Prof. Gocha LORDKIPANIDZE

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?

As evident from my *Curriculum Vitae* and Statement of Qualifications my experience and competence fully meet the requirements of Article 36(3)(b)(ii) of the Rome Statute to be elected as a judge under List B.

I hold a Master's Degree in International Human Rights Law from the University of Essex and a Master's Degree in International Legal Studies from Harvard Law School with a focus on international law, international human rights law and international humanitarian law. From 2011 to 2013, I have been a S.J.D candidate and Doctoral Fellow at Fordham Law School, New York. Further, I have more than 20-year experience of working on the issues of international courts and international organizations in international criminal law, international humanitarian law and international human rights law: 12 years with the ICC, including 1,5 year in the Board of Trust Fund of Victims; 3 years with issues related to ICTY; 2 years with ICTR; 19 years with the United Nations; 10 years with the Council of Europe; 10 years with the European Union; and 10 years with Organisation for Security and Cooperation in Europe.

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?

As a Deputy Minister of Justice of Georgia, I supervise the Department in charge of litigation before the European Court of Human Rights (ECtHR) and UN Treaty-Based Bodies. In this capacity, I have developed an extensive experience in leading and handling litigations and friendly settlements since 2012. During this period I have worked on numerous cases related to violence, discrimination, sexual assault and alleged violation of the rights of women and children before the ECtHR and the following UN committees: Human Rights Committee, Committee on the Rights of the Child, Committee on the Elimination of Discrimination Against Women, Committee Against Torture. It is also my mandate to coordinate execution of ECtHR judgments/decisions and decisions of UN committees. This includes systemic efforts to address individual cases as well as prevent future violations.

Here are some other noteworthy developments that I have led or been involved in:

(i) Led the drafting of the first Human Rights Strategy of Georgia for 2014-2020 to cover key challenges and addressing discrimination and violence-related, as well as gender and child sensitive issues;

(ii) Led Ministry of Justice of Georgia team which drafted the first comprehensive anti-discrimination law adopted in 2014;

(iii) Engaged in drafting the Juvenile Justice Code of Georgia adopted in 2015;

(iv) Contributed to drafting the package of laws on protecting women from violence to harmonise the Georgian legislation with the Istanbul Convention on preventing and combating violence against women and domestic violence in 2017;

(v) Coordinated efforts in the preparation of guidelines for law enforcement agencies on human trafficking issues, with a focus on the identification of THB victims, the treatment of women and child victims;

(vi) Under the auspices of Inter-agency Humanitarian Commission of Georgia, led efforts to further develop the legal framework on missing persons in times of armed conflict, putting in place relevant instruments to combat and prevent sexual and gender-based violence during and after armed conflict;

(vii) As adjunct-professor at Columbia University School of International and Public Affairs (SIPA) has focused on women's rights and gender mainstreaming.

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?

Never.

B. Perception of the Court

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

Throughout its existence, the ICC, as the institution of "many firsts" of international criminal justice project, has faced with a variety of novel substantive and procedural challenges.[1] Hence, some criticisms in relation to its proceedings:

(i) The length of proceedings at the ICC has been criticized as having negative impact on the rights of the accused, the rights of the victims, and the legitimacy of the Court. The Court itself acknowledged this challenge in the *Bemba* case as to the seriousness of the consequences entailed by the absence of statutory limits as to the duration of the proceedings or custodial detention;[2]

(ii) Many Acquittals and Few Convictions: Certain criticism is leveled at the ICC because of relatively many acquittals and few convictions. Further, some argue that the ICC has problems with prosecuting high-level perpetrators while others draw attention that criminal actions or inactions of the highest political and military personnel are always hard to establish.[3] There are also views that the fairness of any criminal justice system must be judged by acquittals and not by convictions;[4]

(iii) Selectivity: Another criticism of the ICC, more specifically of the Prosecutor's Office (OTP) is that that it retains strong focus on the situations in African countries and does not go beyond. In this regard, the OTP's selections and the Court's perceived legitimacy are inextricably linked. On the other hand, over the last decade the legal geography of preliminary examinations have substantially expanded beyond Africa to cover countries in Europe, America and the Middle East;

(iv) Duplication in terms of procedures: In the judicial practice the role and relationship between the Pre-Trial and Trial Chambers under the Rome Statute have not been yet fully clarified to give rise to the challenge of coordinating, pre-confirmation and post-confirmation activities in order to avoid duplications and reduce the time required for the preparations for trial. Once the case has been confirmed, the Trial Chambers have been cautious to take charge of the preparations of the case for the trial that the Chamber is to conduct. Consequently, extensive and time-consuming preparations have taken place twice, albeit for different procedural purposes.[5]

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[1] Song, S-H, 'International Criminal Court-Centered Justice and Its Challenges', MJIL, 7(1), 2016, 8-13.
[2] *Bemba,* Decision on Mr Bemba's claim for compensation and damages, ICC-01/05-01/08, PTC II, 18 May 2020.
[3] As noted by Adrian Fulford "[T]he evidence-trail leading to the General at his headquarters and the politician in his office is often imperfect: identifying what a figure in authority did or did not know, or did or did not order, is frequently hard to establish […]." See 'Foreword', in Olásolo H, *The Criminal Responsibility of Senior Political and Military Leaders as Principals to International Crimes* (Hart 2009).
[4] Goldstone R, Baetens F, Abato A, Acquittals by the International Criminal Court, 18 January 2019, at https://www.ejiltalk.org/acquittals-by-the-international-criminal-court/.
[5] Friman H, 'Trial Procedures - With a Particular Focus on the Relationship between the Proceedings of the Pre-Trial and Trial Chambers', Carsten S. (ed), *The Law and Practice of the International Criminal Court* (OUP 2015) 913-915.

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?

I would propose the **Early Intervention Policy for the Court System ("EIPCS" or "Policy"),** i.e. drafting an unified policy paper with the purpose of building a Court-wide system to provide early and coordinated intervention capabilities for the Court to effectively carry out its mandate. Victims, States Parties, Situation Countries, NGOs, local communities would be beneficiaries of this Policy.

The EIPCS would be policy tool for understanding, managing and meeting the expectations and interests that the international community has towards the Court. Certainly, the international community is not monolithic, being composed of the stakeholders referred above with each of them shaping their own views about the Court. The Policy would therefore welcome pluralistic views, and foster dialogue to understand how to enhance the Court's *legitimacy*.

By creating and then effectively pursuing EIPCS, the Court System would attain greater legitimacy as it would be capable of *exercising* and *be seen effectively exercising* its powers under the Statute and relevant regulations through developing judicial practice and effectively using available policy instruments. In my opinion, the legitimacy of the ICC is intrinsically linked with a foundational question: how effectively is the Court achieving its inherent values, that is, peace and justice? Here I would offer several elements.

(i) ICC engaging with national courts in the States Parties of the Statute - The rationale is in the spirit of *positive complementarity* to provide Highest Courts in the States Parties with a procedural avenue to request advisory opinions from the Court from questions of principle to the interpretation and application of the Statute. The requesting court may seek an advisory opinion only in the context of a case pending before it. This definitely would enhance the legitimacy of the Court amongst the States Parties, local society and NGOs at the earliest stage of ICC engagement, and provide a unified front in the quest of international justice;

(ii) Pre-Trial Chamber and the Registry - Normally, the early intervention system would be put in motion at the same as an investigation, save in exceptional circumstances that may warrant its activation at the preliminary examination stage. In the light of the developing practice of the Court, this would be in principle possible as demonstrated, for example, by the decision of Pre-Trial Chamber I of 13 July 2018, ordering the Registry to establish public information and outreach activities for the benefit of the victims in a situation under the preliminary examination. This proves that intervention is possible at the preliminary examination stage even before the identity of victims and the jurisdiction of the Court are established.[6]

Remarkably, the Chamber resorted, *inter alia*, to Article 21, Article 68(3) (Protection of Victims and Witnesses and Their Participation) of the Statute, Rule 85 of the Rules of Procedure and Evidence to focus on the considerations of legitimacy as necessary "for the Court to be able to properly fulfil its mandate, it is imperative that its role and activities are properly understood and accessible, particularly to the victims of situations and cases before the Court. Outreach and public information activities in situation countries are quintessential to foster support, public understanding and confidence in the work of the Court. At the same time, they enable the Court to better understand the concerns and expectations of victims, so that it can respond more effectively and clarify, where necessary, any misconceptions."

This standard established by the Pre-Trial Chamber I attests to the need of drawing a coherent Outreach and Communication Strategy for the Court system (OTP, Pre-Trial Chamber, Trial Chamber, Registry, TFV) as soon as the matter gets at the preliminary examination stage to be changed *mutatis mutandis* at subsequent stages of proceeding. In other words, the Court needs to work on presenting a unified front of words and actions before its primary stakeholders, among which victims occupy a special place;

(iii) Trust Fund for Victims, ASP and NGOs - Under this Policy of the Court system, the Trust Fund for Victims is to develop a corresponding Policy of Early Deployment and Action. Importantly, the Trust Fund for Victims is one of the firsts to travel to the field, and one of the fews with a capacity to intervene for the benefit of victims at such an early stage. It is important to not lose sight that the Trust Fund's actions are perceived as actions of the entire Court system. To pursue this policy, the TFV must have requisite funding dedicated for this task (not necessarily means increased funding) and support from the ASP. To expedite the process it may have elaborated a list of prequalified partners/NGOs in the field that will drastically

[6] See *Situation in the State of Palestine*, Decision on Information and Outreach for the Victims of the Situation, PTC I, para. 7.

reduce the length of procurement procedures and empower the victims and local actors in the situation countries.

TFV activities in this respect reflect the same interplay of the values built-in the Statute – peace and justice – as corresponding to the two-fold TFV mandate on assistance and reparations. By definition, TFV's assistance programs are directed towards helping affected communities to consolidate peace and stability, whereas reparations lead to achieving justice when Chambers make a decision over the harm and victims' entitlement to receive reparations. Assistance and reparations are distinct though in some circumstances the dividing line appears to be blurred as in the *Bemba* case, when the assistance was the only thing left for the Court system to address the harm to the victims in a broad sense and mitigate the negative perception of the Court that might have been caused by Bemba's acquittal;

(iv) Trial Chamber, Trust Fund for Victims, Victims, other International Organizations - Trial Chambers have an important role in developing proper judicial practice under this overarching Policy so that the Court can navigate through seemingly conflicting undercurrents of the ICC legitimacy – length of investigation and proceedings on one hand and guarantees of fair trial under the Statute on the other. The length of investigations and proceedings are definitely a challenge to the legitimacy of the Court, in particular, in the eyes of the victims of protracted conflicts, locals and civil society, whose perception may harden as time goes. Current practice in reparations offers a valuable lesson on how to save time so that reparations reach victims earlier, and to save the Court's resources. Namely, I advocate for a more frequent use of rule 98(4) RPE under which the Court may order that an award for reparations be made through the TFV to an approved organization. One major advantage of this rule is that it would save lenghty procurement and negotiations which ultimately take time away from the victims' right to receive prompt reparations. In this respect a lesson learned from *Al Mahdi* appears to be valuable for both the TFV and the practice of Trial Chambers in the future.

Involvement of the selected organization(s) would also have improved the perception of the Court amongst victims, local society and specific international organizations. As suggested, not only it is possible to have prequalified partners under the TFV policy of early deployment and action, but also advance arrangements and agreement with other international organizations can be put in place with a view of coordinating actions in the area of reparative justice;

(v) Trial Chambers and Appeals Chamber - The length of proceedings is just one aspect of the Court's legitimacy to influence internal and external perceptions of the ICC that have resuscitated efforts of the judges in October 2019 to adopt a consistent set of internal guidelines regulating the timing of key decisions at the pre-trial, trial and appeals stages, thereby enhancing the efficiency and predictability of proceedings.[7] These guidelines made their way into the *Chambers Practice Manual*. It would be desirable to further streamline the practice whereby, as suggested, Trial Chambers arrive at verdicts and pass sentences in a single judgment at the conclusion of the trial with the understanding that there are no statutory requirement that these two decisions subject to Article 74 and Article 76 of the Statute be delivered on separate occasions.[8] Establishing the practice of the Court seems to be a reasonable way to foster changes within the statutory framework without having to amend the ICC Statute. The decision of the Appeals Chamber in the *Gbagbo and Blé Goudé* case of 28 May 2020, holding that the continuation of proceedings in the absence of the accused when that absense is deliberate, is not prohibited neither by the Statute, if properly interpreted, nor by general principles of law as long as the right to fair trial is scrupulously respected is a good case in point.[9] It does show that, even with respect to the trial *in absentia*, the balance between the need to speed up the trial and the respect of the rights of the accused can be found through an innovative interpretation and judicial courage of the ICC judges to contribute to the improved perceptions of the Court.

[7] See ICC Press Release of 7 October, 2019, ICC judges hold retreat, adopt guidelines on the judgment drafting process and on the timeframe for issuance of key judicial decisions at https://www.icc-cpi.int/Pages/item.aspx?name=pr1485.

[8] Gumpert B, Nuzban Y, What can be done about the length of proceedings at the ICC? 8 November 2019, at https://www.ejiltalk.org/part-ii-what-can-be-done-about-the-length-of-proceedings-at-the-icc/.

[9] *Gbagbo and Ble Goudé*, Décision relative à la requête présentée par le conseil de Laurent Gbagbo aux fins de reconsidération de l'Arrêt relatif à l'appel interjeté par le Procureur contre la décision rendue oralement par la Chambre de première instance I en application de l'article 81-3-c-i du Statut et de réexamen des conditions de mise en liberté de Laurent Gbagbo et Charles Blé Goudé, Chambre d'appel, 28 mai 2020, para. 70.

In concluding, it has to be noted that the improvement of the perception of the Court in the eyes of a large international constituency of stakeholders is dependent on the ability of the Court System to reconcile and harmonize peace and justice, as independent values protected by the ICC Statute, in practice.

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?

The Court has rendered several key decisions regarding various procedural and substantive issues, ranging from establishing the principles and procedures to be applied to reparations,[10] to the finding that members of an armed force or group are not categorically excluded from protection against the war crimes of rape and sexual slavery when committed by members of the same armed force or group.[11] However, many of them have only come to the commentators' and court observers' attention and not all of them affected the perception of the Court in the public.

As a positive development, I am bound to recall the decision by the Pre-Trial Chamber in the *Bangladesh/Myanmar* situation, finding that the Court may assert jurisdiction pursuant to Article 12(2)(a) of the Statute if at least one element of a crime within the jurisdiction of the Court or part of such crime is committed on the territory of a State Party to the Statute. Under this ruling:

(i) the Court explicitly went beyond the scope of the prosecutor's request. It discussed not only deportation but also other possible bases of crimes against humanity, such as persecution and other inhumane acts;

(ii) the Court explicitly invoked Article 21(3), which provides that the ICC's activities must be consistent with human rights norms. It did so in order to highlight that human rights underpin every aspect of the Court's operation.[12]

In an era of cross-frontier international criminality, the decision may strengthen the Court's ability to prosecute the crimes within its jurisdiction.

As arguably a negative example, I would refer to the final outcome in *Bemba* case. On 8 June 2018, the Appeals Chamber of the Court reversed the previous conviction by Trial Chamber and acquitted Jean-Pierre Bemba from the charges of war crimes and crimes against humanity.[13] Notably, it was the first case to find an accused guilty of command responsibility under Article 28 of the Rome Statute, as well as the first ICC conviction for sexual violence. The Appeals Chamber overturned Bemba's conviction in a narrow 3-2 majority decision. As argued, four separate opinions, raising questions about Pre-Trial and Trial Chamber procedures, the standard of Appeals Chamber review, and the scope of command responsibility, have revealed sharp disagreements between ICC judges and created considerable confusion over the state of ICC law and procedure.[14] As argued, the decision came as a big disappointment for the many victims and civil society in the Central African Republic since no reparations order was to be issued in the *Bemba* case, apart from the assistance mandate activities of the Trust Fund for Victims (TFV).[15]

[10] *Lubanga,* Decision establishing the principles and procedures to be applied to reparations, TC I, 7 August 2012.
[11] *Ntaganda*, Judgment on the appeal of Mr Ntaganda against the "Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9", Appeals Chamber, 15 June 2017.
[12] *Bangladesh/Myanmar*, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", 6 September 2018.
[13] *Bemba*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", Appeals Chamber, 8 June 2018.
[14] See Sadat LN, 'Prosecutor v. Jean-Pierre Bemba Gombo', AJIL, 113(2), 2019, 353–361.
[15] Following Mr Bemba's acquittal, Trust Fund for Victims decides to accelerate launch of assistance programme in Central African Republic, 13 June 2018, https://www.icc-cpi.int/Pages/item.aspx?name=180613-TFVPR.

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?

The behavior and conduct of the ICC judge in/off the court must reaffirm the faith of the international society in the independence, impartiality and integrity of the world criminal court. On the other hand, a person elected as a judge, retains human bonds with relatives, friends, former colleagues or people he/she used to know. A ICC judge continues to be a part of society though as a subject of heightened public scrutiny he/she should be required to keep the contacts to a level just necessary to avoid portrayal of ICC judge as too arrogant and "untouchable".

Therefore, if elected an ICC judge, I will continue to have relationships with those I have personal or professional ties with, though in a manner that preserves integrity, impartiality and independence of the court. As a general guiding principle, I would avoid to the maximum extent any relationships with the authorities of my country of origin as it might give rise to appearance of partiality, save multilateral forums (conferences, seminars or symposiums), where I may be assigned a mission to represent the Court. When it comes to the academia and non-governmental sector, I believe there is slightly more leeway for having contacts with universities and NGOs, but it still needs to be limited to the awareness raising and outreach in a broad sense. My standard for any such relationships is to assess each situation on a case by case basis from the objective observer's standpoint and act accordingly. For these reasons, I will endeavor to limit my relationships to the very close family circle. Any contact beyond this shall take place in the context of ICC related events where my participation will be seen as duties of ICC judge.

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

Notably, neither Article 41 of the Rome Statute, nor Rules 34 and 35 of the Rules of Procedure and Evidence consider involvement of a national from a judge's country of origin as a ground for her/his recusal. In general, sharing the same nationality cannot be sufficient to question the impartiality or independence of a judge of international court. This can be well demonstrated by the practice of the European Court of Human Rights (ECtHR) where every single case is examined by the composition of section with the participation of a judge from the respondent government.[16] Therefore, the mere fact of involvement of a national from the judge's country of origin shall not preclude the ICC judge from participating in a trial. However, in certain circumstances recusal might be necessary for the integrity of the proceedings. This brings me to the maxim of judicial impartiality established by the High Court of Justice of England a century ago: "Not only must Justice be done, it must also be seen to be done." Hence, the principle is the following: participation of a judge in a trial involving a national from his or her country of origin will be reasonable unless it undermines the people's faith in the integrity of the court. From the standpoint of an objective observer I would suggest that, apart from having any personal relationships or interests with this particular individual, the ICC judge should take into account at least the following aspects as backed by the Court's reasoning in the *Banda* case while deciding to make a self-recusal request:

(i) the status of an individual in the proceedings;

(ii) the situation and case under investigation;

(iii) composition of a chamber.[17]

[16] Within the system of ECtHR participation of a judge in a hearing involving a national from her or his country of origin and the state itself as a respondent party, is considered an useful mechanism to deliver quality judgments and ensure integrity of the court.
[17] See Decision of the plenary of the judges on the "Defence Request for the Disqualification of a Judge" of 2 April 2012 in the case of The *Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, pp. 11-15, ICC-02/05-03/09-344-Anx 05-06-2012 1/11 CB T at: https://www.icc-cpi.int/RelatedRecords/CR2012_06628.PDF.

In particular, the judge should recuse herself/himself if the case is in any way related to her/his country of origin, an individual is charged and the judge's participation and position might have a significant impact on the way the decision of the chamber (when the case is examined by 3 judges) is seen.

As explained in the Decision as to the appearence of grounds to doubt the judge's impartiality the relevant test would not be whether the circumstance would lead a reasonable observer, properly informed, to reasonably apprehand bias in the respondent, but whether any such apprehension was objectively reasonable. Further, the majority considered that although the nationality of a judge may be potentialy relevant to the application of Article 41(2)(a) the mere coincidence of shared nationality did not provide a basis to reasonably doubt the impartiality of the respondent.

In other circumstances, when the case is not related to the country of origin of the judge or when an individual participates as an expert or witness, there would be not sufficient grounds for recusal. Moreover, it would be even inappropriate from the judge to request a disqualification because it might affect the proper administration of justice. Unreasonable recusals, definitely, do not serve the interests of victims and international justice.

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?

Article 21(3) of the Statute, which provides that the interpretation and application of law must be consistent with internationally recognised human rights, is a commonplace for discussing this issue. As clarified, "[A]rticle 21(1)(b) and (c) refer to different formal sources of law as subsidiary sources of law to be applied by the Court", whereas "Article 21(3) refers to a material source of law, namely 'internationally recognized human rights', which seem to enjoy a superior status before the Court".[18] Article 21 of the Statute, while establishing 'a multiplicity of hierarchies', opens an avenue for a judicial dialogue between the ICC and national courts on one hand and ICC and international courts and tribunals and human rights bodies on the other. Interstingly enough, the jurisprudence of *ad hoc* tribunals being not as such part of the applicable law under Article 21 of the Statute, is still frequently reffered to in the submissions of the ICC. In the same context, the Court also relied on the jurisprudence of the ECtHR, IACHR, resolutions and recommendations of UNGA, UN ECOSOC, UN CAT, the Standards of the Council of Europe CPT.[19]

The main point here is whether the Court will continue more vigorously as it have done so on several occasions, to interpret and apply Article 21(3), especially with respect to 'internationally recognised human rights' in the way that would make it, in fact, an independent source of law and a vehicle to adapt a Statute to the evolution of international law/international human rights law without amending it. It is equally important both in terms of *substantive rights* and *procedural remedies* in the circumstances whereas the procedural remedies otherwise may not be explicitly available under the Statute, for example for the victims.[20] The jurisprudence of the international/regional courts may be useful for the ICC to better understand the same conflict it is now dealing with, in particular as the contextual elements of crimes. As a Judge of the ICC, I would be willing together with others to go this way. In this sense, it would be useful and appropriate for the Court to consider the decisions/jurisprudence of other international courts and human rights bodies. The same extends to the decisions of national courts - the proposal I have outlined above on granting to the Highest Courts of the States Parties a power to request advisory opinion from the ICC promotes just that judicial dialogue and cross-fertilisation.

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?

Under the Court's legal framework, the Appeals Chamber is the highest appellate judicial body and its decisions are final, with no further possibility to appeal. However, according to Article 21(2) of the Rome Statute, the ICC may apply its own case law, but is not bound to do so. More importantly, the paragraph does not make any difference between jurisprudence of the chambers and does not give a particular weight to the jurisprudence of the Appeals Chamber.

[18] Bitti G, Article 21 and the Hierarchy of Sources of Law before the ICC, in Carsten Stahn (ed), *The Law and Practice of the International Criminal Court* (Oxford University Press 2015) 425.
[19] *Ibid*, 427, 434.
[20] *Ibid*, 434-435

Given this premise, in my view, when faced with precedents established by the Appeals Chamber of the Court, the most advised approach for a judge would be generally to follow 'the guiding principles prescribed in the judgements rendered by the Appeals Chamber'[21] and to promote consistency, certainty and predictability in the development of the law in order to ensure 'the fairness of adjudication to foster public reliance on its decisions'.[22] Moreover, such approach will not prevent a judge to depart from the findings of the Appeals Chamber when he or she deems that compelling reasons of a particular issue warrant to 'deviate from the approach and line of reasoning embraced'[23] in the precedents established by the Appeals Chamber.

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.

I would tend to support the approach that a Judge or a Chamber should be allowed to implement innovative procedural practices strictly limited to the Statutory framework of the Court in order to ensure efficiency of the proceedings.

It should be borne in mind that ICC's judges are vested with some formal procedural law-making functions: they may propose to amend Rules of Procedure and Evidence (RPE), subject to an approval by a two-thirds majority of the members of the Assembly of States Parties, and they are permitted to adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning (Articles 51-52 of the Rome Statute). Judges have availed of this opportunity in practice and adopted some amendments to the Regulations of the Court to '*expedite and streamline the Court's proceedings on appeal through a number of procedural innovations, in keeping with the Court's commitment to enhance its efficiency at all stages of the judicial process*' (emphasis added).[24] As for the RPE, for example, judges proposed the amendment to RPE to be able to designate a single judge for the preparation of the trial 'in order to expedite proceedings and to ensure cost efficiency',[25] which was subsequently adopted (Rule 132*bis*).

Out of the functional necessity the ICC judges have, like their ICTY and ICTR counterparts, managed to expand the scope of their powers significantly by liberally interpreting provisions of the respective Statutes and also made vigorous use of judge-made Regulations.[26]

In terms of innovative procedural practices, several examples may be recalled when ICC judges have developed new procedural practices to streamline trial processes. They have added new charges against an accused without the Prosecutor's consent, despite statutory language expressly conferring on the Prosecutor the decision whether to add new charges, and thereby effectively compelled the Prosecutor to lead evidence on those charges.[27] Judges requested the Prosecutor also to amend the document containing the charges to include a distinct segment setting out the material facts underlying the charges on which the Prosecutor sought to bring the person to trial.[28] Whereas Pre-Trial Chambers were reluctant to confirm multiple alternative charges and modes of liability, preferring instead to select one charge or mode of liability over the other, they have modified the approach in ongoing proceedings by confirming alternative charges or modes of liability sufficiently sustained by the evidence, to avoid delays in proceedings.[29] One

[21] *Lubanga*, Decision on the Confirmation of the Charges, 29 January 2007, p. 154.
[22] *Gbagbo and Blé Goudé*, Reasons for the 'Decision on the "Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo's detention (ICC-02/11-01/15-134-Red3)'", 31 July 2015, para 14.
[23] *Bemba*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo, 15 June 2009, para 348.
[24] ICC Judges amend the Regulations of the Court, Press Release, 20 July 2017, https://www.icc-cpi.int/Pages/item.aspx?name=pr1326.
[25] Preamble, Resolution ICC-ASP/11/Res.2.
[26] Boas G, *et al.*, *International Criminal Law Practitioner Library: International Criminal Procedure*, Vol 3 (Cambridge University Press 2013) 472.
[27] *Lubanga*, Decision on the confirmation of charges, PTC I, 07 February 2007, para. 204.
[28] *Gbagbo*, Decision on the Date of the Confirmation of Charges Hearing and Proceedings Leading Thereto, PTC I, 14.12.2012, para 28. *Ble Goude*, Establishing a System for Disclosure of Evidence, PTC I, 14.04.2014, para 12.
[29] *Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, PTC II, 14 June 2014, para. 100.

of the recent procedural innovations is to impose conditions on the acquitted person pending appeal,[30] whereas the Rome Statute and other legal framework say nothing about such conditional release.

Other procedural innovations encouraged by both Pre-Trial Chambers provided for expediting pre-trial proceedings. For example, 'on the basis of the general competence of the Chamber', it was deemed 'appropriate to set intermediate time limits for disclosure of evidence by the Prosecutor ahead of the final time limit.'[31] Pre-Trial Chambers also supported an initiative of the prosecutor of including hyperlinked footnotes in the document containing the charges and formally started request such inclusion of hyperlinked footnotes, underlying that this '[…] is an effective method achieving this purpose [to easily find the relevant supporting evidence]'.[32] These innovative procedural practices contributed to acceleration of proceedings setting internal deadlines and making better use of modern technology.

Chambers Practice Manual[33] further tends to support the approach that new procedural practices by judges are needed. It contains general recommendations and guidelines reflecting best practices to expedite the proceedings. From my point of view, while the *Manual* provides efficient means to enact procedural reforms without having recourse to formal means such as amending the RPE, it further exemplifies the idea that ICC needs procedural law-making through practice.

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?

I believe throughout my long career and extensive experience – a teamwork and collegiality - used interchangeably in the judicial work at the Court have become deeply entrenched into my work culture. Therefore, I am confident I can make best use of this asset when I am in The Hague to contribute to forging the common institutional culture of the Court - teamwork, respect for other Judges and their opinions, open-mindedness through building working relationships with other Judges having diverse backgrounds and representing different legal systems. Having obtained law degrees from the two common law countries and worked in both continental and common law countries I can confirm that I am at ease with both ways of legal thinking.

In my view, teamwork and collegiality as manifestations of the Court institutional culture are ingrained into Article 74(3) of the Statute. Given the obligation under this Article, in order to achieve unanimity I will treat those Judges who disagree with others with respect and try to have in-depth understanding of their positions on certain aspects of a decision so that to the extent possible help to integrate divergent positions into one. If needed, I will be prepared to go as long as it takes in supporting the presiding Judge in her/his efforts to find common ground with the members of the Chamber.

Teamwork and collegiality are essential for the judicial efficiency and cohesion in the Court which stands out because of the diversity of its judicial capital. Importantly this understanding is further reinforced by Article 74(5) of the Statute, pursuant to which the decision shall be in writing and reasoned and whereby there is no unanimity the Trial Chamber's decision shall contain the views of the majority and minority thus opening a possibility for appending a separate concurring or dissenting opinion. What is derived from the obligation under Article 74(5) of the Statute is that within the collegiate culture of judicial decision-making not only majority but also separate concurring and dissenting opinions are to be reasoned to provide clarification of important points of law and contribute to the development of judicial practice. Even though there are plenty of examples in the ICC practice of concurring or dissenting opinions of this kind, two of them in *Al Bashir* and *Yekatom and Ngaissona* cases easily come into mind:

In particular, Judge Usacka dissented with the ICC Pre-Trial Chamber that the crime of Genocide is completed when it presents a concrete threat to the existence of the targeted group or a part and the threat

[30] *Gbagbo and Blé Goudé*, Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute, Appeals Chamber, 1 February 2019.
[31] *Ble Goude*, Second Decision on Issues Related to Disclosure of Evidence, PTC I, 5 May 2014, para. 6.
[32] *Ble Goude*, Decision Establishing a System for Disclosure of Evidence, PTC I, 14 April 2014, para. 13.
[33] ICC Chambers Practice Manual, 2019. First introduced in 2015 and amended four times by 2019.

had to "concrete and real, as opposed to being latent and hypothetical" by pointing out that the requrement of a threat "would then duplicate the purpose of the second part" of the contextual element;[34]

Interestingly, in *Yekatom and Ngaissona*, Pre-Trial Chamber II relied on the previous, Separate Opinion of Judge Adrian Fulford from the *Lubanga* Judgement and Dissenting Opinion of Judge Christine Van Den Wyngaert from the *Katanga* Decision to conclude that "to the effect that the common plan may be one of the shapes taken by a criminal agreement and that, despite its apparent ubiquity, the very compatibility of the notion of a common plan with the statutory framework and its usefulness *vis-à-vis* article 25 of the Statute is far from being a foregone conclusion affirming the value of seperate concuring and dissenting opinions in shaping the judicial practice.[35]

Having this premise, there is a sound ground to believe that in developing judicial practice within the collegiate culture both absence and presence of separate concurring or dissenting opinions serve as an important safeguard of collective and individual judicial independence. This is within the same instituional culture that I would welcome separate concurring and dissenting opinions in a decision when all means to reach unanimity are exhausted.

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

Recusal of a Judge from the case is a significant means to achieve the ultimate goals of judiciary – independence and impartiality.[36] The idea of the recusal is twofold: (i) the first is related to impartial adjudication of a case, i.e. when a Judge has his/her personal/professional connections to that particular case and thus, is unable to decide the case impartially; (ii) the second scenario of recusal concerns to the objective observer, when it may appear to the latter that the Judge is unable to decide the matter impartially. In my personal view, both tests should be satisfied in order the case to be deemed as adjudicated impartially and independently. The Judge should take a decision regarding recusal on legitimate grounds, although, it should not be understood that each and every baseless question merit recusal by a Judge. Recusal should be well-grounded and serve the interests of justice.

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.

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?

I am committed to serve in the judicial formation of the Court whenever I am called for duty.

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 fully prepared for that and even more I have got used to it throughout my 20 years-long career at public service and academia.

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?

[34] See Separate and Partly Dissenting Opinion of Judge Anita Usacka in *Al Bashir*, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, pp. 9/51-10/51.
[35] See footnote 106 in *Yekatom and Ngaissona*, Corrected version of 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona', PTC II, 20 December 2019.
[36] Article 41 of the Rome Statute and Rule 34 of Rules of Procedure and Evidence thoroughly regulate recusal of Judges and set detailed grounds for disqualification.

I belive that the decision must be an expression of internal belief and judicial independence of a judge based upon the law he/she applies. Therefore, I would prepare a major outline of the decision and assign tasks to assistants to undertake a research or prepare memos on legal questions set out in the outline so that then it is fleshed out and major points of law clarified. On the basis of the resulting work, I will be writing and giving to the decision final shape.

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

Single judge can play a significant role in expediting proceedings before Pre-Trial and Trial Chambers. The Pre-Trial Chamber exercises numerous functions under the Statute. Generally, the functions of the Pre-Trial Chamber are carried out by three judges. However, they can be exercised by a single judge "in accordance with this Statute and the Rules of Procedure and Evidence."[37] The Statute sets forth the issues which are to be decided by three judges: orders or rulings of the Pre-Trial Chamber issued regarding authorization of an investigation, preliminary rulings regarding admissibility, challenges to the jurisdiction of the Court or the admissibility of a case, duties and powers of the Prosecutor with respect to investigations, confirmation of the charges before trial and protection of national security information must be concurred in by a majority of its judges. As for the other matters, a single judge can exercise Pre-Trial Chamber's functions 'unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber' (Art. 57 of the Rome Statute).

The Rules of Procedure and Evidence reserve the following functions for the full Chamber: the review of a decision of the Prosecutor not to proceed with an investigation under Article 53 of the Statute and the decision of the Pre-Trial Chamber to take measures on its own initiative in respect of a unique investigative opportunity under article 56(3). Additionally, even if the Pre-Trial Chamber has appointed a single judge, the Chamber retains discretion to reserve complex or significant matters for consideration by a full bench (Rules 7, 108, 110, 112). The main idea behind having a single judge in Pre-Trial Chamber is to expedite proceedings and 'to ensure proper management and efficiency in the handling of the proceedings before the Chamber.'[38] The Pre-Trial Chamber may even designate more than one single judge when the efficient management of the workload of the Chamber so requires.[39] A single judge may also be designated "in light of the urgent nature of the matters […] to ensure the expeditiousness and efficiency of the proceedings."[40]

As for the Trial Chambers, in 2012 the Rules of Procedure and Evidence was specifically amended, giving to Trial Chamber authority to designate one or more of its members for the purposes of ensuring the preparation of the trial, in order to facilitate the fair and expeditious conduct of the trial proceedings (Rule 132*bis*). Despite the fact that this Rule appears to sit uneasy with Article 39(2)(b)(iii) of the Statute which reserves designation of a 'single judge' only for the Pre-Trial Chamber, in practice this Rule has been applied by the Trial Chambers for the same purpose.[41] Yet, this amendment shall be commended as the positive follow-up of initiatives to allow a single judge to consider appropriate parts of the trial process alone, since dealing with all matters at trial stage by three judges was not "an efficient or sustainable use of the Court's limited funds".[42]

With that being said, which decisions could and should be issued by a single Judge, is to be answered in two parts. Firstly, decisions that could be issued by a single judge are decisions on those matters, which are not exclusively reserved for the full bench under the Rome Statute or the Rules of Procedure and Evidence. Secondly, a single judge should issue those decisions which would ensure proper management and efficiency in the handling of the proceedings. In practice specific examples of such decisions would be contingent upon the concrete circumstances of the proceedings. For example, PTC II assigned a single judge to issue a Decision on Disclosure and Related Matters in the *Yekatom* case, in the context of preparation for confirmation of charges; Single Judge served in *Gbagbo and Blé Goudé* to decide on extending the time limit for responses to defence submissions and rescheduling the hearing; PTC I assigned

[37] Art. 39(2)(b)(iii), Rome Statute.
[38] *Situation in the Democratic Republic of the Congo*, Decision Designating a Single Judge, PTC I, 23 March 2018.
[39] Rule 47(2), RPE.
[40] *Situation in the Central African Republic*, Decision Designating a Single Judge, PTC II, 6 May 2013.
[41] *Gbagbo*, Decision designating a Single Judge pursuant to Rule 132*bis* of the Rules of Procedure and Evidence, TC I, 23 October 2014.
[42] Adrian Fulford, 'The Reflections of a Trial Judge', Criminal Law Forum, 22(215), 2011, 221.

a Single Judge in *Al Hassan* to decide on the defence request for leave to appeal the order setting a deadline for the filing of the applications; Earlier PTC II designated Single Judge to decide over issuance of the warrant of arrest in *Harun and Abd-Al-Rahman*.[43]

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?

I am used to working under this kind of pressure. For example, in 2013, NGO's campaign was launched for Georgia to ratify the Convention on the Rights of Persons with Disabilities without a reservation. The Government of Georgia had also expressed a firm commitment to secure ratification of the Convention. Then, as a high-level official of the Ministry of Justice of Georgia with a mandate to deal with international treaties, I came under considerable pressure to avoid making reservation whereas the Georgian Civil Code was not fully compatible with Article 12 of the Convention.

It was my belief in the principle of best human rights interest applied in a professinally responsible manner where I found strength in coming up with a solution - proposing an interpretative declaration to the Convention, not a reservation, under which article 12 of the Convention was to be interpreted in conjunction with respective provisions of other international human rights instruments and its domestic law, thus, allowing ratification to go forward by taking interests of the civil society on board.

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?

I am in good health and prepared to work under the pressure of the Court's heavy workload.

E. Deontology

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

My definition and understanding of independence of judges is quite broad. It covers not only independence from any Government, international organisations, administration of Court, but also independence from parties, non-governmental organisations, etc. The major responsibility of a Judge is to remain to be free from any influences whatsoever and to adjudicate the case solely based on evidence and materials submitted in the case-file.[44]

To elaborate more thoroughly, judicial independence can be grouped in the following way - undue influences outside the judiciary, and from within. More frequently, attention is drawn to the influences outside the judiciary, although independence within the system is of utmost significance. Judges should be free from any directives, pressures and influences from fellow Judges and from judicial superiors who lead the Court. Another challenge is a perception and attitudes in a society towards the Court. With respect to international courts, observance of social attitude is complicated as it concerns millions of nationals of diverse societies and different legal systems. Therefore, the burden of international court is heavier as it belongs to the world society and serves the global interests of justice. Hence, while discussing independence of a Judge, it does not concern only the accused's doubts whether they are objectively justified or not, but it also concerns trust of different international stakeholders towards the Court.

In deciding whether there is a legitimate reason to fear that a particular Judge lacks independence or impartiality, the standpoint of the parties is important but not decisive. What is decisive is whether these doubts can be objectively justified. While deciding on this issue, it should be borne in mind that parties are

[43] See Judge Rosario Salvatore Aitala as Single Judge in *Yekatom,* Public Redacted Version of "Decision on Disclosure and Related Matters", PTC II, 23 January 2019; Judge Cuno Tarfusser as Single Judge in *Gbagbo and Ble Goude*, Decision extending the time limit for responses to Defence submissions and rescheduling the hearing to be held on 10 September 2018, TC I, 22 June 2018; Judge Péter Kovács as Single Judge in *Al Hassan*, Decision on the Defence Request for Leave to Appeal the Order Setting a Deadline for the Filing of the Applications, PTC I, 10 May 2019; *Abd-Al-Rahman*, Decision on the designation of a Single Judge, 9 June 2020.

[44] This cardinal principle is reflected in all international/regional treaties as well as in the preamble of the Rome Statute and Article 40. This fundamental principle also forms a cornerstone of the ICC's Code of Judicial Ethics.

in vulnerable situations during adjudication of a case and sometimes they may go too far while assessing independence of a particular Judge. Therefore, the main test that requires to be satisfied is whether there is a perception of independence for an "objective observer".

I believe that the main safeguard of independence, alongside institutional guaranties, is the internal belief and conscience of a particular Judge. Despite the human weaknesses which we all share, the Judge should have exceptionally strong personal character to cope with all challenges, among others, those related to independence. Thus, in my view, independence should be primarily respected and guaranteed by the Judge himself/herself on an individual basis.

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

The ICC has adopted its Code of Judicial Ethics (that is unique practice) which highlights the key topics and which, among others, draws attention to avoidance of conflict of interest or circumstances giving rise to it. Article 40 of the Rome Statute as well as Article 10 of the Code of Judicial Ethics specify that Judges shall not engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the Court, or that may affect or may reasonably appear to affect their independence or impartiality.

Conflict of interest, for me, is a very practical issue which cannot be solved solely by virtue of legal regulations as its enforcement is left to the Judges themselves. Conflict of interest concerns making some obvious choices: A judge is required to recuse himself/herself when he/she has a personal association with someone involved as one of the parties in a case. Although, other forms of association raise more tricky questions and they are related, among others, to what extent can a Judge perform work outside the primary occupation as a judge and will it compromise the work on the bench? Do public statements of the Judge disqualify him/her from taking part in a particular case?, etc.

The codes of judicial conduct provide answers to the above questions in a different manner. In my personal view, no document can thoroughly envisage all the cases of conflict of interest and it always represents a matter of contestation and interpretation. Hence the principle of conflict of interests largely remains a matter of internal belief, self-control and moral integrity of an individual Judge. When conflict of interest is present, the Judge should not engage in any activities that would prejudice his/her judicial functions.

A Judge should earn individual respect in a society which as a whole holds the respect towards the Court where he/she serves. Therefore, any action which undermines the earned respect represents conflict of interest. Instances of conflict of interest can taint the entire system of international courts and tribunals and can undermine their work. Nevertheless, activities such as (part-time) teaching and writing for publications, speaking at the conferences/round-tables etc. for the purpose of experience sharing according to international experience should be considered compatible with the functions of the Judge. This type of work is essential for the outreach activities of the ICC. In particular, such events are very much needed to raise awareness regarding the Court's activities and its outstanding role in restoring justice.

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?

This particular question has two dimensions. First is related to non-discrimination and equal opportunity for all candidates of Judges on the basis of merit without regard for characteristics such as race, gender, marital status, religion, ethnicity, colour, sexual orientation, political belief, etc. The UN Basic Principles on the Independence of the Judiciary (Principle 10) establish that: "[I]n the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status". International law specifically excludes selection criteria such as a person's religion, race or colour. These motives are irrelevant to the judicial function, the exception being the requirement for a person to be a national of the State concerned.

Second dimension of this question relates to the diversity of the global population to whom the ICC serves. As it serves the constituency of 123 States Parties, this global diversity should be also reflected in the corps of Judges. In that case, the world population will have a sense of representation of their nationality, race, colour, etc. which will reinforce their confidence and trust towards the Court. Due to this reason, international instruments require that the composition of international courts and tribunals must fairly reflect the diverse legal geography of the world.

Furthermore, the ICC adjudicates the cases from all over the world which concerns parties of different race, colour, gender or religion, therefore to better understand the particular characteristics and context of crimes/conflict, it would be better if the above considerations would be taken into account when assessing a candidate's suitability to be a Judge. As to the gender representation, it constitutes a mandatory characteristic under the Rome Statute. As Article 36(8)(a) envisages, the States Parties shall, *inter alia*, take into account the need, within the membership of the Court, for a fair representation of female and male judges.

A court which fairly reflects different religious, ethnic, geographic, gender, or racial components of society may signal that it is "open to all." As scholars have suggested that diversity in courts may have symbolic or descriptive value on the one hand, or substantive value on the other.

To sum up, in my opinion diversity enhances a court's legitimacy by making it seem more inclusive. A reasonable number of Judges from a particular region might enhance the legitimacy of the ICC - the Court may consequently be seen as a truly inclusive judicial body, and not merely as an institution where "outsiders" pass judgments.

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.

Never.

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.

Never.

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

I believe that the interests of victims and their right to participate in a trial is a backbone of the Court which, not only needs to inform the actions and decisions of the Chamber, but get more robust with practice. This is an underlying idea for my proposal below:

Application process

Before an individual participates as a victim in a trial, she/he must be certified as a victim by meeting the criteria set out in the Rome Statute and in the Court's Rules of Procedure and Evidence. To this effect, she/he must file a written application with the ICC's Registry, while the case is before the Pre-Trial Chamber (PTC). PTC examines the applications and officially grants or denies victim status. The examination process is long and complicated, causing delays as each application must be verified for completeness, redacted, sent for observations, and decided upon.

In my opinion, creative and strategic judicial thinking is necessary for system-wide solutions, to make the process more manageable and less resource-consuming. In this respect, I would offer to further develop the collective application scheme, which still allows victims to provide information on specific individual circumstances provided individual voices of victims are not lost in a collective system. I agree with the idea that if possible and with their consent, victims' redacted statements could be published on the Court's website.[45] The goal for making such a publication is many-fold: it will render their harm visible and contribute to their healing process; serve as a source of information for external actors, such as NGO, to conduct studies of victims' experiences and needs in the territory; increase the legitimacy of the Court since the core issues with which it engages would become public and told first-hand by the victims.

The standard forms require applicants to provide a significant amount of information. The judges of the ICC have demanded the submission of an increasing number of documents, for example identification cards, proof of relationship with other victims when the victim argues to have suffered moral harm, documents to prove capacity to act on behalf of an organization, among others. While this is partially understandable because judges must guarantee that no fraud applications are accepted, further efforts must

[45] See Moffet L, *Justice for Victims Before the International Criminal Court* (Routledge 2014) 115.

be made to reconcile evidentiary requirements with the victims' reality – many live in villages where the means to furnish such information are simply lacking.

Additionally, questions geared towards obtaining detailed accounts of the harm suffered by victims and the goods lost increase the risk of, respectively, re-traumatization and elevating expectations. Based on the need to treat victims with dignity and make an efficient use of the Court's resources, I would propose the adoption of a simplified form containing questions strictly in line with Rule 85 RPE (definition of victims) which would be the sufficient for people to be qualified as victims *prima facie*. Further I would suggest that there should be a "standardised" form for all cases, given that each PTC has used a different one.

Under the framework of relationship between the Chambers and the Registry and with the Judges' instructions on key matters, I would also propose solidifying and streamlining of the engagement of the Registry in processing applications and providing a uniform responses to applications. I think that, delegation of some authority by judges upon the Registry will ensure faster and smoother proceedings, provided that the Registry has sufficient resources.[46]

Participation of victims in trial proceedings and legal representation

The regime set up by Article 68(3), which allows victims to express their "views and concerns" through their appointed legal representative during proceedings, has been subject to divergent interpretations across Chambers.[47] Generally, the founding texts of the Court do not provide an exhaustive definition of the terms "views and concerns" and it is upon each Chamber to define their content case-by-case.[48] Yet, there is always a practical necessity to balance victims' participation against expeditiousness of the trial.[49]

I would accommodate the forms of participation considered a key to achieving the fundamental objectives of the criminal process. To that end, the Chambers have already demonstrated considerable flexibility and creativity, occasionally going beyond Article 68(3) of the Statute, so as to enable victims to participate in the way that promoted their 'personal interests' while remaining in harmony with the truth-finding objective. I would further strengthen the Trial Chambers' consistent position, endorsed by the Appeals Chamber, that victims may be allowed to lead and challenge the admissibility of evidence going to the guilt or innocence of the accused, which is critical to the proceedings.[50]

The current case-by-case process of defining participation principles and procedures is also inefficient. Thus, I would focus on establishing greater clarity regarding the principles and procedures relating to participation that will be applied across all cases, whilst ensuring that judicial discretion is preserved to tailor decisions to each situation or case.[51] To facilitate victims' participation in proceedings, the victims are to be consulted during the process of appointing common legal representation.

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?

I would support the position that the rights of victims may not prevail over the rights of the defendants. Any conflict between the rights of victims and the rights of defendants has to be the object of a delicate balance that must be achieved in the knowledge that the overarching purpose of criminal procedure is to reach a finding of guilt or innocence whilst protecting at the highest level the rights of all participants in the proceedings.[52] There is nothing prejudicial *per se* to the rights of the accused in allowing victim participation in international criminal proceedings. As Article 64(2) of the Rome Statute stipulates, "[T]he Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses."

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[46] Pena M, 'Victim Participation at the International Criminal Court: Achievements Made and Challenges Lying Ahead', ILSA Journal of International & Comparative Law, 16(2), 2010, 512.
[47] Vasiliev S, 'Victim Participation Revisited - What the ICC is Learning about Itself', in Carsten Stahn (ed), *The Law and Practice of the International Criminal Court* (Oxford University Press 2015) 1168.
[48] *Katanga and Ngudjolo*, Decision on the Modalities of Victim Participation at Trial, TC II, 22 January 2010, para 53.
[49] Partly Dissenting Opinion of Judge Sylvia Steiner on the Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, ICC-01/05-01/08-2138, 23 February 2012, *Bemba*, TC III.
[50] *Lubanga*, Decision on the Manner of Questioning Witnesses by the Legal Representatives of Victims, TC I, 16 September 2009, paras 26-27.
[51] Carayon G, O'Donohue J, 'The International Criminal Court's Strategies in Relation to Victims', Journal of International Criminal Justice, 15(3), 2017, 23.
[52] Zappalà S, 'The Rights of Victims v. the Rights of the Accused', JICJ, 8(1), 2010, 139-40.

Unreasonable delay in commencing or finalizing a trial may also diminish public support for, and cooperation with the Court. While expeditiousness is an important value, it cannot justify a deviation from statutory provisions or the full respect of the accused's other rights.

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 know basic French. I can speak fluently in English in public hearings and meetings more so given my extensive experience and involvement in international relations, with international institutions and academia. For the same reasons, I am comfortable writing decisions in English.

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

I have a Georgian nationality and I have never requested another nationality.

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.

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

Yes, I am willing to participate in the ICC financial disclosure program.

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?

No.

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 am entirely open to the option of making my answers public.