

## ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

### QUESTIONNAIRE

#### A. Nomination Process

1. The Statute requires every candidate eligible for election to the Court to have established competence in criminal law and procedure, as well as the necessary relevant experience, whether as a Judge, prosecutor, advocate or in any other similar capacity. This includes experience and established competence in criminal proceedings or in relevant areas of international law, such as in international humanitarian law and the law of human rights, as well as 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 above-specified areas? For how long, and in which capacity?

I started specializing in international humanitarian law when I worked on my PhD thesis, which I defended back in 2005. Combining legal knowledge with the practice of law, I embarked on my academic career concurrently with my admission to the Tunis Bar (1996). As a specialist in international humanitarian law, I have assisted in the development of knowledge and practice of this specialty of law on the field as well as in academic and professional circles, most notably amongst the youth. As a university professor, I have also developed curricula in international criminal law, human rights and the law of international responsibility of States. I have been teaching these disciplines for more than twenty years in Tunisian and in foreign universities. My work and publications centre mainly on the protection of people and the environment in times of armed conflict, on the victims' rights in international law, and on the responsibility of non-state actors.

My academic experience has been oriented to serve international organizations and state actors for the sake of bringing operational expertise to the programmes of security and justice sector reform in a miscellany of countries and contexts. In this capacity, I have participated in a series of initiatives and operational missions aimed at restructuring the security and justice sectors in order to strengthen the mechanisms of respect of human rights and good governance in contexts of political transitions, the fight against terrorism or as part of the peace process. Combating impunity has always been the core issue among these processes.

I have practiced the profession of lawyer since 1996, where I also worked on criminal procedure in the context of several cases relating to the respect of the rights of victims of abuse and of sexual or gender-based violence, those of minor children and women.

As a legal expert and practitioner, I regularly partake in numerous civil society programs and initiatives aimed at promoting the rights of the defence and of the fight against torture and ill-treatment within the judiciary.

2. Do you have any experience or competence in handling litigation, or in 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 gained a broad experience in the field of international dispute resolution via institutional means, i.e. via mediation and arbitration. With regard to violence against women, I have addressed this issue in several stages and qualities throughout my professional career.

*As a lawyer:*

- I have defended the rights and interests of female victims of domestic violence and provided legal monitoring for the benefit of a number of NGOs working to defend women's rights.
- I was assigned to represent and defend people accused of sexual violence against minor children.

Knowledge of the practical and procedural challenges provided me with an in-depth view of the circumstances, causes and practices favouring discriminatory, sexist and abusive behaviour towards women and children, but also with the tools and mechanisms of prevention of and reparation for such violence.

*As a teacher-researcher specializing in international humanitarian law and human rights:*

- My interest has focused on the treatment of girls forced into sexual slavery during armed conflict. In this context, I have participated in fact-finding missions in order to determine the causes of this violence as well as the responsibility levels. As a result, measures for the protection and reintegration of victims have been proposed.
- I have directed a large number of research works and projects (doctoral and masters' theses and dissertations in international law) tackling issues of discrimination, protection of minorities, as well as of the implementation of the gender approach in the context of the fight against terrorism.

The achievements in terms of knowledge and practice have enabled me to intervene as an expert trainer in international humanitarian law to meet the needs of civil society NGOs targeted at enabling them to acquire the techniques and tools inherent in the Monitoring and Reporting Mechanism (MRM).

*As an expert adviser specializing in the areas of security reform and peace processes:*

- I have contributed to the development of guides and manuals on the prevention and treatment of violence against women in police services and detention facilities.
- As Head of Mission of the Geneva Centre for the Democratic Control of Armed Forces (DCAF), I have participated in the development and implementation of national strategies and action plans targeted at the implementation of United Nations Security Council resolution 1325.
- I have contributed with prison services to the establishment of a work methodology to be carried out during visits of information and assessment of detention conditions. The work program included detention centres for women and for minor children.

Amongst the issues taken into account during my involvement in country dialogues and processes, one can find the specific institutional and operational arrangements for women combatants benefiting from a disarmament, demobilization and rehabilitation programme.

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 charged with nor been investigated for any allegations of corruption, criminal or administrative negligence, or any other similar 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?

Looking at the Court's situation today, one can find real challenges in terms of the procedure's speed, its effectiveness and, hence, its understanding by the parties and its credibility for the parties involved. These levels of perception vary depending on the stage of the procedure and the decision taken in a given framework. The following points summarise the main criticisms:

- *The non-decisive nature of the procedures aiming at the initiation of the Court's jurisdiction.* The three options for initiating prosecutions under the Statute have not worked as intended nor have they yielded the expected results. Moreover, problems in relation to the functioning of complementarity have more fundamentally reversed the potential relationship between the States and the Court.
- *The discrepancy in the Judges' work methods.* The current procedural modes give precedence to the oral. Furthermore, the role of Judges is not always perceived in the same way in terms of evidence examination and conduct of the trial since the latter originate in different legal systems.
- *The complexity of procedures for the victims.* Despite the major advances made by the Rome Statute's system in terms of victim participation, victims feel they do not understand the procedures which remain intricate and lengthy. Sometimes they think that going to Court does not meet their expectations in terms of seeking truth, redress and reparation.
- *The lack of responsiveness to particular situations.* The investigation procedure in certain cases and / or situations, but not in all cases, does not meet the interests of the good administration of justice.
- *The cumbersome procedures and delays in closing cases.* It is the slowness of the debates within the ICC that is partly criticized by both the defence and the victims themselves.
- *The lack of efficiency in the procedures for executing arrest warrants.* This aspect restricts the effectiveness of procedures, particularly in terms of the execution of arrest warrants issued by the ICC due to the lack or refusal of cooperation of certain States with the Court.
- *Disputed custodial measures.* Detention periods, which remain open pending a decision on the guilt of the accused, are considered contrary to the rights of the accused to a fair trial and to the presumption of innocence.
- *The difficulties to be foreseen in the activation of the jurisdiction over the crime of aggression.* The prospect of implementing the crime of aggression in the near future raises important questions as to the operational implementation of this specific type of violation of international law.

The obstacles and blockages facing the organs of the Court and the parties go beyond purely institutional reasons when the real causes are the independence of the ICC and its role in the global fight against mass crimes.

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?

There are two levels of perception of the Court. The first relates to the extra-legal issues surrounding the Court system, which affect its independence and its role in the international system, while the second relates to its work and its functioning as a universal criminal jurisdiction. Beyond procedural issues, and with a view to improving the perception of the Court in the eyes of the international community, the following avenues could be considered:

- First, to consolidate the *governance* of the Court. The efficiency of the procedure before the Court should be reinforced by means of rebalancing procedural practices in favour of more expeditiousness. The Court must have the capacity to meet the expectations of litigants within a reasonable time and at lower costs than those currently incurred. These fears, which are sometimes expressed against the backdrop of procedural issues, must be addressed and assuaged. It would also be advisable to allow *in absentia* procedures in the event of the non-execution of an arrest warrant, to facilitate "the implementation of provisions which entrust a single Judge with the conduct of the pre-trial phases", to think of setting time milestones

for each phase of the procedure, or to seek to improve coordination between the various jurisdictional bodies of the Court.

- Second, to promote the role of the *organs* of the Court in matters of cooperation with States Parties, in particular that of States on whose territory the accused or the evidence is located. As such, while ensuring strict respect for the separation between judicial and executive functions, consideration should be given to strengthening the decision-making powers of the Assembly of States Parties (ASP) in cases relating to non-cooperation between States.
- Third, to guarantee fair and equitable reparation to *victims*. Improving the victim identification system, speeding up reparation procedures, strengthening the asset tracing process of the accused and the cooperation of States and other organizations concerned in the matter, are avenues to consider.
- Fourth, to strengthen the rules of *ethics*. Two fundamental guarantees should be reinforced in this regard: (i) the statutory independence and moral authority of Judges against any meddling or interference in the exercise of their functions; (ii) the transparency, information and communication mechanisms of the ICC.
- Last but not least, to reinforce the Court's *legitimacy*. In the future, states and other stakeholders must help disseminate and promote the standards of justice and accountability of the ICC, so that these standards are internalized by national legal systems. The latter must also practice a more balanced policy of prosecution and operational priorities with regard to situations and cases falling within the Court's jurisdiction.

3. Which are, in your view, the most important decisions issued by the Court in the past years, which 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 perception of the Court's decisions depends on several factors, some of which are not always of a legal nature. This perception changes and develops most notably in accordance with the nature of the cases, the crimes and the circumstances.

The reception of some decisions by part of the public opinion and by States is a mixed one. Whilst the concept of a universal jurisdiction that fights against impunity for atrocity crimes perpetrated by individuals remains intact, the way by which the Court carries out its mandate sometimes poses problems of understanding and of the correctness of its choice to prosecute. It is this kind of mixed reactions that have been felt, for example, by victims or certain States following decisions of acquittal or failure to investigate in particular situations. One such instance was the decision of acquittal on the *Appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute"*. ICC-01/05-01/08-3636-Red. 08 June 2018. From this point of view, decisions relating to the application and interpretation of the provisions relating to the opening of an investigation continue to give rise to criticism both in terms of the advisability of the decision and the categorisation of the facts, as well as on the independence of the Court and the conditions of the exercise of its mandate.

The violations brought before the Court are for the most part of a serious, dire and complex character, so that the victims and States Parties accept that certain acts or persons are prosecuted and others do not, like in the case of Afghanistan, for instance, in the preliminary phase.

On the other hand, with regard to the functioning of the Court, we can cite the satisfaction of the public opinion and of certain States Parties with regard to the unanimous conviction of *Bosco Ntaganda by Trial Chamber VI (November 7, 2019)* to a total of 30 years of imprisonment. This was especially true since this decision represents the first international conviction for the crime of sexual slavery, notwithstanding the criticism voiced about the internal management of the case.

As well as the reparation decisions in the cases of *The Prosecutor v. Germain Katanga*. The Katanga Decision received a rather favourable reception because it laid the groundwork for an approach to assess individual reparations attached to the different categories of victims and damages.

Under the law applicable by the Court, a decision such as that in the case of *The Prosecutor v. Bemba*, (ICC Trial Chamber, Judgment delivered pursuant to Article 74 of the Statute, March 21, 2016) is a very interesting decision from the point of view of the interpretation and application of the provisions of Article 21 of the Rome Statute. By qualifying the Vienna Convention on the Law of Treaties, the Convention on the Rights of the Child and the Genocide Convention as "applicable", it marked an important normative development in the consolidation of the primary law of the Court. This kind of decision clarifies, for example, the legal ordering of the internal and external sources of substantive law of the ICC. It as well paves the way for the extension of the jurisdiction of the Court to crimes which have a close connection with forms of violence with atrocious and / or global effects, such as crimes against the environment or crimes linked to famine. Each decision echoes intricate realities, utterly different one from the other, and whose assessment cannot be conducted in the same manner. Whatever the decision, the criticisms levelled at the ICC with regard to its decisions do not always relate to the judgments *per se*. In the relentless review of its work methods and the rational and balanced application of international criminal law to established precedents and new situations, referring to the foundations of international criminal justice is systematically indispensable.

### 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?

An independent Judge does not go to court in order to defend the views of his own government. However, it is highly important that a Judge should entertain a good relationship with all the States parties to the Court. Although he does not voice his country's opinion at the Court, dialogue with the latter could help provide guidance to his country with regard to the adjustment and harmonization of the national penal system with the Statute and the case law of the Court. It can also be a vehicle for strengthening the dialogue and cooperation of the authorities of his country with the Court. Nevertheless, the independence of the Judge remains quintessential.

I would also strive to maintain relationships with academic establishments, governmental institutions and non-governmental organizations with which I have collaborated or been affiliated, while being fully devoted to my judicial functions. On the other hand, it is important for a Judge to keep in touch with an environment that stimulates and enriches him and to work for the sake of promoting the dissemination and development of both knowledge and practice of the fight against impunity.

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

The participation of a Judge in a trial involving a national of his country of origin should not pose any problems of principle. In this case, the Judge should perform his duties as if he were to try the person in his own national criminal jurisdiction. I will perform my duties conscientiously and impartially.

It will then be up for the Presidency to weigh up the importance of this aspect when constituting the Chambers.

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?

It should be noted first that the ICC has its own legal instruments, which constitute a one-of-a-kind, and unique system that governs all proceedings before the Court. Article 21 of the Statute, which defines the law applicable by the Court, does not, however, distinguish between procedural law and substantive law. While respecting the sources listed in this article and the criteria for their consideration by the Court, the latter has the possibility to resort to other sources of law in situations where the internal legal texts of the Court are silent and quite unclear, or otherwise do not apply.

This is a trend that should be encouraged in the practice within the ICC. In many of its decisions, the Court refers, for example, to the International Court of Justice to determine the concept of occupied territory, to the Human Rights Courts regarding the respect of the principle of fair trial, or to the decisions of the human rights treaties. Non-binding legal instruments, such as the fundamental principles and guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and serious violations of international humanitarian law, may also be taken into account.

Judges, therefore, have the discretionary power to apply sources other than the legal texts of the Court, which implies the possibility of taking into account the practice and jurisprudence of international and/or hybrid courts and tribunals. It is noteworthy to mention in this context that the Court has referred to the practice of other hybrid courts with reference to Article 21(1)(b) in relation to the issuance of warrants of arrest. Nonetheless, the procedural rules and jurisprudence of other courts are not automatically applicable to the ICC without a detailed analysis (*The Prosecutor v. Thomas Lubanga Dyilo, ICC Trial Chamber, Decision Regarding the Practices Used to Prepare and Familiarise Witnesses for Giving Testimony at Trial. November 30, 2007, para. 44*).

Practices followed in national legal systems may serve as an aid to interpretation when the Court's internal legal sources are applied and to the extent that they are not incompatible with the Court's legal instruments. Hence, there exists a legal complementarity between the international law applied by the Court and the national laws of the States Parties. This can only encourage the emergence of a shared practice in all phases of the procedure.

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?

This issue is regulated by Article 21(2) of the Rome Statute. Under this provision, a Judge has all discretionary powers either to apply or not to apply previous decisions of the Court, including those of the Appeals Chamber. However, for the sake of consistency and legal certainty, when the Judge of the Pre-Trial Chamber or Trial Chamber re-examines the case on the basis of a referral from the Appeals Chamber, his interpretation should not deviate from that of the Judges of the Appeals Chamber. Likewise, whilst it is possible to find numerous examples in the case law of the International Criminal Court where chambers have deviated from previous case law, Judges should strive to have consistent case law in similar cases. The predictability of decisions taken and of the law that Judges are called upon to apply are at stake.

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.

To the extent that the Court texts permit it, a fair Judge seeks to implement a fair balance between the speed and the efficiency of the procedure. The power of Judges to direct the

proceedings within coherent, fixed and predictable time frames during the different phases of trial proceedings is to be explored. One of the aspects to be considered is a better management of the pre-trial stage of the proceedings with regard to the deadlines for evidence submission and the confirmation of charges. Moreover, in order to circumvent lengthy proceedings and to avoid that the trial becomes endless at the expense of the presumption of innocence, it would be useful to consider taking into account the following good practices:

- Speed up the procedures and streamline them by setting time milestones for the different stages of the procedure;
- Set specific deadlines subsequent to the surrender of an alleged offender so that all the evidence available to the Office of the Prosecutor is revealed starting from a fixed date. From that date onwards, the Document Containing the Charges (DCC) should be filed within a determined timeframe as well, before examining whether there is sufficient evidence to corroborate the charges.
- Make full use of the pre-trial phase on procedural issues.
- Ensure that, at the preliminary phase of the proceedings, there exists sufficient conclusive evidence to bear out the seriousness of the case, which would preclude the use of this phase for the collection and constitution of incriminating prosecution evidence.
- Play a proactive role as a Judge and impose a rhythm on the proceedings by setting deadlines for exchanges within the framework of the procedure and by assuming the responsibility for directing and organizing the procedure, since the Statute and the Rules do not prohibit it.
- Ensure that final decisions on guilt and reparation are rendered as soon as the trial is over, especially if the accused person(s) is / are in custody following the execution of an arrest warrant.
- Exercise tighter control over warrants of arrest, whilst warranting prosecution teams are ready for trial.

Other proposals should be taken into consideration, such as the in-depth study of the inter partes proceedings or the manner of conducting public debates.

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 often had the opportunity to work with teams from diverse and multidisciplinary backgrounds, and I regard it as a factor of mutual development as well as a vital element of legal dialogue.

Relationships with other Judges should be one of mutual respect and cooperation. It is important to have the ability to fully understand the nuances of the different legal systems to which Judges belong and to disregard personal biases in decision-making and interactions with other Judges. It is by no means a matter of imposing one's vision of facts, of problems or of the law, but only of exercising one's powers with complete independence, impartiality and fairness.

In the event of substantial disagreement, the members of the Court bear the responsibility and the obligation to express it and to articulate it through dialogue methods and decision-making processes on the basis of the law applicable by the Court and of the interest of Justice. It, therefore, is necessary to ensure compliance with certain principles and rules:

- Respect the right of Judges to a difference of opinion by giving them the opportunity to present their views, including in the final decision;
- Focus on the evidence and the facts and engage in a more deliberative effort in assessing the available evidence and classification and categorization of facts;

- Concur on objective and concrete criteria for approaching disagreements and for decision-making;
- Strive to find consensus through legal dialogue, and resort, if necessary, to facilitation methods to help structure the discussion among peers in terms of what can be done for the sake of rendering the Court's decisions consistent;
- Keep in mind that a Judge must exercise his competence once it is established.

The Rome Statute expressly mentions individual or dissenting opinions in Article 83 (4). Drafting separate concurring or dissenting opinions is important as they allow Judges to structure their individual reasoning and to protect them from streamlining decisions after the fact. They can also have a positive effect on the public's perception of fairness and, therefore, play a key role in consolidating the legitimacy of the Court. The ability to issue separate opinions also makes the exercise of the judicial function less routine, insofar as it enables the phases of development of case law to be reflected as well as nurtured and advanced positions. Dissenting opinions remain useful in that they strengthen the reasoning consistency, uphold the Court's unity and maintain its authority. In order to prevent unreasonable delays resulting from separate opinions, this issue should be further regulated.

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

A Judge has an obligation to request his own discharge when he has reason to believe that there is a ground for his recusal. This is particularly the case when:

- the Judge has a primary family link with one of the parties, or is interested in the outcome of the trial;
- he behaves in such a manner as to reasonably doubt his impartiality, or engages in disputes concerning the remuneration of Judges;
- his impartiality could reasonably be called into question for any reason whatsoever, in particular if he intervened previously, in any capacity whatsoever, in this case before the Court or in a related criminal case at the national level in which the person under investigation or prosecution was involved (Article 41 of the Statute); and
- one of the grounds provided for in Rules 33 to 35 of the Rules of Procedure and Evidence of the Court risks undermining his/her impartiality.

#### 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, of course. Everything, without any problem whatsoever.

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

Yes, I will be prepared and ready to assume my duties the moment I am asked 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?

Yes, I am fully aware of the burden of responsibility and work of a Judge at the ICC; I am ready to accept these work conditions and fully assume them. In my current job, I am accustomed to working long days, even during academic and / or judicial holidays.

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?

Writing decisions is a step that synthesizes all the phases of a trial, bringing them to fruition. This step should correspond to the structure of the judgments and reproduce the judicial process as it unfolded. The need for speed should encourage the drafting of the decision to begin at the earliest stages of the proceedings. It is also important to structure one's decision well, to deal with procedural / preliminary issues first and to adopt a rational approach in assessing the facts, pleas and arguments of the parties before delivering a decision. Sufficient motivation serves also as a crucial element on which the consistency of the Court's reasoning and the predictability of its decision are based. A Judge must be able to distinguish, qualify and draw the useful and necessary consequences of the applicable rules.

An elected Judge must be fully engaged in the exercise of his functions, including the drafting of decisions. In this context, legal assistants have an important role in the preparation of cases. By virtue of their respective skills and experiences in multiple fields, assistants and trainees can, in fact, provide substantial help to the Judge in documentary research and the elaboration of the main lines of certain decisions, as well as enabling him to test his ideas through discussions and stimulating exchanges he can have with these assistants and trainees. The degree of their involvement depends on the nature of the decision.

In the most complex cases, it is important that the Judge himself should follow the drafting of the decision and ensure that all the work is done according to a synchronized structure and a work plan that he discusses with the team of assistants and trainees. The deliberative function is conducted through the pooling of knowledge and multiple experiences. This function ensures that drafting methods are harmonized and that the file record is preserved as the work of the Court develops and unfolds.

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

In order to ensure the proper administration of justice and the speed and efficiency of the proceedings, a single Judge may be appointed to perform functions for which it is not necessary for the Pre-Trial Chamber to take a majority decision. He should, where appropriate, issue orders and writs as well as issue warrants that may be necessary for the purposes of an investigation. In addition, he may be appointed for specific matters, such as the disclosure of evidence and questions relating to victims. He, therefore, can make the decisions necessary for the trial preparation and manage all the stages of the disclosure of evidence before the confirmation of charges.

With regard to the admission of requests for participation in the procedure presented by victims, a single Judge should deliver decisions allowing this phase to be accelerated. In particular, he should set time milestones for all the phases of the recognition procedure of a victim status to a given claimant / plaintiff, rule on the requests for participation which are subject to objections, or designate a legal representative for unrepresented victims whose participation has not been contested.

6. Are you used to working under pressure from States, governmental authorities, national or international organizations, the media or the wider public? Can you provide an example?

I have taken on responsibilities from which I learnt to work in an environment where a person is exposed to many forms of pressure, to manage expectations and to develop communication that is adapted to situations of crisis. The important thing is to know how to exercise one's mandate or job according to the requirements of professionalism and

objectivity, while upholding the confidence of one's interlocutors. I also carried out operational field missions where the risks and constraints were real and tangible. It was always indispensable to approach the situations and constraints with discernment, understanding and realism. In some missions, I have been called upon to make statements to the press, respond to the media, or present findings and recommendations in public.

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, pressure has always been part of my job and I have learnt to work with a sense of urgency. As a lawyer, I worked under the pressure of deadlines and the obligation to do everything possible to see a case through. As a teacher-researcher, I worked under the pressure of the deadlines of competitions, juries, theses and dissertations that one must read or supervise, not to mention the lessons that I had to provide and the work that I had to publish. As an expert, it is the urgency that always comes first. I can combine these different responsibilities and obligations, while preserving my physical and intellectual faculties. I did not take any sick leave in the course of my professional activities for reasons of exhaustion or illness.

## **E. Deontology**

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

An independent Judge is one who fully exercises his functions and prerogatives in his soul and conscience, while protecting himself against any pressure, whatever its origin. This shall entail that the parties appearing before him, the States and the general public can have confidence in him, and, above all, can be confident that the case will be heard fairly and in accordance with the law. A Judge must be aware of the importance of his office. He has the duty to apply the law and to respect ethics, to safeguard the objectivity and fairness of legal proceedings against any interference by state institutions or private persons in the exercise of his functions. Independence also implies duties on the part of the Judge, among other things, a line of conduct which does honour to his office and which preserves the independence of the Court. A Judge must refrain, in particular, from engaging in an activity which could be incompatible with his judicial functions or cast doubts on his impartiality.

Nevertheless, an independent Judge is not only one who derives his independence from his status; he/she is also one who thinks, lives and breathes.

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

The principle of impartiality requires the absence of a conflict of interest. It consists of the situation in which the person entrusted with the function of judging directly or indirectly holds personal, material or professional interests that may influence or seem to influence the objective, impartial and honest exercise of his functions.

In order to preclude any risk of having a conflict of interest arise, Judges must first declare the list of their interests.

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?

Any qualified person who meets the conditions of eligibility has the right to access judicial office, regardless of race, colour, sex or religion. Only the criteria of competence, probity,

independence and integrity should be taken into account in the assessment of a candidate eligible for the position of a Judge at the ICC.

The judiciary function must be seen by all cultures and legal systems as a non-discriminatory function in order to achieve universal adherence.

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. None whatsoever.

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?

Once elected, I would ensure that I take all adequate measures and decisions targeted at guaranteeing specific rights to participate, a general right to participate and a right to reparation for victims. In this context, I would ensure that the interests of victims are taken into account by warranting their rights of observation and reply. Several measures should be taken or actuated. These measures include in particular, but not exclusively:

- adjusting the modalities of participation to the specific circumstances of the stage of the procedure;
- providing basic protections to victims, for example, by ordering that certain accommodations be made in order to render the trial less intimidating for the victim, especially in cases involving the presence of minors, or by ensuring the participation of victims of sexual or gender crimes in proceedings while ensuring the respect of their dignity and well-being;
- ensuring that the trial guarantees the right of victims to reply in an adversarial manner to procedures and motions;
- being vigilant with regard to motions which aim to lengthen the proceedings, or which clearly aim to offend or intimidate certain victims;
- delivering a prompt ruling on disputes and objections relating to the recognition of the victim status of a given claimant or plaintiff;
- allowing any victim alleging to have suffered harm resulting from events falling within the parameters of the charges as confirmed (subsequent to the confirmation of charges) to continue his / her participation in the first instance proceedings, without the need for any "re-admission";
- ensuring that victims who do not benefit from legal representation can participate appropriately in the course of the proceedings;
- applying a flexible approach to the question of the desirability of common legal representation and the appointment of a particular common legal representative;
- including information about the full impact of the crime on the victim in the assessment of sentences to be handed down and reparations to be decided;
- guaranteeing victims or their representatives a right to active participation in reparation hearings which cannot be confined to written observations or submissions in accordance with rule 91(4);
- measuring the impact of decisions and sentences to be handed down on the victims' right to know the truth and to fair and equitable reparation.

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?

A Judge should strive to equally weigh and protect the rights of all parties involved in a criminal prosecution. He can generally only take measures which are specified by the Statute, the Rules of Procedure and Evidence and the Rules and Regulations, or which fall within the discretion provided for by the basic legal texts of the Court.

His decisions must spring from the requirements of conscience, impartiality, fairness and legality. Above all, the fundamental principles of criminal procedure must be respected and applied, notwithstanding the parties, the facts or the circumstances of the offences.

Care should be taken to maintain a balance between the requirements of the appropriate participation of victims in the different stages of the proceedings and the non-prejudicial or incompatible character of the rights of the accused, and the right to a fair, impartial and expeditious trial. Therefore, any person on trial must have the right to have his / her case heard within a reasonable timeframe, hence the importance of time frames.

Regarding the means and arguments presented by the parties to the Court proceedings, the manner or format in which the latter plead their case and present their evidence should be respected. The adversarial principle in exchanges and debates between the parties should be respected as well.

The interest in speedy trials and the limitation of costs and expenses should not stand in the way of the victims' participation as witnesses in the proceedings, nor of the rights of the accused to adversarial proceedings and to the good administration of Justice.

#### **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 have a perfect command of the two working languages of the Court. English and French are working languages that I use fluently both in my teaching and in my publications, research work and expert mission reports. I am fully able to draft decisions, conduct hearings or have high-level talks in both languages. In addition to my command of English and French, my mother tongue is Arabic.

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

I only have the Tunisian nationality, and I have not undertaken any procedure aiming at acquiring another nationality.

3. Have you familiarized yourself with the conditions of service (which include the remuneration and the pensions' scheme) for the Judges of the Court? Are you aware of, and do you accept, the Terms and Conditions of work?

Yes, I have read all the Terms and Conditions of work for the Judges of the Court, and I accept them.

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

I am fully willing to participate in a financial transparency program organized by the ICC, and I deem such programs useful and necessary in order to build and promote public confidence in the Court.

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?

I have provided all the useful and necessary information for the attention of the Committee. I have no other information that would call into question my eligibility for judicial office. I stand ready to provide any further information.

**G. Disclosure to the public**

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

I am in favour of rendering my answers to this questionnaire public.

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