

**Nineteenth session**

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Report of the Committee on the Election of the Prosecutor**Table of contents**

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Letter from the Chair of the Committee to the President of the Assembly

[Original:English]

30 June 2020

Excellency,

I write in my capacity as Chair of the Committee on the Election of the Prosecutor to enclose our report to the Bureau, as required by the Terms of Reference on the Election of the Prosecutor. While the Committee's mandate ends with the submission of this report, its members stand ready to provide such further assistance as may be required by the Presidency.

Please accept, Excellency, the assurances of my highest consideration.

Sabine Nölke
Ambassador
Chair

Report of the Committee on the Election of the Prosecutor

I. Introduction

1. This report of the Committee on the Election of the Prosecutor (“the Committee”) is submitted to the Bureau of the Assembly of States Parties pursuant to the Terms of Reference for the Election of the Prosecutor (“Terms of Reference”).¹

2. The Terms of Reference provide that “the Committee shall establish by consensus an unranked shortlist of three to six of the most highly qualified candidates” for the position of Prosecutor of the International Criminal Court (“Court” or “ICC”), and “prepare a final report which shall specify in detail how the shortlisted candidates meet the requirements for the position”.² A consultation process will be undertaken thereafter, led by the President of the Assembly, to identify a consensus candidate.³

3. The Committee hereby submits the following candidates (unranked, in alphabetical order) for the consideration of the Assembly:

- (a) **Morris A. Anyah** (Nigeria), currently a trial attorney in the Law Office of Morris A. Anyah, LLC in Chicago, Illinois, U.S.A;
- (b) **Fergal Gaynor** (Ireland), currently the Reserve International Co-Prosecutor at the Extraordinary Chambers in the Courts of Cambodia;
- (c) **Susan Okalany** (Uganda), currently a judge of the High Court of Uganda and a judge in the International Criminal Division of that Court; and
- (d) **Richard Roy** (Canada), currently Senior General Counsel with the Public Prosecution Service of Canada.

4. A summary of the qualifications and expertise of these candidates, including how they meet the requirements for the position, is provided below, together with additional details on the process by which the Committee, assisted by the Panel of Experts, arrived at the shortlist. The *curriculum vitae* and letter of motivation submitted by each of these candidates is contained in annex III to this report.

II. The Committee and Panel of Experts

5. The Terms of Reference were adopted by the Bureau on 3 April 2019. In those Terms of Reference, the Bureau decided to designate one representative per regional group, based on consultations with the regional groups, as members of a Committee on the Election of the Prosecutor.⁴ The mandate of the Committee was to facilitate the nomination and election of the next Prosecutor of the International Criminal Court in accordance with the working methods set out in the Terms of Reference.⁵ In addition, the Bureau decided that it would appoint a panel of five independent experts, one per regional group, to assist the Committee in carrying out its mandate.⁶

6. Accordingly, on 7 June 2019, the Bureau designated the following persons as members of the Committee on the Election of the Prosecutor:

- (a) H.E. Marcin Czepelak (Poland);
- (b) H.E. Lamin Faati (Gambia);
- (c) H.E. Andreas Mavroyiannis (Cyprus);
- (d) H.E. Sabine Nölke (Canada); and

¹ ICC-ASP/18/INF.2.

² *Ibid.*, paras. 16 and 20.

³ *Ibid.*, para. 28.

⁴ *Ibid.*, para. 4.

⁵ *Ibid.*, para. 9.

⁶ *Ibid.*, para. 7.

(e) H.E. Mario Oyarzábal (Argentina).

7. On 27 June 2019, the Bureau appointed the following persons as members of the Panel of Experts to assist the Committee in carrying out its mandate:

- (a) Mr. Francisco Cox Vial (Chile);
- (b) Ms. Aurélia Devos (France);
- (c) Prof. Charles C. Jalloh (Sierra Leone);
- (d) Mr. Motoo Noguchi (Japan); and
- (e) Ms. Anna Richterova (Czech Republic).

8. On 23 July 2019, pursuant to paragraph 5 of the Terms of Reference, the Committee designated Ambassador Sabine Nölke as its Chair and Ambassador Andreas Mavroyiannis as its Vice-Chair. In order to facilitate coordination and communication between the Committee and the Panel of Experts, and to coordinate the latter's substantive work, the experts designated Professor Charles C. Jalloh as their Chair.

9. The Committee met in plenary session by video conference on ten occasions, not including the interview sessions.⁷ The Panel of Experts participated in three of these meetings.⁸ In addition, the Panel of Experts met in person in The Hague on 2 and 3 December 2019 and separately by video conference on ten occasions.⁹ The Committee met in person in New York on 20 and 21 February 2020. Additional regular and frequent consultations were conducted among Committee members, among Panel members, and between the Committee and Panel Chairs by e-mail, video-conference, and other electronic means.

10. The Committee provided regular updates to the President of the Assembly and to States Parties, both in writing and orally.¹⁰ The Committee submitted an interim report to the Bureau on 1 December 2020.¹¹ A written update submitted to the President on 29 April 2020 contained information about the move to virtual interviews in light of COVID-19, as well as a proposed vetting procedure (see paragraph 21 below).

11. The Committee received communications about the process from the following organisations: ATLAS (Acting Together: Law, Advice, Support); Human Rights Watch; the International Bar Association; the Norwegian Helsinki Committee; and Open Society Justice Initiative. Members of the Committee also met with representatives of the Coalition for the International Criminal Court in New York on 22 February 2020. The substance of these communications is addressed in section IV below. A request for further discussion with civil society, made after the conclusion of the interview process, regarding the vetting of candidates on the matter of "high moral character", was declined by the Chair.

12. The Committee received a number of unsolicited letters and messages in respect of putative candidates for the position of Prosecutor. While they were welcome as expressions of interest by civil society in the process, the Committee's mandate and the confidentiality of the candidacies at this stage precluded their acknowledgement. Expressions of support for any candidate included on the shortlist established by the Committee, if applicable, will be provided to the President of the Assembly so as to inform the next stage of the process as appropriate.

13. In light of the interest the process on the election of the Prosecutor had generated among civil society including academia and non-governmental organizations, the Chairs of

⁷ 8, 11, 23, and 25 July 2019; 5 and 6 May 2020; 8 and 18 June 2020.

⁸ 11 July 2019; 5 May 2020; 8 June 2020.

⁹ 4 December 2019; 24 and 28 April 2020; 5, 7 and 22 May 2020; 4, 7, 11 and 29 June 2020.

¹⁰ The Chair of the Committee provided written updates to the President on 12 September 2019, 22 October 2019 and 29 April 2020. Oral briefings were provided to the Bureau on 28 November 2019 and 25 February 2020, and to the Assembly Presidency on 23 April 2020. Oral briefings were also provided to the New York Working Group on 25 February and 15 June 2020. In addition, the President and Vice-Presidents provided additional updates at various meetings of the Bureau and its working groups throughout the period.

¹¹ ICC-ASP/18/INF.4 and Add.1.

the Committee and Panel of Experts co-authored an informal piece outlining the process, which is available online.¹²

III. Procedure for applications

14. In accordance with the the Terms of Reference,¹³ the Committee requested the Panel of Experts to recommend a draft vacancy announcement with the requirements for the position of Prosecutor, as set out in article 42 of the Rome Statute. The first part of article 42 of the Rome Statute addresses the role of the Office of the Prosecutor (“OTP”) and stresses its absolute independence. The second part, which the vacancy announcement stressed, emphasized the key competencies required of the Prosecutor who heads the OTP. In essence, under article 42(3), the Prosecutor (and her/his deputy) must possess the following professional and personal qualities: (a) high moral character; (b) high competence and extensive practical experience in the prosecution *or* trial of criminal cases; and (c) excellent knowledge of and fluency in at least one of the working languages of the Court. The Prosecutor and her office must also be (d) fully independent and act as a separate organ of the Court free from any external influence (article 42(1)) and (e) the Prosecutor shall also have full authority over the management and administration of the OTP (article 42(2)).

15. The Terms of Reference also provided that the Panel of Experts may consider including the following requirements for the position: experience in the prosecution of complex criminal cases; demonstrated management experience; and in-depth knowledge of national or international criminal law and public international law.¹⁴ These elements were included in the draft vacancy announcement.

16. The Committee subsequently reviewed the draft vacancy announcement and submitted it for the approval of the Bureau on 26 July 2019. The Bureau approved the vacancy announcement on 31 July 2019 and it was published on the website of the Court on 2 August 2019 with a deadline for applications of 31 October 2019. The vacancy announcement, replicated in annex II to this report, was circulated to States Parties with a request from the President of the Assembly for it to be disseminated nationally, through appropriate professional or institutional channels, with a view to reaching the widest possible and cross-regional audience of criminal justice professionals. The vacancy announcement was also circulated to other stakeholders, including civil society groups.

17. In a written update to the President dated 22 October 2019, the Chair provided an overview of the 55 applications which had been received as of 18 October, broken down by regional group, gender and legal system. That update also contained a recommendation from the Committee that the deadline for applications be extended to 25 November, and that the Presidency re-circulate a reminder to all States Parties to disseminate the vacancy announcement to relevant agencies in their jurisdictions and to encourage qualified candidates to apply. The Bureau approved this recommendation on 24 October and the vacancy announcement was re-circulated on 1 November 2019.

18. As at the extended deadline of 25 November 2019, a total of 144 applications had been received. As part of the application procedure, candidates were required to submit supporting documentation.¹⁵ The applicants were given a deadline of 29 November 2019 by which to upload their supporting documentation via a secure website. As at 29 November, a total of **89 candidates** had submitted complete applications. These applications could be broken down as follows:

¹² See “ICC Prosecutor Symposium: The ICC Assembly of States Parties’ Selection Process for the Third ICC Prosecutor”, available at <https://opiniojuris.org/2020/04/24/icc-prosecutor-symposium-the-icc-assembly-of-states-parties-selection-process-for-the-third-icc-prosecutor>.

¹³ ICC-ASP/18/INF.2, para. 12.

¹⁴ *Ibid.*

¹⁵ Candidates were required to separately submit the following: a) their *curriculum vitae*; b) letters of reference from a supervisor, a peer, and a supervisee; and c) a letter outlining the reasons and motivation for the application as well as a summary of relevant experience.

<i>Regional group</i>	<i>States Parties</i>	<i>Non-States Parties</i>	<i>Total</i>
African Group	20	9	29
Asia-Pacific Group	2	5	7
Eastern European Group	4	1	5
Latin American and Caribbean Group	7	1	8
Western European and Others Group	36	4	40

<i>Gender</i>	<i>Total</i>
Female	26
Male	63

<i>Legal system</i>	<i>Total</i>
Civil law	50
Common law	21
Mixed/Other	18

IV. Assessment of candidates

Modalities

19. The Terms of Reference provided that the Committee “shall review the applications received in light of the relevant criteria set out in article 42(3) of the Rome Statute and in the vacancy announcement, decide on a longlist of candidates and subsequently undertake competency-based interviews”.¹⁶ The Terms of Reference also provided that the Panel of Experts “shall assist the Committee, including by paper-sifting the applications, recommending a longlist of candidates, and preparing and participating in the competency-based interviews”.¹⁷ Accordingly, a meeting of the Panel of Experts was convened in The Hague on 2 and 3 December 2019 in order to paper-sift the applications and prepare a recommended longlist of candidates for interview. The Panel of Experts also prepared a proposal for interview questions and modalities. The Committee then met in New York on 20 and 21 February 2020 to review the Panel’s recommendations for the establishment of the longlist and to decide on the longlist of candidates to be interviewed. The Committee decided on a longlist of 16 candidates. Two of the 16 candidates subsequently withdrew their applications, for personal reasons, before their interviews could take place; a total of 14 candidates were interviewed.

20. Preparations had been made for the interviews to take place in person in The Hague between 28 and 30 April 2020, with the participation of all members of the Committee and the Panel. Unfortunately, the outbreak of the COVID-19 pandemic and the associated travel and health restrictions, as well as closure of the Court due to directives of local authorities, made it impossible both for the Committee and the Panel to meet in person on the scheduled dates and for candidates to attend.

21. Conscious of the timelines set out in the Terms of Reference, the Committee considered it important to proceed with its mandate despite the difficult circumstances. On 29 April 2020, in a written update to the President, the Chair of the Committee advised that the Committee intended to proceed with interviews of all candidates via secure video-conference. In order to complete the interviews across the range of time zones involved, the

¹⁶ ICC-ASP/18/INF.2, para. 14.

¹⁷ *Ibid.*

Chair advised that the interviews would be scheduled over several weeks. The Chair also informed the President about a vetting procedure the Committee proposed to undertake in response to representations by civil society on the matter of “high moral character” (see paragraphs 24 to 32 below). On 23 May, the President of the Assembly informed the Chair of the Committee by letter that the Presidency welcomed the procedures outlined by the Committee and invited the Committee to proceed accordingly.

22. The video interviews took place between 12 May and 5 June, via the Court’s secure video-conferencing platform, Cisco WebEx. The interviews consisted of a series of pre-determined questions based on the requirements of the Rome Statute and the competencies set out in the vacancy announcement, with a section of questions specifically reserved for the Experts. In respect of interviews in which the candidate had the same nationality as a member of the Committee or the Panel, or where there was another reason for a real or perceived conflict of interest, the member in question recused him or herself from the interview process and subsequent assessment of that candidate.¹⁸

23. The Terms of Reference required the Panel of Experts to share their assessment of the candidates with the Committee prior to the elaboration of the shortlist.¹⁹ The Panel of Experts therefore submitted their confidential assessment of the qualifications of all 14 candidates to the Committee, focusing only on the competence of the candidates under article 42 of the Rome Statute and the vacancy announcement, and the Committee took that confidential assessment into account in the elaboration of the shortlist. Consistent with the Terms of Reference, the Committee also had due regard to the extent possible to gender and geographical balance, and adequate representation of the principal legal systems of the world, as well as the best interests of the Court and the Assembly of States Parties as a whole.²⁰

Vetting

24. One of the key competencies required of the Prosecutor, as reflected in the Rome Statute itself, is that s/he be “of high moral character”. This requirement, which is the first among several competencies listed in article 42(3) of the Rome Statute, was reflected in the vacancy announcement. Efforts were made to address key aspects that would reflect high moral character and integrity. Thus, the vacancy announcement, in language approved by the Bureau of the Assembly of States Parties, provided that the next ICC prosecutor must not only possess high moral character, “but also high commitment to the values and guiding principles of the ICC as well as impeccable personal and professional integrity.” This implies that the person should not have engaged in harassment, whether sexual or not,²¹ bullying, discriminatory behavior or other forms of abuse of power or malfeasance.

25. As noted in paragraph 11 above, the Committee received a number of communications from civil society that focused on the above issues, particularly in the context of ensuring that prospective candidates are free from a record of workplace and/or sexual harassment. Communications from civil society organizations included, *inter alia*, suggestions that the Committee receive complaints, carry out investigations, or conduct inquiries into allegations of misconduct against candidates with a view to ensuring that those with a history of workplace and/or sexual harassment would not advance to the shortlist.

26. The Committee determined that while its mandate required it to apply due diligence with regard to the requirements of article 42(3) and that this was central to its task, it lacked the legal authority or framework, as well as the mandate and the capacity, to carry out inquiries, complaint procedures or investigations in respect of candidates who as yet had no legal relationship with the Court, and whose identity it was bound by its Terms of

¹⁸ ICC-ASP/18/INF.2, para. 18.

¹⁹ *Ibid.*, para. 15.

²⁰ *Ibid.*, para. 19.

²¹ See *Administrative Instruction on Sexual and Other Forms of Harassment*, ICC/AI/2005/005, 14 July 2005, section 2. The Committee notes that, in order to uphold the standards in the Rome Statute and other relevant policies and regulations of the Court, the Office of the Prosecutor also adopted a Code of Conduct which applies to all members of the Office as well as interns, visiting professionals, gratis personnel and staff members of other organisations on secondment or otherwise made available to the Office. See Code of Conduct for the Office of the Prosecutor, 5 September 2013, available at <https://www.icc-cpi.int/iccdocs/otj/otp-COC-Eng.pdf>.

Reference to keep confidential. Accordingly, the Committee included a line of questions on the topic of workplace or sexual harassment in the interviews, observing both the candidates' substantive answers and demeanour in response.

27. The Committee furthermore undertook the unprecedented step to include a vetting process, normally only applied to candidates nominated to non-elected positions at the Court and not foreseen in the Committee's Terms of Reference. The Committee's proposal to that effect was endorsed by the Assembly Presidency by letter dated May 23, 2020.

28. The vetting process was carried out independently from the Committee and the Panel of Experts, by the Security and Safety Section of the Court. Given the confidential nature of the work of the Committee, an exchange of letters was concluded between the Director of the Secretariat and the Registrar, to record the fact that the Section would report exclusively to the Committee (via its Chair) with regard to this particular process.

29. The vetting process consisted *inter alia* of detailed reference checks, checks of publicly sourced information (including candidates' own social media accounts), and security and criminal record checks. The Committee agreed with the Security and Safety Section of the Court that certain specific details of the process should remain confidential so as to protect future such processes against potential manipulation or evasion.

30. All 14 candidates consented to the vetting process, which was undertaken for all candidates, concurrently with the interviews, in order to inform the Committee's decision-making without affecting the timeline for its report. The strictest confidentiality was maintained throughout the vetting process. All staff involved signed a confidentiality agreement specific to the Committee process, as previously had all other Court and Secretariat staff involved in assisting the Committee in its work.

31. The Committee is aware that a vetting process set in motion *ex post facto* and with limited scope, cannot lay claim to comprehensiveness, nor will it offer all desirable guarantees. In particular, it is to be noted here that references offered by a candidate will likely be inclined to respond only with favourable assessments, and that not all national criminal records bureaus contacted by the vetting officers responded to inquiries. That said, the vetting process contributed to the Committee's ability to present to the Assembly a strong and credible list of the most highly qualified candidates, whose candidacy are likely to withstand the reputational scrutiny that the subsequent public process will bring with it.

32. The Committee recommends, in this context, that future processes for the election of candidates, including candidates nominated for a position by States Parties, include a provision for the vetting of candidates *ab initio*, with clearly outlined parameters and modalities as well as an indication at which point vetting would be triggered.

Considerations for assessment

33. Candidates were assessed against the requirements of the Rome Statute, the additional competencies set out in the Committee's Terms of Reference, and the vacancy announcement, based on the following considerations:

- (a) qualifications and experiences set out in candidates' applications and supporting materials and documentation provided therewith;
- (b) their performance in the interview; and
- (c) the outcome of the vetting process and reference check.

In the interview, candidates were expected to respond substantively and clearly to the competency-based questions posed by the Committee and Panel, so as to demonstrate the expected competencies and to provide the Committee and Panel members with an appreciation of their understanding and vision for the work of the Office of the Prosecutor and the Court, as well as their suitability for the role by virtue of personality, clarity of communication, character, and overall demeanour.

34. In all instances where a candidate was of the same nationality as a Committee or Panel member or where a member had a close personal or professional association with a candidate, the member recused him/herself: from the initial assessment of the candidate for placement on the long list; from the interview; and from any subsequent assessment and discussion of that candidate. In one instance a Panel member submitted a notice of recusal

after the interview, due to subsequent close professional contacts with a candidate; that Panel member did not participate further in the assessment and discussion of the candidate.

V. Recommendations

35. The Committee's mandate is to facilitate the consensus nomination and election of the next Prosecutor by the Assembly by preparing a shortlist of three to six of the most highly qualified candidates for the position of Prosecutor. To this end, a list of four candidates is copied below.

36. The Committee wishes to express its appreciation to all candidates who submitted an application for the position, and particularly to those candidates who participated in the interviews. The Committee notes that, consistent with the Terms of Reference, the identity of all candidates who do not appear on the shortlist will be kept confidential, as will all information submitted by them throughout the process. Information received in the context of the vetting process as well as the Committee's and Panel's assessments, internal correspondence and deliberations will likewise be kept confidential, as mandated by the Assembly.²²

37. There is no such thing as a "perfect" candidate, and a *curriculum vitae* tells only a part of the story. All four candidates recommended to the States Parties for further consideration have areas in which their actual, recorded experience may not be as extensive as considered desirable. For this reason, the Committee chose to conduct competency-based interviews, with a view to allowing candidates to show how they would demonstrate certain behaviours/skills, as prosecutors, as managers of the OTP and within the strategic context in which the ICC is situated.

38. The interviews themselves provided the Committee and participating Panel members with a unique opportunity to test whether the entries in the *curriculum vitae* corresponded to a candidate's ability to relate that experience to the work of the OTP. The Panel in addition assessed the substance of candidates' responses to questions from a technical standpoint, the quality of professional experiences and qualifications, as well as potential conflict situations.

39. In light of current challenges and ongoing calls for reform of the Court, its business practices and its management, the Committee also closely observed the candidates' personal qualities, ideas and demeanour, in questions aimed *inter alia* at disclosing their vision of the change management leadership that States Parties have indicated the Court will require going forward.

40. As noted in paragraph 23, the Committee had due regard to the extent possible to gender and geographical balance, as well as adequate representation of the principal legal systems of the world. The Committee's ability to provide a balanced slate of candidates in this regard was, however, circumscribed by the available pool of applicants and the qualifications of those who presented within specific categories. That said, the candidates on the shortlist nonetheless present a diversity of professional profiles, backgrounds and experiences which should allow States Parties to choose a candidate who best represents their vision for the future of the OTP.

41. The Committee recommends that gender balance and diversity of legal systems be taken further into account in the selection and appointment of the Deputy Prosecutor(s).

42. The Committee also recommends that further efforts be undertaken by the Bureau and by States Parties to encourage applications from women and candidates from the Asia-Pacific Group, Eastern European Group and Latin American and Caribbean Group in similar selection and election processes in the future.

43. All four candidates on the shortlist impressed the Committee, supported by detailed advice and assessments from the Panel of Experts, with their genuine interest in justice and the rule of law, the ICC and the cause of international criminal accountability – without fear or favour nor desire for personal advancement, beyond the wish to seek out new challenges

²² ICC-ASP/18/INF.2, para. 23.

in public service. Each of them will bring their own, unique and fresh professional perspective to the work of the Court. Likewise, all communicated clearly their appreciation for an organization and a managerial philosophy that value integrity, professionalism, teamwork, diverse and new perspectives, responsible stewardship and accountability.

44. The Committee, taking into account also the views of the Panel of Experts, unanimously agreed and is confident that each of the candidates proposed herein not only meets the formal eligibility criteria of the Rome Statute, but also has the professional experience and expertise and the necessary personal qualities to perform the role of Prosecutor.

45. The candidates' *curricula vitae* and letters of motivation are provided to the States Parties in annex III to this report.

46. The shortlisted candidates proposed to the Assembly of States Parties for further consideration, unranked and in alphabetical order, are:

A. MORRIS A. ANYAH (Nigeria)

47. Morris A. ANYAH (B.A., M.A., J.D.; admitted to the Bars of Illinois, Georgia and the District of Columbia and to Lists of Counsel at the ICC, Special Tribunal for Lebanon (STL), and Special Court for Sierra Leone (SCSL)) is currently a trial attorney in the Law Office of Morris A. Anyah, LLC in Chicago, Illinois, U.S.A., having been in this position since September 2013. His training and background are in the common law legal tradition. He has worked in the Office of the Prosecutor for the International Criminal Tribunals for Yugoslavia and Rwanda (ICTY and ICTR); as defence counsel at the SCSL (including as Lead Counsel in the *Charles Taylor* appeal); and as legal representative for victims at the ICC (*Kenyatta*). Mr. Anyah's primary language is English, and he has some knowledge of Dutch and Igbo. Mr. Anyah is a dual Nigerian-U.S. national and while his residence, legal practice and accreditations are currently in the United States, he was born in Nigeria and has declared his primary nationality to be that of Nigeria.

48. Mr. Anyah distinguished himself through his detailed knowledge of the Rome Statute, evident appreciation for the role of both diplomacy and meticulous trial preparation in the work of the ICC, and his understanding of the Court's strategic context. He has extensive practical experience as appellate counsel before the SCSL (*Taylor*), as prosecutor and legal adviser in other international criminal tribunals, as well as with different legal systems in a variety of countries. While his managerial experience is limited to smaller teams, he provided a convincing understanding of the essential guiding principles relating to delegation, communication, integrity and financial stewardship. In the interview he presented himself as exceedingly well prepared and knowledgeable, as well as calm, thoughtful and deliberate in his responses.

B. FERGAL GAYNOR (Ireland)

49. Fergal GAYNOR (LL.B., M.A., admitted to the practice of law in Ireland, England and Wales) is currently the Reserve International Co-Prosecutor at the Extraordinary Chambers in the Courts of Cambodia (ECCC), having been in this position since March 2020.²³ His training and background are in the common law legal tradition. He has worked as Head of both the Syrian Regime and Myanmar teams at the Commission for International Justice and Accountability; as Senior Assistant Prosecutor in the ECCC; as lead counsel for victims at the ICC (*Kenyatta*); and as a trial attorney in the Offices of the Prosecutor at the ICTY and ICTR. Mr. Gaynor's primary language is English, and he has a strong working knowledge of French and Spanish.

²³ After having been selected for interview, Mr. Gaynor informed the Committee of several updates in respect of his curriculum vitae. Specifically, he informed the Committee that he had left the Commission for International Justice and Accountability (CIJA) on 31 December 2019 and had been appointed as the Reserve International Co-Prosecutor at the ECCC in March 2020. He also advised that, in addition to his role as Lead Counsel for 82 victims at the ICC in the situation in Afghanistan, he was also acting as Lead Counsel for 770 victims in the Situation in Palestine.

50. Mr. Gaynor possesses a 360-degree understanding of the international criminal justice system. His work as prosecutor, defence and victims counsel as well as with civil society has provided him with a clear view of the challenges faced by the ICC, as well as a solid vision for addressing them. His work on crimes in Syria and Myanmar shows a deep appreciation for creating the necessary evidentiary basis for successful prosecutions, including through credible linkage evidence and sound jurisdictional basis. Despite his relatively limited management experience, Mr. Gaynor's understanding of the principles of financial stewardship, accountability and the building of diverse and empowered teams instills confidence in the Committee that he would succeed in the management challenges in the OTP. His interview showed him to be thoughtful, thorough and proactive, with a clearly articulated vision for the future of the Court and the demands of change management.

C. SUSAN OKALANY (Uganda)

51. Susan OKALANY (LL.B.) is currently a judge of the High Court of Uganda and a judge in the International Criminal Division of that Court, having been in this position since 2016. Her training and background are in the common law legal tradition. She has served in the Directorate of Public Prosecutions in Uganda in roles of increasing responsibility, including as Head of the Department of Gender, Children and Sexual Offences and as lead prosecutor on the *Kampala Bombings* case. Ms Okalany's primary languages are English and Ateso, and she speaks Swahili, Luganda and Lao.

52. Ms Okalany has forged an impressive career under challenging circumstances, steered by a clear vision of the rule of law and justice for victims and a strong streak of independence in the face of political pressure and traditional gender roles. Although her prosecutorial and judicial experience is limited to the domestic arena, her experience in prosecuting atrocity crimes and addressing sexual and gender-based violence are highly germane to the substance of the Court's work. Like other candidates, her managerial experience is limited to smaller teams, but she demonstrated a clear understanding of the competencies required, including financial stewardship, as well as a proven track record of embracing new challenges. In the interview Ms Okalany provided candid and thoughtful responses from the perspective of a situation country; an evident openness to learning and adapting; and resilience in the face of pressure.

D. RICHARD ROY (Canada)

53. Richard ROY (LL.B.) is currently Senior General Counsel with the Public Prosecution Service of Canada (PPSC), having been in this position since 2010. His training and background are in both the civil and common law legal traditions. He has served with the PPSC in increasingly responsible positions since 2001, including as prosecutor for crimes against humanity, war crimes and genocide (*Munyaneza* case), and held prior positions with the Federal Prosecution Service (Justice Canada), the Rogatory Commission in Colombia, and the Office of the Attorney General of Quebec. Mr. Roy is trilingual in French, English and Spanish.

54. Mr. Roy is a consummate professional prosecutor and team leader, with extensive experience in successfully preparing and leading complex, multi-defendant, and high-profile criminal prosecutions, including in the face of intense public scrutiny and political pressure. While his prosecutorial experience is primarily in a domestic setting, he secured rare extra-territorial convictions for genocide (*Munyaneza*) and transnational corruption (*SNC Lavalin/Libya*) and actively engaged with prosecutorial networks around the world, particularly in Latin America. His managerial vision focuses on the development and empowerment of a diverse cadre of professionals, as well as modelling responsible financial stewardship, integrity and accountability. In his interview, Mr. Roy proved himself thoughtful, analytical and candid, with a thorough understanding of the many strands required to deal with complex and evolving situations.

VI. Conclusion

55. The Committee wishes to express its gratitude to the Secretariat of the Assembly of States Parties and members of the technical staff of the Registry for their diligent and professional assistance in the course of this process.

56. The Committee also wishes to express its deep appreciation for the invaluable assistance provided to it by the members of the Panel of Experts, as well as for the professional and collegial cooperation throughout.

57. The Committee notes that the evident interest of civil society and supporters of the Court argues most strongly for their engagement in the further, public, process leading to the election of the Prosecutor. In this context, the Committee notes that due to the virtual nature of the interviews undertaken, there will be a significant underspend in the budget allocated to the Committee's work by the Assembly of States Parties, which it recommends be reallocated to any public engagement portion the Assembly Presidency and the Bureau may decide to pursue in order to introduce the shortlisted candidates to the States Parties and civil society.²⁴

58. Although this is not foreseen in the Committee's mandate, in view of the ongoing Review process and in order to assist the Assembly with similar selection and election processes in the future, the members of the Committee and the Panel of Experts stand ready to assist in whatever further ways may be required by the Assembly, and in view of the experience developed over the course of the past year, to prepare an informal "lessons learned" report, with additional recommendations, including as relates to the vetting of candidates for elected office, if so requested.

Marcin Czepelak
Lamin Faati
Andreas Mavroyiannis
Sabine Nölke
Mario Oyarzábal

²⁴ As at 26 June 2020, the actual expenditure associated with the work of the Committee in 2020 amounted to €12,960. Some additional expenditure is anticipated in relation to the translation of documentation. The total amount approved by the Assembly for 2020 was €44,600.

Annex I: Terms of Reference for the Election of the Prosecutor

(See ICC-ASP/18/INF.2)

Annex II: Vacancy announcement

(See ICC-ASP/19/INF.2/Add.1)

Annex III: Candidate reference material

(See ICC-ASP/19/INF.2/Add.2)
