

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 9 - 10 December 2020.

Name: **KARIM A.A. KHAN QC**

Date: **16 December 2020**

COMMITMENT AND VISION

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

We need an OTP that inspires confidence amongst states, civil society, all other stakeholders, including – critically – survivors and members of affected communities. As I mentioned in my motivation letter originally submitted as part of this process:

“The OTP is a critical organ of the Court. It must not only be effective but also be seen to be effective. We have witnessed many instances of survivors – as well as the international community and civil society – being promised much, but receiving little. It is simply not acceptable that survivors so often feel short-changed. If the Rome Statute’s desire to put victims “at the centre” of investigations and prosecutions is not to be rendered meaningless, we must acknowledge that we need to do better and that change is needed.

The OTP is the engine of the Court and it runs on the quality of its investigations. No number of eloquent submissions at trial or wonderfully drafted legal arguments will overcome gaps, flaws or contradictions in investigations. By contrast, an OTP that can conduct independent and impartial investigations and build cases on solid evidence is one that will meet expectations and help foster fair trials.

...I will ensure that the cases my office investigate and present are credible, robust and capable of withstanding the scrutiny they must rightly be subjected to in the crucible of the courtroom.

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, 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 frontiers, StoptheDrugWar.org, The Swedish Foundation for Human Rights, World Citizen Foundation, Women’s Initiatives for Gender Justice, World Federalist Movement/Institute for Global Policy, and the World Renewers Organization. This questionnaire was developed with the assistance of the Coalition for the International Criminal Court Secretariat.

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As Prosecutor, I would ensure that cases are investigated with sufficient participation of lawyers and investigators from the country concerned. The culture, history, politics and other undercurrents in a country must be fully understood at the investigative stage, if properly focused and factually accurate cases are to be presented to the court.

... I will be committed to an OTP that will be recognised by, and known for, its competence and integrity. It will seek to consolidate relationships that exist and forge new bonds based upon mutual respect and constructive dialogue. As Prosecutor, I will also seek to restore trust with states that has been eroded over the years and build trust where there was none. There is no reason for discussions to invariably be based on a zero-sum game between an OTP asserting jurisdiction and a state continuing unaided or being overwhelmed or doing nothing. In short, there must surely be a way in which the experience, capacities, and knowledge of the OTP can help support and enhance domestic or regional efforts for accountability. Such efforts would not only be cheaper, more effective and closer to survivors and their communities, but would also be more consonant with the principle of complementarity that underpins the Rome Statute. This, in turn, will lead to improvements in cooperation.

For the OTP to play a meaningful role in difficult situations where communities are often polarised, it must be led by a Prosecutor who will act with unquestioned integrity and competence. This requires an honest appraisal of what is currently working in the OTP and what changes are required. This can and should be done whilst raising the morale of the office. There should be no better place in the world for a lawyer, investigator, analyst or other staff committed to international justice to be. I have repeatedly seen how morale is a force multiplier. I will, if elected, be a Prosecutor that will lead by example in the field, in the Court room and in the Office. Good management and clear direction are necessary to unleash the potential of staff and to ensure proper discharge of the responsibilities entrusted to the Prosecutor by the Rome Statute. “

The vision I have as Prosecutor is inspired by and founded upon the words of the Preamble of the Rome Statute that the OTP, like humanity, are “united by common bonds, their cultures pieced together in a shared heritage” and that the diverse, gender equal office that we unleash and empower, with excellent representation from different legal systems, civil law, common law, Islamic law and drawn harmoniously from all parts and regions of the world, will be forged together in a results orientated, highly ethical OTP acting with complete integrity in all matters. This can and will be done in an environment which is collegiate, respectful, dynamic and effective. I have never conducted an international case without the participation of nationals from the state concerned and from the region. It is the only effective way of working and it is also the most enjoyable. Harnessing divergent skill sets, experiences, widening and enriching the knowledge base of a team allows it to be built as more than the sum of its individual parts. It allows a collegiate culture to be created which is essential in factually dense and emotionally taxing cases that are the staple of international criminal justice.

The vision of the OTP that motivates me is founded on the rights of survivors, those heroes who have suffered more than can be expressed and whose dignity silences and humbles us. We should not be trying to re-invent the wheel, but draw freely from the lessons that we have learned from the ICTY, ICTR, SCSL, ECCC, STL, various other mechanisms and from the ICC’s own experience. At the same time, we must keep innovating and harness new technologies and approaches. As Special Adviser and Head of UNITAD I have seen how technology can provide a step change in investigating, organizing and analysing mass data sets. From evidence management tools, to mobile applications and platforms that can allow greater involvement and more direct access to victim communities, to the use of 3D laser scanning at crime scenes, or call data analysis, to the ability to analyse phones and hard drives, we see exciting investigative avenues that we must traverse to succeed in the quest

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to prevent impunity gaps and hold the most responsible to account. In an environment where the funds allotted are unlikely to match the need, I have a vision to work intelligently and prioritise but also seek dialogue with the Registry and ASP to build new partnerships with private companies that may have relevant specialized expertise. For example, I have done this in the case of UNITAD where we have seen important assistance by Microsoft corporation, which has been willing to help UNITAD's investigations with cognitive services, Artificial Intelligence, automated translation tools, facial and voice recognition, and other resources that would otherwise be beyond our regular budget. I reached out and met with the President of Microsoft, Mr. Brad Smith, to secure this support, and it has become clear that the resources add significant capacity to UNITAD's investigations and quest for justice. I will similarly seek to engage other specialists and resources in the private sector and seek assistance and contributions, when, and on terms, appropriate for the OTP. The gratis provision of RAPID DNA machines I have managed to secure in UNITAD is one example of the kind of practical tool that I would seek to have made available to our investigators in the OTP.

I have a vision for an OTP in which the value of an idea is not assessed because it comes from me as Prosecutor, or from an intern, a D1 or a national staff, but in which the value of the idea, the work itself is weighed on its merits. To win trust, one must earn trust and at the same time, one has to demonstrate trust in others. Its effect can be dramatic as the default position in most situations is that we want to live up to expectations. An OTP which encourages critical thinking, questioning of ideas in a spirit of "getting it right" but which is devoid of any proclivities of proving the other "wrong" or engaging in *ad hominem* attacks, passive aggressive or other bullying, discriminatory or unkind behavior, is an Office that can perform. Indeed, **only** such an office can perform. Only such an OTP can remain motivated and focused on the rights of survivors. This is the OTP of my vision and one I am convinced we can achieve.

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 OTP's involvement in a case is best assessed by the affected community and the state authorities in which the Court is operating. Sometimes it may be possible for the Court's legacy to be accurately assessed during proceedings, but more often than not, it will be most objectively assessed after the work has ended. That said, it is absolutely critical to have a conception of the Court's legacy when a situation is opened. I think we have a lot to learn from the SCSL and Binta Mansaray's excellent outreach which provided an important anchor to the Court's legacy. The work of the Court must be to dispense justice. The basic requirement of the OTP is to conduct credible, fair, independent, impartial and objective investigations in which incriminatory and exculpatory evidence is collected and in which the most responsible persons are identified based on reliable and solid evidence. The processes of the Court may themselves constitute a legacy if all stakeholders see that fair trials and international standard investigations help to achieve accountability. It is imperative that affected communities realise their right to justice – and the worth of every human life is underscored. Respect for culture, ways of life, and modes of worship are essential in order to create an inclusive and cohesive environment. Accordingly, the Rome Statute which includes provisions prohibiting attacks or targeting of religious and cultural monuments and the environment can ensure the interdependency of all communities on each other to be more acutely realised.

The Court's work can and should leave a legacy behind that may instil confidence in international institutions – but more importantly – that due process and fair trials which allow prosecution and the defence equality of arms and victim's proper representation is seen as meaningful. Justice must

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be rendered by independent judges not based upon which side of the court room an argument is delivered from, but by a rigorous assessment of the evidence and on the merits. This can be vitally important in many parts of the world to underscore that poverty does not denude a person of the value of their life whilst richness and privilege do not render one isolated from accountability.

Legacy will be best achieved by honest dialogue and engagement with all stakeholders. It will be facilitated by fully implementing the OTP policy paper on case selection and prioritisation issued in 2016 to promote cooperation and burden sharing between the ICC and national authorities. The Office must also endorse, in appropriate cases, the role that can be played by truth seeking mechanisms, reparations programmes, institutional reform and traditional justice as part of a broader, comprehensive legacy.

An OTP seeking to genuinely forge partnerships, assisting or encouraging national authorities to act and where possible, willing to share evidence and cooperate with states is an OTP that will play a positive part in moving the dial on accountability and fostering an environment where the rule of law prevails. This is, to my mind, what also was envisaged by the States Parties in paragraph 8 of its Review Conference Resolution RC/Res.1 of 8 June 2010 which “encourages the Court, State Parties and other stakeholders, including international organisations and civil society to further explore ways in which to enhance the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern”. That paragraph is a call that may galvanise a wonderful alliance of helpers to the cause of justice and to be part of building a sustainable and meaningful legacy. It embraces, international organisations, NGO’s, academics and other interested individuals and provides a clarion call for us to find common cause in this collective endeavour. Building these alliances and partnerships, in my view, is one of the best ways to foster a meaningful legacy.

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?

It is unlikely to ever be the case that the resources available to the OTP will match the needs of the Office or the work that is available. That reality is not unique to the OTP. Rather, it is a fact of life that is experienced by perhaps every national prosecution authority. The challenge is to use the resources available as wisely as possible.

I will pay close attention to the recommendations of the Independent Expert Report which acknowledges the resource constraints on the Office of the Prosecutor, and makes practical suggestions and recommendations to the Prosecutor that could lead to efficiencies and greater delivery. It is clear to me that these recommendations and the outstanding work of the IER constitutes a viable road map to utilising scant resources ever more effectively. We should avoid any waste of resources.

It is clear that the current position is untenable with regards to preliminary examinations, investigations and open cases exceeding the resources available to the Office. Discussions with national authorities may be commenced to see whether there has been any change in circumstances since the opening of the preliminary examination or investigation that would allow some cases to be repatriated. In addition, an open mind will be kept regarding third states exercising jurisdiction, to strive for the resources of the Office to be most effectively used, whilst closing the impunity gap regardless of forum in which the trial takes place, as long as international standards are maintained in conformity with the principles of the Rome Statute.

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Article 116 provides for voluntary contributions to the Court from Governments, international organisations, individuals, corporations and other entities in accordance with relevant criteria adopted by the Assembly of States Parties. I would work collaboratively with the Registrar and seek authority to utilise Article 116 of the Rome Statute, as appropriate, to advance the work of the OTP. I have a track record within my current mandate as Special Advisor and Head of the United Nations investigative team to promote accountability for the crimes of Da'esh / ISIL (UNITAD), in developing partnerships, concluding memoranda of understanding (MOU's) and other agreements with various corporations for the provision of bespoke or specialist technology, artificial intelligence and cognitive services that would be not be achievable from a regular budget. Voluntary contributions have been received from States that have allowed me to establish a Financial Tracking unit, a Witness Protection unit, specialist clinical psychologists and to advance the work of exhumations. In all of these, it is also worth recalling that the more the Office of the Prosecutor is seen to deliver, the more likely it will be to attract financial and other support as States see the manifest utility and impact that the investigations and trials bring.

PRELIMINARY EXAMINATIONS, INVESTIGATIONS AND PROSECUTIONS

4. What do you believe are the main challenges facing the OTP in terms of:

a. preliminary examinations;

The issues relating to preliminary examinations have been the subject of careful scrutiny by the Independent Expert Review. I respectfully agree with the challenges identified by the IER. In essence, the status quo regarding preliminary examinations is challenging. The length of time some preliminary examinations have been open may erode confidence in the systems, structures and professionalism of the OTP, provide a cause of complaint to States and may be detrimental to the confidence and expectations of the survivor community and other stakeholders. The length of time preliminary examinations remain open precludes the OTP from actively investigating and gathering evidence that may be unavailable later. In circumstances where preliminary examinations have been open a decade or longer, this risk is even more acute. The range in length of preliminary examinations between 2 months and 144 months cannot easily be explained by the complexity of the case, or the challenges of the situation. The OTP should not spread itself too thin if it is to be effective and have impact. The IER recalls that as of June 2020 there were eight active investigations which means that, within the existing envelope of resources, the OTP cannot conduct timely and effective assessments in each of them.

b. investigations; and

The quality, thoroughness and scope of investigations has been subject to strident criticism by various trial chambers and judges. These are also set out in the Report of the IER. The IER's remarks about the perceived distance between ID leadership and ID staff is one of several that finds form in its Report. In addition, the lack of investigative strategies, at the situation and case level especially, has been commented on. It, perhaps, will provide no practical purpose to set out these concerns here – suffice it to say that the IER report appears to be an outstanding, thorough and helpful health check on improving the various issues afflicting the performance of the OTP and other parts of the Court. Shortcomings have been identified in various Chamber's decisions not to confirm cases and other decisions and judgements. The absence of strategic investigative plans, bottlenecks in drafting and transmitting Requests for Assistance, lack of technical capacity in financial investigations, and limited capacity in its SALTT (suspects and large tracking team) have all been identified as challenges. A major

issue was also the need for greater involvement of local staff, familiar with languages, culture, history and relationships in the situation country. The shortfall of such staff clearly impacts investigations as I have mentioned previously in this questionnaire. The culture relegating analysts to resource persons or facilitators and not giving them as full a role as possible is another shortcoming identified.

c. Prosecutions

I have repeatedly said that the advocates in the court room fire duds without effective and reliable evidence. Prosecuting counsel have a responsibility to critically review the sufficiency of evidence at every stage and to ensure that it always meets the level of establishing a “reasonable prospect of conviction”. There have been cases where Prosecution teams have turned the sound off during videos in openings that were exculpatory. Even if this constituted an accidental oversight, it leaves the public, the judges and all court users with a lack of confidence. Similarly, the “mistakes” of putting videos to witness as incriminatory which relate to a completely different situation are acts that erode, rather than inspire confidence. The integrated teams need to demonstrate a “joined up” approach where the full resources of the Office are focused on what happens in cases in court, and that clear strategies are in place for every case that proceeds.

Outstanding arrest warrants, and failure to gain the required cooperation are also identified as matters of concern in the IER report. The bottlenecks in cooperation should be removed by empowering the senior trial attorney to detail the evidence needed or the cooperation or assistance sought and the cooperation adviser should simply ensure that these requests are in a consistent form and tracked effectively.

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

Understanding that SGBV is not incidental to conflict, but is often a calculated and desired means of inflicting harm against an entire community is important to ensure a more strategic approach to investigating and prosecuting these extremely serious crimes. Misconceptions about SGBV which impede effective investigations and prosecutions are various and exist both within investigating and prosecution authorities, as well as amongst national and victim communities.

It is important to also reflect and acknowledge that misconceptions often stem from us, criminal justice actors. Unless care is taken, we have the potential to exacerbate stereotypes and assumptions that exist.

Misconceptions sometimes arise from a lack of knowledge or understanding *inter alia* (i) of the scope of acts/conduct that may be considered as SGBV, for example forced nudity and sexualized torture in detention settings, (ii) the context in which these crimes happen in a given situation, (iii) that men and boys can also be victims of SGBV, (iv) that individuals are often targeted because of their gender (v) that different people experience SGBV and crimes differently depending on their gender, race, class and their social and cultural status in a community. All these factors compel a realization and understanding that the experiences of every victim may be unique to that individual . I have also witnessed a frequent misconception which stems from our assumptions that survivors are *always* “weak” or “vulnerable” and that we need to tell them what they need. Imposing our assumptions can potentially deny survivors their autonomy and an opportunity to play a role in shaping our investigation and prosecution strategies.

In communities which have a very defined patriarchal culture for instance, experiences of women and girls are often seen, even by the survivors themselves, as secondary to the suffering of men and children. These women would speak about crimes that happened to their husbands and children over and above their own suffering. If we understand these attitudes, we can engage meaningfully and encourage survivors to speak about their own experiences more comfortably.

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I have observed that sometimes the reluctance of survivors to speak out about their experiences is also because of their unfamiliarity with the process itself. To encourage participation therefore they must be provided with enough information to familiarize themselves with the process and they must be encouraged to ask questions and be provided with all the answers so they will know who we are, what is the purpose of our investigations, how will their stories be used, what are the possible implications should they cooperate and participate in an investigation / prosecution and very importantly, what will happen afterwards.

I would strive to ensure that the occurrences and patterns of SGBC crimes are identified at the earliest possible opportunity and incorporated in investigations at the very beginning and not as an afterthought, as it was in the *Yekatom* case. By doing so, we also will ensure that the right approach and resources will be made available from the start.

I will ensure that in addition to the existing general ICC Policy Paper on Sexual and Gender-Based Crimes (which has not been updated since its publication in 2014) situation and case specific policies and guidelines on investigations (including interviewing) and prosecuting SGBV crimes will be produced and constantly reviewed and updated. Without this “bespoke” approach, we increasingly risk treating survivors as a homogenous group rather than adapting to the unique circumstances that individual situations and cases present.

I will ensure effective outreach in communities which will also address possible issues of stigma, discrimination, victim blaming and social inequalities which may deny survivors access to accountability processes. Well thought through outreach activities will create awareness and help break cultural or other barriers which impede participation by survivors. It can help create a more conducive and safer environment for survivors to participate in our investigations.

I intend to participate in various outreach activities myself as ICC Prosecutor, as I do in Iraq, without prejudice to my core responsibilities linked to the work on the cases in the Office. For example, I personally have held meetings with religious leaders including Grand Ayatollah Syed Sistani, Cardinal Sako, the Sunni Council and various other communities to encourage the faith leaders to address their congregations and communities on the issue of accountability and encourage and support survivors including women and children to come forward and give their accounts to UNITAD in full confidence. I also myself met with various Iraqi women politicians to commend them for their role in supporting female victims and encouraged them to continue their good work. I go to all the communities myself to speak about the importance of their participation in our work. In UNITAD outreach videos, I highlight the crimes committed against women and children to demonstrate that there are no hierarchy of crimes or victims. I use my own voice on some outreach videos to demonstrate my personal commitment to the cause of justice for these crimes. It is important that the survivor communities do not see the Prosecutor as remote or distant, but engaged and directly involved.

I have myself interacted directly with victims and survivors of SGBC and have also conducted interviews to document their stories. The gender of investigators will be assessed on a case by case basis avoiding stereotypical considerations. In order to have a wider pool of interviewers and to ensure that I engrain a culture of prioritizing SGBC crimes in investigations from the outset, I will ensure that all divisions receive essential as well as specialized training on the subject and resources are appropriately allocated. It would be inexcusable for an Office like the OTP to fail to identify the occurrence of SGBCs and secure credible evidence due to “severe budget constraints” or the lack of available expertise. If this area is seen by the whole office as a priority from the start, these issues will not present an obstacle to diligent prosecution of these crimes. In UNITAD for example, I have put in place a system which requires the UNITAD Sexual and Gender Based Crimes and Children’s Unit to have been consulted and to have provided input before proposed investigative strategies or plans come to me. This helps ensure that SGBC and crimes against or which affect children is central to our work.

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

It is important to recognize that children are often deliberately targeted in conflict for several reasons including because they represent the future generation of a target group. Children will be visible in the work of any office and team I lead. Children will be recognized as a distinct class of victims and this will be reflected in real terms in the investigations and prosecutions that will happen under my watch.

I have dealt with children who have been victims, witnesses and who have been otherwise affected by crimes and conflict in both my professional as well as through my voluntary work. As a prosecutor in the England & Wales, I prosecuted cases of child rape and other offences against children. I have represented victims of violations by peacekeepers (some of who were very young children at the time they were raped) and I have interacted with and collected testimonies from children conceived as a result of these rapes. I also represented children born of rape by foreign clergy in two countries in two different continents. I have also represented “street children” who were raped and abused.

Investigations into the systematic recruitment, training and use of children by ISIS is a central focus of UNITAD’s work. Children, referred to as “cubs of the caliphate”, were an integral part of ISIS’ long term strategies to ensure a future generation who will continue its existence and ideology. UNITAD’s policy is to treat these children as victims, not as perpetrators. Children used in this way are also victims of other grave crimes, and this will be reflected in distinct charges in the cases UNITAD will build. This is the approach I will take when charging crimes related to child soldiering in the ICC, if elected. It is important that the whole experiences of children in conflict is understood and reflected, appropriately, in criminal charges.

I am familiar with international best practice when interviewing children and the importance of a child-sensitive approach. I have myself adhered to this guidance when interviewing and interacting with children. Adapting our processes to the child, rather than the child having to adjust to the way we work is key. I personally participated in the drafting of UNITAD’s protocols concerning our work with children and I have led outreach activities in this regard to promote awareness on accountability for crimes against children. The best interest of the child guides us and we ensure facilities and expertise is available to enable children to participate meaningfully in our work.

Accountability for crimes against children has been a massively neglected area in the work of the international courts. We have rightly focused on the recruitment and use of children in hostilities since the inception of the Special Court for Sierra Leone, but we have seemingly shied from, or neglected to go further in recognising various other ways in which children are targeted and the many other crimes that they fall victim to. We are yet to properly recognize children as a separate class of victims and ensure their effective participation in investigations and prosecutions. The impact of crime on children can be extremely severe and long term. This must be taken into account when assessing the support needs during investigations and as a relevant factor in sentencing. I will ensure that accountability for crimes against and that affect children will be a priority of the Office, if elected.

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 represented victims of the Kipsigi and Talai communities in historic cases of **land grabbing** and other alleged colonial abuses against the UK Government. See: <https://www.youtube.com/watch?v=XhlQKOtSMg>.

As Special Adviser and Head of the Investigative Team to promote Accountability of the crimes of ISIL, I have led efforts through the prism of international criminal law. ISIL / Da'esh are a proscribed organization and various Security Council Resolutions have declared the group a **terrorist organization** and a threat to international peace and security. I have worked with CTED, UNOCT the 1267 Committee, and with various States Parties to share information, collaborate and find synergies in order to hold members of Da'esh responsible for such crimes. See, for example:

https://www.youtube.com/watch?v=0rEOfh2M_nc&feature=youtu.be

and

<https://www.unitad.un.org/content/multimedia>.

I have also represented *pro bono* Dr. Nkongho Felix Balla Agbo, Chair of the Centre for Human Rights and Democracy in Africa and former SCSL Chambers legal officer who was charged with **terrorism** and treason offences in Cameroon, which carried the death penalty. I was the only international lawyer granted rights of audience in the Military Tribunal in Yaounde, Cameroon. I worked in this case with the late Bernard Muna, former Deputy Prosecutor of the UN ICTR. Dr. Balla Agbo was released and all charges dropped.

At the Law Commission of England & Wales, I worked on various law reform projects including the law of corruption which had financial aspects. I have also prosecuted financial crimes at the Bar of England & Wales and as a barrister included on the Attorney-General's list of prosecution advocates. As Special Adviser and Head of UNITAD, I have established a **Financial Tracking Unit (FTU)** that works with UNITAD's field investigation teams and in collaboration with national and international partners (central banks, various financial crimes desk, money transfer corporations and other resources) in order to leverage this aspect into UNITAD's investigation.

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?

Enforced disappearances of people are provided for in the Rome Statute as a crime against humanity. This crime is particularly serious because of its disastrous consequences, as evidenced by the experiences of Latin American countries and other countries that have set up commissions mandated to examine complaints relating to cases of enforced disappearances.

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The practice of the Court on this issue is not very advanced at present. I anticipate that this crime, as well as all other crimes, will be considered with the greatest attention in the examination of situations and cases by the Office.

The essential point, perhaps, is that the factual matrix of every conflict or situation will differ and a bespoke investigation and prosecution strategy for every situation and case is necessary to ensure the effective focusing of resources aimed at addressing the appropriate crimes that may have been committed. The choice of charges must be founded on evidence, but investigators should also be properly informed to focus on the types of evidence that constitute Rome Statute offences and ensure that categories of victims, such as children, are not overlooked. This will help ensure proper investigation and charging practice.

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?

There must be clarity that the rule of law cannot be impeded. This is particularly the case when it comes to any acts that may threaten, harass, intimidate, or cause distress, or attempt to induce any witness for the prosecution, defence, victims or staff member of the Court. On the one hand, prosecution of an Article 70 crime at the ICC has obvious resource implications. At the same time, however, not taking timely action may embolden the acts that may constitute Article 70 offences.

For Article 70 proceedings to be initiated, the case will have to be strong and disclose a reasonable prospect of conviction. In many cases, I would attempt to speak to national authorities, and media houses and alert them to the danger if certain stories are carried in a certain tone and explain to them the criticality of a free press, but the coercive environment that polarized societies may become for witnesses. A balanced approach to reporting and an awareness of the implications of inflammatory reporting can be made emphasized with dialogue and discussion. I would ask national authorities to be vigilant on any attempts to harass or put pressure on, or induce a witness – whether for the prosecution or the defence or any other person linked to the activities of the Court. I would engage with defence counsel in this endeavour.

Where evidence is available, I would seek to have the national authorities take timely action as it may deter escalating conduct that may be likely to occur if left unchecked in the often partisan and still polarized communities that investigations frequently take place in.

If domestic authorities were unable or unwilling to act and the evidence relating to an Article 70 offence met the threshold and I was satisfied that there was a reasonable prospect of conviction, I would initiate proceedings as soon as possible, conduct a focused trial and hope that the deterrent effect would provide a salutary lesson and prevent such conduct from becoming more widespread. As mentioned, this is an area where constructive engagement with national authorities may be particularly effective.

I would also initiate discussions with the Registrar in appropriate cases to appoint an amicus prosecutor similar to the approach that is adopted in the ICTY/MICT, SCSL and the STL.

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.

I have spoken to survivor communities in Timor Leste, Sierra Leone, Liberia, Kenya, Iraq, Albania, Cambodia and the Philippines, to name a few. I have spoken to displaced families in refugee camps and to heads of governments, heads of state, Speakers of Parliament and heads of the judiciary and senior state officials. I fully understand that a mandate unexplained or not understood by its various stakeholders is a mandate that cannot succeed.

To this end, I have used the full gamut of resources to ensure messages are effectively relayed and not "lost in translation" or misunderstood. This is especially important in circumstances where the message has to be equally well understood by survivors as it is by senior governmental or state officials. In Iraq, for example, I have used local and national outreach events in parallel with the regional, national and international press to get key messages across. Critical in this day and age is also to use the platforms that key stakeholders use. For example, in Iraq we mapped the main platforms used by different segments we wished to engage with and effectively built our presence on social media (such as Facebook and Twitter) and built UNITAD's website. In addition, we developed a platform called SHUHUD ("witness" in Arabic) which allows putative witnesses to safely and securely correspond directly with the team including by transmitting material in a secure and confidential manner. Interviews and articles in traditional mediums (like newspapers) remain important, but communication certainly requires a realisation of what the target audiences watch, listen to or which social media platforms they use. We have to gravitate to the audience, instead of expecting the audience to gravitate to us. In this regard, I have also reached out to and worked with the PM's press office in Iraq in the hope of galvanising common action.

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

Please see above. I would adopt the suggestion of the IER and recruit a senior press officer, as I have done as Head of UNITAD. A well thought out strategic-communication policy is essential. This must be at the macro level of the Office but cascade down to tailored strat-com policies for the situation and at the level of the case.

NGO partnerships and effective dialogue with civil society is indispensable as a part of a communication strategy. Many of the NGOs are essential gateways to the victim and survivor community and harnessing their capacities and forging solid relationship built on independence and objectivity in the work of the OTP – and trust – are also critical. I look at innovative partnerships that enhance the footprint of the OTP and the efficacy of its messaging. Some international and capable communications companies may also be willing to provide *pro bono* advice and expertise. I managed to secure the services of the company M & C Saatchi as Head of UNITAD on a couple of projects that were well received by the survivor communities and other stakeholders.

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.

Every action I would take as Prosecutor will be guided by and founded upon the Rome Statute. Victims participation is a cornerstone of the Rome Statute system and I would aim to help ensure victim participation works as effectively as possible, within the bounds of my own responsibilities as Prosecutor. Certainly, victims' groups have a right to an effective voice and to have meaningful participation in proceedings. This necessitates that their choice of counsel is respected, whilst also ensuring that the proper role of OPCV is safeguarded as has been recommended in the IER.

My approach to supporting the rights of victims will be characterised by respect and honesty. I have seen how harmful it is to over-promise and under-deliver or "talk down" to survivors and affected communities. I believe that a failure to "level" with victims, to manage expectations, to engage with them on various platforms or failing to listen to their experiences and wishes, constitutes not just an abdication of responsibility but, in many cases, a betrayal of trust. Victims must be made to feel that the ICC process does indeed have them at the centre. I have acted for victims in Cambodia, in East as well as in West Africa and in Europe, and I have seen how much accountability means to them. It is a trust that I will hold dear and I will foster this environment by my own engagement with such victims, NGOs and in the direction I set for the Office. (Also see Q 10 above.)

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

All crimes within the jurisdiction of the ICC have a particularly serious impact on future generations. There is obviously scope, in various cases, to prosecute crimes that cause environmental damage under Art. 8(2)(b)(iv) and the like. That said, I believe we need to understand better - and explain more effectively - that the crimes we investigate and prosecute cause trans-generational harm in many cases. Perhaps in most cases. The child born of rape has stigma to deal with and can be ostracized by their families, their communities and that harm can spill over again into yet another generation. Crimes included within the Rome Statute rip at the soul of humanity and we should underscore the breadth and depth of the impact of such crimes. Economic harm, malnutrition and underdevelopment, PTSD afflicting wide communities, fear, instability and lack of social cohesion and development on the individual, national or regional level demonstrate the need of an effective ICC, preventing impunity, as the Preamble states "for the sake of present and future generations".

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

Please refer to questions 10 and 11 above.

DEFENCE RIGHTS

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

I have defended in some of the largest international cases in a variety of international and hybrid courts, in military tribunals and in domestic courts. I have litigated to help secure equality of arms, adequate time and facilities, and a fair trial in numerous cases. I have been an active member in the ICCBA and the ADC-ICTY. As President of the International Criminal Bar Association in 2016, I undertook myriad tasks to support the rights of the accused to a fair trial and the rights of victims' counsel to secure meaningful participation of their client's in court proceedings. I have advocated for representatives of the defence and victims to be given adequate space in ICC premises where they can work to represent their clients whilst maintaining the confidentiality they owe clients and the administration of justice under the ICC Code for Professional Conduct. I have written and lectured about issues of disclosure and the imperative to fully harness Article 54(1)(a). That Article is a wonderful gift to the Rome Statute from the civil law system – and constitutes a key provision to ensure a fair and impartial trial. I have always underlined that our rules of deontology unite all lawyers – whether from the civil law or common law traditions – and whether acting as prosecuting or defence counsel or as legal representative of the victims. The realization that all lawyers in the court room are part of a process – in which each participant has rights and responsibilities – is essential to my mind to ensure fair trials.

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 acted for the prosecution, the defence and for victims. After a multi-tiered selection process, I was appointed and sworn in as Recorder (part time judge) of the Crown Court of England & Wales by the judicial appointments commission. Impartiality and independence were instilled in me during years of practice at the Bar in numerous jurisdictions. There is no tension between respect for colleagues representing other sides in the court room and our professional responsibilities. When acting for the defence, I have strenuously argued for the ICC to be given space to do its work in circumstances where the political environment was polarized. I have been commended in several ICC decisions (at least three public redacted versions of decisions) by Trial Chambers, including the current President of the ICC, for acting in the “highest traditions of the Bar and as an officer of the Court”. I have withstood pressure of intense media scrutiny in various cases, and have repeatedly demonstrated the objectivity that is essential component of independence and impartiality.

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

I will be guided by the principles of the Rome Statute and my solemn undertaking. An effective leader must be aware of the environment and first of realise when and how pressure is applied, or intended to be applied. I will try to understand the reason for the pressure which on occasion will be manifestly obvious, and at other times it may be a little occluded. Where it arises due to miscommunication or misunderstanding, I would be ready to explain the work of the Office to allay any legitimate concerns

that may have arisen. Whatever the reason, I will continue to communicate with all stake holders and other actors, explain the mandate and work of the OTP as clearly as possible, try to narrow gaps and clarify misunderstandings that may have arisen in order to progress the independent and impartial investigations that must be safeguarded at all times. It will remain imperative at all times, however, that the Office I lead demonstrates its independence of thought, integrity of action and resilience in behaviour. It is essential that every step is well considered in advance and that the OTP will not succumb to any undue pressures that may be applied. This requires both a strong culture of fairness within the Office, professional skills and high performance and internal checks and balances to ensure that the overall work of the Office and its staff meet the high standards that States and survivors expect. Re-fashioning and re-energising the relationship between the OTP and States generally, and the ASP in particular, is essential so that where such pressure is applied, the independence of the Prosecutor is viewed as a shared value to be protected by all.

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

The arrest of individuals obviously requires the support of states given that the OTP has no police force or enforcement arm capable of arresting individuals. Ideally, such cooperation must be fostered before the Court even seeks to execute such warrants. I would work with the Registrar, as suggested in the IER report to make the execution of arrest warrants more effective. The Report of the IER also highlights that the SALTT (suspect at large tracking team) needs additional resources. In this regard, cooperation with other agencies like INTERPOL and EUROPOL and the Genocide Network – as well as national and regional organisations may be essential to ensure the effective tracking of suspects and their apprehension. Justice will be delayed and eventually denied unless we secure that these suspects submit to the ICC – and to the rule of law.

As a general point, I am also of the view that the reputation of the Office will be enhanced when the cases brought are seen to be based upon solid and highly credible evidence. The credibility this will bring the OTP and the Court more generally may also have an effect on the willingness of States to execute its warrants. A Court that is well respected – that is seen to work – is a Court that will have a far greater chance of having its orders and warrants enforced by States.

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. There has never been a complaint or formal (or even informal) allegation of this or any type made against me.

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

No. There has never been a complaint or formal (or even informal) allegation of this or any related type ever made against me.

LEADERSHIP AND MANAGEMENT

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

I try to lead by example. I motivate and inspire staff to a common cause that is bigger than anyone of us. This is achieved not by “sound bites” or platitudes, but by a proper understanding of what we are trying to do and how we can get there. I always emphasise the power of “service”. In this area of work, whatever the complexity and however difficult the subject matter, I always underline that we are privileged – and indeed blessed - to serve. It is a calling and opportunity not everyone has. It is responsibility that we hold in trust. The momentum and unity that can be galvanized by this approach to leadership can be transformational. If this spirit of service, for a cause bigger than ourselves, or our line managers, or whoever the current incumbent in Office happens to be, penetrates the heart and mind of staff, the response and effect can be profound. Indeed, the entire culture of the Office can also be affected positively by this vision and a proper, more complete, understanding of the roles we have. It is a vision where every staff member is critical and has a role – it is a culture in which it is clear that no one is indispensable but everyone is valuable and respected.

Upon deploying to Iraq in October 2018, with five staff, only a temporary rooms in a hotel as an office, scant resources, and a daunting mandate and in a non-family hardship station, I addressed the small team in those terms. They were committed to these values and appreciated the joint and collective effort – and the joint responsibility that each of us had; the realisation that we were all mutually dependent, if we were to make the mandate succeed in the way that the victims and states hoped for. This approach formed the bedrock that kept being refreshed as new staff joined in the subsequent periods. Without it, progress would have been pedestrian, instead of dynamic.

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.

As indicated in Question 1 above, I encourage a culture where the value of an idea or initiative is determinative – not based on the rank or position of the person whose idea it is. I am inclusive, promote dialogue and encourage vibrant discussions amongst the team members. When a system is properly established and values and processes take root, very often decisions emerge by consensus. At the same time, I am decisive and after hearing the various positions, seeking clarification or information as needed, I am not afraid to make a decision. I own the decisions I make and any successes I – very properly – view as the result of the team or individuals concerned. I am confident enough to own any mistakes of the organisation and team I lead. I encourage after action reviews so we can learn even from “successes” to do things better and to replicate any successes in other areas of our activity. I am open to criticism and have a burning desire to improve and do things better. I have volunteered to take part in the UN Secretariat’s trial 360 review in which my own performance will be assessed by staff, in order to deliver better on my current mandate by discharging my own responsibilities as efficiently and effectively as possible, whilst ensuring a harmonious, positive and fulfilling work environment.

Delegation works best when systems are in place. I have no difficulty identifying the best staff, or moving staff to positions that match their skill set and then trusting them. One cannot work effectively

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in a large organization without such delegation. I have delegation of authority conferred by the Secretary General of the United Nations. In turn, I sub-delegate a variety of matters to heads of section such as HR, Finance, procurement and the like. In addition, and relevant to the IER report, I already have identified certain economies of scale by working with other UN entities. For example, UNITAD has 23 staff embedded in UNAMI. This is a cost-effective system that allows accountability but offers significant savings in terms of drivers, maintenance, FMU, financial management and oversight and mission support functions. I have regular meetings with UNITAD's chief of staff and UNAMI chief of mission support and finance team and others to ensure the embedded system works effectively and with appropriate oversight - and in line with the independent mandate given to UNITAD by the Security Council.

As for an example of a management challenge, I will mention the requirement to adapt and change. Change is essential in any vibrant organization. Within UNITAD we had an initial organogram and system in place on deployment and this developed further in year 1. In year 2, it was clear that we needed to use resources more effectively, especially in the prevailing fiscal environment. This led to a decision I made to open a field office in Dohuk so that staff did not have to constantly travel from Baghdad. This would give rise to significant budgetary savings (reduction in flights and DSA costs), allow longer periods in country (the R and R cycle in Dohuk was 6 week, rather than 4 week in Baghdad), and allow more flexibility in interviews and engagement with witnesses. The process of change management involved preparing staff, identifying premises, and putting in place an excellent working environment at the new duty station. The transition was assisted by outstanding work by UNITAD's Chief of Staff, mission support and HR, preparing a pack including information of accommodation, history and culture of the city and region, restaurants and then *explaining* the advantages and reasons for the re-deployment and change of duty station to the staff members concerned and to the office in general. To the great credit of the staff involved, they enthusiastically embraced the change and the results have been extremely positive. The financial savings made even in year 2 allowed the purchase of vehicles that were essential to the activities of UNITAD and other dividends have been seen in terms of proximity to crime locations, and victim communities and accelerated and more effective operations. The lessons derived from the review of that process have led to a decision to open another Iraq field office, in Erbil in 2021.

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.

Diversity is essential. It is absolutely critical to every part of an organisation's work. Not only is it normatively to be encouraged, but it also leads to a more harmonious, more vibrant and healthier work environment. I have ensured that every international team I have led included national lawyers, investigators and other staff. Any success enjoyed has, in large measure, been down to them and an excellent rapport with other team members. As far as my current responsibilities are concerned, I have ensured that UNITAD has drawn from all legal systems and from all main geographic regions of the United Nations. We have done this whilst achieving broad gender parity (excluding security who must be recruited from established rosters). UNITAD has 6 field investigative teams and 2 specialised units, as mentioned above. Half of these teams are led by women. One cannot advocate human rights, equality and justice persuasively without striving to live it oneself or trying to instill it in one's team. A non-diverse team will enjoy little credibility when reaching out to marginalized communities who will

not recognize themselves in the team they meet. When building trust such diversity is particularly important and provides an opportunity to learn, understand and engage more effectively with all stakeholders. Having worked in Western Europe and the Balkans, North, West and East Africa, the Middle East and Asia, I am well aware of the importance of respecting diversity, in all its forms.

Diversity of race, religion, gender, ethnic group, and in all forms, enrich our individual and collective life-experience. It is something that defines humanity, has been and is a blessing in my own life. It means a lot. It is certainly something worth protecting and promoting – and I am committed to just that.

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 would defer to the report of the IER in relation to this. It paints a dispiriting and disappointing picture in which there seems to exist a climate of bullying, low morale and general toxicity. Examples of workplace harassment and bullying cannot be tolerated in any organization especially one committed to international justice and the rights of the individual. The prevailing climate will be improved by leading by example, identifying many leaders within the office to help with change management (change champions). Fairness must pervade every area of the work and culture of the Office. Transparency within the Office and a spirit that invites and encourages critical thinking will be essential in order to change the culture of the office. None of us, the Prosecutor included, will be indispensable, but an ethos and environment can be nurtured in which every staff member realizes they are valuable and have something to contribute.

Leaders can not appear remote or isolated. Staff cannot feel they have the responsibilities and not the resources - or that their advice or concerns are not considered, never mind understood. I would implement practices that I have tried and tested. Not only more town halls, but more regular direct contact with teams, by popping in and seeing how they are doing in impromptu visits which I consider to be of fundamental importance. Accompanying teams to the field is something I have always done and it provides an immediate view of the evidence, of the dynamics and helps to build a rapport with team members. The effort to engage, to understand and appreciate the challenges faced by fellow team members can be greatly appreciated.

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.

As Prosecutor I would not be passive in terms of my leadership or management. I would ensure that women and minorities and people of colour hold leadership positions within the OTP and appear at all levels. I have dealt with this issue both by appointing gender focal points within UNITAD and ensuring diversity training. We have been offering candidates the opportunity to be interviewed on a week day or a weekend to allow greatly flexibility for applicants who may have family or child care responsibilities. I have also personally led the Secretary General's Leadership Dialogue Forum in UNITAD, the last being "on civility" as a requirement of respect and I have highlighted issues with all

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staff embrace issues of women, gender, minorities, issues of race and people of colour. I have repeatedly prioritised the completion of mandatory training for all staff members on sexual harassment, workplace bullying, and diversity training. I have always been determined to achieve gender parity. A significant collective success of Iraq and UNITAD was Iraq supporting my appointment of an Iraqi woman as the most senior Iraqi staff member in UNITAD.