

ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

QUESTIONNAIRE

A. Nomination process

1. The Statute requires every candidate for election to the Court to have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings or established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.

Could you please describe your experience and competence in the areas specified? For how long? In which capacity?

I first entered the Judicial career in 1992, after winning first place in a public entrance exam with candidates from all over the country. Public entrance exams for the position of Federal Judge are among the most challenging in Brazil, as candidates must pass through at least four stages: preliminary investigation, two written tests, and one oral test. I have been trying both civil and criminal cases ever since, as a single judge, working in small towns in the Brazilian countryside and later in big cities. In 2010, I was appointed on merit to a position at the Federal Court of Appeals.

As a Federal Judge at the Court of Appeals, I routinely try and analyze the most severe and complex criminal cases. These include federal political crimes and criminal offenses against the Brazilian State's assets and interests; international trafficking of drugs, weapons, and persons; crimes covered by international treaties or conventions; human rights violations; forced labor and crimes against the organization of labor; and, in the cases determined by law, crimes against the financial system.

In this same regard, it is worth mentioning that my Chamber (2nd Section of Appeals) at the Federal Court has jurisdiction over crimes committed by authorities entitled to privileged jurisdiction, such as City Mayors and State Representatives, either on regular crimes or impeachable offenses.

As a direct consequence of my professional activities, I have developed expertise in trying cases of national and international traffic of persons, especially those involving women and children. Such crimes are an unfortunate reality in some regions of Brazil, a source country for the trafficking of men, women, girls, and boys who are later subject to forced prostitution, both within my country and also abroad.

In parallel to my work as a criminal judge, I have also been acting for more than 13 years as the Brazilian Liaison Judge for the Hague Convention on the Civil Aspects of International Child Abduction (1980 Hague Convention). In such a role, I have taken part in resolving several international disputes concerning the international abduction of children and answered a variety of consultations from foreign judges about the functioning of the Brazilian judicial system, its laws and procedures.

This practical experience, in parallel to my academic studies (which include a PhD at the Federal University of Minas Gerais and a post-graduate degree

at the American University - Washington-DC), led to my appointment as coordinator of the subgroup of the Brazilian National Council of Justice dedicated to the issue of international child abduction. I also provide training to judges, prosecutors, and lawyers in both subjects: child abduction and traffic in persons.

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

As a Federal Judge at Brazil's Court of Appeals, I have been in charge of trials related to the international trafficking of women and children over the last ten years. This unfortunate reality takes its toll in the poorest corners of my country, such as the Amazon region, over which my Court has jurisdiction. In recent years, we have been dealing with an exponential increase in the number of pedophilia crimes committed through the Internet. I have tried several of these cases and dealt with large-scale investigations of pedophilia crimes, including those involving public authorities subject to the jurisdiction of the Court.

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

No, I have never been investigated for nor charged with any of the allegations mentioned above.

B. Perception of the Court

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

The International Criminal Court went through a period of institutional consolidation over its first two decades of existence, so criticism was expected. The Court's proceedings are said to be lengthy, leading to the perception of the ICC as an expensive and ineffective body. There is more in this debate than meets the eye, though. As an experienced judge, I am aware that, even at the domestic level, complex situations require time for investigation and trial. This is even more the case in investigations of international crimes, which entail additional difficulties, such as access to witnesses and linguistic barriers, while collecting testimonies in remote localities.

One must also take into consideration the complexity of harmonizing procedures stemming from different judicial systems. Although multiculturalism remains at the very core of the ICC, on a practical level it is not always that easy to assemble these parts into a coherent, functional system.

I would like to point out two other important issues that have been voiced by critics of the ICC. The first refers to the difficulties faced by the Court while enforcing its decisions, as in the case of the non-executed warrant of arrest against former Sudanese president Omar Al Bashir. I do not believe the Court is to blame for that, since it relies on the cooperation of States Parties to execute its decisions, as clearly stated at Part 9 of the Rome Statute, so this is a rather political conundrum to be dealt by the Assembly of States Parties.

Lastly, one final debate that is currently in place concerns the interest of justice in the investigation of situations implicating nationals of Non-Party States. According to the critics, these investigations would be ineffective, since they depend on national authorities that are not willing to cooperate with the Court.

This is a rather sensitive debate and there are several factors to take into consideration. On the one hand, judges must pursue their mandates in accordance with the Rome Statute and hold accountable, to the extent possible, those responsible for grave crimes against international criminal law. Moreover, a tough stance on difficult cases is crucial to dismiss accusations that the ICC only goes after the "low hanging fruits", that is, situations in developing countries that are willing to cooperate with the Court. On the other hand, having in mind the principle of judicial economy, a serious and impartial evaluation must be made about the allocation of the limited resources of the ICC, with a view to maximizing the overall goal of fighting impunity for the most serious international crimes.

2. 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?

From my experience, I can state that judges' faster responses always have a positive impact on people's expectations and ON a Court's reputation. One practical suggestion to expedite the Court's work would be to delegate more actions to the domestic courts of States Parties. In the Brazilian judicial system, we commonly make use of the so-called "letters of order", by which higher courts delegate some assignments (such as hearing witnesses and collecting evidence) to first instance judges. That is but one example of measure with immediate verifiable benefits, since first instance judges are closer to the facts, thus in a better position to carry out such procedures.

Given the broader context of the ongoing revision of the ICC, I am also willing to hear the Independent Panel of Experts' inputs on these issues, and, if elected, work to implement their suggestions to the extent possible, alongside other officials of the Court and the ASP.

3. 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?

There are landmark ICC decisions that have consolidated the Court's role in the prosecution of international crimes and reinforced the reliability on international criminal justice. The criticism that the Court has delivered very few convictions in its 18 years of existence is unwarranted. Like any institution abiding by the rule of law, the ICC is not a court of conviction, but a court of justice. In the system of due process of law in the civilized world, courts hand down both convictions and acquittals on a daily basis. With that in mind, I would like to point out two ICC decisions that had both positive and negative impacts on the Court's perception vis-à-vis the States Parties and the public.

The Judgment in the case Prosecutor v. Thomas Lubanga Dyilo¹ is remarkable not only because it was the ICC's first conviction, but also due to its subject matter. Being the first conviction, the Judgment was a clear sign to the international community that international crimes will not be tolerated, and that perpetrators would be brought to justice. Moreover, it is one of the few international criminal judgments on the recruitment and use of child soldiers. Lubanga's conviction thus set a powerful precedent in fighting impunity against the use of children in armed conflict, calling the world's attention to the many thousands of children still facing the dire consequences of hostilities.

Another important aspect of the case was the direct involvement of victims during the trial, including former child soldiers. For the first time in the history of international criminal law, victims were able to express their views and concerns at various stages of the proceedings. They were authorized to make submissions to the bench, introduce evidence, and question witnesses on specific issues.

At the same time, Lubanga's case also showed that there is room for improvement in the Court's proceedings. It took six years for one single conviction to be delivered, due to – among other reasons – serious challenges in terms of evidence disclosure and the use of intermediaries.

Another noteworthy set of decisions concerns the arrest warrants against Omar Hassan Al Bashir. The situation in Darfur, Sudan represented a challenge to the Court – being the first referral by the Security Council. The decisions in the case against Al Bashir not only raised important and complex legal issues, but also represented milestones in the development of ICC case law. Moreover, the challenges to execute the warrant of arrest against Omar Al Bashir highlighted the importance of States Parties' cooperation in the enforcement of ICC decisions, based on Part 9 of the Rome Statute.

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?

¹ICC – 01/04-01/06-2842, situation in the Democratic Republic of the Congo, issued on March 14th, 2012.

In their decision-making roles, judges must be completely independent from both the executive and legislative branches of government. In my nearly 30-year career as a judge, I have never had any problems in my relationship with other Brazilian authorities, whether at the state or national level. I have always been polite and respectful, being aware that each branch of government plays its roles and has its responsibilities. Respect and understanding must be reciprocal. I believe that the same approach should be adopted internationally.

Judges must also ensure that their impartiality is not affected by any other association, whether academic, commercial, professional or personal. If I am elected to the ICC, I will maintain the same attitude towards institutions as the ones listed in the present question.

I am aware that Article 10 of the ICC Code of Judicial Ethics (ICC-BD/02-0105) establishes the duty not to engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the Court, or that may affect or may reasonably appear to affect their independence or impartiality. I therefore intend to fully observe this guidance if elected to the ICC. In addition, one needs to exercise caution when severing the links with external organizations, so as to avoid any conflict of interest, or even the perception of it (Code of Judicial Ethics, Art. 4, 2).

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

I believe that we, as judges, should always maintain an attitude of detachment in relation to the cases we analyze, avoiding to act in any way that might create doubts regarding our impartiality. In the Brazilian legal system there is an express rule about the cases in which judges must excuse themselves. Similarly, the Rome Statute also states that a judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground (Article 41, 2, a). Hence, just a reasonable doubt about a judge's impartiality is reason enough for him/her to at least request to the Presidency to be excused from the trial.

Moreover, the ICC Judicial Code of Ethics expressly provides, in its Article 4, that judges must not only be impartial, but also ensure the appearance of impartiality in the discharge of their judicial functions (Art. 4, 1). That means that judges shall always be aware of their duties to act impartially, preventing any malicious interpretation regarding the fairness of their conduct. The duty of impartiality is also a commitment taken by ICC Judges at the moment of their solemn undertaking (Rome Statute, Art. 45).

Therefore, even if a judge has no personal connection with the national of his country who is under trial, the fact that both share the same nationality will be a factor that could place the judge's impartiality under suspicion. Therefore, in my view, a judge should not participate in a trial involving a national from his country of origin.

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?

I believe that there is a clear need for order in the use of jurisprudential sources. Firstly, the Court's own jurisprudence must be observed in order to preserve its coherence and uniformity of understanding. Secondly, ICC judges can draw on the case law of other international criminal courts, whose decisions are generally based on the same principles and objectives. It may also be useful to consider decisions from international judicial bodies with a universal character – such as the International Court of Justice – or with a specialized jurisdiction *ratione materiae* – such as regional human rights courts. The dialogue among international tribunals is a positive trend in the international legal society, facilitating cross-fertilization while respecting each institution's particular jurisdiction and specificities.

Thirdly, I believe that the case law of national courts and even documents emanating from human rights treaty bodies can be used, as appropriate, to help resolve cases. If a domestic court or a human rights body develop a reasoned and fair interpretation to an international rule or principle, it might be considered at an ICC trial, as long as it is consistent with the Rome Statute framework and compatible with a criminal trial. One must caution, however, on importing concepts that, although similar, might have different meanings in different legal regimes.

Finally, it might be useful for the Court to consider other bodies' decisions for practical matters too. The reparations decision in the Lubanga case², for instance, noted the need to take into account decisions from other courts or bodies on benefits awarded to victims so as to avoid unfair or discriminatory application of reparations.

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?

In my perspective, an independent Judge is one who acts in a manner that is free from external influence or pressure. As a judge coming from a "civil law" system, judicial precedents, as a rule, are not binding. They just have that power when expressly conferred by law, the so-called "binding precedent."

That being said, respect and obedience to the Court's jurisprudence are quintessential to the Rome Statute system's stability, its uniformity and coherence, and the legal security of the ICC as a whole. Therefore, I believe that whenever possible, an independent judge should abide by the precedents set by the Appeals Chamber of the ICC, unless that precedent was repeatedly overruled by the Pre Trial and Trial Chambers, or not fully adaptable to the case at trial.

² Prosecution v. Thomas Lubanga, Trial Chamber, Reparations Decision, paragraph 201.

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.

As long as it does not contradict the applicable law, a judge or a Chamber may implement innovative procedural practices in order to expedite proceedings. These are measures that emerge in the day to day work of courts and that can be replicated in future cases. The broadening use of videoconference for hearing witnesses and victims who could not be physically present at trials is a good example. Moreover, in the Criminal Chamber where I work, we sometimes exempt defendants and witnesses from formal notifications for the next procedural act when all parties are present for the act being held. This measure increases efficiency with no detrimental effect to the rights of the parties.

6. Are you used to working as part of a team? How do you envisage your working relationship with other Judges from different backgrounds and from different legal systems? How would you deal with a disagreement in relation to a certain aspect of a decision? What are your views in relation to writing separate concurring and dissenting opinions?

I am used to working with other judges, given that the Brazilian Court of Appeals is organized in Chambers. Besides the daily activities of Chambers, there are also instances where all Appeals Judges (27 in total) need to be involved, such as in discussions about the Court rules of internal proceedings. The Court of Appeals where I work has jurisdiction over 14 federal states, which covers about 80% of the territory of Brazil. It is the largest Court of Appeals in the country, both at national and state level. Each Brazilian state and region has a unique cultural tradition. This diversity results in cases where there are multiple cultural aspects involved, and that has to be balanced during deliberations.

I also act as a Liaison Judge to the Hague Conference and as a contact point in Brazil to the Ibero-American International Legal Cooperation Network (IBERRED). This experience has made me more aware of the diverse legal systems of the world, has broadened my professional interactions and has given me the opportunity to see things from a different perspective. It has opened up my horizons by enabling me to meet judges from all parts of the world and to navigate through different cultural environments.

My experience working in Chambers has instilled into me a sense of collegiality, respect and attention to my colleagues' opinions. I generally make all efforts to reach consensus whenever possible. Judging cases involving different cultural traditions has made me more sympathetic and understanding about other points of view.

Moreover, although Brazil formally adopts a civil law system, in recent years it has absorbed influences from common law systems as well, including on the increasing value of judicial precedents as a source of law. The search for greater uniformity in case law is part of a structural reform movement that aims to overcome the current crisis of the Brazilian Judiciary, marked by lengthy procedures and delayed justice. The immense volume of lawsuits in progress (reaching, today, approximately 100 million) adds to the slow pace in concluding judicial processes

(which have taken an average of 10 years to be finalized). These problems constitute considerable obstacles to the proper functioning of judicial institutions in Brazil. By increasing the application of *stare decisis* in its legal system, and giving particular value to its Constitutional Court decisions, Brazil became the stage for an intense intercultural judicial dialogue, represented by the progressive approximation of both civil and common law systems. This experience with the harmonization of elements from distinct legal systems is important, in my view, for the multicultural approach needed from judges at the ICC.

Total or partial disagreement is normal in a collegiate body and as judges we have to deal with it regularly. In this regard, it is key to respect each other's understandings and to avoid bringing to a personal level any discussions or disagreements that may occur during a trial session. My colleagues and I use to say, "what happens in the courtroom stays in the courtroom". Also, to write separate concurring and dissenting opinions is something normal and part of the judicial function.

7. In which situations, in your view, should a Judge of the Court recuse himself or herself from a case?

The Rome Statute explicitly addresses both the requirement of independence and impartiality of ICC judges, and the right of the accused to a "fair hearing conducted impartially" (Art. 67, 1).

Article 41 states that *a judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case under this paragraph if, among other things, that 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* (Art. 41, 2, a).

Rules n. 33, 34 and 35 of the *Rules of Procedure and Evidence* also refer to the question of impartiality and impediment of judges in the cases expressly mentioned therein. These rules set a very clear framework, and every situation that falls within this definition are ones in which Judges of the Court should recuse himself/herself from a case.

Furthermore, as mentioned in a previous answer (B.2), I believe that although not provided for in the Statute, a judge should refrain from participating in investigations and trials involving his nationals.

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?

If elected, I will be available to take up full-time service at the ICC as soon as required. I have already fulfilled the necessary requirements to retire from

my position at the Federal Court in Brazil, and therefore I can retire any time from now.

2. In the event you are not called immediately to work full-time at the Court, are you prepared to do so only as of the moment when you are requested to do so, knowing that this may mean a delay of several months or a year or more from the commencement of your term as judge?

Yes, I am prepared to start working at any moment that the ICC workload so requires. If there is any delay in the commencement of my term, I will continue to work as a judge in Brazil until requested by the ICC.

3. 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?

I believe that my decades of high-level professional experience made me ready for the strenuous routine of a judge of the ICC. The routine of a criminal judge in Brazil is actually not that different from what was described above. My tasks as a criminal judge in Brazil are extensive, and I have been handling it well for almost 30 years.

The jurisdiction of the Federal Regional Court, in which I perform my duties, is the largest in Brazil – covering about 80% of the country's territory – and its judges are faced with a heavy workload. I usually analyze *habeas corpus* requests during the day and often late at night and on weekends as well. It is also common for us judges to spend at least part of our holidays and vacations organizing our work and getting things ready for the periods to come.

I am responsible for more than 3,000 cases, with decisions ranging from simple to the most complex levels. As part of my routine, I meet with lawyers who, by law, have the right to personally discuss legal matter with judges.

My Chamber holds hearings three times a week, where we decide collectively. Those sessions have oral arguments from both lawyers and the Public Prosecutor's Office, which keeps us in Court until late at night in most days.

Working hard has been a part of my daily routine over the last 30 years, and I am fully ready to keep doing that as a judge of the ICC.

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?

Judges from higher courts must deal with a host of decisions that range from the simplest to the most complex. Such workload at times might be overwhelming, so besides working hard and managing its time correctly, delegation

is also a critical skill judges must master in order to carry out their duties properly and in a timely fashion.

These are situations that I currently need to cope with in my daily activities as a Federal Judge. Whenever possible, I rather write my decisions individually. However, since the workload in a criminal chamber is sometimes unbearable, my colleagues and I have enacted the following procedure: more straightforward decisions are drafted by assistants and reviewed by judges, while more complex ones are both written and reviewed by judges. These are decisions that require more reflection and our full attention throughout the entire process.

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

According to the Rome Statute, a Single Judge of the Pre-Trial Chamber may render decisions that are not expressly conferred to the full Chamber (art. 57, 2, b). The *Rules of Procedure and Evidence* also establish that a Single Judge may decide *on those questions on which decision by the full Chamber is not expressly provided for in the Statute or the Rules* (Rule 7, 2).

Resorting to a single judge can help expedite proceedings, as it is already the case in the preparations for the confirmation of charges hearing. Even though the Pre-Trial Chamber has the power to determine when a single judge is able to act, rule 121(2)(b) of the *Rules of Procedure and Evidence*, for example, expressly states that a Pre-Trial Chamber judge shall be appointed to organize status conferences regarding disclosure.

In my opinion, a single judge could issue orders granting defense requests for cooperation in gathering evidence (art. 57, 3, b, Rome Statute), or allowing the defense to conduct investigations. These measures help to expedite proceedings and ensure parity of arms between Prosecution and Defense.

Another type of decision that a single judge could issue is provided in art. 57, 3, c of the Rome Statute: orders aimed at the protection of victims and witnesses, in consideration not only of their particular interests, but also as a manner to safeguard the criminal proceedings. These decisions may help to protect evidence, such as testimonies, thus saving time in further investigations. Most importantly, it is expected that some witnesses might be under imminent risk, which therefore requires swift action by the Court.

I focused here on Pre-Trial Chamber functions to reflect the current framework established by the Rome Statute. However, I believe that there might be room for Single Judge decisions also at the Trial Chamber. Despite the requirements of Article 74, Single Judges can play an instrumental role in preparing the trial, as envisaged in Rule 132bis of the *Rules of Procedure and Evidence*. In my view, it is also important to be open to discuss ways to adjust the current legal framework to ensure more efficient and effective criminal proceedings, including through Single Judge decisions.

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?

In a criminal chamber, dealing with pressure is our “way of life”. We have to deal with arrest warrants, release from custody, *habeas corpus*, complaints, and requests from lawyers on almost a daily basis.

From my personal experience, to be calm and breathe in moments of tension is helpful. Moreover, it is important to maintain the necessary detachment from cases – which is sometimes difficult, especially when they involve children, women and people with disabilities.

I recall a situation when I had to do my utmost to stay calm and focused. Two years ago I was working on a large – and notorious - criminal case, involving state legislators accused of crimes such as bribery, influence peddling, misuse of privileged information among other infractions. The Federal Prosecutor requested the issuance of arrest warrants, and I had to take immediate action. It was 8 PM when I received a call from the Prosecutor saying that there was substantial evidence that a senior government official was also involved. According to the Prosecutor, this governmental authority could destroy important evidence and flee if the arrest warrants were not issued promptly.

We had to work around the clock, exerting utmost caution, to prevent mistakes and unfairness. It was a tense and long night. Eventually I decided that it would be prudent to issue a temporary arrest order, which is allowed under the Brazilian law. The following days were tense as well, with many lawyers coming over to my office to introduce requests and claims. From there it was common procedure. The remaining proceedings were carried out smoothly and with increased judicial oversight, due to the cautious approach adopted during the moments of greatest tension and pressure.

7. Are you in good health and able and prepared to work under pressure, given the Court’s heavy workload? Have you ever been on leave from your professional duties due to exhaustion or any other work-related incapacity? If yes, for how long?

As explained above, working under pressure is not a problem for those who are used to dealing with criminal matters, even at domestic courts. I am both physically and mentally healthy, which allows me to carry out my duties in the best possible way. I have never left my professional obligations because of exhaustion or any other work-related incapacity.

E. Deontology

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

The guarantee of an independent and impartial judge is a universal value of democratic societies. In my perspective, an independent judge acts in a manner that is free from external or internal influence or pressure. Judge's

independence, as expressly provided in the Rome Statute (Art. 40), is intended to promote judgments that are exempt from pressure, whether from organized society or the interests of political or economic groups. Judges are bound by the rule of law, and their positions should always be well grounded, respecting the limits of applicable law.

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

Conflicts of interest may arise when a judge's decision is influenced by their interests or those of one of the parties involved, to the disadvantage of the others. In my opinion, situations that may constitute conflicts of interest are well outlined, although not exhaustively, in Rule 34, 1, of the *Rules of Procedure and Evidence*, which states as follows:

a) Personal interest in the case, including a spousal, parental or another close family, personal or professional relationship, or a subordinate relationship, with any of the parties;

(b) Involvement, in his or her private capacity, in any legal proceedings initiated before his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was or is an opposing party;

(c) Performance of functions, before taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;

(d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned.

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?

Merit should be the overriding criteria while assessing a candidate's suitability to be a judge of the ICC. Integrity, impartiality, and experience are elements that may ensure the proper administration of justice and, therefore, should also be taken into consideration during the selection of judges for the ICC.

That being said, one should always have in mind the need for a fair representation of gender and race while appointing judges to judicial bodies. A balanced bench, with judges of different races, genders, and origins, legitimates a court in the view of its constituencies: citizens and public opinion. It also instills greater confidence in the judiciary system by ensuring that international criminal justice is not the prerogative of a particular race or ethnicity. As for religion, my understanding is that personal beliefs are matters of intimate concern, and should not be taken into consideration neither in the election of members of the court, nor by the judges themselves, in view of their duty of independence and impartiality.

These are conditions that apply to every judicial body and I believe that the International Criminal Court is no exception. From its inception, the ICC has

fostered diversity, by ensuring equal opportunities for women (see ICC resolutions - ICC -ASP/3/RES.6J), as well as an equitable geographic representation.

4. Have you ever been the subject of disciplinary, administrative, criminal or civil proceedings in which your professional or ethical standing has been called into question? If yes, please provide details, including the outcome.

No, I have never been submitted to disciplinary, administrative, criminal or civil proceedings concerning my ethical or professional standing.

5. Have you ever been disciplined or censured by any bar association, university faculty or similar entity of which you may have been a member? If yes, please provide details, including the outcome.

No, I have never been disciplined or censured by any bar association, university faculty, or similar entity I have been a member of.

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

Before the creation of the ICC, the role of victims was limited to being a source of evidence in international criminal tribunals. The Rome Statute innovates by giving effect to victim's rights, through both its Article 68 – on participation in ICC proceedings – and Art. 75 – on reparations. Implementing the Rome Statute requirements, however, presents some challenges, which judges need to tackle with the guidance from the Statute and from State Parties. In this regard, I find particularly useful the messages from Resolution ICC-ASP/13/Res.4 on victims and affected communities. More recently, it is also noteworthy the call from States Parties for an updated strategy in relation to victims, as reflected in Resolution ICC-ASP/18/Res. 6 (Paragraph 111).

In line with the guidance from both the Rome Statute and ASP resolutions, ICC judges should verify, in each particular case, the best and most expeditious way to make the participation of victims more effective. In the case of dual status victims, one important measure is to increase judicial supervision over the preparation of their testimony. Witness proofing, although useful to make the witness more comfortable and therefore more convincing, can dangerously become an induction, even if unconscious, to unwanted responses by the deponent. Hence, one must take into account the victim's fragility and vulnerability during deposition. In my judicial activity at the ICC, if elected, I would do my best to ensure that the victim's testimony, as a witness, causes as little suffering as possible (revictimization) and can thus be more useful in clarifying the facts.

7. In reaching a decision, how would you approach the need to balance the rights of an accused person and the rights of victims, which are both protected by the ICC's legal texts?

The right of victims to participate in the proceedings is established by art. 68(3) of the Statute, in cases in which the "personal interests of the victims are affected". The drafting of paragraph 3 of Article 68 is quite general, reserving to judges an extended discretionary power on its interpretation. In interpreting it, it is instrumental that judges balance the need for meaningful participation of victims with the rights of the accused, including in terms of procedural length.

Proper balance between victim's rights and the rights of the accused is instrumental in all procedural stages, from the recognition of the condition of victim to reparations decisions. The ICC had the opportunity to proceed with this balancing exercise in some occasions, such as the reparations decisions in the Lubanga, Al Mahdi and Katanga cases show.

In conclusion, one needs to bear in mind that victims are not parties in the criminal proceeding, although they are guaranteed participation in it. Trials involving grave crimes that shock the international community are challenging not only because they are often complex, but also due to the heavy toll they impose to victims and affected communities. Victims trust the ICC to give them justice, as a Court of last resort. This is an immense responsibility, as it is the responsibility to convict an individual for one or more Rome Statute crimes. In fulfilling both responsibilities, judges need to evaluate the available evidence and applicable law with utmost caution so as to render justice to both the victims and the accused.

F. Additional information

1. Are you fluent in one of the working languages of the Court? Can you speak fluently in public hearings and meetings, and write your own decisions in one of the languages of the Court?

I'm fluent in English. I have studied for a year at the American University in Washington, D.C, and during that period I performed several oral presentations and wrote academic papers. I had the opportunity to make friends from many parts of the world, as a participant of the Fulbright Program. Furthermore, as a Liaison Judge at the Hague Conference, I have been exposed to long conversations in English. My knowledge of the English language has been constantly challenged during the years, and I'm always learning new things and improving. I can therefore attest that I will be able to speak fluently in public hearings and meetings, as well as to write my own decisions in English.

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

I only possess the Brazilian nationality.

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

I have read both Resolution ICC-ASP 6/Res 6 (setting out the pensions' scheme for the Judges) and Resolution ICC-ASP 3/Res 3 (that establishes their remuneration). I am aware and accept the Terms and Conditions of work.

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

Although I am not completely aware of what this ICC's program of financial disclosure entails, as a public official, I am not contrary to make my incomes public.

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

G. Disclosure to the public

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

My answers can be made publically available.
