

Ugalde Godínez, Sergio Gerardo (Costa Rica)

[Original: Spanish]

Statement of qualifications

The Republic of Costa Rica has the honour so submit the statement of qualifications for Sergio Gerardo Ugalde Godínez, in accordance with article 36(4) of the Rome Statute of the International Criminal Court and resolution No ICC-ASP/3/Res.6 (and the amendments thereto) adopted by the Assembly of States Parties on the procedure for the nomination and election of judges of the International Criminal Court, along with communication No ICC-ASP/19/SP/01 of 20 December 2019 and Annex I thereto.

The government of Costa Rica has decided to nominate Mr Ugalde as a candidate for the post of judge of the International Criminal Court for the period 2021-2030, in the elections to be held at the nineteenth session of the Assembly of States Parties in New York in December 2020.

The government of Costa Rica submits Mr Ugalde's nomination for inclusion on List B, for which candidates must have "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" (article 36(3)(b)(ii) of the Rome Statute).

Candidate selection procedure

Costa Rica wishes to emphasise that Mr Ugalde has high moral character, has demonstrated his impartiality and integrity and possesses the qualifications required for appointment to the highest judicial offices in Costa Rica in accordance with Article 159 of the Political Constitution of Costa Rica, which stipulates the criteria to be met to carry out the function of judge at the Supreme Court of Justice, which is the higher administrative and judicial authority for the judiciary. In Costa Rica, the judges of the Supreme Court of Justice join chambers which deliver final rulings on disputes submitted to them in accordance with the procedure laid down by the law and the political Constitution of Costa Rica. Therefore, Mr Ugalde meets all the constitutional criteria of Costa Rica to exercise the role of judge of the Supreme Court of Justice.

As far as the national selection procedure is concerned, Mr Ugalde submitted to a two-part scrutiny. Firstly, he underwent the nomination procedure carried out by the national group of Costa Rica to the Permanent Court of Arbitration, in accordance with article 36(4)(a)(ii) of the Rome Statute, a procedure which involves an in-depth evaluation of the competences and experience of a candidate. On 16 January 2020, the national group at the Permanent Court of Arbitration submitted to the Ministry of Foreign Affairs and Worship a document evaluating the qualifications of Mr Ugalde which concluded by recommending his nomination for the role of judge at the International Criminal Court to the Government of Costa Rica.

In addition, the executive, the President of the Republic in other words, jointly with the Ministry of Foreign Affairs, in accordance with the law of Costa Rica on the promotion of cooperation with and judicial assistance to the International Criminal Court (*Promoción de la Cooperación y Asistencia Judicial con la Corte Penal Internacional*) carried out an evaluation procedure separate to that carried out by the national group at the Permanent Court of Arbitration. The second evaluation initially conducted under the aegis of the Ministry of Foreign Affairs and Worship, and then by the Office of the President of the Republic, lasted over six months.

As part of the second evaluation, carried out by the executive, Mr Ugalde submitted information in accordance with the provisions of article 36 of the Rome Statute and provided extensive evidence of his qualifications and his rich professional experience in the legal field, which is of relevance to the judicial work of the Court. Mr Ugalde was interviewed for the purposes of this nomination. The Ministry also prepared a technical opinion which it submitted to the Office of the President of the Republic for scrutiny. The Office of the President of the Republic carried out a further evaluation based on the information received which led it to approve Mr Ugalde's nomination.

Costa Rica has carried out an in-depth and rigorous evaluation procedure, which included multiple checks, in order to nominate a candidate who not only fully satisfies all the criteria set out in the Rome Statute but also embodies the country's commitment to and support for the mission and values of the Rome Statute and of the International Criminal Court.



Requisite skills and experience for the role of judge at the International Criminal Court

With a proven and extensive track record in international judicial proceedings, the candidate has been involved in producing international instruments and has extensive experience, both academic and practical, of practising international law, which is a relevant area for the judicial function of the Court.

He is a member of the Bar (Colegio de Abogados y Abogadas) of Costa Rica, of which he has been a practising member for over twenty-five years, twenty of those in international law. The candidate is a native speaker of Spanish and has excellent knowledge and command of English, an official working language of the Court. He is a Costa Rican national and has no other nationality.

The candidate holds a Masters in European and Comparative Law from the University of Oxford in the United Kingdom. He achieved his Bachelor's degree in law at the University of Costa Rica and also achieved his diploma in Notarial Studies at the same university. As a result of his training, his specialty in comparative law and practising his profession, he is fully familiar with European legal systems, of both civil and common law traditions, and he represents the Latin American legal tradition, which is one of the main legal traditions. Finally, his nomination allows for fair geographical representation.

His skills in the relevant fields of international law, such as international humanitarian law and human rights law, as well as recognised experience in a legal profession which is relevant to the judicial work of the Court and in accordance with the evaluations conducted by the Ministry of Foreign Affairs and Worship and those conducted by the national group at the Permanent Court of Arbitration, include his role as coordinator of the internal law commission of the Ministry of Foreign Affairs and Worship (*Comisión de Derecho Internacional del Ministerio de Relaciones Exteriores y Culto*), a post he held for over seventeen years pursuant to executive decree No 30473-RE of 24 May 2002 and in accordance with which he held the post of senior advisor of Costa Rica for the practice and promotion of public international law, international human rights law and international humanitarian law, specifically concerning regional and international conflicts, and for the promotion of Costa Rica's foreign policy on human rights and conflict resolution through international law.

In terms of his experience involving the work of the International Criminal Court since its inception, the candidate played a major part in strengthening the Court by establishing, along with other members of the aforementioned international law commission, the national legal position adopted by Costa Rica whereby it undertakes not to conclude any agreement which would constitute an exception to article 98 of the Rome Statute. The candidate, as a representative of his country, actively participated in the last six Assemblies of States Parties to the Rome Statute of the International Criminal Court and he represented Costa Rica at the Bureau of the Assembly for four years.

In 2015, he organised a regional seminar for Central America and Mexico on cooperation with the International Criminal Court, which was held in Costa Rica and which played a part in one of the countries in the region ratifying the Rome Statute.

In 2016, he was appointed coordinator of The Hague Working Group on the International Criminal Court and in this capacity he coordinated the efforts of the States Parties on issues associated with the fulfilment of their responsibilities under article 112 of the Rome Statute. He also attended working groups on governance, cooperation, universality, complementarity, the budget and other ad hoc meetings and working groups which have their seat in The Hague.

He has played a leading role in promoting gender equality and fair geographical representation policies at the Court and staunchly supported the Office of the Prosecutor and its independence and supported the policies of the Prosecutor, in particular policies involving children. He also supported the strengthening of the Trust Fund for Victims and distinguished himself with his public call demanding that judges meet their fiduciary obligations towards the International Criminal Court.

In 2016, he was also appointed vice-president of the Assembly of States Parties. In this capacity he chaired segments of the Assemblies of States Parties in 2016 and 2017 and also numerous meetings of the Bureau of the Assembly of States Parties. At the sixteenth session of the Assembly of States Parties which was held in New York in 2017, he co-chaired the final meeting and contributed to discussions on activating the jurisdiction of the International Criminal Court over the crime of aggression, which was adopted by consensus by the one hundred and twenty-three States Parties, described as a major achievement for the Court.



In 2018 he was appointed by the Bureau of the Assembly of States Parties to chair a group of ambassadors for the purposes of conducting the selection and recommendation process to appoint the head of the Independent Oversight Mechanism of the International Criminal Court. This was a complex and sensitive process which the group successfully carried out under the leadership of Mr Ugalde.

Regarding further relevant international judicial experience, as provided for in article 36 of the Rome Statute, the candidate advised and represented the State of Costa Rica in cases before the Permanent Court of Arbitration, the Central American Court of Justice, the Inter-American Human Rights System, including its Court, the International Court of Justice and the International Criminal Court. This experience led him to deal with issues involving governance and relations with the afore-mentioned courts and also to examine proceedings and disputes brought before a number of them.

With regard to the International Court of Justice specifically, between 2005 and 2018 he acted as counsel and advocate then as Co-agent for Costa Rica and was involved in various disputes and a request for intervention as part of a dispute between two other countries. He distinguished himself as the coordinator of the legal teams which conducted these cases and also by successfully presenting arguments in person before the ICJ.

Examples of his experience in the management of complex international cases include the case entitled “Certain Activities Carried out by Nicaragua in the Border Area” (*Costa Rica v. Nicaragua*), which was joined with another case entitled “Construction of a Road in Costa Rica along the San Juan Rive (*Nicaragua v. Costa Rica*). The proceedings were highly complex because of the high number of incidences and questions submitted to the Court for assessment, which involved the preparation of dozens of technical reports, the examination of expert witnesses, several proceedings for the indication of provisional measures as well as conducting another stage in the proceedings which aimed to determine the reparation due by one of the States to the other for environmental damage caused to a wetland area of international importance. At the start of the case he was also advising Costa Rica on preparing directives on international humanitarian law in the event of the dispute degenerating into armed conflict involving the security forces of both countries which might affect civilian populations nearby.

As part of the Inter-American Human Rights System, he participated as Costa Rica’s advisor in the evaluation proceedings conducted by the Inter-American Commission on Human Rights. He was also involved in cases involving reports published by various bodies on Costa Rica and Human Rights and rendered various opinions on the importance of strengthening the financial independence of the Inter-American Court of Human Rights.

Between 2000 and 2014, he held various posts at an international level representing Costa Rica, such as ambassador-at-large, mainly on matters involving public international law, both bilateral and multilateral, including the negotiation of international instruments. Between 2001 and 2005, he represented Costa Rica at the Regional Conference on Migration, an international cooperation body responsible for adopting policies on human movement and migration.

He negotiated the first host country agreement signed by the Permanent Court of Arbitration to establish headquarters outside The Hague, in Costa Rica. He also sat as a representative on the Court’s administrative council for four years. He has been a member of the Permanent Court of Arbitration since 2005.

He represented Costa Rica at The Hague Conference on Private International Law and also represented his country for four years at the Organization for the Prohibition of Chemical Weapons (OPCW). One of his roles within this organisation involved being vice-president at the Twentieth Session of the Conference of States Parties.

He has also been invited to lecture at a number of events on international law and international criminal justice, including various events on universality, cooperation and complementarity under the Rome Statute, and also on the activation of the jurisdiction of the Court over the crime of aggression. Finally, he was a speaker at the celebrations for the twentieth anniversary of the International Criminal Court.

His career has also earned him recognition in academic circles: he delivered a course on the Inter-American Human Rights System at the University of Costa Rica; he was invited on three occasions by the prestigious The Hague Academy of International Law to lead the seminar on the management of litigation before the International Court of Justice; and he is currently associate professor of international law at the University for Peace, which was established by a United Nations General Assembly resolution, where he delivers a number of



lectures for the Masters in International Law and Human Rights and the Masters in International Law and Conflict Resolution.

Costa Rica also wishes to emphasise his skills in institutional governance and his management skills which are required both to take on a judicial role and to administer the resources and personnel of the Court.

Undertakings

Mr Ugalde undertakes, if elected to the position of judge, to fully comply with his fiduciary obligations towards the Court, including the obligations to be loyal to and to protect the institution, and also undertakes to protect the interests of the Court should they conflict with his own personal interests. He also undertakes to observe the highest ethical standards, both in terms of utilising the resources of the Court and also in terms of his judicial mandate.

He undertakes to make himself available for any interview(s) required for the selection process, including the interview with the Advisory committee on nominations of judges.

In light of Sergio Ugalde's recognised background and knowledge in the relevant fields of international law, such as international humanitarian law and human rights, as well as his proven track record in legal professions relevant to the judicial work of the Court, and his experience of management and institutional governance, the Government of Costa Rica firmly believes that his skills fully meet the criteria set out in article 36 of the Rome Statute and that he will use them effectively to achieve the objectives which constitute the mission of the Court in accordance with the values and objectives of the Rome Statute.

