

**QUESTIONNAIRE FOR THE CANDIDATES FOR PROSECUTOR OF THE
INTERNATIONAL CRIMINAL COURT
ICCBA**

15 December 2020

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Question 1: Yes

Question 2: Yes, as far as it is necessary to guarantee the equality of arms of all the parties before the Court. Yes. Yes.

Question 3:

- i) Yes, in case of indigent defendants.
- ii) Yes.
- iii) Yes.
- iv) Yes.

Question 4: A policy paper should be published in order to address these specific offenses. States parties must regulate in their domestic law these offenses, according to the provisions established in article 70, 4 a) RS. Once this duty is accomplished and the domestic principle of legality fulfilled, the prosecution of these offenses can follow the guidelines of complementarity, the OTP dealing with these cases only when the concerned State is unwilling or unable to prosecute them.

Question 5: Yes.

Question 6: The ethic requirements and codes of professional conduct for lawyers litigating before the Court must be the same whether they serve in the Office of the Prosecutor or as legal counsel for any other parties.

Question 7: The staff serving at the Office of the Prosecutor is accountable without exceptions, including the Prosecutor him/herself. The requirements of personal and professional integrity and transparency must be enforced.

Question 8: Preliminary examinations should be concise assessments addressed to gather the information indispensable to make a sound decision whether to open or not an investigation, and should not take more than six months. There are not suspects in this phase. During the investigative phase, the widest possible collaboration and communication between the OTP and the defense counsel -with the due respect for the requirements of investigative confidentiality- is desirable.

Question 9: Preventive detention is too long in the ICC. The rationale of complementarity demands that OTP should not take the jurisdiction from national authorities if the ICC is not able to do much better than them. This standard must be improved in order for the ICC becoming a referent of fair and expedient justice for the States. If there are unavoidable long delays, provisional release must be considered.

Question 10: Impartiality is a duty for prosecutors. Exonerating or mitigating circumstances must be investigated with the same dedication as it is gathered incriminating evidence. To guarantee equality of arms before the Court, defense and victims counsel must enjoy as much participation in the investigations as possible, and this fundamental right must be guaranteed by the OTP.

Question 11: Yes.

Question 12: The guarantee of a fair trial requires that all the incriminating evidence is made available to the defense in advance, before the initiation of the trial.

Question 13: Up to day, proof relies mostly in testimonial and documentary evidence. There must be a significant improvement in the quality rather than the quantity of evidence. This goal can be achieved by incorporating to the OTP forensic experts and 21st century technology in the investigations and prosecutions. Additionally, it will avoid undesirable delays.

Question 14: The RS provides some participation for victims (RS 68,3), protection (RS 68,1) and their right to reparations (RS 75). The OTP must contribute to the widest possible interpretation of these articles and facilitate as much as possible victims' participation; but in any case, accepting that this participation is recognized with a limited role in the RS, it has to be recognized that for the time being, the recognition and satisfaction of the interests of the victims relies mostly in the OTP, which is at the same time an opportunity and a responsibility.

Question 15: Yes.

Question 16: I agree the OTP policy papers, specially those about the interest of justice and the victims' participation must be updated. There must be a much closer communication between the OTP and the victims' representatives, the concerned communities and NGOs in the territories of the situations, opening offices in the field and establishing permanent mechanisms for cooperation. Standing should be granted to every representative of victims who can prove a legitimate interest.

Question 17: Strategies for investigation and prosecution should contemplate always the interest of victims as the main priority: before the crimes have been committed, through prevention of atrocities with early interventions prosecuting preparatory conducts punishable according to article 25 RS; in situations of on going conflicts, providing deterrence by investigating and prosecuting the peripheral crimes surrounding the combats, conducts such as facilitating, financing, aiding and abetting the violent crimes, or simultaneously laundering the illicit profits; in the aftermath of the crimes, providing accountability for the perpetrators, justice and reparations for the victims, and no recurrence for the post-conflicted societies.

Question 18: The OTP must have field offices in all the situation countries. Moreover, there should be a Unit directed by a spokesperson, in charge of an extensive communication effort. The OTP outreach policies must be strong, in the field, and coordinated with the Registrar.

Question 19: For the time being, the absolute priority must be to deliver the results expected by the States parties, civil society and victims, adjudicating fair and impartial justice and achieving convictions. To this purpose, the Prosecutor must dedicate most of his/efforts to the OTP itself, interacting with the Court, the Registrar, the SC, the ASP, the SC and the State parties and non States parties, mostly in The Hague and NY, enforcing international rule of law and gaining the respect of the international community. A Deputy Prosecutor must travel extensively through the situation countries directing the investigations and interacting with the field offices and national authorities. Another Deputy Prosecutor must be in charge of litigation.

Question 20: Some benchmarks should be: guaranteeing 21st century quality investigations including financial, SGBV and communications special sections working regularly, warrants for arrests timely executed, a permanent network of OTP and cooperating national prosecution offices established and consolidated, regular joint investigations with national authorities in the field, fair and expedient trials, regular convictions, and becoming a widely respected global referent of international rule of law.

Question 21: Yes.

Question 22: OTP must be independent and must be seen as independent. For this, any undue pressure must be reported, decision making processes must be transparent and collegial thus bringing legal certainty to the concerned parties, guaranteeing to everyone that double standards are not acceptable.

Question 23: Yes.

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