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?

   I have a career of over 30 years as a practitioner in the field of international humanitarian law and human rights law with extensive experience as litigator on criminal law at the national level and as litigator of complex cases at the international level. I made decisions at the very beginning of my practice in law, when my country was coming out of a dictatorship, to pursue justice, redress for victims, and accountability. I am a believer in the need of a robust legal system and fair trial as key components of the rule of law and strong democracies. I have made not only a professional, but also a personal decision, to live up to these goals.

   I will highlight some of the major developments of my professional career, which I believe show that I have extensive relevant experience to make a distinctive contribution to the judicial work of the Court.

   Firstly, I was a litigator of criminal cases at the domestic level. At an early stage, when I was a young attorney I handled cases of severe human rights violations at the Uruguayan criminal courts during the period of transitioning back to democracy in my country in the mid to late '80s, which was risky and complex. It was a time when reporting atrocities at courts and seeking accountability for crimes committed during the dictatorship was unthinkable.

   Secondly, I have a track record as a litigator in the Inter-American System. For several years I held the position of Executive Deputy Director of the Center for Justice and International Law, the most renowned organization and leader in strategic litigation of human rights cases before the Inter-American Commission and the Inter-American Court of Human Rights. In that capacity, I led the litigation team (making crucial decisions and overseeing cases at all stages), as well as frequently taking the role as lead litigator within the Courtroom. I managed complex criminal proceedings on cases related to human rights violations committed during internal armed conflicts, dictatorships and authoritarian regimes in addition to democracies in North America, Latin America and the Caribbean. This litigation required a deep knowledge of international human rights law, humanitarian law and criminal law. Some of these cases were complex because prominent figures and structures at the State level were involved under the State's responsibility, sometimes important sectors of the army or the police forces, and/or high-ranking rulers, or paramilitary organizations. Some cases were

complex because they affected numerous victims (massacres); others were complex because of the passage of time; the lack of access to evidence or very extensive judicial case files, among other factors. In many cases victims were in remote places relative to where the trial was taking place. Most of the cases were extremely politically sensitive. The litigation strategy required the crafting of arguments related to human rights violations and their interaction with humanitarian law, including the use of disproportionate armed force, the protection of civilians, the specific protection of women, children and displaced population during armed conflict, and others.

Thirdly, I worked as an Ombudsperson in Uruguay (2012-2017) at the National Human Rights Institution and Ombudsperson office (NHRI), position for which I was elected by majority of the parliamentarians from all political parties. In such capacity, I had quasi-judicial powers. I personally addressed complaints of human rights violations, documented the cases, issued recommendations and did the follow-up of compliance by the different State's agencies. The NHRI in Uruguay also functions as the National Preventive Mechanism of Torture (NPM, according to the UN/OPCAT).

Currently, I am the Executive Secretary of the Institute of Public Policies on Human Rights of the "*Mercado Común del Sur*" (MERCOSUR), directing an intergovernmental institution, to design and develop good public policies in human rights and to serve as a technical cooperation body in these matters. I also worked as a parliamentary consultant on issues of human rights and legislative harmonization in Uruguay, and as a consultant for Foundations and International Organizations (intergovernmental, including the OAS), as well as an academic at the prestigious Latin American Faculty of Social Sciences (FLACSO). In addition, I am a designated member of "The Mandela Dialogues – Dialoguing Memory Work", of the Nelson Mandela Foundation Centre of Memory, and a designated member of the Latin American Network on Prevention of Genocide and Mass Atrocities of the Auschwitz Institute for Peace and Reconciliation, among others.

Throughout my career, I litigated cases which contributed to establish unprecedented Court rulings. For example, the recognition of the particular violation of the right of juridical personality in a case of enforced disappearance and, in a separate case, the recognition of the status of forced disappearance of a person who was born under captivity and lived with another family, unaware of her origins, during the entire period that her fate was unknown. I personally led the litigation of the Gelman case vs Uruguay, where the judgment issued by the Court led to the overturning of the so-called "Impunity Law" and the subsequent enactment of a Law (2011), which restored the full exercise of criminal prosecution for crimes committed as State terrorism during a dictatorship. In terms of scopes of the cases, as I mentioned, they involved enforced disappearances, torture, gender-based crimes, cases of massacres, all of which provided me with experience and expertise on cases similar to the cases addresses by the ICC. It is important to recall that the jurisprudence of the Inter-American Court, with which I have worked for many years, has been at the forefront of the human rights rulings. Indeed, it has had a tremendous influence in the jurisprudence of other international courts, including the ICC. To mention some examples, when addressing evidentiary matters and rehabilitation and reparation of victims, the ICC referred to rulings of the Inter-American Court. These two systems are different however in some issues they intersect as, for example, the application and interpretation of the exhaustion of

domestic remedies rule and the principle of complementarity. My experience and expertise are related to legal framework, procedures, legal questions and, in sum, I was exposed to all phases in preparing a case and presenting it in the Court room. I believe that I am an excellent candidate because of my extensive practice as a defender of victims in national and international court-rooms, my vast experience leading complex litigation cases, my quasi-judge role as Ombudswoman and my current position directing an intergovernmental Institution.

My competence was confidently assessed independently in 2017, by the Advisory Committee on Nominations of Judges, which concluded that I was particularly well qualified for appointment as judge of the International Criminal Court. The Committee noted that I had exceptional expertise and established competence in international law, including international humanitarian law and the law of human rights, (document ICC-ASP/16/7).

I am most honored to have been nominated under list B and I also consider that I complete the requirements for list A nominations since I have established competence in criminal law and procedure, and the necessary relevant experience as a litigator.
I want to use all of my experience, together with my integrity and personal skills to pursue justice by making a major contribution as a judge of the International Criminal Court and the Rome Statute System. The creation of the ICC is one of the biggest achievements in the fight against impunity and one of the most important legacies to which we can contribute.

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 have vast academic and legal experience in dealing with issues of discrimination and gender-based violence working with psychological experts to establish the extent of trauma. I represented victims of violence in times of war and peace, including many women who had suffered forced sterilization, rape and other forms of sexual violence, children who were abducted and given up for adoption during dictatorships and civil wars, displaced persons, children and adolescents arbitrarily detained, victims of domestic violence and other forms of violence, children deprived of liberty subjected to torture and mistreatment, and women raped under deprivation of liberty.

As I have often witnessed during my work, and as it is widely recognized, women and men suffer a differentiated form of violence due to their gender. Hence, I believe it is important to understand not only that these crimes are serious abuses but also, they are related to stereotypes and social roles and are, ultimately, culturally constructed. Gender perspectives in litigation, as well as the application of a gender-based analysis, are key elements in understanding the impact of these crimes. Sensitivity and knowledge in this field are essential to properly understanding the different impact of these crimes on victims, post-traumatic effects suffered by them and their (possible) latent re-victimization. In my capacity as an Ombudsperson I also dealt with gender-based inequality situations, police abuse of female inmates, just to mention a few examples. I am convinced that it is extremely important for all judges to have

skills, knowledge, and sensitivity regarding sexual and gender-based crimes. My focus in these perspectives is constant.

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?

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

B. Perception of the Court

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

As the world's first permanent international criminal court, the ICC has faced and continues to face unique challenges based upon its global nature and its innovative mandate. Many of the challenges are openly discussed in the public domain. In addition, many of the challenges have been addressed by the Court and the States Parties in an on-going open-ended process. In terms of proceedings and fair and expeditious trial, the Court has improved its policies, working processes and structure, while openly reviewing its own strategies. The Court proceedings encompass issues of a complex judicial nature and none of them have an isolated impact, moreover all of them are interconnected and, therefore, affects the judicial process and the judicial System as a whole. The introduction of the fourth edition of the Chambers Practice Manual, is the acknowledgement that the matter of expeditiousness of proceeding is a complex one and needs to be addressed collectively.

Having said that, I will point out three of the main criticisms of aspects at the Court's proceedings that I am aware of and that have a strong impact on the efficiency and effectiveness of the Court:
- The length of the proceedings is perceived too long. The challenge is to move towards a more streamlined process and to expedite judicial proceedings at all stages;
- The limited predictability of proceedings, the need to improve the process and procedures has been discussed in order to promote coherent jurisprudence without affecting judicial independence;
- The effective conduct of judicial work. The working method of the judiciary, the need to maximize efficiency in rendering decisions and judgements, while avoiding delays.

Although many policies were developed in a short amount of time, the Court needs to continue to improve its core processes (including trials), in order to deliver justice more expeditiously without damaging equal guarantees for all parties, judicial independence, security of victims and witnesses. This means that the Court needs to be effective in the *hic et nunc*, but also needs to build a long-lasting system that enhance the legitimacy of the Court and that can be sustainable and thrive in the future.

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?

The International Criminal Court is a unique permanent international and multicultural institution, the main role of which is to fight against impunity at the international level, based on the principle of complementarity. The Court is composed of different organs with independent mandates and all of them need to align with the same vision towards a "One - Court principle". The Court already has made essential contributions in the fight against impunity; however, all efforts should be constantly made for its best performance, transparency and good governance. The Court, undoubtedly, confronts internal and external challenges, which arise from different causes and are therefore multifaceted. Some of them continue to persist and some of them arise with new investigations, prosecutions and judicial proceedings.

The Assembly of States Parties, Presidency, Chambers, Registry, and Office of Prosecutor acknowledge some of these challenges and have been taking measures to address them accordingly. In previous years, a Study Group on Governance was established by the Assembly of States Parties and a Working Group on Lessons Learnt was also established by the ICC that led to some amendments to the Rules of Procedure and Evidence. In addition, the development of qualitative and quantitative performance indicators for the Court was an important step forward. There are important ongoing initiatives as stated in Court Strategic Plan 2019/2021, OTP Strategic Plan 2019-2021, Registry Strategic Plan 2019-2021, which are all complementary. Simultaneously, interrelated efforts were undertaken by the Bureau, as the drafting of the "Matrix over possible areas of strengthening the Court and Rome Statute system" (2019) drafted as a living document for an open dialogue to review the Court functions. As a result, the Assembly of States Parties decided to appoint a group of independent experts to make recommendations on the road to enhance performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole. The outcomes of the Group of Independent Experts on clusters of Governance; Judiciary; and Investigations and prosecutions expected to be reported this year for consideration of the Assembly and the Court.

If elected as a Judge, my first obligation will be to exercise my duties in an independent manner to strengthen the legitimacy of the Court. I will foster consensus at work, coordinating with colleagues from different judicial chambers and an open approach to self-criticism. I will put forward all of my efforts to safeguard a good relationship among all judges and all parties of the litigation and enrich the cooperation with internal and external participants and stakeholders.

My suggestions which would build on all efforts and investments made to this moment, include: a) promoting an open debate on the conclusions of the Group of Independent Experts, first by the Assembly and the Court and then a more comprehensive one with the participation of all stakeholders; b) strengthening a culture of the highest integrity and collaboration within all the organs of the Court; c) working collectively weighing all perspectives and opinions to achieve major Court credibility; d) encourage training to better fulfill Judges' duties, as well as exchanging experiences, lessons learned, and obtaining a more in-depth knowledge of other legal systems; e) improving transparency; f) seeking for stronger support and cooperation.

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 decisions in the following cases had an important impact, which I am briefly going to address. The first judgements in the Katanga and Lubanga cases are of particular importance as they discontinue the slow performance of the ICC, thus removing any doubt as to whether the system was capable of delivering justice to victims of war crimes, genocide and crimes against humanity. The Katanga case represents the first time the ICC has dealt extensively with an issue of the utmost importance: sexual violence as a war crime. Although the ICC found that there was not enough evidence to convict Katanga for committing this crime, it already elaborated on a criterion that would eventually allow the Court to examine similar cases. The relevance of the Katanga case lies in the fact this is the first time that the ICC issued a sentence for committing crimes against humanity, a feature that was not present in the Lubanga case.

In the Al Mahdi case, a person responsible for the destruction of cultural property was tried for the first time for the deliberate destruction of monuments (as indicated by the Rome Statute, as a war crime). The ruling shows the importance of humanity's cultural heritage as a whole, and its importance in the reconstruction of peace. The discriminatory religious motive, invoked for the destruction, is also considered relevant in establishing the gravity of the crime. He pleaded guilty to the crime he was charged, in a process that lasted only one year, thus setting a benchmark of effectiveness for the International Criminal Court. This case became an example of the decisive, multifaceted and concerted action of the various institutions of the international community.

Among the above-mentioned cases, I will focus in more detail on the case of The Prosecutor v. Thomas Lubanga Dyilo. On March 14, 2012 (more than three years after the commencement of the trial), the Trial Chamber decided that, notwithstanding various failures during the course of the trial, the Prosecutor had established beyond reasonable doubt that Thomas Lubanga Dyilo was guilty of conscripting and enlisting children under the age of fifteen, using them to participate actively in hostilities. It is the first sentence issued by the ICC that punishes the recruitment of children, highlighting the gravity of the crimes against children.

Next, I would like to address as positive examples the Lubanga substantive decisions, confirmation of the charges, and conviction and the Appeals Judgment confirming Lubanga's conviction. These decisions set out standards and interpreted the ICC law for the first time in numerous questions. Subsequent jurisprudence continues to refer to these fundamental decisions, which set out the grounds for the proper understanding of the following issues, to list just a few:

Procedural/evidentiary:

1) The right to privacy and the seizure of material, by the Prosecution, from the accused's residence, a) analysis of the right to privacy in accordance to the principle of proportionality in unlawful interference, guided by international human rights

jurisprudence; b) considers violated the principle of proportionality, whether such violation "can justify the exclusion" of the evidence? Interpretation of Article 69 paragraph 7 of the Rome Statute. (ICC-01/04-01/06-803, paras.62-90)

2) Age determination (by images) of children, concludes (The Appeals Chamber) that the determination of age by images made findings of age determination "only where the children were, in its assessment, 'clearly' under the age of fifteen years." (ICC-01/04-01/06-312, para. 222)
3) The determination of the charges by way of parameters, as opposed to individual criminal acts, (ICC-01/04-01/06-312, paras. 118-137)

Substantial:

1) The proper limits of the notions of conscription, enlistment and use of children to actively participate in hostilities;
2) The attribution and criminal liability including the mental element.

Regarding the active participation of children under the age of 15 in hostilities, the Chamber shares the interpretation of "participation" as limited exclusively to combat, or more broadly related actions, including any supporting activity or role. In other words, it refers to any form of participation, whether direct or indirect, that puts children at risk. Despite the difficulties involved in this case (the first one to be handled by the ICC), the Court came to a balanced decision, which managed to preserve the rights of the accused.

Next, I will address the outcome of the long trial of the Prosecutor vs. Jean-Pierre Bemba. This acquittal of Jean-Pierre Bemba in 2018 by the Appeal Chamber has become a multi-faceted event that has shaken the debate in the field of international criminal law and, more specifically, in criminal justice. This occurred not only because of the possible consequences for the question of command responsibility, but also in terms of the standard of assessment regarding the facts. Following a 16-month deliberation by the Judges, on March 2016, the Trial Chamber rendered a verdict in the case against Jean-Pierre Bemba. The judgement made clear that, although Jean-Pierre Bemba was not present in the Central African Republic, he was "in command", receiving daily reports of the crimes his soldiers were committing. Bemba was unanimously convicted of crimes against humanity and war crimes committed in the Central African Republic in 2002 and 2003. He was sentenced to 18 years in prison. The case against Jean-Pierre Bemba was the first ICC case in which the conviction relates primarily to crimes of sexual violence, and in which a military leader or senior official was convicted of command responsibility.

On 8 June 2018, the Appeals Chamber ruled that Jean-Pierre Bemba could not be held criminally responsible under Article 28 of the Rome Statute of the ICC for the crimes committed by the troops of the Movement for the Liberation of the Congo during the operation in the Central African Republic, and was therefore acquitted, reversing the previous sentence. The judgment of the Appeals Chamber was by majority of 3-2. A Dissenting Opinion to reverse the conviction (based on the disagreements concerning the scope of the charges, and the assessment of whether Bemba failed to take all necessary and reasonable measures as a commander under Article 28, and with the standard of review adopted by majority with respect to factual findings. In addition, a Separate Opinion was also released by two of the judges of the majority in matters

they disagreed. For the Appeals Chamber, one of the elements of superior responsibility under Article 28 a) of the Statute had not been properly established. The majority of the Appeals Chamber declared the proceedings discontinued, since the crimes the Trial Chamber was judging were beyond the scope of the facts and circumstances of the case. Similarly, it considered the acquittal of Jean-Pierre Bemba for the crimes referred to, in terms of errors, and with respect to the necessary and reasonable measures to hold him fully accountable. For the two judges who disagreed, the original ruling was adequate.

In the Jean-Pierre Bemba case some issues generated a negative impact, such as: 1) the fact that the majority of judges who were involved in the process, at various stages, found him guilty, 2) the acquittal of an appeal sentence reached by a majority of 3-2, with profound divergences and with Dissenting and Separate Opinion, in important matters, and 3) the impact of the outcome on victims, witnesses, and in relation to reparations.

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?

When a judge is elected, he or she does not represent the State that nominated him or her. His or her duty as an ICC judge is to serve with independence and impartiality to the mandate of the Court. If elected to the ICC, my relationship with my country of origin should be friendly while keeping a healthy distance. I would be extremely careful to avoid any misperception of bias. Certainly, as with any other State, I would promote awareness of the Court's mandate and its functions and cooperation and commitment to international justice, without trespassing the limits required to preserve my independence.

The same would apply to my relationship with universities, Courts and non-governmental organizations with whom I have worked or been affiliated to. Judges are expected to leave behind all affiliations to performance judicial duties independently and without bias. I would maintain a friendly relationship with these institutions, allowing for cooperation in the form of assistance, training programmes and knowledge exchanges, but always preserving my independence and impartially; and being overly cautious when expressing views on matters significant to ongoing cases, and only to the extent these activities do no unduly interfere with my judicial functions or the workload of the Court.

It will be my obligation, if elected as a Judge, to act impartially and with independence, releasing myself from any engagement that would present a conflict of interest with my role in the Court.

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

I am very aware that judicial independence is a crucial element of the rule of law. Therefore, a judge should exercise the duty with complete independence from any influential power, parties in the trial, or pressure of any kind. A Judge can participate in a trial involving a national from his or her country of origin as long as he/she has complete independence and impartiality. Moreover, it is not enough that the judge feels independent, he or she needs to appear to be acting with complete independence and impartiality to the eyes of a reasonable external observer. In this regard, Article 41, paragraph 2 a) of the Rome Statute (Excusing and disqualification of judges) establishes that "A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground."

According to the Bangalore Principles of Judicial Conduct a judge shall recuse himself or herself from participating in any proceedings if it may appear to a reasonable observer that the judge is unable to decide the matter impartially. The term "impartial" implies absence of bias, actual or perceived. Therefore, the existence of grounds that put the judge's independence to question are enough reason for that judge not to participate. If that is the case, as a Judge, I would request to be excused in accordance with rule 35 of the Rules of Procedure and Evidence.

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?

Necessary: the binding sources of law indicated in Article 21, paragraph 1 (a, b, c) in the order established therein as Article 21 not only indicate the applicable law but also establishes a hierarchy between the sources.

Useful and appropriate: other decisions of the Court, in particular those of the appeals chamber may be both useful and appropriate to support the chamber's findings. These are explicitly mentioned by Article 21 as a possibility to the Court.

While not mentioned by Article 21, references to other jurisprudence from national or international courts may also be appropriate to support certain findings but only to the extent they do not detract from binding applicable law. Jurisprudence from human rights bodies may be especially relevant and appropriate in order to support findings of internationally recognised human rights taking into account Article 21, paragraph 3 which mandates the Court to apply the law in accordance with internationally human rights.

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?

Article 21 paragraph 2 of the Rome Statute establishes that "The Court may apply principles and rules of law as interpreted in its previous decisions." An independent Judge is not bound by precedents established by the Appeals Chamber of the Court. The provision does not establish a particular weight of decisions of the Appeals Chamber. However, it would be desirable to follow the precedents to promote coherent and accessible jurisprudence and decision-making, unless there are truly exceptional circumstances not to do so. It is also important to develop public trust in the

Court's work. In any case, whether the judge adheres or goes against precedents, he or she needs to provide sufficient reasoning to support its findings.

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.

A judge needs to implement all innovative measures that benefit the principles of the criminal procedure (immediacy, celerity, efficient use of resources, transparency, equality of arms, etc.), without affecting the interests of any of the parties. For this purpose, the judge should propose these measures and submit them to a discussion within the framework of the proceedings, generate the necessary consensus, and make sure that these practices are not harming any aspect of the due process of law. In terms of proceedings and fair and expeditious trials, the Court has improved its policies, working processes and structure, while openly reviewing its own strategies. As more cases come to trial and judgment, and as the Appeals Chamber renders more decisions, this trend will only strengthen.

Furthermore, a series of lesson learnt processes and collective exercises have been taking place, some of which concluded with an updated version of the Chamber Practice Manual (2019) that put together deadlines for key judicial decisions and internal guidelines on judgment drafting and structure. Additionally, amendments to the Regulation of the Court were made by the Judges. A Judge or a Chamber of the Court should make continuous efforts to identify the best practices by collective agreements to enhance the predictability of proceedings and foster a more cohesive judicial culture.

I consider the improvements that have been made in the methods of work to be healthy, and these should continue to be promoted.

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 have a long and successful trajectory of working collegially. Most of my positions involved working as part of multicultural legal and advocacy teams which I greatly enjoyed. I also appreciate learning different approaches to common challenges. One of my most relevant experiences was being a member and Chair of the Board of Directors of the Uruguayan National Human Rights Institution in its first mandate, where I led a group of 5 peers during my term. The close collegial dynamic of the National Human Rights Institution and Ombudsperson office tested my ability to ensure that in collective exercises the voices of different members were respected and heard.

In my leadership positions in governmental and non-governmental, national and regional institutions, I was able to build the necessary bridges of communication between States, civil society, victims and other key actors. I consider myself a team-player, who is always willing to contribute significantly to healthy work environments. I am a person of dialogue and someone that has demonstrated pondered and fair judgment. Not in vain, I was elected to direct institutions that required multiple skills, balance, patience and determination, and I was able to live up to such responsibilities.

One of the strongest values of the Court is that it brings together jurists from different backgrounds and legal systems. In its work, the Court strives for a common ground that will be nourished by different legal systems and experiences. I would bring that spirit to the resolution of controversies. In my view, criminal justice systems throughout the world have similar goals and face similar challenges. I am convinced that each system has features that balance each other out to protect fairness and ensure efficacy. The challenge is to find ways to combine systems without losing the required checks and balances.

I am confident that I will adapt to the environment of the Court's functioning. Searching for a common ground will create better solutions for a Court that aspires to be relevant globally. Disagreement is a natural part of the process of ruling in a collegiate judicial context. A disagreement should never be taken personally; to the contrary, diverse positions and opinions enrich the process; they allow the channeling of different perspectives on a single issue, perspectives that are not always taken into account.

Article 74 paragraph 3 establishes that Judges must strive for unanimity in decisions, failing which the decision shall be taken by a majority of the judges. Article 83 paragraph 4 provides that Appeals Chamber judgments shall be taken by a majority of the judges and when a unanimity cannot be reached, the judgement "shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law." Obviously, each judge must decide with his or her own conviction and independence. However, ideally dissent should be limited to important issues, and efforts should be made to reconcile disagreements.

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

Article 41, paragraph 2 a) of the Rome Statute (Excusing and disqualification of judges) establishes that "A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground." The same paragraph set up the reasons upon which a Judge shall be disqualified. In addition, rule 34 of the Rules (Disqualification of a judge, the Prosecutor or a Deputy Prosecutor) set up grounds for disqualification of a Judge.

A judge's recusal is a serious matter and should certainly be exceptional. The reason for that decision should be based on two grounds: 1) when the judge concludes, after thorough examination, that there is no way he or she could act objectively in a case; 2) when the judge considers him or herself capable of being objective, but when he or she is aware to be seen as not independent by other parties (what is referred to as "fear of bias"). However, in order for a conflict of interest to trigger the judge's decision to recuse a case, the reason must be sufficiently grounded. The judge must have carefully assessed the situation, concluding that there is no other alternative than recusing, based on the belief that he or she cannot act with sufficient objectivity and peace of mind. Recusal and excusal are procedural tools to protect the right to be tried by an impartial body.

D. Workload of the Court

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

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

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

In the event that I am not called immediately to work full-time at the Court, I am prepared to work full-time only at the moment when I am requested to do so. I am aware that this may mean a delay of several months or a year or more from the commencement of my term as a judge.

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

Yes. I am very prepared for the mission I would be entrusted, and I feel ready to fulfill the mandate with the best of my ability, efforts and commitment. I have faced difficult and demanding tasks before, and I have always fulfilled them working with devotion and commitment.

I am most committed to undertake the expected working demands of the position as a Judge at the ICC. In my work history I am most familiar and accustomed to long hours and changing schedules. Working evenings and weekends has been the norm and I am well prepared to work in such an environment.

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 will undertake the work myself, in coordination with the other Judges of the Division. I am most capable of writing decisions. I would delegate to assistants: a) adherence to drafting guidelines including proper and accurate footnoting, b) research, c) exchange of views: playing "devils advocate". Transitions in the judiciary (as in any other institution) require a certain phase of immersion in the institutional culture, particularly to promote a coherent jurisprudence and decision making.

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

Article 39 paragraph 2 (b) (iii) of the Rome Statute establishes that the functions of the Pre-Trial Chamber shall be carried out by either the three judges of the Pre-Trial Division or by a single judge of that division. Rule 7 states that a single judge shall decide on matters for which the Statute or Rules do not expressly require a decision by the full Chamber.

In practice, I perceive that the institution of the single judge provided for in Article 39 of the Rome Statute has been widely used in the process of confirmation of

charges in pre-trial until the hearing and decision of confirmation of charges in which the three judges act together. This has proven to be a very good practice to expedite the procedure. It has led judges to propose the institution of the single judge also for the preparation of trials (although with fewer functions than for pre-trial) through an amendment of the rules of procedure and evidence (Rule 132a). Both are good practices that should be maintained. What is especially important, both for pre-trial and trial, is that the single judge always keeps his o her colleagues informed and consults with them on all matters of importance about the procedure.

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, in all of my positions I have been immersed in all levels of communication with governmental bodies, and both local and international non-governmental organizations. Presentations and interviews with the media and public have always been a common part of my previous positions and I consider it a strength in my repertoire.

While litigating cases of different countries and at the international level, communications with media, government groups and parties was common. I am very experienced at managing these situations under high pressure. As an Ombudsperson I was constantly exposed to the media and interacted with internal tension within State agencies. In my present position leading an intergovernmental Institute, I relate and report to the Member States, upon their request.

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 able and prepared to work under pressure, given the Court's heavy workload. I have never been on leave from my professional duties due to exhaustion or any other work-related incapacity.

E. Deontology

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

A judge should exercise the duty with a complete independence of any influential power, direct or indirect, inducement, influence of parties in the trial, or pressure of any kind. A judge must not only be independent, but also appear to be independent to an external reasonable observer. Independence encompasses a personal, political and intellectual attitude.

In the twenty-first century, the concept of judicial independence should not be restricted to possible pressure from governments, it also involves pressures arising from the Judicial institution itself, from its own structure, and from the public. A Judge working collegially should always remain independent from inappropriate influence arising from attitudes of other judges. In terms of external influence, there is an increasing influence on judges from companies, media and transnational corporations,

whose interests on certain issues may lead them to exert pressure on courts with competence to decide on matters in which they have stakes.

In conclusion, when assessing judicial independence in the twenty-first century, judges should be required freedom from any conditioning from the multiple holders of power, both public and private. Also, there are certain activities or attitudes that could put a Judge in a position where their independence could be curtailed. Thus, The Commentary on the Bangalore Principles of Judicial Conduct records the activities that should not be carried out. Judges should not comment on affairs that could be politically sensitive or could affect in any manner the judiciary´s decisions or the administration of justice, among others.

We also need to consider the role played by media (press, social media, internet, etc.), which can interfere with the independence of the judiciary. It is important to guarantee the right of access to information and freedom of expression without allowing the spillage of opinions interfering with the independence of decision making. It is important for the judiciary to be perceived as independent, regardless of the way the judiciary proceeds. The perception of the public needs to be considered. An external reasonable observer should perceive the judiciary as independent.

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

A conflict of interest is any matter that may affect the judge's objectivity before a specific case, both regarding the subject matter (for instance, if the judge has been personally affected by such matter, if the judge was a victim, plaintiff, etc.) as well as the parties involved (for instance if the judge was ever the attorney of any of the parties, or was involved in legal actions with any of them, or for any reason related to what is referred to as "fear of bias", serious and real).

The principle of impartiality requires the judge to base his or her decision solely on the facts of the case, free from any prejudice; but such principle also requires that the judge's freedom of prejudice or bias is not put to question by the parties or the community. When a judge can think of any interest or bias that could affect his or her decision, this already constitutes a conflict of interest. But he or she must also bear in mind that, when subjected to an objective and reasonable assessment, other aspects not considered by the judge may come up, that raise reasonable doubts about his or her impartiality.

The function of the judge should be performed with impartiality beyond any presumption or bias. The so-called objective impartiality involves determining whether the judicial authority in question has provided convincing evidence to eliminate legitimate fears or well-founded suspicions of bias. Article 41, paragraph 2 a) of the Rome Statute (Excusing and disqualification of judges) establishes that "A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground." The same paragraph states the reasons for which a Judge shall be disqualified. In addition, rule 34 of the Rules (Disqualification of a judge, the Prosecutor or a Deputy Prosecutor) states grounds for disqualification of a judge. A judge's recusal is a serious matter and should certainly be exceptional.

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?

The central aspect when assessing a candidate to become a judge is his/her qualifications or merits; that is, specific related knowledge and professional experience, other managerial/team work abilities, as well as proven independence, impartiality, and integrity, as established in the Rome Statute (Article 36). A suitable candidate will be the one who fulfills all the requirements, and if possible, excels in the particular expertise needed, maybe combining criminal law and procedural and international humanitarian and human rights law competence, and professional legal practice in relevant functions (as lawyer, judge or prosecutor, and as academic, or advisor) in cases or matters specifically related to the work of the International Criminal Court (international crimes, and issues that require some specialization, like on violence against women and children).

Having been in touch with different legal systems would also contribute to a better understanding of the cases and among the judges in the drafting of the decisions. The candidate's racial or ethnic origin, socio-economic background, gender, religion, nationality or native language, among other considerations, should not come up as a detrimental or negative factor/dimension in the merit-based assessment, according to the non-discrimination principle.

The considerations explicitly established in the Rome Statute which apply to the election by the State Parties -in order to have in mind the global picture of the composition of the Court, in trying to be as diverse/representative as effective- are: the representation in the Court of the main legal systems of the world; an equitable geographical distribution and a balanced representation of men and women among the judges. The Assembly of States Parties has established some minimum requirement votes only for the first rounds and subject to a competitive election, which are not quotas, both for geographical and gender representation (for example, they do not guarantee a minimal gender representation -30%- or gender parity -50%-).

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.

I have NEVER been subject of disciplinary, administrative, criminal or civil proceedings of any kind.

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.

I have NEVER been disciplined or censured by any bar association, university faculty or similar entity of which I may have been a member.

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

Victims participation is a crucial and innovative feature of the ICC system. Victims are central to proceedings and essential to maximize their impact. They need to be accorded sufficient and genuine access to justice. This requires ensuring they are aware of and understand the proceedings, to facilitate their application to participate in them and to guarantee that they have a genuine and effective legal representation. Also, they must be afforded broad opportunity to express views and concerns and participate in other ways, without prejudice to the rights of the defence.

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 believe the purpose of the ICC goes beyond merely issuing judgments of conviction or acquittal. The Court must both do justice and be seen to do justice, and to do so it must conduct trials that are thoroughly fair and that actually have meaningful impacts upon international, national and local communities, and most importantly on victims. For the legitimacy of the ICC and the success of fight against impunity the appropriate balance between the rights of the accused and the need to respond to victims, should be carefully preserved. Guarantees of accused persons are established in the Rome Statute, especially in Articles 63, 66, 67. I believe that these provisions offer the accused all guarantees foreseen by major human rights treaties and courts (ECHR, IACHR, etc.) – presumption of innocence, right to cross-examine and call witnesses, etc.

The Rome Statute is clear on this, and on the fact that the Court needs to function properly, by conducting fair and expeditious trials. The Rome Statute is unique in that it guarantees victim participation, by considering their views and concerns at different stages of the proceedings as determined by the Court, and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Both things are equally important, fair participation of victims and a fair trial for person accused of being a perpetrator. If expeditious trials or victim participation are in conflict with fairness, the Court must assure fairness.

In my experience as a lawyer litigating at a national level in Uruguay, and before the Inter American Court of Human Rights, I am very aware of the importance of the equality of arms in order to assure a fair trial. Applying the Rome Statue in terms of victim's participation demonstrates that said participation does not constitute an imbalance in terms of rights of the accused, nor in terms of guarantees of a fair trial. Finally, the judge needs to be sufficiently trained and have the sensitivity to be able to identify and recognize the existence of these rights, 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?

As shown in more detail in my CV, I have undertaken extensive studies abroad in English. I studied at The Hague Academy in 1998; in 2002 I attended the Geneva Training Course in International Human Rights Law and Diplomacy and after I worked

in Geneva at the Association for the Prevention of Torture (APT). I was then awarded the Hubert H. Humphrey Fellowship Program at the American University, Washington College of Law, where I completed a Master's Degree in Laws. Both the fellowship and the Master's program required fluency in spoken and written English, as well as advanced reading comprehension skills to read complex technical legal texts.

I have worked in the United States, in two different positions: as Deputy Director of the Center for Justice and International Law and as consultant of the Organization of American States. I presented and participated in a wide variety of academic and legal events in English. I am a member of foundations, organizations and initiatives that work exclusively in English. The Advisory Committee on Nominations of Judges in its report of 2017 noted that I was fluent in English, (document ICC-ASP/16/7). I can speak fluently in public hearings and meetings. I am capable to write my own decisions in English, however, initially I would need an editing assistant to be in line with the ICC jurisprudential style.

I studied French in High School, and I currently have a basic passive fluency of this language, which (as a Romance language) shares many of the grammatical structures of Spanish, my mother tongue. I can read and understand but I cannot speak. I am extremely interested in gaining a deeper understanding of French, and I am confident that I will be able to improve my command of this language as part of my work and commitment.

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

I am a national of Uruguay and I was presented under that nationality. I also have Italian nationality as was stated in the Statements of Qualifications.

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 for the Judges of the Court, including the remuneration and the pensions' scheme. Yes, I am aware of and accept the Terms and Conditions of work. I consider the Terms and Conditions appropriate.

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

Absolutely, if elected I am willing to participate in a financial disclosure program organized by the ICC. Similar programs apply in Uruguay for different positions, as for the NHRI which I presided.

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, there is not.

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?

   My option is to make public my answers to this questionnaire.

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July 16, 2020. -