

Questionnaire for candidates to the 2020 Election of the ICC Prosecutor

Civil society¹ 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: Richard Roy

Date: 26-09-2020

COMMITMENT AND VISION

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

I believe in an OTP that delivers on its core mandate: the investigation and prosecution of the most serious crimes of concern to the international community. This begins with timely and high-quality investigations that respect the rights of victims and accused persons and that aim to establish the truth. It ends with prosecutions that deliver justice to victims and affected communities while safeguarding the rights of a defendant to a fair trial.

The OTP has fulfilled this vision in many cases. However, in other instances it has not. The OTP can and must do better. If elected, I will consult and work with OTP staff, and other stakeholders, to identify and implement the reforms needed to allow the office to achieve consistency in delivering justice to victims of mass atrocities.

I am deeply committed to doing everything in my power to making the OTP an efficient organization in the investigation and prosecution of the most serious international crimes.

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

The Court's legacy will be judged by how its process positively impacts the rebuilding of a society which faces mass atrocities. Such a process, if conducted to the highest standard, may then contribute positively to post conflict strengthening of the Rule of Law. Accountability for the worst crimes, and putting an end to impunity of those most responsible, can be an essential part of post conflict resolution, but forms only part of the solution. To achieve this result, I would ensure the most transparent investigation possible while preserving its

¹ This questionnaire is endorsed by the following organizations: African Center for Democracy and Human Rights Studies, UNA Sweden, Alhaq, 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 frontières, 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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integrity. I would also ensure that investigations are conducted with the utmost respect and understanding of those affected as well as the relevant national institutions. I would ensure that this commitment forms an integral part of any steps taken by any member of the OTP involved in the investigation.

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?

The OTP is under-resourced and understaffed to achieve its core mandate. A Report on the Basic Size of the OTP revealed that it should be operating with a budget of 60.6 M euros. The budget approved for 2020 was of 47.4 M, 22% less than its basic size. The same report reveals it is operating with approved staffing of 320 when it should be staffed with 540 positions. This situation is unlikely to change in the near future, particularly given Covid-19's impact on the global economy.

In light of the Court's financial situation, the following steps are some of the steps I believe in to achieve the Court's mandate:

- The OTP has to prioritize some investigations over others. The ICC's jurisdiction is broad and wide. However, it cannot investigate all crimes committed in its jurisdiction. Furthermore, thirteen situations are currently under investigation, the situations in 9 countries are under preliminary examinations and at least 14 defendants are still at large. Looking to the future, I foresee further demands on the OTP to investigate while many of its cases have not been closed or resolved. I will devise a policy that clearly articulates which investigations ought to be prioritized given the OTP's limited budget. My core value consists of ensuring high-quality investigations that respect the rights of accused persons and victims. It would be where the prospect of such investigation are the highest that I think the OTP should invest resources first.
- I believe that the OTP needs to improve its performance in investigations and prosecutions. This can be achieved by hiring policies that put a greater emphasis on hiring, retaining, and promoting staff who have experience and high performance in the positions for which they are being recruited. Greater flexibility is also required in ensuring that underperforming staff can be rotated or removed.
- I believe that performance management plays an important role in the efficient use of limited resources. The performance review system of the OTP should be evaluated. Currently it does not calibrate performance reviews across teams. As a result, individuals who perform poorly on one team may nonetheless receive a higher rating than higher performing individuals on another team. Performance reviews therefore fail to serve as an effective barometer to measure which staff are genuinely performing below expected standards. For similar reasons performance reviews are not accounted for in determining which staff should be promoted, resulting in some staff being promoted for reasons entirely unassociated with their ability to effectively perform their functions. I would put in place a performance review system that fairly evaluates staff performance and provides incentives not only to perform with expected standards but also to exceed them.

PRELIMINARY EXAMINATIONS, INVESTIGATIONS AND PROSECUTIONS

4. What do you believe are the main challenges facing the OTP and how would you overcome them in terms of :
- a. preliminary examinations?;

The main challenge facing the OTP is the length of its preliminary examinations. Many of the OTP's preliminary examinations have gone on for an excessively long period of time, many well beyond a few years. The average length of reported preliminary examinations amounts to approximately 48 months (4 years).

This raises concerns regarding the quality of evidence to be collected once an investigation is authorized to begin. The Pre-Trial and Trial Chambers of the Court have noted the profound and detrimental effect that the length of time between the occurrence of the crimes and the moment in which evidence is presented at trial can have on the reliability of evidence presented before a Chamber. In particular, with the passage of time, victims *"who suffered trauma, may have had particular difficulty in providing a coherent, complete and logical account"*.² Similarly, a recent report by FiDH and the Kenya Human Rights Commission notes that *"delays in progressing preliminary examinations come at great cost: they can undermine confidence in the OTP as it can contribute to impunity and a denial of justice to victims."*³

I do not believe that lengthy preliminary examinations necessarily ferment positive complementarity. In the same FiDH and Kenya Human Rights Commission report, the organizations determined, following a case-by-case analysis of preliminary examinations, that *"[i]n some instances, the situation on the ground worsened and crimes continued being committed while the OTP was assessing the genuine nature of domestic accountability efforts among other legal criteria."*⁴

I believe that the OTP's primary goal during preliminary examinations should remain a timely determination of whether the office will seek to exercise the ICC's jurisdiction and open an investigation.

I believe that preliminary examinations should last only as long as needed to fulfil their purpose. Where there are limited prospects of encouraging national prosecutions, I

² Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", No. ICC-RoC46(3)-01/18, para 88

³ The victims' mandate of the International Criminal Court: disappointments, concerns and options for the way forward; Observations and recommendations for the Independent Expert Review, FiDH and the Kenya Human Rights Commission, para 26

⁴ Ibid

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believe the OTP should proceed rigorously to a determination as to whether or not an ICC investigation is merited to maximize the timely collection of reliable evidence. More importantly, this would also provide certainty and transparency to victims and communities as to the outcome of the preliminary examination.

Where the prospects of encouraging national prosecutions are higher, I believe that strict timelines are incompatible with the flexibility this engagement requires. Instead, if elected Prosecutor I would make increased use of benchmarks to stimulate national authorities to take specific steps, and to signal to partners and civil society organizations as to how they may amplify the office's efforts.

I am committed to streamlining and making more transparent the preliminary examination stage.

b. investigations?;

A number of reports have come out criticizing the OTP's investigative practices. The External Expert Review of the OTP's handling of the Kenya case, concluded that many OTP investigators lacked adequate experience, resulting in their failure to accurately assess the viability of the cases or to voice such assessments, and to overcome the many obstacles OTP faced in dealing with high level, powerful accused conducting a pervasive campaign of propaganda and witness interference.⁵ Similarly, a recent analysis concerning the Georgia investigation found that most of the people within the Court involved in the investigation had no knowledge or experience working in this region.⁶

I strongly believe in effective investigations that respect the rights of victims and accused persons and that aim to establish the truth. 30 years as a prosecutor have taught me that successful prosecutions are entirely dependent on effective investigations. Effective investigations require having experienced and high-quality investigators from diverse backgrounds. I also believe that in-country experience is incredibly important.

If elected Prosecutor, one of my first tasks will be to review our investigation division to ensure we are hiring and promoting the right people, especially in meeting today's investigative challenges.

I will also evaluate our Operations Manual and other investigative documents to ensure the OTP is employing investigative techniques that are best practices across all investigations in a consistent manner. The OTP should constantly audit its investigative

⁵ ICC OTP Kenya Cases: Review and Recommendations, Executive Summary of the Report of the External Independent Experts, para E13

⁶ <https://www.ijmonitor.org/2018/05/the-georgian-experience-a-story-of-how-the-icc-is-failing-victims-in-its-first-case-outside-africa/>

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practices, in full transparency, so that it is constantly learning from past mistakes and committed to growth.

One of the golden rules of high-quality investigations is preserving the evidence as soon as possible. Doing so necessitates having access to crime scenes and witnesses. In-country presence is an important component of an effective investigation. Where feasible, I agree with civil society organizations that ICC offices should be established as early as possible from the outset of investigations.

In cases where on the ground investigations are not possible, with the exponential increase in mobile phone usage and the use of social media, there is an opportunity to collect high-quality information without necessarily traveling to the country. It is however important in those cases to act quickly and preserve electronic evidence before it is lost. This includes social media accounts and telephone records for potential suspects.

As Prosecutor, I intend to review our investigations in locations where we have no local presence to ensure we undertake every step to preserve and collect high-quality information. I will also ensure that we impose strict time limits for certain investigative steps so that we can ensure the collection and preservation of certain digital evidence before it is deleted or otherwise lost.

Lack of State cooperation is another challenge the OTP faces in regards to its investigations. In a number of high-profile investigations--Afghanistan, Georgia, Sudan, Kenya--the absence of State cooperation has been identified as the principle reason for why the investigations did fail or could be bound to falter.

I understand that international cooperation is essential to ensuring effective investigations, especially in the context of international criminal law where the ICC lacks its own policing mechanism. To that end, a good Prosecutor is not just a good manager, but also an effective diplomat.

I have a long history of working constructively with law enforcement bodies to collect evidence for the prosecution of international crimes. This includes working with partners throughout the world, including in South America, Europe, and Africa. The relationships I developed over the past three decades as a prosecutor have allowed me to effectively prosecute complex cases of organised crime, economic crimes, terrorist offences, international fraud and corruption, and crimes against humanity and genocide committed across the world.

I would want first to engage with law enforcement authorities wherever the evidence is to be found and work constructively to collect it. Where such cooperation is not forthcoming, I agree with civil organizations that the ASP must play a robust role as a strategic partner for the Court, particularly when it comes to strengthening cooperation

by State Parties and other actors, including the United Nations.⁷ I would not hesitate to engage the ASP while not compromising the independence and impartiality of the office.

c. prosecutions?

The ICC and the OTP suffer from gross disparities in diversity among its staff. The Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court has documented the geographic and gender balance of Court staff since at least 2013. The number of staff from the Group of Western European and Other States (“WEOG”) is grossly disproportionate when compared to all other regional groups.

Based on my own experience in prosecuting a trial for war crimes, genocide, and crimes against humanity, I know that a sophisticated understanding of the situation country is essential to a successful prosecution.

The lack of geographic diversity means that the OTP has been unable to respond effectively in outreach and assisting victims of underrepresented communities. It has generally represented a lack of understanding in relation to those communities. The nature of the ICC’s mandate is highly assisted by having staff that are from the underlying situation country, and those staff members must hold positions of authority that permit for suggestions to be taken seriously by the Court.

The OTP’s caseload is constantly fluctuating, in terms of both the types of conflicts investigated and their locations. While the Court previously focused on violence in principally Western African states, its prospective investigations are now focused on situations in Asia, the Middle East, and South America. This means that the OTP requires flexibility in terms of hiring staff with the relevant skills, experience, or language proficiency.

I am deeply committed to having a diverse workforce, especially at senior levels of the OTP. Diversity and inclusion are not only important as a principled matter, but are important to ensuring that we have staff that are representative and can better understand and communicate with our stakeholders, including victims.

If elected, I will ensure that our hiring prioritizes having a diverse office that includes people of underrepresented races and underrepresented geographic regions. I will also prioritize having gender balance at every level of my office, especially at the senior trial attorney level where there is currently only one woman in that post.

⁷ https://www.hrw.org/news/2020/04/16/human-rights-watch-submission-independent-expert-review-international-crimina#_ftnref10

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

As a young prosecutor in the early 1990's, a significant part of my caseload was sexual offences against women and children. I observed and learned, early in my practice of criminal law, the challenges for victims of SGBC to report their crimes to the police and then to participate in the legal process.

As Justice L'Heureux Dubé of the Supreme Court in Canada wrote in 1991: *Sexual assault is not like any other crime. In the vast majority of cases the target is a woman and the perpetrator is a man...Unlike other crimes of a violent nature, it is for the most part unreported. Yet, by all accounts, women are victimized at an alarming rate and there is some evidence that an already frighteningly high rate of sexual assault is on the increase. The prosecution and conviction rates for sexual assault are among the lowest for all violent crimes. Perhaps more than any other crime, the fear and constant reality of sexual assault affects how women conduct their lives and how they define their relationship with the larger society. Sexual assault is not like any other crime.*⁸

Justice L'Heureux Dubé words are still relevant and actual. She also wrote that women did not report their victimizations for fear of reprisal, fear of a continuation of their trauma at the hands of the police and the criminal justice system, fear of a perceived loss of status and lack of desire to report due to the typical effects of sexual assault such as depression, self-blame or loss of self-esteem. She added that numerous victims choose not to bring their victimization to the attention of the authorities due to their perception that the institutions with which they would have to become involved will view their victimization in a stereotypical and biased fashion.⁹

I believe victims of SGBC for crimes within the jurisdiction of the ICC experience the same. The Policy paper of the OTP on SGBC states among the challenges of prosecuting such crimes: the under- or non- reporting of sexual violence owing to societal, cultural, or religious factors, stigma for victims of sexual and gender-based crimes, limited domestic investigation.¹⁰

There are several misconceptions concerning SGBC that might impede an investigation and prosecution of such crimes:

- SGBC is an opportunistic crime. Under this misconception, investigators and prosecutors mistakenly believe that rape and other forms of sexual violence are crimes of opportunity which, during conflict, is committed by men indulging their sexual urges, but without association to either the armed conflict or with discriminatory intent.

⁸ *R. v. Seaboyer; R. v. Gayme*, [1991] 2 S.C.R. 577, pages 648 and 649

⁹ *Ibid*, p 649-650

¹⁰ Policy Paper on Sexual and Gender-Based Crimes, para. 50

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- A victim that does not report a SGBC is not credible. There are many reasons why a victim may not initially report a SGBC, or even deny being a victim of such a crime, the stigma associated with victims of SGBC in her community for example. Under this misconception, investigators or prosecutors disregard the testimony of a victim that does not correspond to an ideal profile, the victim that reports the crime at the first opportunity and that has never denied it.
- Stereotypical views of victims of SGBC behaviour. The rules of procedure and evidence prohibit taking such views into account, for example Rule 70 (c) states that consent cannot be inferred by silence or lack of resistance. However, the misconception that a rape victim should struggle or resist her attacker can nevertheless find its way in the assessment by investigators and prosecutors of the victim's credibility.
- Violence against women is an issue that only concerns women. Under this misconception, male investigators and prosecutors are led to believe that SGBC is a matter of exclusive concern for their female counterparts such that they fail to prioritize it as part of their own planning.
- SGBC means investigating crimes against women. Under this misconception, investigators and prosecutors believe that SGBC is exclusively about finding incidents of rape. In contrast, a gender analysis can strengthen investigations and reports by contributing to an analysis that addresses the adverse human rights impact that certain human rights situations or crises can have on different people, including men and boys, as well as LGBTI persons or persons with non-binary gender identities.

My vision for addressing these misconceptions is through ensuring SGBC are effectively incorporated into every investigation and prosecution. In practical terms this means:

- Policies and procedures: The OTP has a Policy Paper that outlines the importance and challenges associated with investigating and prosecuting SGBC. I intend to incorporate these policies into the Office's Operations Manual and other operative policies concerning investigations and prosecutions. I would continue the policy of integrating a gender perspective within the investigations, and for ensuring that SGBC are thoroughly addressed at each stage of the investigative process. I share the view stated in the policy that in the course of its work, the OTP must be mindful of and consider both the existence of adverse gender biases that may affect different sources of information and the possibility of under-reporting or misrepresentation of the truth about sexual and gender-based crimes.¹¹ I also agree with the policy that for preliminary examinations admissibility assessments concerning the absence of genuine national proceedings, the OTP must consider amongst other indicators: attitudes and gender stereotypes in substantive law, and/or procedural rules that limit access to justice for victims of such crimes.
- Training: every investigator and prosecutor must be an expert on SGBC. To that end, every OTP staff engaged in investigations and prosecutions should be required to undertake

¹¹ Ibid, para. 69

annual training on SGBC. Training would be mandatory and considered as part of the staff's performance review. I would also continue the current policy of training OTP staff on relevant cultural issues, traditional and religious practices, including the status of females and males and any other factors that may have an impact on an investigation and the interview process of victims'.¹² I most certainly agree with the importance of considering diversity and local knowledge in the composition of investigative and prosecutorial teams for SGBC.¹³

- Oversight for compliance: responsibility for complying with the OTP's policies should be first and foremost the responsibility of the senior trial attorney overseeing the investigation. The directors of the Prosecution and Investigation Divisions should have supervisory responsibility as well.
 - Auditing: systems should be put in place to ensure an effective auditing of the OTP's compliance with its policies on SGBC. This includes quarterly reports that includes leads and investigative steps designed to uncover SGBC, metrics built in to ensure and evaluate SGBC at the arrest warrant and confirmation of charges stages.
 - Remediation: in cases where the investigation team fails to uncover SGBC, or where the prosecution fails to charge the crime, further audits should be conducted to determine whether there were investigation steps that could have uncovered such evidence. In such cases, additional training will be provided to non-compliant staff, and performance appraisals could reflect these deficiencies.
6. Please describe your experience in addressing crimes against and affecting children and related issues, including dealing with child witnesses.

As mentioned above, at the beginning of my career as a prosecutor, a significant part of my caseload involved sexual offences against women and children. Most of the cases relative to children were for sexual abuse committed by a parent or a family member. I successfully prosecuted an adult involved in the Boy Scouts movement for sexual crimes committed on campers under his supervision. I have experienced the challenges of prosecuting cases with child witnesses. Among the cases of such nature I prosecuted, I was the first in my district to obtain an order from the Court to have a child (a four year old girl) testify out of Court and presence of the accused through video link. I know the challenges of having young children interact with investigators, and testify in a Court of law, given their level of maturity, capabilities and vulnerabilities.

In one particular case, I prosecuted a man for incest on all of his four daughters during decades. He was elderly when he was charged and the witnesses were by then adults. He pleaded guilty and was sentenced to a severe sentence of federal penitentiary. I have

¹² Ibid, par. 57

¹³ Ibid, par. 53

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therefore prosecuted crimes affecting children but brought to light when they are adults. I also prosecuted parents for physical abuse against their children.

In the trial against Desire Munyaneza for war crimes, genocide and crimes against humanity, our team brought before the Court three witnesses who testified about their experience during the genocide in Rwanda when they were teenagers.

I also prosecuted young offenders in our youth Courts for criminal offences for a short period before becoming a federal prosecutor

My experience working with child victims predates my time as a prosecutor. As a university student, I worked one summer for our provincial child-protecting agency to investigate allegations of child abuse and neglect that were part of a large backlog of denunciations. I had to go and meet the children and their parents to investigate the allegations. It gave me first-hand experience, early in my professional life, on how to interact with children victims of alleged abuse including the danger of improperly influencing them in the interview process.

I have read the OTP's policy on children. I fully endorse its adoption of a child-sensitive approach in all aspects of its work involving children. I agree with its practice to take into account the best interests of a child as a primary consideration within the context of its mandate. It corresponds to my experience as a prosecutor of crimes against and affecting children.

7. The 2016 OTP Policy Paper on case selection and prioritization lays down several areas of serious crimes under national law that 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?

I have extensive experience in the investigation and prosecution of financial crimes. I successfully led the prosecution against SNC-Lavalin and some of its senior officials, for the crimes of corruption of a foreign public officer and fraud. The charges were relative to than \$47 million in bribes paid to Saadi Ghadafi for exercising his influence as the son of the Libyan dictator Muammar Ghadafi for securing contracts for the benefit of SNC-Lavalin Construction Inc. The alleged victim of the fraud charge was the people of Libya for an amount more than \$127 million dollars. The case involved a complex international corruption scheme that lasted more than a decade and money transfers for a through a web of companies registered in tax havens.

I also have extensive experience working on matters relating to terrorism offences. For the past ten years, I have served in an advisory capacity and prosecuted terrorism offences in Canada. In that capacity:

- I serve on a Committee of Public Prosecution Service of Canada (PPSC) prosecutors that give advice to the Deputy Director of Public Prosecutions of Canada on matters related to investigations and prosecution of terrorism offences.

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- I have presented in many cases *ex parte* applications to the Court for electronic surveillance authorizations in relation to terrorism offences.
- I charged and sought an arrest warrant against Omar Ould Hamaha and Mokhtar Belmokhtar, two commanders in the Organization of Al-Qaida in the Islamic Maghreb, for terrorism offences in relation to the kidnapping of two Canadian diplomats: Robert Fowler and Louis Guay, in Niger and Mali.
- With co-counsel, I conducted a jury trial against two young adults charged with trying to leave Canada to join ISIS and having in their possession explosive substances with intent to endanger life or to cause serious damage to property. I was responsible for the evaluation and presentation of the voluminous digital evidence seized in cellular phones, computers and social media. I also managed the presentation of expert evidence on improvised explosive devices, and presented and argued applications to the trial Judge.

In addition to the above, I have given lectures on the prosecution of terrorism offences, including on one occasion for the United Nations Office on Drugs and Crime. It was on the topic of mutual legal assistance in terrorism investigations and prosecutions. The main point I presented was that understanding and taking time to listen to other official's reality and point of view was the secret to successful law enforcement cooperation.

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?

While charging decisions must always be evidence driven, serious and sometimes creative consideration must be given to reflecting as much as possible the full breadth of criminal conduct. That is particularly true for signature crimes of conflicts such as forced marriage in cases prosecuted in the Special Court for Sierra Leone. Aside from the important symbolism, such recognition of particularly notorious victimization helps engage affected communities with the potential benefit of improving investigative capabilities.

What Article of the Rome Statute best reflects the criminality involved will depend on the conflicts, the evidence and the strategy. The OTP has shown that it can be responsive to the specificity of conflicts as evidenced by its approach in the *Al Mahdi* case where the accused was charged for war crimes of intentionally directing attacks against historic monuments and buildings dedicated to religion. It demonstrated the same in the Al Hassan case where charges for forced marriage, as a crime against humanity, were confirmed as other inhumane acts intentionally causing great suffering or serious injury to body or to mental or physical health. I would make it a stated priority of the Office to continue such approaches.

Another example of this is the OTP prospective use of enslavement as a crime against humanity. The Rome Statute states that the act of enslavement can be prosecuted as a crime against humanity. As stated in its policy on SGBC "*According to the Elements, one of the elements of enslavement as a crime against humanity under Article 7(1)(c) is that "[t]he perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or*

by imposing on them a similar deprivation of liberty.”¹⁴ The Policy also points out that “[i]t is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.”¹⁵

Crimes against migrants and international human trafficking have attracted the attention of the OTP, for example in the Libya situation. The Prosecutor stated that the OTP was following with concern the situation related to migrants transiting through Libya. She added that the information collected by the Office to date indicated that torture, unlawful imprisonment, rape and other crimes are committed against migrants throughout their journeys and in both official and unofficial detention centers. In December 2018, the Prosecutor also stated to the ASP that the OTP was developing strategic documents on namely modern slavery within the confines of the Rome Statute. A policy paper on the modern slavery as not yet been issued by the OTP. I would continue the work of the Prosecutor in developing this policy with a view to investigate and prosecute modern slavery within the Rome Statute framework.

In addition, I would endorse the OTP’s commitment to financial investigations, with which I have significant experience, and which may allow for accountability for the support of core crimes.

For example, I believe that greater emphasis should be placed on investigating the contributions to international crimes by private actors, including corporate ones, responsible for contributing to increasing hostilities or worsening conflict situations. The private sector’s role in the exploitation of natural resources and the continuation of the war has been vital to the commission of international crimes, particularly in sub-Saharan Africa, including through increased arms trafficking and exploitation. To date, the ICC – and other *ad hoc* Tribunals – have largely avoided these investigations. I believe that targeting such actors and using the Statute’s expansive modes of criminal responsibility can lead to genuine results in holding such individuals accountable and garnering great State support. Doing so could also reduce the trafficking of weapons and supplies to armed groups, thereby reducing the prospect of conflicts and the violence committed therein.

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?

Offences against the administration of justice undermine the confidence in the ICC and in the enforcement of the Rome Statute. They compromise the integrity of the proceedings, impede

¹⁴ Ibid, par 34 footnote 35

¹⁵ Ibid

the Court's ability to discover the truth and provide justice to victims. They also are prevalent. The Open Society Justice Initiative, for instance, noted that allegations of witness interference were made in eight out of nine cases that in 2017 had proceeded to the trial stage at the ICC.¹⁶ Investigation of these offences, while remaining secondary to its Article 5 mandate, have occupied significant time and resources of the OTP – the article 70 case against Jean-Pierre Bemba and four others, for instance, was the most expensive trial in ICC history.

Nonetheless, I believe that these offences must be investigated fairly and prosecuted firmly.

I have experienced the danger, and consequences, of such offences in cases I prosecuted recently. In the terrorism jury trial I mention earlier, a witness told co-counsel and myself, while we were preparing her testimony for a pre-trial hearing, that she had lied when she initially gave a statement to the police that her sister was planning to leave Canada and join ISIS with her boyfriend. In the prosecution I lead against SNC-Lavalin, and some of its former senior officers, an individual defendant, and a lawyer acting on his behalf, offered the Crown's main witness \$10 million for a statement favourable to his defence. I therefore know first-hand the challenges of investigating such offences in terms of: the potential for conflicts of interest, possible violation of solicitor-client privilege and timely disclosure to defendants charged, or on trial, in related proceedings.

I would seek a fulsome and frank evaluation from OTP staff involved in the investigations and prosecution of Article 70 cases so as to properly understand the issues, costs, benefits and possible alternative practices to balance the need for accountability with resource allocation.

I believe that the OTP should adopt a policy, and guidelines, to ensure the transparent, fair and consistent exercise of the Prosecutor's discretion in investigation and prosecution of Article 70 offenses.

These guidelines should address considerations to be taken into account to justify the undertaking of an OTP investigation or prosecution where the seriousness of the allegations warrant it. Such guidelines should consider the following elements:

- Impact on the integrity of the proceedings: Article 70 is designed to address a range of activities that go from witness interference to corruptly influencing an official of the Court. This requires weighing the impact the alleged offenses have on the OTP's case or the anticipated defence's case, on the rights of victims or defendants, or on the overall fairness of the proceedings.
- Effect on witnesses: This includes the extent to which the conduct at issue affected the witness's physical or mental well-being.

¹⁶ Open Society Justice Initiative, *Witness Interference in Cases before the International Criminal Court*, November 2016, p 2-3, www.opensocietyfoundations.org/sites/default/files/factsheet-icc-witness-interference-20161116.pdf

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- The interests of victims: Offences against the administration of justice can have a serious impact on the interests of victims, including foreclosing seeing justice and accountability in the main proceedings.
- Involvement of OTP staff: OTP staff have a particular obligation of care and duty to witnesses and victims and in executing the OTP's mandate to administer justice. Thus, any OTP involvement in acts against the administration of justice are particularly grave given that responsibility and the potential impact to undermine the OTP's operations generally.
- Other alternatives: Where the OTP decides not to investigate, it should consider other alternatives to protect the integrity of ICC proceedings, for example timely disclosure of Article 70 allegations to defendants.

The OTP should develop procedures for addressing conflicts of interest in the Article 70 context. They should address issues pertaining to which OTP personnel should be assigned to Article 70 investigations and prosecutions, when to delegate them to independent counsel or investigators and in what circumstances investigation or prosecution by States Parties would be preferable.

Investigation into administration of justice offences have the potential to provide the OTP access to communications protected by solicitor-client privilege particularly when the allegations regard an accused, in detention or not, or his attorney. The OTP should develop practices, and adhere to protocols, to ensure that it minimise the risk of obtaining privileged communications not covered by the crime fraud exception. These could include prior review by the Court or *amicus curiae* of material obtained pursuant to ex-parte applications.

Finally, timelines should be developed for investigation of Article 70 offenses with a view to provide prompt and transparent responses to allegations brought by not only the prosecution, but also by the defence, the chamber, and another participant or by an external source. I believe, particularly when a defendant is on trial, that such investigations should be concluded as soon as possible depending on the circumstances. The OTP should adopt timelines to ensure disclosure of the results of Article 70 investigations to the accused in related proceedings before the ICC in order to protect the his right to a fair trial and equality of arms.

COMMUNICATION AND OUTREACH

10. The ICC's work is of concern globally and to multiple audiences.
 - a. What experience do you have in prioritizing and successfully conveying key yet complex information to different audiences? Please provide specific examples.

As Senior General Counsel, I am responsible for litigating the most important and complex cases receiving media attention before the Courts all over Canada. I have argued complex cases before Judge alone at all level of Courts in my province and also in Ontario and in the northern territories of Canada. I have done Jury trials; the latest was relative to

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international corruption and a multi-million fraud on a Libya by senior officers of SNC-Lavalin an international corporation based in Canada .

I have learned that the key to a successful communicating strategy is first to have clear idea of the message you want to convey and second an understanding of the audience that you are going to address.

As a prosecutor, I have always taken into account certain important considerations when framing communications: the independence and impartiality of the office, the protection of confidential information, the importance of upholding the authority of the Court and the right of the defendant to a fair trial.

In the prosecution against SNC-Lavalin and some of its senior officials, I had to convey information about a fraud of more than \$127 million dollars that lasted more than a decade. The case involved a complex international corruption scheme and money transfers through a web of companies registered in tax havens. This information was conveyed in briefings to the Director of public prosecutions (DPP), in notes to the Attorney general of Canada (AGC), in mutual legal assistance request to foreign states, to defendants, in submissions to different Judges and a jury, and to the public at large via the media.

The communication strategy prioritised providing information about the case to the most important stakeholders the Director of Public Prosecution and the investigative agency (the Royal Canadian Mounted Police), through a prosecution plan. Notes to the AGC about the case were short and standardized providing her with an executive summary of the case. The disclosure brief to the defendants contained a detailed narrative of the evidence and the prosecution's theory of the case. Submissions to Judges, either oral and in writing were very detailed and extensive, but always preceded by an overview to allow the Judge to be an informed listener or reader. Closing addresses to Judges or a jury were drafted with a view to provide a clear and compelling narrative of the evidence. Press releases and media lines for press conferences were prepared with the assistance of the PPSC communications department, and always reviewed by me, in order to make sure that the message was coherent with the arguments presented in Court and mindful of the defendants right to a fair and impartial jury. I gave interviews, and participated in press scrums at the Courthouse, to give information about the prosecution.

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

It is of vital importance to the Prosecutor that he or she communicate transparently about the work of the OTP, its investigations and prosecutions, its methods and policies. He or she must do so while protecting confidential information in its possession, ensuring the security of all who cooperate with it, upholding the authority of the ICC, defending the Rome Statute, not compromising its independence and impartiality, supporting the rights of victims and protecting the rights of the accused to a fair trial.

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Working with law enforcement can sometimes be daunting for members of the public. That is why the OTP should try, to the extent possible, to demystify what the ICC does and explain the legal process to the broader community. It is essential that the Office have a community outreach program to better inform the public about the OTP's capabilities and activities, with the hope of building relationships and developing trust between the OTP and the broader community. This includes effectively leveraging social media, field offices, partnerships with the Registry and non-governmental organizations, and the public relations office. Some strategies and tools could include the following:

- **Dedicated Community Outreach Officer:** Outreach and communication are distributed among different offices at the OTP. However, none of those officers are mandated with ensuring communities understand the OTP or are familiar with its investigations or preliminary examinations. To that end, outreach efforts should be centralized to a dedicated Community Outreach Officer responsible for ensuring that the OTP has a broader communication strategy and one specific for each investigation.
- **Communication strategies for each preliminary examination/investigation:** Every preliminary examination and investigation present its own challenges for effective outreach. There is no one size fits all solution and outreach will depend on a variety of factors including access to different technologies, literacy rate, trusted medians for communication, and so on. I will require that the opening of every preliminary examination or investigation be accompanied by a comprehensive outreach plan that includes strategies to communicate with vulnerable communities, such as minorities, women, and children. Those strategies must benefit from the input of on-the-ground experts and community leaders to ensure that they are sensitized to local circumstances. For each case being prosecuted or investigated, I would want a communication plan to be drafted to make sure that all-important stakeholders are informed of the office's activities, in particular victims and affected communities. I would want to know what means of communications are to most efficient to reach these communities.
- **Building relationships with local law enforcement and community organizations:** Local leaders are important and trusted agents for communication. I would require that in every investigation or preliminary examination there are strategies that include organizing small meetings with local law enforcement and community organizations to better inform the public as to the ICC process and the rights of victims, witnesses, and suspected persons.
- **Community meetings:** Meeting with local community members is essential and the most effective way of ensuring direct engagement with the impacted population. I will require that the office hosts meetings open to the broader community to discuss a wide range of topics. These meetings should be done in-person, but can also be held virtually to ensure broader participation. I will require that these meetings are built into any investigative plan to ensure they are part and parcel of the investigative

process and done with sufficient frequency to ensure community involvement. If this requires in person visits of the Prosecutor to these communities I would not hesitate to accept.

More generally, as the leader and face of the OTP, I would continuously make myself available as a spoke person for the office for media request and communication with the public. I would make sure to review media lines and releases to ensure that our message is clear, coherent and understood.

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 and communities affected by violence are the Court's most important stakeholders.

I agree with the OTP statement in submissions on victims' participation, that the Rome Statute "*empowers victims as an actor in the international criminal justice system, with a right to express their views and concerns independently in proceedings where their personal interests are affected*".¹⁷

As a prosecutor, I have worked with victims. I understand the importance of transparency and engagement. It is important that victims are informed and have a clear understanding of the offices activities. It is through communication with victims and affected communities that misinformation about the ICC can be prevented.

The processes of the Office must ensure that victims are treated with dignity and respect. They must ensure they are informed and engaged. This includes during the preliminary investigation stage and during investigations.

I also agree with the statement of the OTP in its policy paper that, as a matter of law and policy, the prosecution must support the participation of victims in proceedings in accordance with the Court's legal framework.¹⁸

Although the prosecution is independent of victims and affected communities in ICC proceedings, it must not remain merely passive when victims and affected communities intervene in them. The prosecution has a duty to support victims when they seek to enforce their rights. However, the prosecutor must continuously safeguard the rights of the defendant to a fair trial.

I believe the OTP's current policies strike the proper balance when they state that the office will support an application from victims to participate in proceedings under the statute when:

¹⁷ Policy Paper on Victims' Participation, page 5

¹⁸ Ibid

the applicant qualifies as a victim under rule 85; legal and factual issues in the proceeding affect the applicant's personal interest; the applicant's participation is appropriate at the particular stage of the proceeding; and the manner of participation is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial.¹⁹

Ultimately, the most important contribution a Prosecutor can make is to ensure the integrity of the judicial process so that victims can best achieve justice and the truth of their victimization be established.

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

I would continue the OTP's policy of selecting and prioritizing the investigations of crimes in a particular situation by taking into account the impact of those crimes on affected communities.²⁰

I intend to build assessments as to the impact crimes have on future generations when evaluating which investigations to prioritize, which crimes to charge, and which accused to pursue. These factors will also be incorporated into any gravity assessment, as required for when opening an investigation or preliminary examination. I also agree with the OTP's policy to consider particularly prosecuting Rome Statute crimes that result in the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.²¹

I would also continue the practice of prosecuting particularly crimes against or affecting children as well as rape and other sexual and gender-based crimes; and attacks against cultural, religious, historical and other protected objects as they have particularly serious impact on future generations of affected communities.²²

I would also continue practice of seeking to cooperate, and assisting upon request, States with respect to the illegal exploitation of natural resources, arms trafficking, human trafficking, terrorism, financial crimes, land grabbing or the destruction of the environment.²³

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?

I understand that victims and communities affected by violence are the Court's most important stakeholders.

¹⁹ Ibid page 6

²⁰ Policy paper on case selection and prioritization, para 50

²¹ Ibid, para 41

²² Ibid par 46

²³ Ibid par 7

As a prosecutor for over 30 years, I know that victim input is critical to ensuring that our investigations are effective and properly meet the situation's demands. I am deeply committed to hearing and learning from victims and ensuring their continued involvement. Getting victim engagement right will maximize other parts of the process to meet the Court's mandate of addressing the gravest crimes.

As stated earlier, to maximize the offices work, it must engage with local civil society organizations and victims early and routinely. It must have staff that understand the local situation.

Where secure and appropriate, it must have in country presence whether through in country offices of the Court or frequent missions. Being present in affected communities, building relationships with local law enforcement and local leaders is the most efficient way to maximize the OTP's work. Visit from the Prosecutor or one of his/her deputies in the affected communities is an important way for the OTP to signal its commitment to bring justice to them and maximize the impact of its work.

DEFENCE RIGHTS

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

As a prosecutor in Canada for the last three decades, I have operated within institutions, and a justice system, where prosecutors are considered "ministers of justice", more part of the Court than proponents of a cause.

I have exercised my duties following the principles laid out by the Supreme Court of Canada in its landmark decision in *Boucher*:

*"It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with a greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."*²⁴

This has meant making sure, in all the prosecutions I have led, that full disclosure of evidence and information in the investigative file was ready before laying charges or seeking an arrest warrant of the accused. No prosecution I have undertaken has ever been stayed for non-disclosure of relevant information to the defence in possession of the police or the prosecution.

I believe that the prosecutor as a "minister of justice" cannot adopt a purely adversarial role towards the defence. In the prosecution against Desire Munyaneza for genocide, crimes

²⁴ *Boucher v The Queen*, [1955] SCR 16, (1954), 110 CCC 263, at page 270

against humanity and war crimes, the prosecution team I was involved in acted as such. The prosecution was initiated only when a full disclosure package was ready for the defendant. When he applied for state funding of his defence, pursuant to Canadian law, we did not oppose the applications. We did not oppose defendant's requests for orders appointing a commissioner to take the evidence of witnesses in France, Tanzania and Rwanda, and even supported these request in these countries. While on rogatory commission in Africa, we accommodated the defence to allow for testimony of a witness that was not on the defence list. We afforded to defence witnesses, the same treatment that was afforded to prosecution witnesses regarding *in camera* testimony, and non-publication of their identities, where there were issues concerning their safety. In his closing arguments, defence counsel congratulated the prosecution team for its professionalism. He thanked us for behaving not as enemies but as adversaries.

In his Judgement the Judge, Justice André Denis, S.C.J., underscored the remarkable work of myself and all attorneys in the case. He wrote that through our ethical sense, the intelligence of our words and the respect we showed, we contributed to ensuring that the trial retained a human face. In doing so, he stated, we assisted the Court, served justice and provided an example of what is most noble about the profession of attorney.²⁵

IMPARTIALITY, INDEPENDENCE, AND COOPERATION

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

I have proven track record of conducting prosecutions with independence and impartiality.

This was certainly the case for the Munyaneza war crimes trial. Within the community, including in legal circles, support for the prosecution was divided. The cost of the prosecution was the object of criticism in the media. Certain legal observers criticized measures taken to have parts of the trial conducted in camera to protect the identity of victims and witnesses. We continued the prosecution focused on the ultimate goal of upholding Canada's legal obligation to fight impunity and insuring a fair trial to the defendant.

I also led a prosecution against the Conservative Party of Canada (then the governing party) for violation of Canada election laws. The case was a top priority of the DPP and the Commissioner of Canada elections (the investigative agency). It was highly political, attracted significant media attention and was the subject of strong and divisive debate in Canada's Parliament (the House of Commons). I successfully led the prosecution team. The case ended with the Conservative Party of Canada's guilty plea. It was imposed the maximum fine authorised by Canada's election laws.

Finally, the prosecution for international corruption and fraud against SNC-Lavalin is another example carrying out a mandate with independence and impartiality. That prosecution was also the object of divisive debate within the House of Commons and in the media and in political, business, legal and academic circles. It is a matter of public record that the office of

²⁵ *R. c. Munyaneza* 2009 QCCS 2201, par. 30-32

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the Prime Minister of Canada tried to convince the then Attorney General of Canada to intervene and direct the DPP to offer SNC-Lavalin a remediation agreement that would have allowed the company to pay a fine without being convicted of an offence. Despite the pressure and the surrounding noise, pursuant to the mandate given to me by the DPP, I led the prosecution, managed the team's work, delegated responsibilities and made sure that all aspects of the prosecution were in line with the overall legal strategy and direction of the DPP. This very contentious prosecution led to successful results in the public interest and with full respect of Canada's international obligations. The company pleaded guilty to a fraud on Libya and was fined 280 million dollars. One of its former Executive Vice Presidents was convicted by a jury and sentenced to 8 ½ years of federal penitentiary, confiscation of properties worth more than \$4 million dollars and a fine of more than 24 million dollars.

In all of these instances, I prosecuted the cases with a steadfast determination to uphold the prosecution's independence and a commitment to impartiality despite the overwhelming surrounding noise.

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

I would be a fierce defender of the OTP's independence, of the Rome Statute and the authority of the ICC.

I would make sure to remind all personnel of the OTP that, as mentioned in its regulations, the office and its member must maintain their full independence and not seek to act on instructions from any external source. I would want to make it clear that any interference or pressure exerted on any member of the office should be reported to me.

I would want to make it clear to all members in my office that they have my full support in conducting their activities despite the surrounding noise of political or external pressure.

In communications about such cases, I would make sure that statements, issued by the office or me, reiterate firmly that pursuant to the Rome Statute, the OTP is an independent organ of the Court that it is responsible to investigate and prosecute crimes within the jurisdiction of the ICC, and that it must not seek or act on instructions from any external sources. I agree with the current Prosecutor's statements that the OTP must conduct its work without fear or favour.

In my conduct and communications, I would want to make sure that I do not say or do anything that would affect confidence in my independence or that of the office. This means careful screening of: any meetings or events I participate in and any statement of the office.

I would want to make sure all members of my offices not engage in activities, conducts or communications that undermine the confidence of the OTP's independence. A violation of this could lead to sanctions.

In the end though, I believe strongly that it is through the office's action and results that it can best provide an answer to political pressure and external pressure. It must, especially in those circumstances, conduct high quality investigations and prosecutions with a view establishing the truth about crimes of the most serious concern for the international community, provide

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justice for victims and affected communities and do so while respecting the rights of defendants.

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

International cooperation is essential to bringing fugitives to trial and toward preventing impunity. I have worked in cases where we were worked successfully across borders with partners in other countries to ensure that fugitives were brought to justice.

There is no magic formula to this. It requires the assistance of all partners to track fugitives, including States, non-governmental organizations and intergovernmental organizations. It requires strong relationships with domestic law enforcement authorities where the persons are found. Sending an extradition request is not enough to be successful. The Prosecutor needs to engage with those countries and develop investigative alliances. The power of the prosecutor, under Article 54 of the Statute, not only to seek cooperation of any State but to enter in agreements to facilitate the cooperation of a State should be used where appropriate to conclude agreements with States, including non-State-Parties, pertaining to the transfer to the ICC of individuals wanted by the Court.

When all efforts have proven to be unsuccessful to obtain cooperation of a State Party, the Prosecutor should ask the Court to make a finding that it failed to comply with a request to cooperate contrary to the Rome Statute, and refer the matter to the ASP or the Security Council where it as referred the matter to the Court.

I also believe that the OTP must to make sure that all cases with outstanding warrants are trial ready. Reasonable prospect of conviction is something that must continuously be re-evaluated. It does not serve the fight against impunity to have a case stayed for lack of evidence once you have successfully brought a fugitive to the Court. Timely execution of outstanding warrants should be a constant priority.

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 I am not.

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

No I am not.

LEADERSHIP AND MANAGEMENT

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

I have lead teams of prosecutors in all of my cases for the past twenty years.

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As a leader, I am responsible and accountable; my leadership is an inclusive one. I listen to my team, consult them and take their point of view in consideration in decision-making.

I exercise leadership generously and do not hesitate to let others develop themselves.

The investigation and prosecution against SNC-Lavalin lasted over seven years. The focus of the case was not only on the company but also on some of its senior officers; I assembled a team of prosecutors to conduct the prosecution. I delegated responsibility for segments of the case to different prosecutors. One of the prosecutors was a very talented woman with strong experience in the prosecution of financial crimes. After consultation with the team, I decided that she would act as lead counsel on the prosecution of one of the senior executive Vice-President with the understanding that I would remain present to support her. I kept the lead of the prosecution against the company in a separate proceeding and other attorneys on the case (including her) acted in support.

All decisions: drafting the charges; legal strategy; choice of evidence to be presented; preparation of witnesses; applications and submissions to the Court and liaising with the investigative agency and the DPP's office, were taken with the aim to ensure a coherent strategy and an efficient prosecution. The result was a successful prosecution with effective penalties in the public interest.

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 was team leader to a group of a dozen prosecutors of the PPSC responsible for cases against organised crime. I was an attentive, respectful and dedicated leader that supported his team, and that strove it towards excellence while making sure that their work was in line with the directives and goals of the organization.

As a team leader I assigned cases; organized the workload and the environment; authorized leave and drafted annual performance reviews, ensured that prosecutors needs in training, tools and working conditions were satisfied and acted as mentor and support more particularly for younger prosecutors on my team.

At one point, I was asked to take the lead of an additional second team of prosecutors. I accepted and discharged my duties as a supervisor, now of a group of two dozen prosecutors, with the same attention and care, while at the same time conducting a prosecution for genocide, crimes against humanity and war crimes. I was fortunate to lead professional, dedicated and hardworking civil servants. Nevertheless, I had sometimes had to intervene when issues would arise that compromised the offices performance. For example, on one occasion, the lead investigator of the RCMP of an organised crime case called me from the Courthouse. He informed me that the prosecutor I had assigned to his case was having a nervous breakdown. I immediately sent another attorney to the Courthouse to relieve him. I reassigned the case and even got personally involved in some aspects of the proceedings. I met the attorney, discussed the situation, authorized temporary leave and provided him support. The case continued with successful results. The prosecutor continued his career and developed into a successful and respected prosecutor.

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As stated earlier, my approach to decision making is inclusive. I listen to my team, consult them and take their point of view in consideration in decision-making.

I would always assign cases based on the experience of the attorneys, always mindful balancing the workload in a fair manner. I would also aim to provide attorneys opportunities to develop themselves by assigning cases with challenges I believed they were ready to meet.

By organizing monthly team meetings to communicate the policies and goals of the organization, through an open door policy where the people I supervised had continuous access to me and annual performance reviews that were personal, thorough and fair, I achieved accountability.

As stated by a reference of mine Alexis Gauthier, General Counsel of the PPSC, as a leader I always provided thoughtful legal and strategic advice to the attorneys I supervised and I was a particularly attentive leader to the younger attorney under my mentorship.

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.

I agree that diversity is critical to the success of the ICC. I am deeply committed to having in the OTP a diverse workforce, especially at senior levels of the Office. Diversity and inclusion are not only important as a principled matter, but are important to ensuring that we have staff that are representative and can better understand and communicate with our stakeholders, including victims.

All environments I worked in throughout my entire career respected and promoted diversity. As a member of the PPSC and the Law societies of Quebec and of Ontario, I must every year follow training on diversity issues.

I have led prosecuting teams that were gender diverse.

I have worked, and trained law enforcement officials throughout Latin America. I organized, four years in a row, the internship of prosecutors from Latin America that came to Montreal to learn about our judicial system and its values.

As a young prosecutor, I led cases where women were victims of domestic violence and sexual violence. I have conducted prosecutions for crimes where gender, race, nationality or religion were a component of the narrative of the offense. In all these prosecutions, I defended the respect for diversity in all its forms. This has thought me the importance of respect, tolerance and the importance of cultural diversity in communities and society.

As a provincial prosecutor, and as a federal prosecutor, part of my caseload was relative to crimes committed in aboriginal communities of Canada. This opened my eyes to the situation of aboriginal communities affected by poverty, substance abuse, lack of education, and the lack of employment opportunities, even in a country as developed as Canada. It also made me

aware of the danger that the criminal justice system contribute to the alienation of aboriginal people through over incarceration of aboriginal offenders.

I sit on the access to the profession committee of the Quebec law society. The committee decides whether candidates to the profession of attorney have the knowledge, skills, morals and qualities required to be granted a right to practice law. Many of the candidates that appear before the committee are immigrants from all continents that have studied law in their native countries and want to become lawyers in Canada. Because of the nature of the committee's work, all members are required to follow diversity sensitivity training. My work on the committee has allowed me to be aware of the importance of a greater diversity of the legal community in Canada and to contribute to it.

In my personal life, I have lived personal experiences that allowed discovering and knowing different cultures. As a 17-year-old young man, I lived in Venezuela, in a Venezuelan family, as a foreign student for a year. It completely transformed my life. I immersed myself in a different country and culture. Ten years later, I married the young woman I met in Venezuela. It completely transformed my vision of Latin Americans and allowed me to identify the prejudices in my own society against people of a different culture.

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?

Having not worked in the OTP it is impossible for me to have a correct and precise assessment of its current working culture. I have taken notice however of the reported growing attention regarding workplace conditions at the ICC, including the Office of the OTP.

For example, on 8 January 2020, the ICC Staff Union, which includes representatives from the OTP, produced an open letter demanding that the Committee on the Election of the prosecutor emphasize the issue of "character", noting that "[b]ullyng, harassment, discrimination and abuse of power have been already shown to negatively affect the wellbeing and health of the staff of the Court, and lead to a poor work climate, higher rates of sick leave and medical claims, and decreased engagement and work productivity."²⁶ These issues led the Open Society initiative to note in an article on 18 May 2020, that "[t]he pervasive toxic office culture within the OTP must change."²⁷

As I repeated in the public hearings, having a healthy office culture is important to me. I am committed to building a talented and passionate workforce that operates with integrity, commitment to the Office's important mandate, and respect for one another and our stakeholders. I believe it starts with how we work together. I want to build an Office where

²⁶ <https://www.ijmonitor.org/2020/01/icc-staff-union-council-calls-on-states-to-give-full-meaning-to-the-provisions-on-high-moral-character-of-elected-officials/>

²⁷ <https://www.ijmonitor.org/2020/05/its-complicated-the-icc-prosecutors-office-and-the-need-for-reform/>

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people of different views, backgrounds, and experiences can do their best work and support one another.

One of my first step would be to communicate directly to all staff members that I consider everyone's role in the office to be essential regardless of the position. As such, I would welcome to get directly from them and in the manner they would be most comfortable with, their input as to what they need to feel best able to contribute to their outmost abilities while being happy and proud to be members of the OTP.

There is no place for harassment, bullying, discrimination or retaliation of any kind in the workplace. This is something I strongly believe in. I will take a hard line on inappropriate behaviour to ensure that all employees, contractors, and volunteer staff can feel safe and respected. I will ensure that our policies and procedures are improved to address harassment and misconduct. This includes through, strengthening our workplace policies, including policies on harassment, discrimination, retaliation, standards of conduct, and work place conduct. This also includes clarifying the ways employees and our workforce can raise concerns safely and without fear of retaliation.

I also believe that all instances of inappropriate conduct should be investigated rigorously and independently. To make sure complainants have care and support, I will also ensure there is a dedicated support system to provide better care to victims during and after an investigation. Reporting misconduct takes courage and I want to provide care and support to people who raise concerns.

Finally, I intend to take a hard-line against harassment and misconduct in my Office, including, when appropriate, terminating staff who engage in such conduct.

I understand the importance of this issue and intend to set high standards that I will personally be committed to making successful.

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.

Prejudices and bias affect minorities and people of colour in the workplace disproportionately. One way to address this issue is through diversity in the workplace.

As I stated earlier, I am deeply committed to having a diverse workforce, especially at senior levels of the Office and I would ensure that our hiring prioritizes having a diverse office that includes underrepresented people of colour and underrepresented geographic regions.

Another way to address these issues is through training on diversity issues in the workplace. I have followed such trainings and I have experienced how they allow identifying prejudices and biases that we often have without really knowing it. I would require my staff to follow such training, much as many organizations around the world currently do.

I believe women in the workplace, and particularly in the legal community, are disproportionately affected by the difficulties of balancing a successful career and family obligations.

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Access to maternity and parental leave without losing employment was a problem for a very long time in my country. Fortunately, this changed in my organization. Women can now ask for maternity and parental leave for up to 18 months year with full pay and without losing their employment. Men now can take part of the parental leave. I did so myself when my second child was born.

However, managers need to support such programs and policies by not prejudicing women who take time to fulfil their family obligations. As a manager, I supported the women I supervised by approving their return to the workforce on part-time time basis after parental leave. I did not prejudice them in the assignment of cases or in annual performance assessment reviews. When they were back on full time basis, I approved flexible working hour schedules and working from home. It never affected their productivity and results. Many of them went on within the PPSC to have access to senior positions.

Thank you.