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?

My relevant experience and competence are as follows:

- From 1974-1999 & 2004-2008, practising barrister undertaking serious and complex criminal work, (including fraud, murder, serious sexual offences and other grave crimes), for both prosecution and defence.
- Between 1999-2004 and 2008-2012, Senior Prosecuting Trial Attorney at the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia ('ICTY') leading in cases involving high-level leaders (*Prosecutor v. Brdjanin & Talic, Prosecutor v. Stakic, Prosecutor v. Stanisic & Zupljanin*), charged with Genocide, Crimes against Humanity and War Crimes.
- One of team of Counsel in the ICJ case of *Bosnia and Herzegovina v. Serbia and Montenegro* [2007].
- From 2004-2005, Senior Legal Adviser to Chief Prosecutor of Bosnia and Herzegovina ('BiH') during the establishment of Special Department for War Crimes. Responsibilities included drafting the original "orientation criteria" for prioritisation of cases, selection of international prosecutors, integration of national and international prosecutors, liaising with other criminal justice and diplomatic agencies.
- Author of two reports, (2016 & 2020), commissioned by OSCE to report on progress and make recommendations in respect of war crimes trials in BiH. Also produced report in 2013 for EU on training needs for prosecutors and defence advocates in BiH war crimes trials.
- From 1993-2012 Recorder, (part-time judge), of the Crown Court (the highest court of first instance for criminal cases) of England and Wales. From 2012 to present, full-time judge, routinely trying the most serious and complex criminal cases in domestic courts, including: cases of fraud, serious sexual offences, gang violence and murder.
- Organised and conducted judicial training in ICL and Case Management for Judges in Asia, Africa, Europe, Central and South America.

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- Grade "A" advocacy trainer and was Head of International Faculty of the Advocacy Training Council from 2005-2011. Organised and taught on numerous advocacy-training courses in the UK and internationally, including for the International Criminal Court, United Nations agencies, and the ICTY.

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?

Whilst in practice in UK, (both as a barrister and judge), conducted numerous trials involving serious sexual crimes against women men and children. All trials I was involved in at the ICTY (see question 1 above) involved allegations of sexual violence. I have conducted training programmes for judges and lawyers in the handling of vulnerable witnesses.

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 main criticisms I am aware of are:

- Concentration on cases relating to African States
- Length of pre-Trial proceedings: increases pre-existing delay between commission and trial of crimes
- Process of Victim Participation: Inconsistencies in approach
- Length of Trial Proceedings
- Length of time taken to issue judgments
- Too many judgments of Acquittal
- Costs of proceedings which arise from the length thereof

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?

I would suggest the following may improve the perception of the Court:

- Issuing guidelines to streamline process of victim participation
- Simplification of pre-trial procedures (the process adopted for confirmation of indictments at the ICTY was simpler and shorter)
- Greater use of judges case management powers to streamline trials
- Guidelines in respect of delivery of judgments already drafted by judges

- Allowing amendment of Rules of Procedure and Evidence (RPE) by judges after consultation with court users but without necessity of agreement from States Parties
- Improved coordination at the Court and enhanced "One Court" principle
- The Court's public messaging needs to be clear and consistent, and focused on the work of the ICC. In these days of Covid-19 and the aftermath thereof, the Court could consider further developing its digital presence and online networks to strengthen its image and communicate the work of the ICC throughout the international community.

Separately, the Independent Expert Review process should produce recommendations designed to deal with many of the criticisms of the Court. I look forward to reviewing its findings.

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?

States Parties, academic commentators and the public generally may not come to the same conclusion on what decisions have had an important "positive" impact, and which have had an important "negative" impact, given the different perspectives and approaches to the Court and its role amongst the wider international community.
"Positive" examples would include:

- *Prosecutor v. Lubanga* (as the first completed trial and precedents for mode of victim participation).
- Trial Chamber's convictions in *Prosecutor v. Ntaganda* of war crimes and crimes against humanity. Whilst not the first guilty verdict delivered by the Court, this conviction was the first in the Court's history concerning sexual crimes.
- Appeals Chamber decision in *Situation in the Islamic Republic of Afghanistan.*

In respect of "negative" examples, it is important to note that judges coming to decisions on procedure, or defendants being found not guilty, or convictions being overturned on appeal are not normally to be thought of as "negative" in a healthy and functioning judicial system. The question is concerned with the decision's impact on "perceptions" vis-à-vis the Court, not whether they were in themselves substantively "negative".

On that basis the decision by Pre-Trial Chamber II in April 2019, rejecting the Prosecutor's request for authorizing of an investigation into the situation in Afghanistan, (since overturned by the Appeals Chamber) was heavily criticized for its definition of "interests of justice" and the overall impression that the decision was a political one.

The decision by the Appeals Chamber, in the case of *Prosecutor v. Bemba*, to overturn the conviction, has had a negative impact on the perceptions of the Court. It also highlighted the criticism over length of proceedings. Bemba was in custody for 10 years and has brought compensation proceedings against the Court in relation to his custody and the management of his assets, frozen at the direction of the Court.

C. Judge's independence

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

There is no "relationship" between a judge of the ICC and the authorities of his/her country of origin. Art. 40 of the Rome Statute states judges must be independent, and be seen to be independent, of the authorities of their countries of origin.

As a judge one cannot be a member of any organisation which had, has, or obviously may have, dealings with the Court. If invited to deliver a talk to a university or court or NGO, that does not present a problem, provided confidentiality of proceedings are maintained and it is made clear that any views expressed are the speaker's personal ones and not those of the ICC as an institution.

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

In theory the answer is, and should be "yes" (subject to Rule 34 RPE). A judge decides a case based on evidence and argument. The nationality of a witness, accused or counsel is irrelevant and indeed to apply for recusal on these grounds could be said to undermine the concept of independence. However it is likely to be preferable for a judge to recuse him or herself, in the circumstances of proceedings brought before the ICC that significantly relate to a national from his or her country of origin - bearing in mind the context of the Court as a treaty-based institution, that judges are nominated by States Parties, and the importance of protecting the Court from any aspect which might needlessly undermine it.

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?

See Art. 21 of the Rome Statute. Useful and appropriate jurisprudence/decisions which may be considered during proceedings, (if there is no ICC settled law on a point), are those from other international courts, Customary International Law, and if a point arises not considered by any of the afore-mentioned then national courts. Art. 21(3) of the Rome Statute is clear that application and interpretation of law pursuant to this Article must be consistent with internationally recognised human rights. As such, the decisions of Human Rights Bodies may provide relevant and useful guidance.

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?

Art 21(2) of the Rome Statute states that the "*Court **may*** (emphasis added) *apply principles and rules of law as interpreted in its previous decisions*". Judges should be able to depart from precedent if permitted, and if it is necessary to do so in order to do justice in a given case. However the development of a coherent and consistent body of jurisprudence is vital for the ICC. An Appeals Chamber decision on an area of law which is of general application, and not a decision arising from a particular set of facts, should be followed. A judge's independence is not compromised by adherence to an interpretation of law which may not be his/her own. The importance of adherence to settled jurisprudence is that it provides certainty and allows those who appear before the court to make legal submissions and provide advice based on that certainty.

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.

In theory the answer should be "no". Art. 51(3) states: "*After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties*". However, as already stated in my answer to question B.2, Art. 51 envisages a cumbersome and consequently lengthy procedure which may not cater for the exigencies of an on-going case. As a general rule, such innovations should be limited to obviously sensible and time-saving procedural practices e.g. insisting that issues between the parties are identified in writing prior to the commencement of trial, or evidence which is not disputed being reduced into as writing as "Agreed Facts". It is noteworthy that the Statute and RPE do not cater for a submission by an accused of "no case to answer" at the close of the prosecution evidence. In the case of *Prosecutor v.Gbago & Ble Goude* the Trial Chamber acceded to such a submission.

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 worked at the ICTY as one of a large number of Senior Trial Attorneys from different countries and legal backgrounds. I also led large multi-national teams of lawyers, investigators, analysts and administrative staff as Senior Trial Attorney in five different cases, (three of which I took to trial). I have conducted training programmes for judges in a number of different countries. As Legal Advisor to the Prosecutor of BiH, integration of international and national prosecutors was one of the major tasks I undertook.

Accordingly, I foresee no difficulty in establishing working relationships with other judges. The key is to be prepared to listen and discuss. Disagreement over an aspect of a

decision needs to be discussed in full in a calm rational manner, (without descending into personal criticism or abuse), in order to try and reach consensus.

In respect of written decisions, it benefits all parties to a case and any future court which may have to consider the decision, if there is a single judgment. Concurring opinions should be a rare occurrence as they cause unnecessary complication and dissenting opinions should only be issued if a judge is genuinely of the opinion that the majority has made a major error in the interpretation of the law or evidence.

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

A judge should apply to recuse him/herself if there is a conflict of interest or appearance thereof, for example, they know one of the parties, has written articles/book about a conflict which has come before the court and he/she is being asked to try it.

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.

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.

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 used to a heavy workload as practicing barrister and as a judge. Cases both domestically and at the ICTY required work to be done in evenings and weekends. As a serving judge, I deal with long and complex cases which are fixed in advance. Therefore, I am accustomed to taking holidays at fixed periods during the year.

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 would set out the framework of the decision and seek assistance from assistants and interns on researching relevant decisions and possibly writing a draft (s). However the final draft will be written by me.

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

All decisions of the Pre-Trial Chamber concerning case-management could and should be issued by a Single Judge. This is clearly anticipated for in the Rome Statute (Art 39(2)(b)(iii), and the Rule 7 of the Rules of Procedure and Evidence), notwithstanding the provisions of Art. 57(2).

Decisions of a more substantive legal nature – such as in respect of the Court's jurisdiction – could also be issued by a Single Judge, but – as recognised by the current provisions of Art. 57(2) - it would be appropriate to have within the Rules the possibility of other members of the Chamber being appointed to consider the issue, given the significance of some of these questions to the wider Rome Statute system. If that were to be maintained as it is now, an important consideration would be whether to issue one decision alongside separate opinions.

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

Yes. As a prosecutor at the ICTY, I sought evidence from UN, government and international agencies. I had to negotiate conditions for obtaining and use of that evidence. As a barrister and judge, I have dealt with high-profile cases which have attracted much media attention and accordingly, as a judge, have had to deal with requests from the media for information and allegations of contempt of court. In 2019, I presided over an "insider dealing" trial (*The Queen v. Abdel-Malek and Choucair*) in which the financial press made numerous requests for copies of documents and written legal submissions, and this required careful consideration of the law. Eventually I had to deal with a contempt hearing, which arose from the publication of matters that had arisen during legal argument but were not subsequently made public.

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 prepared to work under pressure (see answer to Q.D3). I have never been on leave from professional duties due to exhaustion or other work-related incapacity.

E. Deontology

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

Individual judges and the judiciary as a whole are impartial and independent of all external pressures and of each other, so that those who appear before them and the wider public can have confidence that their cases will be decided fairly and in accordance with the law.

Art.40 of the Rome Statute states judges "*shall not engage in any activity which is likely to interfere with their judicial functions or affect confidence in their independence*".

I would echo the England and Wales judiciary's Guide to Judicial Conduct, which states that an independent judge is "*independent of all sources of power or influence in society, including the media and commercial interests.*" Judges should be accountable only to the law which he or she must administer.

As well as in fact being independent in this way, it is of vital importance that judges are seen to be both independent and impartial. Justice must not only be done – it must be seen to be done.

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

I would agree with the Bangalore Principles: A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to,

- instances where the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- the judge previously served as a lawyer or was a material witness in the matter in controversy; or
- the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy.

I would also reference Art. 41 2(a) of the Rome Statute and Rule 34 of the RPE. Consequently, any interest or obligation that a judge has outside of the case in hand that raises a question mark over a judge's ability to act impartially, or could be seen reasonably to do so, would constitute a conflict of interest. While there are likely to be situations in which it is unclear whether there is genuinely a conflict, judges should act cautiously so as to enhance the confidence of the public, legal profession, victims and the accused in their personal impartiality and that of the judiciary.

See answer to Q. C7 *supra.*

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?

Rome Statute Art.36(3)(a) states "*The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices*."

Art, 36(8)(a) states "*The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for: (i) The representation of the principal legal systems of the world; (ii) Equitable geographical representation; and (iii) A fair representation of female and male judges*."

In terms of whether or not a candidate is suitable to be a judge at the ICC it seems clear that race, colour, gender or religion are not relevant considerations. First, they are not factors to be taken into account under Art. 36 of the Rome Statute. Second, such factors are not relevant to a judge's ability to apply the law. Third, discriminating between judges on the basis of such factors would be inconsistent with international human rights law (e.g. Article 26 ICCPR).

The question of suitability is separate to the question of whether the States Parties should seek to ensure the ICC judiciary includes a fair representation of female and male judges and equitable geographical representation. While it could be argued that if judges are both independent and suitable, it should not matter whether they come from diverse backgrounds, having a diverse judiciary is important both because it widens the range of expertise, improves decision making and ensures that the ICC is seen to be representative, which is important for its reputation.

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.

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?**

   I should start this response by pointing out that there was no victim participation at the ICTY, nor does it exist in UK criminal trials, and therefore I have no personal experience of victim participation in trials. My knowledge of the system in place at the ICC, has been acquired from reading the various decisions on such participation and commentaries thereon (See answer to Q. B1*supra*).

   The approach taken to victim participation before the Court appears to lack coherence and consistency. This results from decisions being taken anew for each case.

   Victim participation is undermined by this case-by-case approach, which lacks certainty and adds significant delay, as each Chamber goes through its own consideration of how to provide for victim participation. Victims need as much certainty as can be offered.

I would seek to work with the Judiciary, as well as others (e.g. Registry), to ensure there are some agreed principles and /or guidelines regarding victim participation. It is not possible to be too prescriptive but we should try to work towards consistency.

Further, it is important that victims and witnesses are willing to give evidence. Many may be deterred from so doing if protective measures are not granted and if they believe that questioning may be lengthy, sometimes hostile, or at the very least difficult to understand. Witnesses may be "vulnerable" not simply as a result of being victims but as a result of other conditions, e.g. low educational attainment. In my view it is vital before witnesses testify in any hearing, that discussion take place between judge and counsel in a "Ground Rules Hearing" to decide upon not only protective measures but the ambit of questioning of such witnesses.

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 Rome Statute is very clear about the rights of the accused (see Arts. 66 & 67). The Statute (Art.68) also deals with the protective measures which may be afforded to victims and witnesses, and the representation of their views to the Court.

Art, 68 (3) states "*Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court* ***and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial*** (emphasis added)**".**

Accordingly the over-riding factor must be the rights of the accused. Care must therefore be taken to ensure that the representatives of victims are not permitted to assume the role of second prosecutors.

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 English and can use it in the contexts described.

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?

Yes.

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 am content to have the answers to this questionnaire made public.

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