the confidentiality of investigations. I see an Office which is honest, open and prompt in its communications with victims, in particular where the Office is not going to be able to deliver justice. I see a strong relationship with States Parties, leading to faster information-sharing concerning fugitives and the availability of evidence, leading to more prompt arrests and delivery of evidence.

I am energised by the possibilities offered by responsible and sustainable change, drawing from the report of the Group of Independent Experts,¹ and in accordance with the steps to be decided by the Assembly of States Parties. I am confident that, working with States Parties, the Registrar, the Presidency and civil society, together we can deliver a strong, happy, positive, efficient and effective Office of the Prosecutor.

2. How will you define the Court's legacy in situations where investigations are undertaken? How will you achieve that legacy?

The focus of the Court's legacy in a situation should be the end of impunity in that situation.

If elected as Prosecutor, the Office will produce a draft policy on completion strategies for situations, to be publicly released for comments and observations. Among the questions to be addressed in the policy will include: how best to determine genuine willingness and ability on the part of the authorities in the situation country to deliver accountability; how best to determine the views of a representative sample of victims concerning closure of a situation; criteria for reopening a closed situation; the transfer of evidence from the OTP to the situation country or other jurisdictions following closure; prohibition on the transfer of evidence for use in cases where the death penalty is available; and witness security after closure. This policy paper will pay due regard to traditional processes of accountability and truth-telling as an alternative to conventional criminal trials, and will address ways to determine whether traditional processes enjoy true support from affected victims and communities.

3. What is your assessment of the resources available to the Court? If you are elected Prosecutor, how will you achieve the Court's mandate in light of available resources?

Clearly the OTP does not have the resources it needs to carry out investigations across all situations to the necessary level of depth and quality.

Nevertheless, we must be pragmatic in the Covid-19 funding environment. It is unlikely that States Parties will be at liberty to increase the OTP's budget in the short term. In the longer term, as Prosecutor I would transparently communicate to States Parties the practical realities underlying the funding requirements for investigations. I believe that greater transparency on funding requirements by the OTP will bring greater trust from the States Parties, which in the longer term is more likely to lead to increased funding.

In long-running situations, repatriation of cases to the domestic level must be explored where possible. We must work together with the situation country, States Parties who fund accountability efforts at the domestic level, and civil society to ensure that trials can take place within the countries where the crimes took place. Situation countries which are making good faith efforts to establish domestic or hybrid courts focused on international crimes must receive from donors the financial,

¹ The Group of Independent Experts ("Group") invited me to provide oral observations, and I duly provided both oral and written observations to the Group. I was also invited to participate in a stakeholder consultation in Nairobi in March 2020, which resulted in recommendations to the Group.

logistical and other support that they need to arrest and put on trial fugitives whose cases which are currently pending before the ICC.

In prioritising the allocation of resources, due account must be taken of gravity; geography (the need to ensure that the OTP's investigations are not primarily concerned with one continent) and opportunity (if a sealed or unsealed arrest warrant is executed and a person is taken into custody, the Prosecutor must divert resources to ensure that the trial of that case is conducted as expeditiously as possible).

PRELIMINARY EXAMINATIONS, INVESTIGATIONS AND PROSECUTIONS

4. What do you believe are the main challenges facing the OTP in terms of preliminary examinations, investigations and prosecutions?

Preliminary examinations

The main challenges in preliminary examinations are: 1. Whether to open further investigations given the pressure on the OTP's resources; 2. Degradation and loss of evidence during the preliminary examination; 3. Ensuring that the universality of the Rome Statute system is not threatened.

As a general rule, preliminary examinations should be as short as possible. As the Prosecutor does not have investigative powers during the preliminary examination, many items of evidence will be deliberately destroyed or lost, or will degrade, in the months and years after commission of crimes and before investigation has commenced. Whether the trials ultimately take place at the ICC or before domestic courts, it is vital that probative evidence is collected and secured as soon as possible.

Two States Parties withdrew from the Rome Statute after the commencement of preliminary examinations into crimes on the territory of those States Parties. Further withdrawals would impact negatively on the universality of the Statute. As Prosecutor, I would request JCCD to present a concise analysis, based on the Court's experience so far, as to the advantages and disadvantages of public preliminary examinations, and engage in a frank discussion with OTP staff to decide whether future preliminary examinations should be public.

Investigations

The main challenges to ensuring a successful investigation is obtaining access to, and securing, probative evidence prior to its loss, destruction or deterioration. A related challenge is dealing with witness interference.

Where access to the territory of the State where the crimes took place is available, investigative teams, incorporating suitably qualified nationals of the situation country, should carry out a highly intensive period of evidence collection as soon as possible, preferably based for that period in the situation country. Investigative staff should preferably be fluent in a working language of the situation country.

Whether or not access to the State is possible, OTP staff must have the training necessary to ensure that they can take full advantage of all opportunities to secure and analyse relevant digital evidence found on hard drives, phones, and online. As Prosecutor I will strengthen relations with the relevant corporations who store vast quantities of relevant digital information, and emphasise our shared

responsibility to use digital evidence to bring to justice those responsible for massive atrocities in a manner that fully respects the privacy rights of ordinary users of digital services.

Managing the risk of witness interference starts from the pre-investigation stage. It includes identifying from the outset whether, in a new situation, there is a long-standing cultural or political environment which favours witness intimidation or extrajudicial killing, and then managing the evidence-gathering process accordingly. Some parts of the world more than others have long battled insidious forms of interference with witnesses. Elsewhere, state-sanctioned extra-judicial killing is a well-established phenomenon. In such situations, evidence-collecting efforts should focus on sources of evidence which cannot be bribed, intimidated, or executed. This includes intercepts of radio and phone communications; cellphone, cellsite, geolocation and other data on hard drives and phones; emails; banking and other financial information; communications within and among perpetrator entities at the local, regional, and national levels.

In all situations, I will take steps promptly to inform States Parties (and, in the case of Security Council referrals, the Council) of instances of serious non-cooperation, so that they can promptly take appropriate steps, such as those as envisaged in the informal dimension of the ASP procedures on non-cooperation.

Prosecutions

As Prosecutor, I will work with senior staff to ensure that charges (including modes of liability and crimes) faithfully reflect the evidence to be presented at trial. I will ensure that the temporal and territorial scope of the charges is sufficiently broad to accurately reflect the true extent and gravity of the criminal activity, and the existence (where relevant) of a widespread or systematic attack against a civilian population. This must be balanced against the need to ensure that charges are not needlessly broad, requiring trials to run for years. I will ensure that the Office takes full advantage of the tools and procedures in the Statute, Rules of Procedure and Evidence, and Chambers Practice Manual so that proceedings are as expeditious as possible.

5. Please describe your vision for addressing misconceptions related to sexual and gender-based violence that might impede the investigation and prosecution of SGBCs.

Cultural misconceptions in some conflict areas mean that the true extent of SGBC, including crimes against men and boys, remains underreported, under-investigated, and under-prosecuted. I would ensure that investigative team leaders explore and apply situation-specific remedies, in collaboration with SGBC staff from the situation country, to address this.

There remains a lack of jurisprudence concerning the crime against humanity of sexual violence under article 7(1)(g)6 of the Statute. The comparable gravity requirement in the Elements of the Crimes (“Such conduct was of a gravity comparable to the other offences in article 7, paragraph 1 (g), of the Statute”) and the requirement that the provisions of article 7 “must be strictly construed” apply. As Prosecutor, I would favour the prosecution of article 7(1)(g)6 offences where acts of sexual violence were committed in circumstances satisfying the legal requirements, including crimes against detainees in conditions of confinement characterised by fear and intimidation. I would ensure that the Chamber receives evidence not only of contemporaneous mental suffering, but also evidence of,

for example, symptoms of post-traumatic stress disorders resulting from and continuing long after the incidents occurred.

Restricting the number of OTP staff who can interview a survivor of SGBC can have a detrimental impact on the SGBC evidence collected, and on survivors, who may be frustrated to hear that she or he cannot be interviewed about their harrowing experiences because an expert SGBC investigator is not available for interview. To generally improve SGBC survivor interaction with the OTP, and the quality and quantity of SGBC evidence collected by the OTP, I would ensure that all OTP investigators, as well as other staff involved in interviewing, receive specific training in interviewing SGBC survivors.

6. Please describe your experience in addressing crimes against and affecting children and related issues, including dealing with child witnesses.

As an international prosecutor, I have participated in numerous cases, at leadership and lower levels, concerning systematic crimes against civilian communities that included children. For example, in 2005 I was the principal author of the prosecution's sentencing brief in the *Bralo* guilty plea case at the ICTY. In one incident, of the fourteen members of two families who were killed by a soldier with the assistance of the accused, nine were children. I ensured that the suffering of the children who were murdered was given prominence in the sentencing submissions, and duly considered by the sentencing judges.

From 2017 to 2019, I was head of a team investigating crimes committed by the Assad regime in Syria. I supervised investigators who had interviewed hundreds of persons who had been held in detention, and lawyers and analysts who prepared criminal briefs concerning those crimes. A particularly grave aspect of the crimes in Syria was that many were committed against children under the age of eighteen. Some took part in demonstrations and other opposition activity in Syria and were then arrested, detained, and subjected to abuse or inhumane conditions of detention. Some children were detained with their parents, or were threatened or abused in detention in front of their parents to secure false confessions. Working with an SGBV adviser, I ensured that each criminal brief (at national level and governorate level) contained a separate section on crimes against children.

7. The 2016 OTP Policy Paper on case selection and prioritization lays down several areas of serious crimes under national law which the OTP will take into consideration when investigating core crimes under the Rome Statute. These include the illegal exploitation of natural resources, arms trafficking, human trafficking, terrorism, financial crimes, land grabbing or the destruction of the environment. Could you please provide an example of your experience in any of these areas?

Of the areas cited, my primary experience concerns terrorism investigation and litigation.

In 2007, I provided strategic and tactical advice in Lebanon to the Commissioner of the United Nations International Independent Investigation Commission, responsible for the investigation of the assassination of former Lebanese Prime Minister Rafik Hariri. As part of that, I prepared and co-conducted in Syria a high-level insider interview, which took place over three days, assisted by the Chief of Investigations of the Commission.

In 2008, I made several applications on behalf of persons accused of terrorism-related offences to the Special Criminal Court in Dublin, a non-jury court established in 1972 to handle terrorist cases. For example, I successfully argued before the Court the amendment of bail conditions on behalf of an alleged member of an Irish terrorist organisation.

8. To date, the crime against humanity of enforced disappearance has not been charged. Are there aspects of the Rome Statute, including crimes within its jurisdiction, that you consider have been underutilized and would form part of the Office's prosecutorial strategies, if elected?

I agree that the crime against humanity of enforced disappearance has been underutilised, as has the crime against humanity of sexual violence discussed above.

A key part of prosecutorial success is choosing the modes of liability contained in the Statute which best reflect the acts, conduct and mental state of the accused. Several key modes of liability remain under-litigated or underutilized.

For example, the Appeals Chamber has endorsed the 'control over the crime' theory which distinguishes those who have 'committed' crimes (co-perpetrators) from those who have merely contributed to crimes of others. Under this model, a co-perpetrator makes, 'within the framework of a common plan, an essential contribution with the resulting power to frustrate the commission of the crime'. As a practical matter, it remains unclear how the power to frustrate a crime can be proven without inviting a Chamber to embark on an exercise of speculation. In future litigation, I will seek judicial clarity on the nature of proof necessary, and the practical distinction between "significant contribution" (which applies to another form of liability) and "essential contribution".

As Prosecutor I would seek to utilize more of the modes of liability envisaged by the Statute.

9. Under the Rome Statute, the Prosecutor has unilateral authority to investigate offences against the administration of justice (Article 70 cases). As Prosecutor, what policy considerations would guide your implementation of the Article 70 mandate in a clear and consistent manner?

The principal considerations to be weighed are deterrence; speed of proceedings; prospect of conviction; and proportionate expenditure of resources.

Investigations and prosecutions under Article 70 might be seen by some as an expensive and time-consuming sideshow to the ICC's core mandate. But they are a vital element in effectively deterring and thus reducing the general risk of witness interference. As Prosecutor, I would explore whether the prosecution of such crimes could be outsourced to external counsel, as has occurred at the ICTY and Special Tribunal for Lebanon, in a cost-saving fashion.

Generally, Article 70 proceedings should be undertaken only where the charges are focused, the trial will be relatively short, and there is a high prospect of conviction.

COMMUNICATION AND OUTREACH

10. The ICC's work is of concern globally and to multiple audiences.

What experience do you have in prioritizing and successfully conveying key yet complex information to different audiences? Please provide specific examples.

I have extensive experience in selecting and conveying the most relevant information to a wide variety of audiences, and choosing audience-specific language to do so. Some examples are provided here.

As a professional advocate who has appeared before judges of Pre-Trial, Trial and Appeals Chambers since 2001, I have extensive experience in courtroom communication with judges, counsel and witnesses. This includes direct examination, cross-examination and re-examination of fact and expert witnesses, and oral submissions on a wide range of legal issues. See, for example, my December 2019 oral submissions before the Appeals Chamber of the ICC.

Since 2012, I have communicated effectively on complex ICC-related matters to numerous international and domestic print, radio and television media outlets. This includes media outlets in situation countries. I have done so in compliance with applicable codes of professional conduct, and ICC jurisprudence on media interaction. See, for example, a live 2013 interview on Kenyan television concerning ICC proceedings, which included questions from ordinary citizens telephoned in to the studio, and a live 2014 interview on an evening news programme in Kenya.

I have extensive experience in communicating ICC-related matters on international radio and television. See for example, a BBC World Service interview in September 2014, and an Al Jazeera discussion in June 2020.

For over 20 years, I have communicated with legal, investigative and analytical staff from an array of national and religious backgrounds, working on dozens of legal and investigative issues in Africa, southeast Asia, Europe, North America and the Middle East. I have participated in over 50 meetings with groups of victims in situation countries, briefing them on developments and providing responsive answers to their questions on a broad range of ICC-related issues. I have held numerous ICC-related meetings with domestic and international NGOs, and with Ambassadors from all five geographic regions in English, Spanish and French.

I have communicated effectively with many units within three prosecution offices in two international courts and one hybrid court. I have communicated with over 10 units within the ICC, negotiated budget-related issues with the ICC Registry, and participated in numerous initiatives at the Registrar's request. I have successfully used effective communication strategies to manage almost every issue relevant to the successful day-to-day operation of a large international prosecution office, including the recruitment of staff, performance management, IT, budgets, field security, insider and UN witnesses, uncooperative expert and fact witnesses, and numerous confidential issues relevant to safe and successful field operations in situation countries.

What kind of communications strategies and tools will you put in place as Prosecutor?

I set out below principles which will guide my communications strategy in respect of victims, situations generally, States Parties, the Security Council, regional organisations and the press.

- Victims: Honesty towards victims is a central responsibility of the Prosecutor. Victims must be kept meaningfully, candidly and regularly informed. In particular, I will ensure that major prosecutorial decisions which negatively affect victims' interests are communicated swiftly and with sensitivity to the affected communities and incorporate opportunities for questions from victims and answers by prosecution staff.
- Situation countries: As Prosecutor, I would aim to visit each State in which there is a preliminary examination or investigation once per year, with the consent of that State. In francophone countries, I would aim to conduct meetings with government, civil society and victim communities primarily in French. In Spanish-speaking countries, I would aim to conduct these meetings in Spanish.
- States Parties: Candid interaction with Working Groups of the ASP provides an opportunity to articulate the obstacles that the OTP is facing in its work, and to seek State Party assistance. I would aim to provide, as far as possible without compromising witness security or operational integrity, all information that ASP Working Groups need to carry out their mandates.
- United Nations: The Prosecutor's visits to the Security Council in New York to report on Security Council referrals provide an opportunity for the Prosecutor to have informal engagements with all Council members who are also States Parties of the ICC. (At any given moment, a majority of Council members will be States Parties.) Such meetings provide a forum for candid discussion of barriers to accessing evidence and arresting fugitives across all situations. The United Nations remains a key partner in securing access to evidence. As Prosecutor I would aim to maintain excellent and frequent communications with all relevant partners within the United Nations system.
- Regional Organisations: As Prosecutor, I would make myself available to attend, as appropriate, summits of regional organisations, and to be available for informal bilateral and multilateral engagements in order to listen to the concerns of States and to update them on developments.
- Press and social media: I would ensure that the Office of the Prosecutor swiftly counters misinformation and correct misperceptions in a range of languages through effective and prompt use of social media, radio and television interviews, and frequent media briefings.

VICTIMS AND AFFECTED COMMUNITIES

11. Please describe your vision of the prosecution's role in supporting the rights of victims in ICC proceedings as per the Rome Statute.

From my extensive field experience in situation countries, I have seen how the Prosecution's absence from the media space can leave room for that space to be occupied by misinformation about the work of the ICC. This negatively impacts on the willingness of victims to participate in ICC proceedings.

The collapse of cases at the ICC exacerbates the suffering of victims, deprives them of knowing the full truth about the crimes committed against them, and prevents applications for reparation. The most important way that the Prosecutor can help victims to obtain truth, justice and reparation is by

presenting strong evidence at trial concerning the participation of the accused in the crimes charged, in order to secure a fair conviction. I would take all reasonable steps to ensure that reparations proceedings are concluded as swiftly as possible to facilitate swift delivery of reparations to victims.

I would ensure to ensure that Prosecution staff respond swiftly to communications by victims' representatives.

I would ensure that pre-trial and trial proceedings are conducted in such a way as to establish the truth about the crimes committed, and the participation of the accused in those crimes, in a manner that respects the right of the accused, and the victims, to proceedings that start and finish within a reasonable time.

12. How will you pursue accountability for those crimes that have a particularly serious impact on future generations of affected communities?

The crime of enforced disappearance referred to above is of particular importance. Investigations of this crime – even if they do not result in trial – could act as a catalyst to encourage relevant entities – including perpetrator groups – to identify grave sites and permit exhumation and dignified reburial of human remains. This would help the healing process for surviving relatives.

As noted above, I would ensure that all relevant OTP staff receive specific training on SGBCs. Such training would include international best practice on referral pathways, to ensure that victims of SGBC – including children and adolescents – are appropriately referred to relevant entities who can provide to them the psychosocial support that they need.

13. How do you view the OTP's relationship with affected communities? How would you seek to maximize the impact of the Office's work and that of the Court more broadly for affected communities?

Please see the answers to question 10 above regarding communications with victims and in situation areas by OTP staff generally.

The physical presence of the Prosecutor in a country or area under preliminary examination or investigation sends forth a visible message that the justice process is underway, and accelerates local dialogue about international and domestic justice options. I would aim to listen to affected communities directly by visiting situation countries once per year. Social media communications by the OTP, as noted above, in the local language of the situation area, can also catalyse dialogue on justice options in situation countries, particularly in the key under-25 segment of the population.

DEFENCE RIGHTS

14. Please describe your experiences in ensuring the rights of the accused to a fair and impartial trial.

I am an ethical, pragmatic, and highly experienced international prosecutor with enormous experience in litigating the rights of suspects and accused before international criminal courts. Every trial in which I have participated in prosecutor has resulted in conviction upheld on appeal. I have a profound understanding that upholding the statutory rights of suspects and accused at every stage of the proceedings is a key element in securing convictions that are upheld on appeal.

I have represented accused before the Irish courts on a range of issues and participated in numerous consultations with accused persons. In 2009, I co-authored a constructive analysis of the right of an accused to a speedy trial in international criminal tribunals. My co-author and I examined lengthy detention periods prior to, during and after trial. We made numerous practical recommendations aimed at reducing delay in pre-trial, trial and post-trial periods.

IMPARTIALITY, INDEPENDENCE, AND COOPERATION

15. How have you demonstrated your ability to carry out previous mandates with independence and impartiality? Please provide specific examples.

My record demonstrates that I am an ethical legal professional who has represented a wide variety of clients before international, hybrid and domestic courts, with complete impartiality and independence, without fear or favour, and without discrimination on grounds such as age, gender, race, colour, language, religion, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

I have prosecuted accused from Europe, Africa and Asia before pre-trial, trial and appeals chambers of three international courts (the ICTY, ICTR and ECCC) in a manner fully aligned to the statutory requirements of independence and impartiality of the prosecutors of those courts. I was engaged in that work for the vast majority of the period between 2001 and 2017.

I have represented the interests of victims from a variety of ethnic and religious backgrounds before the Pre-Trial Chamber, Trial Chamber and Appeals Chamber in three situations before the ICC which have attracted high levels of political attention. In doing so, I acted fully in accordance with my strict ethical obligations, domestic and international, to represent my clients fully and fearlessly.

My record of independence and impartiality has been recognised. In 2019, the UN Secretary General appointed me as the Reserve International Co-Prosecutor at the ECCC. In 2020, I was appointed as judge on the roster of international judges of the Kosovo Specialist Chambers (KSC), as recommended by an independent Selection Panel. I was first nominated by my State (Ireland) for the roster in 2016. KSC Judges must be persons of high moral character, impartial and of integrity, and must qualify for the highest judicial offices in their respective States.

16. How will you act in cases where significant political or other external pressure is exerted upon you and the Office you lead?

As Prosecutor, I will at every stage of the proceedings uphold, without fear of favour, the Rome Statute. It is only through unwavering adherence to the Rome Statute that the Prosecutor will attract and retain the respect of States Parties and non-Parties alike.

I will invite all relevant parties – suspects, accused, States and victims – who feel aggrieved by prosecutorial action or inaction to seek solutions within the framework of the Statute and the Rules of Procedure and Evidence. I will encourage parties to engage in constructive consultations with the Office of the Prosecutor, and, in appropriate circumstances, to assert their rights fully before the relevant Chambers, as foreseen by the Statute and Rules of Procedure and Evidence.

17. How will you secure cooperation in the arrest of individuals wanted by the Court?

I will request a full briefing upon taking office regarding the OTP's own tracking capacity, and ways that this might be improved, in coordination with States Parties and relevant entities including Interpol and Europol. I will ensure that the Deputy Prosecutor(s) (as relevant) address this issue on a day-to-day basis with very high priority.

I will fully support steps taken by the Assembly of States Parties to facilitate the secure sharing of information with the aim of tracking, arresting and transferring fugitives.

As noted above, I will use opportunities to hold informal engagements with States Parties on the margins of the UN Security Council, in regional summits, and fora such as the Munich Security Conference, to brief them as appropriate on outstanding warrants of arrest and to identify opportunities for cooperation on arrest-related issues.

HIGH MORAL CHARACTER

18. Are you aware of any formal allegations made against you related to professional misconduct, including allegations of sexual harassment, discrimination, or bullying, or any investigations regarding your alleged professional misconduct related to the same? If so, please explain.

No.

19. Are you aware of any formal allegations made about you related to financial mismanagement or fraud? If so, please explain.

No.

LEADERSHIP AND MANAGEMENT

20. How would you describe your leadership style? Please describe a situation where you have demonstrated this in your work.

My style of leadership is about providing staff with the inspiration they need to stay committed, identifying opportunities for positive change, setting direction, and building unity, enthusiasm, and staying-power when under external pressure. It is about identifying opportunities for principled and pragmatic action to realise the ideal of ending impunity for atrocity crimes.

Leaders build leaders. One specific example of this is leading a team of Kenyan lawyers in representing the interests of thousands of Kenyan victims of crimes committed during post-election violence. Despite intense anti-ICC sentiment, my team remained motivated, inspired and productive. They have since progressed to leadership positions themselves. Team members under my leadership are encouraged to take whatever decisions they can, propose new lines of action, and they know that they will receive prompt and informed decisions from me as the need arises.

21. How would you describe your management style and experience, including your approach to decision making, delegation of authority, and accountability? Please describe a management challenge, and how you addressed it.

My management style is inclusive, empowering and respectful of diversity.

As a manager I remain constantly informed of progress by teams, and in particular of obstacles to progress. I do not micromanage, but encourage devolved decision-making, and remain available always for consultation. Team members feel empowered when they can take decisions, and are in regular contact with the ultimate decision-maker for major decisions. My decision-making is swift, informed, and communicated promptly and clearly to those most affected.

A major management challenge that I addressed is the existence of parallel lines of managerial authority within a single team. In my experience, teams work best when there is a single line of authority, realistic objectives and timelines, and information is shared among team members liberally, so that problems (such as weaknesses in evidence) are identified early, and solutions are found. Parallel lines of authority can lead to confusion, silos of information, and suboptimal performance. To build high performance teams, I have tried to create high levels of internal trust, and encourage the free flow of information and analytical insights across all team members.

22. Diversity is critical to the success of the ICC. Please explain how diversity has played a role in your past and present professional activities, community engagement, and your lived experience.

My experience investigating and prosecuting crimes in Rwanda, Bosnia, Cambodia, Lebanon and Syria has provided me with a strong belief in the importance of recruiting impartial and independent professionals who are nationals of situation countries. In my experience, these professionals can provide enormous added value and speed to investigation and prosecution due to their knowledge of local law, customs, geography, religious traditions, interethnic relations and history. After a period working at the ICC, they can return, where security circumstances permit, to their situation countries to serve as judges, prosecutors, police chiefs and defence lawyers. They are the justice leaders of tomorrow, and can reinforce the rule of law in situation countries. This is one facet of complementarity in action. Recruitment of more suitably-qualified nationals of situation countries is therefore a win for the Court and a win for the situation countries.

As for lived experience, my life has exposed me to enormous diversity. I was born in Malawi. My primary education was in schools in Swaziland; the great majority of students and teachers were Swazi. My legal education included a year studying Spanish law in Spanish, at the University of Salamanca. Part of my training as a lawyer was in Japan, working alongside Japanese lawyers. During my practice in international criminal justice, I have worked in Tanzania, Kenya, Lebanon, Cambodia as well as The Hague with lawyers, analysts and investigators from across the world. My wife is a Cambodian Buddhist. I have enjoyed working with people of a range of backgrounds, regardless of their nationality, religion or sexual orientation.

OTP OFFICE CULTURE

23. What is your assessment of the current working culture within the OTP and what measures would you take to improve it?

If elected as Prosecutor, one of the first steps I would take would be to engage in conversations with staff at all levels within their Office to gain a fully informed understanding of the depth, extent, and principle sources of frustration and low morale.

As Prosecutor I would aim to harness the energy and talent that staff bring to the OTP by providing them with the information and tools that they need to do their job. To enable faster, more informed decision-making at all levels, I would encourage senior staff to delegate decision-making authority as much as possible to mid-level and junior staff, and ensure that all staff have access to the information they need to make the right decisions. In my experience, the principal elements of a successful working culture are inclusiveness; empowerment; clear communication; breaking silos and welcoming constructive criticism.

Where cases fail at any stage (confirmation, pre-trial, no-case-to-answer, or at the conclusion of trial), I will encourage swift, constructive, open, and positive “lessons learned” exercises. I will ensure that recommendations emerging from “lessons learned” exercises are shared throughout the Office, in a manner respectful of restrictions in place concerning witness safety or state security information.

24. How would you address any issues that disproportionately affect women or minorities and people of colour? Please describe a situation where you have demonstrated this in your work to date.

Geographical and gender equity in the workplace is a key issue. As Prosecutor, I will take the steps set out below to redress the underrepresentation of women at leadership levels at the OTP, and the underrepresentation of people of colour.

As Prosecutor I would promote the participation of nationals of non- and under-represented States Parties, in particular developing countries, in the internship, junior professional officer and visiting professional programmes, and encourage voluntary contributions to a fund for this purpose.

French and Spanish are official or working languages in a large number of States Parties. These languages are also principal or secondary languages in many areas under preliminary examination or investigation. However, the number of fluent speakers of these, and other relevant languages, within the OTP appears to be lower than desirable.

Recruitment of suitably qualified native speakers of French, Spanish and other relevant languages from underrepresented States Parties would be help to address gender and geographic imbalance, and to reduce delays in the collection and analysis of evidence in these languages. Fluent speakers can contribute to faster investigations through participation in crimebase and insider interviews, and analysis of documents, audio communications, text messages, social media posts.

In order to ensure greater representation of women at the senior level within the OTP, I would explore with the Registrar, President and States Parties suitable reforms. For example, term limits would enable the Court to benefit from the fresh thinking and new managerial approaches that new high-level recruits deliver. In considering a new system of term limits for senior staff, the ICC and States Parties can benefit from the extensive experience of other international organisations, such as the OPCW. As Prosecutor, I would explore options to proactively identify and approach highly-qualified women candidates, in particular from underrepresented States Parties, to apply for vacancies in senior positions.