ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

QUESTIONNAIRE

BETI HOHLER (Slovenia)

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 a specialist in international criminal law with extensive experience as an advocate, prosecutor, and judicial advisor. I have spent most of my career practising at international and internationalised criminal courts, including the ICC. In addition, I am a recognised scholar and have lectured at universities and professional conferences and authored articles and book chapters on diverse topics ranging from the relationship between domestic and international law to enforcement of sentences in international criminal law. I have experience and expertise not only in handling complex criminal litigation, but also in thought leadership around complex contextual issues and modes of liability relevant to the ICC. I also have the necessary understanding of and experience in procedural systems with victim participation, which is another important feature of ICC proceedings. All my professional and academic roles and other activities (as outlined below) are directly relevant to the judicial work of the Court.

Since 2015 I have served as a prosecuting attorney with the ICC Office of the Prosecutor (ICC OTP), where I have been a leading member of Prosecution team(s) at various stages of proceedings (preliminary examination, investigation, confirmation, trial and sentencing). For example, I was a leading member of the Prosecution team in a completed case, acting Head of Unified Team and lead lawyer in another (pre-trial) case and a member of Unified Team Leadership as a lead lawyer in the preliminary examination and investigation stage of a situation. I also serve on the ICC Appeals Board. Previously, I worked with the ICC Office of the Public Counsel for Defence (2007-2008), where I assisted defence teams with legal research, legal advice, drafting filings and memorandums; conducted comparative analysis on legal issues raised in proceedings; and co-authored the manual for counsel practising before the ICC.

Prior to joining the ICC in 2015, I spent 3.5 years as a Judicial Advisor to international Judges in the internationalised courts in Kosovo (EU Rule of Law Mission). In this role, I facilitated efforts to set up the International (Criminal) Judges' Unit at the Court of Appeals for Kosovo in January 2013, organised the work of the unit and internal case-management and case-reporting systems. For a period of time, I was the sole legal advisor in the unit and thereafter the informal head of legal advisors. I advised international Judges (initially at the district court level and since 2013 at the appellate/supreme court level) in criminal cases within the jurisdiction of the internationalised panels (war crimes, organised crime, terrorism, all ethnically motivated offences, and corruption offences). I dealt with hundreds of cases involving complex factual and, complex, often previously unlitigated, legal issues.

Prior to my international career, I worked as a Senior Associate (litigation lawyer) in a fast-paced top-tier law firm in Ljubljana, Slovenia for almost two years. I handled various types of complex litigation, was responsible for over a hunderd cases, and regularly appeared in court at all levels. In 2008-2009 I served as a Judicial Trainee/Legal Officer with the Court of Appeals in Ljubljana, Slovenia, where I clerked for first instance and second instance criminal and civil law judges. I analysed evidence and legal issues in the cases, participated in hearings, proposed decisions and wrote rulings and judgments.

For years, I have also been training judges and advocates on substantive and procedural aspects of international criminal law and ICC procedure at national and international events. I serve as the Director of Training at the Institute for International Legal and Advocacy Training (IILAT). I also served on the International Law Association's Committee on Complementarity in International Criminal Law, which completed its work with a final report and a set of recommendations in 2022. I am an External Associate at the University of Amsterdam, Faculty of Law, LLM Programme in International and Transnational Criminal Law. I am one of the authors of the leading Commentary of the Rome Statute (in the English language). I am the Associate Editor of the Oxford Reports on International Law in Domestic Courts.

For further details of my professional career and full description of various roles, please see my Curriculum Vitae.

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?**

Yes, I have significant experience in all these areas, most of it at the international level.

Whilst serving with the EU Rule of Law Mission in Kosovo as a judicial advisor, I worked on many cases involving ethnically motivated crimes and cases involving conflict-related sexual violence, including the first case of rape as a war crime dealt with by the EU Rule of Law Mission.

At the ICC, I was one of the prosecutors in the case against Dominic Ongwen (2015-2021), known for its wide consideration of sexual and gender-based crimes (SGBC) and crimes against and affecting children, including a number of first-time prosecutions (and convictions), and innovative procedural practices relating to SGBC victims (use of Article 56) and child soldiers. Further, I was a member of the ICC OTP working group, dedicated to the implementation of its Policy on Children and have served as a focal point for SGBC/crimes against children.

During my time with the Court of Appeals in Slovenia, I also dealt with criminal cases involving sexual violence (rape, sexual assault, sexual attack against a minor) and domestic violence.

I am a PhD candidate in international law, preparing a dissertation on SGBC in international criminal law. I have lectured and written on the topic as well.

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, never.

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?

Vision and dual nature of the Court

My vision of the ICC is that the Court must be a responsive, universal, resilient international institution that instils trust and public confidence, and is known for its independence, effective management of proceedings and high-quality decision-making. A Court that conducts fair and impartial proceedings and ensures proper administration of justice. A Court that attracts the most competent staff from all over the world and is representative of the people it serves.

The Court has no enforcement capacity and relies on the cooperation of States, civil society organisations and other stakeholders to fulfill its mandate. This cooperation is crucial to the effectiveness of the judicial process. Whilst relationship building to foster cooperation is important, the ICC must also be vigilant and make sure to diligently carry out its responsibilities (as a judicial institution) under the Statute.

The Court as a judicial institution must be independent, but as an international organisation, it is shaped and governed by States Parties. Balancing the two is not always straightforward. However, my vision of the ICC is of an institution that has the maturity and ability to fulfill both roles effectively.

Main differences between the ICC and the UN ad hoc tribunals

The ICTR and ICTY were created by the UN Security Council under Chapter VII of the UN Charter to deal with specific situations. They had a limited mandate and jurisdiction, and were temporary institutions. In contrast, the ICC was created and is governed by a treaty and is a permanent autonomous international court, which may exercise jurisdiction over a broad range of situations in accordance with Articles 12 and 13 of the Statute.

Importantly, States in Rome in 1998 did not only seek to create an institution but rather a whole system – the Rome Statute system – dedicated to fighting impunity for international crimes. The ICC is the central part of this system. Its jurisdiction is governed by the principle of complementarity, which is in turn the defining feature of the system. It recognizes that States are primarily responsible for investigation and prosecution of international crimes and – unlike the *ad hoc* tribunals – defers to them when they conduct genuine proceedings.

The ICC differs from the *ad hoc* tribunals in other ways as well. For example, in the sources of the law it applies, in that its criminal procedure is a true hybrid procedure and that victims play an active role in the ICC proceedings.

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

Some of the main points of criticism I am aware of in relation to the Court's proceedings include:

- Biased selection of situations under investigation (perceived focus on Africa) and reluctance to address crimes which may involve nationals of powerful States from the Global North;

- Indeterminate length of preliminary examinations and investigations;
- Excessive duration of trials, combined with slow decision-making (delays in issuing judgments and rulings) and drawn out scheduling;
- Lack of consistent jurisprudence and diverging practices between different chambers;
- Failure to fully realize the potential for effective victim participation in proceedings and inconsistent approaches to the same;
- Excessive length of, and inconsistent approaches to, reparation proceedings; and
- Detachment from victim communities.

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?

In my view, the path to improving the perception of the Court in the eyes of the international community is to increase the efficiency of its core activities, ensure high quality decision-making and communicate more effectively with the stakeholders.

Some of the more concrete suggestions I would offer are:

<u>To strengthen the Court's reputation as a credible judicial institution:</u>

- Further develop consistent and credible jurisprudence by issuing high quality rulings and judgments;
- Ensure effective judicial case management;
- Ensure timely decision-making (rulings and judgments of the Court should be issued promptly and in line with (self-imposed) deadlines);
- Use the full range of possibilities in the Statute to bring the proceedings closer to the affected communities (*e.g.*, use of other official languages as working languages, conducting site visits and holding at least part of proceedings *in situ*, where circumstances allow);
- Ensure meaningful participation of victims and efficiency of reparations proceedings;
- Ensure greater transparency of working processes by publicizing guidelines and protocols.

<u>To improve perception as a reputable global institution:</u>

- Put in place a coordinated, comprehensive communication strategy to explain developments at every phase of proceedings to different audiences;
- Improve the Court's presence and visibility in situation countries;
- Engage with legal professionals from other national and international jurisdictions and consider, where feasible and appropriate, best practices from other jurisdictions;
- Ensure better geographical representation of under-represented regions in hiring, to make sure that the Court is truly representative of the people it serves;
- Improve workplace culture; and
- Be open to innovation and regularly introduce improvements to effectively implement its mandate.

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?

Often the same important decision has evoked positive *and* negative reactions, depending on the respondent or the lens through which one views it.

Decisions that have received predominately positive reactions vis-à-vis States Parties and the public include:

- Two arrest warrants issued in the *Ukraine situation* by the Pre-Trial Chamber on 17 March 2023 for demonstrating that the Court's Prosecutor and Judges do not shy away from commencing proceedings against high-ranking nationals of powerful States, when the evidentiary threshold and conditions for the exercise of jurisdiction under the Statute are met.
- *Ongwen Trial Judgment (4 February 2021, ICC-02/04-01/15-1762)* and *Sentence (6 May 2021, ICC-02/04-01/15-1819)* (both confirmed by the Appeals Chamber on 15 December 2022) for a number of firsts: first ever conviction for the crime of forced pregnancy and corresponding clarification of the elements of the crime; first conviction for forced marriage as other inhumane act before the ICC and articulation of why it is a distinct crime from sexual slavery and enslavement; various other relevant findings related to SGBC and crimes against children; first ever discussion of grounds excluding criminal responsibility under Articles 31(1)(a) and 31(1)(d); first case in which the ICC discussed what role, if any, traditional justice mechanisms might play in the context of the pronouncement of the sentence; first case in which a former child soldier was prosecuted for international crimes he committed as an adult; use of Article 56 to preserve evidence of vulnerable witnesses - direct victims of SGBC.
- *Myanmar/Bangladesh Article 19(3) Decision (6 September 2018, ICC-RoC46(3)-01/18-37, reflected also in the subsequent Decision on authorization of investigation (14 November 2019, ICC-01/19-27))* for finding that the Court may assert jurisdiction pursuant to Article 12(2)(a) of the Statute if at least one element of a crime within the jurisdiction of the Court or part of such crime is committed on the territory of a State Party, thereby clarifying the application of the Statute to cross-border crimes involving the territory of a non-State Party.
- *Ntaganda Appeals Judgment (15 June 2017, ICC-01/04-02/06-1962)* for finding that rape and sexual violence, committed against child soldiers in the accused's own armed group, constitute war crimes, thereby reinforcing the prohibition of sexual violence and importantly contributing to the development of international criminal law and international humanitarian law.
- *Al Mahdi Trial Judgment and Sentence (27 September 2016, ICC-01/12-01/15-17)* for clarifying how the procedure for admission of guilt under Article 65 operates at the ICC and demonstrating effective balancing of demands of justice and expediency; and for being the first conviction by the ICC for the war crime of directing attacks against protected cultural buildings and historic objects under Article 8(2)(e)(iv) of the Statute.

When it comes to examples of decisions that have evoked predominately negative sentiment vis-à-vis the public and States Parties, I wish to stress that I am discussing *perceptions*. I say this because judgments of acquittal or decisions not authorising an investigation must not be seen as negative as such. To the contrary, when properly grounded in fact and law, judicial limits on prosecution are important both in upholding the rights of suspects and accused persons, and also in strengthening the rule of law and ultimately the credibility of international criminal justice.

- *Gbagbo and Blé Goudé Trial Chamber Decision on the no case to answer motion (16 July 2019, ICC-02/11-01/15-1263)* for the manner in which the decision was rendered and for the disjointed issuing of the written opinions.
- *Bemba Appeals Judgment (8 June 2018, ICC-01/05-01/08-3636*) for what has been described as a fractured judgment given the number of separate opinions and a perceived change in the standard of review at the appellate level.

- Pre-Trial Chamber's decision in the *Afghanistan Situation (12 April 2019, ICC-02/17-33)* declining to open an investigation after conducting its own assessment of "the interests of justice" (the decision was overturned on appeal on 5 March 2020). The decision also attracted negative criticism, because of the length of time it took the Judges to come to a determination.

There is one decision that has evoked very strong positive *and* negative sentiment, and that is *the Judgment in the Jordan Referral re Al-Bashir Appeal (6 May 2019, ICC-02/05-01/09-397)* relating to Head of State Immunity. Some welcomed the decision, whilst another portion of the public took the view that the Appeals Chamber's analysis was flawed.

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?

There should be no "relationship" between a Judge and the authorities of his or her country of origin. Every Judge of the ICC must be completely independent and must act independently from the authorities of any State, including their own. He or she must also manifestly be seen to have that complete independence.

Independence of judges is the cardinal principle of the administration of justice and imperative for the credibility and legitimacy of the Court as a whole. It must therefore be respected and fiercely protected.

In this regard, I note that I have been an international civil servant (directly contracted by the respective international organisations) for most of my professional life and have lived abroad for many years, practising at international and internationalised criminal courts. I have never performed any political role in my country of origin (or any other country) or held any other position in Government administration.

Insofar as my relationship with non-governmental and academic institutions is concerned, I currently serve as Director of Training at the Institute for International Legal and Advocacy Training in The Hague; as a Board Member at the Be the Ladder Charity in The Netherlands; as Associate Editor at the Oxford Reports on International Law in Domestic Courts and as an External Associate at the University of Amsterdam. Although I consider these roles to be compatible with being an ICC Judge, I would nonetheless step down from all of them, if elected. This is because I believe it is vital to minimize any and all affiliations with third parties whilst serving in a judicial capacity. I would make sure that throughout my judicial term, I refrain from any affiliations with other organisations where there could possibly be a perception of compromised independence.

I have been engaged in the training of judges and advocates for a number of years and have frequently appeared as a speaker in conferences and seminars to promote the understanding of the Court's work and mandate. Workload permitting, I would endeavour to continue with such activities but would at all times be mindful of the need to ensure the preservation of my independence and impartiality, and the perception thereof. Such commitments are an important opportunity to engage with the public and interested parties, to demonstrate the human face of the ICC and to explain the role of the Court and the importance of the fair and proper delivery of international justice. It goes without saying that judges in public engagements should never discuss issues that are *sub judice* or specific cases or situations and should not comment on their own or other Judges' decisions, including historical ones.

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

There is no provision in the Court's legal framework that would prevent a Judge participating in a trial involving a national of his or her country of origin in whatever capacity – as an accused, counsel, witness or in any other role. An independent and impartial Judge decides matters before him or her on the basis of evidence and argument, and not the nationality of the participants in the trial or the nationality of the accused. Therefore, as long as the Judge is independent and impartial and is also seen to be independent and impartial, the nationality of individuals in the courtroom should not play a role. In other words, participation in a proceeding involving a national from the Judge's country of origin will be reasonable unless it undermines the objective observer's faith in the integrity of the proceedings.

That said, in view of the type of cases before the ICC and the often highly politicised context in which the Court operates, it would be preferrable - insofar as it is possible - to ensure that a Judge does not sit in a panel which is to try an accused who is a national of his or her country of origin. Whilst the Judge would be independent, there is a risk of a perception of partiality.

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

Article 21(1) of the Statute sets out the sources of law before the ICC in a hierarchical manner, and does not include – as a *source* – jurisprudence from national courts, international courts or human rights bodies. In contrast, Article 21(2) states that the Court *may apply* principles and rules of law as interpreted in its previous decisions, thereby enabling discretionary use of precedent by the Court.

Although not a source of law as such, I consider it useful and appropriate, when interpreting the sources of law laid out in Article 21(1) of the Statute, to take into account jurisprudence from other international criminal courts and tribunals, international human rights courts, international human rights bodies such as the Human Rights Committee, regional courts and also national courts.

With regard to the jurisprudence of other international and internationalised criminal courts specifically, the case law of ICTY, ICTR, IRMCT, SCSL, STL, ECCC and KSC may be particularly instructive in interpreting the Statute and the Elements of Crimes, since it often contains detailed discussions of definitions of international crimes, and international humanitarian law in particular.

I also note Article 21(3), which requires that the interpretation and application of all ICC law be consistent with internationally recognized human rights. As a result, the Court can properly rely on human rights conventions and materials from relevant treaty bodies (courts and various committees) interpreting those norms.

I would highlight that in reaching for the decisions of other courts and human rights bodies as an interpretative tool, it is important to ensure – in a world court like the ICC – that those references are representative (e.g., not only referring to the regional human rights court one may be most familiar with but considering and, where relevant, including a range of fora).

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?**

An independent judge should follow the precedents established by the Appeals Chamber unless there are good and compelling reasons to do otherwise. Following precedent does not mean a loss of independence of the judiciary. Whilst judges at the ICC quite properly have discretion to depart from the jurisprudence of the Appeals Chamber (Article 21(2) of the Statute), they should not readily do so without good, sound reasons.

Following precedent provides consistency, certainty, and reliability, which in turn leads to a greater transparency and fairness of the Court proceedings. Precedent is capable of being flexible, since adjustment can be made where there is a need to reflect necessary change, allowing for societal change and factual differences. Applying previous decisions is in the interests of expeditiousness, procedural economy and legal certainty. A coherent body of consistent, and well-reasoned jurisprudence is extremely important for the credibility of the ICC as a judicial institution.

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 short answer is that it depends on the circumstances. First and foremost, Judges are, quite properly, bound by the legal framework of the Court, and any and all procedural innovations in the name of efficiency must be in line with that legal framework. The ICC Judges have, over the years, developed public guidelines for various stages of proceedings in the form of the Chambers Practice Manual. Whilst the latter is not a binding source of law, it is important that it is followed, as it is a way of ensuring consistency, predictability and common practice across chambers in the same division.

In my opinion, a Judge or a Chamber can and should, for reasons of efficiency and effectiveness, implement appropriate innovative procedural practices that help streamline proceedings. One example of such a practice would be for a chamber to depart from mostly written litigation to resolving more issues via oral argument and decisions rendered in court. To adopt such a course does not offend the Statute or the Rules of Procedure and Evidence and can be a very effective tool to expedite proceedings and generate greater clarity of argument as the issues are narrowed in a way that may not be possible with written submissions.

Notwithstanding, where the proposed innovative practice involves a significant change to well-established practice, the proper course of action, in my opinion, would be for the Judge or the Chamber to submit the proposal for discussion to their colleagues in the respective division or plenary and seek collective agreement, and perhaps adaptation of the Chambers Practice Manual before introducing the change.

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?**

First, having served at the ICC for 8 years and having spent most of my career practising in criminal courts applying hybrid criminal procedure, this will not represent a challenge for me. I have in-depth knowledge and understanding of the ICC procedure and of the Court's jurisprudence.

Second, serving alongside colleagues from across the world, from different cultural and linguistic backgrounds and legal systems has been a constant in my professional life. Because I am accustomed to this type of working environment, I expect to quickly develop meaningful working relationships with other Judges, as well as with judicial support staff.

I have long years of experience working closely and effectively with individuals from all corners of the world. I have worked in teams of 20+ nationalities from all continents, and I have successfully led a multinational team in the ICC OTP. I also worked closely with local and international colleagues in the internationalised criminal panels in Kosovo, whilst serving with the EU Rule of Law Mission. In the latter role, I successfully achieved the integration of international and national colleagues to ensure capacity building. I have worked with judges and lawyers of all ages, all levels of experience and from many different legal systems. I have always maintained excellent professional relationships and am known for developing positive working collaboration.

I am naturally curious and interested in comparative law. I have been persuaded many times about the value of certain methods and approaches that differ from my national jurisdiction. I have the ability to seek alternative solutions and to adapt when circumstances require it. If elected, I look forward to working with professionals from different backgrounds and different legal systems in order to create sound jurisprudence.

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?**

Team environment and dealing with disagreement

Yes, I am very much used to working as part of a team and have worked in teams in different roles throughout my career (the only time where I worked individually was when I practised as a litigation lawyer in Ljubljana, Slovenia). These teams have been composed of colleagues from different national, cultural, linguistic and legal backgrounds. I find working in a team environment enriching.

In terms of disagreement on a particular aspect of a decision or interpretation, this too is something I am used to in both my current and my previous roles. Disagreements are an inevitable and a healthy part of a decision-making process. More often than not, disagreements improve the result and the quality of ultimate reasoning and lead to a reflective and robust decision.

First, when there is disagreement, I acknowledge the difference of opinion and enter the discussion with an open mind – that is to say that I remain open to being persuaded. I believe this is key for any genuine exchange of views where the aim is to build consensus. Second, I hear out my colleagues with a different view. I make a real effort to understand their position and their arguments. I do my best to explain my position and engage with the opposing arguments. I endavour to ask questions to foster better understanding. Third, I remain open to a proper and appropriate compromise.

That said, after undergoing the above process, I am also comfortable with good faith disagreement. It is ultimately the responsibility of any Judge to apply the law to the best of his or her ability, and this may entail disagreeing with the reasoning of another Judge.

Separate opinions

Insofar as separate concurring and dissenting opinions are concerned, arguments can be made for and against such an approach. Those who advocate against separate opinions say that they

endanger the unity of the court and undermine its authority, whereas their proponents believe that separate opinions make the judiciary more transparent and strengthen its authority.

I believe that separate opinions can improve the depth of the legal analysis. However, I also believe that separate concurring and dissenting opinions should be used sparingly and only where circumstances truly require them; they should not be routine. Importantly, the number of dissenting and concurring opinions should not create doubt about the coherence of the Court's decision and the decision-making process.

I would specifically emphasize that it is important for a Chamber to agree in advance how they will go about producing separate opinions, if the need arises. It is vital that separate and majority opinions are circulated amongst the Judges in advance to allow adjustments, and they must also be issued simultaneously. When done right, separate opinions will not undermine but strengthen the decision, hopefully demonstrating that Judges have attempted to genuinely reconcile opposing views.

D. Workload of the Court

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

Yes, I am.

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

Yes, I am. A heavy workload and long working hours have been the norm throughout my career, and I am comfortable working long days and weekends. I am also well used to working under time pressure in order to meet deadlines and to ensure timely delivery. Having worked my entire career in roles that involved judicial schedules, I am also accustomed to taking holidays at fixed periods during judicial recess.

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 ?

Whilst having two working languages is adequate, I also believe that the Court should strive to be more flexible when it comes to holding proceedings in other languages. Rule 41 of the Rules of Procedure and Evidence provides the legal basis for the Presidency to authorize the use of an official language of the Court as a working language, *inter alia*, when it considers that this would facilitate the efficiency of the proceedings. This should in particular be the case when a language is understood and spoken by the majority of those involved in a case before the Court.

Language diversity increases operational capacity. When composing judicial panels, the Presidency should consider the languages spoken by the Judges. It is also useful when ICC Judges, in addition to being fluent in one of the working languages, have at least passive knowledge of the other working language in order to be able to understand submissions immediately when made, rather than waiting for translations.

As to how multilingual challenges could be better addressed by ICC Judges:

- Judges should ensure that language requirements in a situation or case are identified as early as possible in order to ensure timely recruitment and training of interpreters. In the past, this has caused delays, or the quality of translations and interpretations was not as good as it could have been had the process been started earlier;
- Chambers should strive for linguistic diversity among staff;
- Judges could and should promote the use of modern technology for translation purposes. Modern translation software produces excellent results in many languages and should be relied upon where possible, whilst professional translators can perform the necessary role of reviewers;
- Rapid 'immersion style' language training could be made available to Judges. Whilst the latter cannot be expected to gain fluency in languages wholly new to them, the ability to have some passive understanding, or at the very least the ability to pronounce names and places with accuracy, can be of immense benefit.

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 believe it is the duty of the Judge to produce his or her own written decisions as much as possible. Where this is not the case, the Judge must provide clear guidance and skeleton reasoning to the legal officers that assist in drafting. The Judge remains responsible for reviewing and editing the decision.

A Judge is a team leader, responsible for every decision that comes out of his or her Chamber down to the last sentence. He or she must also manage an efficient and productive team of legal professionals who take part in research and drafting. As a former member of judicial chambers, I saw first-hand how important it is that Judges motivate, collaborate and efficiently utilize judicial support staff.

Legal officers in ICC Chambers are comprised of highly educated and competent individuals with specialist knowledge. I would provide clear guidance to the legal officers working with me, whilst also enabling them to make valuable contributions to the efforts of the Chamber. I would particularly appreciate the opportunity to work with legal officers from different legal, cultural and linguistic background to my own, as I believe that diversity of perspectives and constructive debate will sharpen my own legal reasoning.

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(2)(b)(iii) and Rule 7 regulate decisions that may be issued by the Single Judge. Article 57(2)(a) dictates, in turn, what decisions must be issued by the full (Pre-Trial) Chamber and points to the Rules that designate further functions that must be exercised by the full Chamber as opposed to a Single Judge at pre-trial stage (*e.g.*, review of a decision of the Prosecutor not to proceed with an investigation (Rule 108(1), and decision to take measures on its own initiative in respect of unique investigative opportunity (Rule 114(2)).

In accordance with this legal framework, the vast majority of decisions can be taken by a Single Judge at the pre-trial stage. Those particularly suitable are, for example, decisions on requests for redactions; decisions on interim release; decisions severing proceedings; decisions relating to victim participation, procedural rights of victims and issues concerning common legal representation; decisions on Defence requests for the amendment of the Document Containing the Charges; and decisions on restrictions of communications, to name a few.

The Trial Chamber may similarly designate a Single Judge for the purposes of ensuring the preparation of trial (Rule 132*bis*). This improves efficiency given the considerable number of motions dealt with by a Trial Chamber before (and also during) trial that are related to trial management. In some of the recent trials (*e.g., Bemba et al*, *Ongwen* and *Al Hassan*), the respective Trial Chambers designated Single Judges in this manner, which in my view improved the efficiency of proceedings.

I would note that it is possible, and may in fact be desirable, to designate more than one Single Judge within the Chamber. For example, a Chamber could designate one member to act as Single Judge for all case-management issues, and another member to act as a Single Judge for issues related to victim participation or for issues related to preservation of evidence requests under Article 56 of the Statute. In this way, the Chamber could effectively divide the workload and may also be able to utilize specific experience and/or expertise of individual Judges.

In all instances, where a Single Judge exercises the functions of the Chamber, he or she should ensure that other members of the Chamber are fully informed about the developments and decision-making in the situation or case. Regular and transparent communication is key. The Single Judge should also be open to proposals from his or her colleagues that a particular matter, although falling within the purview of the Single Judge, should be addressed by the entire Chamber (NB: That functions be exercised by the full Chamber can also be requested by a party (Rule 7(3)). The Single Judge should also be mindful that in instances where the litigation concerns complex or sensitive issues, especially if litigated for the first time and having a significant impact on the proceedings, it may be preferable that the matter is decided by the full Chamber.

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

Yes, as to all of the above. As a Judicial Advisor to international judges in Kosovo, I frequently encountered (and resisted) pressure from different entities and the media. I have dealt with high profile cases of war crimes, corruption and abuse of authority involving high level political figures and frequently encountered resistance in the execution of judicial orders in order to frustrate proceedings.

Whilst prosecuting *Prosecutor v Dominic Ongwen* before the ICC, I was faced with the strong public sentiment on the accused's status as a former child soldier and the disagreement on the appropriateness of prosecuting him. Questions were also raised on whether the ICC showed sufficient cultural sensitivity.

In terms of media attention and scrutiny, I am well accustomed to this. For the past 13 years, my work has been in the international spotlight and the subject of intense public attention and scrutiny. This does not affect me. I do my work on the basis of the law and evidence, and remain unaffected by the public attention and opinion.

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 excellent health and have the necessary time and energy to devote myself completely to the heavy workload of the Court. I am accustomed to working under pressure and expect to

continue to do so. I have never been on leave from professional duties due to exhaustion or other work-related incapacity.

E. Deontology

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

I view judicial independence as a prerequisite to the rule of law and a fundamental guarantee of a fair criminal trial. It has been said, and I fully agree, that judicial independence is not a privilege, but a responsibility attached to judicial office.

First and foremost, an independent judge must exercise his or her judicial function solely on the basis of his or her assessment of the facts and in accordance with a conscientious understanding of the law, free of any external influences, inducements, pressures, threats or interference, direct or indirect, from any party or for any reason. Moreover, an independent judge must encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary as whole. And, last but not least, an independent judge must exhibit and promote high standards of judicial conduct at all times in order to reinforce public confidence in the judiciary.

The Statute addresses the independence of Judges in Article 40. In addition, my understanding and definition of an independent Judge is inspired by the Bangalore Principles of Judicial Conduct and the ICC Code of Judicial Ethics (2022) with which I am fully familiar and to which I subscribe.

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

The following are examples of what would, in my view, constitute conflict of interest or the appearance thereof for a Judge of the ICC: (i) previous involvement in any capacity in the case before the Court or a related criminal case at the national level or in another international jurisdiction; (ii) personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship with a party; (iii) private capacity involvement in any legal proceedings, business or financial dealings involving the accused or any of the parties or participants; (iv) performance of functions, prior to taking office, during which the Judge could have formed an opinion on the case in question or the Parties that, objectively, could adversely affect impartiality; (v) previously expressed opinions that, objectively, could adversely affect impartiality; and (vi) any sort of economic interest in the outcome of the proceedings for the Judge or his or her family.

The reasons for disqalification of an ICC Judge are included in Article 41 of the Statute and Rule 34 of the Rules of Procedure and Evidence. I would also point to Bangalore Principle 2.5.

Having served with the ICC OTP, I would – in accordance with Rule 35 – make a request to be excused from all ICC cases I have been involved with in a prosecutorial capacity as a staff member of the ICC OTP. I note that I have only been involved in a very limited number of cases and situations whilst with the ICC OTP, meaning that the impact on my possible assignments would be small. I am happy to share with the Committee further details. I also note there is precedent in this regard (Judges who previously served with ICC OTP and a Prosecutor who previously acted as defence counsel).

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?**

Gender is specifically included in the Statute as a relevant consideration. In Article 36(8)(a)(iii) the Statute mandates States Parties to take into account the need for fair representation of female and male judges.

On the other hand, considerations of race, colour or religion are not mentioned in the legal framework of the Court when it comes to the election of Judges. In this regard such characteristics should not make an individual candidate more or less desirable. However, in aggregate, a diverse judiciary is better positioned to represent the communities it serves. Having a range of lived experiences and perspectives allows Judges to make better informed decisions. Accordingly, given that accomplished candidates come from all manner of diverse backgrounds, one would expect to see diversity in the ICC judiciary. I therefore find taking into account considerations relating to race, colour or religion when assessing a candidate's suitability to be a Judge at the ICC acceptable, provided that the primary considerations remain those dictated by the Statute.

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, never.

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

Victim participation is a defining feature of ICC proceedings. Judges must ensure that the rights afforded to victims in the Statute and the Rules of Procedure and Evidence are implemented meaningfully and effectively. I believe that victim perspectives bring added value to ICC proceedings. Victims provide invaluable context and information that enables Judges to fulfill their mandate. As an ICC Judge, I would support victim participation in all stages of proceedings, whilst making sure that such participation is compatible with the rights of the accused.

The measures and decisions related to effective victim participation that I would strive to implement include:

- I would issue a framework decision at the start of proceedings regarding victim participation, in order to provide guidance to the Legal Representatives of Victims and the Parties about the expectations of the Chamber and ensuring that clear procedures and timelines are in place;
- I would advocate for designating a Single Judge (properly experienced and knowledgeable about ICC victim participation) to deal with victim participation issues in the situation/case;
- When deciding on legal representation (Rule 90), I would take into consideration the specific dynamics in the situation country to ensure effective participation;
- I would allow, where appropriate, participation of Legal Representatives of Victims, via video-link from the situation countries, to ensure greater representation of counsel who may otherwise not have the means to be present in The Hague;
- I would work collectively with other Judges to develop guidelines for victim participation that are applied consistently (to be reflected in Chambers Practice Manual or Regulations of the Court);
- I would recognize the use of the current standard four-page application form and the current procedure of victim status determination (so called A-B-C system of review for

victim applications, introduction of which has been an important step forward in efficiency);
- I would invite submisisons from the parties and other relevant actors (e.g., Victims Participation and Reparations Section of the Registry) before deciding complex issues affecting victims' rights and participation.

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?

I would be guided by Article 68(3) of the Statute. That provision allows the views and concerns of victims to be presented and considered at appropriate stages of proceedings, but signals that this must be done *in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial*. The Statute itself therefore highlights the primacy and the respect for the rights of the accused as an essential component of a fair trial, which cannot be compromised.

I believe that the balancing of victim participation and the rights of the accused person must be guided by the procedural principles governing the modern criminal procedure, such as the presumption of innocence, the right to an expeditious trial, the right of the accused to confront and present evidence, etc.

I concur with the jurisprudence of the Court that has allowed participation of victims at various stages of proceedings, including early stages (considering the Prosecutor's application to open an investigation, deciding on a request to resume investigation following a deferral request under Article 18, considering a request for confirmation of charges *in absentia* under Article 61(2)(b)), provided that the Parties have the opportunity to respond. At trial, I would be cautious to prevent duplication of arguments and evidence already presented by the Prosecutor and to avoid victims assuming the role of Prosecutor *bis*, which would be inconsistent with the rights of the accused. Noting the lack of elaborate provisions about victim participation in the Statute and the Rules of Procedure and Evidence, issuing clear guidelines about the scope and manner of victim participation at the outset of proceedings, as outlined in the response to the previous question, is in my view crucial.

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?

Yes. I am fluent in English and have been practising criminal law in English for many years. I have conducted complex international criminal law litigation in English, written judgments, rulings and submissions in English, as well as examined and cross-examined witnesses in English. I am a fluent and confident public speaker. I regularly train judges and advocates at international events in the English language. I also publish in the English language and am an Associate Editor of an English-language Oxford publication.

In addition to English, I have knowledge of French and have been taking intensive French language courses for the past 2 years in order to further improve my facility in the French language. Although I would not be comfortable writing decisions in French, I can read French documents with a reasonable degree of accuracy and can follow discussion.

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

No, I do not have any other nationality, and I have never requested any other nationality.

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

Yes, I have familiarised myself with the conditions of service (including the remuneration and the pensions' scheme) for the Judges of the Court.
Yes, 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, I am.

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

No, there is not.

G. Disclosure to the public

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

I choose to make my answers to this questionnaire public.

Questionnaire completed in The Hague, 20 June 2023.

[END]