

## Questionnaire for candidates to the 2020 Election of the ICC Prosecutor

Civil society<sup>1</sup> 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.*

Name: Lady Justice Susan Okalany

Date: 28/09/2020

Before I respond to this questionnaire, please allow me to say that my replies in actual fact, amount to a birds eye view of the OTP, since I am not an insider and would need to conduct my own examination of the prevailing realities on the ground before making accurate responses to the questions posed below.

### COMMITMENT AND VISION

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

The OTP'S mission as articulated in its current Strategic Plan 2019 -2020, is the effective and efficient conduct of preliminary examinations, investigations and prosecutions of the perpetrators of the crime of genocide, crimes against humanity, war crimes, and the crime of aggression, so as to help end impunity for the commission of such crimes, respond to the suffering of victims and communities affected by them, and thus contribute to their prevention in the future.

It's vision for the achievement of the mission is – acting independently, impartially and objectively, to ensure justice is done and is seen to be done, fully respecting the rights of victims, witnesses, suspects and accused persons, paying particular attention to the security and well-being of victims and witnesses, those with whom it interacts, and the Office's staff, while constantly striving toward excellence, by creating an environment in which its staff thrives, and making the best and most responsible use of the resources afforded to it to carry out the mandate conferred upon it by the Rome Statute.

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<sup>1</sup> This questionnaire is endorsed by the following organizations: African Center for Democracy and Human Rights Studies, UNA Sweden, Al-Haq, ALTSEAN-Burma, Amnesty International, Asian Legal Resource Centre, The Australian Centre for International Justice, Congo Peace Initiative, FIDH, Georgian Coalition for the International Criminal Court Human Rights Watch, Justice International, Nigerian Coalition for the ICC, No Peace Without Justice, Odhikar, Open Society Justice Initiative, Parliamentarians for Global Action, REDRESS, Reporters sans frontiers, StoptheDrugWar.org, The Swedish Foundation for Human Rights, World Citizen Foundation, Women's Initiatives for Gender Justice, World Federalist Movement/Institute for Global Policy, and the World Renewers Organization. This questionnaire was developed with the assistance of the Coalition for the International Criminal Court Secretariat.

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I believe that the above stated vision is worth implementing. It can be reviewed subject the realities on the ground warrant so.

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

The involvement of the court in a situation for instance like case for Uganda, raised the hope of redress for thousands of victims of war in Northern Uganda. I believe that it was responsible for the cessation of hostilities when a threat to prosecute was created and also led to the not so successful Juba peace talks. The Court's existence in Uganda also resulted in the promulgation of the ICC Act of Uganda and the establishment of the International Crimes Division (ICD) of the High Court, which is now trying one of the Lord's Resistance Army Commanders. The ICC has conducted some outreach activities and engaged in some capacity building, through training and technical assistance to the ICD Registry.

Apparently, from Uganda's experience, the Court is still struggling to establish its relevance for victims and the affected communities. Its impact in combating impunity is yet reach its full potential.

To achieve its mission, the court needs to protect witnesses and victims and fully uphold the rights of victims envisaged in the Rome Statute, ensure cooperation with the ASP, promote complementarity by effectively supporting national proceedings, to name but a few. The Court's long-term legacy would be improved by maintaining a stronger permanent presence and representation in situation countries, which is a necessity in order for it to be effective. It is probably one of the major reasons for the successes registered by the UN ad hoc tribunals. By Courts organs addressing the above issues, I do believe that the Court will leave a profound legacy in the situation countries.

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?**

From available published information, including the OTP Strategic plan for 2019-2021 and some questions posed during the recent public hearings conducted by the ASP and Civil Society, the current resources, especially the human and financial, seem inadequate for the OTP to execute its mandate properly. The OTP is conducting preliminary examinations, investigations and prosecutions in multiple situations within the ICC's jurisdiction, namely; Uganda, Democratic Republic of the Congo, Darfur-Sudan, Central African Republic, Kenya, Libya, Côte d'Ivoire, Mali, Georgia, Burundi, Bangladesh/Myanmar and Afghanistan, Colombia, Guinea, Iraq/UK, Palestine, the Philippines, Nigeria, Ukraine, and Venezuela. This implies that the finances and the staff are thinly spread on the ground. If elected Prosecutor, I would, engage the office in a planning process to: Assess the types and amount of resources required to carry out those ongoing activities; Appraise the current performance of the OTP, relying *inter-alia* on the outcome of the work of the Independent Expert Review (IER) Panel; Prioritize conclusion of the investigation and prosecution of cases in more advanced stages, with a view to achieving quick wins, making best use of available resources. Resetting of performance standards, relying on various tools, including the OTP current strategic plan and benchmarking the successes of the Ad hoc Tribunals among other international organizations may be necessary.

**PRELIMINARY EXAMINATIONS, INVESTIGATIONS AND PROSECUTIONS**

4. What do you believe are the main challenges facing the OTP in terms of:
- a. preliminary examinations;
  - b. investigations; and
  - c. prosecutions?

From public information available, I believe that the major challenges faced by the OTP are –

**a. Preliminary Examinations:**

- Protracted and costly preliminary examinations in some situations;
- Lacklustre support or a total lack of cooperation from states, which fail to provide the requisite information or which provide irrelevant or inaccurate information to the OTP;
- Deficiency in transparency at the various stages of preliminary examination;
- Bureaucracy in the management of preliminary examinations;
- Limited financial and human resource, which impact the quality of the OTP’s work in that area; and
- Political pressure and threats;

**b. Investigations:**

- Inadequacies in the composition and skilling of investigative teams, which lack experienced and competent investigators and analysts inter-alia, leading to the failure by the OTP to thoroughly investigate cases and bring appropriate charges and well corroborated evidence, further resulting in prosecutorial failure at trial in a number of cases;
- Limited presence and impact in the situation countries;
- Centralized decision making in the Hague, hampering flexibility in decision by investigative teams on the ground;
- Inadequate resourcing;

**c. Prosecutions:**

- Relying on the “control of the crime” theory and common plans involving the commission of mass crimes, where there is no strong direct evidence to support them;
- Inadequate tools and practices for successful prosecution of higher-level perpetrators and persons bearing the gravest responsibility;
- Bringing broad and ambitious charges relying often on far-fetched case theories.
- Lack of a standardized SGBC practice and knowledge gaps leading to few SGBC prosecutions, particularly in respect of SGBC committed against men and boys.

**How would you overcome them?**

- Entrenching preliminary examination processes into OTP structures and activities by involving investigators, lawyers, and other specialists more closely in the preliminary examination activities, to exploit their expertise especially in the preservation of evidence and protection of witnesses;
- Imposing timelines on preliminary investigations, depending on the peculiar circumstances and dynamics of each situation;
- Reallocating the available resources and eliminate redundancies where possible;
- Advocating for allocation of adequate resources to the OTP;

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- Determining the resource needs of investigative teams, in order to ensure that each team is provided with appropriate resources;
- Concluding preliminary examinations and adjourning investigations until funds are available to conduct investigations;
- Enhancing transparency towards all stakeholders with regard to the OTP's decisions made on each phase of the preliminary examinations as allowed by the Rome Statute, providing regular updates on progress made in the situations;
- Continuing to conduct activities independently and be open and transparent about the political pressure faced;
- Resisting political pressure, by making public statements in response to any attempts to exercise political pressure;
- Calling for the support and backing of the ASP to proactively and robustly assist in the face of significant political interference or threats;
- Increasing engagement and consultation with States Parties and international and regional organizations, such as the AU and the Security Council where applicable;
- Implementing prosecution guided preliminary examinations and investigations;
- Auditing the current composition and size of the investigative teams, with a view curing the deficiencies in the teams;
- Appraising the skill sets of the existing staff and comparing with recommended skills for respective investigative teams and re-assigning other duties (depending on their skills, experience) those who do not meet the role requirements;
- Recruiting highly qualified professionals with the needed skills and experience in conducting investigations of international, transnational, and other serious crimes, including on short term basis, competent national investigators conversant with local languages and the local contexts;
- Establishing appropriate training programs for investigative staff, which training supervised, and evaluated by experienced OTP investigators and/or external experts.
- Establishing formal mentoring programs for the transfer skills from experienced investigators to the less experienced ones;
- Establishing a field presence during the conduct of investigations, whenever possible and if not possible, increasing the time spent by investigation teams during missions, in order to among other things, build rapport with victims, witnesses and other relevant stakeholders, if successful investigation outcomes are to be realistically met;
- Improving cooperation, coordination and communications between investigation teams, internal and external actors for consistency in information flow, in order to ensure that OTP investigators and prosecutors can operate with the necessary autonomy and flexibility in the course of their work;
- Bringing charges where the OTP stands a reasonable chance of securing a conviction, based on available overwhelming evidence of the defendant's guilt;
- Bringing more smaller-scale, modest cases concerning individuals lower down the chain of command, especially notorious mid-level perpetrators and local commanders.
- Developing tools and practices that would make cases against higher-level perpetrators and persons bearing the gravest responsibility more feasible;
- Taking a more modest and realistic approach towards framing case strategies by bring simple charges, which do not require establishing far-fetched case theories.
- Regularly updating policies and operating guidelines to promote better outcomes in addressing SGBC and ensuring that they are enforced;
- Integrating gender perspectives and expertise in all case stages, including at the earliest stages of the OTP's activities in a situation;
- Training all staff members on addressing SGBC. Special training programs for investigators, prosecutors and OTP management on the effective investigation and prosecution of SGBC and

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child related crimes as well as in framing SGBC sensitive and child responsive policies which should be upgraded where necessary and implemented;

- Recruiting of specialized SGBC investigators and analysts;
- Periodically reviewing the work of the OTP on SGBC and feeding back the results into to OTP Policy documents on SGBC;

### **Time frame**

In my esteemed view, 3-5 years is a reasonable time to see tangible results in the performance management of the OTP.

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

The stereotypes and misconceptions about sexual violence that can impede accountability efforts include many false assumptions, such as: Rape is used as a weapon of war in most conflicts; Sexual violence in war affects only women and girls; In war, armed men are the main perpetrators of sexual violence; Sexual violence is used as an intentional weapon of war through the line of command, etc.

My vision in addressing the misconceptions related to SGBC is to put emphasis on contextualising conflict-related SGBC within other patterns of violent conduct. Establishing analysis frameworks and evidential approaches that link senior officials who are not the direct perpetrators to SGBC. Establishing an effective victim-centred approach, which encourages victims and witnesses to come forward and which empowers them as much as possible.

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

Crimes against children constitute over 70% of serious cases tried in the Chief Magistrates' Court and the High Court of Uganda, for the simple reason that Defilement and Aggravated Defilement most especially against the girl child, are the most prevalent serious crimes registered. Thus since 1999 when I became a prosecutor, I have not only directed the investigation of those crimes in addition to other grave offences, but have personally successfully prosecuted accused persons for the said crimes, not to mention the mentoring of prosecutors that worked under my guidance to do the same.

The Gender, Children and Sexual Offences GCSO Department which I helped create, was established to meet the need of building the capacity of the DPP staff to professionally handle not only SGBV cases, but also cases involving children, who are the majority of victims in SGBV crimes. Additionally, I provided oversight for the development of the **Handbook for the Directorate of Public Prosecutions on Prosecuting child-related and SGBV cases in Uganda**. Subsequently, I organised dissemination and training workshops in respect of the handbook, which process was ongoing when I moved to the bench. One of the key areas addressed by the handbook is handling of child victims and witnesses, which aspect of prosecution requires specialized skills, since children communicate differently from adults and also due to the fact that on account of their age, they are significantly affected by trauma and require a child friendly approach before, during and after the trial processes.

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The same applies mutatis mutandis to children in conflict with the law. As a judge, I have heavily capitalised on my experience as a prosecutor, to conduct professional voir dire of child witnesses before allowing them to testify as required by law and to finally appreciate their evidence when determining the case. I still examine children, especially as sitting judge of the Family Division of the High Court, on matters of child custody, adoption and guardianship, where the law requires, (although children are not actual parties to those suits) that a child who is capable of forming his or her own views must be accorded the right to express those views freely in all matters affecting the child and the views of the child shall be given due weight in accordance with the age and maturity of the child.

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?

Apart from arms trafficking, I do have experience handling cases of human trafficking, terrorism, financial crimes, land grabbing, the destruction of the environment and illegal exploitation of natural resources. Human trafficking penalised under the Prevention of Trafficking in Persons Act (PTPA), 2009, is one of the crimes that the Office of the Director of Public Prosecutions (ODPP) handles through the department of GCSO and the International Crimes Department (ICD). Before the promulgation of the Act, charges would be brought against suspects depending on the outcome of his/her act, under the Penal Code Act, such as murder, kidnapping and rape, to name but a few, whose elements are of course distinct from the elements of the crimes under the PTPA 2009. I thus prosecuted crimes akin to those in the PTPA between 2000 and 2009. Since 2009, I have handled the domestic type of Human Trafficking involving mostly children trafficked from their homes in rural areas and brought to urban areas as domestic workers or for sexual exploitation, while the ODPP ICD handles the international arm of human trafficking.

Concerning terrorism, my experience is with the 2010 Kampala Bombings case where I was lead prosecutor of a team that worked with national and international actors to obtain and present credible evidence, resulting in several convictions involving over 70 counts.

In respect of financial crimes, before the promulgation of the Anti-Corruption Act 2009, all white collar crimes prosecutions were conducted under the Penal Code Act. That meant that every Resident State Attorney including myself was empowered in terms of jurisdiction and skills, to prosecute white collar crimes. Therefore, I handled several cases involving white collar crimes at the magisterial court level. After 2009, with the creation of the Anti-Corruption Division of the High Court, the DPP centralised the prosecution of financial crimes, mandating the Anti-Corruption Section (ACS), (now the Anti-Corruption Department (ACD) based in the Anti-Corruption Division of the High Court, to prosecute financial crimes.

As far as environmental crimes are concerned, I was empowered in terms of jurisdiction and capacity building, while I served as Resident State Attorney between 2000 and 2010, to prosecute such crimes under the National Environment Act (NEA), Chapter 153, Laws of Uganda (now repealed and replaced by the NEA 2019). I managed the investigation and

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prosecution of crimes under the NEA which contains components of illegal exploitation of some natural resources such as exploitation of wetlands, river banks, lake shores and natural forests.

With respect to land grabbing, my experience is in handling civil land disputes since 2016 as Resident Judge Mbale and as Judge of the Family Division. I presided over the determination of hundreds of land disputes as a trial and appeals court, in my tour of duty of the Mbale High Court Circuit. I am still presiding over land disputes at trial and appeal, at the Family Division. Land tenure systems are diverse in Uganda. Because it is farming country, naturally, the courts are awash with land disputes involving small pieces as well as huge chunks of land. Investors are setting up farming projects, while others are in oil and other minerals exploitation, which demand considerable acquisition of land from communities surrounding those projects. While land disputes arise for many reasons, fraudulent land acquisition has increased the caseload for all High Court Circuits, as well as the Specialized Land Division of the High Court in Kampala. The Family Division of the High Court, which deals inter-alia with estates of deceased persons has not been spared from the problem, as a significant portion of its caseload for various reasons, is land disputes which must be resolved before estates can be distributed.

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 am aware that the Crime of enforced disappearance is one of the crimes being considered in the Burundi situation. I agree that accountability is enforced across the board, based on sufficient evidence. Given a chance, I will go with an open mind to the OTP to ensure that all serious crimes will be pursued and no crime proved by evidence following a competent investigation, will be ignored.

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?

My strategy would be to prevent the commission of those crimes, since they have the tendency to undermine the integrity of the Court's core mandate to handle Article 5 crimes. Working with the Victims' Unit to forestall the commission of those offences and to protect witnesses, through the chamber, should be one of the strategies. There must be vigilance to detect such crimes before they are fully actualized. In case they are committed, prosecution of the same must be done speedily, to send a very stern message to other would be offenders. Referral of those cases to domestic jurisdictions to prosecute may be considered depending on the circumstances of each case.

### 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.

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My experience in this area is in regard to organising community awareness campaigns under the auspices of the Chain Linked Committees of Uganda's Justice Law and Order Sector (JLOS). I have participated in organising and/or presiding over those meetings particularly in respect of Sexual and Gender Based Violence (SGBV) awareness raising, and child justice sensitization, targeting communities at grassroots level and schools, to empower them on their rights and responsibilities and on the ills of harmful beliefs and practices that promote SGBV and child abuse, as well, as well as to encourage and promote male participation in SGBV prevention programs. Also the different justice actors, including local council courts, which are lay courts participate and generally, several issues are discussed. My involvement in such campaigns started in 2002 when I worked as Resident State Attorney at Iganga Chief Magisterial area. I have also organized and presided over several Court Open Days programmes, meant to demystify court processes to the public and to promote court innovations such as mediation, plea bargaining and small claims procedures, as Resident Judge Mbale High Court Circuit. Lastly, I have organized, in collaboration with other JLOS actors, plea bargaining sensitization programmes in incarceration facilities, with the purpose of sensitizing prisoners awaiting trial for serious crimes, on the benefits of plea bargaining, giving adequate time to for responses from the target groups and to providing feedback to them.

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

I will work to implement a policy of consistent and regular two way communication, cooperation and coordination with all stakeholders, throughout the OTP's engagement in a particular country. I will seek to improve coordination between OTP and the Registry, defence, and victim representatives and consider joint outreach and engagement activities. Resources will be allocated for outreach and engagement with local communities. Situation specific, gender and culturally sensitive ways of communicating with affected communities will be designed, including translated and simplified relevant IEC materials.

## 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.

Victims have a statutory right under the Statute to participate in the Court's processes, starting from the submission of information on crimes. The OTP policy paper on victims' participation promotes direct interaction with victims and victims' associations at all stage of its activities, from the preliminary examination, investigation, pre-trial, trial to reparation stages. I would like to see that the victim-centred approach articulated in the OTP's, policy is fully implemented. Partnership with civil society and other relevant actors working with and for victims should be developed at the outset, based on a transparent confidential two way communication process.

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

Just as I opined in paragraph 8 above, it is important that accountability is enforced across the board, based on available evidence. It is however not possible because of resource constraints, to prosecute all crimes and all perpetrators at the ICC. Engagements must be

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pursued to implement positive complementarity measures by states and facilitated by the ICC to strengthen and enable national capacity to conduct serious and effective national investigations and trials of Rome Statute crimes and, where necessary, to exert political pressure toward that end. It is trite that it is the primary obligation of the states to conduct credible national trials. The Court could also engage donor states of situation countries to prioritize prosecution of serious international crimes as a crucial component of their development programs aimed strengthening the rule of law. Transitional justice mechanism can may be pursued to encourage healing.

**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?**

From available online information, the OTP and the Court are criticized for implementing a distanced relationship with affected communities as well as a general lack of transparency during the various stages of the OTP/s activities. I would work to:

- Improve transparency and implement regular communication throughout the OTP's activities in a particular country;
- Implement a genuine two-way approach to outreach, with stakeholders, including affected communities and victims;
- Improve coordination between OTP and Registry;
- Improve on implementation of joint outreach activities; and
- Improve coordination, cooperation and communication among the Court's stakeholders on outreach activities.

### **DEFENCE RIGHTS**

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

In my practice at the bar and the bench, I endeavoured to implement the principle of equality of arms, which requires that there be a fair balance in the opportunities afforded the parties involved in litigation. Such as the right to be tried in one's presence, to defend one's self in person, to call witnesses and cross-examine the witnesses called by the other party, to be informed of the right to counsel, to choose one's counsel, to receive free legal aid according to the law and to disclosure by the prosecution, of all relevant evidence, including exculpatory facts. Additional rights of accused persons include the right to pray for an adjournment, the right to apply for bail. I have granted justifiable adjournments to all parties and exercised my discretion to grant bail, based on circumstances of the case the relevant standard of the law.

While I worked as a prosecutor, I never sanctioned charges that were not based on facts and the law. It was the reason that I personally registered high conviction rates. I do believe that the convictions and the acquittals that I have issued as Judge, are supported by the law.

Notably, most of the accused persons charged with serious crimes in Uganda, such as murder, kidnaping, rape, defilement, aggravated defilement and aggravated robbery, cannot afford

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the services of a private lawyer. The Courts are mandated to appoint Counsel on State Brief to represent their interests, albeit at the trial stage.

### **IMPARTIALITY, INDEPENDENCE, AND COOPERATION**

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

In my previous position as prosecutor, I worked independently, making thousands of decisions impacting on the lives of all categories of people. I successfully prosecuted a cabinet minister. I also prosecuted a District Chairperson in a district that I was working as Resident State Attorney, although the said accused was acquitted due to inconsistencies in witness accounts. Furthermore, declined to prosecute the father and step mother of a victim of alleged child abuse, for want of credible evidence, despite the prevailing public opinion and a very hostile national media campaign in favour of the preferring charges.

Additionally, I was the Head of the ODPP electoral Offences Task Force 2016, which was comprised of lawyers and investigators who were nationally responsible for handling cases of electoral violence and fraud. As expected at such a time, the atmosphere was very tense between rival candidates. The electoral laws and other penal laws were applicable. I sanctioned hundreds of charges without fear or favour, against those implicated by evidence and in the same way, boldly closed investigations where evidence was none existent or inadequate, or lacked credence, despite pressure to the contrary.

As judge of the High Court of Uganda, I have tried hundreds of persons accused of serious crimes, convicting many and acquitting others, basing on the law and evidence, not regarding their station in life as that would be contrary to the oath of office that I took. I have also tried hundreds of civil cases of all sorts involving indigent persons as well as wealthy ones and making decisions only based on the evidence and the law.

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

I will follow the law. The same way I have done in the thousands of cases that I have perused, prosecuted or tried in over 20 years of my professional life.

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

Strategic goal 3 of the OTP's current Plan is to develop with States enhanced strategies and methodologies to increase the arrest rate of persons subject to outstanding ICC arrest warrants. It is stated that the OTP has requested and obtained public arrest warrants or summonses to appear against 45 suspects, but 15 suspects in six different situations remain at large.

The OTP's plan lists several challenges relating to monitoring the whereabouts of suspects and fostering support for their arrest and the fact that it has together with the Registry identified areas of improvement of relevance to its partners, including in terms of tracking efforts, identification of potential incentives and leverage as well as diversification of partners. It is stated that the office is actively seeking support from those States on whose territory the

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suspects are located. Several activities are proposed, including: enhancing the streamlining of information flows to its staff involved in tracking and arrest efforts and increasing responsiveness internally; keeping arrest issues high on States' agenda despite conflicting priorities; and exploring options to create operational groups of relevant States and organisations to exchange information and coordination on diplomatic and military efforts to secure arrests.

The said proposals highlight the importance of prior planning, transparent information flow and cooperation with specific states as well as the ASP generally, to achieve results in regard to arrests. Without a doubt, the court exists in a political terrain. It largely depends on the cooperation of member states of the Statute to succeed in its work, since it has no police of its own. Continuous engagement with the relevant states and also via the Presidency of the ASP and via the Security Council in cases referred by it, is crucial. How, when and with whom to engage, may depend on prevailing dynamics. Independence, impartiality and wisdom are mandatory values to retain in the process, although it may be necessary to publish the fact the court has issued a warrant of arrest depending on the prevailing terrain. I will if elected, depend largely on the experience of the office to formulate or retain the OTP's current actions with respect to arrests.

### **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.

I think that in practice, I amalgamate many leadership styles, to achieve a desired result.

Largely, I am a democratic coach who is open with employees about whatever affects their responsibilities. I build individuals and teams and work to achieve cooperation from employees. I want to get results with input from staff since I believe that I am not an island of knowledge. Most people that I have worked with are talented. I mentor them to develop their talents and achieve their fullest potential.

As a prosecutor I have mentored hundreds of prosecutors even when I was not their direct supervisor. I am still doing so at the bench, something I know that many judges are reluctant to do for fear of being accused of "entering into the arena of the case". I will describe the Kampala 2010 Bombings prosecution as an example that demonstrated my leadership style. I became the case's team leader by sudden appointment in response to a tragic occurrence in

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the ODPP. I was not really knowledgeable about the case or an expert on the law applicable having never perused a terrorism case file. The expert in terrorism cases was a young lawyer who had participated in the building of that case. However, I was the expert in providing leadership to prosecution teams as well as in trial advocacy. I appointed a colleague with my skill sets but who also had worked with the previous prosecutor in the building of that case, to join us, in addition to two other young lawyers, thus constituting a team of five prosecutors. I also had several national and international police officers who were experts in their own right becoming part of the team. We met regularly in the course of the prosecution. I had never worked directly with any of my team members. The combined expertise of the team was its strength I made sure that contributions of every member was valued. The case was heard and concluded in one year. Our individual expertise as prosecutors was enhanced greatly and the feedback I got from the young lawyers is that from that experience, they have become independent and very empowered prosecutors. All the prosecutors got well deserved promotions.

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.

I think that like in leadership, I do amalgamate many management styles, relying commonly on the authoritative, participative and coaching management styles, depending also on the expertise of the people with whom I work. At the end of the day, I love collective decision making, because team members own what they participate in creating. When they own something, they feel accountable for it. A more participatory approach creates more team accountability and more team accountability will in my view, produce the desired results. Ideally, I believe, that a manager should build the capacity of his/her team through proper training and coaching and when it is empowered, concentrate on lobbying for the resources required to meet the goals of the office. Successful management cannot be achieved without delegation of well-defined authority and responsibility. Reporting mechanisms must also be well defined.

My most recent management challenge was how to motivate my research assistants to continue working for the Judiciary, after the salary of judicial officers was enhanced, leaving support staff dreary. I had spent considerable time training and mentoring them and they are doing a tremendous job supporting my work for the last two years. I do want their salaries enhanced. Generally, there is a high staff turnover for that cadre of staff due to poor pay. The judiciary recently got an enabling law, which gives it some leverage in respect of the recruitment and determination of salaries of support staff, but it will take some time to implement that law, especially due to COVID19 crisis. I shared with them, a collection my old photographs that told the story of my professional journey. I subsequently gave a motivational speech to all the support staff of chambers, about building a career in the legal profession, relying on my life story and other real life examples. The office mood is now back to normal.

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.

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Embracing diversity is important for the success of any institution in this global world. I have throughout my professional life, worked in diverse regions and communities of my country, interfacing with people that practice various cultures and speak languages so different from mine. I have prosecuted accused persons from other countries, and led witnesses from various nationalities, leading to convictions of accused persons. I have thus had to rely on the services of translators and interpreters to communicate with witnesses and accused persons from other ethnic groups and nationalities. I still do so in my current work. I have in the course of my career, worked with medics, psychologists, social workers, financial experts, diverse forensic experts inter-alia, relying on their expertise to direct investigations, conduct prosecutions and determine cases as a judge. Since 1996, I have travelled internationally, attending meetings, trainings programmes and other activities as a participant and also as a trainer. Additionally, I have organised and attended locally hosted international fora, involving people of different colours, backgrounds and cultures.

### 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?

It appears to me that while steps have been taken to eliminate unethical conduct, such as sexual harassment, racial intolerance and bullying, the office still suffers from a poor working environment. I would work to:

- Promote a culture of zero tolerance to any form of harassment, bullying , sexism and discrimination;
- Provide capacity building on leadership and management skills, gender and cultural sensitivity, sexual harassment;
- subsequently implement an assessment tool to assess all staff, that includes those areas of abuse;
- Implement affirmative action to address gender and regional imbalances, with a view to curing the issue of under-represented groups;
- Establish a confidential, easy to access reporting procedure for reporting sexual harassment, bullying, discrimination, or other unethical practices within the office and establish a responsive accountability mechanism .

24. How would you address any issues that disproportionately affect women or minorities and people of colour?

I intend to promote affirmative action for women and people of colour ensuring geographical balance during recruiting processes. Affirmative action is positive discrimination. It may be executed by providing as a minimum requirement, that a certain quota of employees at the OTP must be female and another quota must be people of colour, coming from the respective regions of operation of the ICC. This can be rotated with time, in favour of any group which becomes the minority. I would also, depending on the skill sets provide promotional opportunities to the disadvantaged groups.

## Questionnaire for candidates to the 2020 Election of the ICC Prosecutor

Please describe a situation where you have demonstrated this in your work to date.

While heading the Gender, Children and Sexual Offences Department of the ODPP and as a member of the top management organ of that office, I was able give equal opportunity to both male and female prosecutors to participate in the departments activities. I included both male and female prosecutors in the capacity building training programmes designed to provide them with skills to effectively prosecute sexual and gender based violence (SGBV) cases and child related cases. I made male prosecutors part of the solution, since it had been assumed for a long time, that SGBV cases and child related cases were the domain of female prosecutors. At the time, I helped create an inclusive team, composed of different ranks of prosecutors who were handling these cases in magistrates courts, the high court, the court of appeal as well as the supreme court.

Thank you.