

## ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

### QUESTIONNAIRE

CANDIDATE: ÍÑIGO SALVADOR CRESPO (ECUADOR)

#### 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?**

I have developed extensive experience in the fields of international law, international humanitarian law and the law of human rights throughout the course of my career. Much of my career has been devoted to the resolution of international claims before international courts and tribunals as well as through administrative proceedings.

Early in my career (1992-1996), I had the privilege to serve with the United Nations Compensation Commission (UNCC) in Geneva, Switzerland, as Head of the Category “A” Claims Unit, one of the largest claims categories with a significant humanitarian dimension. I was in charge of a 20-plus person team that processed close to 1 million claims filed by persons who, as a result of the Iraqi invasion of Kuwait, were forced to leave Iraq or Kuwait. The mass claims processing methodologies that we developed entailed on the ground fact-finding, analysis of international evidentiary, compensation and humanitarian law and principles, as well as the application of innovative machine technologies.

Following my return to Ecuador in September 1996, I re-entered private law practice, focusing my practice predominantly on international litigation. Notably, I appeared before the International Court of Justice (ICJ) as the only Ecuadorian member of the legal team that advised the Government of Ecuador in the “Case concerning Aerial Herbicide Spraying (Ecuador v. Colombia)”. This dispute was brought before the ICJ in 2008 and settled in 2013, in terms very favourable to Ecuador. I also appeared in 2009 before the Tribunal of Justice of the Andean Community, the highest supranational tribunal of the integration regime maintained by Bolivia, Colombia, Ecuador and Peru since 1969. There, I represented the claimant in an important case that ended in the revocation of an illegally granted patent belonging to a multinational pharmaceutical company.

In July 2018, I was appointed Ecuador’s State Attorney General, a position which I continue to occupy today. One of my key functions is the oversight of Ecuador’s defence in international litigation, including before the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, and investor-State arbitral tribunals

formed under international treaties.

As State Attorney General, I am also responsible for prosecuting crimes where the State is a victim, such as in white-collar crimes (along with the State General Prosecutor, competent for all criminal offenses). In the past two years, I have brought a number of such prosecutions and actively participated in the corresponding trials, including oral hearings, many of which have ended with guilty verdicts against the individuals accused.

In addition to my professional experience in private practice and public service, I also have extensive experience in the academic domain in the field of international law generally, and international criminal law and humanitarian law in particular. This experience is of particular relevance to the work of a judge at ICC, as I have a solid theoretical understanding of the legal issues that are at the core of the work of the ICC.

In 1985, I obtained my Doctor in Jurisprudence degree<sup>1</sup> from Pontifical Catholic University of Ecuador (PUCE) having written and defended a doctoral thesis on the Draft Code of Crimes Against Peace and Security of Mankind—the direct predecessor of the Rome Statute. That was the beginning of my life-long interest in crimes against humanity (a category that then included the crime of genocide), war crimes and the crime of aggression.

Following the entry into force of the Rome Statute in 2002, I published my doctoral thesis along with two of my other articles (*From Nuremberg to Rome. The International Criminal Court's Long Journey* and *Ecuador, the International Criminal Court and International Humanitarian Law*) in a volume titled *International Criminal Law. Studies in Perspective* (Centro de Publicaciones PUCE, 2004).

I have regularly taught courses on international law, international humanitarian law, and international criminal law. Since 2001, I have taught the general course on Public International Law at PUCE's Law School.<sup>2</sup>

In addition, I have served as an instructor in ICRC training courses on international humanitarian law for, among others, military and police personnel in Ecuador (several years starting 2008), Peru (2014) and Bolivia (2015). These courses have addressed, among other topics, the Rome Statute and ICC as they pertain to the activities of security personnel.

As the Director of the Centre for Research in International Law (CIDI) at PUCE, I also facilitated the conclusion of a cooperation agreement with the ICRC in 2014. As a result, PUCE included *International Law of Armed Conflict* and *International Criminal Law* as elective courses in the regular law curriculum. Since that time, I have taught those two courses every other term at PUCE.

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<sup>1</sup> *Doctor en Jurisprudencia* (Doctor in Jurisprudence) was the end degree that Law Schools granted in Ecuador before the Bologna Process nomenclature was adopted in 2010, when the Organic Act on Higher Education was passed. It is not an equivalent to Bologna Process' Ph.D. degree.

<sup>2</sup> Due to my duties as Ecuador's State Attorney General, since July 2018 I suspended my teaching activities at the university.

**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?**

The experience that I have in inquiring into issues related to violence and harassment inflicted on women dates from the time when, as Dean of PUCE's Law School, in an unprecedented initiative, I had the School Council approve a Protocol to Eradicate Violence from the University Classroom, in June 2016. On a number of occasions when the Protocol was put to use, very thorough investigations were conducted, in which the presumption of innocence of the accused as well as the rights of the victims were rigorously respected.

At the Office of the State Attorney General I have recently issued a similar protocol, which is intended to strongly dissuade acts of harassment and sexual violence from occurring, and to punish them appropriately if they do occur.

I am aware that the situations examined and decided upon under the above schemes are, in terms of their gravity and dimension, far from those with which I will be faced if elected to the ICC, but I believe that they have provided me with the necessary sensitivity and exposure towards the rights and needs of the victims of sex and gender-based offenses, which are present in most instances of war crimes, crimes against humanity and the crime of genocide.

**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?**

On 26 April 2019, a complaint was filed with the Office of the General Prosecutor by Mr. Jorge Torres for acts of influence peddling allegedly committed by me and other government officials relating to the nomination of the Public Defender by the Citizen Participation Council, in which a relative of the complainant was a candidate. After a thorough investigation carried out by the General Prosecutor, no evidence was found of the occurrence of any acts potentially involving influence peddling and, consequently, the complaint was dismissed by the General Prosecutor on 8 July 2020, and archived by the relevant judge at the National Court of Justice on 17 July 2020.

**B. Perception of the Court**

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

One of the main criticisms that the ICC faces today concerns the Office of the Prosecutor's alleged political bias when selecting situations for investigation. Many claim that the Prosecutor investigates only situations in countries of certain regions, that only one side of a conflict is investigated, or that the investigations do not reach the persons in the highest positions of influence. Others suggest that the political influence of certain countries is the reason for launching investigations in some cases and not in others.

Another criticism often made is that the Court is not sufficiently efficient and effective. This criticism, which is also made of many international courts and tribunals, is addressed especially to the ICC because of the high expectations arising from its visibility and prestige. The criticism has focused, in particular, on the ratio between the number of convictions and the ICC's general budget, as well as on the elapsed time from the beginning of an investigation until the final decision by the Appeals Chamber.

A third line of criticism in relation to the Court's proceedings has to do with what has been called "witness interference", i.e. the attempt by interested parties to influence, outside the courtroom, the contents of witness testimony, and/or to prevent witnesses from appearing at all, in order to alter the results of the trial.

**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?**

Some changes that may be suggested are evident, and are related to the criticisms described *supra*, but their implementation may not necessarily be simple. For instance, a reduction in processing times can be achieved through an improvement, both quantitative and qualitative, of the combination of technology and human resources at the ICC. The design and purchase of new software and hardware and the training of personnel are costly, and expenditure policies by the State Parties impose harsh budgetary restrictions.

The importance of the ICC's work on providing reparations should be better communicated to the international community. It is true that, in terms of deterring the most serious crimes of international concern and in fighting impunity, it is important to communicate the Court's decision and sentences. But it is no less important for the international community to be made aware of the reparatory aspects of the ICC's decisions, particularly of the ways in which reparation helps heal the wounds inflicted on the victims and the communities to which they belong. In that particular aspect, small videos showing how reparations have impacted the victims' lives could improve the public perception of the work of the Court.

**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?**

There is no doubt that the final decision in *The Prosecutor v. Thomas Lubanga Dyilo* (2014) provides a good example of a positive public response to the work of the ICC, since, being the ICC's first decision, it set a landmark in the history of international law and international criminal justice. The crimes thereby punished, i.e., enlisting and conscripting of children under the age of 15 and using them to participate actively in hostilities, addressed a criminal phenomenon that had at that time generated a worldwide outcry. In spite of the time the entire proceedings took (8 years), the general perception by the public and States Parties was of enthusiastic approval.

From the perspective of the public perception only (although from a strictly legal standpoint I do not disagree with the Court's decision), the acquittal of former Congolese vice-president Jean-Pierre Bemba in *The Prosecutor v. J.-P. Bemba Gombo* (2018) had, in my view, a negative response. After a 10-year trial, a decision that while acknowledging that Mr. Bemba's troops committed war crimes and crimes against humanity in the Central African Republic, determined that the evidence available was insufficient to prove his "command responsibility", was a big disappointment to the victims and Court supporters, and justified those who criticized the ICC for its lengthy proceedings and questionable results.

### **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?**

Once elected to the ICC, the only relationship a Judge may be allowed to maintain with the authorities of his or her country of origin should be those relating to promoting at the national level the objectives and work of the Court. This relationship is important in order to create an effective network and strengthen the ties between the country and the Court in search for permanent support for its effort to eradicate impunity. No other tie should bind a Judge with his or her country of origin.

In similar terms, an ICC judge may maintain a relationship with universities and non-governmental organizations. With the former, cooperation agreements could be entered into in order to foster academic exchange for the research about, and dissemination of, the work of the Court. With the latter, similar agreements could be signed with a view to consolidating civil society's support of the Court's objectives and efforts. In both contexts, the Judge may act as the natural intermediary between the Court and his or her country of origin.

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

In my view, in such a case a Judge must recuse him or herself from taking part in the trial. The independence of a Judge has to do not only with his or her dissociation from any interests of the parties to a case under his or her examination, or of other parties, but also with the appearance of impartiality and independence, as perceived by an external observer. Inasmuch as nationality is a direct and objective link between a person and a State, which establishes reciprocal rights and duties, it is highly likely that a Judge may be, or appear to be, subject to some kind of moral obligation or even prejudicial bias that may impair his or her objectivity when deciding a case involving a national from his or her country of origin.

**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?**

The Statute of the International Court of Justice, which “forms an integral part of the present Charter [of the United Nations]” (U.N. Charter, article 92), assigns to “judicial decisions” the value of “subsidiary means for the determination of rules of law” (Statute of the International Court of Justice, article 38, 1, (d)).

Consequently, the ICC, in order to carry out its duty to decide the cases brought before it, is entitled to consider the following judicial decisions:

- (a) Its own decisions issued in previous cases, in such aspects which are relevant to the legal issues raised in the case to be decided, in application of article 21, 2 of the Rome Statute.
- (b) Decisions issued by other international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone or the Extraordinary Chambers in the Courts of Cambodia, in such aspects as are relevant to determine the scope and particularities of the crimes which are common to the jurisdictions of both ICC and any of those *ad hoc* tribunals, as well as of common procedural provisions.
- (c) Decisions issued by international tribunals of human rights, such as the European Tribunal of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples’ Rights, in such aspects as they address the human rights’ implications of the commission of certain crimes and to procedural guarantees.
- (d) Decisions by the International Court of Justice in such general aspects of International Law that have been adjudicated by the ICJ and should be applied by ICC.

As far as the decisions of national courts are concerned, it would seem acceptable that the ICC considers during its proceedings those of the highest national tribunals of States Parties to the Rome Statute regarding crimes within ICC jurisdiction, that have been issued in application of the principle of complementarity, in order to appraise how the Rome Statute provisions are interpreted and applied in such States Parties.

**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?**

The jurisprudential precedent set by the Appeals Chamber may be used by the Judge as an auxiliary means to determine the contents and scope of the relevant law applicable to the case *sub examine*. Of course, the precedent should refer to the same legal provisions applicable to the case under examination, so that the Judge may use the interpretation by the Appeals Chamber in applying those provisions to the facts proven in the proceedings.

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

Yes, every effort towards increasing efficiency should be encouraged, experimented with, and, if successful, definitively implemented. However, any innovative procedural practice that is proposed by a Judge should not be carried out at his or her sole initiative, or applied in a particular Chamber alone. Rather, they should be directed by the President in consultation with all the Judges and the Registrar, in order to attain generality and homogeneity in its implementation throughout the Chambers.

The use of information technology, as the COVID-19 crisis has shown, may make unnecessary in the future that witnesses or expert witnesses are brought before the Court in every case. This may be an initiative to explore.

Also, in view of the wide scope and reach of the crimes within ICC jurisdiction, specially war crimes, genocide and crimes against humanity (given their “widespread and systematic” nature), the use, *mutatis mutandis*, of mass claims processing techniques, such as the computerized sampling or matching pioneered at UNCC, could also be explored (see the answer to question A. 1, *supra*).

**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?**

In my previous professional experience, I worked as part of several teams. The most recent example is that of the legal team who represented Ecuador before the ICJ in the “Case concerning Aerial Herbicide Spraying (Ecuador v. Colombia)” during the period 2008-2013 (see my answer to question A.1). I had then the unique opportunity of working along an outstanding professional team led by Mr. Paul Reichler, and composed also by Messrs. Pierre-Marie Dupuy, Philippe Sands and Alain Boyle. My ability to interact in a constructive manner with international lawyers of such calibre proved to me that my team work skills had evolved positively since my previous international team work experience.

Prior to that, when I worked at the United Nations Compensation Commission (1992-1996), I was part of a legal and administrative team comprised of people from different cultural and legal backgrounds, who came from every continent and latitude. It was a very enriching experience that has positively marked me ever since (see the answer to question A. 1, *supra*).

I now look forward to having the honour of working with Judges and other ICC team members from different parts of the world, sharing the knowledge of International Law, International Humanitarian Law and of our respective legal experiences and finding solutions to the very complex legal problems we will face; all within the framework of

the Rome Statute, the Elements of the Crimes, the Rules of Procedure and Evidence and other relevant law.

Dialogue and rational exchange of ideas are the way out of any disagreement. I do not think that there is any legal debate that cannot be resolved by exchanging legal arguments and trying to persuade the other party (or being open to be persuaded by him or her).

Concurring or dissenting opinions should be resorted to only as the last option available, because, in addition to showing lack of unanimity within the Chamber, and therefore weakening the necessary appearance of consistency within the ICC's rulings, they may also appear to be proof of insufficient analysis of the relevant legal issues and may provide grounds for appealing the decision.

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

The Rome Statute (article 42) and the ICC Rules of Procedure and Evidence (rule 34, para. 1) set out the situations in which a Judge of the Court should request to be excused. They are related to any event where reasonable doubt might arise about the Judge's impartiality, and refer to any previous involvement that the Judge might have had, either within ICC or at the national level, with a case regarding the same person who is prosecuted in a new case brought before ICC, which the Judge is to decide.

Article 34, para. 1 of the Rules of Procedure and Evidence provide more specific grounds for disqualification of a Judge (where he or she should request to be excused):

- “(a) Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;
- (b) Involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was or is an opposing party;
- (c) Performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;
- (d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned”.

I fully subscribe to, support and will be bound by these rules and principles.

**D. 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?**

Yes, I am prepared and available to serve at the commencement and for the duration of my term, if elected and if called to work at the Court full-time.

**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?**

Yes, I am.

**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?**

I am prepared for the hours of an ICC judge and to take holidays at a fixed period during the year. In my entire career as an independent lawyer, university professor and dean, international civil servant and diplomat, and now as the State Attorney General of Ecuador I have regularly put in many extra hours a day and through weekends. Doing so as an ICC judge would be entirely normal to me.

**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?**

I would personally undertake the drafting of the main findings and rulings, especially those involving complex legal issues. Assistants or interns would help with the research of the relevant doctrine or jurisprudence that may apply to the case under study. They may also assist in organizing and systematising the facts that have been proved by the Prosecutor and even in preliminarily drafting the narrative of those facts. All of this work, however, would always be subject to my direction, oversight, review and verification.

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

There does not currently seem to be ample room for a Single Judge to expedite proceedings. Pursuant to Rule 7 of the Rules of Procedure and Evidence, a Single Judge may only decide “on those questions on which decision by the full [Pre-Trial] Chamber is not expressly provided for in the [Rome] Statute or the Rules [of Procedure and Evidence]”. Article 57 of the Rome Statute determines the specific cases where rulings by the Pre-Trial Chamber need to be taken by a majority of its Judges.

However, current practice at the Pre-Trial Chamber shows that a Single Judge may expedite proceedings by leading the arrangements for the confirmation of charges hearing, which include evidentiary issues such as disclosure between the Prosecution

and the Defence as well as the participation of the victims. Additionally, in order to expedite proceedings, new responsibilities could be entrusted to a Single Judge, such as the issuance of arrest warrants in accordance with article 58 of the Rome Statute.

The Rome Statute allows for the appointment of a Single Judge only at the Pre-Trial phase of the proceedings. The possibility of making such an appointment in the Trial phase, thus shortening the time for otherwise full Chamber decisions, warrants further consideration and possibly the amendment of the Rome Statute and Rules of Procedure and Evidence.

**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?**

In my current capacity as State Attorney General, the discharge of my official duties is permanently scrutinized by the media and the wider public. I have managed to find a balance between discretion in the performance of my responsibilities and the need to keep the public informed. That has helped me in coping with the pressure correlative to the post.

At the time I worked for the United Nations Compensation Commission, Government representatives often approached the Unit Heads to ask for prompt processing of the claims, sometimes suggesting that those from their nationals should be given priority. The answer was simple: UNCC regulations provided for the processing of the claims in application of a number of criteria that could not be altered or derogated, consequently, their claims should be processed in application of those criteria.

Application of the law and strict adherence to the rules and principles of impartiality and independence are always the best shield against outside pressure.

**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?**

Yes, I am in good health. I swim regularly and am a weekend mountaineer and bird-watcher. That helps me fight stress and enables me to work under pressure. I have never been on leave from my professional duties due to health reasons.

**E. Deontology**

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

An independent Judge is someone who is able to dissociate him or herself from any interests of his or her country of nationality or other countries that have supported his or her candidacy, and act and decide about the case brought before him or her on the basis of the law and his or her own conscience.

Independence must also be shown from the interests of the parties to the case that is under the Judge's study.

But, most of all, an independent Judge is someone mature, wise and experienced enough to dissociate him or herself from his or her own pre-conceptions of the case that is being heard and the circumstances in which it is surrounded.

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

Conflict of interest is an elusive concept. According to the Oxford Dictionary, a conflict of interest is "a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity". Translated onto the judicial field, a conflict of interest arises when a Judge cannot make a fair, impartial and independent decision because its result will personally affect him or her, directly or indirectly.

The ICC Code of Judicial Ethics imposes on the Judge the duty to "avoid any conflict of interest or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest" (article 4, para. 2).

The grounds for disqualification established in Rule 34, para. 1 of the Rules of Procedure and Evidence (see the answer to question C. 7 *supra*), encompass most of the cases in which a judge is faced with a conflict of interest situation, but, as the *inter alia* expression denotes, this rule does not attempt to be exhaustive.

In any event, avoidance of conflict of interest warrants a request by the incumbent to be excused from the case. And, when in doubt about whether he or she has a conflict of interest, the Judge should err on the side of caution.

## **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?**

No, they should not. Men and women of every race, colour or religious background, or any other diversity characteristic, should be assessed as suitable to become a Judge at the ICC exclusively on the basis of their professional qualifications and relevant experience.

This is *a fortiori* the case in a body such as ICC, the founding instrument of which provides that "[t]he application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender (...), age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status" (Rome Statute, article 21, 3).

**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.**

Please refer to the answer to question A. 3, *supra*.

**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.**

No, I have never been disciplined or censured by any bar association, university faculty or similar entity of which I have been a member.

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

I find it very difficult to suggest any improvement to what the ICC's Victims and Witnesses Unit is already doing in the domain of the protection of the victims, as it has had outstanding results.

I think, however, that additional efforts should be made in order to keep "witness interference" (see my answer to question B. 1, *supra*) from occurring, and they may consist of strengthening all the measures aiming at preventing the witness's relationship with the Court from becoming known by his or her community or the general public.

In the field of victim participation, additional efforts should be carried out in order to subsidize the costs of free legal representation of victims, by raising funds from donors, both private and public, to fuel the work of the Office of Public Counsel for the Victims (OPCV).

**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?**

Indeed, the Rome Statute (RS) and the Rules of Procedure and Evidence (RP&E) protect the rights of the accused (e.g. RS arts. 23, 24, 25, 66, 67) as well as those of the victims (e.g. RS art. 68; RP&E Chapter 2, section III, subsection 2; Chapter 4, section III).

However, both sets of rights are not on a collision course, for they are each of a different nature.

The rights of the accused are a set of guarantees grounded on the presumption of innocence. The Judge may only depart from the presumption of innocence when he or she is convinced, beyond any reasonable doubt, that the accused is indeed guilty. This conviction is the result of the appraisal of the evidence produced during a contradictory process, in which the accused has had the opportunity to actually controvert said evidence. The trial is, therefore, the only space where the presumption of innocence may be overcome, but the

law ensures that this happens only if the conditions generally outlined *supra* are met.

On the other hand, the rights of the victims, other than the right to seek punishment of the perpetrator of the crime as well as the correlative reparation, are directed to preventing them from being further subjected to any mental pain or psychological damage, additional to that already inflicted by the criminal conduct itself at the time of its commission, that may be caused by the re-enactment of the circumstances of the crime in which they were the victims, in the sole interest of presenting evidence to the tribunal.

Therefore, in order to attain the necessary balance between the rights of the accused and those of the victims, a Judge should look after the thorough application of both sets of rights, while having in mind that they pursue different purposes and are of different nature.

#### **F. 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?**

I am fluent in English and partially conversant in French. I can speak fluently in public hearings and meetings, and write my own decisions in English. My writings might need minor editing.

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

Currently I only hold the Ecuadorian nationality. However, I have submitted a request to be granted Spanish nationality and that process is in course.

**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?**

Yes, I am familiar with the remuneration and pensions' scheme for ICC Judges. I am aware of, and I accept, the Terms and Conditions of work.

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

Yes, I am willing.

**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?**

Not to my present knowledge.

**G. Disclosure to the public**

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

I hereby authorize the Advisory Committee on Nominations to make public my answers to this questionnaire.

Quito, 23th July 2020

Íñigo Salvador Crespo