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?

   As my nomination has been presented under the criteria of article 36.3.b.ii, list B, my competence is in international law, including international humanitarian law and the law of human rights. I also have extensive experience in professional legal areas, which are relevant to the judicial work of the Court.

   For 20 years I have been Costa Rica's leading senior international legal counsel and Chair of the International Law Commission at Costa Rica´s Foreign Ministry. I represented the country in several cases before the International Court of Justice and in other international adjudication bodies, and I have been a member of the Permanent Court of Arbitration since 2005.

   For a nation with no army, its only defence from threat and aggression is the rule of international law. Costa Rica is proud to be at the forefront of the protection of human rights, the fight against impunity and the strengthening of democratic values. Therefore, the positions I had the honor to hold, defending those values and principles so important, required in-depth knowledge of every aspect of international law, including the international law of human rights and humanitarian law, as well as special awareness on how to successfully engage with the rules based system to which courts, such as the International Court of Justice and the International Criminal Court, are indispensable.

   As has been requested, I will refer to the most prominent aspects of my experience, which are relevant to the judicial work of the Court, in addition to the information contained in the model CV and the statement of qualifications presented by the Government of Costa Rica.

   I played a significant role in proposing and in deploying material actions in international law, advising on highly complex issues, including about the law of armed conflict and humanitarian law concerning highly contested cases, such as the border dispute cases between Costa Rica and Nicaragua. I also guided and regularly directed national positions on several instruments of international law, for example, negotiations involving the first host country agreement for the Permanent Court of Arbitration outside the Hague, in achieving the objectives of the Ottawa Convention on the Prohibition of Anti-Personnel Mines; and the negotiation and implementation of instruments on regional security, such as promoting the Agreement Concerning Co-operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area. Furthermore, I participated on matters concerning international disarmament agreements, such as in the early negotiations of the Arms Trade Treaty, and of the Treaty

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on the Prohibition of Nuclear Weapons, acting as an external advisor for the Presidency of the Conference. I also acted as a representative before the Organisation for the Prohibition of Chemical Weapons (OPCW), and followed up on the use of chemical weapons in Syria, and therefore, about the possible perpetration of international crimes. I also represented the Latin American and Caribbean Region as a member of the delegations of the OPCW Executive Council on two inspections regarding the destruction of chemical weapons carried out in 2015 in Haerbaling, China, and in 2016 in Kizner, Russia, which involved the analysis of legal and technical aspects in the field and of sensitive political issues.

I also advised and engaged in matters pertaining to a number of international adjudicatory bodies, such as the Permanent Court of Arbitration, the Central American Court of Justice, the Inter-American Human Rights System, the International Court of Justice and the International Criminal Court, which led me to deal with issues concerning jurisdictional issues, litigation and governance.

Furthermore, I advised the Government of Costa Rica on its prominent policy concerning the promotion of human rights and conflict resolution through international law, thus, representing Costa Rica in numerous special missions around the world. Some of these experiences include the demining programme under the Ottawa Convention, the promotion of regional security instruments, participation in actions carried out by the United Nations High Commissioner for Refugees, and drawing up policies on the displacement and governance of immigration issues in the framework of the Regional Conference on Migration. I was also engaged with the InterAmerican Human Rights System concerning reports on Costa Rica and in proceedings on human rights issues.

Concerning international litigation, from 2005 to 2018, I had a prominent and relevant litigation practice before the International Court of Justice, where I acted as legal team coordinator, counsel and advocate, as well as co-agent on numerous procedures in six cases. As specified in the model CV, these cases were as follows: Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Cost Rica v. Nicaragua), Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Application for Permission to Intervene by Costa Rica: Territorial and Maritime Dispute (Nicaragua v. Colombia).

Regarding the International Criminal Court, I counseled on Costa Rica's national position, whereby the country decided not to conclude agreements to introduce exceptions to article 98 of the Rome Statute, and drafted opinions on the progress of preliminary investigations, situations under investigation and cases before the International Criminal Court. I actively participated in the last six Assemblies of States Parties to the Rome Statute of the International Criminal Court and represented Costa Rica in the Bureau of the Assembly for four years. In 2015, in coordination with the Court, I organised a regional seminar for Central America and Mexico on cooperation with the International Criminal Court, which was held in Costa Rica and was attended by the President and the Registrar of the Court. This seminar assisted one of the countries in the region in its decision to ratify the Rome Statute. In 2016, I was appointed as the coordinator of the Hague Working Group on the International Criminal Court and in this capacity coordinated the efforts of the States Parties on issues of high relevance for the Court, including assisting and coordinating with facilitations on governance, cooperation, universality, complementarity and budget, among other matters. This position required me being well informed not only about on-going cases before the Court, but also about amendment proposals. I also participated in other *ad hoc* meetings and working groups which have their seat in The Hague, having the opportunity to promote gender equality

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policies at the Court and support the Office of the Prosecutor, its independence and its policies, in particular those involving victims and children. I supported the reinforcement of the Trust Fund for Victims, given its fundamental role within the Rome Statute system.

During that period, both within the Assembly of States Parties and with the Presidency and Registry of the Court, I played a role in coordinating the institutional defence of the ICC and its independence in light of attacks to the institution. In addition, in 2016, having been appointed as Vice-president of the Assembly of States Parties, I chaired segments of the Assemblies in 2016 and 2017, as well as numerous meetings of the Bureau of the Assembly of States Parties. At the sixteenth session of the Assembly of States Parties held in New York in 2017, I presided the final plenary meeting and contributed in the activation of the Court´s jurisdiction over the crime of aggression, which was adopted by the consensus of the States Parties on the basis of a proposal I formulated together with the other ASP Vice-president. In 2018, I was also appointed by the Bureau of the Assembly of States Parties to chair the panel entrusted with the selection and recommendation process to appoint the head of the ICC's Independent Oversight Mechanism.

Currently, I serve as adjunct professor of international law at the UN mandated University for Peace, teaching the courses "International Law related to Armed Conflict", "International and Transnational Adjudication", and "International Law and Diplomacy", which form part of the programmes for Masters degrees in "International Law and Human Rights"and "International Law and Conflict Resolution".

The experience listed is not exhaustive, however, it provides evidence of a material record concerning competence and involvement on matters relevant to the work of the Court, which squarely conform to the requirements for listed B candidates. Thus, my professional work enabled me to develop a solid practice in public international law and its various branches, including the law of human rights, international humanitarian law and on the International Criminal Court.

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?

   Although I have provided advice on matters concerning the UN Convention on the Rights of the Child, and I have supported policies on the protection of vulnerable populations, including the sponsorship and support of the ICC's Office of the Prosecutor's Policy on Children, I have not participated in litigation or inquiring or investigating into issues related to violence, discrimination, sexual assaults, or other similar conducts, inflicted on women and children.

   Notwithstanding, I have experience in other relevant areas pursuant to article 36.8.b of the Statute. Specifically, I have relevant knowledge on matters concerning the jurisdiction of the Court over the crime of aggression, after working closely and constructively with States Parties and having presided over relevant plenary meetings of the ASP that were instrumental on the activation of the Court´s jurisdiction over this crime, I have also spoken and written about it. In addition, I have relevant expertise in migration and human displacement matters, resulting from my engagement on behalf of Costa Rica with United Nations High Commissioner for Refugees, the International Organization for Migration and the Regional Conference on Migration. I believe this is important and relevant material experience under the Rome Statute, given that certain category of crimes involve the forcible transfer of population or deportation, transfer of population, the commission

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of outrages upon personal dignity, in particular humiliating and degrading treatment, which have strong linkage with migration and displacement issues**.**

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, or charged with, allegations of corruption, criminal or administrative negligence or any other similar misconduct, including sexual harassment.

B. Perception of the Court

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

   The one significant criticism towards the Court is that it is failing its mission. After 22 years since the adoption of the Rome Statute, and 17 since the Court has been operational, it appear to have had little success in performing efficiently, with only a handful of cases having been fully completed -of which a third saw acquittals and only a third, meaning 4 cases, saw convictions for core crimes-. Currently, only a few cases are active, even though the docket accounts for around 28 and some 42 defendants. The point made is that such a low case completion together with the weak number of convictions for core crimes, do reflect failures in the capacity of the system to fight impunity to the fullest extent and in the timely redress of victims.

   Other criticisms are more case-specific, particularly in regards to the Chamber's decisions in the Gbagbo and Blé Goudé case, the Bemba main case and the Aghanistan situation. Public disagreements among judges, including a lawsuit by some judges against their own Court, have prompted calls for reform.

   Regarding the highlighted cases, these appeared to have significantly departed from previously established jurisprudence. The first two concerned acquittals of 'high-profile accused' persons, alleged to have been involved in serious international crimes, and the third, a pre-trial decision not to authorize an investigation into alleged international crimes committed in Afghanistan. As regards the Afghanistan decision, it seems to contradict the very essence of the mission of the Court, even though this has been amended recently by the Appeals Chamber. Specially regarding the Bemba main case, the decision of the Appeals Chamber about the standard of appellate review has been widely criticized. All three cases are reputed to have brought the Court's judiciary into assessment as a result of what is perceived to be lacking proper legal reasoning and a substantial change in the evaluation of evidence.

   In addition to questions of coherence and certainty in the Court's jurisprudence, there also seem to exist strong disagreements among judges, which have brought sharp language and conflicting views on several issues, from the composition of Chambers to the question of remuneration. However, one point that affects the coherence and strength of the judiciary are the now normalized dissenting and separate opinions that feature so often in decisions, which indicates a fractured approach to the deliberation process. One example that accentuates this conflicting approach by judges is the Appeal decision on the Bemba main case, and therefore, I find it pertinent to note an excerpt of the separate opinion of two distinguished judges, who stated:

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> "While we fully respect [the] views [of colleagues in the minority], it is important to recognise that the strong divergence in how we evaluate the Conviction Decision is not just a matter of difference of opinion, but appears to be a fundamental difference in the way we look at our mandates as international judges. We seem to start from different premises, both in terms of how the law should be interpreted and applied and in terms of how we conceive of our role as judges. While we do not presume to speak for our colleagues, it is probably fair to say that we attach more importance to the strict application of the burden and standard of proof. We also seem to put more emphasis on compliance with due process norms that are essential to protecting the rights of the accused in an adversarial trial setting".

Such language, rather frequent across important judicial decisions, emphasizes the divergences in Chambers on fundamental aspects of procedure and evidence. It is also a statement that after 17 years of actual operation, the Court still has not been able to reconcile and adopt a consistent approach to central aspects of the Rome Statute. But then, the problems are not only of recent onset and do not exclusively relate to Chambers.

Points have also been raised concerning the manner in which the Office of the Prosecutor (OTP) has handled cases, its policy on selection, the approach to the law and the handling and weight given to evidence; and even the claim that in the exercise of certain prosecutorial prerogatives, including certain discretionary powers, it has viewed these as laying outside judicial review. In addition, there are tensions with Chambers. It is true that some decisions by the judiciary has taken aim at the OTP, and some of the language employed seems unnecessarily harsh. However, the fact is that this has taken place within the realm of the judicial function of Chambers. The OTP, on the other hand, has also levelled critical and unwarranted language at the judiciary, both within and outside proceedings. The latter is an unfortunate sign of a split from the one Court principle, where the Court should act as one externally. Stressing this fact are the statements made public in late June of this year, concerning the launching of an appeal by the Prosecutor in the Gbagbo and Blé Goudé case, where judges, according to the prosecution, and as quoted by the news organization AFP, "*tarnished the very essence of the judicial adjudicative process, thereby affecting the reliability and the integrity of the decision itself*". These are exceedingly strong words used in any situation, and it is the more so when its effect is to feed news cycles, which in my view hurts the one Court principle and damages the ICC´s image. It is hard to see how making public of statements like these help the Rome Statute system, and therefore it is urgent that disagreements of this nature are dealt with by institutional means.

The ethos of the Court also seems so have writhed, and with no clear guidance from its leadership, the staff resent how the institution has descended from the proud and admired organization it once was, into one which is being dented and criticized from all fronts, both within and elsewhere.

Other challenges the Court faces, such as matters related to State cooperation, began from inception. Cooperation, as vital as it is, has presented the Court with, perhaps, its biggest test. Not just because it puts the Court on an extraordinary level of dependency of States, particularly the OTP, but because in several instances there has been reluctance to cooperate, thus posing challenges to the breadth and constancy of the support needed for the Court to succeed in its mandate. Whilst Part 9 of the Rome Statute will continue to play a major role in the ICC's functioning, it is obvious that there is a bond that needs strengthening between the Court and States Parties to make cooperation effective. This means that cooperation should profile more prominently in the relationship between the ICC and States Parties. But building a more collaborative atmosphere requires that other challenges within the Court be addressed promptly.

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While questions about the one Court principle, matters of policy, procedure, consistency and certainty of the judiciary's work are relevant to the review of the ICC, they are not the only matters that challenges the Court. Larger issues about the role of the ICC as a complementary system, and achieving effective material cooperation from States and the Security Council, will remain at the core of a successful Court. Overcoming these difficulties requires, without doubt, the commitment and constructive collaboration of all stakeholders.

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?

It must be observed that the foundational law of the ICC, the Rome Statute, strived to be the international legal framework of international criminal justice, built around the major legal systems of the world and from the experiences and practice of the United Nations *ad hoc* tribunals, aiming to function as a criminal tribunal but acting within the realm of public international law. The Rome Statute is not a criminal code; it is an international treaty constructed around a political and legal compromise, and as such, many aspects of the often differing approaches in criminal method among major legal traditions appear difficult to be reconciled and managed, and it is apparent that a lot more effort is required in this regard. However, this is the one institution that matters to millions of victims and to countries around the world, as a sign of hope and justice. It is the duty of judges and States Parties to make sure that the challenges are addressed promptly and fully, so that the Court can effectively and determinedly carry on with its mission.

More specifically, notwithstanding the recommendations that the independent expert review will provide to the Assembly of States Parties and the Court itself in a few weeks' time, a number of measures could be implemented to right some of the obvious problems that the Court is facing. Measures, such as improvements in trial management, the use of technology to speed up routine procedural steps -including translations-, and even the implementation of stricter time limits within the procedure, but leaving judges some discretion to engage with aspects of substance, depending on complexity and scale of the case, could greatly help.

But overcoming other ICC challenges lies with its governance and in its ability to fully engage with the institution's international character. Good governance implies acknowledging that judges do have a fiduciary obligation with the Court, and that, therefore, there should be in-house ways to deal with conflict when conflict arises. Good governance also implies electing good leaders. Leadership is essential. If it is true that some judges have lost interest, or that from the outset they were never fully engaged with the mission of the Court and that they lack institutional identity, thus, provoking fissures and rivalry among them, I consider this to be as much the responsibility of the leadership as it is of the judges'. The leader's top priority in any organization, and certainly in this one, is to unify and to guide. While acknowledging that the Court is made of independent and strong-willed jurists, the more important that the role of leadership plays. This is done by setting the example, by listening, and by creating an atmosphere of compromise and constructive dialogue.

The engagement of the ICC with its international nature means that it needs to grapple with maintaining its judicial independence while fully liaising with States, other international organizations, and other stakeholders. This liaising needs to be beyond the mere occasional contact, it means to engage in fostering a continued relationship, one that delivers, as necessary, in all aspects of an accountable organization, and in seeking cooperation in order to fulfil its mandate.

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As the world enters an unprecedented era of challenges, such as the effects of Covid-19 on communities and States Parties, which have placed States under increased sanitary and financial pressure, the Court needs to adapt to this reality while keeping resilient in its core values and mission. This determined spirit will also see the ICC stand strong and come through successfully in the face of the hostile threats and actions levelled against it by third States.

Thus, aspects that need to be addressed comprehensively are: judges accountability, staff motivation, Rules of Procedure and Evidence, trial management, achieving the right balance in victims participation, and the two fundamental challenges for a truly effective Court, to wit: the implementing of a comprehensive strategy concerning complementarity and addressing head-on cooperation; which will remain key aspects of a successful Court going forward.

Contrary to the narrative employed by the hostile attacks that the Court has faced in the last months, the ICC is one of the most democratic international institutions there is. Criticism, constructive or otherwise, is a sign of democracy, and that makes the ICC exceptional in the international institutional landscape. The Rome Statute system is also uniquely consequential because it stands for and represents the best of humanity. If we recognize failings in the system, it is because we cherish the institution and wish it to stand strong and resolute. This requires not only inspirational leadership, but leadership that can actually deliver by engaging with all actors, by providing example while harnessing the momentum to unite the Court around its mission and against its dangers. This, perhaps, is the biggest and most important action yet.

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?

It is said that the first case is always a landmark case for any newly created Court. But for the ICC, the Thomas Lubanga case appears to be one success story, not just for being the first, but because it gave substance to the successful prosecution of the crime of enlisting and conscripting children and using them to participate actively in hostilities. The judgment showed the resolve by which Chambers ascertained the rights of children in relation to their special situation as victims, as perpetrators and as witnesses. These findings sent a strong message to the international community about the fact that the Court would not tolerate any instances of forcible engagement of children in international crimes, and that their special vulnerable condition shall be protected at all costs. The case was also important because Chambers set the tone for precedents that were important within the Rome Statute System.

I will add that, in my opinion, the trial of Al Mahdi is also ground-breaking, even if a guilty plea, insofar it recognizes other non-typical international criminal conduct as susceptible of prosecution and conviction. This means that the criminal justice system has placed value in protecting, as the case was here, on cultural heritage, but also on other realms relevant to humanity. These protections, which go beyond the customary protection of life and associated rights, address the safeguard of certain category of rights that until this very case, could not be justiciable in a court of international criminal justice.

Even though these cases featured only one count, and leaving aside the claim that the alleged perpetration of other grave crimes in these cases were not redressed, both cases appeared to have had a positive perception by ICC stakeholders and by the wider public.

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As to negative decisions in cases that have been perceived as controversial, if not downright unfortunate, because they appear to be weak in law or in the appreciation of evidence, and/or because they came out reflecting discord within Chambers, there are a few, especially the ones I referred earlier in Gbagbo and Blé Goudé, Bemba main and Afghanistan. I have already provided my view on those cases, and, as I said, they appear to have triggered not just criticism, but actual material action which could influence to a great degree the future of the ICC.

C. Judge's independence

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

   The relationship between a Judge and the authorities of his or her country of origin should be the same relationship that a Judge should have with any other State, that is, one of respect and courtesy, but not of submission, obedience or commitment.

   As stated earlier, the ICC is both, an adjudication body and an international organization. Therefore, concerning the the judiciary function, a Judge cannot engage with third parties outside the law and practice of the courtroom, regardless of who these third parties are, including his or her country of origin.

   However, as a member of an international institution, which the ICC is, and outside his or her judicial responsibilities, the Judge is answerable to the States Parties, and therefore, while keeping his or her integrity and independence, the Judge must engage with them constructively. He or she should also engage with other third parties, whether academic institutions, civil society and other international organizations, when so required. It is not only beneficial to the Judge and to the organization itself to listen and interact with the very society that is serving, but it also gives an opportunity to be transparent and to reaffirm and defend the importance of the Rome Statute system for humanity.

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

   Provided he or she has not advanced an opinion or has had a connection in any other way with the case, a Judge can participate in a trial involving a national from his or her country. I have answered this in the affirmative because seating as an adjudicator of the ICC, the Judge does not do so in representation of his or her State, and it is apparent that his or her actions shall be guided only by the interest of justice, independence, integrity and the law.

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

   Article 21 of the Rome Statute clearly defines the scope of the applicable law and the role and the order in which 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 -including case law from other national and international courts-; could be relied on by the Court, failing the first two tiers of applicable law.

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That said, the ICC's case law contains references to jurisprudence of other international tribunals, particularly but not exclusively, from the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). One can also find references about the law of human rights concerning findings made by Human Rights Courts, and other relevant jurisprudence of the International Court of Justice.

Inasmuch as the ICC has not developed its own jurisprudence on a given subject-matter concerning the applicable law in cases featuring the perpetration of an international crime under article 5 of the Statute, the Court may refer to national or international jurisprudence if it has clearly dealt with the subject-matter under consideration. As established by the Appeals Chamber, such jurisprudence, as well as other international "soft law" instruments may also serve as guidance.

It is already mandated under article 21 that the application and interpretation of the law by the ICC must be consistent with internationally recognized human rights. Insofar as decisions by Human Rights Courts or Human Rights bodies reflect internationally recognized human rights, and these are relevant to the decision that the Court might take, it would be appropriate to rely on these.

Nevertheless, the Rome Statute system of international criminal justice is not linked or contingent on other jurisdictions or tribunals or on their jurisprudence, whether national or international. Decisions by the Court must be reached on the basis of its own primary applicable law, that is, the Statute, Elements of Crimes and its Rules of Procedure and Evidence; and, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict, human rights, and, obviously, where applicable to a specific case, its own jurisprudence.

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 must follow up the precedents of his or her Court, especially the Appeals Chamber's, insofar the precedent is applicable to the case at hand, is consistent with the applicable law referred to above, and is not contrary to the interests of justice.

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.

   Absolutely. The implementation of any innovative procedural practices should, however, be applied Court-wide, and be consistent with the Statute and the Rules. But it is in the interest of justice to take sensible pace measures in proceedings, because, after all, the time passed between the crime and the conclusion of a case may weaken the significance and effectiveness of the judgment for both victims and offenders.

   As to examples of what can be done, it depends on what is readily implementable, and what may require amendments of the Rules, or of the Rome Statute. As to what could be readily implementable, as noted previously, I believe that the use of technology is one, provided it does not conflict with procedural principles of fairness and immediacy.

   I also believe that the broader use of Rule 68(2) and 68(3), concerning prior recorded testimony; and, where possible, the implementation of "one judgment", where all matters are decided in one decision and all evidence heard in a single hearing, could achieve a more efficient proceeding.

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Other measures may require amendments to the Rules and perhaps, the Statute. For example, it should be considered whether the Court could introduce the figure of simple summary proceedings, which could be employed in cases that can be dealt with by a single Judge within an enhanced procedural structure. Summary proceedings could be implemented on certain situations, for instance, when the accused has pleaded guilty to single counts.

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?

Yes, I am used to working as part of a team in a multinational setting, as my experience in international law demonstrates, and as was indicated in the response to question A.1
I envisage my working relationship with other Judges from different backgrounds and from different legal systems as cordial, respectful and constructive.

Concerning the writing of separate concurring and dissenting opinions, I observe that it is natural that judges may find themselves in disagreement on legal or evidentiary issues, after all it is expected that judges bring with them independence and strong legal backgrounds, which structures their critical thinking. However, a Judge must also consider his or her mandate, and as per article 74.3 of the Statute, shall endeavour to reach unanimous decisions. This means that judges must give their best effort into reaching agreements by cultivating a culture of dialogue and respect. Where judges find that, in the circumstances of a case, they cannot agree with their fellow judges, and based on their independence, knowledge and critical thinking, I find that it is possible for them to provide their reasons for a decision that may or may not be unanimous, giving way for the writing of separate concurring or dissenting opinions, as the case may be, but I place this practice as an exception rather than the norm.

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

A Judge of the Court should recuse himself of herself when he or she finds to have a bias against a party, even an apparent bias; or because he or she had previously conflicted himself/herself by having provided an opinion on the case; or by having been involved in whatever condition in the case. He or she may also recuse from a case if a reason is found to prevent him or her from being impartial, or, as the case is, for any other reason consistent with the provisions of article 41 of the Statute, and rules 34 and 35.

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D. Workload of the Court

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

   Yes, I am prepared and available to serve at the commencement and for the duration of my term, if elected and if called to work at the Court full-time.

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?

In the event that I am not called immediately to work full-time at the Court, I am prepared to work full-tima only as of the moment when I am requested to do so, knowing that this may mean a delay of several months or a year or more from the commencement of my term as Judge.

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. I am prepared to work as a Judge full knowing that the work involves many hours a day, including evenings and even weekends. I am aware that holidays can only be taken at fixed periods during the year, and I agree with that.

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 will write my own decisions. I will require support and effort in a team minded spirit, but I will not direct assistants or interns to make determinations of substance themselves, which I will ponder and draft myself. Naturally, I will rely on the team to provide advice, to correct me when in err, and I will encourage them to offer objective critical thinking and the volunteering of good ideas.

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

   Currently, as per Rule 7 and article 39, the designation of a single Judge is possible in certain Pre-Trial procedural steps. It is also noted that in trial procedure, Rule 132 *bis*, permits a single Judge to be designated for the preparation of the trial. It would seem that there is little space for a single Judge to sit on substantive issues, unless amendments to the Rules, and perhaps the Statute, are introduced.

   Earlier I commented on the possibility of summary proceedings being undertaken by a single Judge. Furthermore, I observe that a single Judge could also take on matters pertaining to Section IV of Chapter 12 of the Rules, concerning reparation orders. There is also value in considering the sitting of single judges on matters concerning Section 9, offences and misconduct against the Court. The rationale is that, where the Rules or the Statute do not make a specific case for the Chamber full sitting, which would appear to be warranted for the protection of the rights in trial of both, the accused and the victims; and given that a single Judge could act more speedily, it makes sense to consider their employment in certain decisions beyond those strictly procedural.

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, I am used to working under pressure. I led international legal teams litigating before the International Court of Justice under intense pressure from the State and the wider public. The pressure concerned not just the expectation of a successful outcome upon conclusion of the case or cases, but more importantly, there was a significant burden concerning the planning and execution of a mission-strategy capable on effectively delivering on the protection of fundamental values and interests, which were at stake, and which had an exceptional importance for historical, sovereignty and territorial reasons, and/or because of their value for international law.

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The same could be said about my experience presiding plenaries of the Assembly of States Parties, especially the one which adopted the activation of the jurisdiction of the Court over the crime of aggression, which was successfully achieved under incredibly demanding circumstances. The crime of aggression, and the activation of the jurisdiction of the Court over this crime, had faced incredible obstacles from the outset. Albeit having been introduced in the Rome Statute as a core crime, the Court did not have active jurisdiction over it, requiring almost 20 additional years of discussions and negotiations. Up to the last hour, there was no certainty that the Court would be able to exercise its jurisdictional powers over this crime, despite the extraordinary effort placed by many stakeholders. Therefore, the decision of the Assembly meant not only that the stakes were high for the Court, it was also a historical moment for humanity, which fortunately saw 123 States Parties reaching out to compromise.

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

   Yes, I am in good health and I am prepared to work under pressure. No, I have never left professional duties because of exhaustion or any work-related incapacity.

E. Deontology

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

   In my view, an independent Judge is one that can engage in proceedings without preference or prejudice for the accused or the prosecution, without political or personal inclination, and one that will not be influenced by States, family or public opinion. A Judge is neutral, is impartial and is honest. That, I believe, makes an independent Judge.

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

   A conflict arises when a Judge holds an interest of any kind that compromises his or her impartiality and/or fiduciary duty. A conflict may also arise when, for an objective observer, an interest or a conflicting nexus appear to exist, thus compromising the Judge's impartiality, or, as the case may be, compromising his or her fiduciary duty (duty of care and duty of loyalty). Here the expectation is not only that the Judge be impartial and act in the best interest of his fiduciary duty, but that he or she appears impartial and loyal to his or her obligations in the eyes of third objective observers.

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?

   Whilst the Rome Statute requires gender equality and regional representation in the composition of the bench; it does not make any mention of race and religion.

   However, it is my conviction that the Court must ensure that diversity and inclusion within its ranks is pursued and achieved. This means the implementation of policies to make certain that the Court's hiring practices, whether of judges or of any other ICC staff, adheres to best practices in achieving diversity and in promoting inclusiveness of all persons, welcoming and recognizing the importance of all races, genders, sexual orientations, geographies, faiths, ages, social and cultural backgrounds. The Court, being the international microcosmos it is, must not just ensure compliance with diversity and inclusion's best practices, but should set an example and aspire to be emulated for its stance in this regard.

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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 the subject of disciplinary, administrative, criminal or civil proceedings in which my professional or ethical standing has been called into question.

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 of which I am, or I may have been a member.

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

   If the Rome Statute system is, as I believe it is, a victim centred system of international criminal justice, victims should play a crucial role in proceedings. That is why I agree with proposals made on the strategy related to victims, which provides emphasis into aspects of victims attention of significant importance, and which have been laid out in proposals made by stakeholders, such as enhanced communication, protection and support, participation and representation, and reparations and assistance.

   As a Judge acting within Chambers, I will be limited by the Rome Statute and the Rules concerning the Judge's engagement with, and/or in significantly modifying the legal role of victims' participation in proceedings. However, there are two aspects that a Judge can ensure in proceedings. First, that representation is adequate and that it responds to all victims, and not just a few. Second, while safeguarding that trials are effective and efficient, a Judge may also take the necessary procedural provisions to make sure that victims fully have their voices heard, particularly those of the most vulnerable, such as children and women.

   As a member of the Court outside proceedings, I will propose that all organs and sections of the Court adopt a common strategy concerning victims. I will follow up about how far has the Revised Strategy, proposed in 2012, been incorporated into the Strategic Plan of the Court, and make sure that it is fully implemented. Furthermore, I would like the Court to have a more robust interaction with the Trust Fund for Victims in order to avoid its depletion. The transformation of the Trust Fund into a sustainable instrument for reparations should be a priority for the Court and for States Parties, and in whatever way as a Judge I can contribute to this happening, I shall do so.

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?

   I do not see the launching of proceedings under the Rome Statute as a conflict between the rights of an accused and the rights of victims. The point of proceedings is to establish the truth. In establishing the truth, the adjudicator and all of the other participants in the judicial process, such as prosecution, accused and defence, victims and victims representation, and witnesses; play a role in determining what that truth is. The adjudicator does have an inherent role in arbitrating and directing the proceedings. This means that the Judge´s task entails the protection of the rights of the accused and the safeguarding of a fair trial. This task also entails the protection of evidence, particularly

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witnesses, and the protection of the victims and their rights, ensuring their participation in proceedings as a fundamental aspect of their right to redress, which the proceeding is premised to accomplish.

Victims deserve particular protection within and outside proceedings. In proceedings, the Judge must strive to approach their cases with humanity and sensibility, preventing that proceedings' re-victimise and/or cause further pain. Outside proceedings, and if within his or her remit, the Judge must also consider the risks, political and socio-cultural pressures that the victims may be subjected to, and provide those protections that can be afforded to them.

Yet, when reaching his/her decision concerning the guilt or innocence of the accused, the Judge must be guided by the evidence and the law. A Judge may not come back with a conviction decision if the evidence does not support a conviction of that particular accused beyond reasonable doubt.

Where the evidence supports a conviction beyond reasonable doubt, the Judge shall consider the gravity of the crimes and the suffering of the victims as integral components of the findings and the redress process, all of which need to be weighted and assimilated in the sentencing and in eventual reparations.

More fundamentally, victims deserve answers and the truth, and as Judge, it will be my duty to make certain that the proceedings are aimed and carried out, at every instance, with these values and aspirations in mind.

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?

   Yes, I am fluent in one of the working languages of the Court.

   Yes, I can speak fluently in public hearings and meetings, and write my own decisions in one of the languages of the Court.

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

   No, I don't have any other nationality than my Costa Rican nationality.

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

   Yes, I am familiar with the conditions of service for Judges of the Court, including the remuneration and the pensions' scheme. I am also aware of, and I do accept the Terms and Conditions of work.

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

   Yes, I am willing to participate in a financial disclosure program organized by the ICC.

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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?

   Not to my knowledge.

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 agree, and as a matter of fact, I request that the answers provided by me in this questionnaire, as well as any other public information relevant to my nomination, be made public.

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