

## 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 9 - 10 December 2020.*

Name: **Brigitte RAYNAUD**

Date: **January 15<sup>th</sup> 2021**

### COMMITMENT AND VISION

- 1. What vision will animate the work of the ICC Office of the Prosecutor (OTP), if you are elected Prosecutor?** I would like the work of the Office of the Prosecutor to be animated by three principles, two relating to its internal functioning, the third to its relations with the other organs of the ICC, the States Parties and civil society. **The first principle is that of cohesion at the service of action.** In my opinion, team cohesion and the well-being of each of its members at work condition the construction and success of the OTP's action strategies, which must be supported by innovative and attractive internal and external communication. I would like to develop, with the staff of the OTP, a management method that is participatory, unifying and ethical at the same time. This method will aim to ensure: cross-functionality and fluidity of communication between the divisions of the OTP; a high degree of professionalism in the recruitment and career development of staff, with the promotion of mobility within and outside the Office and the ICC; the strengthening of ethics to combat and prevent harassment, burn-out and the risks of corruption, using highly operational tools to free speech, punish abuses and develop prevention and control policies over the long term. To achieve this, I will use a method of reorganizing services that has already been successfully tested, guided by efficiency and caring. This management allows cohesion and consultation while preserving the essential principle of final decision making by the public prosecutor himself. **The second principle is valorization through communication and openness.** Communication must support all stages of the reform of the functioning and action of

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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, Colombian Commission of Jurist, 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.

the OTP. It will focus as much on the staff of the Office, through their initiatives, innovations, successes, and commitment to shared projects as on the actions of the Office itself, in terms of innovation in management, strategies in prosecution, prevention, cooperation with States Parties and non-States Parties, lawyers and civil society. The Bureau's relations with the other organs of the ICC (judges, Registrar), the States Parties, the civil society will be guided by **the third principle, that of mobilizing all for action**, in particular through : The establishment of spaces for reflection with the judges of the Court (seminars, communication tools) on the evolution of the Court's jurisprudence, the pooling of legal and human resources (experts, assistants); the formalization of bilateral or regional cooperation agreements with States Parties but also with non-States Parties, and/or with national courts, which are very pragmatic and operational, taking into account their material, legal, and financial possibilities of cooperation; the strengthening and expansion of cooperation with civil society, namely NGOs, local associative networks in the areas of women's rights, child protection and youth engagement; the implementation of cooperation with local authorities (mayors, departments, regions) in order to be as close as possible to the inhabitants, with a view to ensuring the effectiveness of the Prosecutor's action in terms of prosecution and the collection of evidence, but also in terms of prevention by raising awareness among the population and the various levels of political governance; a reflection also on outreach to the armed forces operating in countries in crisis or facing crimes within the jurisdiction of the ICC, with a view to reaching agreements on the collection of information and written evidence for the benefit of the OTP.

2. ***How will you define the Court's legacy in situations where investigations are undertaken? How will you achieve that legacy?*** The legacy of the ICC needs to be analyzed, for ongoing investigations, in terms of feasibility and effectiveness in terms of convictions. The review of the oldest investigations should lead to the closure of investigations with no prospect of success in the short term, in terms of international cooperation and convictions, to allow the OTP to focus on the strongest investigations. This analysis must lead to the clarification of the criteria for the choice of prosecutions and their readability, in order to avoid any suspicion and to encourage the adherence of States to facilitate the investigations.
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 budget is limited, certainly insufficient in view of the challenges posed by the Court's internal operating difficulties and the current international context, which is conducive to the outbreak of major conflicts around the world. I had to manage a budget of more than 400 million euros for three years, from 2016 to 2019, in a community in a difficult financial situation. In this situation, there are three principles to be respected: **credibility, ingenuity, and transparency**. In other words: convince, invent, communicate. **Convincing:** credibility in the choice of prosecutions and the effectiveness of the prosecutor's action in terms of convictions and prevention to strengthen confidence in the ICC and its attractiveness in the eyes of current States Parties and potential new States. The increase in the number of memberships must respond to a fine and long-term strategy. **Invent:** ingenuity in the elaboration of actions and the use of existing resources : with the introduction of new working methods to create synergies and reduce costs; with the valorization of the OTP's own human wealth, with 380 members, quite young and representing more than 60 nationalities, all of them potential

"ambassadors" of the Prosecutor's action to strengthen the policy of international cooperation and the promotion of the ICC ; with the conclusion of partnerships in the field of prevention; with the elaboration of a strategic action plan over several years in line with the roadmap established by the independent experts, and with an enlarged steering committee; with the culture of evaluation. **Communicate:** through annual reporting based on the sincerity of expenditures and needs; make the rationalization of expenditures a participatory project within the OTP, to be valued in terms of good governance.

#### **PRELIMINARY EXAMINATIONS, INVESTIGATIONS AND PROSECUTIONS**

4. ***What do you believe are the main challenges facing the OTP in terms of:*** The difficulties relate to the choice of prosecution and the timeliness of investigations. The choice of prosecutions (partly referred to above) must be guided by the criteria of seriousness as provided for in the Statute, but also by the criteria of technical and temporal feasibility. The principle of complementarity, linked to the sovereignty of States, must be applied with diplomacy and sincerity. The Prosecutor must verify the reality of the prosecutions carried out by national courts and the sincerity of the will to prosecute within a reasonable time. The guiding thread of my action is common to both legal systems represented at the ICC and can only elicit the adherence of States: **the right to a trial within a reasonable time**. It is a principle that respects the individual and human rights. This principle requires a judicious choice of prosecutions, a strengthened international cooperation but also a rebalancing between the two legal systems. The Civil law system allows indeed to control and limit the time limits of investigation and judgment. It is necessary to introduce the spirit and modalities of this system into the practice of the criminal chain (preliminary examinations, investigations, judgments) of the OTP and the ICC.

*a. preliminary examinations;*

*b. investigations; and*

*a. prosecutions? How would you overcome them?*

5. ***Please describe your vision for addressing misconceptions related to sexual and gender-based violence that might impede the investigation and prosecution of SGBCs.*** Sexual or gender crimes should be considered to have the same level of gravity as all other crimes within the jurisdiction of the ICC. It would be wrong to consider them as less serious because they affect women. On the contrary, by targeting women, they jeopardize their future. These crimes must therefore be placed on an equal footing with the most serious crimes. But they require specific treatment because they are complex crimes that affect the intimacy of the human being. The rape of women but also of men has become an increasingly used weapon of war. Children are sexually abused before becoming child soldiers. This treatment must be adapted in terms of investigation modalities and long-term care of victims. In this respect, the policy already developed by the OTP and unanimously recognized, must be systematically implemented. Training must benefit as many people as possible, including investigators, lawyers and judges... The care of victims must be envisaged in the long term, in conjunction with NGOs and civil society, and, if necessary, with the conclusion of useful partnerships with States or local authorities at the decentralized level. Also, the action of the OTP in this area needs

to be valued because it is very unifying. Beyond the collection of the word of victims during my legal proceedings, a real policy of assistance to victims could be initiated. Indeed, victim assistance contributes to crime prevention.

- 6. *Please describe your experience in addressing crimes against and affecting children and related issues, including dealing with child witnesses.*** I have worked on the subject of child victims from various angles during my career: at the Paris Court of Appeal, I was in charge of developing judicial policies to fight against child prostitution and intra-family violence and to promote the proper care of victims. Currently, I am in charge of the field of child protection and educational assistance aimed at protecting, through the coordinated intervention of justice and social services, abused children and unaccompanied minors resulting from migratory movements linked to wars and crises. The subject of the collection and credibility of children's voices is an issue for collective reflection, particularly with regard to sexual abuse. I had a more territorial vision of the subject of child victims when I worked in the field of urban policy aimed at reducing territorial and individual inequalities. Children from poor suburbs, ghettos and underprivileged neighborhoods are more exposed to physical or psychological violence and to trafficking, particularly drug trafficking. My 8 years of experience in this field can help to develop, at the level of the OTP with civil society and lawyers, awareness raising actions and a specific prevention and prosecution policy.
- 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?*** I have experience in financial crime, having worked at the Financial and Commercial Department of the Public Prosecutor's Office of the Paris Judicial Court. I have conducted investigations and supported the prosecution at hearings on cases of fraud, abuse of trust, embezzlement, with sometimes international connections and more or less complex financial arrangements. I have also followed up on business failures at the Paris Commercial Court and on financial criminality in relation to them.
- 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?*** Most of the Treaty's violations have been used to date. However, I believe that future prosecution strategies must include not only enforced disappearances, but also slavery in general, specifically affecting women and children. This is a subject that is close to my heart and for which broad international cooperation may be easier to obtain for the OTP because it is a unifying issue.
- 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?*** Article 70 of the Statute refers to two types of behavior that voluntarily prevent the manifestation of the truth that may occur at any stage of the proceedings: the register of false testimony (perjury, falsification of evidence ...) and the

register of pressure (witness tampering, threats, intimidation) or consensual (influence peddling and passive corruption). These are, in national legislation, classic and common criminal offences. My principle is that of systematic repression because such behavior distorts the truth and undermines ethics and deontology. However, in my opinion, it is necessary to dissociate according to the register: to have the offences in the register judged as forgeries and pressures on national justice systems, by first confirming cooperation with them on this aspect; to have the pressures granted (influence peddling, corruption) judged at the level of the ICC itself, as an example, because these offences seriously undermine the integrity of the ICC itself, and ruin its image and credibility. However, the concealed and underhand nature of these breaches makes their discovery complex and requires a genuine policy of internal detection (identification of risks and feedback of information) and transparency on prosecutions and sanctions, at all levels of responsibility. The personal and professional ethics of OTP members must be a management focus and a priority for action by the Prosecutor, with an internal unit dedicated to the subject. Also, the ethical requirement can be the opportunity for a federative action that promotes the image of the OTP and the Court in terms of good governance.

## **COMMUNICATION AND OUTREACH**

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

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

I have often piloted the communication of the institutions I have been in charge of during my secondments. I attach paramount importance to communication to accompany internal change, strengthen cohesion and commitment, enhance actions and actors, ensure the readability of policies and strategies, and enable the defense of the Prosecutor and the ICC in case of personal or institutional attacks. Communication must be thought out both internally and externally. The communication of complex information to different audiences must be the subject of a real strategy in the short, medium and long term: information on the choice of prosecutions, on investigations, on hearings, on international cooperation agreements, on prevention actions, on actions developed with civil society, on the protection of children and women's rights...The communication policy must be the occasion for internal collective reflection at the level of the OTP and at the level of the ICC in order to differentiate the strategies. Communication tools: a communication specific to the OTP with, on the official website of the ICC, an interactive page dedicated to the OTP to debate with the public on subjects not subject to confidentiality, thematic, geographic, legal and diplomatic newsletters, interviews with actors, reports and photographs on current events and "the beautiful stories" of the OTP to ensure communication on "lighter" but rewarding subjects. The launch of the "Justice Prize" or "Peace Prize", aimed at OTP staff, lawyers, NGOs and civil society to create emulation. The appointment of a spokesperson for the Prosecutor may seem necessary to ensure unity of communication and professionalism in this area, which does not suffer from improvisation, with regard to the secrecy of investigations and the security of OTP personnel. The OTP's communication must find relays in the States Parties.

- c. ***What kind of communications strategies and tools will you put in place as Prosecutor? Cf réponse ci-dessus.*** Communication is a strong axis of my program for the OTP. Four axes: a first axis of internal communication within the OTP to support change, facilitate cohesion, and enhance the value of actions, projects, teams and individual successes; a second axis of internal communication within the ICC for judges, lawyers, the Registrar ... to facilitate the flow of information, particularly on the needs of the OTP in relation to judicial activity; a third axis of communication for States Parties and non-States Parties, and national courts in particular, to identify the means of international cooperation according to mutual expectations and means; a fourth axis specifically for civil society. Four axes to be developed collectively and with innovative and interactive communication tools to ensure broad communication covering the repression and prevention of crimes against humanity.

#### **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.*** The OTP must promote the identification of all victims of selected crimes, in particular through close cooperation with national justice systems and civil society; ensure that the voices of victims are heard in the best possible conditions of security and confidence in order to obtain detailed and solid statements over time, particularly at hearings; to facilitate spontaneous testimony, particularly for sexual crimes committed in French-speaking countries, the use of French will be developed within investigation teams and also at the hearing level. Indeed, the impact of the hearings on the affected communities is linked to their good understanding. The choice of language conditions trust with the victims, the quality of the testimonies collected, the impact of the prosecution in terms of understanding, prevention and communication, but also international cooperation itself. Finally, the place of the victim at the trial during the time of the investigation and at the trial must be reinforced. The victim of the most serious crimes cannot be considered as a mere witness of his or her misfortune. The legal system of Civil Law allows the victim, if he or she so wishes, to become a true party to the proceedings and the trial with the recognition of rights (requests for acts), with the possibility of appealing against judicial decisions of refusal. It is necessary to engage with lawyers, civil society, the prosecutor, and the judges of the ICC in a reflection in this sense.
12. ***How will you pursue accountability for those crimes that have a particularly serious impact on future generations of affected communities?*** Crimes against humanity and genocide by definition have a particularly serious impact on future generations of affected communities. Indeed, unlike ordinary crime, special consideration must be given to the youth of the affected communities, and in general to the youth of the States Parties, through NGOs and civil society, because the ICC is a promise made to the youth of the world of a peaceful world through the action of justice and diplomacy. The Prosecutor must combine the action of justice and diplomacy, which is exciting and difficult at the same time. Justice must be done in a timely manner to allow peace to take hold. It is young people who are the bearers of this peace because they embody the future of humanity. The Prosecutor must address the youth, and this is the whole challenge of a prevention policy that remains to be built at the level of the OTP, through

education, culture, and communication. This is a true public policy whose elaboration by the OTP will be very unifying for the members of the Office and the States Parties themselves. Resources and relays have already been identified internally, but the project still needs to be carried out collectively.

- 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?** See answer above.

#### **DEFENCE RIGHTS**

- 14. Please describe your experiences in ensuring the rights of the accused to a fair and impartial trial.** I served as an investigating judge for 13 years in a court specialized in military matters and I always made sure that the defendants were immediately and always assisted by a lawyer, even when this was not mandatory. I have always granted the requests for acts presented by the lawyers of the defendants and the civil parties (victims). The effectiveness of the recognition of the rights of the parties is a position of principle that allows both the full and complete expression of the parties at the appropriate moment in terms of procedure and thus a saving of time in the end. I have always had this position as a prosecutor also in the conduct of investigations. It seems to me necessary at the ICC level to establish a real procedural dialogue with the parties' lawyers and then with the judges to allow the expression of rights while preserving the principle of reasonable time.

#### **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 investigated three very sensitive cases that have had international repercussions and that attest to the independence and impartiality that I have shown in the conduct of my investigations in France and in the countries under consideration: the genocide of Tutsi victims committed in Rwanda in 1994 following the complaint filed by 6 of them in February 2005 against the French army for complicity in genocide and complicity in crimes against humanity, it being specified that it is thanks to my perseverance that the case is still ongoing today; the bombing of Bouake in Côte d'Ivoire in November 2004, which resulted in the death of 9 French soldiers; the assassination of an Ivorian national by the name of MAHE in 2004, which implicated the French army and led to the prosecution of high-ranking French soldiers (colonel and general). Within the framework of my judicial functions, in courts of common law or military jurisdiction, I have always investigated in complete independence and impartiality, with the greatest respect for the rights of the defense, of my foreign counterparts but also of the military and diplomatic authorities. I consider that independence does not mean rigidity or opacity. On the contrary, it goes hand in hand with transparency and communication. I also consider it to be first and foremost a personal quality. That is why it must be consolidated with protective and control rules to avoid suspicion and to strengthen the prosecutor. This is a priority for the ICC Prosecutor in light of the criticisms expressed by the States Parties.
- 16. How will you act in cases where significant political or other external pressure is exerted upon you and the Office you lead?** In addition to my answer above, the rules protecting the independence of the prosecutor and his Office require tools for

expression and feedback. The public prosecutor must be able to report, within the framework of a select committee within the OTP dedicated to ethics, on the pressure exerted to guarantee the traceability, confidentiality and treatment of the incident. A procedure for reporting information to this dedicated committee must be able to guarantee the ethics of each member of the Office, allowing the implementation of a genuine risk prevention policy (security, corruption, harassment). Another risk of pressure may arise in the area of corruption. Here again, safeguards must be established at the level of the OTP, from an ethical standpoint, to prevent risks. Having worked in a local authority with a budget of more than 400 million euros and exposure to public procurement, I know that it is essential to draw up a policy to prevent ethical risks.

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

Effective cooperation requires an adjustment of the requests expressed by the OTP to the material and financial means available to the national jurisdictions to which they are addressed. The OTP's requests are sometimes perceived as being too broad and not sufficiently focused in time or space, which hinders the effectiveness of research. As suggested by the excellent report published in September 2020 by the independent experts on the functioning of the ICC, cooperation agreements with national judiciaries or heard at the regional level are necessary. The time is also propitious because many States are currently focusing, in terms of human and financial resources, on the repression of crimes against humanity, under the guise of universal justice. The ICC Prosecutor could take a form of leadership on this general movement.

**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.** Response: None

**19. Are you aware of any formal allegations made about you related to financial mismanagement or fraud? If so, please explain.** Response: None

**LEADERSHIP AND MANAGEMENT**

**20. How would you describe your leadership style? Please describe a situation where you have demonstrated this in your work.** My personality leads me to a leadership style that is firm and respectful, ethical, participative, federative and open, aiming at the emergence and promotion of talents, well-being at work, innovation, adaptability and collective reflection to favor the final decision taken, in this case, by the attorney alone. I have successfully practiced this management method for three years with and for the benefit of 1700 employees of a local public authority, in my capacity as Director General of Services.

**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.** The prosecutor alone makes the decision, which he assumes alone. The solidity of the team surrounding him

must allow for the delegation of authority to the appropriate hierarchical level. The prosecutor must know how to delegate. However, trust does not preclude control. Furthermore, delegation of authority must not result in isolating the prosecutor by cutting him off from members of his office and other ICC organs, from judges, but also from lawyers and NGOs. Isolation often leads to asphyxiation and loss of control. It is therefore necessary to create innovative tools or information spaces within the Office to allow for the transmission of complex, sensitive information...

- 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.*** On a personal level, I myself represent cultural diversity since I am fortunate enough to have dual nationality, French and Ivorian. Professionally, I have worked for 8 years to promote cultural and gender diversity within the framework of the city's policy to reduce the wealth gap between territories and territorial and human inequalities. I have also written several articles on the subject. Diversity is the key to understanding the evolution of our contemporary societies in the context of globalization. Diversity has become the driving force behind their development, even if fear of difference and cultural reflexes still hinder its promotion. The OTP with its 60 nationalities represented must be exemplary on the subject. It must bring out talents of all colors and ensure the fair representation of men and women in leadership positions in particular. This is what I did in my capacity as Director General of Departmental Council Services by dividing the 6 general management positions 50% for men and 50% for women. Also, I had created and assigned two strategic positions (director of legal affairs, mediator) to two representatives of cultural diversity, which was an innovation in the local landscape. I will proceed in the same way, with voluntarism and conviction, for the OTP.

#### ***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?*** I have not experienced the culture of the OTP on a personal basis, I cannot give an accurate assessment of it, various grievances have been expressed in the specialized press. I therefore have no preconceived ideas or unfavorable representations. My neutrality is complete even if I am well aware of the difficulties, the stakes but also the potential of the OTP. I will try to develop a work culture focused on well-being, respect, openness, pragmatism, and efficiency.
- 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.*** Abuses in this particular area must be sanctioned and injustices redressed. Discrimination against women and people of color is not tolerable in a general matter, let alone at the OTP that brings the charge and the ICC that symbolizes justice. A real policy that is both proactive and unifying in promoting diversity and the fight against discrimination must be displayed. This would be a very innovative project in terms of management for a court of justice and very promising in terms of image for the ICC, too often reduced to the image of its trials.

***Thank you.***