

## Some Remarks on Integrity in International Justice

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### 1. Teleological Underpinnings of Integrity in International Justice

In October 2017, media revelations sourced from the e-mail account of the first International Criminal Court (‘ICC’) Prosecutor, Luis Moreno-Ocampo, revealed disturbing details regarding his personal conduct during and after his mandate. The veracity of several ethical violations committed by the second-highest ranking ICC official, elected against the legally-binding requirement of ‘high moral character’, was astounding. Accusations against him ranged from assisting a potential suspect during the investigation of the Libya situation, to sharing sensitive investigative information with a celebrity actress. The news reverberated around the globe.

A subsequent policy brief ‘A Prosecutor Falls, Time for the Court to Rise’,<sup>1</sup> authored by directors of four independent organizations working in the field of international justice, further revealed that Mr. Moreno-Ocampo blatantly disregarded applicable ICC recruitment procedures. His administration’s gradual weakening of the Independent Oversight Mechanism’s (‘IOM’) mandate eventually resulted in a malnourished body, with a complicated approval process for initiating investigations and weak transparency as to their outcome.<sup>2</sup> Reporting of misconduct at the ICC continued to be sparse according to ‘Why I Didn’t Report’, a 2021 Twitter campaign by the Women’s Initiatives for Gender Justice and Atlas. It narrates a culture of labelling and gaslighting against female complainants within the ICC – so much so that formal procedures had been vitiated as a legitimate option against misconduct.

Whereas insiders saw a culture of fear, mistrust and intimidation brewing, outside actors gazed at an ICC functioning with a slow yet rigorous resolve to end impunity for core international crimes. Consequently, observers end up with differing perceptions of integrity at – and legitimacy of – international justice institutions. On the one hand, diplomats of States Parties (whose incisive involvement is normally constrained by 3-year rotation) and representatives of civil society organisations that have worked hard to establish the ICC have appeared blind to the lack of integrity displayed by high officials and staff of such institutions, perhaps in part because the legitimacy of elected individuals flows through their association with nominating States and stakeholder organisations. On the other hand, some observers have been appalled by the lapse of judgment displayed by elected officials, and a very small number of them have had the courage to speak up. The field owes the latter a considerable debt. Events have proven them right

<sup>1</sup> Morten Bergsmo, Wolfgang Kaleck, Alexander S. Muller and William H. Wiley, “A Prosecutor Falls, Time for the Court to Rise”, FICHL Policy Brief Series No. 86 (2017), Torkel Opsahl Academic EPublisher (‘TOAEP’), Brussels, 2017 (<http://www.toaep.org/pbs-pdf/86-four-directors/>).

<sup>2</sup> Independent Expert Review, “Review of the International Criminal Court and the Rome Status System, Final Report”, 30 September 2020, para. 285 (‘IER Report’) (<https://www.legaltools.org/doc/cv19d5/>).

in their insistence on “efficiency, competence, and integrity”<sup>3</sup> and that compromising on these legal requirements for political or other short-term gain may prove fatal.

Published on 19 November 2020, the comprehensive anthology *Integrity in International Justice*,<sup>4</sup> co-edited by Morten Bergsmo and Viviane E. Dittrich, was the most tangible outcome of the Integrity Project, a joint initiative of the Centre for International Law Research and Policy (‘CILRAP’) and the International Nuremberg Principles Academy. The Project focussed on individual integrity in international justice and the legally binding character of the ‘integrity standard’ under the Rome Statute of the International Criminal Court (‘ICC Statute’)<sup>5</sup> and in other international courts and tribunals.

The present policy brief reflects on the Integrity Project as expressed through CILRAP’s online Integrity Symposium,<sup>6</sup> and attempts to garner broader attention as to how moral challenges in international criminal justice can be confronted. Section 2 considers some key contributions of the Integrity Project which are now germinating among actors in The Hague and around the world. In Section 3, I reflect on the ‘integrity standard’ in the work of the Indian Supreme Court, integrity challenges in Indian justice, and the standard-setting role of the Indian lawyer Mahatma Gandhi. In Section 4, I consider integrity challenges facing the ICC and its Prosecutor in the coming months and years. The policy brief is informed by my understanding that the ‘integrity standard’ is legally-binding for high officials and staff in international courts and tribunals, and that it should be treated as such both within such jurisdictions and by their States Parties.

### 2. Recalibrating Moral Compasses: Some Contributions of the Integrity Project

By charting essential features of ‘integrity’ through its roots in ancient Greek and Roman texts, Emiliano J. Buis<sup>7</sup> and Hanne Sophie Greve’s<sup>8</sup> chapters both locate and detach the definition and development of the

<sup>3</sup> Rome Statute of the International Criminal Court, 17 July 1997, Article 44(2) (‘Rome Statute’) (<https://www.legal-tools.org/doc/7b9af9/>); Dag Hammarskjöld, “The International Civil Servant in Law and in Fact”, Oxford, 30 May 1961, p. 337 (<http://www.legal-tools.org/doc/64bcae/>).

<sup>4</sup> Morten Bergsmo and Viviane E. Dittrich (eds.), *Integrity in International Justice*, TOAEP, Brussels, 2020 (<https://www.toaep.org/nas-pdf/4-bergsmo-dittrich>).

<sup>5</sup> Rome Statute, Article 44(2), see above note 3.

<sup>6</sup> The Centre for International Research and Policy (CILRAP), “Symposium on Integrity in International Justice”, available under the persistent URL <https://www.cilrap.org/integrity/>.

<sup>7</sup> Emiliano J. Buis, “Physically Upright, Morally Sound: Recreating Ancient ‘Integrity’”, in Bergsmo and Dittrich (eds.), 2020, see above note 4, p. 47 (<https://www.legal-tools.org/doc/ixs3ka/>).

<sup>8</sup> Hanne Sophie Greve, “*Integer Vitae*: Christian Sources and Reflections on Integrity in Justice”, in Bergsmo and Dittrich (eds.), 2020, see above note 4, p. 85 (<https://www.legal-tools.org/doc/8k6pju/>).

‘integrity standard’ in respectively Greek-Roman and Christian thought. The etymology of opposing vocabulary flowing from the vice-virtue dichotomy so identified allows the reader to construct a multifaceted definition of ‘integrity’ in terms of political, social and religious dimensions. Each of these accounts create an unconscious-unsaid plurality of virtues. The ‘integrity standard’, thus, may be traced as arising out of conduct that tends to approach such virtues. In the same breath, Adel Maged’s chapter<sup>9</sup> supplements evidence from the *Sharf’ah* of a pan-cultural basis for the legally binding nature of the ‘integrity standard’. In this manner, Part I of NAS 4 projects global, philosophical, religious, and role-model perspectives on the origins and meaning of ‘integrity’, and, by that, offers a conceptual depth to the discussion (which the editors rightly signal that they would have liked to broaden further, even if the book already counts 1,192 pages).

Of the major themes explored by *Integrity in International Justice*, whistleblowing and inquiries are of most relevance against the current trend of obtrusion into free speech protections and anti-corruption efforts in different parts of the world. The rampant abuse of India’s seditious and anti-terrorism laws has triggered an ongoing reconsideration of the constitutional validity of the former.<sup>10</sup> Indonesia’s Novel Baswedan, former senior Investigator of the Corruption Eradication Commission, was also subjected to a systematic campaign of fabricated charges, an allegedly retaliatory acid attack, and a dismissal from civil servant status.<sup>11</sup> The prosecution of the Maldives’ Gasim Abdul Kareem, whose disclosure of government bank statements effected the voting out of the authoritarian President, Abdulla Yameen, is yet another example.<sup>12</sup> Parallels from the following chapters may be drawn in addressing this culture of governmental and corporate crackdown on whistleblowing.

Jan Fougner’s chapter<sup>13</sup> argues, in particular, that only a culture of transparency can reinstate lost public confidence in international justice institutions. While classifying misconduct of a superior as misconduct ‘against the institution’, rather than misconduct ‘of the institution’, Fougner favours openly accepting and addressing misconduct rather than remaining silent or discreet in an attempt to uphold the institution’s reputation. Cyril Laucci<sup>14</sup> further highlights failures of ICC-management to promulgate procedures for the implementation of the Anti-Fraud and Whistleblowing and Whistleblowing Protection Policies, leaving whistle-blowers without adequate protection against retaliation. It may be suggested that those desiring an end to impunity ought not to allow themselves to debilitate structural safeguards and stifle attitudinal reforms within international justice institutions.

In nourishing an institutional culture of ‘integrity’, *Integrity in International Justice* offers snippets of policies, loopholes, and plugins from insiders of international criminal institutions, having experienced inadequacies within these institutions first-hand. Brigid Inder’s chapter<sup>15</sup> contains, perhaps, the most comprehensive account of the successes and failures in the various facets of institution-building at the ICC. She asserts a systemic indifference and a lack of foresight as to

<sup>9</sup> Adel Maged, “*Sharf’ah* Sources and Reflections on Integrity”, in Bergsmo and Dittrich (eds.), 2020, see above note 4, p. 93 (<https://www.legal-tools.org/doc/hvp9fd/>).

<sup>10</sup> See also Justice Madan B. Lokur, “Reflections on Freedom of Expression, Hate Speech and Seditious in India”, CILRAP, 8 April 2022 (<https://www.cilrap.org/cilrap-film/220408-lokur/>).

<sup>11</sup> Jonathan Emont, “‘I Don’t Want to Be Sad’: Indonesia’s Top Graft Buster Talks to TIME From His Hospital Bed”, *Time*, 13 June 2017.

<sup>12</sup> “Maldives Prosecutor General Should Dismiss Case Against Whistle-blower”, *Transparency International*, 11 November 2016.

<sup>13</sup> Jan Fougner, “On Whistle-Blowing and Inquiry in Public Institutions”, in Bergsmo and Dittrich (eds.), 2020, see above note 4, p. 605 (<https://www.legal-tools.org/doc/ldh4f/>).

<sup>14</sup> Cyril Laucci, “The Wider Policy Framework of Ethical Behaviour: Outspoken Observations from a True Friend of the International Criminal Court”, in Bergsmo and Dittrich (eds.), 2020, see above note 4, p. 845 (<https://www.legal-tools.org/doc/rz9zv6/>).

<sup>15</sup> Brigid Inder, “Conformity, Leadership and the Culture of Integrity at the International Criminal Court”, in Bergsmo and Dittrich (eds.), 2020, see above note 4, p. 309 (<https://www.legal-tools.org/doc/eq8jgb/>).

the reasons behind, *inter alia*, the delayed adoption of the Code of Conduct for the Office of the Prosecutor,<sup>16</sup> the inability to translate strict observance of the role of UN international civil servants within the ICC ecosystem, and the disabling of key oversight mechanisms, such as the Office of Internal Audit. Inder argues for a shift in the ICC’s approach from a mission-driven to a *value-oriented institution* as a first step to restoring ethical integrity.

A value-oriented institution necessarily implies institutional loyalty. This cannot merely be achieved by the induction of competent personnel and division of staff roles. Due to their close proximity to figures of authority, staff may tend to owe allegiance not to the institution, but to the persons in charge. But they are not the same. A rewiring of loyalty towards one’s office of employment is thus imperative for ensuring post-appointment and -election integrity. The high officials should themselves take the lead, starting with their manner of communication. The chapter written by Richard J. Goldstone<sup>17</sup>, the first Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (‘ICTY’) and the International Criminal Tribunal for Rwanda (‘ICTR’), extends this rhetoric to the language or demeanour used *inter-se* each office of the institution, governmental and non-governmental agencies, and the media. The frankness and candour contained in his account serves as a one-of-a-kind resource on diplomatic interactions for those who serve or will serve as international justice leaders.

Several chapters of *Integrity in International Justice* articulate *lacunae* in addressing sexual or gendered violence committed in the workplace. Brigid Inder provides a detailed dissection of the 2005 Administrative Instruction on Sexual Harassment<sup>18</sup> in terms of its casual and trivializing tonality, the subtle victim-blaming orientation, and its ignorance of power imbalances as an impediment to reporting, among other things. Dieneke T. de Vos’ chapter<sup>19</sup> offers an enhanced infrastructure for addressing sexual harassment in the workplace in the form of the 2018 United Nations System Model Policy on Sexual Harassment (‘Model Policy’).<sup>20</sup> The Model Policy itself is hailed for its acknowledgement of the intersectionality of *power inequalities* and its acceptance of the survivor as the driver of the remedial process. Ultimately, these measures set the threshold for ‘organizational tolerance’, a significant contributor to institutional integrity.

The ‘integrity movement’ has commenced sowing its roots deep into Asian judicial mechanisms. November 2021 witnessed an unprecedented boycott by 18 of the 19 justices of the Supreme Court of Nepal in protest against Chief Justice Cholendra Shumsher Rana. Prompted by allegations of illicit executive influence, favouritism in case allocation, and refusal to list writs against persons constitutionally appointed by the Chief Justice, the 18 justices raised an unequivocal demand for resignation by the Chief Justice.<sup>21</sup> The establishment of the Philippine Judicial Integrity Board (a panel composed of retired justices tasked with investigating intra-judiciary corruption) in 2021, after nearly two years of its conceptualization, marks a change in the overall accountability framework in the nation’s administration.<sup>22</sup> A significant hiccup

<sup>16</sup> ICC, Code of Conduct for the Office of the Prosecutor, 5 September 2013 (<https://www.legal-tools.org/doc/3el1eb/>).

<sup>17</sup> Richard J. Goldstone, “Prosecutorial Language, Integrity and Independence”, in Bergsmo and Dittrich (eds.), 2020, see above note 4, p. 1065 (<https://www.legal-tools.org/doc/qvw99v/>).

<sup>18</sup> ICC, Sexual and Other Forms of Harassment, Administrative Instruction, 14 July 2005, ICC/AI/2005/005 (<https://www.legaltools.org/doc/hyvqzp/>).

<sup>19</sup> Dieneke T. de Vos, “Institutional Ethics, Individual Integrity, and Sexual Harassment: Recent Developments in Ethics Standard-Setting and Mechanisms at the United Nations”, in Bergsmo and Dittrich (eds.), 2020, see above note 4, p. 515 (<https://www.legal-tools.org/doc/1cj7v1/>).

<sup>20</sup> United Nations System Chief Executives Board for Coordination, “UN System Model Policy on Sexual Harassment”, 2018 (<https://www.legal-tools.org/doc/blueqt/>).

<sup>21</sup> International Commission of Jurists, “Nepal: Protect Judicial Independence and Integrity”, 12 November 2021.

<sup>22</sup> Stanley Buenafe Gajete, “Will the new Judicial Integrity Board root out corruption in PH courts?”, in *Philippine Center for Investigative Journal-*

in its mandate, however, is the self-exemption of the Supreme Court justices from its scope. This has prompted a shift in the narratives of civil society and opposition parties from internally dealing with corruption to demanding independent inquiry by specialized commissions.

### 3. Lessons from India: Constructing an Indigenous Mosaic of Integrity in the Administration of Justice

Amongst tumultuous storms, ‘integrity’ represents the anchor which safeguards against capsizing. In India, the perceived ‘integrity’ of her Supreme Court has allowed people far-removed from its socio-political proximity to seek enforcement of constitutional safeguards. With reference to the Constitution of India (‘Constitution’), the Court equates the ‘living document’ to a laser beam, a guiding light in institution building.<sup>23</sup> The Court has held that democratic values central to our ‘constitutional morality’ are achieved when those in charge of public institutions reflect in their actions the primary concern of maintaining institutional integrity.<sup>24</sup> Even matters of adequate budgeting, including the determination and promotion of the salaries of judicial officers and staff, are considered as integral contributors of institutional efficiency and independence.<sup>25</sup> To this effect, the Court has sought to continually restate the virtues of ‘honesty’ and ‘trustworthiness’, as against those of ‘corruption’ and ‘abuse of power’, as defining the integrity of civil servants.

For instance, in addition to its statutory autonomy and independence, the Indian Supreme Court has emphasized the maintenance of institutional integrity and competence as the primary consideration for the appointment of the Central Vigilance Commissioner.<sup>26</sup> Even with regard to the Securities and Exchange Board of India, the national regulator of India’s securities market, the Court noted that the wide-ranging powers of the institution<sup>27</sup> necessitated the legally-binding nature of the requirement that its Chairman be an individual of high integrity.<sup>28</sup> This standard of integrity has been enforced for all levels of public and judicial administration. For example, for the appointment of constables (the lowest ranking officers in the Indian Police Force), the Court has held that an “employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law”.<sup>29</sup>

Despite these powerful observations made by the Indian Supreme Court, painful travesties are abreast. A case in point is the incident concerning the allegations of sexual harassment made by a junior court assistant against the former Chief Justice of India, Hon’ble Mr. Justice (Retd.) Ranjan Gogoi. Even before such allegations were made public, the junior staffer was allegedly persecuted for rebuffing sexual advances from Justice Gogoi. Not only was the staffer transferred from her post thrice within three weeks, but baseless criminal charges, sanctions and dismissals were also imposed against her family members working in public institutions. Once the allegations were made public, Justice Gogoi convened a three-judge special bench, *headed by himself*, to adjudicate on what was termed a “matter of great importance touching upon the independence of the Judiciary”.<sup>30</sup> Unsurprisingly, the allegations

*ism*, 5 May 2021 (available on its web site).

<sup>23</sup> Supreme Court of India, *Manoj Narula v. Union of India*, 27 August 2014, (2014) 9 SCC 1, paras. 74–76 (<https://www.legal-tools.org/doc/xtex5t/>).

<sup>24</sup> *Ibid.*

<sup>25</sup> Supreme Court of India, *State of Rajasthan v. Ramesh Chandra Mun-dra*, 11 July 2019, (2020) 20 SCC 163 (<https://www.legal-tools.org/doc/9sfl0d/>).

<sup>26</sup> The Central Vigilance Commission is responsible for the enforcement of anti-corruption laws over high officials of the Executive and All India Services, among others; Supreme Court of India, *Centre for PIL v. Union of India*, 3 March 2011, (2011) 4 SCC 1, para. 30 (<https://www.legal-tools.org/doc/a3vqia/>).

<sup>27</sup> Including the inspection of the personal books of any listed public company and the impounding of the proceeds or securities of any under-investigation transaction.

<sup>28</sup> Supreme Court of India, *Arun Kumar Agrawal v. Union of India*, 1 November 2013, (2014) 2 SCC 609 (<https://www.legal-tools.org/doc/icquaw/>).

<sup>29</sup> Supreme Court of India, *State of Rajasthan v. Chetan Jeff*, 11 May 2022, 2022 SCC Online SC 597 (<https://www.legal-tools.org/doc/r5d9gt/>).

<sup>30</sup> Supreme Court Observer, “Sexual Harassment and the CJI” (available on

were dismissed. The in-house panel appointed subsequently upon the request of Justice Gogoi, also dismissed the allegations, and delivered an *ex-parte* report, which was neither made public nor shared with the staffer. These violations of the maxim *nemo iudex in causa sua* have deeply wounded the integrity of the Indian Supreme Court. The realization that a lack of accountability for the top official of an institution percolates to each stratum of the organizational structure renders the bearing of collective responsibility a prerequisite to rebuilding trust.

For renewed inspiration, young professionals, especially those dejected by their experience of corrupt judicial institutions, should turn to the Integrity Project and perhaps some of the intellectual leaders of South Asia. A central figure to draw inspiration from is Mahatma Gandhi, a lawyer revered as the ‘Father of India’, who possessed an extraordinary sense of integrity for which he was renowned globally. Much like Dag Hammarskjöld,<sup>31</sup> Gandhi maintained tireless individual accountability, providing the accounts of each *paisa* (a monetary unit, equivalent to one-hundredth of an Indian rupee) spent by him or by Sevagram, an *ashram* (hermitage) under his guidance. An ardent humanist, Gandhi treated indentured labourers in South Africa as equal clients, and frequently accepted Untouchables or *Dalits* under his aegis, even at the cost of retraction of financial support for the *ashram*. Early in his legal career, Gandhi realized that legal justice involved the pursuit of ‘truth and service’. He posited that the burden of proof upon lawyers was not to prove the innocent as guilty or *vice versa*, but to assist the judge in arriving at the truth.<sup>32</sup> In his book *Hind Swaraj*, Gandhi acutely criticized the practice of lawyers, including those from India, of promoting a litigious culture and needlessly prolonging court involvement for self-interest, a critique which seems relevant to contemporary international justice.<sup>33</sup> He grounded his practice by positioning the afflicted, as opposed to the lawyer-facilitator, at the centre of justice administration. Each young professional, perhaps more so those inhabiting South Asia, should aspire to the indelible integrity that Gandhi exhibited. An integrity of such calibre holds the potential to initiate necessary shakedowns.

### 4. Recent Discourse Surrounding Integrity in Recruitment and Administration

In the aftermath of the Independent Expert Review of the work and functioning of the ICC<sup>34</sup> and the Integrity Project, discourse surrounding the ‘integrity standard’ and the ‘high moral character’ requirement came to the fore. Civil society began viewing the election of the third ICC Prosecutor as an opportunity to effect institutional change. ‘Integrity’ became the watchword during the year leading up to the election.

The Committee on the Election of the Prosecutor was, in that connection, criticized for its handling of the vetting to ensure ‘high moral character’ of candidates. While the electoral process included “questions on the topic of work place or sexual harassment in the interviews, observing both the candidate’s substantive answers and demeanour in response”<sup>35</sup> and detailed checks of reference and publicly sourced information (including social media accounts and criminal record),<sup>36</sup> the Committee itself noted the low possibility of comprehensiveness in mechanisms adopted *ex post facto*. The vetting procedure was seen as tokenistic, rather than a definitive step towards compliance with the

its web site).

<sup>31</sup> In *Integrity in International Justice*, Ambassador Hans Corell draws from the legacy of Dag Hammarskjöld, the second UN Secretary-General, as a global icon for integrity. Hans Corell, “The Dag Hammarskjöld Legacy and Integrity in International Civil Service”, in Bergsmo and Ditrach (eds.), 2020, see above note 4, p. 213 (<https://www.legal-tools.org/doc/dyq3ru/>).

<sup>32</sup> Mohandas Karamchand Gandhi, in *Young India*, 22 December 1927, pp. 427–482.

<sup>33</sup> Mohandas Karamchand Gandhi, *Indian Home Rule*, International Printing Press, Phoenix, Natal, 1910.

<sup>34</sup> IER Report, 2020, see above note 2.

<sup>35</sup> ICC, Assembly of State Parties (‘ASP’), “Report of the Committee on the Election of the Prosecutor”, 30 June 2020, ICC-ASP/19/INF.2, para. 26 (<https://www.legal-tools.org/doc/hpc4ya/>).

<sup>36</sup> *Ibid.*, para. 29.

legally-binding ‘integrity standard’.

Consequently, the Committee has been criticized for failing to review and assess the ‘credible complaints’ it solicited. In fact, the Committee admitted that investigation of received complaints was not carried out as that was not part of its mandate. The Committee and the Assembly of States Parties arguably failed to advance non-onerous recommendations, such as reputational interviews with individuals beyond the candidates’ references.

Perhaps for this reason, incumbent Prosecutor Karim A.A. Khan QC, in his first statement after assuming the role, emphasized the importance of maintaining independence, both from states and collectively from NGOs and civil society.<sup>37</sup> He specifically referred to discharging his duties with “integrity”,<sup>38</sup> while fostering a harassment-free environment by introducing measures such as gender and geographical parity among the upper echelons.

Prosecutor Khan QC, however, must not only practice uprightness in personal conduct, but should invigorate all stakeholders in international criminal justice to give full effect to the ‘integrity standard’. As of the time of writing, the appointment of more than twenty Special Advisers under Article 42(9) of the ICC Statute represents a positive step towards capacity building.<sup>39</sup> For instance, Professor Purna Sen, a specialist in gender equality and sexual harassment, has been accorded the portfolio on ‘Working Climate’. According to the 2021 Report of the Court on Key Performance Indicators, the gender balance amongst non-elected staff has increased (reaching a 49–51 percent split). Similarly, the geographical representation also witnessed an addition of two non-represented States Parties and a reduction of three over-represented parties. The number of those represented in balance, however, still remains at 25 out of 123. Albeit the slow but promising direction of these indicators, they cannot be suggestive of any substantive change in the culture of the Office of the Prosecutor. One may thus ask about other indicators, such as the number of formal complaints against staff and elected officials, the number of disciplinary proceedings instituted, and average timeline of resolution of such proceedings.

But more than anything, we should expect the Prosecutor repeatedly and without hesitation to restate the vital importance of the legally-binding ‘integrity standard’ for the operation of his Office, the work of the ICC, and its effectiveness and reception. He should ensure that no person is hired or engaged by his Office who does not, beyond any doubt, satisfy the ‘integrity’ requirement, also among the Special Advisers.<sup>40</sup> And he should turn every stone to remove existing personnel

<sup>37</sup> ICC ASP, “Mr Karim Asad Ahmad Khan QC sworn in today as the Prosecutor of the International Criminal Court”, 16 June 2021, ICC-CPI-20210616-PR1598 (<https://www.legal-tools.org/doc/yb6ows/>).

<sup>38</sup> *Ibid.*

<sup>39</sup> ICC ASP, “ICC Prosecutor Mr Karim A.A. Khan QC appoints eminent experts as his Special Advisers”, 22 October 2021, ICC-CPI-20211022-PR1621 (<https://www.legal-tools.org/doc/nuqxzs/>).

<sup>40</sup> Cf. Julija Bogoeva, “International Judges and Government Interests: The Case of President Meron”, TOAEP, Brussels, 2016 (<http://www.toaep.org/pbs-pdf/48-bogoeva>); Gunnar M. Ekeløve-Slydal, “ICTY Shifts Have Made Its Credibility Quake”, TOAEP, 2016 (<http://www.toaep.org/pbs-pdf/49-slydal>); and Frederik Harhoff, “Mystery Lane: A Note on Independence and Impartiality in International Criminal Trials”, TOAEP, 2016 (<http://www.toaep.org/pbs-pdf/47-harhoff>). Judge Theodor Meron CMG was appointed Special Adviser on International Humanitarian Law in June 2022, see ICC, “ICC Prosecutor Karim A.A. Khan QC appoints Special Adviser on International Humanitarian Law (IHL)”, Press Re-

lease, 28 June 2022 (<https://www.legal-tools.org/doc/tfd4mp/>).

whose integrity is tainted either by their own conduct or their appeasement *vis-à-vis* the transgressions of the first Prosecutor. The removal of such staff members will probably become one of the yardsticks against which the success of the third Prosecutor will be measured. It should be clear to any honest observer that this process of removal has only just begun.

As regards the ICC judges, amendments to the Code of Judicial Ethics were adopted in January 2021, the first amendment after its initial publication in 2005.<sup>41</sup> The amendments, *inter alia*, introduced specific admonitory language delineating the principles of independence and impartiality under Article 3.2. New additions to Article 5 also make particular reference to the ‘integrity standard’. Article 5.5 now addresses the practice of horse-trading by obligating the judges of the Court to act with probity and integrity in all aspects, including the election of fellow judges to administrative positions. An amendment to Article 12 bestows binding nature upon the Code by deleting previous references to its advisory character. It now extends such binding effect to former judges in addition to currently serving judges. Previously, such disciplinary proceedings could only be initiated against staff members, and not appointed officials.<sup>42</sup> Applied in such manner, the Code, if enforced, could serve as a tool in ensuring integrity and accountability. Notwithstanding these developments, without an emphasis on exposure and rectification of issues, a sigh of relief may be premature.

The present policy brief attempts to serve as a mirror for both civil society and international justice institutions in furthering introspection. Each should realize their role towards the larger purpose of justice administration and forego an approach of self-interested participation. Constant vigilance and inquiry of integrity violations is required. There is mounting critique of selectivity in the prosecution of international crimes. Mere denial is fruitless. The legitimacy of, and public confidence in, high officials and judicial institutions depend upon the ‘apprehension of bias test’; that is, “justice should not only be done but should manifestly and undoubtedly be seen to be done”.<sup>43</sup> With the initiation of an investigation into the Ukraine situation, the incumbent Prosecutor, and the ICC, stand to experience increased geopolitical influence. Here, an unflinching and consistent prosecutorial policy may reinspire trust in the institution. To achieve this, the Prosecutor should consolidate the moving parts of prosecuting international crimes, with the ‘integrity standard’ serving as the glue that binds it all.

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<sup>41</sup> ICC, Code of Judicial Ethics, 19 January 2021 (<https://www.legal-tools.org/doc/3e1x47/>).

<sup>42</sup> Bettina Julia Spilker, “Codes of Judicial Ethics: An Emerging Culture of Accountability for the Judiciary?”, in Bergsmo and Dittrich (eds.), 2020, see above note 4, p. 741 (<https://www.legal-tools.org/doc/z9x625/>).

<sup>43</sup> ICTY, *Prosecutor v. Furundžija*, Appeals Chamber, Judgement, 21 July 2000, IT-95-171-A, para. 195 (<https://www.legal-tools.org/doc/660d3f/>).



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