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 am an established expert in public international law with a focus on human rights, international humanitarian law and with highly relevant experience in professional legal capacities pursuant to Article 36 (b) (ii) of the Rome Statute, including as an academic, as a judge, and as a human rights expert elected by the United Nations, Council of Europe, and the European Union.

I joined legal academia in 1995 and received a PhD in international law in 1996 from Paul Cezanne University Aix-Marseille III, in which I dealt with exceptions to Article 2 (4) of the UN Charter as interpreted by the Security Council. I received a second PhD in Moral Philosophy in 1998, I dealt with ethics in international relations. I became a full professor of law at the faculty of the University of Bucharest in 2002. In the past three decades, I have been a professor and researcher there and taught as a visiting professor in 12 universities on 3 continents, including at Yale University, New York University, Sorbonne University, the European University Institute in Florence, and the UN University in Tokyo. In this time, I developed countless curricula, among others in general international law, international criminal law, humanitarian law, human rights law, and digital governance. I also supervised master's and PhD theses in these areas. I published more than 80 publications, including books and articles, in English, French, and Spanish. In these publications I dealt with highly relevant question of international law, including the use of force and the security council, aggression, genocide, humanitarian law, and human rights, putting a special focus on women's rights. Moreover, I served in multiple academic and editorial boards of journals and academic societies. Leading international legal institutions have recognized my work, including the Hague Academy of International Law, which invited me as a Visiting Professor for the session of 2024, and the Institute of International Law, recipient of the Nobel Peace Prize, which elected me as its sole Romanian member in 2021.

I have served as a judge on the domestic, regional, and universal level for 20 years. My most relevant judicial experience is my service at the European Court of Human Rights from 2013 to 2023, where I sat on over 2,500 cases from a wide array of member states, including common law jurisdictions. In this capacity, I also participated in cases

involving mass human rights violations, international humanitarian law,[1] international criminal law, fundamental principles of criminal law,[2] and the protection of minorities and vulnerable groups such as women and children.[3] Moreover, I founded the Public International Law Group at the ECHR to provide more outreach to scholars and practitioners of general international law. I was also active in fostering inter-judicial dialogue, especially with courts from the Global South, and kept in active contact with criminal courts, including the ICC, through my involvement in the ECHR's Criminal Law Group.

I also served in Romania's national judiciary in several functions which are highly relevant to the ICC's mission. From 2010 to 2013, I served as a judge on the Constitutional Court of Romania, where I was a rapporteur on international law and human rights issues. I also sat on trial panels in over 2000 cases concerning criminal law, which further deepened my knowledge of criminal principles and procedure. At the beginning of my career, from 1989 to 1995, I worked as a prosecutor and judge in Romania, where I got first-hand experience in criminal procedure, the prosecution of sexual offences against women and children, and the implementation of transitional justice laws.

At the universal level, I was a member of the UN Human Rights Committee from 2007 to 2013, and, from 2012-2013, its Vice-President. In this forum, I participated in the evaluation of reports on the human rights situation in specific countries and in deciding on individual complaints about human rights violations in a quasi-judicial formation. Here, my main focus was likewise on mass violations of human rights, humanitarian law and international criminal law. I also served as a focal point with non-governmental organizations and victims, with whom I worked in a close relationship.

In my functions as an internationally elected expert, I gained highly relevant experience in monitoring human rights situations, especially relating to massive violations of human rights and the protection of vulnerable groups such as minorities, women, and

[1] See, e.g., *Ukraine and the Netherlands v. Russia*, app. nos. 43800/14, 8019/16 & 28525/20, 30 November 2022, which concerned the military events in the Donetsk and Luhansk regions of Ukraine beginning in 2014; *Drelingas v. Lithuania*, app. no. 28859/16, 12 March 2019, in which the court reviewed a guilty verdict for the crime of genocide committed during the Soviet era; and *Chiragov and others v. Armenia*, app. no. 13216/05, 16 June 2015, which concerned human rights violations and war crimes in the Nagorno-Karabakh region and thus raising complex issues of jurisdiction in occupied territories).

[2] See, e.g., *Mihalache v. Romania*, app. no. 54012/10, 8 September 2019, which concerned the application of the ne bis in idem principle to pre-trial procedures; and *Ibrahim et al. v. the United Kingdom*, apps. nos. 50541/08, 50571/08, 50573/08 & 40351/09, 13 September 2016, which has since been criticized by human rights and international criminal legal scholars for lower the standards of protection for the accused.

[3] See, e.g., *Carvalho Pinto de Sousa Morais v. Portugal*, app. no. 17484/15, 25 July 2017, in which the Court found that courts had discriminated against a middle-age woman because her age and gender had been the decisive factors for lowering her compensation in a gynaecological malpractice case; *D.M.D. v. Romania*, app. no. 23022/13, 3 October 2017, which concerned ineffective proceedings regarding a domestic abuse case; *I.C. v. Romania*, app. no. 36934/08, 24 May 2016, in which the court found a violation of the prohibition of inhuman or degrading treatment because the domestic authorities had failed to take into account the particular vulnerability of a 14-year old girl with an intellectual disability when investigating her allegations of rape; *Kurt v. Austria*, app. no. 62903/15, 4 July 2019, which concerned the extent of positive obligations of a state to protect children from domestic violence.

children. My most relevant experience relating to the work of the ICC was my time as UN Special Rapporteur on Human Rights in the Democratic Republic of the Congo, in which capacity I served from 2001 to 2004. In this role, my main goal was to end impunity. Among others, I was the first UN official to talk about war crimes in Ituri in September 2003. I also included the crimes of several high-profile individuals who were later convicted by the ICC in my reports.[4] I also focussed on the situation of the victims, especially the most vulnerable ones such as women and children, whom I wanted to give a voice on the international level. To this end, I undertook several field visits to the DRC, and was the first UN expert to visit the remote regions in North and South Kivu and Ituri provinces. I conducted interviews with many victims of war crimes and crimes against humanity in these areas, most of them living in extreme poverty and in precarious situations. These included women who had suffered sexual violence or were mutilated, as well as child soldiers. The hope which these people expressed that the international community and the ICC would address their suffering is the main motivation why I run for this position. As a result of these interviews, I was able to produce a series of reports which documented war crimes and crimes against humanity which had not yet been reported. Both the General Assembly and the UN Human Rights Commission debated the findings of these reports. Beyond that, they were widely cited, including by the Prosecutor of the ICC regarding his inquiry into the situation in the DRC, the International Court of Justice, several UN bodies, non-governmental organisations, and scholars.[5]

I served as a member of the UN Sub-Commission on the Promotion and Protection of Human Rights from 1996 to 2007, where I dealt with a full array of human rights issues. As a member of the working group on indigenous people, I authored a report on the free consent of indigenous peoples which subsequently informed the preamble of the UN Declaration on the Rights of Indigenous Peoples. Moreover, as a member of the UN working group on extreme poverty, I participated in producing the first report on human rights and extreme poverty, in which capacity I travelled a lot and met with victims of extreme poverty and highlighted the connections between extreme poverty and serious human rights violations. During my mandate at the Sub-Commission, I also served as UN Special Rapporteur on Human Rights and Genetics and produced the first reports about the implications of this technology for human rights on the universal level.

At the regional level, I was a member of the Advisory Committee on the Framework Convention for the Protection of National Minorities for ten years, from 1998 to 2004 and again from 2008 to 2012. In this role, I made numerous field visits to member states and participated in the adoption of over 80 reports. Likewise, from 2010 to 2012, I served as a member of the management board of the European Union Agency for Fundamental Rights (FRA), which is an independent centre for promoting and

[4] See, e.g., *Report On The Situation Of Human Rights In The Democratic Republic Of The Congo, Submitted By The Special Rapporteur, Ms. Iulia Motoc, In Accordance With Commission On Human Rights Resolution*, 2002/14 E/CN.4/2003/43 (15 April 2003).

[5] See, e.g., UNICEF, *The Impact of Conflict on Women and Girls in West and Central Africa and the UNICEF Response* (2005); Human Rights Watch, *The War Within The War: Sexual Violence Against Women And Girls In Eastern Congo* (2002); Kerry F. Crawford, *Wartime Sexual Violence: From Silence to Condemnation of a Weapon of War* (2017); Stephen Nmeregini Achilihu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of the Child* (2010).

protecting human rights in the States Members of the EU with a special focus on the rights of minorities, especially Roma.

2. **Do you have any experience or competence in handling litigation or inquiring or investigating into issues related to violence, discrimination, sexual assaults, or other similar conduct, inflicted on women and children? In which capacity?**

I have extensive experience with investigations and legal proceedings in these areas. Most relevant to the ICC's mission, as UN Special Rapporteur on Human Rights in the Democratic Republic of the Congo, I gathered first-hand experience of the situation of women and girls in asymmetrical conflict zones (see also above, B.1.). In my reports, I paid special attention to the crimes and human rights violations perpetrated against them. During my field visits, I witnessed first-hand the excessive devastation which the conflict had wrought on the most vulnerable groups. This was most apparent in the destruction of their homes and possessions and in the physical wounds many of them had sustained. Moreover, my conversations showed to me the deep psychological damage which this conflict would inflict upon the population for generations to come. For example, I interviewed child soldiers in Bunia and Kindu, most of whom told me they had suffered ill-treatment and torture, and most girls had been subjected to sexual violence. The perpetrators of this conflict had forced them to kill, rape and take part in dehumanizing initiation rituals. These child solders acted under the threat of severe corporeal punishment and almost always under the influence of alcohol and other drugs. I was deeply impressed by these children's profound wishes to benefit from education and start a new life away from the conflict zone.[6] The use of children as tools for inflicting war crimes poses the seemingly intractable problem of how to do justice in the communities affected by these crimes, which the Trial and Appeals Chambers also recently noted in the *Ongwen* case.[7] Furthermore, during my visits, I was able to meet numerous women who had survived abduction, sexual assaults, and slavery, which armed groups often deliberately used as a weapon of war. While their families often rejected the victims because of the social stigma, the perpetrators often lived on in impunity because the local law enforcement and judicial authorities were reluctant to punish them. In my reports, I stressed the importance of recognizing the gendered aspects of war crimes and of setting up reparation regimes for the victims.[8]

Moreover, during my time as a judge, I decided a considerable number of cases dealing with discrimination and sexual violence. At the beginning of my career I focused on cases dealing with sexual offences against women and children as a national prosecutor and judge. Likewise, at the constitutional court of Romania I dealt with individual complaints in the area of discrimination. Moreover, during my time at the ECHR, I sat in several cases regarding domestic violence, gender discrimination, and

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[6] *Report on the Situation of Human Rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur*, E/CN.4/2004/34 (10 March 2004), paras. 86-91.

[7] *Ongwen*, Sentencing Decision, ICC-02/04-01/15, TC IX, 6 May 2021, paras. 374-397; *Ongwen*, Judgment on the Appeal of Mr Dominic Ongwen Against the Decision of Trial Chamber IX of 6 May 2021 entitled "Sentence", ICC-02/04-01/15, AC, 15 December 2022, paras. 13-14.

[8] See, e.g., *Report on the Situation of Human Rights in the Democratic Republic of the Congo*, paras. 92-95.

hate crimes, and helped to develop the court's case law in this field. Likewise, at the UN Human Rights Committee, I dealt with the issues of discrimination and sexual violence within the context of states reports and individual complaints and participated in formulating the conclusions and recommendations about these issues.

Lastly, I devoted a considerable part of my academic work on women's rights. Thus, in additional to several seminars and articles dealing with this issue, I published a book on women's rights in the human rights system in 2009 and will publish another book on the role of women in public international law this year.

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?**

One of the main differences is that the International Criminal Court is instituted as a separate international organization. Regarding the ICC's legal personality as an international organization, I essentially agree with Judge Péter Kovács, who has argued

> that more than one hundred and twenty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity called the International Criminal Court, possessing objective international personality, and not merely personality recognized by them alone, together with the capacity to act against impunity for the most serious crimes of concern to the international community as a whole and which is complementary to national criminal jurisdictions.[9]

This dual nature of the ICC as a Court and an international organization bears many opportunities, but also risks. Above all, it is paramount that the Court's organs can conduct the judicial and prosecutorial activities freely and without political interference from the state parties or any other outside force. In contrast to the *ad hoc* Tribunals, the ICC is not dependent on the UN Security Council, but its structure, including the relationship to the Assembly of States Parties, creates new challenges. The ASP has made many positive contributions in the past, including amendments to the Rome Statute and political checks and oversight to the ICC's activities and thus has set the political framework for a progressive development of international criminal justice. However, like in a domestic context, judges must be eternally vigilant to confine the impact of political bodies to their realm and not let them influence essentially judicial tasks. At the same time, the ICC as an international organization has the opportunity and

[9] Péter Kovács, *On the Specificities of the International Legal Personality of the International Criminal Court*, 2018 Hungarian Yearbook of International Law & European Law 225 (2018), at p. 228. Note that this is an adaption of the famous Bernadotte-formula used first by the International Court of Justice in the Advisory Opinion on reparation for injuries suffered in the service of the United Nations. See *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 11 April 1949, I.C.J. Reports 1949, p. 174, at p. 185.

the duty to enhance cooperation with all relevant stakeholders, including domestic law enforcement and judicial authorities. This is the principal way to, among others, enhance the Court's jurisdiction, further its investigative capabilities, and provide better support to victims. The ICC can only work towards these goals effectively and without compromising its judicial independence by strict internal separation of its different functions. The Independent Expert Review Report has recognized this and identified a three layered model of governance which in my view strikes the best balance between coordinated action and necessary separation between the ICC's judicial, administrative, and policy functions.[10]

Another main difference is presented by the much broader jurisdictional scope of the ICC as comparted to the *ad hoc* Tribunals. First, from a *ratione temporis* point of view, it is permanent whereas the *ad hoc* Tribunals only had a specific competence, limited in time. In terms of ratione loci, its jurisdiction extends over more than 120 territories and beyond (according to the declaration of acceptance of jurisdiction and referral to the United Nations Security Council), whereas the Tribunals' jurisdiction was limited to certain territories. Lastly, regarding jurisdiction *ratione materiae*, since the entry into force of the Kampala Amendments, the ICC has jurisdiction for the crime of aggression, even if this jurisdiction is limited. The universal outlook of the ICC is an achievement, but it is also a mandate to live up to the Rome Statute's promises, a challenge to which the ICC must live up to.

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

In the past years, the ICC has made great strides to address some of the most significant criticisms levelled against it. Thus, the Independent Expert Review (IER), which the Court is considering now, addressed some of the warranted criticisms about the Court's work and proposed solutions to some of the structural issues which impeded the trust in the Court from the inside and outside. Similarly, I am highly supportive of the Court-wide Values Project, which was launched in July 2022 and is part of the ICC's Strategic Plan for 2023-25. This project bears the great potential to realign the Court's working culture around the values of "inclusivity, transparency and open-minded discussion."[11] This recognition of fundamental values in the Court's internal work is especially important since without it it cannot fulfill its external mission, which has from the beginning been based on the internalization of values through international criminal law.[12]

The most pressing problems addressed by the Court's critics which I am aware of are the following:

- A disproportional focus on cases relating to fact patterns originating in African States.

[10] *Independent Expert Review of the International Criminal Court and the Rome Statute System: Final Report* (30 September 2020), pp. 12-19.

[11] *International Criminal Court Strategic Plan 2023-2025*, p. 7.

[12] See Harold Hongju Koh, *The 1998 Frankel Lecture: Bringing International Human Rights Home*, 35 Houston Law Review 623 (1998), p. 628.

- Procedural obstacles for the participation of victims in establishing the facts and seeking reparation.

- Lack of procedural efficiency, leading to a comparably low number of core criminal convictions and several high-level acquittals.

- Wide latitude of prosecutorial discretion, leading to convoluted indictments heavily relying on hearsay evidence and with a focus on high-up individuals without personal involvement.

- Long delays of proceedings, especially in the pre-trial and trial phase, with negative consequences for the accused and for victims.

- Flaws in the court's internal work culture and judges' ethics.

I addition, I am aware of several criticisms which relate more to detailed points of legal procedure than to large structural problems. These include:

- The adoption of no case to answer motions despite a lack of textual foundation in the Rome Statute or the Rules of Procedure and Evidence.

- Inconsistent approach to allowing *amicus curiae* briefs before the Court.

- Questions relating to the practice of separate opinions, especially their tone, which has undermined the Court's legitimacy and collegiality.

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?**

Ultimately, the only sustainable way for the Court to improve its international perception is to genuinely reflect on its flaws and address those criticisms that are warranted. In this vein, I am very supportive of the Court moving beyond the African continent in its investigative and prosecutorial practice. Thus, the ongoing investigations into the situations in Georgia and Bangladesh/Myanmar have in my view contributed a lot to increasing the Court's international legitimacy especially in the Global South. Likewise, I would highlight the Court's recent retreats, which are now taking place two times a year, and which have done a lot to resolve some of the issues which were also highlighted by the Independent Expert Review.

I would have several suggestions to further improve on these steps already taken. First, I would suggest instituting three new permanent expert bodies within the Court, composed of experienced current and former judges. First, a working group on working methods could build on the success of the recent retreats by elaborating methods of work in response to the methodological challenges which the court is facing, for example regarding the timing and frequency of oral hearings. Secondly, a Committee on the Status of Judges, composed of experienced former and current judges, could deal with ethics issues, for example regarding speaking engagements, prior involvements with parties before the court, and post-mandate situations. Such a committee could provide authoritative guidance to judges who have concerns about these matters. Lastly, a regulation group could constitute an expert forum to propose

revised Rules of Procedure and Evidence to the Assembly of State Parties. This would involve the judges more in addressing one of the Court's main problems and the combined legitimacy of an expert determination and the approval of the ASP would finally provide more clarity and coherence to the accused, to victims, and to legal practitioners.

A further point relates to the ICC's perceived efficiency. Critics of the ICC in the interested public and the press often emphasize the number of completed cases and length of proceedings. However, at the same time the public is not be fully aware of obstacles which impede the Court's investigative work but lie outside of its immediate responsibility. This includes budgetary problems and insufficient cooperation by domestic authorities. The ICC's leadership should communicate these challenges more openly in public where it is warranted. Moreover, the ASP should institute a procedural and jurisdictional mechanism which allows the court to declare non-compliance with the cooperation requirements of the Rome Statute. Moreover, as already addressed above (see answer to B.1.), the ICC should also use its dual role as a court and an international organization to its advantage, and actively shape cooperation with states, other international organizations, and non-governmental organizations to improve the efficiency of its investigative and judicial functions and, most importantly, to enhance participation, protection, and compensation of victims.

Likewise, the ICC should pro-actively position itself at the forefront of legal and technical developments instead of just reacting to them. For example, it should take into account new issues of international law, most importantly developments in environmental law. Thus, without compromising the principles laid down in Articles 22 and 23 of the Rome Statute, the Court should be mindful of the developments regarding humanitarian law and environmental law, as was recently laid down by the International Law Commission's special rapporteur on protection of the environment in relation to armed conflicts in her third report.[13] On a methodological level, the Court should embrace new technologies in investigative functions without undermining the relevant evidentiary standards and the rights of the accused. In this way, the recent introduction of virtual immersive environment 3D modelling in the trial in the *al-Hassan* case is a positive example of the prosecution and the Court using new technological tools to ascertain the facts in complex situations.[14]

Lastly, the Court needs to communicate better about its activities. The Court's decisions and, more importantly, the press releases in which the Court informs about these decisions should be written in an accessible style. In this way the Court would not only become more accessible to the interested public who reads the decisions directly but would facilitate communicating through information disseminators such as journalists, who themselves do not often have the requisite legal training and time to interpret complex decisions themselves. To the same point, the Court should expand

[13] *Third Report On Protection Of The Environment In Relation To Armed Conflicts, By Marja Lehto, Special Rapporteur*, International Law Commission Seventy-Third Session (18 April to 3 June and 4 July to 5 August) 2022 A/CN.4/750.

[14] See Alice Speri, *How 3D Models and Other Technology Could Make it Easier to Convict War Criminals*, The Intercept 12 June 2023, https://theintercept.com/2023/06/12/icc-war-crimes-digital-evidence-reconstruction/ (accessed on 19 June 2023).

its outreach activities to the public, especially in situation countries. Most importantly, this would inform victims about their rights to participation, protections, and reparations. Moreover, this could provide an accessible way to inform about how to communicate with and apply to the Court. Moreover, judges should themselves increasingly participate in outreach activities, particularly in regions and with people who are most affected by the Court's activities. My time as Special Rapporteur on Human Rights in the DRC taught me how important it is to reach out to local populations not just to gather information, but to show the presence and concern of the international community. While I am aware of the differences between a monitoring mission and judicial office, international judges can and should visit the regions affected by their decisions, whether on official business, as allowed by Article 62 of the Rome Statute and Rule 100 of the Rules on Procedure and Evidence or for outreach activities.

I am convinced that all of these measures would sustainably improve the legitimacy of the Court, especially with regions with which it has strained relations.

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**

A recent positive example is represented by the *Ongwen* case, especially from the point of view of the protection of marginalized groups from sexual violence. Specifically, it recognized forced marriage and forced pregnancy as separate crimes allowing for cumulative convictions. Moreover, it stands for the Court's careful consideration of the context of long-term armed conflicts and the forced recruitment of child soldiers in sentencing decisions.

Another positive example is presented by the *Ntaganda* case. While in this case, the judges of the Appeals chamber were regrettably divided on the question of liability of indirect co-perpetration and did not consolidate this legal question, the judgment provided a carefully reasoned treatment of sexual violence, including sexual slavery, as part of war crimes and crimes against humanity. Similarly, I would consider the *Lubanga* case to be a positive example of the Court's jurisprudence because of how it underlined the rights of children as vulnerable groups and its treatment of the conscription of child soldiers as a war crime.

A recent positive example of a case at the pre-trial stage are the three arrest warrants issued by the Pre-Trial Chamber in the investigation relating to the situation in Georgia in June 2022, because these represent significant steps towards indictments outside the African continent, which reflects a heightened sensibility of the Court towards criticisms of bias towards the Global South and African states in particular.

An example of a case with several negative attributes is the judgment of the Appeals Chamber in the *Bemba* case. In this case, the trial chamber judgment had constituted the first ICC conviction for command responsibility and for sexual violence, but the Appeals Chamber subsequently acquitted the accused Jean-Pierre Bemba of the charges of war crimes and crimes against humanity. Unfortunately, the 3-2 Appeals

Chamber decision did not elucidate the relevant substantive and procedural questions. On an institutional level, the four separate opinions in the case further raised questions about the Court's internal cohesion and consistency. Lastly, the decision lacked a reparations order, which was heavily criticized by victims and NGOs representing them.

Another more negative example is presented by the *Gbagbo and Blé Goudé* case, in which both accused were acquitted. Ultimately, the judges in this case decided correctly. However, this case should serve as a reminder to the Court as a whole and to the Prosecution in particular that as the principal body of international criminal law it has a special responsibility to select cases in which the evidentiary record has at least the high likelihood to clearly demonstrate the individual criminal responsibility of the accused. Moreover, the Appeals Chamber in particular could have done more to come together in this central case to work out a cohesive doctrine of its evidentiary standards.

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?**

The relationship with the judge's country of origin should be based on respect for a member of the Assembly of States Parties. At the same time, a judge should be cautious to avoid even the appearance of dependence, partiality, or bias towards any state, especially to his or her country of origin. My personal experience has confirmed the validity of these principles. During my more than two decades of service in domestic and international judicial offices, I often took positions adverse to the interests of my home country, including in cases which had major political implications and were under intensive public scrutiny and media attention. Especially under these circumstances, I have found that a maximum of independence and impartiality is not only necessary, but the most the powerful tool at the disposal of judge to preserve the legitimacy of the judicial office.

Outreach to civil society is paramount if the Court wishes to succeed in establishing a public consciousness about international criminal justice in the wider world. Therefore, I would accept public speaking engagements or other forms of informal cooperation with other courts, NGOs, and universities if I was convinced that these would further the legitimacy, efficiency, and public perception of the court in its institutional context.

Lastly, I am strongly in favor of instituting an independent committee on the status of judges within the Court, consisting of experienced former and current judges, which could provide guidance to individual judges and the Court as a whole in securing their independence and impartiality in non-judicial activities. In the absence of such a committee, I would seek guidance from the presidency of the Court.

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

In my opinion, a judge should not participate in a trial involving a national of his or her origin. While not prohibited by either Articles 40 & 41 of the Rome Statute nor Rule 34 of the Rules of Procedure and Evidence, nor directly addressed by Articles 3, 4 and 5 of the ICC Code of Conduct for Judicial Ethics, I believe that in accordance with the principles expressed in these documents, in such a situation the appearance of partiality outweighs any potential positive contribution that this judge could make.

Regarding judges' states of origin or their nationals as parties, international courts have adopted diverging rules and practices. Where the primary goal of a judicial body is the equitable and peaceful solution of legal disputes between states, such as in the case of the International Court of Justice, the inclusion of judges nominated by the parties serves the legitimacy of the respective court or tribunal. Likewise, where the disputes concern sometimes complex questions of domestic law and procedure, such as in the European Court of Human Rights, national judges can greatly expand the expertise of a court. Conversely, in fora where these considerations are absent or minimal, they cannot balance out any potential for bias. Thus, the UN Human Rights Committee excludes nationals of the state concerned from participating in decision making. Likewise, where judges decide cases at the ECHR in single judge formations, they are not allowed to decide cases involving the states which nominated them to the court.[15]

Regarding the ICC, I believe that there are no substantial legitimacy or expertise-based arguments which counsel in favor of including a national judge. The court's main function is not to settle disputes, but to administer criminal justice. Therefore, I see no reason why a judge should participate in a trial involving a national of his or her country of origin. At the same time, the substantial political or military status which accused before the ICC often enjoy within their home countries in combination with the political nature of judicial elections would shed reasonable doubt on a national judge's impartiality within the meaning of Article 41 (2) (a) of the Rome Statute. Judges must not only be impartial but must be seen to be impartial and help to promote the work of the Court and must uphold the credibility and integrity of the Court to avoid any perception of bias.

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 contrast to Article 38 (1) (d) of the ICJ Statute, the Rome Statute lacks an explicit reference to judicial decisions as subsidiary means for the determination of rules of law. However, I am convinced that the Rome Statute itself and considerations inherent in the nature of judicial determination counsel in favor of consulting prior jurisprudence. First, pursuant to Article 21 (2) of the Rome Statute and in furthering the institutional coherence of the Court, I consider prior decisions of the Court itself to provide the most useful and appropriate guidance (see further explication below in Q C.4.).

[15] Article 26 (3) European Convention on Human Rights; Article 27A (3), ECHR Rules of Court (20 March 2023).

Moreover, Article 21 (1) (c) requires the Court to apply general principles of law derived from the national law of the legal systems of the world as a form of subsidiary sources, given that they do not conflict with the Statute and with international law and internationally recognized norms and standards.[16] In my view, the decisions of domestic courts who apply these laws can be of great help to the Court in establishing their meaning and shaping general principles out of them. Moreover, national court decisions can also themselves constitute these national laws, as is the case in some common law jurisdictions.

Next, because of the explicit mention of human rights conformity in Article 21 (3), I believe that the Court should pay particular regard to the decisions of human rights bodies. These bodies constitute the experts recognized by the state parties. Therefore, the International Court of Justice has ascribed "great weight"[17] to their jurisprudence as persuasive authority. However, when looking at the pronouncements of human rights bodies and other soft law instruments, the Court should be mindful of the character of these norms. Moreover, given that in the past two decades international criminal law has developed into its own significant sub-field of international law, the Court should likewise examine in every instance how a particular decision rendered by a human rights body makes sense within the context of international criminal law.

Furthermore, while the Rome Statute does not explicitly mention the jurisprudence of other international courts and tribunals, there is likewise nothing in the Statute which would preclude the use of these decisions as persuasive guidance. However, I believe that for cross-fertilization of any kind of jurisprudence between international courts one must bear in mind the context of the increasing fragmentation of international law.[18] An international court like the ICC must realize its role within an essentially pluralist international system. It must analyze the specific context of the norms interpreted by other courts and examine whether their results are persuasive within its own context before importing wholesale their results. Ultimately, any international court may "be used for good and for ignoble purposes and it should be a matter of debate and evidence, and not of abstract "consistency," as to which institution should be preferred in a particular situation."[19]

In particular, I agree with the Court's decisions which have urged a cautious approach to importing caselaw from other fora, especially from other international criminal

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[16] See William Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd ed. 2016), p. 525.

[17] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, 30 November 2010, I.C.J. Reports 2010, p. 639, para. 66.

[18] See generally International Law Commission, *Fragmentation Of International Law: Difficulties Arising From The Diversification And Expansion Of International Law: Report of the Study Group of the International Law Commission*, A/CN.4/L.702 (18 July 2006).

[19] Martti Koskenniemi & Päivi Leino, *Fragmentation of International Law? Postmodern Anxieties*, 15 Leiden Journal of International Law (2002), p. 578. For example, beginning with *Ibrahim et al. v. United Kingdom*, the ECHR has lowered the standards for the rights of the accused as compared to the ICC.

tribunals.[20] While these tribunals had a similar role as the ICC, their decisions represent the interpretation of a different legal framework. Moreover, in contrast to human rights bodies, the decisions of these tribunals deal with an area of law in which the ICC itself has the requisite expertise. Therefore, these decisions should be relevant as persuasive authority only where the other tribunals were "in a clearly comparable position to the Court."[21] However, where the context of cases is comparable or even the same, the ICC should not limit itself to other international criminal tribunals. Thus, where the same fact patterns give rise to pending multiple pending cases or investigations, the Court should familiarize itself with the decisions rendered in other fora in order to embed its own decisions within the wider international legal context.[22]

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?**

While the Rome Statute does not support a strict system of *stare decisis* and therefore, decisions of the Appeals Chamber are not precedents *stricto sensu*, I believe that several reasons mandate careful consideration before another chamber departs from an Appeals Chamber decision. First, an inherent function of a court, especially a criminal court, is to provide legal certainty so that legal subjects can adjust their behaviour accordingly. Therefore, the Court should pronounce what the law is with the maximum amount of internal consistency. Moreover, the Rome Statute has set up the ICC as a judicial institution with multiple instances and the possibility to appeal. A judicial practice in stark disregard of the higher instance's decisions would thus subvert the Statute's object and purpose.[23]

Therefore, I fully agree with the findings of the Independent Expert Review in this regard, which recommended that "the Court should depart from established practice or jurisprudence only where that is justified on grounds precisely articulated in the decision/judgment" and to grant the parties notice and the right to present written submissions on any proposed departure from Appeals Chamber Jurisprudence.[24]

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[20] See, e.g., *Situation in Uganda*, Decision on the Prosecutor's Position on the Decision of Pre-Trial Chamber II to Redact Factual Descriptions of Crimes from the Warrants of Arrest, Motion for Reconsideration, and Motion for Clarification, ICC-02/04-01/05, PTC II, 28 October 2005, para. 19; *Bashir*, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09, PTC I, 4 March 2009, paras. 118–20.

[21] *Lubanga*, Decision on the defence request to reconsider the 'Order on numbering of evidence' of 12 May 2010, ICC-01/04-01/06, TC I, 30 March 2011, para. 15; see also *Lubanga*, Decision Regarding the Practices Used to Prepare and Familiarise Witnesses for Giving Testimony at Trial, ICC-01/04-01/06, TC I, 30 November 2007, paras. 44-45 (rejecting *ad hoc* Tribunals' practice of allowing witness proofing as precedential for the ICC because of the differing procedural frameworks).

[22] See, e.g., the investigation on the situation in Bangladesh/Myanmar, which is also subject of a pending application at the International Court of Justice (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*).

[23] See generally William Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd ed. 2016) p. 527.

[24] *Independent Expert Review of the International Criminal Court and the Rome Statute System: Final Report* (30 September 2020), p. 204.

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.**

Every judge, and especially a criminal judge, must apply as closely as possible the relevant rules of procedure to ensure fairness through stability and predictability. If a court stops to follow its own rules, this will inevitably result in a loss of trust by the public and the specifically affected individuals, which in the case of the ICC are most often members of marginalized and vulnerable groups. Therefore, a judge must never make a procedural innovation *contra legem*. However, under certain circumstances *extra legem* innovations, which are neither provided for by the legal instruments of the ICC nor in contradiction to them, are necessary. It is impossible for legal frameworks to address every possible fact pattern, and it is one of the most critical roles of a judge to fill the resulting lacunae with rules that comport most closely with the principles expressed in the overall framework. In these situations, a judge must always pay the utmost respect for upholding procedural fairness and internationally recognized human rights. Moreover, some problems may go beyond mere lacunae and require the judge to make new law as opposed to interpret it. A judge must be attuned to this fine line and be prepared to leave the issue to the political bodies to amend the relevant Rules or the Rome Statute.

Some examples of procedural innovations which I consider within the purview of judges or chambers include:

- Innovative measures to restore the protection of witness when their security has been compromised and time is of the essence.
- Suspending or interrupting a procedure where a party to it has engaged in abuse of process which resulted in a serious breach of procedural fairness.
- Procedural innovations adopted in the wake of the COVID-19 pandemic in order to ensure fair and efficient proceedings while safeguarding the health of all participants.
- The use of new technologies such as immersive reality and 3D modelling (see also above, answer to B.3.).

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?**

The most important part of my career I spent working with hybrid criminal procedure, at the Human Rights Committee and especially at the ECHR, which have also developed hybrid criminal procedural principles to deal with cases coming from jurisdictions with diverse legal traditions.

Since 1997, when I started working as an expert for the UN, I have been working with other legal experts coming from all over the world. I worked as a human rights expert

for the UN in different capacities for 18 years. I always had excellent relationships with colleagues coming from other continents and legal traditions and learned a lot from them about their respective legal systems. Moreover, as a researcher and professor in Yale and New York Universities for 6 years, I acquainted myself thoroughly with common law criminal procedure. In my opinion, this legal and cultural diversity constitutes the richness of an international court and if elected, I would be looking forward to further deepen my understanding of principles of criminal law and procedure around the world.

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?**

I am used to being part of different kinds of teams, including teams of researchers, professors, experts in human rights, and judicial teams. I hope that, if elected I would be useful in reaching a consensus on difficult questions. Faced with disagreement about a certain aspect of a decision, I would try to engage in an open debate with a willingness to learn. As an academic, I live by intellectual humility and honesty. I am convinced that humility is even more important for a new judge in an international court, especially one that brings together judges from diverse legal backgrounds. At the same time, intellectual honesty would require me to state my own position in good faith and to stand firm on matters of fundamental convictions about the law. I believe that this approach, always expressed in a cordial and respectful tone, both in deliberations and in decisions, serves best the cooperative judicial task of finding the best interpretation of the facts and law.

The Rome Statute comprises a specific duty of conduct in its Article 74 (3), which requires the judges to attempt to achieve a unanimous decision. Therefore, to honor the letter and spirit of this provision and to further the Court's legitimacy, a judge at the ICC should only write separate opinions where he or she has strong and fundamental disagreements with the majority decision. Articles 74 (5) and 83 (4) of the Rome Statute mandate the inclusion of the view of the minority in the majority decision, which in my view opens a way for judges to express their views in a less polarizing way than through a separate opinion.[25] Moreover, where judges do feel that they need to resort to writing separate opinions, and especially dissenting opinions, they should use a polite and professional tone, which was regrettably not always the case in the past. Lastly, if more than one judge has fundamental disagreements with the majority, it would in my view be preferrable that they attempt to write a joint separate opinion, so that there is at least unity in disunity which presents the lines of disagreements clearly to the outside world.

D. **<u>Workload of the Court</u>**

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?**

[25] See, e.g., *Katanga*, Minority Opinion of Judge Christine Van den Wyngaert, ICC-01/04-01/07, TC II, 8 March 2014, para. 12 fn 1.

If I am elected, my preference would be to begin serving immediately at the commencement of my term. However, I am also fully prepared and willing to join whenever I am called to do 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?**

During my whole career, I have been used to heavy workloads, including in the evenings and weekends. In particular, my time at the Constitutional Court of Romania and the ECHR taught how to manage large caseloads and work efficiently with an extensive number of documents containing both legal and factual information. Likewise, during my work at these court for the past 13 years, I have been used to taking holidays at specific times of the judicial calendar.

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?**

My first foreign language is French. I hold three advanced degrees from French Universities and consider myself francophone and francophile. Consequently, I strongly support the Court's bilingual approach. I believe that in practice, the French language is not used enough at the Court, and if elected I would use French as much as possible. The multilingual challenges could be addressed by judges and staff having more knowledge of both working languages. This could first be addressed at the very beginning by emphasizing knowledge of French during the staff hiring process. Additionally, judges, lawyers, and assistants should be encouraged to draft more in French. In this regard, I believe that the ECHR can provide a good example, because it strives to achieve equal usage of both working languages by encouraging its judges to take classes to improve their knowledge of the language they know less well.

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 an ICC judge, I would personally draft all my decisions. I deeply believe that a judge must produce carefully reasoned decisions which fully reflect their opinion on the legal and factual questions presented by a case. Contributions by staff are important, but they should be limited to providing research and critical reflection and the final responsibility for every word of the decision would rest with me.

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

Article 39 in conjunction with Article 57 (2) of the Rome Statute and Rule 7 of the Rules of Procedure and Evidence allows a single judge to issue decisions during the pre-trial Procedure, excluding those used under Articles 15, 18, 19, 54, paragraph 2, 61 (7) and 72, which are, among others, decisions authorizing an investigation, preliminary rulings on admissibility, challenges on jurisdiction and admissibility, and confirmation of charges.

During the Trial Phase, Rule 132*bis* allows the Trial Chamber to designate a single judge for certain preparatory tasks. There is some tension between this rule and the relatively restrictive regime of Article 39 of the Rome Statute. Consequently, it is framed very restrictively and does not allow a single judge to "render decisions which significantly affect rights of the accused or which touch upon the central legal and factual issues in the case, nor shall he or she, subject to sub-rule 5, make decisions that affect the substantive rights of victims." Given this restrictive approach of 132*bis*, its added efficiency in the trial procedure, and the legitimacy which the amendment introducing this rule enjoyed through support both by the plenary of judges and the ASP, I support the use of single judges in the manner foreseen by this rule.

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?**

As a Special Rapporteur on Human Rights in the DRC, I was under intense pressure because of the political impact of my reports and the situation within the DRC. During my field visits undertaken in this position, I also got used to travelling under precarious security conditions and without water and electricity for extended periods of time. Likewise, after certain decisions of the European Court of Human Rights which concerned corruption of political figures, I was subject to personal attacks by them. As a judge of the Constitutional Court of Romania, I participated in a highly publicized and politicized impeachment proceeding against the president at the time. Despite incessant attacks on the court and against me personally, I did not let this pressure interfere with a disinterested analysis of the evidence and the arguments presented and rendered the decision which I thought was supported the relevant facts and law.

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 am prepared to work under pressure, as I have done during my whole career. I have never been on leave from your professional duties due to exhaustion or any other work-related incapacity.

E. <u>Deontology</u>

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

As a matter of law, a judge of the ICC should strictly adhere to the relevant rules and principles which safeguard the independence and impartiality of judges as laid down in Article 40 of the Rome Statute and the Court's revised Code of Judicial Ethics.[26] Moreover, a judge should seek guidance from other relevant international legal instruments as far as they reflect universally applicable principles, most importantly

[26] International Criminal Court, *Code of Judicial Ethics*, ICC-BD/02-02-21 (19 January 2021).

the Bangalore Principles of Judicial Conduct,[27] the Basic Principles on the Independence of the Judiciary,[28] Article 14 of the International Covenant on Civil and Political Rights and its relevant interpretations given by the Human Rights committee,[29] and the ECHR's Resolution on Judicial Ethics,[30] to whose drafting I contributed principally as president of that court's Committee on the Status of Judges.

Beyond following the legal requirements, I am deeply convinced that an effective judge must also live and breathe the principles of impartiality and independence because they hold meaning not only as tenets of professional ethics. These values make up the very foundation of the rule of law itself for "when public judicatories are swayed, either by avarice or partial affections, there must follow a dissolution of justice, the chief sinew of society."[31]

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

I essentially agree with the definition provided in the Bangalore Principles: "A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially."[32] The first category includes, but is not limited to cases in which the judge has a personal association with one of the parties or an economic interest in the outcome of a case, harbours actual bias or prejudice concerning a party, or has personal knowledge of facts or evidence in a case.

The second case, the appearance of partiality to an objective observer, is harder to define, but judges should generally err on the side of caution because the potential risks of such an appearance can be far greater than any advantage gained by the judge participating in the relevant proceedings. However, as distinguished legal scholars and practitioners, judges at the ICC necessarily have had a long and full career before starting service at the Court. Consequently, they may have numerous professional and personal ties to individuals, organizations, and states which have dealings with the Court. I believe that a judge's former academic and civic commitments, for example voluntary work for non-governmental organizations, should not *a priori* create conflicts in unrelated cases in which individuals or organizations with which they had worked in the past are in some form involved. Such a rigid rule would discourage legal professionals from engaging in the kind of pro bono work that is urgently needed in the areas of human rights and humanitarian law. Rather, such situations require careful analysis in each individual case to safeguard the Court's impartiality and appearance of

[27] *Strengthening Basic Principles of Judicial Conduct*, ECOSOC 2006/23, Annex.

[28] Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (26 August to 6 September 1985) UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

[29] See Human Rights Committee, *General Comment No. 32*, CCPR/C/GC/32 (23 August 2007).

[30] European Court of Human Rights, *Resolution on Judicial Ethics* (21 June 2021).

[31] Sir Thomas More, *Utopia* (1516).

[32] *Strengthening Basic Principles of Judicial Conduct*, ECOSOC 2006/23, Annex, Principle 2.5.

impartiality. In this regard, a Committee on the Status of Judges, which I would be in favor of instituting at the Court (see above, answer to B.3.), could provide guidance, predictability, and transparency regarding the judges' practice in this area.

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?**

   I believe that every international court should, in the makeup of its judges and its staff, reflect the diversity of the world for which it administers justice. The Rome Statute recognizes the importance of high qualifications of judges as well as their diversity in terms of legal systems, geographical representation, and gender (Article 38 (3) & (8) of the Rome Statute). The Statute does not explicitly mention race, colour, or religion and it is obvious that these factors have nothing to do with a judge's qualifications as a legal professional. At the same time, ethnic and religious minorities are disproportionally affected by violations of international human rights and humanitarian law, including crimes which fall under the jurisdiction of the ICC. Thus, the personal and collective experiences of members of vulnerable and marginalized groups coulc only add to the work of the court. Moreover, representation of these groups in the ranks of the ICC's judges would also foster the legitimacy of the Court because it counteracts the risk that it is perceived as a top-down elitist institution. Therefore, I believe that states should consider race, colour, and religion as one of many factors when they nominate candidates and vote in the elections.

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?**

   The Rome Statute's recognition of victims' rights marked a significant shift towards the incorporation of international human rights law in international criminal law. Thus, victims' rights represent more than just the influence of civil law criminal law traditions on the Statute, they are a central building block of the Court's legitimacy.[33] To improve victims' participation, the Court first needs to provide more outreach and communication to inform victims about their rights and how they can participate in the proceedings. To this end the Court's work must also become more visible within the countries where crimes took place and victims reside. To this end, the Court should use the possibility provided by Article 62 of the Rome Statute and Article 100 of the Rules of Procedure and Evidence to hold hearings outside of the Hague, security and budgetary concerns permitting. The Court should also expand its practice of visiting the situation countries outside of hearing to better understand the local context. This

[33] Antônio Augusto Cançado Trindade, *The Access of Individuals to International Justice* (2011), pp. 201-204.

outreach is essential because it serves one of the most vital interests of victims. During my field visits to the DRC as Special Rapporteur, the victims I interviewed emphasized the need for mechanisms enabling a dialogic and participatory experience of giving testimony, setting the factual record, and ultimately administering justice.

I believe that the inconsistent practice of chambers on the participation of victims present a further obstacle to their effective participation. Chambers should be allowed and required to react flexibly to situations, but the Court as a whole must also provide stability and predictability to the victims and their representatives and work out common standards. In this regard, the Court's work which it began on its recent retreats should be continued in a more permanent forum such as a working group on regulation, which could draw from the experience of both current and former judges (see also above, answer to B.3.). Another significant obstacle for effective participation is the length of trials. Therefore, the Court should also continue to work on streamlined and common timeline, as it has already expressed in its recent Chambers Practice Manual.

One of the most important challenges is identifying and finding the victims, both to enable their participation and to facilitate reparations. To this end, the Victims Participation and Reparations Section should be strengthened and act as the central entity for swiftly and efficiently identifying victims and their claims.[34]

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 Rome Statute has an innovative framework for the rights of victims, but they cannot put in jeopardy the rights of the accused to a fair trial. The basic rights of every accused in a criminal proceeding – including the presumption of innocence, the right to equality of arms and the right to an expeditious trial – must be protected in every case. In the final analysis, this also serves the interests of victims because correctly applying all of the rights of the Defendant enforces the international recognition of the Court as a reliable mechanism internationally and grants it more effectiveness for imposing measures that benefit the victims. In this sense, in light of the objectives of the ICC towards ending impunity on an international scale, respecting the rights of the accused reaffirms the reliability of the Court under the international community, and ensures that victims of international crimes world-wide can resort to the ICC for help and protection now and in the future.

However, victims' rights comprise more than merely holding the accused accountable in a criminal procedure. Thus, in many ways, victims' rights need not conflict with the rights of the accused in the first place. Where there is real tension, this needs to be resolved in favor of the basic rights of the accused, above all the presumption of innocence. One of the main criticisms regarding the participation of the victims is that there is a risk of indiscriminate prolongation of the proceedings. The different practices of the chambers regarding victims' participation have also added to apprehension and

[34] See also *Independent Expert Review of the International Criminal Court and the Rome Statute System: Final Report* (30 September 2020), p. 287.

uncertainty about their encroachment on the rights of the accused.[35] Thus, clearly defining the contours of victims' rights during the proceeding would go a long way towards alleviating the remaining conflicts or the perception thereof.

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 both English and French, both of the working languages of the Court. French is my first foreign language and I have completed three advanced degrees, which included major research theses, in 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?**

   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?**

   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?**

   I wish to have my answers made public.

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[35] See, e.g., Michelle Coleman, *The Tension between the Presumption of Innocence and Victims' Participation Rights at the International Criminal Court*, 20 International Criminal Law Review 371 (2020), pp. 392-93.