

ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

QUESTIONNAIRE

A. Nomination process

1. The Statute requires every candidate for election to the Court to have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings or established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.

Could you please describe your experience and competence in the areas specified? For how long? In which capacity?

Answer 1

I have established competence in criminal law and procedure and have the necessary relevant experience as an advocate, investigating prosecutor, and as a judge, thus fulfilling the requirements of article 36 (3) (b) (i). In 2001, I started my career as an advocate in criminal defense at the Mongolian Advocate's Association specializing in juvenile crimes and human trafficking, particularly in crimes involving women and children with the purpose of sexual exploitation. Going forward, since 2004, I have served as an investigating prosecutor at the Investigation Unit of the General Prosecutor's Office for two years and was primarily responsible for investigating crimes committed by judges and other judicial officers, prosecutors, police officers and special agents such as intelligence agents, special service agents and court marshals. My most substantial work is dedicated working in the capacity of a Judge for the past fourteen years. In the course of my career as a judge from 2006 to 2012, I served on the bench of a first instance court, the Sukhbaatar District Court. Between 2012 and 2015, I worked at the Capital City Court of Appeals and in 2015, I was appointed as a Judge at the Criminal Division of the Supreme Court of Mongolia, my current place of employment.

The above mentioned professional expertise serves as an evidence to the attained elaborate multifaceted nature of my professional competence in criminal law and procedure. By assuming key positions in criminal proceedings starting from working as an advocate, prosecutor and then transitioning into the tenure of a judge, a professional capacity where I have gained the most substantial experience to this date. I personally believe that the professional experience accumulated serving in these positions as well as my extensive employment as a judge in all instances of the judiciary of Mongolia satisfy specific requirements stated in the Statute.

2. Do you have any experience or competence in handling litigation or inquiring or investigating into issues related to violence, discrimination, sexual assaults, or other similar conduct, inflicted on women and children? In which capacity?

Answer 2

As I mentioned before, my career as a jurist started from taking position of an advocate handling juvenile crimes and working on human trafficking cases. One of the outcomes of difficult socio-economic conditions formed after the collapse of legal and political system in Mongolia in 1990s was the increase of illegal activities that subsequently

undermined the security of the most vulnerable groups of the society, which were predominantly women and children. Having served as a victim's counsel specializing in crimes of human trafficking involving woman and children with purpose of sexual exploitation, I have participated and defended the rights of women and children in many complex criminal cases involving multiple accused with multiple counts, and multiple victims; as well as cases concerning implicate legal matters, including issues surrounding international law, criminal law, and Constitutional law.

My involvement in this area was both as a legal counsel and in a capacity of a judge. I want to reinforce the fact that human trafficking cases, involving women and children constituted abundant part of my work as a judge. As such, I have accumulated significant experience in defending, managing and presiding over complex criminal cases related to the rights of women and children. Also, sufficient part of my work comprised of numerous cases concerning crimes of serious sexual and gender based violence and multitude of cases involving rape, enforced prostitution and sexual slavery. As a judge, I have always aspired to protect the rights of the weak and those falling under the category of vulnerable persons when the victims of such crimes, who are women and children, deserved more attention.

3. Have you ever been investigated for, or charged with, allegations of corruption, criminal or administrative negligence or any other similar misconduct, including sexual harassment? Was there a conclusive determination?

Answer 3

I have never been investigated for, or charged with, allegations of corruption, criminal or administrative negligence or any other similar misconduct, including sexual harassment.

B. Perception of the Court

1. What would be the main criticisms you are aware of in relation to the Court's proceedings?

Answer 1

Firstly, I believe that the one most serious criticism surrounding the ICC since its establishment until today is the freedom from political influence. Considering that the Court still lacks competent protection from political influence, ICC is capable of being used as a machine for the unjust prosecution and unfair targeting of some leaders of some states. This suggests that justice at the ICC is unduly affected by the political mandate of nations. For instance, a rise in referrals from the U.N. Security Council, a highly political body, could potentially undermine ICC's reputation. Furthermore, the SC's referrals have exacerbated double standards beyond the inequalities already existing in the UN system. Respectively, not all cases of gross violation of human rights have been referred to the ICC due to a veto by one of the five permanent members.

Second major criticism is the ICC's alleged bias against Africa. The fact that the prosecutor's office has instituted criminal proceedings only for crimes perpetrated on the African continent and has conducted proceedings against three heads of states from Africa has generated allegations of such. It has also led to the implementation of a policy of non-cooperation by the African Union, adopting a range of non-cooperative measures towards the ICC, including the ICC withdrawal strategy in 2016. This development is very unfortunate, as the African states have undoubtedly been the

greatest proponents and supporters of the ICC, as they have contributed greatly to the ICC's conception, establishment, and cooperation with it.

Finally, I have observed that due to the complexity of the cases and procedures before the ICC, the large number of victims, and other contributing external factors such as lack of cooperation and intimidation of witnesses, the duration of criminal proceedings before the Court are too long. Despite some objective reasons, the excessive length of proceedings conflicts with the fundamental right to be tried within a reasonable time. From the perspective of the right to a fair trial, such length cannot be justified.

2. Do you have any suggestions on changes that could be proposed in order to improve the perception of the Court in the eyes of the international community?

Answer 2

I would say that questions one and two are closely interrelated with each other because of some persisting criticisms, which could potentially undermine reputation of the ICC before the international community.

The ICC is operating in a highly political environment, making the independence of the ICC from political pressure quite imperative. Maintaining strict compliance of robust mechanisms stipulated in the Rome Statute provides ensuring no undue political influence can be exercised over the ICC. This includes implementing two major elements such as applying certain institutional safeguards reinforced by the Rome Statute to a full extent, which protect the independence of the institution, as well as strengthening the independence of the Judges of the Court.

At this time I would also like to emphasize the issue concerning the concentration of cases facing investigations and trials by the ICC. The independence of the Court as an institution is particularly relevant when it comes to the selection of situations that are to be investigated and brought to trial. In the future the ICC's focus should transition from African cases to cases concerning parts of the world, which are most affected by the atrocities, and it is evident that the ICC is currently making every effort to attempt at this. In recent years, the ICC has opened several investigations in situations outside Africa, and, in my personal opinion, this shift in focus is fortunately observed in the countries situated in Asian region.

Although there has been an increase in number of ICC situations involving Asia and the Court has the ability of acquiring extended jurisdiction over crimes when part of the criminal conduct takes place on the territory of a State Party, many atrocities in Asia are still currently occurring without ICC's intervention. It is also important to emphasize that Asians still remain to be the most underrepresented population to be protected by international justice system. This might create the perception of selective justice and the ICC's inability to fulfil its tasks.

Lastly, the States Parties and the judges have to continue to search for a legislative solution for speedier and more efficient criminal proceedings as well as for an improvement in the modalities for a large number of victims to participate in the proceedings. The ICC is the first international criminal court, whose judges do not have competences to adopt rules of procedure and evidence because this competence is given to the State Parties. Case management still remains a major challenge. Timely and thorough investigations on prioritized crimes would avoid collapsing cases at the trial stage and improve the speed and quality of proceedings and judgments.

Continuing education and training for all the arms of the ICC is absolutely necessary as it would improve through working methods and output.

3. Which are, in your view, the most important decisions issued by the Court in the past years, that have had an important impact in relation to its perception *vis-à-vis* the States Parties and the public? Could you give and explain at least one positive and one negative example?

Answer 3

In my personal view, I would like to highlight last two decisions taken by the competent organs of the Court related to the situations in Bangladesh/Myanmar and Afghanistan.

The fact that both of these situations involve Asian region demonstrates that the ICC has started making visible efforts to regard Asia-Pacific region as a potential territory, which require international attention from ICC and where atrocities are currently occurring.

On 14 November 2019, Pre-Trial Chamber III of the International Criminal Court authorised the Prosecutor to proceed with an investigation for the alleged crimes within the ICC's jurisdiction in the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar. The Chamber concluded that the Court may exercise jurisdiction over crimes when part of the criminal conduct takes place on the territory of a State Party. While Myanmar is not a State Party, Bangladesh ratified the ICC Rome statute in 2010. The decision of the Chamber is unique not only in terms of the way it has proved that The Rome Statute is a valuable framework for delivering justice to indigenous groups, but also due to the fact that it has opened up possibilities of further development of legitimate enhancing of the ICC jurisdiction within the international justice framework. In order to be an effective and credible back-up, the Court needs to be able to take part in all situations of crimes in an equal and non-discriminatory manner. International justice cannot be selective. The ICC needs to become truly universal in this sense.

I would like to identify ICC Pre-Trial Chamber II's decision on 12 April 2019 as not one of the greatest examples undertaken by ICC in relation to its perception *vis-à-vis* the States Parties and the public. This particular decision has unprecedentedly refused to authorize an investigation into alleged war crimes and crimes against humanity committed in Afghanistan. The judges cited that an investigation into the situation in Afghanistan at this stage "would not serve the interests of justice" because the state party was unlikely to cooperate. In my opinion, the Chamber did not repudiate with sufficient ground the Prosecutor's request seeking authorization for an investigation, taking into account the facts on the ground: this means lack of willingness and lack of capacity of the state party's national judicial institutions to investigate war crimes. Office of the Prosecutor has argued in its request that the ICC's investigation would "serve the interest of justice" in Afghanistan underlining the fact that "the limited prospects for accountability at the national level" and continuation of war crimes and crimes against humanity are seriously "in favor of an investigation." However, after the Office of the Prosecutor submitted their request, the court was faced with strong reactions and threats of US sanctions. Emphasizing the importance of victims' right to appeal, most of amicus briefs focused on the incorrect interpretation of the Pre-Trial Chamber II about the provisions of article 15 of the Rome Statute on the "interests of justice". They argued that "taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would serve the interests of justice". Further, these appeals stood that the Pre-Trial

Chamber misused its authority by limiting the scope of investigation and overlooking the victims' interests and hope for justice.

Since ICC's history of being governed by the Rome Statute for the past 20 years as the world's first permanent international criminal court, there is a high expectation that the Court should be a fair, robust institution, which is well adjusted to meet the challenges which may or may not inevitably arise when it investigates allegations of crimes committed by powerful states or non-state actors.

C. Judge's independence

1. What in your view should be the relationship between a Judge and the authorities of his or her country of origin? Similarly, how do you envisage your future relationship with bodies such as universities, courts or non-governmental organizations with which you have been involved or to which you have been affiliated, if elected to the ICC?

Answer 1

The independence of a Judge of an international tribunal shall not be undermined by any inappropriate or unwarranted interference from a State of which the judge is a national. It is the duty of all governmental and other institutions to respect and observe the independence of the Judge. Nevertheless, there is still a disparity between exercising these principles and current reality, which demonstrates that these principles should be firmly embedded. Throughout the history, the government has always had its own interests in a judicial process, particularly in anticipating that court decisions will potentially influence the interests of the State or States they have friendly relations with. In my view, during the tenure of serving as a Judge of the Court one should completely disregard political interests of the country of origin and refrain from any situation, which might question and compromise the Judge's ability to properly perform judicial duties in an impartial manner, while interacting with government officials and authorities. The judge is then to refer to the specific ICC statutes and regulations imposing ethical standards on matters concerning conflict of interest, particularly within the context of maintaining appropriate relationships between a Judge and authorities of the same origin. I would not hesitate to claim that the Judge would have to suspend his/her rights as a citizen of the home State and temporarily refuse the right and duties provided by the citizenship in order to maintain the mindset of an international citizen, who is impartial in its very sense when dealing with authorities of the home State. Nevertheless, it is also important to note that such affiliation will not serve as a prejudice to the obligations of an international judge to encourage own State to cooperate and support the ICC in this sense.

In assessing the propriety of one's proposed conduct, a Judge should pay close attention to consider all relevant statutes and regulations outlined by ICC when liaising with institutions such as universities, courts or non-governmental organizations as it largely depends on the agenda of such bodies.

2. In your view, can a Judge participate in a trial involving a national from his or her country of origin? Why?

Answer 2

Sure, in accordance with the Basic Principles on the Independence of the Judiciary by UN a judge shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason

regardless whether the judge shares a common citizenship with the defendant. Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects. Judicial independence is the responsibility imposed on each judge to enable him or her to adjudicate a dispute honestly and impartially on the basis of the law and the evidence with the complete liberty of the judge to hear and decide the cases that come before the court; no outsider, whether the government, pressure group, individual or even another judge should interfere, or attempt to interfere, with the way in which a judge conducts a case and makes a decision.

3. Which jurisprudence/decisions do you consider necessary, useful and appropriate to be considered during proceedings at the ICC? From national courts? From international courts? From Human Rights bodies?

Answer 3

All jurisprudence/decisions are important to a judge for taking proper rulings on a particular case, however I would focus more on hierarchy of maintaining an order of jurisprudence starting from Human Rights bodies, then transitioning to the next level of hierarchy, which are comprised of the decisions produced by international courts and as a last step, considering decisions from national courts.

4. In your view, what should be the approach of an independent Judge when faced with precedents established by the Appeals Chamber of the Court?

Answer 4

In national legal systems, precedent constitutes the starting-point of judges' reasoning. Most of the time, judges hew closely to precedent for purposes of legal certainty and for fear that their decisions might be challenged before higher instances. The extent to which international courts and tribunals use prior judgments as a basis for decision making has been a subject of increasing scholarly interest.

In contrast to the charters, statutes, laws and agreements of most other prominent international tribunals, Article 21 specifically sets out the applicable law for the Court.

Under this hierarchy, the Court must apply sources of law in following orders as the Rome Statute, the Elements of Crimes, Rules of Procedure and Evidence which are documents adopted by the ICC Assembly of States Parties, and if they do not adequately address an issue, Article 21(1) (b) requires the Court to then, apply applicable treaties and the principles and rules of international law. The Court must apply the mentioned sources of law. In contrast, the Court may, but need not, apply the principles and rules of law as interpreted in its own decisions.

Finally, the main requirement for the application of sources of law by the ICC is adherence with internationally recognized human rights and impartial decisions regardless of race, gender, language, wealth, age, colour, religion or belief, political or other opinion, national, ethnic or social origin, birth or other status.

5. Do you consider that a Judge or a Chamber of the Court, in order to ensure efficiency, should be allowed to implement innovative procedural practices? If yes, please give examples.

Answer 5

From my point of view, a Judge or a Chamber of the Court, should not be allowed to implement innovative procedural practices. The ICC is the first international criminal court, whose judges do not have competences to adopt rules of procedure and evidence, currently this competence is given only to the State Parties.

6. Are you used to working as part of a team? How do you envisage your working relationship with other Judges from different backgrounds and from different legal systems? How would you deal with a disagreement in relation to a certain aspect of a decision? What are your views in relation to writing separate concurring and dissenting opinions?

Answer 6

My answer for the first question is yes. The collegiality, in Mongolia, with its civil law traditions, is one of the basic principles which should be abided during judicial process and this principle has been the very fundament in my professional character as a judge during my past fourteen years of service in Mongolian judiciary.

I have acquired substantial amount of knowledge on common law system while completing an LLM program at Brigham Young University and continued with internship at the Fourth District Court of Provo in the USA. Although, historically Mongolia has always belonged to a civil law system, due to recent major judicial reform, Mongolian criminal justice system has adopted multiple elements from common law jurisdiction. Due to extensive knowledge of the common law system, I believe there will be no misunderstandings or disagreements with the representatives from common law jurisdictions. If I face some disagreements with other Judges I will always settle it with a spirit of cooperation and collaboration to preserve collegiality among the Judges of the Court.

Personally, I am brought up as a judge in a judicial culture favouring unanimous decisions, together with an understanding of the need to ensure that separate opinions are only used when it is truly impossible to come to an agreement between the judges, and it has led all judges in my country to maintain a cooperative approach during important times of decision making.

Indeed, in many of the States where separate opinions have been introduced, this has not led to a less cooperative state on the part of judges. Instead, where judges feel a strong duty of loyalty to their institution, the introduction of dissenting opinions does not necessarily weaken the collegiality of the deliberations.

7. In which situations, in your view, should a Judge of the Court recuse himself or herself from a case?

Answer 7

In my opinion, making the solemn undertaking required by article 45 of the Rome Statute of the International Criminal Court and rule 5 (1) (a) of the Rules of Procedure and Evidence, any judge of the ICC takes solemn obligations to perform his or her duties and exercise his or her powers honourably, faithfully, impartially and conscientiously, in this situation the judge should not disqualify himself or herself on the general grounds as “his impartiality might reasonably be questioned” despite situations when the procedural law requires recusing himself or herself on particular following grounds in the instances when the judge has previously served as a lawyer or witness concerning the same case or when the judge or a member of his or her immediate family has an interest in the decision of the case.

4 Workload of the Court

1. Are you prepared and available to serve at the commencement and for the duration of your term, if elected and if called to work at the Court full-time?

Answer 1

Yes, I am fully prepared to serve both at either the commencement as well as for the duration of my term if called to full-time work at the Court.

2. In the event you are not called immediately to work full-time at the Court, are you prepared to do so only as of the moment when you are requested to do so, knowing that this may mean a delay of several months or a year or more from the commencement of your term as judge?

Answer 2

Yes, I understand that I may not be immediately called to work full-time at the Court and it may take some time before the commencement of my term as a judge.

3. Work as a Judge of the ICC frequently involves many hours a day, including into the evenings and over some weekends. Holidays can only be taken at fixed periods during the year when, for instance, there are no hearings. Are you prepared for that?

Answer 3

Yes, it would not pose any problems for me to work extra hours whether into the evenings or some weekends and I would be more than happy to accommodate my holiday leave as per the workload of the Court.

4. What is your approach to writing decisions? Will you undertake this work yourself? To what extent would you delegate drafting to assistants or interns?

Answer 4

I will have no problem in undertaking this work myself. Although, assistants and interns can provide substantial assistance to the judge faced with writing an opinion, judges should be aware of some of the risks and ensure that they ultimately remain accountable for the final versions of judgments at all times. The judge must always take into the account that assistants and interns usually are fresh out of law school, which is why they seldom have practical experience.

I found for myself that it takes more time to work with an assistant's draft rather than writing my own version from the very beginning. However, if judicial assistants are to be involved in the drafting process, they should work under the close supervision and with the guidance of the judge. If judicial assistants prepare complete drafts, there is a risk that the assistant's suggestions might somehow steer the judge's thinking. Therefore, judges should not simply edit draft opinions, which are made available for them. Regardless of the professional capabilities of the assistant, the opinion must always be the result of the judge's work.

5. Which are, in your view, the decisions that could and should be issued by a Single Judge in order to expedite proceedings?

Answer 5

In my opinion, majority of decisions issued by Pre-Trial Chambers can be issued by a Single Judge in order to expedite proceedings. As stipulated in Rule 7 of the Rules of Procedure and Evidence “the designated judge shall make the appropriate decisions on those questions on which decision by the full Chamber is not expressly provided for in the Statute or the Rules”.

Above is one way to reduce lengthy proceedings in order to allow exclusion of some questions from the mandatory list, which have to be deliberated by the full Chamber, therefore providing more opportunities for a Single Judge to make decisions without the involvement of the Chamber.

This can be achieved by making amendments to the rules, permitting the Pre-Trial Chamber, on its own motion or, if appropriate, at the request of a party, to decide that the functions of the full Chamber to be exercised by the single judge.

6. Are you used to working under pressure from States, governmental authorities, national or international organizations, the media or the wider public? Can you provide an example? (19) 6. Are you used to working under pressure from States, governmental authorities, national or international organizations, the media or the wider public? Can you provide an example?

Answer 6

While working as a Judge of all instances of the judiciary it was not uncommon for me to conduct well known trials and work under the pressure from States, authorities, both national and international institutions, and especially under constant attention from the media. In the beginning of 2000s, Savings and Credit cooperatives in Mongolia became insolvent and bankrupt due to borrower’s loan defaults during economic downturn. It was reasoned that insolvency occurred as the result of insufficient control and lack of supervision of these institutions by Financial Regulatory Commission. This lack of supervision also opened windows for criminals to commit fraud by establishing fraudulent financial institutions in order to illegally extract money from civilians. As the result, trust in financial system in Mongolia was lost and clients who deposited their money in those institutions organized movements to pressure the government in forcing responsibility unto the savings and credit cooperatives and claim the right to confiscate their property to compensate the damages and losses allegedly suffered. Although this was not permitted by the Criminal Procedure Code, the government promised to provide permission to place institution’s property under the client’s protection. This tendency to uniformly punish all the individuals who conducted savings and credit operations and seize all of their property was prevalent in society, particularly among government officials. Because of social, and subsequently, governmental pressure, all the directors of insolvent savings and credit cooperatives, among whom were bankrupt individuals, but who were not involved in fraud, were prosecuted on an equal basis. As a judge, I emphasized two things to adhere to in the above mentioned cases: to grant equal opportunity to both parties to present their respective evidence, and ensure that statutory laws were properly applied to the facts of the case. These cases demonstrate the danger of an imbalance between the protections of victims and preserving the rights of defendants, for overzealous protection of victims could lead to miscarriage of justice. I came to realize that it is important to avoid any prejudice to the accused in allowing victims to perform their procedural rights. Any attempt to expand the rights of victims will certainly cause further debate as to the proper balance between the rights of victims and those of the defendant.

7. Are you in good health and able and prepared to work under pressure, given the Court's heavy workload? Have you ever been on leave from your professional duties due to exhaustion or any other work-related incapacity? If yes, for how long?

Answer 7

Yes, I am mentally prepared to work under pressure and accommodate the Court's workload during peak times. In my current employment there are certain periods of time, which require judges to work extra hours and meet important deadlines given little notice and a close deadline. I am accustomed to working such hours whilst maintaining high performance during these busy periods.

No, I have not been on a leave from my professional duties due to exhaustion or other known work related incapacity since the start of my career. I don't view this as a potential issue.

5 Deontology

1. What is your definition and understanding of an independent Judge?

Answer 1

The existence of independent and impartial judges is at the heart of a judicial system that guarantees human rights in full conformity with international human rights law. Obviously, independence of a Judge is a multi-faceted concept in various states depending on cultural and political differences between the states.

Taking into count that Mongolia has experienced a more recent transition into democracy, while other countries have a long standing democratic tradition, I would like to focus on the independence from other governmental actors, which is vitally important considering that it is quite difficult to achieve. In this instance the judge should not be affected by differences of power between litigating parties. Protection of the citizens against the power of the government of the state is obviously central but the issue has a much broader scope. The judge must be incorruptible and able, in a proper case, to decide cases in ways that contravenes both media and public opinion. Here, the prospects for judicial independence are at their lowest: the judiciary is called on to demonstrate independence from both the government and the public, yet it lacks the help of a powerful ally to withstand the pressures that it faces. Judges are often found being unable to fulfill their role as protectors of human rights because they tend to lack individual independence as a judge before legislative and executive powers of the government. Independence means that both the Judiciary as an institution and also the individual judges deciding particular cases must be able to exercise their professional responsibilities without being influenced by the executive, the legislature or any other powerful players. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects. Therefore, even though a person's right to a fair trial may be respected in a particular case when a judge is independent, a State would be in breach of its international obligations if the judiciary were not an independent branch of power.

2. In your view, what would constitute a conflict of interest for a Judge?

The conflict of interest is defined as "a situation of interference between a public service mission and the private interest of a person who contributes to the performance of this mission, when this interest in nature and intensity, can reasonably be regarded as likely to influence or appear to influence the independent, impartial and objective exercise of

his duties”¹. This definition is representative of what conflict of interest constitutes and is an undisputable definition in a sense that it is applicable for judiciary as well.

The judge usually determines whether or not the apparent conflict requires his or her recusal, and the judge's decision is given considerable deference. A judge must himself or herself makes the decision whether it is appropriate to sit previously consulting his or her own emotions and conscience, and pass an "internal test of freedom" from disabling conflicts.

As mentioned in Answer 7 of Judge’s independence questions, by making the solemn undertaking, any judge takes solemn verified obligations to perform his or her duties and vows to exercise his or her powers in manner that is honorable, faithful, and impartial regardless of any circumstances which may or may not affect him or her. In this situation the judge should not disqualify himself or herself on the general grounds as “the impartiality might reasonably be questioned” and should overcome the appearance of bias or a possible conflict of interest and decide the case independently even if the decision results in a personal harm to him or her.

In my view, the decision concerning disqualification should not be predicated on the conflict rules that apply to a judge’s conduct instead, courts should develop a conflict-of-interest jurisprudence that is less restrictive and less categorical than the conflict rules.

In the capital city of Mongolia, which has a fairly small population but where all government services including courts are largely concentrated, it is extremely difficult to create a complete vacuum environment free from any external influences. This is why our judiciary have developed set of ad hoc judicial rules specifically addressing disqualification issues. I believe this approach should serve as a model for addressing conflicts of interest in other jurisdictions.

3. Should considerations relating to race, colour, gender or religion be taken into account when assessing a candidate’s suitability to be a judge at the ICC? Why?

Answer 3

One of four criteria of eligibility for appointment as a judge to the ICC is the diversity. Judges must come from diverse backgrounds and in appointing judges to the court, States Parties must take account of the need for: (1) representation of the principal legal systems of the world, (2) equitable geographic representation, and (3) fair representation of female and male judges. The Rome Statute mandates diversity even in the allocation of judges to divisions. Thus, each division is required to have an “appropriate combination” of expertise in criminal law and procedure and in international law. However, although judicial appointments to the ICC have to be made on considerations of diversity, the diversity rule of the court did not guarantee equal representation of all social groups. Instead, representation of other forms of diversity might also be considered to be advantageous, such as ethnic background, culture or religion. Judges are meant to protect “discrete and insular minorities”, inasmuch as diversity enhances a court’s legitimacy by making it more inclusive. Even though there are tensions between diversity and impartiality on courts, these tensions can be appropriately addressed by staffing judgeships fairly amongst diverse constituencies or groups. Otherwise, the legitimacy of the Court might be undermined by a justifiable fear that judges from

¹ Commission de réflexion pour la prévention des conflits d’intérêts dans la vie publique, Pour une nouvelle déontologie de la vie publique, presented by Jean-Marc SAUVE, 26 January 2011, p. 14.

particular geographic regions that dominate judgeships on the bench might harbor conscious or subconscious biases towards or against certain causes. In order to be perceived as legitimate, the norm of geographic diversity on international courts must embrace true diversity—not just diversity fostered by geopolitical realities.

4. Have you ever been the subject of disciplinary, administrative, criminal or civil proceedings in which your professional or ethical standing has been called into question? If yes, please provide details, including the outcome.

Answer 4

During recent major reforms in legislative, executive and judicial branches of government of Mongolia, initiated by current political and government leaders, detailed inspection of assets and income declarations of all judges without exception from district, appeal and cassation instances had been one of the specific provisions stipulated in the Reform program. The Judges of the Supreme Court of Mongolia, which is the highest judicial office in the State, were subject to more accurate review and analyze provided by The National Anti-Corruption Agency. The Agency's inspection has showed that declarations filed on my own, have been filled out correctly and completely, and have been submitted in due time in compliance with the set procedures and regulations and there are no grounds to believe that the law has been violated. The Anti-Corruption Agency is a special independent government body charged with functions to raise anti-corruption public awareness and education, and corruption prevention activities, and to carry out under-cover operations, inquiries and investigations in detecting corruption crimes, and to review and inspect the assets and income declarations of those required by this law.

5. Have you ever been disciplined or censured by any bar association, university faculty or similar entity of which you may have been a member? If yes, please provide details, including the outcome.

Answer 5

No, I have not been disciplined or censured by any bar association, universal faculty or similar entity in which I was involved in.

6. What measures and decisions would you take, if you are elected, to ensure the effective participation by victims in the proceedings?

Answer 6

Victims have a recognized right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. The fact that victims are included as participants in the process, and not merely the objects of the prosecution's case, is some recognition that an equitable justice requires that victims are heard in dignity, that their concerns and needs are taken into account alongside the rights of the accused allowing for a fair and impartial trial. The broad wording of the provisions on victim participation in the ICC's constitutive documents suggests that the drafters intended to leave wide discretion to the judges in shaping the Court's victim participation scheme.

Participation of victims in the criminal proceedings on equal base with prosecution and accused is a common practice in the Mongolian legal system. However, this might seem unacceptable for common law jurisdictions and might appear as a novice approach for International courts. The victims in Mongolian criminal proceedings possess practically similar rights compared to the rights of defense and prosecution: they can not only

demand compensation but also possess the right to be present at all investigation and adjudication procedures including interrogations, forensic analysis proficiency testings, pre-trials and trials, and to present evidence and express their opinion regarding the degree of the guilt and appropriate sentence of the accused. From 2016 victims and their representatives by the verdict of Constitutional court of Mongolia were allowed to appeal Court decisions all the way up to the Supreme Court. According to Criminal Procedure Code of Mongolia, the damage caused by criminal action to victims must be fully compensated by the defendant. Therefore, all issues regarding damages must be resolved within the criminal proceedings and only a few turn to separate civil law suits.

I strongly believe that my long term experience in judiciary of my home State will be helpful in addressing consideration for victims' interests, defining a more comprehensive, concerted and defined approach towards victim participation. Furthermore, practical issues such as victim participation at the investigation stage and its implications, identification of the applicants, the legal representation of victims, collective participation of large victim groups and the form and modalities of presentations need to be assessed. I am dedicated to find solutions and to take attempts to develop a more consistent approach to victim issues and to devise and establish a meaningful victim participation that respects to the fullest extent possible the rights, needs and interests of victims.

7. In reaching a decision, how would you approach the need to balance the rights of an accused person and the rights of victims, which are both protected by the ICC's legal texts?

Answer 7

One of the most evident problems arising from the participation regime of the ICC is that of striking a balance between victim interests and other interests in criminal procedures. It has often been argued that such participation impedes the equilibrium between prosecution and defence, and that it interferes with the suspected or accused person's right to a fair and expeditious trial. I have had an extended experience being involved in such instances while serving on the bench of a first instance at the Sukhbaatar District Court. I have conducted trials of criminal cases, which were very complex in nature and included a large number of victims, in particular, trials concerning mass fraud cases. However, when the court considers all measures to expand the protection of victims, it is also critical to pay due respect to the rights of the defendants. Maintaining the proper balance between the rights of defendants and the rights of victims is crucial in any criminal justice system.

As mentioned above, the Court has to reconcile two requirements – the participation of victims in criminal proceedings and the right of the defendant to a fair trial. These two needs affect the fairness and legitimacy of any trial. In other words, in any criminal trial the balance between the rights of an accused to a fair trial and the rights of victims have to be properly maintained. Defense lawyers are concerned that the increased participation of victims in trial proceedings and the extension of the rights of victims will endanger the rights of defendants, eventually leading to arbitrary convictions and unreasonably harsh sentences. My personal view remains that the possibility of erroneous conviction will not be significantly increased by the protection of victims or participation of victims in criminal proceedings, especially when the opinions of victims are carefully limited so as not to influence the determination of guilt.

However, as a trial judge I noticed that during trials of complicated and highly-publicized mass fraud cases involving savings and credit cooperatives, with participation of numerous victims, and when the prosecution and victims' legal

representatives are united, while the social pressure and government interests are concurrently merged, in this case, often times defendant's due process right is always endangered in connection with judge's reluctance to make rulings, which might not always work in their favor.

In my professional capacity, I faced such challenges with these types of trials, which required a fine balance between the prosecution and the defense of accused, by reconciling between the two parties and successfully mitigating excessive influence from the above mentioned factors.

6 Additional information

1. Are you fluent in one of the working languages of the Court? Can you speak fluently in public hearings and meetings, and write your own decisions in one of the languages of the Court?

Answer 1

I have an excellent knowledge of English and can speak freely in public hearings and meetings as well as draft and write decisions in the same language.

2. Do you have any other nationality, other than the one indicated in your nomination, or have you ever requested another nationality?

Answer 2

I do not hold any other nationality other than the one indicated in my nomination nor have I requested another nationality at any point of time.

3. Have you familiarized yourself with the conditions of service (which include the remuneration and the pensions' scheme) for the Judges of the Court? Are you aware of, and do you accept, the Terms and Conditions of work?

Answer 3

I hereby confirm that I am acquainted with the conditions of service, which include both the remuneration and the pensions' scheme. I have been made aware and fully accept the Terms and Conditions of work as a Judge of the Court.

4. If elected, are you willing to participate in a financial disclosure program organized by the ICC?

Answer 4

I have no reasons to decline my participation in a financial disclosure program organized by ICC and will be willing to provide any pertaining information upon request.

5. Is there any other information which should be brought to the attention of the Committee and which might call into question your eligibility for judicial office?

Answer 5

No, not to my current knowledge. I believe there is no other information, which might compromise my eligibility for judicial office, that needs to be disclosed to the Committee at this time.

7 Disclosure to the public

1. You have the option to make your answers to this questionnaire public. What is your preference in this regard?

Answer 1

I am willing to make my answers to this questionnaire made public. I don't have any objections to this.

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