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 worked for 22 years as a prosecutor in charge of criminal investigations, prosecution, and trials, and for ten years as an attorney in charge of defence in criminal cases. I have also continued my research on criminal law and procedure as a member of the Korea Criminal Procedure Law Association, published articles, and attended seminars. In addition, when I worked at the Ministry of Justice, I drafted the domestic legislation to implement the Rome Statute and participated in many ICC-related meetings as part of the Korean government delegation, ranging from Preparatory Commission meetings for the establishment of the Court all the way to the Review Conference in Kampala.

In addition, after graduating from Seoul National University's School of Law in 1987, I attended a two-year course for Master's degree on international law at Seoul National University's Graduate School of Law. In 1998, I studied criminal law and international law at Columbia Law School in New York, USA, wrote a thesis titled 'Independence of the ICC Prosecutor,' and earned an LL.M. degree with a certificate from the Parker School(Foreign and Comparative Law). In 2008, I earned a doctorate in international law from Hanyang University's Graduate School of Law in Seoul, Korea; my thesis was titled 'Criminal Evidence Law of the ICC'. Since then, I have continued my research as a member of the Korea Society of International Law, writing a number of books and articles, attending seminars, and lecturing on international law and international criminal law at various institutions, including the Judicial Research and Training Institute, the Legal Research and Training Institute, and several universities.

Furthermore, I served at the Headquarters of the United Nations Office on Drugs and Crime (UNODC) and at its Regional Office for Southeast Asia and the Pacific for a total of five years. I assisted Member States to implement the UN Convention against Transnational Organized Crime and supported the strengthening of their law enforcement capacity. I also established a mutual legal assistance network and an asset recovery inter-agency network in the Asia Pacific Region to facilitate efficient and effective practical cooperation among Member States.

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?

As a prosecutor, I worked in various departments at the Korean Prosecutors' Office, including the Criminal Department, the Public Security Department, and the Trial Department. I conducted investigations into a variety of serious criminal cases, such as crimes of murder, assault, and sexual violence. The cases included an organized criminal group's violence and racketeering case as well as cases involving discrimination and hate crimes against foreigners, gang rape, and violence and extortion against children.

In particular, when I served as a Deputy Director of the Criminal Department in charge of crimes related to women and children, I supervised investigations of crimes by minors and crimes against or affecting women and children, and managed the probation and community support system for juvenile delinquents and assistance programs for victims, particularly victims of sexual and gender-based crimes and domestic violence.

In addition, while working as a state attorney at the Ministry of Justice in 2001, I prepared an assessment report on human trafficking and sexual exploitation in Korea for domestic and international review and suggested corrective measures to eradicate and prevent such crimes.

Finally, while working as a private attorney, I have had a lot of experience in internal investigations, which were conducted on behalf of companies regarding the misconduct of officers and employees in the workplace. Through employee interviews and forensic/document review, I have investigated misconduct such as discrimination, abuse of authority, sexual harassment and bullying among employees, and recommended disciplinary actions to the companies.

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

No.

B. Perception of the Court

1. What 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?

Through the Rome Statute, the International Criminal Court (ICC) has been entrusted by the States Parties with the task of preventing and punishing serious international crimes and implementing restorative justice for victims, and is accordingly equipped with the authority necessary to carry out these tasks. Subject to the principle of state sovereignty and the principle of complementarity, the ICC is expected to actively perform its duties and show the value of its existence through the successful implementation of its mandate.

From the perspective of such an active approach, the ICC's dual status as a court with judicial independence and an international organization with administrative functions should be noted. The ICC is a court that holds investigations and trials, but it is also an international organization that conducts internal administrative operation and external supportive missions such as reparations/assistance to victims. In this regard, the Office of the Prosecutor (OTP) is also expected to play the role of an international organization on top of its investigative functions, based on the principle of 'positive complementarity' or even 'dynamic complementarity' with the aim of closing the impunity gap. It can assist

the situation country's domestic investigations when the country shows the will and ability to investigate the crimes within the jurisdiction of the Court. On the other hand, when the OTP intervenes and conducts investigations, it can support 'legacy matters' in the situation country after the completion of the case by establishing professional working relationships and supporting capacity building as long term projects.

The same applies to the Judiciary of the ICC. Although most of the Judges' roles are performed within the Court, it is also necessary to expand their roles at the ICC as an international organization. ICC Judges should be more engaged in seeking opportunities for dialogue with judges from national jurisdictions, and there should be a constant process of learning and feedback to enhance mutual understanding, promote awareness, and achieve universality. Judges' participation in outreach programs to victims' communities, in a manner consistent with their independence, will also contribute to implementation of restorative justice.

In this respect, the ICC is expected to play a different role from the ICTY and the ICTR. In comparison to the ICC, the ICTY and the ICTR, as *ad hoc* tribunals, do not really play the role of international organizations. Through the UN Security Council Resolutions based on Chapter VII of the UN Charter, the UN granted the function of the investigation and punishment of the crimes committed in relation to the situations in the former Yugoslavia and Rwanda to the two tribunals, and their jurisdiction prevails over the domestic courts. The only area that can be considered to be that of an international organization seems to be supporting domestic criminal investigations and trials in the process of transferring the remaining cases.

Unlike the ICTY and the ICTR, the ICC is a permanent tribunal established by the delegation of criminal sovereignty by the States Parties to the Rome Statute, and it exercises supplementary jurisdiction over the four categories of international crimes committed after its entry into force. Since it prioritizes the implementation of each State Party's domestic jurisdiction in accordance with the principle of complementarity, it is expected to perform the role of supportive action. The difference in the nature and role of the ICC, especially in its dual status, is attributable to this historical background.

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

There are practical criticisms that the progress of the ICC's investigation, trial, and reparations process is too slow, and that the number of successful convictions falls short of the international community's high expectations. Another criticism is that the Court's judgments are so complicated that they are difficult to understand, and can even be unpersuasive due to the divergent, and sometimes contradictory, separate/dissenting opinions.

In addition, from a legal perspective, it is said that the Court is leaning too much towards the strict principles of criminal law and not properly embracing the developed principles of customary international law and the shared expectations of the international community.

It has also been pointed out that the Court system has inherent limitations due to its reliance on voluntary cooperation from the States Parties in arresting criminals and collecting evidence; the crime scenes and the location of the Court are often too far apart; and the cost and safety concerns in operating on-site offices are an obstacle to effective investigations.

There are also criticisms that the selection of situations/cases is not based on clear, transparent and consistent criteria, and that double standards are applied due to political considerations. It has been argued that this is a reason for the current lack of global support for the Court and why the number of States Parties is not increasing. This is also why some countries have even withdrawn, complaining of sovereignty infringement and interference in internal affairs by the Court.

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?

The Court should be mindful of how well investigations and trials will be accepted, not only by the parties concerned but also by the international community, and how this will affect the trust and support from the international community as a whole. The Court should ensure that investigations are initiated and conducted in a transparent and discreet manner and that judgments appear to be reasonable and based on common sense, notwithstanding the need for complex legal reasoning. In this regard, it would be desirable to improve the institutional system by accepting external advice and carrying out expanded deliberations so that various opinions can be heard before making important decisions.

Furthermore, promoting the international community's understanding of the trial process and important judgments through comprehensive communication strategies is essential for a better perception of the Court. It is advisable to prepare user-friendly explanatory materials for various audiences, such as victims, scholars, lawyers and the general public, and to have a wider range of opportunities for more visibility, including press conferences.

In order to further secure the international community's support in political, diplomatic, financial and operational terms, it is recommended to create more opportunities for dialogue and discussion between the Court and the Assembly of States Parties, international and regional organizations, and civil society. It is necessary for the officers of each organ of the Court, including the Judiciary, to fully understand the various positions, opinions, concerns and interests of these key stakeholders and to take these views into account in their work. Broadening the scope of understanding will be helpful for the Court to obtain voluntary cooperation from States Parties and other stakeholders and to create a supportive network which can contribute to achieving universality.

In terms of procedure, it is necessary for the Court to make internal efforts to reduce the interstitial period between the pre-trial, trial and appellate stages, and to expedite the process for orders, decisions and judgments. For this purpose, it is crucial for the parties involved to comply with the deadlines and submit opinions and evidence focusing on the key issues to facilitate the Judges' efficient management of proceedings.

In addition, in order to expedite the process without being hindered by issues related to the integrity of evidence, it is necessary to accelerate the introduction of advanced IT technology in the Court's work and enhance the Court members' IT proficiency. With the development of global IT technology, most of the evidence nowadays is collected, stored, and reviewed in digital form. Therefore, not only should IT technology be actively introduced in the Court's work, but also various criminal legal principles should be interpreted and adjusted to ensure proper compliance in the digital environment, for example in case digital evidence is submitted to trial directly by the OTP.

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?

I believe that the decisions in the Ntaganda case[1] – conviction by Trial Chamber on July 8, 2019 and confirmation by Appeals Chamber on March 30, 2021 – are of great significance for the following reasons.

First, the traditional norms related to war crimes in international humanitarian law were developed to protect those who belonged to the opposing armed forces, such as *hors de combat* or war prisoners, based on the concept of 'reciprocality'. Although, with the development of war crimes norms, some areas not subject to reciprocality have emerged, the traditional idea was that the category of victims of serious war crimes are still limited to the opposing party, and that a group's own forces cannot be the victims.

However, in the Ntaganda case, the Court determined that there are no principles of international law that exclude members of an armed group from protection against crimes committed by members of the same armed group. It acknowledged for the first time in the ICC that rape and sexual slavery committed between members of the same armed group may constitute war crimes. In the Ntaganda case, the commission of war crimes, such as rape and sexual slavery, was recognized not only against non-Hema women on the opposing side, but also against child soldiers in the armed forces of its own side. This is significant in that the ICC was the first to accept the concept of intra-party protection in the area of war crimes.

Second, it is meaningful that the Ntaganda case, in particular through the Appeals Chamber's decision, confirmed the jurisprudence regarding the concept of indirect co-perpetrators, which had been developed through previous decisions in the Katanga and Chui, Al-Bashir, Bemba, and Kenyatta and Muthaura cases. This is based on the theory of collective control through an organized structure of power (OSP) and combination of the concepts of co-perpetrator and indirect perpetrator, which are provided for in Article 25(3)(a) of the Rome Statute.

In the appeals judgement, various opinions were presented from the Judges and, in light of the principle of personal culpability, stricter interpretation may be further required on issues such as the level of intent and degree of contribution. However, it is notable that the Court has clearly acknowledged the principal culpability of an indirect co-perpetrator, which provided a legal basis for holding the leader or high-ranking members of a State or an OSP, who committed mass atrocities by wielding state power or the power of organizations, as principal offenders of international crimes.

On the other hand, the Appeals Chamber's acquittal decision in Bemba case[2] caused collective disappointment in the international community. It has had a particularly negative impact in that it reversed the Trial Chamber's decision[3] which (1) applied the 'command responsibility theory' and (2) convicted the accused on sexual violence crimes, both of which occurred for the first time in the ICC.

1 *The Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, ICC-01/04-02/06-2359; *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', 30 March 2021, ICC-01/04-02/06-2666.

2 *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", 8 June 2018, ICC-01/05-01/08-3636.

3 *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343.

There were many criticisms that it was difficult to understand the Court's acquittal based on a very unique view on the scope of facts confirmed through the confirmation decision, the elements required for the application of command responsibility, and the Appeals Chamber's standard of review on the Trial Chamber's factual findings.

Even if errors of fact and law had been found in the Trial Chamber's judgment, it might have been better for the Appeals Chamber to remand the case to a (different) Trial Chamber for a new trial, as provided in Article 83(2)(b), rather than to reverse and conclusively acquit the case. Considering that the accused had been in custody for ten years since his arrest in 2008, it is my opinion that holding a new trial but releasing him from custody could have been pursued as an opportunity to discover the truth and implement international criminal justice.

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?

In order for the Court to ensure trust and support from the international community, the principles of fair trials, legal stability and predictability must be pursued. Trials must be conducted independently and pursuant to the rule of law based on due process with respect for fundamental human rights.

In this sense, the independence of Judges is not an end in itself, but an important and invaluable means for fair trials and reliable judgments. Judges should perform their duties in a fair and impartial manner without considering their relationship with their country of origin or other organizations with which they have previously been involved or affiliated.

If elected to the Court, I will perform my duties independently, in accordance with this principle, without being affected by any existing relationship with my country of origin or any other organizations with which I was previously involved or affiliated.

However, I feel that personal relationships with people in government agencies, institutions or universities with which I was previously involved may continue as long as it does not affect my independence at trial. There may be opportunities to engage them, for example, by holding seminars and giving lectures to enhance understanding and universality for non-States Parties. My relationships with those institutions will be managed in the interest of the Court in implementing its mandate and not prejudicial to my independence in performing my judicial functions.

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

From the moment of election and since taking an oath as Judge, a Judge becomes a member of the Court, i.e. an international civil servant, who is expected to consider the organization's mandate as the top priority and perform his/her mission independently from the country of origin.

Therefore, in principle, there is no problem for a Judge to participate in a trial involving a person of the same nationality if he/she performs the duties independently in strict accordance with the law and his/her conscience.

However, it is of paramount importance to secure the trust of the trial and the trial should *appear* to be carried out fairly, not just *be* carried out fairly. In this sense, even if there is no private interest or relationship between the Judge and the person involved, the public may have doubts as to the fairness of trial due to them being of the same nationality. Therefore, it would be desirable for the Judge not to participate in the trial in such a case based on this practical consideration.

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?

In accordance with Article 21(1)(a) and (b) of the Rome Statute, the Court shall first apply the Statute, Elements of Crimes and the Rules of Procedure and Evidence (the "Rules"), followed by the principles and rules of international law. If necessary, in accordance with Article 21(1)(c), the Court shall apply general principles of law derived from national laws, including those of States that would normally exercise jurisdiction over the crime.

Therefore, a Judge may properly consider decisions or jurisprudence formed and developed by national courts, international courts or Human Rights bodies in order to derive principles of law. Jurisprudence and decision from national courts will be useful in deciding criminal issues at the Court, and those from international courts and Human Rights bodies will be helpful in finding and confirming principles of international law. This comprehensive consideration will supplement the application and interpretation of the Statute, Elements of Crime and the Rules.

The Statute and the Rules are the result of efforts by countries with different legal systems to establish a desirable mechanism for international criminal justice, but many of the issues that were difficult to agree upon remained unresolved as a form of 'constructive ambiguity'. Although many gaps have been filled in over the last 20 years, the law of the Court needs to continue to develop as society develops, and the decisions and jurisprudence from national courts, international courts and Human Rights bodies should be sufficiently considered by Judges in the development of the Court's jurisprudence.

Through this, it is possible to make judgments understandable from the international community's viewpoint and to ensure the international community's trust in the Court. It will serve not only to bolster States Parties' support for the Court but also non-States Parties' understanding and joining of the Rome Statute.

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?

With 20 years of experience, the Court's legal principles and jurisprudence have been developed, in particular through final confirmation by the Appeals Chamber. Therefore, even if a Judge independently renders a judgment, he/she shall do so according to the law, and if a clear and consistent standard and interpretation of the law has been presented in previous judgments, a Judge should respect and follow it, absent special circumstances, for the sake of legal stability and predictability.

However, I understand that it is a practice of the Court that previous decisions do not have the same effect of *stare decisis* as is usually recognized in national courts. Article 21(2) of the Rome Statute stipulates that the Court 'may' apply principles and rules of the law as interpreted in its previous decisions. In other words, if there is a reasonable and cogent reason in the interest of justice, a decision different from the previous decision on the same issues may be made.

Fact-finding decisions in a specific case are the authority and duty of the Judge in charge, and since the application of the law is premised on the specific facts and circumstances of the case in question, there is always room for a new and creative interpretation that is different from the previous decisions. Especially, if it belongs to the area of developing customary international law, it is possible to take a more active approach than in the area of criminal law, which is relatively more inclined to the strict principle of legality, i.e. *nullum crimen nulla poena sine lege*.

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.

The Judges of the ICTY and the ICTR were given the authority to create and revise their own rules of procedure and evidence. However, the ICC Judges do not have such authority in relation to the Rules of Procedure and Evidence, but only have the authority to propose amendments of the Rules. Furthermore, the Regulations of the Court (the "Regulations") that the ICC Judges can make are limited to the area of routine functioning in accordance with Article 52(1).

However, since the Rome Statute itself is a product of compromise and the Rules do not perfectly supplement the Statute, the ICC judges have exercised their authority through a reasonable interpretation of the Statute and the Rules in consideration of their object and purpose. Good examples include the Pre-Trial Chamber's flexible approach on the amendment of charge[4], the Trial Chamber's open approach on the issue of 'motion of no case to answer'[5] and the Appeals Chamber's positive approach on its authority to decide upon 'conditional release'.[6]

In this context, such an active approach may be considered more favorable procedurally for the sake of efficiency, and Judges should be allowed to take innovative procedural measures to the extent that they do not exceed the Court's inherent authority nor go beyond the expectations of the parties involved.

In this regard, in order for the Court to engage the parties involved more effectively and make sure everyone has the same understanding, it may consider using the 'status conference' stipulated in Regulation 30 with the parties involved more frequently to agree upon a streamlined process.

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[4] *The Prosecutor v. Thomas Lubanga Dyilo,* Deicision on the confirmatoin of charges, 29 January 2007, ICC-01/04-01/06-803, para. 204.

[5] *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions), 3 June 2014, ICC-01/09-01/11-1334, paras. 15,16; *The Prosecutor v. Bosco Ntaganda*, Decision on Defence request for leave to file a 'no case to answer' motion, 1 June 2017, ICC-01/04-02/06-1931, para. 27.

[6] *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute, 1 February 2019, ICC-02/11-01/15-1251, para. 53.

In addition, it would be helpful to expand the scope of use of the 'agreements as to evidence' stipulated in Rule 69, which makes it easier to recognize facts and evidence that are not contested, if appropriate, to narrow the issues at trial to the greatest extent possible.

On the other hand, with respect to reparations orders and the ensuing implementation process, I think it is necessary to introduce and develop an open channel or public hearing so that the positions and opinions of the Registry and the Trust Fund for Victims (TFV) can be presented to the Chamber more efficiently, and the opinions of the situation country and the victim community can be fully communicated to the Chamber.

Furthermore, I think it is also desirable to continuously pursue innovative measures based on artificial intelligence (AI) technology for court proceedings, which I understand the OTP is also actively trying to introduce for more efficient investigations.

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?

Korea's criminal justice system is a hybrid system that originated from the civil law system and introduced various common law aspects such as the hearsay rule, the rule on exclusion of illegally obtained evidence, and the jury trial. In order to improve the criminal justice system of Korea, I conducted comparative research in a variety of areas while working at the Ministry of Justice and the Prosecutors' Office, as well as while studying at a US law school. This research experience has also helped me study and write papers and books on the evidentiary rules and procedural aspects of the ICC, which combines various elements of the common law and civil law systems.

I also gained experience researching the key features of Southeast Asian countries' legal systems while working at the UNODC. In order to assist their capacity building and the implementation of UN TOC Convention, the first thing I had to do was to get a basic understanding of the laws of the different countries.

Therefore, I think that I have an advantage in understanding both the ICC's legal system and Judges from different backgrounds. I may be able to explain and coordinate discussions so that there is efficient deliberation and minimal misunderstanding among Judges. The wisdom and insight of Judges from different systems should be fully incorporated in the deliberations and reflected in the judgments, and I am willing and prepared to contribute to that goal.

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?

In the Prosecutors' Office, I worked with other prosecutors as part of a team for the investigation of large scale crimes. In addition, as a defense attorney, I have been working with both Korean and foreign attorneys, each of whom is an expert in at least one of a number of professional areas, such as criminal defence, industry practice, personal information protection and forensic review. Moreover, at the UNODC, I worked with experts with different nationalities and career backgrounds as well as government officers of various countries.

Based on this experience, if elected to the ICC, I will try to narrow the divergence that may arise among the Judges through dialogue and discussion and strive to achieve the unanimity recommended in Article 74(3) of the Rome Statute. Although each Judge's point of view on various principles of criminal law, international humanitarian law and international human rights law may differ in applying to the facts and evidence, it is necessary to try to achieve unanimity by way of beginning discussions at the early stages of the trial and taking step-by-step measures to reach agreement.

It is the international community's desire to have absolute certainty and clarity regarding the outcome of a case. In this regard, Judges are strongly encouraged to endeavor to find the middle ground on diverse issues and achieve agreement by exercising judicious self-restraint and encouraging collegiality.

However, Judges are independent and cannot be forced to agree. If the Judges are unable to reach an agreement despite the aforementioned efforts, writing separate concurring or dissenting opinions should be accepted. The views and analyses in those opinions may be referred to later in other cases, and it is not impossible for such opinions to be adopted as a unanimous or majority opinion by different judges based on different sets of facts. Those opinions will have undeniable value since they can be an important tool of discussion for academia and contribute to the development of ICC jurisprudence.

Having said that, separate and dissenting opinions should be used with moderation and in a spirit of humility. In writing such opinions, Judges should refrain from overly pedantic attitudes, excessive criticism of their colleagues and lengthy analyis of peripheral matters. They should be written in a way that the points at issue can be clearly understood, and the analysis should be succinct, not overly complex, so that the entire judgment looks balanced and coherent when viewed by the international community. It should be borne in mind that such opinions might weaken the persuasiveness of the judgment and give a false impression of division and polarization among the Judges.

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 look forward to doing so.

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?

While working as a prosecutor, I often had to continue to work hard for several days, weeks or months without a break in order to maintain the momentum of the investigation, secure urgent evidence and successfully conclude the investigation in a timely manner.

More recently, while working as a private attorney, it has been quite common to need to work late into the evenings and over weekends in order to fulfill clients' requests that are made at short notice. I have had to postpone, cancel or rearrange my personal plans in order to meet deadlines.

In addition, the acquisition of a doctorate degree, writing articles for publication and making presentations at seminars were made possible by spending my personal time outside office hours.

In sum, I am not concerned about sacrificing my personal time to achieve the mission and the goals of the Court, and I am more than prepared to perform the hard work required by the Court.

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?

The Rome Statute was concluded following discussions among many countries and was the result of accommodating the respective merits of the common law and civil law systems, which cover most of the world's diverse range of legal systems. It is understandable in that sense that English and French were decided upon as the Court's two working languages based on this historical background.

However, I understand that currently officers of the Court who are familiar with only one language may have problems in communicating and collaborating with officers who are only familiar with the other language. Understanding a language is a very important factor in understanding the people who speak such language and the countries where the language is spoken.

This applies equally to the Judges of the Court. In principle, it will be better to have at least a basic knowledge of the language other than the language one is fluent in. In case of an important key issue, a Judge's direct understanding will be helpful for making an accurate decision rather than indirect understanding through interpretation and translation. Therefore, Judges should be encouraged to endeavor to develop their skills in both languages even after they join the Court.

Nevertheless, it must be admitted that it is quite difficult to master a foreign language, especially for those from different linguistic origins. In this case, linguistic challenges should not be a barrier for Judges to work for the Court. If necessary, full and immediate support by professionals should be ensured so that such challenges do not become an obstacle to efficient court proceedings and accurate decision-making. I also look forward to AI providing sufficient support to deal with these challenges in the near future.

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 think it is the fundamental duty of a Judge to write trial decisions in his/her own words. The Judge's opinion must be written by himself/herself from start to finish in order for the judgment to be consistent and coherent.

In particular, early drafting by a Judge will be beneficial for achieving a final unanimous decision, since the points at issue can be worked out through the drafting process. This will also provide an early opportunity to exchange views with fellow Judges on the points at issue.

However, written decisions may include technical matters such as a reflection of research results or compilation of statistics, and Judges may seek assistance from assistants or interns on these matters for efficiency.

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) of the Rome Statute, the functions of the Pre-Trial Chamber may be performed by a Single Judge. However, Article 57(2)(a) stipulates that orders or rulings under Articles 15, 18, 19, 54(2), 61(7) and 72 must have the concurrence of a majority of the Judges, and Rules 108 and 110 stipulate the same for decisions under Article 53(3)(a) and (b). Accordingly, it can be construed that such orders, rulings and decisions should actually be made by the Pre-Trial Chamber, and only other matters may be determined by a Single Judge under Article 57(2)(b).

Based on the foregoing, it would be desirable for a Single Judge to make decisions on procedural matters concerning case management to the extent possible and appropriate, in accordance with Rule 7 and Regulation 47, unless the Pre-Trial Chamber decides otherwise.

Considering the practice so far, I believe that such instances may include decisions on measures to preserve evidence at the investigation stage, on requests for permission to redact evidence to be submitted, on requests for interim release, on time limits for submission of opinions, on the procedural matters for the participation of victims, and on protective measures for victims/witnesses, as well as other procedural matters for the preparation of trials which are not within the exclusive authority of the Pre-Trial Chamber.

In addition, according to Rule 132*bis*(1), the Trial Chamber may also designate one or more of its members for the purposes of ensuring the efficient preparation of the trial. Rule 132*bis*(5) sets out the preparatory issues that can be decided by a Single Judge. This appears to be not consistent with Article 39(2)(b)(ii), which stipulates that the functions of the Trial Chamber shall be carried out by three judges of the Trial Division, but it was adopted as amendment to the Rules by resolution ICC-ASP/11/Res.2 and has been applied thereafter. Accordingly, a decision to carry out such preparatory work for a trial may be made by a Single Judge subject to Rule 132*bis*(6), which will contribute to the prompt commencement and efficient progress of a trial.

On the other hand, according to Rule 165(2) and (4), with respect to offences against the administration of justice under Article 70, the functions and powers of the Pre-Trial Chamber and the Trial Chamber shall be exercised by a (different) Single Judge, unless it is combined with the original case. Considering that a trial on offences against the administration of justice and its outcome may affect the progress and outcome of the original trial, the intent to proceed on such case as quickly and efficiently as possible seems to be facilitated by a Single Judge system.

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?

While working in Korea as a prosecutor at the Prosecutors' Office and as a state attorney at the Ministry of Justice, I endeavored to work in full consideration of divergent interests, concerns and pressure from numerous stakeholders.

As a prosecutor, I investigated a number of election offences surrounding the National Assembly and local government elections. Not only the alleged offenders and the accusers, but also the political parties of the alleged offenders and the accusers, civic groups of different political ideologies and the general public, closely monitored the investigation and made a number of claims and requests to the Prosecutors' Office. There

were many instances that could be seen as hard pressure, but I continued to investigate the cases in a fair manner in accordance with the principle of rule of law.

On another note, issues related to US Status of Forces Agreement (SOFA) were fairly controversial and sensitive due to public sentiment in Korea. In 2000, the Korean Government had a SOFA revision negotiation with the US Department of Defense, and I was in charge of criminal matters as a representative of the Ministry of Justice. The US side sought to further strengthen legal protection for the members of the US armed forces or the civilian components, or their dependents, while on the Korean side there was a strong demand from civic groups calling for the early and strict exercise of Korean criminal jurisdiction over the members of the US armed forces or the civilian components, or their dependents. Negotiations were held in a transparent manner based on the principle of respect for state sovereignty and criminal justice. The final outcome of the negotiations was accepted well in Korea and to the satisfaction of both governments.

In addition, while working at the UNODC, one of my mandates was to support Member States' capacity building. I was also in charge of the establishment of cooperative networks between the central authorities for mutual legal assistance and between the law enforcement authorities for efficient cross-border asset recovery. In the process, I had to reflect various interests of the Member States, and occasionally there were requests from Member States that were difficult to accept. Through transparent and outspoken discussions, mutual legal assistance and asset recovery interagency networks were successfully established in the Asia Pacific region.

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 at the Court. 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?

Judges should conduct proceedings and make decisions objectively in accordance with the law and their conscience, without being influenced either inside or outside the Court, and they should be fair and impartial. Judicial independence is the most important principle for judicial institutions and is recognized in all civilized countries; this principle remains the same in international criminal trials.

I am fully aware that Article 3(1) and (2) of the Code of Judicial Ethics requires Judges to uphold the independence of their office and to decide matters "without regard to any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason". Article 40(2) and (3) of the Rome Statute provides that "Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence" and "shall not engage in any other occupation of a professional nature". I completely concur with these requirements.

Indeed, in performing the duties of the Court, Judges (1) must be independent from "any political group or government authority"; (2) must not receive "orders from outside,

including from their country of origin"; (3) must not get involved in "matters related to interests of the parties to the case"; and (4) must refrain any actions that can raise "doubt about their independence and impartiality". For this purpose, a mechanism of checks and balances is essential for accountability, as stipulated in Articles 46 and 47 of the Statute and Rules 23 to 32, without prejudice to the independence of Judges.

However, what is more important than such rules is that Judges be proud to serve in the Court, recognize the value and duty of their independence, and independently safeguard their independence without succumbing to any external influence or interference.

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

A trial should secure the trust of the parties and any other persons involved, as well as the international community as a whole, through a fair proceeding and independent decision. The interests pursued by Judges through performance of their duties for this purpose are not those of a specific individual or organization, but the public interest of the unspecified majority – the entire international community. There may be a conflict between such public interest and the interests of the Judge himself/herself or related parties, but in such a situation, Judges should always pursue the public interest.

In this sense, the types of situations in which conflicts of interest may arise are as follows.

First, when the Judge has a personal interest in the case at hand, there is a conflict of interest. For example, in cases where a Judge is a party to a trial or is a victim, where a Judge took charge of the investigation or pre-trial of the case previously and participated in the case in another position, or where a Judge has an economic or non-economic interest in the outcome of the case, there is clearly a conflict of interest.

Second, when the Judge has a close personal relationship with the persons involved in the case, there can be a conflict of interest. For example, in cases where a Judge's spouse, family member, close relative or acquaintance is a party or a victim in the case, or where an organization in which the Judge previously worked or may work in the future is a party or a victim in the case, there can be a conflict of interest.

Third, when the Judge has a legal relationship with the persons involved in the case, there can be a conflict of interest. For example, in cases where legal counseling or advice was previously provided by the Judge, or a transaction such as a loan occurred with the persons involved, there can be a conflict of interest.

Not only a real conflict, but also any potential conflict including in relation to extra-judicial activities of Judges, will undermine the perceived fairness of the trial and public trust. Therefore, in principle, the Judge should be excluded from the trial in such a situation, and it is desirable for the Judge to recuse himself/herself in advance if there seems to be a possibility of such conflict of interest.

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?

These elements should not generally be considered as either positive or negative factors in assessing the suitability of an individual judicial candidate. Candidates should be evaluated only from the perspective of high moral character, impartiality, integrity and competence, in accordance with Article 36(3) of the Rome Statute.

However, Article 36(8)(a) of the Statute requires the States Parties to take into account the need for the representation of the principal legal systems, equitable geographical representation and fair representation of female and male judges in the election of Judges.

The Rome Statute was born as a product of compromise by combining a variety of social and cultural values, which differ from country to country. Therefore, for a proper understanding and interpretation of the Rome Statute, the Court may well be composed of various judges of different backgrounds. Those factors in the question above can be considered only for this limited purpose of diverse representation, not for each candidate's suitibility assessment.

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.

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

For the first time in the history of international criminal tribunals, through the adoption of victim's participation system, the ICC has recognized that the victim can be an active party to help determine the truth and achieve justice and has granted the victim the necessary status.

However, Article 68(3) of the Rome Statute and Rules 85 and 86 only set forth general principles on the victim's participation and do not provide details on the procedures. Therefore, it is understood that much is left to the Judges' discretion.

The Court, through its decisions and judgments, is seen to have set a considerable number of criteria related to victims' participation, such as the qualifications for victim, and the form and stages of participation. However, there are still some criticisms that the rights for victims' participation are not fully protected and, on the contrary, the victims' participation can be a contributor to prolonged court procedures.

Therefore, it would be important for judges to efficiently manage the victims' participation process while ensuring an appropriate balance between the rights of the victims and the accused. Below are some ideas or suggestions to support victims' participation.

First, according to Court precedents, it is understood that an indirect victim, among natural victims, is limited to persons whose harm was the result of the 'harm' suffered by the direct victims, not extending to persons whose harm was the result of the 'conduct' of the direct victims.[7] This excludes a number of people, who otherwise would be considered as victims. This issue may be re-visited in that, if the 'conduct' is a foreseeable action based on the 'harm' of the direct victims, the harm caused by the 'conduct' could be linked to the 'crimes charged' and could be included as an indirect harm.

Second, it is necessary to seek a more simplified process for receiving and reviewing the victims' applications for participation. Judges should be more flexible in streamlining the

[7] *The Prosecutor v. Thomas Lubanga Dyilo*, Redacted version of "Decision on 'indirect victims'", 8 April 2009, ICC-01/04-01/06-1813, paras. 49, 52, 54.

existing A-B-C approach, which has been developed through Court decisions and included in the Chambers Practice Manual.

Third, it is necessary for Judges to lead the proceedings of the trial so that victims' legal representatives fully understand the issues and participate in a substantive way. Since the persons who participate in the trial in fact are mostly the victims' legal representatives, not the victims themselves, the competence of the legal representatives is essential for effective reflection of the victims' views and concerns. Submission of legal briefs, requests for witness testimony and witness examinations can be made effectively when the legal representatives have a sufficient understanding of the case, and the Chamber's flexible approach in allowing their access to trial material to the extent possible will ensure their effective participation.

Finally, in relation to reparations orders, since it is required to make a determination on the number of potentially eligible or actual victims and provide an appropriate calculation,[8] Judges will need to review and analyze material related to victims' requests for participation/reparations more thoroughly and inclusively for an appropriate determination of those issues.

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?

The accused and the victims ideally should have no objection to the Court's basic goal of discovering the truth and imposing punishment corresponding to responsibility. During the process, the accused wants the basic right to a fair trial to be guaranteed, and the victims want their views and concerns to be fully reflected. These desires are not fundamentally opposed. Therefore, from a human rights perspective, in theory, the trial can be operated in a way that respects both sides to the fullest extent.

However, in reality, the accused presumably wants a not guilty verdict, whereas the victims want the accused to be convicted and punished. Therefore, the exercise of the rights of victims could have a potentially negative impact on the accused. In this regard, it is notable that Article 68(3) of the Rome Statute stipulates as follows:

> Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and equitable trial.

In brief, it is understood that victims' participation shall be facilitated in such a way as not to infringe upon the accused's rights, which, in principle, should be prioritized over the victims' right of participation.

Below are some examples of the accused's rights to consider.

First, the victims' participation in the procedure can infringe on the principle of the presumption of innocence. For example, if the victims participate and express their opinions at a hearing before the decision on whether to release the accused, it may give

8 *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", 12 September 2022, ICC-01/04-02/06-2782, paras. 745, 746.

the impression that these participants are genuine victims of crime, that somebody must therefore be responsible for the crime, and that the accused is the person to be punished and should not be released, conflicting with the presumption of innocence.

Second, it may also cause problems with the principle of equality of arms. Due to the victims' participation in the procedure, the accused may feel like he/she is dealing with another prosecutor. Especially, if the victims take very aggressive action, such as requesting the appearance of many witnesses, conducting harsh interrogations or demanding additional amendment to the facts charged, this will inevitably put a considerable burden on the accused in exercising the right of defence.

In addition, due to the victims' participation in the procedure, the trial process can become more complicated and delayed, which will harm the accused's right to a speedy trial. Their active participation may also put a burden on the Prosecutor and the Chamber.

According to Article 64(8)(b) of the Rome Statute, Judges have broad authority in court proceedings to give directions on various procedural issues, which may include the amount of evidence, the volume of legal briefs and the duration of witnesses' examinations, as well as the stage and manner of victims' participation. Therefore, it would be desirable for the Chamber to conduct a trial through the proper exercise of such authority so that the victims' participation does not infringe upon the accused's basic rights.

According to the practices so far, the potential risk of infringement does not necessarily lead to the disallowance or suspension of the victims' participation but, rather, Judges have tried to navigate through by striking a balance between both sides' rights. I believe the decision should be made by carefully considering the nature of the accused's rights at risk, the seriousness of the degree and level of the infringement, what the negative impact would be on a fair trial, and whether remedial measures are possible.

Rather than strict prohibition, it is desirable to find a compromise solution by recalibrating the manner of participation. Consideration of opinions from the parties involved would be helpful for proper coordination and decision.

On the other hand, it is notable that the same standard of balancing should also be considered when the provisions of Article 68(1) and (5) apply in relation to victim protection and evidence disclosure, since both provisions require that the relevant measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. The accused's right of cross-examination will be an issue, and considering the safety concerns of the victims, a balanced solution should be explored depending on each victim's individual circumstances.

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 have an excellent knowledge of and am fluent in English. I have a basic knowledge of French.

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

No.

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.

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

   Yes.

5. **Is there any other information which should be brought to the attention of the Committee and which might call into question your eligibility for judicial office?**

   No.

G. Disclosure to the public

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

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

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