

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: Robert Petit

Date: 27 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?

My vision will be one of unwavering commitment to bring the best practices and lessons learned into producing in Court the most solid cases, representing the widest array of justice that the resources of the OTP can effectively support. This will be coupled with an office culture that will empower and motivate all staff members because they will know that they are a respected, supported and valued member of an enterprise greater than themselves. In seeking to represent the highest ideals of justice the OTP must first embody those values. Finally, while respecting at all time the integrity of its mandate, the OTP I would lead would be committed to fully transparent and supportive relationships with victims, affected communities, their representative and all stakeholders.

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

Having worked in situ where accountability for mass atrocities were part of a larger transitional justice context, I am fully aware of the importance but also the limits of the judicial process. Therefore, I believe the legacy of the Court's intervention needs to be a focused, productive contribution to this process with a strong sense of respect to the national processes. The Court has a key role to play by dispensing justice free of any partiality or political constraints. However, that role must be attuned to the specific circumstances of every situation in order to help the affected community in rebuilding its rule of law foundation. The truth about atrocities and responsibilities must be its legacy.

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.

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 Court's resources are not commensurate with expectations nor its mandate and this is not solely an ICC problem. It is trite to say that for most accountability mechanisms the resources given seldom adequately meet the lofty goals that are their remit. As confirmed by the IER the resources currently allocated or reasonably expected in the future will force the OTP to further prioritize its work in terms of investigations and prosecutions. The responsibility of the next Prosecutor will include not shying away from acknowledging this fact while continuously advocating for adequate resources. In this, the best argument will be successful cases and the demonstrable optimum use of available resources.

PRELIMINARY EXAMINATIONS, INVESTIGATIONS AND PROSECUTIONS

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

- a. preliminary examinations;

A clearer standard of purpose and its rigorous application. At the War Crimes Section when an allegation is received, we do an initial review of the facts, political context, possible source of evidence, ect. This exercise is time limited, with clear milestones, expectations and responsibilities but is necessary because unlike situation specific Courts allegations can have various origins; this is of course the same with the ICC. The Section uses a Project Management approach to develop its cases from inception, with an extensive Matrix covering all relevant steps which could be considered for the OTP. The end goal is for a timely assessment of the decisions to proceed and for what remedy. The current approach of the OTP to PEs is not sustainable and the prospective vision of Complementarity must be reviewed. There needs to be an integration of the PEs stage into a more holistic process of investigation, a clear strategic plan with a fixed timeline for a decision under art. 53 (1), which must be the objective of the whole process.

- b. investigations;

The application of national and international best practices in terms of evidence collection planning, evidence management and evidence review. As part of the consolidation of policies (see below) I would prioritize the completion of the Lessons Learned exercise of the ID along with a review of its correlation with the Compendium of Lessons Learned of the OTPs of the other Tribunals which I edited. I would review the qualifications and experience of the ID staff to ensure that any deficiencies is addressed either through learning projects, secondments or recruitment. To that end I would review the budget to identify possible resource allocations to the ID which is the key to the process and must be adequately staffed.

and

- c. prosecutions

Regular filing of solid cases in line with the characteristics outlined in the Strategic Plan 2019-2021. In doing so a review of past practices should be undertaken and lessons learned from past cases, comparing approaches in cases such as Ntaganda and Gbagbo

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for example. While the Court must remain committed to bringing those most responsible to justice, especially those too powerful for national accountability, it is clear that the OTP must favour, where possible a more phased in approach. By focusing on mid-level, direct perpetrators and the best evidence against them, the Prosecution can build expertise and knowledge in a particular situation and help, through successful cases, build a narrative that can then become part of the political dynamics needed to make more senior level actors accessible to justice. Mid-level perpetrators are often the most active and notorious participants in atrocities. By having such cases brought successfully victims and affected communities will feel recognized and vindicated which in turn will help foster further cooperation and success.

How would you overcome them?

I've outlined above some the approaches I would take. However, as a first step there needs to be a consolidation of all the internal policies, strategy papers and most importantly Lessons Learned, in a comprehensive, updated and accessible "deskbook" format. This is essential so that there is uniformity and clarity about all relevant matters both substantive and administrative. It is fundamentally important that an office such as the OTP has clear guidelines that everyone must refer to, get guidance from and be accountable for, in the discharge of any responsibilities. Taking again the example of Canada, the Federal Prosecution Service has Deskbook which helps frame the exercise each prosecutor's discretion. It covers all matters relevant to a prosecution and refers the prosecutor to the pertinent statutory and jurisprudential references as well as the relevant guidelines elaborated by the Service. It is regularly updated including any lessons learned. An OTP having such a complex mandate cannot function optimally without a clear framework to its decision-making process. As a priority I would appoint a group including representative of all sectors of the OTP to come within the first 100 days with a draft of the "deskbook" and make its completion a priority.

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

The aim should be to have all decisions regarding the mandate centered on the knowledge that all crimes have gendered causations and outcomes but even more so in matters of conflict related sexual and gender violence. From this would flow a more accurate representation of the victimization in both the investigations and prosecutions. In order to achieve this, I would seek guidance from internal and outside expertise in order to draw up a long-term strategy to implement a permanent gender mainstreaming framework for the OTP. One of the ways I would envision would be a convening of experts, perhaps funded externally, to ensure getting the best possible input possible. I would also seek to have the implementation of that strategy as part of the Performance Evaluation process.

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

As a Crown Attorney at the beginning of my career I sought assignment to the Sexual Assault Team, as it was then known, in order to represent those who are often the most vulnerable victims. A large number of the cases concerned abused, trafficked and exploited children and I dealt directly with them and often times with their families. It was for me, the clearest and

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most humbling demonstration of the responsibility entrusted to a Prosecutor in pursuing justice for victims. This assignment coincided with a growing awareness in Canada of the special needs of children as victims or witnesses. Statutory amendments and training of Judges and Prosecutors were key in raising awareness of the particular needs of children and avoiding further victimization by their participation in the judicial process. Among other things this means involving other professionals while preserving the integrity of the process and the testimonies of the children.

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

As a member of the Integrated proceeds of Crimes Unit of the Royal Canadian Mounted Police I advised investigators on legal and strategic matters relevant to assets tracing and forfeiture. I do not have experience in the other areas cited.

However, as a principle I believe it is important for any Prosecutor to seek to reflect the breadth of victimization and account for all criminal responsibilities in as much as the statute and the evidence provides for it. While it is imperative that the law evolves to reflect accountability, "bad case makes bad law" and novel approaches should be grounded in the best possible evidentiary and legal basis in order to develop a strong jurisprudential base. I believe that the above should guide the OTP in the application of its Policy.

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?

As mentioned above it is fundamental that the OTP seek to reflect accurately the suffering endured by victims and communities (see Question 20 and forced marriage). Such charging decision must be made on a case by case basis and balance the importance of accountability with the overall likelihood of success of the case.

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?

Unless the RS is amended the power to investigate and prosecute such offences rests with the Prosecutor and in some circumstances, it might well be that the Prosecutor is best able to exercise these functions. However, because there can be in some cases the appearance or real conflict of interest or the appearance of undermining fair trial rights, the possibility to appoint an amicus to investigate and eventually prosecute should be an option. I would task a review team to draft guidelines for the exercise of this power and including grounds for recusal making use of the available jurisprudence from the Court and lessons learned from other tribunals. I would consult widely for these guidelines including the IBA and then make sure that they are part of the continuing education processes of the OTP.

COMMUNICATION AND OUTREACH

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

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

As a Prosecutor in front of a jury one of the skill you must develop is the ability to pare down legal and factual concepts to their essential component in order for a la person to understand and apply the key elements of their responsibilities in order for them to discharge their mandate. Furthermore, I learned early on in my international career the importance of learning the cultural, social and gender context of any communication about Justice, the notion of which can differ greatly from community to community. For example, in Cambodia a lot of victims and survivors would have been satisfied if the judicial process led to an admission by the accused and a request for forgiveness rather than any retributive sentences. I had to understand this, respect it, and yet be able to make the argument why, as a society, Cambodia needed a process which sanctioned the worst of crimes in order to contribute to its transitional justice process that was still ongoing more than 30 years after the Khmer Rouge era.

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

I fully agree with the IER assessment of the need for a better communication strategy and the incorporating of professional advice through a PIU and a dedicated spokesperson. While there is a need to foster the One Court concept through coordinated communication with other organs of the Court the OTP's specific mandate does require a dedicated capacity to clearly and convincingly engage media, communities and stakeholders. I would work with the PIU to ensure utmost transparency and clarity of communication, managing expectations, engaging directly and frankly with the most sensitive issues and thereby creating an essential part of the mandate: credibility.

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.

Based on my experience working in Courts located in the affected communities as well as in civil party legal systems, I believe that a Prosecutor must develop an effective synergy with victims not only as affected persons but as full-fledged parties to the process. While sometimes interests and strategies may differ and lead to difficult decisions, it is fundamentally important especially in mass atrocities context that the Prosecution is victim centered.

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

The impact of some of the crimes of the RS do indeed affect not only direct victims but communities present and future. Full accountability must be the goal including for those crimes where the impact may be long term. Where possible those crimes should be prosecuted, and their full impact convincingly argued along with sentencing recommendation that reflect their true impact.

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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?

Whenever accountability for mass atrocities occur in a transitional justice context the Prosecutor has a fundamentally important role to play in ensuring that the interest of the affected communities in the outcome of the judicial process is part of any decision. Obviously one such important outcome is the integrity of the judicial process itself. Another would be to have, from the inception of a case, a strategy to maximize the legacy of the proceedings including how, after the final verdict, the evidence and findings could be made available and accessible for future generations in order to have a proven narrative as a starting point. Throughout, the OTP must work in as transparent a manner as possible and be engage meaningfully with the communities and their representatives.

DEFENCE RIGHTS

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

As an officer of the Court the role of the Prosecutor, above all else, is to preserve the integrity of the process so that the verdict can be sound and the interest of society in a fair and just system is served. Those interests include the rights of the accused to a full and fair process.

This is something that I have believed and practice since my first assignment as a Prosecutor in Montreal. That commitment was tested, for example, when two police officers, in mid trial, confessed to me to have lied under oath against a person charged with drug trafficking. I immediately suspended the proceedings and after briefing my hierarchy, filed a motion terminating the proceedings. I subsequently testified for the Prosecution against the two officers. While this put me in a difficult situation with the police corps with which I had to continue working closely, I did not view it a choice but rather an obligation.

For the same reason I believe that full and timely disclosure, with the appropriate safeguards for, among other things, witnesses and investigative methods, preserves fair trial rights and need not be an issue to a well-prepared Prosecution. That is a principle which I have followed and instilled into all the teams I have managed.

IMPARTIALITY, INDEPENDENCE, AND COOPERATION

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

A Prosecutor must be guided only by the law, the evidence and the interest of justice. In turn these factors must frame the interpretation of his or her mandate and how to best discharge its responsibilities. This has guided my duties wherever I have worked and one of the best example is in my tenure as the first International Co Prosecutor for the ECCC. The Court was under constant pressure by some members of the Government who opposed it on principle, wanting the Khmer Rouge period to be left unaccounted for. Further the Government was on

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record as wanting the Prosecution to be limited to 5 designated former KR leaders and no others. Upon review of the evidence and interpreting the legal duty to prosecute those most responsible, I carried out the prosecution undeterred for three years including that of 4 additional suspects that in my opinion fell within the mandate. In my opinion the prosecution of all these suspects was warranted by the evidence and would best account for the crimes perpetrated in light of the resources and the mandate. That is what, in my opinion, should frame the use of a Prosecutor's discretion.

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

The only real pressure I have felt in over 31 years of prosecution stemmed from my inability to effectively help deliver justice in all cases I was involved in. The first time you have to tell a victim that even if you do believe she was victimized you are unable to proceed and seek for her the succor of a judgment or even simply a day in Court, you realize the full weight of the responsibility attached to the duties of a Prosecutor. It goes without saying that this weight is multiplied exponentially in cases of mass atrocities. Any factors external to that reality, though relevant for the work and important to consider, are not what must direct the exercise of your mandate. Of course, the Court is an actor within the political landscape and the Prosecutor must be fully cognizant of the political context so as to execute his or her mandate with the best set of facts. As the Prosecutor of the ICC I would seek to have access to the best political intelligence and provide the most efficient advocacy in support of the OTP's work.

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

This is obviously a crucial issue for the efficiency but also the credibility of the Court as a whole, but the OTP in particular. In order to achieve the needed support of States the Prosecutor must have the best analysis of the relevant political factors, be able to marshal in the most efficient way the support of relevant stakeholders (CSOs, States, international organizations, specific high profile or powerful stakeholders) and tailor any intervention and advocacy to the specific, likely obtainable goals of the current situation. In doing so I believe transparency in terms of the crimes and responsibility of individuals are important though of course in respecting fully the presumption of innocence.

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 are none nor any informal ones.

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

No, as above.

LEADERSHIP AND MANAGEMENT

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

While as leader you have the ultimate responsibility to make a decision and assume its consequences, you must make sure to listen to input, empower those you lead to make the best decision themselves, always consider that there may be a better solution than the one you were envisioning and chose success over ego. In the context of prosecuting mass crimes, I also feel that it is the responsibility of the leader to make the grave responsibility of bringing justice to victims a central part of the team's ethos.

As an example whilst a Senior Trial Attorney at the SCSL an intern on the team brought to my attention a memo she had prepared on her own initiative arguing that the "bush wives" phenomenon, a signature crime of the conflict, could be qualified as a distinct underlying crime against humanity inhumane act, that of "forced marriage". I agreed and amended the indictment against the leadership of the RUF and AFRC and refocused the investigation and prosecution to support the charge which was eventually upheld and is now part of ICL.

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

My leadership eschews micromanagement for empowerment. I firmly believe that success is a team outcome whereas, in most cases, failure is a leadership issue. To be able to draw the best out of people and have the best chance to succeed a leader must develop a clear vision of the objectives and get buy in from his or her team. I have found that this is achieved if team members feel that their contribution is valued and welcomed. In my experience a good manager is one that listens, engage and empowers those whose responsibility it is to make decisions, so that they can do so themselves. This is particularly true on the prosecution of such massive and complex cases, where if you try to direct everything, nothing gets done at its best.

In my current assignment I supervise, from home, a team deployed in the field in the DRC. At the beginning of our mandate the deployment of the team, for various reasons, had to occur quickly without an opportunity for the team and I to really exchange and develop a full understanding of our work processes. This eventually led to some miscommunication issues and affected the productivity of the team. To correct it I organized a 3-day team retreat in New York that included briefings from the various sections in the UN which supported our work as well as frank exchanges between the team and I, outlining our respective visions of our roles and expectations for the mandate. This helped foster a good working relationship that has endured over 3 years and allowed us to effectively discharge our mandate.

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.

From my first posting in Kigali, Rwanda in 1996 to the present I have grown personally and professionally from working with and learning from people of various identities, nationalities and background. On a professional level having the broadest spectrum of perspectives and practices substantively enhances your ability to succeed by providing solutions that you may

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not otherwise have had and by providing you the opportunity to consider problems and solutions from a different point of view. On a personal note, having lived with my family in several countries and within different communities I will always be grateful for the opportunity this has accorded my children to become aware of the world and its richness as well as the responsibilities entailed in being a privileged guest in someone's else community..

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?

Unfortunately, the IER has confirmed what has long been known to informed outsiders, that morale and general working conditions within the OTP were not optimum. It is of course wholly unacceptable that anyone, let alone those in an institution tasked with rendering justice, would be working in an atmosphere of fear. I would first seek to confirm or qualify the findings of the IER by inviting all staff of the OTP to reach out directly to me with their evaluations of the findings, since it appears that only 70 or so of the 400+ members to the Office were interviewed. I would then make sure that everyone understood my management values outlined above and my belief that everyone's contribution is essential to success and must be valued as such. The culture of an office starts and ends with how you treat people and while some of the related structural issues would take time to change, such as promotion opportunities, others, like regular meetings between the Prosecutor and teams and an open door policy, should be implemented quickly.

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.

It is clear from the IER that the OTP has as an institutional issue regarding gender and geographical representation and empowerment. This is an issue developed over time and well known, so I would get a fulsome assessment of any attempts to correct this and the reasons why they have obviously fallen short. Then I would task a group composed of senior leadership, focal points and, more importantly, staff affected by these issues, to come up with an actionable plan within the first 100 days of my tenure to address these issues in order to achieve by mid mandate, gender and geographical parity in at least P5 and above posts. I would also review the possibility of getting the assistance of outside expertise on gender mainstreaming and racial workplace equality.

As mentioned above I consider that diversity and fairness, aside from the obvious moral necessity, can only contribute to efficiency and success. As an example, I advocated for national posts for the OTP of the ECCC and sought out advice on qualified national candidates, with a focus on women. While the functional titles and terms of those posts were limited by the budget, I sought candidates who could perform needed tasks and empowered them to contribute to the utmost of their abilities. As an example one of our staff, whose father had been murdered by the Khmer Rouge and his family persecuted during their reign, offered to assemble a definitive list of victims of the S21 killing center, something that was missing even after 30 years. We eventually introduced it in Court and this has allowed thousands of families to confirm the fate of their loved ones.

Thank you.