

## 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 have been performing judicial duties since 2010, and I have been adjudicating criminal cases exclusively.

From 2016, I have been working at the Court of Bosnia and Herzegovina (Court of BiH) War Crimes Department, acting either as a presiding judge or a member of the trial chamber, in numerous cases of crimes against humanity and values protected by international law. Until now, I have adjudicated 16 war crimes cases, of which in 7 cases I acted as the presiding judge. Those cases dealt with total of 49 accused persons charged with either individual or command responsibility for crimes against humanity and/or war crimes. Seven of the 16 above-mentioned cases have been completed in the recent years, while nine cases are still ongoing. Most of the ongoing cases are multi-accused cases with multiple-counts indictments. Also, I acted as a Pre-Trial judge in several cases (dealing with crimes of genocide, crimes against humanity and war crimes). In addition, from 2010 until 2016, before I became the Court of BiH judge, I worked as a judge at the Sarajevo Municipal Court adjudicating criminal cases, including domestic violence cases, rapes, juvenile cases and other. Therefore, I have total of 10 years experience as a criminal judge, and in the past 4 years I exclusively worked on the same type of cases that fall under the ICC's jurisdiction.

Besides regular judicial duties, I am also a representative of Bosnia and Herzegovina in the Consultative Council of European Judges (CCJE) and a permanent trainer of the Judicial and Prosecutorial Training Centre of the Federation of Bosnia and Herzegovina for criminal law, juvenile justice and other domains of substantive law and procedural law and skills. I am also a trainer and author of topics in seminars and trainings in the domains of criminal law and criminal procedural law and a guest lecturer at the Faculty of Law of the University in Sarajevo in domains of criminal proceedings and juvenile delinquency.

In addition to this, I have total of 18 years of experience as a lawyer, working both in domestic and international environments.

From 2004 to 2008, I worked in the relevant fields of International humanitarian law and war crimes, when I served as a Legal Assistant for Defence in the case IT-03-68 before the International Criminal Tribunal for the former Yugoslavia (ICTY) during all stages of the proceedings, including pre-trial, trial and appeal.

In addition to the above-mentioned professional experience, I completed postgraduate studies at the Faculty of Law of the University of Sarajevo in 2012, by defending Master thesis: „*Command responsibility – Statute and jurisprudence of the International Criminal Tribunal for the former Yugoslavia*“, and obtained the title of Master of Legal Sciences. I obtained my PhD degree in 2017, also at the Law School of the University of Sarajevo, Criminal Law Department, defending PhD thesis: „*Examination of witnesses in criminal proceedings*“.

I am an author and co-author of a number of publications on domestic violence, command responsibility, juvenile delinquency, criminal offence of rape, sexual exploitation from the position of power (sextortion) and narcotic drug abuse.

Considering all of the above-mentioned, I have both experience and knowledge required for dealing with complex war-crimes cases involving hundreds of witnesses, thousands of exhibits and numerous victims in need for special treatment and protective measures during the proceedings.

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

I have extensive experience in the areas of domestic violence, violence against women and children, sextortion (sexual exploitation from the position of power), criminal offence of rape and issues of children's rights.

In the field of international humanitarian law, at the Court of BiH, I have tried cases involving rape and sexual assaults qualified either as war crimes or as crimes against humanity (4 cases with several counts of rape or sexual assaults). In that regard, I have extensive experience in work with victims of these crimes who belong to particularly sensitive witness categories, and judges must be especially sensibilised for such work. Before trial, such victims often require special treatment by the Victims' and Witnesses' support unit, and they often need psychological assistance and support during the trial. They often testify under special protection measures, but they sometimes also seek ad-hoc protection measures when they are about to enter a courtroom, which is a special challenge for judges who must take a decision immediately.

As a judge of the Sarajevo Municipal Court, I tried hundreds of cases involving domestic violence, rapes, and cases involving children and juveniles.

I was also a member of the Domestic violence Judges Panel in BiH which analysed caselaw in terms of evaluating aggravating and mitigating factors at the sentencing stage. Its work resulted in the development of the Judicial Benchbook - Considerations for Domestic Violence Case Evaluation in Bosnia and Herzegovina.

I also participated in the Judicial Panel for consideration of the criminal offence of rape in the caselaw of Bosnia and Herzegovina, which analysed caselaw in that field and provided recommendations to judges for sentencing in cases of this nature.

Since 2017, I have been the Consultant for sexual and gender-based harassment within the Court of BiH.

In my previous legal work (before I became a judge), I was the World Health Organization *focal point* for domestic violence for the Federation of Bosnia and Herzegovina, a member of the Coordinating Body for implementation of the Strategy

for prevention of juvenile delinquency in BiH, and a member of the working group for the implementation and monitoring of the implementation of the Strategy for prevention of family violence in the Federation of BiH. On the levels of the Federation of BiH and Sarajevo Canton, I participated in drafting and implementation of a number of projects dealing with juvenile delinquency, children's rights and domestic violence.

I am an author and co-author of several publications about domestic violence, criminal offence of rape and juvenile delinquency, such as: *Benchbook for consideration of the criminal offence of rape in the caselaw of Bosnia and Herzegovina*; *Judicial benchbook - Considerations for Domestic Violence Case Evaluation in Bosnia and Herzegovina*; *Manual for training and education of health workers in cases of domestic violence*; *Toolkit: Fighting sextortion*; *Treatment of Children and Juveniles in Criminal Proceedings and Manual for Judges and Prosecutors on Law on Protection and Treatment of Children and Minors in Criminal Proceedings in the Federation of Bosnia and Herzegovina*.

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

No.

#### **B. Perception of the Court**

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

The criticisms addressed to the Court are many, some of them are longstanding issues and some of them have materialized in recent times.

In my view, the main criticisms in relation to the Court's proceedings would be as follows:

- Lack of fully consistent jurisprudence and legal doctrine
  - Lack of clarity on evidentiary thresholds and other legal parameters for trials
  - Lack of efficient conduct of high-impact investigations and prosecutions in a transparent and predictable manner
  - Lack of clarity in regard to victims participation in trial proceedings
  - The length of the confirmation procedure
  - The length of proceedings of the Court in terms of delays, costs and inefficiencies
  - Reparations – too slow in reaching the victims
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?

In order to improve perception of the Court in the eyes of the international community, among other things, the following should be done:

- Ensure the highest quality of nomination and election of judges (for example: to ensure that elected judges have at least 8 years of experience of sitting in criminal trials, to review the use of List B candidates, to create a judicial commission for appointments etc.)
- Ensure easier and more effective procedures for adapting, amending and clarifying the Rules of Procedure and Evidence
- Ensure transparent and predictable framework for preliminary examinations
- Ensure high quality of investigations and case preparation processes
- Ensure efficient and expeditious trials while respecting all fair trial rights

- Develop coherent, cohesive and consistent jurisprudence and decision making
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?

The most important decisions issued by the Court in the past years, that had an important impact to the perception of State Parties and the public, are Judgements in the cases of Prosecutor vs. Ntaganda and Prosecutor vs. Al Mahdi. I would mention them also as positive examples: the Ntaganda case because it represents the first international conviction for the crime of sexual slavery, and the Al Mahdi case where the admission of guilt is seen as a positive step in expediting the proceedings.

As a negative example, I would mention the acquittal of Mr. Bemba on appeal. In that case, there was a perception that States or the public do not necessarily like acquittals and that the acquittals are considered as a failure of the Court to do its job. This decision was also widely criticized as some perceived it as departing from the standard of appeal applicable to factual errors previously and consistently applied by the Appeals Chamber and all other international criminal courts, and for not providing reasons for such decision.

### C. Judge's independence

1. What in your view should be the relationship between a Judge and the authorities of his or her country of origin? Similarly, how do you envisage your future relationship with bodies such as universities, courts or non-governmental organizations with which you have been involved or to which you have been affiliated, if elected to the ICC?

In my view, an elected judge is, and needs to be, entirely independent of everyone and everything, including authorities of the country of origin. So, if I get elected I would only act in my own capacity and free of any kind of influence.

In accordance with the article 40 of the Rome Statute, judges are not allowed to engage in any other occupation of a professional nature and in that regard if I get elected I would refrain from any official relationship with universities, courts or non-governmental organizations with whom I have been involved.

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

In my view, a judge can participate in such trial. Reasons for judge's excusing or disqualification from a case are strictly prescribed by the Rome Statute and the Rules of Procedure and Evidence. If such reason for excusal or disqualification does not exist, the judge should act completely independently and participate in the trial that involves a national from his/her 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?

As it is prescribed by the Rome statute (article 21), the Court shall firstly apply the Rome Statute and its Rules of Procedure and Evidence. In the second place, it will apply applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict. This primarily applies

to standards established by the ICTY and ICTR. Then, it would apply national laws of States that would normally exercise jurisdiction over the crime (if those principles are not inconsistent with the Statute and with international law and internationally recognized norms and standards). After that, it is prescribed that the Court *may apply* principles and rules of law as interpreted in its previous decisions.

Therefore, I consider as necessary and useful the use of previous jurisprudence of the ICC, if such practice is uniform and consistent. Also, it would be appropriate and relevant to use jurisprudence of the *ad hoc* tribunals (ICTY and ICTR) as the most recent jurisprudence in the field of the international humanitarian law. Use of decisions/jurisprudence of the national courts, international courts and human rights bodies can be useful, but in order to be applied, it must be consistent with internationally recognized human rights and be without any adverse distinction based on discrimination.

4. In your view, what should be the approach of an independent Judge when faced with precedents established by the Appeals Chamber of the Court?

An independent judge may apply precedents established by the Appeals Chamber of the Court, but there is no obligation in that regard. Of course, if the judge agrees with the precedent – reference to it will ensure consistency of the ICC jurisprudence. But there are cases requiring a change of the common practice, and the different decision should be explained in details, particularly the reasons behind the change of practice and such decision.

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.

Introduction of any innovations should be in line with the Rome Statute and the Rules of Procedure and Evidence. Such innovative procedural practices could apply to some issues that are not elaborated in detail in the legislation, or that are not covered by adequate legislation. For example, innovative practices and methods can be introduced in the field of admission of evidence and victims participation in trial proceedings.

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 as a part of the team. For four years already, I have been working in a Trial Chamber with two colleagues and we have a fairly good relationship. We are coming from the same legal system, but we come from different ethnic backgrounds and we are of different age. We have had a number of professional disagreements (either regarding procedural or substantial legal issue), but we have been dealing with them in a professional manner, by discussing all aspects of the issue at hand, listening to each other's arguments, carefully considering them and respecting differences in opinions. In the end, we try to reach an unanimous decision if it is possible, by continuous deliberations and by assessing the strength of each other's arguments. There were some situations in which we were not able to get to the consensus, and in those situations, we had no problem with writing separate concurring and dissenting opinions. In our legal system, it is prohibited to publish concurring and dissenting opinions, and they remain confidential along with minutes from the deliberations.

In addition, several years I spent working as part of a Defence team before the ICTY, gave me a very valuable experience in working with lawyers from different legal systems and different ethnic, national and cultural backgrounds. I consider that experience to be of great importance not only in a professional manner, as I had a chance to learn about a different legal systems, to familiarize myself with different approaches to the procedure and precedents, to learn other legal skills and behaviours in the courtroom, but also in a personal manner, gaining new and strong friendships with people from all around the world.

Similarly, before my appointment to the judicial office, I worked at the Office of the High Representative in Bosnia and Herzegovina, with mostly international supervisors and staff, and I also had the opportunity to work with colleagues from different backgrounds and different legal systems.

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

In my view, Judge should recuse him/herself in the cases when their impartiality might reasonably be doubted on any ground. The reasons for recusal are set out clearly in article 41 of the Rome Statute and article 34 of the Rules of Procedure and Evidence. Those reasons include: cases in which judge previously acted in any capacity before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted; Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties; Involvement, in his or her private capacity, in any legal proceedings initiated prior to 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; Performance of functions, prior to 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; 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.

If any of these reasons exist, a judge should recuse him/herself from a case.

#### **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?

Of course.

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?

If it is necessary, yes.

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?

Yes, of course.

4. What is your approach to writing decisions? Will you undertake this work yourself? To what extent would you delegate drafting to assistants or interns?

I am entirely capable of drafting all the decisions by myself. I consider that the decision making is at the heart of a judge's role and that judges must command the law and facts in a way that judicial decisions remain fully theirs. Judicial assistants may help research the facts, prepare summaries or organize and sift through large documents under the guidance and supervision of the judge. However, since judicial decision-making builds on facts, the evaluation and establishment of facts remain the sole responsibility of a judge. Consequently, an assistants' role should remain limited in this respect. Part of the drafting could be delegated to judicial assistants, but they should work under close supervision and with strict guidance of a judge.

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

The role of a single judge is prescribed by the articles 39 and 57 of the Rome Statute and Rules 7 and 132bis of the Rules of Procedure and Evidence.

In that regard, a single judge could make the appropriate decisions on those questions on which decision by the full Chamber is not expressly provided for in the Statute or the Rules.

A single judge can also act in the cases when the Trial Chamber designates its member for the purpose of ensuring the preparation of the trial. In that case, single judge shall take all necessary preparatory measures in order to facilitate the fair and expeditious conduct of the trial, it may hold status conferences and render orders and decisions. The judge may also establish a work plan indicating the obligations the parties are required to meet and the dates by which these obligations must be fulfilled. In relation to preparatory issues, those might include: ensuring proper disclosure between parties, ordering protective measures when necessary, dealing with applications by victims for participation in the trial, scheduling matters, dealing with the conditions of detention and related matters and dealing with any other preparatory matters that must be resolved which do not fall within the exclusive competence of the Trial Chamber.

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

In the last four years, I have been working on war crimes cases that are usually followed by the media, NGOs, national or international organizations and sometimes by state officials. Almost, in all hearings, I have the media, OSCE and NGOs present at the Courtroom (public galleries). Most of the cases are followed by wider public as well. So, in that regard, I am familiar with working in such conditions and have no problem with that.

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

I am in good health and ready to work under pressure. I was never on a leave because of exhaustion or any other work-related incapacity.

#### **E. Deontology**

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

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. Judges are “charged with the ultimate decision over life, freedoms, rights, duties and property of citizens” (recital to UN basic principles, echoed in Beijing declaration; and Articles 5 and 6 of the European Convention on Human Rights). Their independence is not a prerogative or privilege in their own interests, but in the interests of the rule of law and of those seeking and expecting justice.

Judicial independence presupposes total impartiality on the part of judges. When adjudicating between any parties, judges must be impartial, that is free from any connection, inclination or bias, which affects - or may be seen as affecting - their ability to adjudicate independently. In this regard, a judge must thus not merely be free in fact from any inappropriate connection, bias or influence, he or she must also appear to a reasonable observer be free therefrom. Otherwise, confidence in the independence of the judiciary may be undermined.

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

Conflict of interest for a judge would be to engage in any other occupation of professional nature or any activity which is likely to interfere with his/her judicial function or that can affect confidence in his/her independence.

In Bosnia and Herzegovina, the High Judicial and Prosecutorial Council adopted the Guidelines for the prevention of conflict of interest in the judiciary that elaborate in details all potential conflicts of interest and must be followed by all judicial office holders in BiH.

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?

All differences of the world should be represented in the court’s work, as much as possible. However, I believe that the main criteria for selection of judges should primarily be their qualifications, knowledge, experience and ability to perform this important duty.

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

No. Never.

5. 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.

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

The participation of victims in the proceedings is of crucial importance, and if I am elected, I would work on ensuring adequate presentation of victims during the proceedings, through their representatives, with all legal and practical support they



need. I would make sure that victims are not exposed to additional traumatization, that all rights and needs of the victim are fulfilled, without influencing a fair and efficient trial.

In my work so far, particularly at the Court of BiH, victims participated as witnesses in all the cases I adjudicated. I am well sensibilised for work with victims who appear in war crimes cases almost on a daily basis. I was also intensely engaged in research dealing with examination of victims through the development of my doctoral dissertation: "Examination of witnesses in criminal proceedings": A part of the dissertation is devoted to this category of participants in the proceedings, and the forensic aspects of their examination and testimonies.

With regard to the participation of victims' representatives in terms of submission of reparations claims, I adjudicated several cases involving victims who sought reparation through their representatives, and the compensations were eventually awarded to the victims. Therefore, I do possess relevant experience with the effective participation by victims in the proceedings.

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?

It is definitely one of the challenges that ICC judges are facing, and my approach would be guided by the provisions of the Rome Statute, the Rules of Procedure and Evidence and the ICC case law relevant to this issue. In order to ensure a fair trial, it would be necessary to avoid any unreasonable delay in the proceedings and therefore it would be important to carefully manage victims' representation and participation, and to ensure effectiveness and efficiency. It of course differs from case to case and depends on different circumstances, but one of the possible approaches in that regard would be to apply time limits for the interventions of victim representatives, as well as for the prosecution and the defence.

The Criminal Procedure Code of BiH clearly stipulates the procedure and the possibility of victim's participation during the proceedings, and actions in which the victim or their representative can participate. I tried several cases involving crimes against humanity and war crimes with participation of victims' representatives, and I believe that I have relevant experience from such trials, where the balance between the victim's rights and accused person's rights was fully ensured.

#### **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 am fluent in English and I am capable of speaking fluently in public hearings and meetings and writing my decisions in English.

I have been actively learning French in the course of the last year. I am currently on B1 level, and I plan to complete B2 level by March 2021.

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

No.

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

I familiarized myself with the conditions of service and I accept the Terms and Conditions of work.

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

Yes.

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

No.

**G. Disclosure to the public**

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

I have nothing against making it public.

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