

**RESPONSES TO THE QUESTIONNAIRE PREPARED BY THE
ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES**

CANDIDATE: MARIA DEL SOCORRO FLORES LIERA, MEXICO

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 broad experience in international law, including international humanitarian law, human rights law and international criminal law. For the last 27 years, I have been involved in multilateral discussions where international law plays an important role in the decision making process and the adoption of agreements. I highlight some of the most relevant experiences closely related to those three disciplines:

From 1993 to 1995 and from 2001 to 2005, I worked at the International Law Department within the Office of the Legal Counsel of the Ministry of Foreign Affairs of México. My legal experience was broadened when I served as legal advisor to the Permanent Missions of Mexico to the United Nations in New York (1995-2000) and in Vienna (2000-2001). As a legal adviser in the Foreign Ministry and in the Permanent Mission to the UN, I was in charge of following up and participating in the whole process that led to the establishment of the ICC and the adoption of its main instruments, I was also part of the legal team which drafted the Constitutional amendments that enabled Mexico to ratify the Rome Statute and afterwards, the draft legislation to facilitate compliance with the Statute at the national level.

In 2006, I was appointed head of the ICC Liaison Office to the UN. In that capacity, I established the office and represented the Court before the UN and its different organs. I also provided support to the Assembly of States Parties and liaised with Member States in NY.

Since 2017, I serve as permanent representative of Mexico to the international organizations in Geneva. Among my main responsibilities, I lead the delegation of Mexico to the UN Human Rights Council, the subsidiary body of the UN General Assembly in charge of promoting universal respect for the protection of all human rights and fundamental freedoms. In that capacity, I participate in the discussions of the Council and of its different special procedures, and as well as in the follow up of the work of treaty bodies in areas such a torture, enforced disappearances and violence against women, among others.

In December 2019, I served as the Chair of the Drafting Committee of the 33rd International Conference of the Red Cross and the Red Crescent.

- 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?**

I do not have experience in litigation in criminal law. However, I do have experience in examining situations of human rights violations. During 2019, I was member of the Human Rights Council's working group on situations, which is in charge of reviewing communications, identifying consistent patterns of gross and reliable attested violations of human rights and fundamental freedoms, and making recommendations to the Council on the course of action to take in this regard. Some of the communications I dealt with were related to violence against children and women.

- 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?**

No

B. Perception of the Court

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

Proceedings are long and final convictions are very few; decisions are not consistent among the different chambers and, sometimes, there is duplication or contradiction, particularly at pre-trial and trial stages; collegiality within the Judiciary needs to improve to ensure consistency; the Court needs to make more efforts to deliver as one and the cases need to be better prepared.

- 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?**

Managing expectations is always very difficult given the important mandate of the Court and the many incidents of violence occurring all over the world. It is key to strengthen dialogue with the different stakeholders and to lead different views into a common understanding on how to improve the work of the Court. I identify four levels for action:

More frequent and organized dialogues could be held with different stakeholders to share information, to reaffirm that all actors have a responsibility to ensure that the ICC delivers and to give more content to the fact that national criminal systems of States should be prepared to deal with crimes not reaching the level required by the Statute.

The Court needs to work more internally to ensure that all the machinery truly delivers as one. Progress has been achieved in recent years, but more can be done without undermining the independence of the main organs. Independence does not mean taking decisions without bearing in mind the system as a whole. More dialogue and understanding among main actors within the Court is needed to make sure it delivers as one.

The Judiciary needs to improve collegiality and cooperation. Chambers are part of a broader machinery and each of them needs clarity on their mandate to avoid duplication or revision of issues already decided. Pre-trial decisions may not be reopened at Trial and the pre-trial phase is not a mini-trial. There is a need to endure a consistent body of jurisprudence and the resort to separate or dissident opinion should be an exception and not a rule.

Along the same line, there is a need to strengthen ownership and enhance institutional behavior of all staff, no matter the level. They are part of an organ with an essential mandate and each of them has a contribution to make.

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?

Recent legal and political events have affected the perception, both positively and negatively, of the International Criminal Court as an effective tool to investigate and prosecute the most serious crimes of international impact.

The Court has often being criticized of having political motivations leaving aside its main function of being a Court of Law that adjudicates individual criminal responsibility.

Also, recent cases in which the accused have been acquitted have raised serious questions about the effectiveness of the Court, in addition to criticism for how costly the Court is compared to what is perceived as its ineffectiveness.

In this regard, it is important to say that an acquittal should not be perceived itself as a failure of the system, on the contrary, the right of any accused to be defended includes the possibility of being acquitted. Nevertheless, it is important to see the circumstances of those acquittals.

The cases of Bemba, Gbabo and Ble Goudé, demonstrate the difficulties in imposing individual criminal responsibility on persons with political command responsibility. It is not enough to be in a position of power and that crimes such as those described in the Statute occur, but it is required to prove that the conduct of the accused is adapted to the elements of the crime, including the intention to commit such crimes. In my opinion, the Judiciary performed its duty in a correct way, but a wider lesson needs to be reflected in the work of the Court as a whole: cases need to be better selected by the Prosecutor to ensure that the evidence solidly points out to the criminal responsibility of the person accused.

Among good recent examples, I would like to refer to the case of Bosco Ntaganda, in which based in solid evidence, the Court found Mr. Ntaganda guilty of directly and indirectly commit war crimes and crimes against humanity, making a correct link between the evidence available and the conduct of Mr. Ntaganda. It may be said that he was not a Head of State or a prominent political figure, but this type of judgments bring legitimacy to the work of the ICC. It is also an important case to set standards on topics such as child recruitment and sexual and gender based crimes.

In addition and as specific examples of decisions that have impacted the perception of the Court, I would like to point out the following:

- The two first decisions (Lubanga, 2012 and Katanga, 2014), which completed the whole judicial cycle. They constitute a landmark on the activity of the Court, for becoming a tangible result after several years since its inception. They put back the ICC on the eyes of the world.
- The decision on the Al Mahdi case (2016)), which is the third sentence completing a whole judicial cycle. It brought a new perspective on the work carried out by the three organs of the ICC, as a process which developed fast, efficient and effectively.
- The decision authorizing the OTP to open an investigation on Bangladesh/Myanmar, in which the Court authorized for the first time, a fully-fledged investigation *vis a vis* a humanitarian crisis that had been denounced by the international community.
- The decision authorizing the OTP to open an investigation on Afghanistan. This decision is an example of the judicial independence of the Court.

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?**

As a matter of principle, the relationship of a Judge with the authorities of his or her country of origin, should be the same and abide by the same standards and rules as with any other State. A relationship should always be respectful, transparent and avoid any perception of conflict of interest.

Future relationships with universities, courts and non-governmental organizations should aim at furthering knowledge and understanding of the work of the Court and at identifying ways that those actors can contribute to its mandate.

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

In principle, a Judge cannot participate in a trial of such nature, but it will depend of the context of the specific case. If the case relates to a situation originating in the country of nationality/origin of the Judge, he or she cannot participate under any circumstances. However, if the trial relates to a crime committed in another State by a person from the country of nationality/origin of the judge and there is no connection whatsoever, he or she may be involved. In any case, it needs to be crystal clear that impartiality and independence of the Judge will not be affected and there is no risk of a conflict of interest.

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 use of decisions from other tribunals, whether international or national, will depend of the specific circumstances and the value they may bring to the issue under discussion. None of them may be ruled out in principle.

For example, the decision of the ICTY in the Tadic case, has been widely used to adjudicate the existence of armed conflict, and therefore to hint on the existence of war crimes in a given situation. Nevertheless one of the main duties of a Court of law is to adjudicate the norms to the concrete cases and circumstances, therefore one single jurisprudence should not be understood as applicable to all cases, where other sources of International Law can be applicable. In any case, it is important that the Court maintain consistency and uniformity regardless what source is applied.

An additional example may be found in the recent decision from ICJ, regarding the indication of provisional measures requested by Gambia in the case Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar). This important decision coincided with the authorization granted by the Court to the OTP to initiate an investigation in the Rohingya case.

The work of Human Rights bodies can also be valuable to inform discussions of the Court on certain issues, like independence of judges, standards on sexual and gender based violence (SGBV), torture, enforced disappearances, extrajudicial executions or arbitrary detention, among others. However, all those sources have to be weighted on the basis of the quality of the analysis preceding them. Human Rights bodies can assist in the interpretation of certain provisions, but they are not legal or judicial organs.

In addition, it may result useful to consider decisions issued by States that apply the principle of universal jurisdiction to crimes against humanity. The current tendencies in national law are gradually colliding with the traditional principles of international law (and vice versa). Thus, national decisions in this respect may become useful for international judges.

The work of country specific special procedures and investigative mechanisms created by the UN Human Rights Council may provide useful information to the Prosecutor and it will be up to the latter to determine if they can be used as subsidiary sources of evidence.

Findings of Human Rights bodies, as well as other bodies investigating human rights abuses have been widely used by regional Courts, in particular by the Inter American Court of Human Rights. Those findings could serve as reference to the ICC under the understanding that they are not legally binding, do not entail matters relating to criminal responsibility and have been used to better understand the context in which certain situations have occurred. This is particularly relevant in cases in which there are systematic patterns of sexual and gender- based violence or widespread human rights abuses.

Finally, Human Rights standards may help the Court to develop internal administrative guidelines to tackle harassment and advancing towards gender parity.

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 precedents established by the Appeals Chamber of the Court should help an independent Judge to guide his or her future decisions. If the Judge is also a member of the ICC, he or she should abide by the precedent, unless there is a very compelling reason to revise such precedent and that the revision is discussed and agreed by the Court as a whole.

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.

There is always room to innovation, but within the limits of the applicable rules of procedure and evidence, the regulations of the Court and the Chamber's Manual. It is key to ensure uniformity within the judiciary and that requires discipline. Innovative measures may be, for example, promoting and organizing frequent meetings among judges of a Chamber to discuss approaches to cases under their consideration, approach that may help to harmonize views and conduce to unanimous decisions. It is important that the Court standardize and harmonize its practices and procedures and in this context, innovations should be part of a broader discussion.

One area that I believe could benefit from innovation is the trial management. More active communication among different relevant actors could reduce delays in the proceedings.

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 am used to work as part of a team and to deal with persons with different backgrounds, cultures and legal systems. For that reason, I am convinced that dialogue and engagement are essential to reach understandings. This is even more important when decisions taken have an impact in the lives of persons.

When disagreements arise in relation to a certain aspect of a decision, it would be useful to separate the different components, isolate those that generate the most differences and identify different ways to address them. A deep consideration of all views expressed would facilitate understandings. Depending on the extent of the disagreement and the issues at stake, other members of the Court could be also involved in the discussions.

Separate concurrent and dissenting opinions should be an exception and be used rarely, when all efforts to reach a unanimous decision have failed.

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

The Judge must always evaluate all issues related to a case he or she will be entrusted with, and recuse himself/herself whenever there are facts or situations that may affect his/her

impartiality or give rise to a conflict of interest. For example, if he/she knows, has or have had a relationship with the accused person, the defense counsel or with victims of the crime, that may impact his or her judgement, such relationship must be brought to the attention of the President for the appropriate action to be taken. This, in addition to situations that occurred in the country of origin of the Judge, in which case an excuse should be mandatory.

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 to serve full time at the commencement of the term and for all the term.

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?

If elected, I would prefer to start serving at the commencement of my term. In case it is not possible, I would be prepared to join when requested to do so.

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 and fully aware of the implications of becoming a judge.

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 am used to work as part of a team. I write myself but I also share the responsibility with members of the team. As long as all the team has clarity of the issues at stake and discuss in advance the approaches to follow (during the whole drafting process), then writing becomes a less difficult task. At the end, as the person entrusted with writing a decision, I will take ownership of the final version.

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

Given the importance of expedite proceedings, the single judge could organize conferences with the parties to establish reasonable timeframes for the conduct of the specific proceedings and afterwards, monitor the respect of such timeframes or consult to adjust them when needed. He or she should also keep constant contact with the parties to identify minor matters that can be dealt without the need of formal written submissions. Decisions on conditions of detention; issues related to offences against the administration of justice, or supervision of decisions of national authorities regarding property seized, and in general, aspects that do not touch or affect central issues of the case. It is important that the single judge keeps informed and consult the other judges on his or her activities.

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?**

Yes, as a public servant I frequently work under pressure and subject to scrutiny.

As an example of work under pressure, I recall my participation as member of the senior team in charge of the organization and development of the XVI Conference of the States Parties to the United Nations Framework Convention on Climate Change, held in Cancun, Mexico in 2010. I coordinated the negotiating team of Mexico, supported the work of the Special Envoy of Mexico and of the President of the Conference and liaised with all States Parties and the Secretariat during a very divisive period, where negotiations were close to fail. The work done by the whole team under very stressing circumstances allowed Mexico to get a very successful outcome, one that paved the way to the Paris Agreements.

I am also prepared to deal with pressure from the media, non-governmental organizations and the wider public. The basic understanding should be to address their inquiries and concerns with transparency, frankness and clarity. A recent experience has been my work as representative of Mexico to the UN Human Rights Council and as one of its Vice Presidents. Transmitting the work of the Council and the positions of Mexico requires communication skills with a clear understanding of the important role those stakeholders play.

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 and prepared to work under pressure, for long hours and as much as needed. I have never been on leave for work related reasons.

E. Deontology

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

An independent judge is a person that decides on issues brought to his or her attention on the basis of the applicable law, respecting the rights of persons involved in the proceedings, to the best of his or her knowledge and without influences of any kind.

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

Whenever there is a situation that may affect the impartiality or independence of a judge, it has to be brought to the attention of the President of the Court for a collegiate decision. This may refer to relationships with any of the parties, current or previous, being professional or private in nature.

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, all candidates must be assessed on the basis of their merits and without discrimination of any kind. Given the nature of the ICC, when electing the judges States Parties should consider

merits and at the same time ensure gender balance, legal systems and geographical representation, among other criteria established in the Statute.

- 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.**

No, 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.**

No, never

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

Participation of victims in the proceedings, a core and innovative element established by the Rome Statute, must be a leading principle in the decisions adopted by the judiciary. Participation of victims must be effective, fully compatible with the rights of the accused and more importantly, it should help to manage expectations, particularly due to the length and uncertain outcome of the processes.

With regard to victims, a uniformed approach should be adopted from the earliest stages of a procedure and include: 1) A close interaction with the outreach units from the OTP and the Registrar; 2) A clear and concise dialogue with the Office of the Public Counsel for Victims (OPCV), and 3) An effective communication with the Trust Fund for Victims.

Concerning the first measure, a decision clarifying the mandate of these units in possible situations, including a clear definition of those considered “victims” even during a preliminary examination, would prevent misunderstanding and, as mentioned, would allow managing expectations with a sound legal basis.

Regarding the OPCV, a close interaction and dialogue should aim at clarifying the steps to approach the victims and to facilitate their participation in the proceedings.

Finally, the interaction with the Trust Fund of Victims should aim at providing realistic and close-to-reality reparation orders. Given the nature of the crimes within the jurisdiction of the Court and the many victims that the commission of such crimes may entail, innovative approaches to reparations are worth exploring

- 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?**

Finding a balance between rights of the accused and the rights of victims is a complex issue. The Statute only provides generic guidance and the Judiciary is the body entrusted with defining how to shape and regulate victims participation in proceedings. Both are recognized in the Statute, but clearly, rights of victims may not affect the rights of the accused to due

process and fair trial. A uniformed approach to victims, as the one expressed above, may help to balance the interests of both parties.

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 have a good knowledge of French. I can work in both languages.

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

No. I am Mexican and I have never requested any other 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, I am familiar with the conditions of service and terms of work and, if elected, I would abide by them.

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

Yes. I am familiar with such programs. As a public servant, I declare **annually** my patrimony and income, as well those of my spouse, to the competent authorities of Mexico. .

- 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 have no problem in making them public
