

**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 another 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?

My competence in criminal law and procedure is grounded in my extensive experience working in various capacities within the criminal justice system of Mongolia. Over the 30 years career, I had the unique opportunity to work as a prosecutor, criminal defense advocate, and Supreme Court Justice of Mongolia and also in some other advisory, academic, and tutoring capacities, which provided me with a comprehensive experience of criminal law, criminal procedure, and trial process from multiple perspectives.

Working within the legal system that has undergone significant changes toward democratic values has greatly necessitated the reevaluation of the implementation of internationally recognized human rights principles outlined in various international legal instruments. Throughout my career, combined with thematic and comparative studies in international law, I have acquired comprehensive knowledge and competence by applying and interpreting core international human rights treaties.

As a Supreme Court Justice, I adjudicated a wide range of the most serious and complex criminal cases. Additionally, I dealt with numerous cases involving the exoneration of victims of mass killings and exterminations of 5 percent of the civilian population perpetrated in Mongolia during the 1930s. While the main focus of the cases was on exoneration rather than conviction of the perpetrators, it required analysis of the Genocide Convention and relevant Articles of the Rome Statute.

Over the past decade, I have actively participated in the process of legal reform by providing advisory legal opinions for the improvement of the legal framework of the criminal justice system. This included focusing on the harmonization of international human rights treaties, the Genocide Convention, and the Rome Statute through integrating international and transnational crimes into the Criminal Code of Mongolia. Also, I have been involved in academia, mentoring, and training students, lawyers, and judges offering advice on their research in criminal litigation and justice.

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?

Throughout my tenure as a prosecutor, I initiated, led, and conducted supervision over thousands of examinations and investigations of all types of criminal cases, including, sexual and gender-based violence and violence against vulnerable groups, and also participated in court proceedings related to the above cases.

As a defense advocate, I represented both victims and accused during every stage of criminal proceedings, ensuring a fair trial and due process. The working experience with victims of sexual and gender-based violence enriched my understanding of victim representation, restitution, compensation, and rehabilitation. It not only inspired but also equipped me with the knowledge to contribute effectively to the drafting of the Law on Victim and Witness Protection later in my career.

As a Supreme Court Justice, I handled a broad spectrum of cases, encompassing all categories of criminal conduct including, discrimination, domestic violence, deprivation of liberty, child sexual exploitation and abuse, sexual harassment, rape, murder, and transnational organized crimes such as sexual slavery, enforced prostitution, and human trafficking.

Furthermore, I dedicated my efforts to ensure that the decisions of lower courts were consistent with the requirement for uniformity of implementation and application of norms and principles of international legal instruments on the protection of the rights of children and women, such as CRC, CEDAW, UNTOC, and its Protocols.

In various capacities, such as Member of the Working Groups of the Legal Standing Committee of the Parliament and National Committee for Children, I have provided advisory legal opinions on legislation for the prevention of violence against children and women, improvement of juvenile and women rights in the Administration of Criminal Justice.

3. Have you ever been investigated for, or charged with, allegations of corruption, criminal or administrative negligence or any other similar misconduct, including sexual harassment? Was there a conclusive determination?

No. I have never been investigated for, or charged with, allegations of corruption, criminal or administrative negligence or any other similar misconduct, including sexual harassment.

## **B. Perception of the Court**

1. What is your vision of the International Criminal Court and its dual nature as a court and an international organization? How do you see the main differences between the ICC and the two *ad hoc* Tribunals for the former Yugoslavia and for Rwanda?

As a core pillar in the international criminal justice system, I envision the ICC attaining universal jurisdiction over international crimes, prosecuting perpetrators regardless of their official capacity or claims of immunity, complementing national criminal justice systems, contributing to the development of international criminal law and prevention of international crimes, and possessing the ability to significantly impact international relations.

Based on the dual nature of its mandate, the ICC operates as a judicial organ entrusted with the authority to investigate and prosecute international crimes. Additionally, as an international organization, it has responsibilities regarding the management of its staff, office, and budget, as well as promoting cooperation with other States, international organizations, and civil society.

Therefore, while the ICC's judicial role as a court of last resort is of profound significance, it is equally critical to acknowledge its standing as an international organization. By possessing an international legal personality, under Article 4 of the

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Rome Statute, the ICC can uphold its independence and impartiality, foster cooperation, negotiate agreements with States, and significantly influence international relations and the global status quo.

Consequently, the dual nature of the ICC underlines its uniqueness as an international judicial institution and an international organization with a noble mission. In this context, the promotion of universality, complementarity, cooperation, and outreach by the ICC are not merely optional activities; they are indispensable components that ensure the effective functioning of the ICC.

In my view, despite sharing the common goal of ensuring accountability for individuals who committed international crimes, the ICC and the two ad hoc Tribunals have some notable differences related to their mandates, organizational structures, and financing mechanisms. By its origin, the ICC is established as the first permanent, treaty-based international court with jurisdiction over the most serious crimes of concern to the international community, while the ICTY and ICTR were established by the UNSC with limited jurisdiction over crimes committed in certain areas within a specific timeframe.

Furthermore, as stated in Article 17 of the Rome Statute, unlike the ICTY and ICTR, which supersede national courts, the ICC complements them when they are unable or unwilling to genuinely investigate and prosecute international crimes.

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

The main criticisms of the ICC that I am aware of include:

- Limited jurisdiction, reflecting a lack of universality;
- Long proceedings, particularly at the Pre-Trial and Trial stages;
- Inconsistent practices within the Court regarding evidence assessment and victim participation; and
- Issues with efficiency and increasing budget demands.

In addition to these points, the criticism goes along with the non-cooperation of State parties. According to Article 86 of the Rome Statute, State Parties are obliged to cooperate with the Court. However, there have been some instances of non-compliance.

3. 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?

As the sole permanent international criminal court with jurisdiction over international crimes, extending its reach is crucial. Achieving universal jurisdiction or accession to the Rome Statute is indeed a challenging task for the ICC, yet not an impossible one. Therefore, it is essential for the Court to constructively engage with non-State parties, encouraging their accession to the Rome Statute and fostering cooperation. Simultaneously, reinforcing and strengthening cooperation with State-parties under Article 86 of the Statute is equally important to address issues of non-compliance of States.

In my view, international and regional engagement is vital in enhancing the ICC's outreach and relationship with States. Against this backdrop, Mongolia will host the upcoming Asia-Pacific Regional Seminar of the ICC. The seminar will bring both State and non-State parties of the Rome Statute to deepen their understanding of the Court, discuss and strengthen the cooperation regime, and advance efforts toward universal accession to the Rome Statute.

The procedural challenges facing the ICC as mentioned in section B2 require comprehensive analysis and research. To my knowledge, the Chambers Practice Manual of the ICC can play a fundamental role in addressing pertinent procedural issues. By outlining procedures and timeframes, it can streamline proceedings, fostering coherent, consistent, and predictable processes that enhance the overall efficiency and ensure transparency of judicial proceedings.

While the manual is non-binding, adherence to it is paramount to ensure a fair trial and due process and develop consistent, harmonized, and well-understood procedures. Thus, Judges should endeavor to follow the manual.

4. 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?

In my view, certain Court decisions have a positive influence on the perception among the States Parties and the public. A notable example is the Pre-Trial Chamber's decision authorizing the Prosecutor to proceed with an investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar. This decision affirmed the Court's jurisdiction over crimes committed partially on the territory of a State Party, even if those crimes began in the territory of a non-State Party. I concur with the interpretation of the territorial criminal jurisdiction, as it upholds the territoriality principle, ubiquity principle, and principle of accountability for international crimes and extends protection to victims who would otherwise have no recourse to justice.

On the other hand, the Pre-Trial Chamber's initial decision to reject the Prosecutor's request to commence an investigation into the situation in the Islamic Republic of Afghanistan had a negative impact. This decision sparked widespread criticism, as it appeared to limit the concept of 'interests of justice' to the likelihood of a successful investigation and prosecution. I respectfully disagree with the Pre-Trial Chamber's interpretation of Article 53(1)(c) of the Statute. In my view, the Pre-Trial gave undue weight to pragmatic considerations when interpreting the 'interest of justice,' at the expense of legal and moral imperatives, such as the gravity of the crimes and the interests of victims.

It is important to note, however, that the Appeals Chamber later changed this decision, authorizing the Prosecutor to commence an investigation into alleged crimes within the jurisdiction of the Court relating to the situation in Afghanistan.

### **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?

Similar to the Constitution and the Law on Judiciary of Mongolia, the Rome Statute, specifically Article 40, mandates judges to act independently and impartially. Therefore, a judge's actions should not be influenced by external factors, including the authorities of their home country. The relationship between a judge and their country of origin must adhere to principles of impartiality, independence, and integrity to avoid any bias or conflict of interest.

Furthermore, Article 11 of the Code of Judicial Ethics of the ICC asserts that judges must not partake in extra-judicial activities that might jeopardize their judicial duties, or seemingly affect their independence or impartiality. While engagement with entities such as universities, courts, or non-governmental organizations is permitted, a judge's primary commitment must remain with the ICC. Any external involvement should never compromise their independence, impartiality, or judicial performance at the ICC.

If elected, and Court's workload allows, I would engage with universities, courts, and non-governmental organizations to disseminate and promote the mission and work of the ICC, ensuring that it does not impede my judicial duties.

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

The Rome Statute does not contain any provision that prevents a judge from participating in a case involving a defendant from their country of origin unless there is a case in which the judge's impartiality might reasonably be doubted on any ground. Article 41 of the Rome Statute, similar to Article 10.1 of the Criminal Procedure Code of Mongolia, lays down the legal basis for excusing a judge from the exercise of a judicial function. The judges should not have any personal interest or bias that could affect their decision-making process in a case. It is the responsibility of the judge to excuse him or herself from the case if the judge is unable to decide the matter impartially or in it may appear to a reasonable observer that they are unable to do so.

Accordingly, a judge can participate in a trial involving a national from his or her country. If there is any question or concern about the judge's ability to remain impartial, the judge should disqualify themselves from the case.

3. Which jurisprudence/decisions do you consider necessary, useful and appropriate to be considered during proceedings at the ICC? From national courts? From international courts? From Human Rights bodies?

Article 21 of the Rome Statute governs the hierarchy and applicability of the sources of law and allows the ICC to apply customary international law and general principles of law, making the national court decisions a useful reference.

Furthermore, decisions from the ICTY, ICTR, and other international or hybrid criminal tribunals are valuable resources. These tribunals have developed significant jurisprudence covering a broad spectrum of international criminal law and procedural issues.

From my experience, decisions of UN Human Rights bodies, such as the General Comments, are helpful aids in interpreting and applying human rights treaties. Consequently, decisions from human rights tribunals such as the European Court of Human Rights and the Inter-American Court of Human Rights can assist the Court in applying and interpreting the law in a manner that aligns with internationally recognized human rights.

Lastly, Article 21(2) of the Statute allows the Court to use its own jurisprudence as a reference, applying principles and rules of law as interpreted in its previous decisions.

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?

From my perspective, the ICC judge should, when confronted with precedents set by the Appeals Chamber, strive to adhere to those precedents in similar cases. This consistency is critical to promote and uphold coherent, predictable judicial procedures and ensure the

same application and interpretation of the law. It also contributes to the court's legitimacy and credibility, as it shows that the ICC is applying the law in a consistent and systematic manner.

However, judicial independence allows a judge, in exceptional circumstances, to diverge from established precedent when there is a reasonable basis to do so. Such a decision should not be made without due consideration and must be accompanied by thorough reasoning, which should be explicitly justified in the decision or judgement.

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.

Yes, I do believe that a Judge or a Chamber of the Court should be permitted to implement innovative procedural practices to ensure efficiency, granted that such actions are not contradictory to the Rome Statute or the Rule of Procedure and Evidence.

One innovative way to increase the efficiency of the Court could be to increase the use of technology, including utilizing artificial intelligence in the Case Law Database. The most recent introduction of the evidence submission platform OTPLink by the Office of the Prosecutor is a welcome addition.

The Judge or a Chamber could also explore ways to make judicial proceedings more efficient to set the stage for a smoother trial. For instance, preferring to Single Judge to issue an order to expedite proceedings.

6. How do you envisage working with a hybrid criminal procedure, different from the one you experienced in your national functions? How do you envisage your working relationship with other Judges from different backgrounds and from different legal systems?

During my work on reforming Mongolia's criminal justice system, I actively contributed to the drafting of a new Criminal Code and Criminal Procedure Code. Despite Mongolia's civil law system, we recognized the importance of hybrid criminal systems in ensuring a fair trial, due process, and the rule of law. Therefore, with the support of the Mongolian government, we studied best practices from common law systems. As a result, our working group incorporated elements of the adversarial system and plea bargaining into the new Criminal Code of Mongolia.

Although Mongolia does not have a legal precedent, in practice, the judgments and decisions of the Supreme Court hold significant weight. This experience has provided me with insights into working within a civil law criminal system that incorporates elements of common law.

I strongly believe in the benefits of hybrid criminal procedures as they blend the strengths of different legal systems. Collaborating with judges from various legal backgrounds would be an excellent opportunity to develop a unique framework that suits the ICC and contributes to the advancement of international criminal law.

7. Are you used to working as part of a team? 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?

From my experience, it is clear that disagreements during deliberations are inevitable, and consensus is not always achieved. However, upholding a spirit of collegiality and

professionalism, maintaining dignity and respect in our exchanges, engaging in constructive dialogue, and striving for unanimity are crucial.

It is crucial to remember that a judge's decision should remain independent. As a Justice, I frequently wrote separate, concurring, and dissenting opinions. I view this practice as fundamental to developing legal dialogue and promoting diversity of thought.

Given its international status, the ICC requires even greater respect for cultural diversity and differing opinions. Also, it is important not to rigidly adhere to the rules, principles, and practices of one's home country when addressing substantive or procedural issues at the ICC and approach legal issues with open-mindedness. As stated in Articles 74(5) and 83(4) of the Rome Statute, if there is a differing position regarding the application and interpretation of the law the Judges are permitted to present separate, concurring, and dissenting opinions.

#### **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 affirm that I am fully prepared and available to serve at the commencement and for the entire duration of the term if elected. I am also fully prepared to work at the Court on a full-time basis if called upon to do so. I understand the demands and responsibilities associated with this position and commit to fulfilling them to the best of my abilities.

2. 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 prepared. As a Justice of the Supreme Court, I have extensive experience working long hours, often extending into evenings and over weekends. This commitment to the responsibilities of the judiciary is something I am both familiar with and dedicated to.

3. The Court has two working languages. What is your opinion about this matter? How could multilingual challenges be better addressed by International Criminal Court judges?

Pursuant to Article 50 of the Rome Statute and Rule 41 of the Rules of Procedure and Evidence, English and French serve as the working languages of the Court. Rule 42 necessitates translation and interpretation services to ensure accessibility.

However, the sheer volume of daily documents and the limited availability of translators, human resources, and budget complicate judicial proceedings significantly. To increase efficiency and consider the judicial cost, the Court must address the challenges associated with the working language and translation. A potential solution could involve adopting a more flexible approach to written translations. For instance, the Chamber or a Single Judge, based on the request and consent of the parties involved, decide not to translate certain procedural documents into both working languages of the Court, enabling translators to focus on the pertinent translations.

This proposal is without prejudice to the rights of the accused, as outlined in Article 67(1) of the Rome Statute, to be informed promptly and in detail of the nature, cause, and content of the charge and to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if

any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks. Accordingly, administrative decisions on working language and translation should be made on a case-by-case basis.

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?

As having experience writing court decisions for over a decade, I will have no problem undertaking this work by myself. While I delegate tasks such as preliminary research or interpretation of a law to assistants and legal officers, the final drafting and decision-making ultimately rest with me, ensuring the consistency and integrity of my judgments.

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

According to Article 39(2)(b)(iii) and 57(2)(b) of the Rome Statute, a Single Judge from the Pre-trial Chamber is authorized to carry out judicial functions and make decisions. This judge is responsible for deciding on matters not explicitly provided for in the Rome Statute or the Rules of Procedure and Evidence. However, Rule 7 allows the Pre-Trial Chamber to transfer the functions of a single judge to the full Chamber if needed.

In my experience as a judge, I believe that a Single Judge could enhance case management efficiency by making decisions on the following matters:

- Redaction requests;
- Interim releases;
- Severing proceedings;
- Victim participation; and
- Issuance of Arrest Warrants.

These matters, in my view, could be handled effectively by a Single Judge to streamline the case management process.

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. During my three decades of experience in criminal litigation, especially during my years as a Justice of the Supreme Court dealing with the most serious crimes in Mongolia, I have been accustomed to working under all sorts of pressure from governmental authorities, private organizations, the media, or the wider 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, I am in good health and fully capable of working under pressure, which is an inherent part of the Supreme Court's significant workload. Throughout my professional career, I have not taken any leave due to exhaustion or any other work-related incapacity.

#### **E. Deontology**

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



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Drawing from my judicial experience, I agree with the definitions presented in the ICC's Code of Judicial Ethics, Basic Principles on the Independence of the Judiciary, and the Bangalore Principles of Judicial Conduct. As defined, an independent judge must impartially exercise their judicial duties based on an objective evaluation of facts and a thorough comprehension of the law. They act free from all forms of inappropriate influence, inducement, pressure, threat, or interference, irrespective of the source or motive. As a result, judges should refrain from any activities that might impede their judicial responsibilities or undermine public faith in their independence.

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

In my view, conflict of interest arises when a judge's personal interests or affiliations undermine or appear to undermine their ability to deliver unbiased, equitable decisions, thus threatening the Court's credibility. Such conflicts could include financial involvements, relationships with case participants, past case engagements, or public statements indicating prejudice. Furthermore, extra-judicial activities that could challenge a judge's impartiality, also constitute conflicts of interest. It is a judicial responsibility of a judge to recuse themselves from any proceedings where they possess, or where a reasonable observer might perceive, a conflict of interest that could compromise their ability to adjudicate impartially.

3. Should considerations relating to race, colour, gender or religion be taken into account when assessing a candidate's suitability to be a judge at the ICC? Why?

No, primary considerations for assessing a candidate's suitability to be an ICC judge should not be based on race, color, gender, or religion.

According to Article 36(3)(a) of the Rome Statute, judges should be selected from individuals qualified for appointment to the highest judicial offices in their respective states. The primary assessment, therefore, should be grounded in their professional qualifications, high moral character, impartiality, and integrity.

However, this does not disregard Article 36(8)(a), which stipulates that the ICC must strive for representation reflecting the principal legal systems of the world, equitable geographical distribution, and gender balance among judges. It also acknowledges the necessity of including judges with legal expertise on specific issues, such as violence against women or children.

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, I have never been the subject of any disciplinary, administrative, criminal, or civil proceedings in which my professional or ethical standing has been called into question. I always strived to uphold the highest professional and ethical standards throughout my career.

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

The criminal justice system of Mongolia, as part of the civil law system, ensures the broader involvement of victims in criminal proceedings. Accordingly, as a member of the working group of the Legal Standing Committee of the Parliament responsible for drafting Mongolia's current Criminal Code, we aimed to ensure the effective participation of victims. In the current Mongolian criminal justice system, victims have the right to

representation, participation in criminal proceedings, protection, and reparation from trial through to appeal. The victim's participation extends from submitting documents and delivering opening and closing statements to appealing decisions on innocence or guilt, sentence, and reparation.

Drawing on my extensive experience in managing criminal cases involving victim participation, I am committed to ensuring effective victim participation. I will strive for clear, unified practices within the Court's jurisprudence, guaranteeing that victims encounter coherent, consistent, and predictable processes relating to their participation, protection, and reparation.

6. 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?

Based on my judicial experience of delivering judgments on criminal cases involving active victim participation, I worked towards striking a balance between the rights of the accused and victims. This ensures that the participation of victims does not turn into a secondary prosecution, which undermines fair trial.

In my opinion, this matter is addressed in Article 68(3) of the Rome Statute. It states that the Court will allow the presentation and consideration of victims' views and concerns at stages it deems appropriate, without prejudice to the rights of the accused or compromising a fair and impartial trial.

#### **F. Additional information**

1. Are you fluent in at least 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 working languages of the Court?

I am fluent in English and have the capability to speak effectively in public hearings and meetings. Additionally, I have the proficiency to draft my own decisions in this language.

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

No, I do not have any other nationality, other than the one indicated in my nomination, nor have I ever requested another nationality.

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

Yes, I familiarized myself with the conditions of service, which include the remuneration and the pensions' scheme, for the Judges of the Court. I am aware of, and I accept, the Terms and Conditions of work.

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

The financial disclosure program of the ICC is one of three main mechanisms of the Court to prevent potential conflict of interests. Therefore, to improve the perception, credibility, independence, and impartiality of the Court I am willing to participate in a financial disclosure program organized by the ICC.

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 no other information that should be brought to the attention of the Committee that might call into question my eligibility for judicial office.

**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?

Yes, I agree to make the answers to this questionnaire public.

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