



## QUESTIONNAIRE FOR THE CANDIDATES FOR PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT

*Note: please feel free to use a separate document to submit your answers.  
Your answers can be sent to the following email address [executivedirector@iccba-abcpi.org](mailto:executivedirector@iccba-abcpi.org)*

The upcoming election of the next Prosecutor is an important moment for the International Criminal Court. A key aspect of the Prosecutor's work is her capacity to build a relationship of trust and cooperation with the Defence and Victims in order to contribute to the overall quality of the justice rendered at the ICC. It is in this spirit of constructive dialogue that the ICCBA, the representative organisation of Defence and Victims' Counsel at the ICC, proposes the following questionnaire to all candidates for the position of ICC Prosecutor.

### **A) Equality of Arms between the parties and participants to the proceedings, and within the Rome Statute framework**

**Question 1:** Would you support amendment of Regulation 3 of the [Regulations of the Court](#) to allow for representatives of the Defence and Victims to participate in the Court's Coordination Council?

**Question 2:** Do you support the principle that the salaries, entitlements and fiscal treatment of persons working for ICC Defence and Victims' legal teams should be equivalent to their Prosecution counterparts? If so, would you be willing to collaborate with the ICCBA on these issues? Would you be willing to advocate in favour of such principle within the Court and before the ASP?

**Question 3:** Would you be willing to advocate within the Court and before the ASP in relation to the following issues:

- i) Revision of the Court's [legal aid policy](#) and adoption of a sufficient legal aid budget to ensure that suspects, accused persons and victims are able to effectively exercise their rights under the Rome Statute and Rules of Procedure and Evidence? These subjects concern matters crucial to ensuring a fair trial, such as allocation of sufficient resources to conduct proper investigations, consult and meet with victim clients, and compose a legal team (lawyers, analysts, professional investigators and experts) commensurate to the complex and large-scale cases prosecuted before the ICC.
- ii) Ensuring sufficient funds for [family visits](#) for indigent detainees?
- iii) Ensuring better respect for the presumption of innocence (Statute, Article 66), by increasing State cooperation in relation to agreements pertaining to provisional release and acquittals?
- iv) Increasing donations to the Trust Fund for Victims?



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## **B) Accountability, Transparency and Integrity measures within the Office of the Prosecutor**

**Question 4:** What are your views on the ICC model of OTP-led Article 70 (offences against the administration of justice) investigations and prosecutions in comparison to the model of other international courts and tribunals, which provide for the possibility of appointing external *amicus* investigators and prosecutors?

**Question 5:** Are you open to amending the [Code of Conduct for the Office of the Prosecutor](#) to provide a formal submission mechanism for alleged breaches of the Code, which is accessible to the public as well as parties and participants to the proceedings?

**Question 6:** Do you believe, and if so to what extent, that the [Code of Professional Conduct for counsel](#) should apply to lawyers in the Office of the Prosecutor? In respect of this issue we note Trial Chamber V(b)'s Decision of 31 May 2013.<sup>1</sup>

**Question 7:** Do you believe that any additional accountability, integrity or transparency measures are needed in respect of the Office of the Prosecutor and the conduct of its mandate?

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## **C) Presumption of Innocence, Fair Trial and Expeditious Proceedings**

**Question 8:** To better ensure fair trial guarantees from the outset of the proceedings, what are your views on increasing collaboration and communication between counsel for (potential) suspects during the preliminary examination and investigation phases?

**Question 9:** To date, the OTP has systematically opposed detained suspects and accused persons' requests for provisional release. Do you envision any changes to this approach to ensure better respect for the presumption of innocence, as well as the principle that detention of defendants should be the exception not the norm?

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<sup>1</sup> *Prosecutor v. Kenyatta*, [Decision on the Defence application concerning professional ethics applicable to prosecution lawyers and Concurring separate opinion of Judge Eboe-Osuij](#), 31 May 2013, ICC-01/09-02/11-747.



**Question 10:** Past practice has shown that the OTP does not always adequately investigate potentially exonerating evidence and leads, as required by Article 54(1)(a) of the Rome Statute. How do you propose to amend investigative policies at the OTP to improve this situation, and otherwise fully respect the rights of defendants and victims under the Statute (Article 54(1)(c))?

**Question 11:** Past practice has shown that the OTP is not always efficient in respecting its disclosure obligations, especially in regards to potentially exculpatory evidence and information (Article 67(2)), or items that are material to the preparation of the Defence (Rule 77). Would you support a more rigorous and transparent Prosecution disclosure policy in order to better guarantee the rights of defendants and victims, the presumption of innocence, and the efficiency of proceedings?

**Question 12:** Past practice has shown that the OTP regularly discloses incriminating evidence late in the proceedings, even after the start of trial. How would you propose to improve this situation?

**Question 13:** How do you envisage enhancing the expeditiousness of the proceedings to better respect the interests of victims in achieving a timely outcome to the proceedings, and the right of the Accused to be tried without undue delay (Statute, Article 67(1)(c))?

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#### **D) OTP engagement with Victims and their Counsel**

**Question 14:** How do you conceive of the Prosecution's role vis-à-vis victims in a proceeding where victims are represented independently of the Prosecutor?

**Question 15:** Would you support the amendment of the [Regulations of the OTP](#) (or the creation of a separate instrument) to include more detailed rules regarding:

- i) Information to be provided by the OTP to unrepresented victims;
- ii) The regulation of OTP interactions with victims who are already legally represented before the Court (including at the investigation stage);
- iii) The provision to victims' counsel of information held by the OTP which specifically relates to their clients;
- iv) Mechanisms for complaint and enforcement where breaches of the Regulations (or other instruments) are alleged by victims?

**Question 16:** The [OTP Policy Paper on Victims' Participation](#) is now 10 years old. Is it time for an updated Policy Paper, and if so what would the key changes in approach be? What is your view on



the OTP's current approach of proactively opposing victims' standing (for example standing to initiate appeals,<sup>2</sup> or standing to initiate judicial proceedings during the investigation stage<sup>3</sup>)?

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### E) Objectives of the Office of the Prosecutor

**Question 17:** What are your objectives during your mandate in relation to the selection of situations and cases to investigate?

**Question 18:** How do you envision increasing OTP presence in situation countries, including through outreach towards affected communities?

**Question 19:** Among the many roles that an ICC Prosecutor can play (for example: manager and leader; diplomat and spokesperson; lawyer and in-court advocate) where would you place the greatest priority and how would this be reflected in the way you spend your time?

**Question 20:** What benchmarks do you think should be used to measure the 'success' of the Office of the Prosecutor, as a party to the proceedings and as an Organ within an international tribunal?

**Question 21:** Would you be willing to meet with the ICCBA on a regular basis to discuss ongoing matters of mutual interest and concern?

**Question 22:** How do you propose to increase OTP independence *vis-à-vis* third party sources (e.g. Article 15(2) information originators (States, UN entities, NGOs)) during all stages of the investigation and proceedings in order to avoid bias?

**Question 23:** Given that there are currently no formalised investigation protocols before the existence of a case and the intervention of the Defense, would you be willing to collaborate with the ICCBA to draft formal investigation protocols for the preliminary examination and investigation phases?

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<sup>2</sup> See for example [ICC-02/17-42](#).

<sup>3</sup> See for example [ICC-01/19-35](#).