

**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 below? For how long? In which capacity? (par. 2.2 of the Guiding Principles on National-level Procedures for Nominations of Judges of the International Criminal Court)

**a) A graduate and postgraduate legal education, recognizing assets of the postgraduate studies and specialization in the legal fields relevant for the work of the Court**

In accordance with Article 36 of the Rome Statute and ASP Assembly resolution ICC-ASP/23/Res.1, annex II of December 2025, I have the requisite qualities of impartiality, integrity, and competence, and I have been properly nominated as per the procedure under the national law of Kenya for **List A**.

I hold a **Master of Laws (LL.M.) in Human Rights and Civil Liberties** from the University of Leicester, United Kingdom (1993). My master's thesis examined the relationship between international human rights standards and local legal systems through a study of human rights in colonial Kenya. In addition, I hold a **Diploma in the Human Rights of Women** from World University Services, Austria (1994), and was admitted as a **Fellow of the Chartered Institute of Arbitrators** (United Kingdom) in 2024.

I also hold a **Bachelor of Laws (LL.B.)** degree from the University of Nairobi (1988) which included a compulsory subject on criminal law (where the core topics were: general principles of criminal liability, definitions of crimes, criminal responsibility, elements of an offence, strict liability, and general defences, specific offences against the person, property offences and offences against the state and public order, sentencing and penal policy), and a **Postgraduate Diploma in Legal Education** from the Kenya School of Law (1989), which included a criminal litigation course on case law preparation comprised of the mechanics of prosecution, defence structures, navigating trial practice, professional ethics, trial advocacy, construction of pleadings, drafting of charges and rules of evidence.

My postgraduate studies allowed for in-depth analysis of international humanitarian law, international criminal law, regional frameworks for the application of international treaties and conventions, mental health and disability law, religion and rights, and equality, gender and women's human rights. It also provided for a study on international and regional bodies, including the European Court of Human Rights (ECHR), the African Court on Human and Peoples' Rights (ACHPR), and the Inter-American Court of Human Rights (IACtHR).

These fields are directly relevant to the work of the International Criminal Court, particularly in relation to victims' rights, fair trial guarantees, international justice, and the protection of human dignity.

**b) Professional activities in relevant capacities such as judge, prosecutor, advocate, legal scholar or similar**

My legal career spans more than thirty-five years. From 2011 to date (2026), I have served as a **Judge of the Supreme Court of Kenya**, the country's apex court. From 1989 to 1993, I served as **Criminal Prosecutor under the Director of Public Prosecutions**, where I prosecuted criminal cases before Magistrates' Courts, the High Court, and the Court of Appeal of Kenya (then the apex court in Kenya).

Between 2003 and 2007, I served as a **Member of Parliament in Kenya**, where I was the **principal architect of a primary criminal law** addressing crimes of a sexual nature – the Sexual Offences Act, 2006. In addition, I was the mover of the motion adopted to ratify the International Conference on Great Lakes Region Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children, 2004. I was also the mover of key human rights amendments to the Kenyan Refugee Act, 2004. At the same time, I served as a Member of the **Pan-African Parliament**, where I moved and included for debate a motion on **reparations** for colonial harms. This motion was intended to prescribe a mechanism for restitution and compensation of communities affected adversely by colonial violence during colonial rule.

From 2009 to 2010, I served as a **Member of the Committee of Experts that drafted the Kenyan Constitution**, which was adopted by public referendum in 2010. The experts were instrumental in ensuring that the Constitution included a progressive section on substantive fair trial rights, including the rights of the accused and victims. We were further instrumental in ensuring that the Constitution of Kenya incorporates provisions domesticating international law under Article 2(4), and the inclusion of Article 143, which prohibits immunity for the Head of State in the event of the commission of a crime that may be prosecuted under any treaty to which Kenya is a party, such as the Rome Statute. I also provided expert commentary on the proposed Truth, Justice and Reconciliation Commission Bill until its enactment.

From 2000 to 2002, I worked as a **Political Analyst at the African Union's Conflict Management Centre** in the Human Rights Division, where I played a key role in the drafting of the **Maputo Protocol on the Rights of Women in Africa**, to the African Charter on Human and Peoples' Rights and the African Union (OAU) **Convention Against Corruption**.

From 1995 to 1997, I served as a **National Protection Officer with UNHCR**, conducting eligibility interviews and providing protection assessments for asylum seekers in refugee camps.

I have been a **consultant/trainer on human rights**, governance, and gender justice issues, contributing to legal scholarship through publications, lectures, and training manuals. For example, in 2008, I developed the training manual for judicial officers on the interpretation and application of the Sexual Offences Act in judicial work.

From 2000 to date, I am **Chairperson of the Board of Trustees of the Gender Violence Recovery Center** of the Nairobi Women's Hospital, which provides free medical treatment to victims of sexual and gender based violence. During the post-election violence (PEV) of 2007-8 in Kenya, this Center established temporary satellite clinics in the hotspots, where we provided holistic care, including medical, psychosocial treatment and counselling to victims and survivors. Many of these victims provided evidence before the Waki Commission, and in February 2008, I gave evidence on the PEV before a special hearing of the United States House of Representatives Committee on Foreign Relations, Sub-Committee on Africa.

**c) Proven experience in dealing with complex criminal cases**

My experience in criminal law spans more than three decades.

As a **Criminal Prosecutor**, I handled serious criminal offences, including murder, robbery with violence and other capital offences. My responsibilities included evaluating evidence, examining witnesses, drafting opinions, presenting cases in court, and conducting appeals. I routinely assessed witness statements and investigative files. My work required close engagement with complainants, victims, witnesses, investigators, and accused persons within the framework of criminal proceedings.

At UNHCR as a **Protection Officer**, I conducted eligibility interviews for refugee status determination following strict guidelines under international humanitarian law and international criminal law, including the Geneva Conventions. The eligibility process included interviews with asylum seekers and determining who met the criteria for a genuine claim. If there were serious reasons to believe that a person had committed a war crime, a crime against humanity or genocide, then that person was excluded from protection as a refugee. As a Protection Officer in Kenya, I worked at a time when Kenya hosted the largest number of displaced populations in the world. This included asylum seekers, displaced persons and even combatants from Somalia, Sudan, Ethiopia, Rwanda, Burundi and the Democratic Republic of Congo. My work was to conduct interviews to determine whether a person was an ordinary refugee, a perpetrator of a serious crime, or a war criminal. When I identified such persons, I would flag them for exclusion from refugee status and possible political prosecution, so that they would be placed in a separate camp away from genuine refugees who required protection.

As a **Judge of the Supreme Court of Kenya** for over fifteen years, I have participated in determining criminal appeals involving complex factual and legal issues, including fair trial rights, admissibility and evaluation of evidence, constitutional protections for accused persons, legality of convictions and sentences, and victim participation in criminal proceedings. In addition, the Court has made determinations as to the constitutionality of the mandatory nature of the death penalty (including guidelines on sentencing for murder); the definition of confessions and admissibility of admissions, as well as the guidelines on situations where the propriety of the acquisition of the evidence is in issue; extradition of suspects; the adoption of foreign judgments; the rights of children in conflict with the law; the effect of the battered woman syndrome; search and seizure protocols; and differentiation of minimum and mandatory sentences.

The Supreme Court routinely determines matters involving voluminous records, novel legal questions, constitutional interpretation, and issues of significant public importance. These responsibilities closely parallel the analytical and adjudicative demands faced by judges of the International Criminal Court.

At the **Gender Violence Recovery Centre** of the Nairobi Women's Hospital, I worked at the intersection of human rights, survivor care and criminal justice. This role required me to engage closely with the medical, psychosocial and forensic dimensions of sexual and gender-based violence, including in the highly complex context of the 2007/2008 post-election violence. Through this work, I developed a practical understanding of how medical findings, survivor testimony, trauma, and patterns of sexual offending translate into criminal evidence. It strengthened my ability to assess evidentiary issues in grave and complex crimes with clarity, sensitivity and rigour.

**d) Relevant international experience of the candidate, namely of his/her involvement in the broader field of international justice**

I have accumulated substantial international experience throughout my professional career.

As a **National Protection Officer with UNHCR**, I worked on refugee protection law, refugee status determination, and protection of vulnerable populations displaced by conflict and persecution.

As a **Political Analyst at the African Union's Conflict Management Centre**, I participated in the development of the Maputo Protocol on the Rights of Women in Africa and the African Union Convention Against Corruption while also working on conflict prevention, human rights protection, and accountability mechanisms within peace processes.

As a **Member of the Pan-African Parliament**, I participated in discussions and debates concerning reparations, conflict-related violence, human rights, and protection of displaced populations.

As a **Member of Kenya's Committee of Experts** following the 2007–2008 post-election violence, I contributed to constitutional reforms aimed at strengthening accountability for international crimes and embedding international legal obligations within domestic law.

I have also worked extensively with **United Nations agencies** (UNHCR, UNICEF, UNIFEM, UNFPA and UNDP) and other international and regional civil society organisations (IPPF, AMREF, FEMNET, WILDAF, FIDA) across Africa on issues relating to sexual and gender based violence, victim protection, governance, and access to justice.

For my work, I have been recognised internationally and received the International Commission of Jurists (ICJ) (Kenya Section) – **Jurist of the Year Award (JOYA)** 2006 and the **UN Person of the Year Award for Kenya** in 2006.

**e) Proven ability to work effectively with diverse and multicultural environment**

The ICC requires its judges and staff to work effectively in a diverse and multicultural environment, as reflected in the Rome Statute, the Court's Regulations, and its institutional policies. Diversity is a structural necessity for a global organisation such as the ICC. Indeed, Article 36 of the Rome Statute provides that the Assembly of States Parties (ASP), when electing judges, must take into account equitable geographical representation, fair representation of female and male judges, and the representation of the principal legal systems of the world. This commitment is also reflected in the composition of the Court's staff, who represent more than one hundred nationalities, and in the Staff Regulations and Rules, which promote regional, geographical, and gender balance.

The Strategic Plan also speaks to inclusion, accessibility, and sensitivity to the needs of diverse groups who come before the Court. It recognizes the importance of specialized training and appropriate procedures when engaging with witnesses who are children, elderly persons, persons with disabilities and victims of sexual and gender based violence.

My current work as a Judge of the Supreme Court also includes a portfolio where I chair the **Employee Protection and Inclusion Committee (EPIC)**. The Committee oversees not only the issue of sexual harassment prevention, but also gender mainstreaming, affirmative action, diversity and inclusion of the members of staff of the Judiciary of Kenya.

Kenya, as a country, is ethnically, racially, linguistically, and religiously diverse and therefore my social and professional networks are multiculturally inclusive. My career has required sustained engagement with individuals and institutions from diverse legal traditions, cultures, languages, and professional backgrounds.

I have worked within international organizations such as the United Nations and the African Union, and collaborated with governments, judiciaries, civil society organizations, and development partners both in Africa and across the globe, participating in regional and international legal initiatives.

Within the Judiciary of Kenya, I serve on the collegial apex court and regularly work with judges, legal professionals, policymakers, and stakeholders from varied backgrounds.

These experiences have strengthened my ability to work respectfully, effectively, and constructively within multicultural and multidisciplinary environments, qualities that are essential for service in an international judicial institution such as the International Criminal Court.

**f) Proven expertise and experience in the specific issues including but not limited to violence, discrimination, sexual assault, or other similar conduct, inflicted on women and children**

I am aware that the Rome Statute considers sexual and gender based violence as serious crimes, specifically in Article 7, which provides for crimes against humanity and in Article 8, which defines war crimes as including the crimes of rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilisation. Policy and law reform in the field of sexual and gender based violence is a core area of my professional expertise. For more than four decades, I have worked on legislative, institutional, and judicial responses and interventions to violence against women and children.

In Kenya, by 2003, sexual violence incidents had reached alarming levels and had become a national crisis. This was partially due to an inadequate law regime, lack of proper investigation, deficient witness protection and lack of deterrent sentences. As a Member of Parliament, I sponsored and successfully steered, through strong opposition and in a traditional, conservative, male-dominated Parliament, the enactment of Kenya's **Sexual Offences Act, 2006, which significantly strengthened the country's legal framework addressing sexual violence**. I further introduced the legislative proposals with a gender justice focus, including the introduction of maternity and paternity leave; the requirement for sexual harassment policies in both the public and private sector employment law; and also lobbied for the zero-rating of tax on sanitary towels, which were accepted and enacted by Parliament.

As a judicial officer, trainer, author, and policy advocate, I have contributed extensively to improving legal responses to sexual and gender based violence, victim protection, evidentiary standards, and survivor-centred justice. Currently, I am the **Chairperson of the Employee Protection and Inclusion Committee (EPIC)**, which oversees the implementation of the Sexual Harassment Policy, the Gender Policy, and the Affirmative Action and Diversity Policy within the Judiciary of Kenya. I am also a **Commissioner of the Judicial Service Commission**, which is charged with the oversight of ethics and discipline of judicial staff.

As a Member of the Federation of Women Lawyers, I co-wrote a booklet on **the Women's Guide to Law**, in particular the chapter on criminal law, and an intervention on the Constitutional Review Process titled 'Putting Women First'. In 2000, I was the drafting focal point for the **Maputo Protocol on Women's Rights in Africa** and in 2001, I supported the foundation of the **Gender Violence Recovery Center** for the Nairobi Women's Hospital, which provides free medical treatment to victims of sexual and gender based violence, and of which I am now Chairperson of its Board of Trustees.

I have advised and trained justice-sector actors through engagements with UNIFEM, UNICEF, UNFPA, UNDP, IPPF, Equality Now, and other organizations. I have also worked on refugee protection, trafficking of persons, child protection, conflict-related sexual violence, and violence affecting displaced populations.

My experience includes direct engagement with survivors, legal reform initiatives, judicial education, humanitarian protection, and institutional strengthening across several African countries and institutions around the globe.

**g) Proven knowledge of the main provisions of the Rome Statute and of the jurisprudence of the Court**

The Rome Statute, adopted in 1998 and entering into force in 2002, establishes the International Criminal Court, defines its jurisdiction, sets out its procedures, and provides the legal framework governing the prosecution of the most serious crimes of concern to the international community. The ICC is a **permanent international criminal court** with jurisdiction over individuals rather than states and is intended to complement, rather than replace, national criminal justice systems.

The Court may exercise jurisdiction only with respect to crimes committed after the Rome Statute entered into force on 1st July 2002, reflecting the principle of non-retroactivity of criminal law. The Court's subject-matter jurisdiction is limited to the **four core international crimes: genocide (Article 6), crimes against humanity (Article 7), war crimes (Article 8), and the crime of aggression (Article 8 bis)**. One of the central principles of the Rome Statute is the **doctrine of complementarity**, which provides that the ICC is a court of last resort. Under Article 17, the Court may only exercise jurisdiction where national authorities are unwilling or genuinely unable to investigate or prosecute the crimes concerned (see *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* ICC-01/09-01/11 (*Ruto and Sang cases*)). This principle preserves state sovereignty while ensuring that perpetrators of serious international crimes do not enjoy impunity. Jurisdiction of the Court may be exercised only where the situation is referred to by a state party, or the UN Security Council, or where the Prosecutor initiates investigations *proprio motu*.

The Statute also establishes **individual criminal responsibility (Article 25)**, meaning that political leaders, military commanders, public officials and private individuals may all be held personally accountable for international crimes. It further incorporates, under Article 28, the **doctrine of command responsibility**, under which military and civilian superiors may be held liable for crimes committed by subordinates where they knew, or should have known, of the crimes and failed to prevent or punish them (see *The Prosecutor v. Dominic Ongwen* ICC-02/04-01/15(*Ongwen case*)). In addition to protecting the rights of the accused as per Article 67, the Rome Statute is notable for its strong recognition of victims' rights as per Article 68. **Victims may participate in proceedings**, be represented by counsel and seek reparations, including compensation, restitution and rehabilitation. The Court may also order reparations through the Trust Fund for Victims (see *The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06 (*Lubanga case*) and *The Prosecutor v. Ahmad Al Faqi Al Mahdi* ICC-01/12-01/15 (*Al Mahdi case*)).

Over the past two decades, ICC jurisprudence has significantly developed and refined the provisions of the Rome Statute. The Court has elaborated the principle of complementarity by establishing tests for determining when national proceedings are genuine and when ICC intervention is justified. It has developed important doctrines relating to **co-perpetration and joint criminal responsibility**, clarified the law governing the recruitment and use of child soldiers, expanded international jurisprudence concerning sexual and gender based crimes, and strengthened the doctrine of command responsibility. The Court has also delivered landmark decisions concerning attacks on cultural and religious heritage (*Al Mahdi case*), victims' participation and reparations (*Lubanga case*), and the accountability of senior political and military leaders (*The Prosecutor v. Germain Katanga* ICC-01/04-01/07 (*Katanga case*)). Its jurisprudence has reinforced the principle that no individual is above the law and that international criminal responsibility extends to those who plan, direct, facilitate or fail to prevent serious international crimes.

**h) Familiarity with the hybrid procedure governing the Court**

I am aware that as per paragraph 8(a) of Resolution ICC-ASP/25/SP/01/Corr.2, the States Parties in the selection of Judges, shall take into account the need within the membership of the Court for the representation of the principal legal systems of the world.

In doing so, the ICC's procedural framework combines elements derived from both **civil law** and **common law** traditions. I understand the differences between the two primary legal systems and where they converge, including the **adversarial** nature of one and the **inquisitorial** truth-seeking nature of the other. I am also aware that there are other legal systems used elsewhere such as religious and indigenous customary law systems.

At the ICC, the common law tradition can be seen through the proceedings, where the prosecutor is responsible for gathering and presenting the evidence and drafting charges, and the defence is responsible for bringing their evidence to challenge the prosecution's case. Witness testimony is generally given **viva voce** before the Court, with opposing counsel being allowed to cross-examine the witnesses. The accused has the right to remain silent, and the prosecution must prove its case beyond reasonable doubt.

Civil law elements, on the other hand, include not having a jury system but instead having a panel of judges. Judge-made law and binding precedent are not foundational principles of the Court. Also, due to the inquisitorial nature of the Court, the judge can go further and investigate by requesting additional evidence, seeking clarification from witnesses, and taking measures necessary to establish the truth.

The interaction between these two legal traditions has not always been seamless. Early ICC jurisprudence revealed **tensions between adversarial and inquisitorial approaches**. For example, in the case of *Prosecutor v. Thomas Lubanga Dyilo (Lubanga Case)*, disagreements centered on the Prosecution's failure to disclose potentially exculpatory evidence and the identities of intermediaries; as a result, the Trial Chamber I intervened to protect the accused's right to a fair trial. The case illustrated both the challenges and the strengths of operating within a hybrid procedural system that seeks to draw upon the best elements of the two legal traditions.

My legal career has been uniquely suited to understanding such a hybrid model. At the African Union, member states have both common and civil law traditions, such that the drafting of documents and discussions on reforms borrowed components from both systems. At UNHCR, dealing with asylum seekers from DRC, Burundi, Rwanda, Ethiopia and Somalia required an understanding of civil law processes.

As a prosecutor, legislator, constitutional reform expert, and Supreme Court Judge, I have worked within systems that require balancing adversarial procedures with judicial case management, protection of victims, and active judicial oversight.

I am familiar with the Court's approach to victim participation, disclosure, confirmation proceedings, evidentiary assessment, and judicial management of complex proceedings. My experience in appellate adjudication in a collegial court and institutional leadership would assist me in adapting effectively to the Court's procedural framework.

**i) Proven knowledge of the organization and functioning of the Court**

The ICC, as established under the Rome Statute, comprises four distinct but interlinked bodies:

- (i) **The Presidency (Article 38)** - responsible for the proper administration of the Court, with oversight of judicial proceedings and external relations of the institution.
- (ii) **The Chambers (Article 39)** - there are three (3) chambers: Pre-Trial, Trial, and Appeals, which exercise the judicial function of the court, ensuring the effective adjudication of cases from the confirmation of charges through to final appeals.
- (iii) **The Office of the Prosecutor (Article 42)** - which is fully independent and self-administering. It conducts preliminary examinations, investigations and prosecutions.
- (iv) **The Registry (Article 43)** - headed by a Registrar elected by judges, which handles all of the non-judicial court services, court management, IT, security, witness protection, victim participation, legal aid, field operations, finance, and human resources.

There is the **Assembly of States Parties (ASP) (Article 112)**, which oversees legislation, budget authority and management of the ICC, but is not an organ of the Court itself. It meets annually to undertake key administrative functions, including electing judges of the Court, reviewing and approving the Court's annual budget and amending rules of procedure and evidence as well as adopting regulations.

**Independent bodies:** (i) **The Committee on Budget and Finance (CBF)**, a subsidiary expert body of the ASP meets twice a year to examine the Court's budget proposals, audit reports, and financial statements before making recommendations to the ASP. The ICC is funded primarily through assessed contributions from States Parties, under the Rome Statute (Article 115), calculated using the UN scale of assessments modified for ICC membership. Voluntary contributions supplement the core budget, particularly for the trust fund for victims; (ii) **Independent Oversight Mechanism (IOM) (Article 112(4))**, which is responsible for investigating allegations of misconduct, including administrative or ethical breaches by elected officials and staff members; (iii) **Trust Fund for Victims (TFV)** is an independent body and it has two mandates: implementing Court-ordered reparations in cases where convictions have been secured; and running general assistance programmes for victims in situation countries even absent a conviction.

The ICC's activities are guided by its **Strategic Plan 2026-2029**, informed by challenges including the lack of a formal court-wide business continuity plan and, leaving the institution without a tested framework for operations during crises and cyberattacks. The Plan therefore addresses some of the Court's challenges, including the shifting international political climate, rapid technological developments, growing financial constraints, worsening humanitarian crises, the evolving nature of the crimes under the Court's jurisdiction, and heightened stakeholder expectations. It therefore encompasses ten strategic goals: **expeditiousness & efficiency; victim approach; gender mainstreaming; cooperation and political support; impunity gap; professionalism and integrity; safe and secure working environment; geographical and gender balance; resource management and resilience; and situation completion.**

**j) Practical skills, including excellent knowledge of and fluency in at least one of the working languages of the Court**

In accordance with the Rome Statute, Article 36(3)(c), English is my first language and is one of my working languages, and I possess advanced written and oral proficiency.

For over three decades, I have conducted legal proceedings, authored judgments, delivered lectures, published scholarly work, participated in international conferences, and engaged in legal advocacy in English.

Having undertaken the learning of the French language as part of my early education as a compulsory subject in school, I possess basic written and spoken French and continue to strengthen my proficiency in the language.

In addition, my practical skills include judicial decision-making, appellate adjudication, legal analysis, case management, drafting complex judgments, institutional leadership, legal training, policy development, stakeholder engagement, and the use of modern judicial technologies and electronic case-management systems.

- 2. Have you ever been investigated for, charged with, or otherwise been the subject of any disciplinary, administrative, civil or criminal proceedings involving allegations of corruption, criminal or administrative negligence, misconduct, including sexual harassment, or any matter calling into question your professional or ethical standing? If yes, please provide full details, including any determinations or outcomes.**

No.

Under Resolution ICC-ASP/22/Res.3, Annex II titled “Due diligence procedure for candidates for elected officials of the International Criminal Court”, paragraph 11 adopted in December of 2023, misconduct refers to “human rights violations; incidents in the workplace or in connection with work or harassment, including sexual harassment, abuse of authority, discrimination and bullying; as well as other ethical or legal breaches such as fraud or corruption”. I have never been investigated for, charged with, or otherwise been the subject of any disciplinary, administrative, civil or criminal proceedings of any of the above-mentioned.

In Kenya, Article 168 of the Constitution of Kenya provides for the procedure for a Judge who is subject to allegations of misconduct. A complaint (petition) is considered by the Judicial Service Commission (JSC), a constitutional complaints mechanism, and if the JSC is satisfied that a complaint meets the threshold for disciplinary proceedings against a judge, it will then recommend that the President form a Tribunal to undertake an investigation and disciplinary proceedings against the Judge.

No complaint against me has ever been referred by JSC to the President and/or Tribunal for any investigation, charges, or disciplinary action.

I am aware of the removal and other disciplinary processes and measures relating to judges of the ICC under Article 46 of the Rome Statute for serious misconduct and serious breach of the law. The laid-down procedure to be followed can be found under Rules 23 to 32, including the role of the plenary of judges and the ASP.

## 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?

The duality of the ICC as both a judicial court and an independent international organization is built into its structure and constitutive framework. The Rome Statute, which was adopted on 17<sup>th</sup> July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries established the International Criminal Court with power to exercise its jurisdiction over persons for the most serious crimes of international concern. Article 3 established the seat of the Court in **The Hague** and provided for a headquarters agreement with the Host State. Articles 4 and 48 of the Rome Statute give the Court its international legal personality necessary to fulfil its purposes.

It is, however, the Preamble to the Statute that sets out the aspirations of the ICC, which go beyond trying cases. It is an institution “determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes”. The preventative aspect of the court is crucial to its mandate, and **my vision** would be to see the enhancement of the ICC as an international organization with a focus on teaching, capacity building of national judiciaries and training in conflict resolution. The ideal version of the ICC would be a Court which has no cases, not due to an abdication of its judicial role and non-cooperation from States, but due to its deterrent influence and the absence of crimes within its jurisdiction.

The ICC is governed by the Rome Statute and differs from the *ad hoc* International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR) tribunals in three main ways:

- i) *Permanence and Jurisdiction* - by comparison to its predecessor *ad hoc* tribunals ICTY and ICTR, which were temporary bodies created retrospectively by Resolutions of the United Nations Security Council for specific conflicts, the ICC is a permanent, treaty-based institution with a prospective jurisdiction.
- ii) *The Principle of Complementarity* – the ICC is a court of last resort and does not override domestic jurisdictions, whereas the *ad hoc* tribunals were superior to domestic courts in the countries where they operated.
- iii) *Role for victims and reparations for harm* – the ICC has a dual focus on conducting a trial against a particular accused person and also ensuring that victims of the accused have a role in the proceedings and may benefit from reparations; the *ad hoc* tribunals only heard from victims as witnesses, but there was no possibility for compensation.

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

The Court by default, through the oversight of the Assembly of States Parties, and given the role of the United Nations Security Council, works within an inherently political context, while endeavouring to deliver justice which is fair and independent (see Articles 40(1), 42(5) and 74(2)). Criticisms of the ICC primarily focus on **geopolitical selectivity, enforcement paralysis, jurisdictional limitations, and the pace of its proceedings**. The Court faces complex challenges in delivering impartial global justice.

- i) *Geopolitical Selectivity and Bias*: Critics in the Global South often argue that the court disproportionately targets African nations, leading to accusations of bias. Conversely, powerful nations refuse to join the Rome Statute, leading to perceptions that they may be shielding their own citizens while urging the court to prosecute others.
- ii) *Jurisdictional Constraints*: The ICC cannot investigate crimes in non-member states unless the United Nations Security Council refers the situation and therefore, the Court is often unable to investigate glaring atrocities in certain geopolitical hotspots.
- iii) *Lack of Enforcement Power*: The ICC relies entirely on the goodwill of its member states to arrest suspects and enforce its warrants. Because it lacks its own police force, indicted individuals often remain at large for years, severely limiting the court's tangible authority.
- iv) *Slow and Protracted Proceedings*: Trials at the ICC can take many years to conclude. Critics point out that this immense delay frustrates victims and raises operational costs.
- v) *Threats and sanctions against Judges*: Judges have no adequate protection against threats and sanctions from state actors, which undermines the Judges' stable environment to deliver timely and efficient justice.

The challenges faced by the Court in these regards are perhaps to be expected for the judicial system at the crossroads of law and politics. As the Court matures and as the international community grows its trust in the institution, these challenges are expected to resolve over time.

**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 its pursuit of justice and accountability, the ICC may not always make determinations which are popular with the international community. This is not an unusual perception of a court of last resort, when some parties may not be satisfied by the outcome.

However, there is some criticism that the Court ought to address without threatening its neutrality, by doing the following:

- i) **Emphasize Complementarity** - The Rome Statute established the ICC to be a court of last resort, not a primary prosecutor. The Court ought not to be seen to rush to take on matters which may be better handled by national or regional institutions. By heavily investing in the training, resources, and development of domestic and regional justice systems, the ICC can position itself as a supportive partner. It should collaborate closely with institutions like the proposed African Court of Justice and Human Rights (ACJHR) and the Malabo Protocol, or the Inter-American and European Courts of Human Rights as this can help the ICC localize justice processes and resonate better with regional legal cultures. This type of collaboration will center the Court as a partner in the pursuit of justice.
- ii) **Enhance outreach** – the Court ought to engage in a more proactive manner in order to explain its work and its significance. While being conscious of the parameters of Article 9(2) of the Code of Judicial Ethics, I suggest that the Court’s outreach should not only be led by the Office of the Prosecutor and Registrar but also have judge-centred initiatives, such as lecture series circuits, bar-bench engagements and town hall engagements, where the public can understand the work of the Court in a way that does not interfere with its judicial function. Outreach ought to be done in a neutral manner and explain the genesis of the cases, their progress, their challenges and their impact on victims. The Court requires a vibrant social media strategy and grassroots outreach which speaks to people in *Situation* Countries. These materials should be provided in multilingual formats. This will help counter local narratives which may be contrary to the good intentions of the Court.
- iii) **Improve efficiency of the judicial process** - Expediting investigations, and ensuring that pre-trial proceedings are evidence-backed, and disposing of long-standing matters with urgency. This will help counter narratives that the Court is delaying the conclusion of cases and will avoid politically motivated and unsubstantiated allegations of bias against the Court.
- iv) **Protection of Judges** – currently, the Judges are protected by diplomatic immunity, rules of judicial independence and physical security measures. However, these protections are insufficient in the face of threats and sanctions from state parties, non-state parties and other actors. Therefore, the Assembly of State Parties (ASP) should ensure the UN sets up a mechanism to protect judges and staff of the ICC against retaliatory attacks, including legal interventions from human rights bodies and from supportive state parties themselves.

I understand, of course, that for the changes proposed above, there may be need for amendments to the Rome Statute, the Rules of Procedure and Evidence or any of the Regulations, and that the relevant process for such amendments should be followed as per Articles 51, 121 and 123 of the Rome Statute.

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?

The Court's decisions on reparations and the jurisprudence which the Court is developing with respect to its five core elements – restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition – are both novel and positive in terms of their scale and significance to victims.

I believe that a **positively impactful example** is the 2019 *Lubanga* Appeals Judgment on reparations and related decisions, which upheld a landmark \$10,000,000 collective reparations award, prioritizing community-wide restoration over individual compensation. This award was helpful in persuading a skeptical international community that its investment in the Court was indeed meaningful. Specifically, its victim-inclusive approach, dictating that reparations must have a gender-inclusive design and explicitly supporting the reintegration of former child soldiers, demonstrated that the Court understands the plight of the victims and can design relevant and meaningful remedies for their harms.

Admittedly, with respect to reparations, there are still questions about how to best ensure equitable treatment of victims within the same Situation Country, given limited funding. For example, in the Situation in Mali, in the *Al Mahdi* case, the Chamber set his liability at 2.7million Euros, for economic loss and moral harm to the Timbuktu community. This money was paid out through the Trust Fund for Victims reserves and earmarked contributions from States Parties, funding approximately 1000 victims. However, a **negative example** is *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ICC-01/12-01/18 (*Al Hassan* case), where the Chamber assessed liability at 7.25million Euros, for crimes against humanity and war crimes against the civilian population, including persecution on religious grounds, torture, mutilation, and outrages upon personal dignity during the occupation of Timbuktu. However, there is insufficient funding from the TFV and therefore a precedent-setting 65,000 plus victims are not expected to see actual benefits from the decision. This disparity in treatment and quantum may negatively impact the public's perception of the Court.

Since the inception of the Court, it has also been significant that not all cases have resulted in convictions. For victims, this may create an unpopular or negative perception. However, it actually has demonstrated that the judges of the Court are able to exercise independence in decision making and to uphold strict standards when it comes to evaluation of evidence, and not serve as a rubber stamp for prosecutorial discretion. For example, the acquittals of *Laurent Gbagbo* and *Charles Blé Goudé* (*The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* ICC-02/11-01/15) at the 'no case to answer' stage of the proceedings demonstrated that where evidence is insufficient, the Court will release the accused. The fact that the Trial Chamber made the decision at this intermediate stage, and did not wait until rendering a final judgment, showed that the Judges were alert to concerns of judicial economy. This outcome may give States that are hesitant to expose their nationals to the reach of the court some reassurance that the Court is not a political actor, but a genuine judicial institution.

### 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?**

**Articles 40(1) and (2)** of the Rome Statute mandate that judges shall be independent in the performance of their functions and shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence. Once elected to the court, judges should not represent their home countries but serve in their personal capacities.

Therefore, a Judge must maintain complete independence from the authorities of his or her country of origin and must neither seek nor receive instructions from any government, institution, or individual. Judicial legitimacy rests on impartiality and the confidence that decisions are based solely on the law and the evidence before the court.

My own experience in Kenya has reinforced this principle. The Constitution of Kenya, Article 160(1), provides for the independence of the Judiciary and that no judicial officer can be subject to the control or direction of any person or authority. In line with this, judges in Kenya, including myself, have, over the years, demonstrated remarkable institutional independence, including in highly sensitive matters such as presidential election petitions and other cases involving the Executive and Parliament. On occasion, judicial decisions have attracted criticism from political actors and other branches of government. Nevertheless, the judges have continued to discharge their constitutional mandate without fear or favour, illustrating the practical meaning of judicial independence in a constitutional democracy.

If elected to the ICC, my relationship with the authorities of Kenya would be governed strictly by the obligations of judicial office and the Rome Statute. While I would remain proud of my country of origin, my duty would be exclusively to the Court, its mandate, and the interests of justice.

I would however, maintain **appropriate professional relationships** with universities, courts, bar associations, and civil society organizations with which I have previously engaged, while ensuring that such engagements neither compromise nor create the appearance of compromising my independence. Throughout my judicial career, I have valued constructive dialogue with academic institutions and legal stakeholders. For example, the Supreme Court of Kenya through initiatives such as judicial lecture series has welcomed academic critique of its decisions to improve decisions in future. The Supreme Court of Kenya also actively engages with its stakeholders, including through the Bar-Bench Committee, which provides a forum for professional dialogue and constructive engagement. These interactions contribute to the development of jurisprudence and support the continuous improvement of the Court's institutional and administrative processes. Such interactions enrich legal discourse, provided they remain consistent with judicial ethics and do not touch upon pending or prospective matters before the Court.

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

Yes, but in limited circumstances and unless there are legitimate grounds for recusal.

It is clear from the Rome Statute, Article 41 that the Presidency may at the request of a judge, excuse that judge based on circumstances where his or her impartiality might reasonably be doubted on any ground, or where the judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted, in this respect being a national of a state.

Further under the Rules of Evidence, grounds for disqualification under Rule 34 of the Rules of Procedure and Evidence include where the judge has (a) a personal interest in the case or a relationship with any of the parties; (b) previously been involved, in a private capacity, in legal proceedings involving the person under investigation or prosecution; (c) performed functions before taking office that could reasonably be seen as having led to a preconceived opinion about the case, the parties, or their legal representatives; or (d) publicly expressed views, whether through the media, publications, or other public actions, that could objectively call into question his or her impartiality. Further, in accordance with Rule 35, it is the duty of the judge to request to be recused, not to wait for a request for disqualification under Article 41 or 42 of the Rome Statute.

An example of **how these provisions have been tested** is in 2021, where the Defence for *Paul Gicheru* requested the disqualification of Judge Miatta Maria Samba on the basis that prior to becoming an ICC judge, she had worked inside the OTP as a Field Operations Officer (FOO) in the *Situation in Kenya*. The Defence argued that this prior role created an institutional appearance of bias. In her decision declining to recuse herself, she relied on the decision of the *Plenary of Judges on the Defence Application for the Disqualification of Judge Silvia Fernández de Gurmendi from the case of The Prosecutor v. Thomas Lubanga Dyilo*, 3 August 2015 (notified on 4 August 2015), ICC-01/04-01/06-3154-AnxI (*'Lubanga 2015 Disqualification Decision'*) where the Court held that attention has been paid to the 'degree of congruence' between the legal issues in question and to whether factual determinations would be 'based on the same evidence in that country'.

Accordingly, I do not consider nationality alone to be an automatic ground for disqualification. Indeed, in some circumstances, a Judge's familiarity with the legal, cultural, historical, or social context of a particular country may assist the Court's understanding of the issues before it. However, the overriding consideration must always be whether a fair-minded and informed observer would be satisfied that justice will be administered impartially and independently.

However, as stated, participation would depend on whether there exists any actual conflict of interest or a reasonable apprehension of bias in the particular circumstances of the case. There may be circumstances such as an instance where there is a challenge to the quorum of the Court and there arises a duty to sit when the necessary number of judges are absent.

This is because the **duty of a Judge to sit** and hear cases assigned to him or her must be balanced against the equally important obligation to recuse oneself where impartiality may reasonably be questioned. This balance is familiar in many jurisdictions, including Kenya, where courts have developed jurisprudence addressing recusal, the appearance of bias and the duty to sit.

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?**

The Rome Statute sets out a hierarchy of laws in Article 21. In the first instance, judges should rely on the **Rome Statute, Elements of Crimes and its Rules of Procedure and Evidence**. In the second place, the judges should follow, where appropriate, **applicable treaties** and the **principles and rules of international law**, including the **established principles of the international law of armed conflict**. Failing that, judges should apply general principles of law derived by the Court from **national laws** of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

In applying decisions, the Court first must in accordance with the same Article, apply principles and rules of law as interpreted in its previous decisions and which must be consistent with internationally recognized human rights. This ensures coherence, predictability, and legal certainty.

As an international court serving a diverse community of States Parties, the ICC should remain attentive to legal developments across different legal systems and regions, especially its member states, while always grounding its decisions in the Rome Statute and its governing instruments. Consequently, while the Court's own jurisprudence remains the primary point of reference, I consider jurisprudence from other relevant sources to be informative and persuasive where it is compatible with the Rome Statute and the applicable law of the Court. The Court ought to consider the **reasoning found in case law from international and regional courts** (International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), Extraordinary Chambers in the Courts of Cambodia (ECCC), Special Court for Sierra Leone (SCSL), Special Tribunal for Lebanon (STL), African Court on Human and Peoples' Rights (AfCHPR)), **human rights bodies and national courts**. This jurisprudence is highly persuasive in developing coherent principles of international criminal law, procedural fairness, and evidentiary standards

The Court should also consider jurisprudence from national courts, as they frequently develop robust jurisprudence in areas directly relevant to international criminal law, including criminal procedure, evidentiary standards, fair trial rights, sentencing principles, and victims' participation. Comparative analysis of such jurisprudence can provide valuable guidance when addressing novel questions.

Finally, decisions and general comments from international and regional human rights bodies are important in ensuring that the Court's work remains consistent with internationally recognized human rights standards.

**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?**

The Rome Statute does not establish a strict doctrine of *stare decisis* comparable to some common law jurisdictions. Article 21(2), the Court “may” apply principles and rules of law as interpreted in its previous decisions, giving Chambers the discretion to depart from them for cogent reasons. Nevertheless, precedents of the Appeals Chamber play a vital role in promoting consistency, legal certainty, predictability, and equal treatment before the law. Consequently, such precedents should ordinarily be followed.

Notably, the 2020 **Independent Expert Review of the ICC and the Rome Statute System**, gave recommendation R217 that “*Recognising the importance of legal certainty and consistency, the Court should depart from established practice or jurisprudence only where that is justified on grounds precisely articulated in the decision/judgment*”, and R218 spelled out a detailed procedure for the same, Where both parties would be heard before departing from established precedent. I believe this would be a balanced approach.

At the same time, judicial independence also requires a Judge to engage critically with precedent. Where the facts, legal issues, or surrounding circumstances materially differ from those addressed in an earlier decision, a Chamber may distinguish the precedent and explain why a different approach is justified. Similarly, where compelling legal reasons exist to reconsider a previous interpretation, the Court should remain open to principled legal development. Consideration may also be given, where appropriate, to the passage of time and the evolution of jurisprudential understanding, particularly where earlier interpretations may warrant reconsideration in light of subsequent developments.

The appropriate balance is therefore one that promotes legal certainty while preserving the Court's capacity to respond thoughtfully to new legal questions and evolving circumstances.

**5. Do you consider that a Judge or a Chamber of the Court, in order to ensure efficiency, should be allowed to implement innovative procedural practices? If yes, please give examples.**

Yes. Courts must continually seek lawful and practical ways to improve efficiency, particularly in proceedings that are often complex, lengthy, and resource-intensive.

Innovation must be consistent with the Rome Statute, the Rules of Procedure and Evidence, and the fundamental rights of the parties. Innovation should supplement, rather than circumvent, established legal safeguards.

Innovative practices may be particularly useful where procedural gaps exist. However, they must be adopted through collegial agreement within the Court, and where they enhance efficiency, they must do so without compromising fairness. For example, where a Chamber has set a specific amount of time for counsel's submissions, a timer could be used that turns off the counsel's microphone automatically and advises counsel that their time is up.

Other examples may include the increased use of technology for case management, electronic filing systems, virtual procedural conferences, digital evidence management platforms, and secure artificial intelligence tools to assist with translation, document review, and the organization of large volumes of evidence. The use of such tools could significantly reduce delays while preserving due process and judicial oversight. I am aware that the Court is already using technology for transcription of proceedings and e-filing (TRIM), electronic disclosure of evidence (Ringtail), secure remote access to court materials while away from the seat of the Court (Citrix) and software for secure virtual proceedings. While this is commendable, judges of the Court must be consistently aware of advances in technology that may advance the procedures.

**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 hybrid nature of ICC procedure is one of the Court's greatest strengths. It combines elements drawn from both common law and civil law traditions while incorporating principles developed through international criminal justice.

My judicial experience has prepared me well for such an environment. Throughout my professional career, I have worked with colleagues from diverse legal traditions and professional backgrounds, including through regional and international engagements involving the African Union. These experiences have reinforced the importance of openness, mutual respect, and intellectual curiosity when addressing legal questions from different perspectives.

In Kenya, we use a common law approach, which is adversarial and based on precedent and the judge is a neutral party. This differs from the civil law tradition, where the judge's role is more inquisitorial and precedent is not as binding. I particularly appreciate the inquisitorial truth-seeking method and emphasis on mandatory disclosure of potentially exonerating evidence, both of which contribute meaningfully to the administration of justice. Therefore, I would approach the Court's hybrid system with a willingness to learn from colleagues whose legal traditions differ from my own. This approach, I already undertook when working at the AU and UNHCR where different legal approaches were routinely discussed and utilized. A twinned legal system approach is not one I would be unfamiliar with. Effective international adjudication requires Judges to move beyond purely national approaches and to develop solutions that reflect the Court's international character.

**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?**

Yes. Judicial work at the Supreme Court level is inherently collaborative as it is a seven(7) member bench, where the minimum quorum is five(5) judges. We have judicial conferences on all matters before the Court and work is shared equitably and all decisions are taken collectively. Where there is a rare dissent or a concurring judgment, it is taken only after sufficient discussion and deliberation of the full bench. The ICC, as per Articles 74(3) and (5) and 83(4), recognizes that dissents are part of international legal practice.

Throughout my service on the Supreme Court of Kenya, I have worked closely with colleagues in deliberating complex legal and constitutional questions and in producing collective judgments. As per the Supreme Court Act, we also collectively make administrative decisions as to the running of the Court.

Different approaches in both judicial and administrative work are addressed through respectful dialogue, rigorous legal analysis, and careful consideration of alternative viewpoints. Collegial discussion often strengthens judicial reasoning and contributes to more robust decision-making.

I have from time to time made **separate concurring and dissenting opinions**, which I believe remain valuable jurisprudence as dissenting judgments globally often become the basis of future decisions. Dissents also promote transparency by allowing Judges to explain their reasoning where they differ from the majority. They also contribute to the development of the law by presenting alternative analyses that may inform future jurisprudence.

At the same time, dissent should always be exercised responsibly and constructively. The objective is not to undermine institutional coherence but to enrich legal discourse while maintaining respect for the Court and for colleagues whose views differ.

Beyond my judicial work, I currently chair the **Employee Protection and Inclusion Committee (EPIC)**, which is responsible for promoting a safe, inclusive, and respectful working environment within the Judiciary of Kenya. The Committee brings together 18 members from different levels of the institution to address issues relating to employee welfare, sexual harassment prevention, gender mainstreaming, and broader diversity and inclusion initiatives. I also Chairperson the **Judiciary Committee on Elections (JCE)**, a multi-disciplinary body comprising 13 members drawn from the superior courts, the Judiciary's administrative leadership, and legal counsel. The Committee is supported by a secretariat of six members, and it plays a key role in coordinating the Judiciary's preparedness and institutional response in relation to electoral matters. In addition, I have been involved with the **Gender Violence Recovery Centre (GVRC)**, contributing to multi-agency and collaborative efforts aimed at supporting survivors of gender based violence through coordinated legal, medical, and psychosocial interventions. As Chairperson of the Board of the GVRC, I work closely with a team of over 40 full-time staff, which includes program and administrative managers and case workers. These roles reflect my ability to work effectively in team-based, inter-institutional environments involving diverse stakeholders.

**8. Have you considered the risk of being subject to sanctions imposed by one or more States due to the exercise of your judicial functions?**

Yes.

Any person seeking judicial office at the ICC must appreciate that the Court operates in a complex international environment and that its work has political implications and affects powerful political, military, and governmental actors. As a result, judges unfortunately may face criticism, pressure, or even sanctions arising from the discharge of their judicial responsibilities. Such possibilities, however, cannot be permitted to influence judicial decision-making.

My experience in Kenya has reinforced the importance of judicial courage and institutional resilience. The Kenyan Judiciary, including the Supreme Court, has on several occasions been called upon to determine highly sensitive and politically consequential matters. For instance, decisions arising from presidential election petitions, for example, have attracted intense public scrutiny and criticism from political actors and other stakeholders. At various times, judicial decisions have also prompted criticism from both the Executive and Parliament, particularly where the courts have exercised their constitutional mandate to review governmental action or uphold constitutional limitations on the exercise of public power. Despite such pressures, the Judiciary has continued to perform its constitutional role independently and in accordance with the law.

At the international level, the stakes are even higher. The ICC must continue to support and protect its judges against improper external pressure, while judges themselves must remain steadfast in their commitment to independence and impartiality. Acceptance of judicial office necessarily entails acceptance of these challenges. The proper response is not retreat, but unwavering fidelity to the law, the evidence, and the judicial oath.

**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 fully understand that service as a judge of the International Criminal Court is a full-time judicial commitment that requires complete dedication to the work of the Court. If elected, I am prepared to assume my responsibilities at the commencement of my term and to serve full-time and for the full duration of a nine-year term.

Throughout my professional life, I have accepted positions of significant public responsibility, and I view service on the ICC as both an honour and an obligation to contribute to the fight against impunity and the advancement of international justice.

**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.

My judicial and public service career has required sustained commitment under demanding circumstances. As a Judge of the Supreme Court of Kenya, I have routinely worked under strict deadlines, managed substantial case records, participated in intensive deliberations, and handled matters of considerable national importance. For example, within the Kenyan Presidential Election Petition, we work within a tight timeline and under intense scrutiny. The Supreme Court operates under strict constitutional timelines, requiring it to hear and determine such disputes within fourteen days. This necessitates continuous judicial engagement, often extending into late hours and weekends, while maintaining rigorous standards of legal analysis and procedural fairness in an environment of considerable national tension.

As a Judge of the Supreme Court of Kenya for 15 years, I am comfortable with the structured cycle of court processes, which includes scheduled recesses. At the Supreme Court, leave-taking is guided by the court calendar, and as a collegial court, it requires judges to sit together, with all court dates determined collectively.

I fully appreciate that the work of the ICC involves complex proceedings, extensive evidentiary records, and significant responsibilities to victims, accused persons, and affected communities. I am prepared for the workload and scheduling demands that accompany such responsibilities.

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

The multilingual nature of the Court is one of its strengths. As a truly international institution, the ICC serves individuals, communities, and States from diverse linguistic backgrounds. The use of both English and French helps ensure inclusivity, accessibility, and legitimacy.

I am aware that while French and English are the working languages of the Court, the ICC also recognizes the six official languages of the United Nations, namely English, French, Spanish, Arabic, Chinese, and Russian. The ICC further relies on situation-specific languages during proceedings, as both accused persons and witnesses have the right to use a language they fully understand. This is provided for under Articles 55 and 67 of the Rome Statute read together with Regulations 40 and 41.

Whereas multilingual proceedings can create practical challenges, including delays in translation, differences in legal terminology, and communication difficulties among parties, the interests of justice have far more overarching priorities, and these challenges can be addressed.

Judges can contribute to addressing these challenges by promoting clear and concise judicial drafting, ensuring that language-related issues are anticipated and managed efficiently during proceedings, and remaining attentive to the rights of parties and participants who rely on interpretation and translation services. Continued language training and effective use of professional language services are also important in supporting the Court's work.

**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?**

Judicial decisions are ultimately the responsibility of the judge.

This includes reviewing pleadings, hearing parties before the Court, participating in conferences, conducting legal research, and making determinations on matters before the Court.

My approach is to engage personally and substantively with every stage of the reasoning process, including review of the evidence, legal analysis, deliberation, and determination of the conclusions to be reached. The core reasoning, structure, and conclusions of any decision must be the work of the judge.

Legal assistants and judicial support staff play an important role in legal research, citation verification, compilation of authorities, and preparation of background materials. In the Supreme Court of Kenya, law clerks and judicial assistants are subject to a Code of Conduct that imposes strict obligations of confidentiality, integrity, impartiality, and professionalism. Similar safeguards are essential in any judicial institution to preserve the integrity of judicial deliberations and maintain public confidence in the administration of justice.

However, the judicial reasoning itself, the assessment of the evidence, and the final text of the decision must remain under the direct control and responsibility of the judge. This approach preserves both judicial independence and accountability.

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

Articles 39 and 57 of the Rome Statute, as read together with Chapter 2 of the Rules of Procedure and Evidence, Section I, Rule 7, do permit a single judge to exercise the functions of the Pre-Trial Chamber. For example, in the case of *The Prosecutor v. Bosco Ntaganda* ICC-01/04-02/06-25 from the situation in the Democratic Republic of the Congo, the three-judge panel designated one of its members to perform the functions of the Chamber pursuant to Article 57(2)(a) of the Rome Statute.

Without prejudging the Court's existing legal framework or future cases, I believe that procedural efficiency should guide the allocation of judicial responsibilities wherever consistent with the Rome Statute and the rights of the parties.

Routine procedural matters, scheduling decisions, extensions of time, disclosure-related issues of limited complexity, victim application management, and certain case-management decisions may often be appropriately handled by a Single Judge where the legal framework permits.

By contrast, matters involving significant substantive rights, major evidentiary disputes, confirmation of charges, determinations affecting the scope of the case, or issues with substantial implications for fairness and due process generally benefit from consideration by the full Chamber. **Any decision which may dispose of the matter in its entirety must be reserved and determined by the full bench.**

The objective should be to promote efficiency while safeguarding the quality, legitimacy, and fairness of judicial decision-making.

**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.

Throughout my professional career, I have held positions that attracted significant public attention and scrutiny. First, as a Member of Parliament, then, while drafting the Constitution of Kenya as a constitutional reform expert sitting in the Committee of Experts and subsequently as a Judge of the Supreme Court of Kenya, I have frequently worked in highly visible environments involving issues of national importance. In all these positions, I have faced wide media coverage, comments and criticisms on the work I have done. I have also worked in other highly visible roles.

A clear example is the adjudication of presidential election petitions before the Supreme Court of Kenya. These proceedings are among the most consequential in the country's constitutional order, being disputes involving the results of a presidential election, attracting extensive media coverage, sustained public debate, and heightened attention from political actors, State institutions, and civil society. The Court operates under strict constitutional timelines, requiring it to hear and determine such disputes within fourteen (14) days. This necessitates continuous hearing and determination of applications and petitions, often extending into late hours and weekends, while maintaining rigorous standards of legal analysis and procedural fairness in an environment of considerable national tension.

As the final court in an adversarial court system, litigants and their counsel often engage in social media platforms and newsroom analysis, giving views on the outcomes of the cases. There often can be public criticism of these decisions that bring pressure to bear on judges, including myself. However, we have always maintained composure in the face of such comments and public debate.

In such circumstances, judges must remain insulated from external pressure and guided solely by the Constitution, the law, and the evidence before the Court. My experience in these matters has reinforced the importance of judicial composure, institutional independence, and disciplined adherence to the judicial oath, even where decisions may attract public disagreement or political criticism.

**7. Are you in a health condition allowing you to work under pressure, given the Court's heavy workload?**

Yes.

I am fully capable of undertaking the responsibilities associated with service as a judge of the International Criminal Court. My current judicial responsibilities require sustained intellectual engagement, extensive reading and writing, participation in lengthy hearings, travel, and leadership of significant institutional initiatives. Mental and physical well-being are important for a judge entrusted with matters of such gravity as those handled by the ICC.

I have successfully managed demanding professional responsibilities throughout my career and am prepared to meet the workload and pressures associated with service at the Court.

**E. Deontology**

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

An independent Judge is one who is free from external influence, pressure, or inducement, whether from States, institutions, parties, media, or personal interests and who decides cases solely on the basis of facts established in evidence and the applicable law.

Independence has both an external and internal dimension. Externally, it requires institutional and personal freedom from interference. Internally, it requires intellectual integrity, disciplined reasoning, and the ability to decide without allowing personal beliefs, career considerations, or external expectations to distort judicial reasoning.

At the ICC level, judicial independence is particularly critical given the political sensitivity of cases. It is also closely linked to the appearance of independence, which is essential for maintaining public confidence in the Court. This is defined in detail in the ICC's *Code of Judicial Ethics*, which establishes the baseline principles of judicial independence, impartiality and integrity.

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

A conflict of interest arises where a Judge has any personal, professional, financial, or other interest that could improperly influence or could reasonably be perceived to influence the Judge's impartiality or independence in a matter. This understanding is partially derived from the conflict of interest clauses in the Kenyan Judicial Service Code of Conduct and Ethics Regulations, Section 20. The **Bangalore Principles of Judicial Conduct, 2002**, particularly the values of independence, impartiality, integrity, propriety, equality, and competence and diligence, also provide important guidance in this regard. The Principles emphasize that a judge must avoid both actual conflicts of interest and situations that may give rise to a reasonable perception of bias.

My understanding of what would constitute a conflict of interest includes, but is not limited to, prior involvement in a case as counsel, advisor, or expert; personal or familial relationships with parties, victims, witnesses, or counsel; financial interests in entities affected by proceedings; prior public statements or advocacy on issues directly before the Court that could create an appearance of bias; and any institutional or political affiliations that compromise perceived neutrality.

At the ICC, even the appearance of a conflict is as significant as actual bias, given the Court's reliance on legitimacy and trust. If elected, I would be guided by the **ICC Code of Judicial Ethics ICC-BD/02-03-22**, specifically Article 4 on impartiality, which provides that judges shall avoid any conflict of interest or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest. Where such a conflict of interest is identified, it is processed by the presidency to ensure the integrity of the judicial process. For example, conflicts of interest may arise where the judges in the court have sat in other courts, tribunals or bodies, where they have handled critical aspects of a situation country and may require recusal. Also, some concerns were raised by Japanese Judge Kuniko Ozaki whose judicial term was extended for her to complete the Ntaganda Trial, yet she had already been appointed as an Ambassador by her home country Japan.

**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?**

The primary criteria when assessing a candidate's suitability to be a judge at the ICC must remain those set out in the Rome Statute under Article 36(3)(a), including high moral character, impartiality and integrity, and the qualifications required in their respective States for appointment to the highest judicial offices. Judges' competence should also include knowledge of the law, judicial temperament, intellectual rigour, and courage. Therefore, race, colour, gender, or religion alone should not determine whether an individual candidate is qualified to serve as a judge.

However, diversity considerations are relevant when constituting the Court as an institution. Article 36(8) of the Rome Statute requires States Parties, in the selection of judges, to take into account the need for equitable geographical representation, a fair representation of female and male judges, and the representation of the principal legal systems of the world. These considerations enhance the Court's legitimacy, inclusiveness, and ability to understand the diverse contexts in which international crimes occur.

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

The Rome Statute established victims as independent participants in criminal proceedings. Key provisions include: **Article 68(3)** which recognizes the fact that victims may present their views and concerns where their personal interests are affected; **Article 75** which establishes reparations for victims, recognizing the maxim *ubi jus, ibi remedium* (where there is a right there is a remedy) and draws heavily on the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; **Article 79**, which establishes the Trust Fund for Victims, which supports victims of crimes within the ICC's jurisdiction and their families by funding physical, psychological, and material rehabilitation; and **Rules 89–93 of the Rules of Procedure and Evidence** which govern participation by, and representation of, victims in the criminal justice process.

Normally, the Registrar appoints a Common Legal Counsel for groups as opposed to individuals. I am aware that there exists the **Victims' Participation and Reparation Section (VPRS)** within the ICC Registry, which is mandated to facilitate victims' access to the Court. Some of the challenges Counsel encounter when seeking to have victims participate during trials include translating the victims' experiences into legal submissions, communicating court proceedings to the victims, and presenting victims' views before the chamber and the consequences of where there are acquittals but still existing victims.

If elected, I would ensure that Counsel are provided with adequate opportunities to present victims' views and concerns in a manner that is meaningful and consistent with the requirements of a fair trial. I would support clear procedural directions and effective case management to facilitate communication between the Court, the VPRS, and victims' Counsel, particularly in situations involving large numbers of victims.

Further, one of the ICC's greatest criticisms is that justice takes too long. Additionally, other concerns include victims are very far away from The Hague, there are security risks to the victims and limited funding for victim support.

If elected, I would encourage the appropriate use of technology, including secure virtual hearings, to address the expediency of proceedings, particularly for procedural matters that do not require in-person testimony. Technology will also be useful to overcome geographical barriers as well as the security risks concerned during giving testimony. This will be particularly useful for victims who have faced sexual violence, who must be provided extra protection as witnesses, due to the stigma that is caused within the family and community. I would also encourage the use of targeted outreach mechanisms to overcome geographical, linguistic, and informational barriers that often limit effective participation. I would also support the enhancement of contributions to the Trust Fund for Victims so that meaningful and timely reparations can be made.

**5. 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?**

Victim participation and the rights of the defence should not be viewed as competing interests. Both are important components of a fair and legitimate system of international criminal justice. Under the Rome Statute, the **rights of the accused (in Article 67) and those of victims (in Articles 68 and 75)** are not mutually exclusive but co-exist within the ICC's statutory framework. However, it is essential to bear in mind that measures taken to protect victims shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial (Article 68(1)).

In approaching this balance, I would be guided by the principle of fairness and equality of arms. The presumption of innocence and the rights of the defence must remain foundational and non-derogable. At the same time, victims' rights to participation, protection, and reparations must be meaningfully upheld.

Victim participation may enrich proceedings by providing perspectives regarding the impact of crimes and by enhancing confidence in the justice process. At the same time, safeguards are necessary to ensure that participation does not create procedural disadvantages for the defence or result in duplication of prosecutorial functions.

Judges must therefore carefully balance these interests by ensuring clarity regarding the role of victims' representatives, maintaining procedural fairness, protecting the presumption of innocence, and guaranteeing that accused persons retain full opportunity to challenge the evidence presented against them.

In practice, this requires a context-sensitive, case-by-case judicial assessment, ensuring that procedural accommodation for victims does not compromise fair trial rights, and that defence rights are not exercised in a manner that undermines victim protection or the integrity of proceedings.

The Supreme Court of Kenya has had opportunity to apply itself and interpret the need to balance the rights of an accused person and the rights of victims in its decision in ***Joseph Lendrix Waswa v Republic*** [2020] KESC 23 (KLR). As a member of the bench that heard and determined that matter, we were able to provide a useful articulation of this balance. The Court affirmed that victim participation is a constitutionally and statutorily protected component of criminal proceedings, but emphasised that it must be carefully regulated so as not to "convert the victim into a second prosecutor" or compromise the accused's right to a fair trial. The Court underscored that while victims have a legitimate interest in the outcome of proceedings, their participation must remain within defined procedural limits that preserve the adversarial structure of the trial and the primacy of the prosecution and defence.

Overall, meaningful victim participation can contribute to the legitimacy, inclusiveness, and credibility of proceedings. However, participation must always be implemented in a manner that is consistent with the rights of the accused, judicial efficiency, and the overall fairness of the proceedings.

**6. How do you see the possibilities and limits of the use of AI in the work of the Court? Do you have any experience in using AI in your work?**

Artificial Intelligence (AI) offers significant potential to enhance judicial efficiency, particularly in managing large volumes of evidence, improving document review processes, providing translation support, and legal research.

AI, however, must remain strictly assistive and never determinative of judicial decision-making. The core functions of legal interpretation, evidentiary assessment, and credibility determinations must remain exclusively within the human function and control.

While it is also important to understand that AI presents significant opportunities, it is crucial to appreciate its substantial risks. These include the creation of fabricated evidence, deepfakes, misinformation, manipulation of witness testimony, cybersecurity threats, and the potential use of unreliable AI-generated legal analysis. In the court, when making a decision, one must be cautious of AI-manufactured case law and authorities brought to Judges either through submissions of parties or chamber research. Key limitations also include risks relating to bias in training data, lack of transparency in algorithmic reasoning, confidentiality concerns, and the inability of AI to replicate human reasoning grounded in legal responsibility and moral judgment.

**Own experience with AI:** I am fully comfortable using modern judicial technologies, including electronic filing systems, digital case management platforms, virtual hearings, legal research databases, document management systems, and electronic evidence review tools. My current workplace at the Supreme Court has also adopted digital tools such as electronic repositories and digital “flipbooks” to improve access to judgments and legal materials. In support of proceedings, the Judiciary of Kenya is the second jurisdiction globally that has developed AI guidelines and is developing a bespoke method of using AI for the doctrine of precedent, being aware of the advancement of technology. The Kenya Judiciary is also developing the use AI in transcription and interpretation services to ensure accurate and timely production of minutes and typed proceedings. I therefore have experience in utilizing AI.

My other leadership responsibilities within the Judiciary have also required adaptation to technology-driven reforms aimed at improving judicial efficiency and access to justice. For instance, the Judiciary Employee Protection Unit (EPU), which was created by the Employee Protection and Inclusion Committee (EPIC), (which I Chair), employs a digital system of confidential and safe reporting for staff reporting on sexual harassment.

**F. Additional information**

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

No.

I confirm that I do not hold any nationality other than the one indicated in my nomination and have never applied for or requested any other nationality.

- 2. 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 confirm that I have familiarized myself with the conditions of service applicable to Judges of the International Criminal Court, including remuneration and the pension scheme. I am fully aware of, and accept, the Terms and Conditions of service attached to judicial office at the Court.

- 3. 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.

To the best of my knowledge, there is no information, circumstance, or situation that would call into question my eligibility.

I remain committed to upholding the highest standards of judicial conduct throughout the duration of my service, if elected.

**G. Disclosure to the public**

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

Yes.

You may make my answers to this questionnaire public.