

## **Draft Questionnaire for candidates to the 2020 ICC Judicial Election**

Civil society<sup>1</sup> plays an important role in monitoring the election of International Criminal Court (ICC) officials. We promote fair, merit-based and transparent elections.

*Please answer the questions below.*

Name: MÔNICA JACQUELINE SIFUENTES

Nationality: BRAZILIAN

Nominating State: BRAZIL

Legal Background (List A or List B): LIST A

Gender: FEMALE

Date: 26 September 2020.

### **BACKGROUND**

#### **1. What motivates you to seek election as a judge of the International Criminal Court (ICC)?**

I have been trying complex criminal cases for almost 30 years. As a single judge, I tried all sort of cases in small countryside towns, and later moved to capitals, where I had the chance to judge more complex cases. After being nominated to the Court of Appeals, I had the chance to try cases involving high ranking authorities, such as mayors, federal judges and prosecutors, state deputies, and others accused to commit federal crimes. I have done my work over these almost 30 years with renewed pleasure and I believe I perform well in what I do.

After so many years in the judicial career, I would like to move further, to broaden my horizons and keep seeking Justice at a wider level. I am really enthusiastic about the spirit of the Rome Statute and believe that its motto—*Peace through Justice*—is real, both at the international and also at the national level. Fighting impunity has been

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<sup>1</sup>This questionnaire is endorsed by the following organizations: African Center for Democracy and Human Rights Studies, UNA Sweden, Alhaq, ALTSEAN-Burma, Amnesty International, Asian Legal Resource Centre, The Australian Centre for International Justice, Congo Peace Initiative, The Colombian Commission of Jurists, FIDH, Georgian Coalition for the International Criminal Court, Human Rights Watch, Justice International, Nigerian Coalition for the ICC, No Peace Without Justice, Open Society Justice Initiative, Parliamentarians for Global Action, REDRESS, Reporters sans frontiers, StoptheDrugWar.org, The Swedish Foundation for Human Rights, World Citizen Foundation, Women's Initiatives for Gender Justice, World Federalist Movement/Institute for Global Policy, and the World Renewers Organization. This questionnaire was developed with the assistance of the Coalition for the International Criminal Court Secretariat.

what makes me move on. That is what I am striving for my whole life, sometimes putting myself and my family at risk.

The ICC plays a huge role in the pursuit of global values such as peace, justice, fairness, and overall security. All of us who work in the criminal law area dream about being part of such a remarkable institution. I trust that my professional history, my practical experience and my lifelong commitment to the values enshrined in the Rome Statute qualify me to become a part of the ICC and contribute to it in any possible way.

At a more personal level, I was inspired by the example of the former Brazilian Judge Sylvia Steiner, who for more than a decade sat at the bench of the ICC and inspired a generation of women, in Brazil and beyond. I would be honored to follow her path and become a judge of the ICC.

2. What do you believe are the most important challenges and achievements of the ICC in its first 18 years?

The International Criminal Court went through a period of institutional consolidation over its first two decades of existence. Over this period, it came by a number of strenuous challenges, such as building a solid jurisprudence; trying some of the most serious international crimes; and developing an internal normative framework. Moreover, the Court had to deal with high expectations since its inception, and find innovative ways to fulfill the expectations of the international community in sensitive areas, such as redressing victims, fostering national reconciliation, and the fight against impunity itself.

There are several important achievements so far. The mere existence of a permanent international tribunal has a deterrent effect that constraint criminals who wish to engage in mass criminality. Even though some aspects may be streamlined, the Court has already developed innovative jurisprudence in the international trial of sexual and gender-based crimes (SGBC) and the payment of reparations to the victims of mass international crimes. Another great achievement was the emphasis on the victims' participation in the proceedings. These contributions go beyond the ICC itself; while raising the bar of international justice, they are a legacy to humanity itself.

The ICC naturally couldn't live up to the huge expectations that existed when it was created, so criticism was expected. Yet, the mere fact that the institution surmounted

these hurdles and remained a relevant actor in the international community is an outstanding achievement. The ICC is now a mature institution, better positioned to face the challenges that lie ahead in the next few decades.

3. What do you believe are some of the major challenges confronting the ICC and Rome Statute system currently and in the coming years?

One of the major challenges faced by the ICC is to optimize the efficiency of its judicial proceedings. In order to strengthen confidence in the Rome Statute system, it is imperative that the Court learns how to handle its increasing workload, reducing the length of the proceedings, keeping in mind that expeditiousness must not be at the expense of the rights of the accused or the victims.

In this regard, I trust that my previous experience might be an asset to the ICC. As an experienced judge, I am aware that, even at the domestic level, complex situations require time for investigation and trial. This is, even more, the case in investigations of international crimes, which entail additional difficulties, such as access to witnesses and linguistic barriers, while collecting testimonies in remote localities. While doing all of this, judges must also bear in mind the additional challenge of taking into consideration the necessity of harmonizing procedures stemming from different judicial systems, as expected in a tribunal that aspires universality.

Another challenge refers to the difficulties faced by the Court while enforcing its decisions. The Court has issued 14 arrest warrants still non executed and the suspects are at large, which means a load of work behind the expedition of these orders. As the ICC does not have its own police force, it relies on the cooperation and assistance of the States Parties to enforce its decisions and warrants. Another concern is about the relocation and protection of victims and witnesses, which is essential for the guarantee of the truth and security of their testimonies. Also, the issue related to the Court's management of the seized and frozen assets. These measures will rely on the cooperation of the State Parties as well.

Another important debate currently in place regards the interest of justice in the investigation of nationals of states nonparties. A satisfactory solution to this matter will deeply affect the international community's perception of the ICC as an impartial and body, that avoids selection bias and equally prosecutes individuals from all regions of

the world. On the other hand, taking into consideration the principle of judicial economy, a serious and impartial evaluation must be made about the allocation of the limited recourses of the ICC, with a view to maximizing the overall goal of fighting impunity for the most serious international crimes.

A more efficient ICC will be better positioned to expand its membership and allure more states parties to adhere to the Rome Statute. That is desirable to ensure greater consistency in the application of the ICC's ambitious goal of eradicating impunity for the most serious crimes in the world.

## **LEGAL SYSTEM**

4. The Rome Statute seeks judges representing all of the world's major legal systems.

a) Which legal system is your country part of?

Civil Law

b) Please describe any knowledge or experience you have working in or with other legal systems.

Although Brazil formally adopts a civil law system, in recent years it has absorbed influences from common law systems as well, which included a greater value of judicial precedents as a source of law. The search for greater uniformity in case law is part of a structural reform movement that aims to overcome certain insufficiencies in the Brazilian Judiciary, which have been leading to lengthy procedures and delayed justice. The immense volume of lawsuits in progress (circa 100 million, according to current estimates) adds to the slow pace of judicial processes (which take an average of 10 years to be concluded), hindering the proper functioning of judicial institutions in Brazil. By increasing the application of *stare decisis* in its legal system, and granting a greater role to Constitutional Court decisions, Brazil hosted an intense intercultural judicial dialogue, allowing for an approximation between civil and common law systems.

In addition to my work as a Federal Judge, I have been acting, since 2006, both as the Brazilian Liaison Judge to the Hague Conference on Private International Law and as a contact point to the Ibero-American International Legal Cooperation Network (IBERRED) in Brazil. In this role, I have been working with both legal systems, connecting judges from Brazil and abroad. At the academic level, I would also like to

point out that my Ph.D. thesis was about the “normative judicial act”, discussing the Brazilian approach to judicial precedents and *stare decisis*.

## **LANGUAGE ABILITIES**

5. The Rome Statute requires every candidate to have excellent knowledge of and be fluent in English or French.

- a) What is your native language?

Portuguese

- b) What is your knowledge and fluency in English? If it is not your native language, please give an example of your experience working in English.

I have studied for a year at the American University in Washington, D.C. Over that period, I was required to perform several oral presentations and write academic papers. I had the opportunity to interact with colleagues from all over the world, as a participant of the Hubert H. Humphrey Fellowship Program (2016/2017). Furthermore, as a Liaison Judge at the Hague Conference, I had English as my working language. In this regard, I have taken part in long debates, seminars abroad and as part of several Brazilian official Delegations at the Special Commission meetings that took place in The Hague.

- c) What is your knowledge and fluency in French? If it is not your native language, please give an example of your experience working in French?

I have just instrumental knowledge of French, enough to read scientific and legal articles and texts when I was pursuing my Ph.D. I haven't had the opportunity to continue my French studies ever since, since Spanish and English were my working languages as a Liaison Judge in Brazil to the Hague Conference. I am conscious of the importance of French as a working language of the ICC and, if elected as a judge, intend to start back my studies of the language.

## **LIST A OR B CRITERIA**

6. Your response to this question will depend on whether you were nominated as a List A candidate or a List B candidate.

a) For **List A** candidates:

- How would you describe your competence in relevant areas of international law outside of the field of international criminal law, such as international humanitarian law and international human rights law?

Alongside my career, I have often proved my enduring commitment to a society based on fundamental principles, such as the rule of law, truth, and respect for human rights and human dignity. As a Federal Judge at the Court of Appeals, I try crimes covered by international treaties and conventions; human rights violations; forced labor, and crimes against the organization of labor. As a direct consequence of my professional activities, I have developed expertise in trying cases of national and international traffic of persons, especially those involving women and children. Such crimes are an unfortunate reality in some regions of Brazil, a source country for the trafficking of men, women, girls, and boys who are later subject to forced prostitution, both within my country and also abroad. I also give lectures and training courses to judges and prosecutors on traffic in persons.

The Court to which I belong (The Federal Court of Appeals of 1<sup>st</sup> Region) has jurisdiction over 14 states of the Brazilian federation, which covers about 80% of our territory, including all the Amazon region. Among other duties, my Court is responsible for trying cases related to the rights of indigenous people and crimes committed on indigenous soil. I was also coordinator in my Court of the Group responsible for the monitoring and overseeing of the federal prisons, which enabled me to analyze cases regarding the rights/duties of the prisoners and prohibit unauthorized and illegal measures that might have occurred on there.

b) For **List B** candidates:

- How would you describe your competence in criminal law and procedure?
- How would you describe your experience in criminal proceedings?

#### **OTHER EXPERTISE AND EXPERIENCE**

The ICC is a unique institution, as such ICC judges face a number of unique challenges (including managing a regime of victims' participation and witness protection in complex situations, including of ongoing conflict). Even judges with significant prior experience managing complex criminal trials may not necessarily possess requisite skills and knowledge needed to manage these challenges.

7. Is there any area of expertise, knowledge or skillset which you would like to enhance through workplace trainings?

As mentioned above, I would like to resume my studies of French and learn other languages used at the Court. I would also like to learn more about the use of new technologies that could help my work at the Court.

8. Please provide examples of your legal expertise in other relevant areas such as the crimes over which the ICC has jurisdiction, the management of complex criminal and mass crimes cases, or the disclosure of evidence.

I have acquired a broad practical experience presiding first instance criminal trials for many years. On those occasions, I had to plan the course of the proceedings and be responsible for their effective and expeditious execution.

Today, as a Federal Judge at the Court of Appeals, I routinely try the most severe and complex criminal cases, on a range of subjects directed related to the jurisdiction of the ICC, such as homicides, sexual and physical violence against women and children, violations of human rights in Brazilian federal prisons, slave labor and crimes against the indigenous population. These cases often involve a large number of defendants, victims, and witnesses, as well as issues related to the disclosure of evidence.

9. Please describe the aspects of your career, experience or expertise outside your professional competence that you consider especially relevant to the work of an ICC judge.

After a lifetime in chambers, I learned how to work as part of a team. Nowadays, some of the most important issues of my Courtroom have to be dealt with collectively by all its current 27 Appeal's Judges, such as decisions about rules of procedure and internal regulations. The work in chambers has provided me with a sense of collectiveness, respect, and attention to my colleagues' opinions, envisaging consensus, whenever possible. This practical experience working collegiate bodies is an important skill for those who run for an international court, like the ICC, which also relies on panels of judges.

Being able to work in a multicultural environment is another key element to perform well at the bench of the ICC. My Courtroom has jurisdiction over 14 states of the Brazilian federation, which covers about 80% of our territory. It is the largest Court of Appeals in Brazil, both at federal and state levels. Brazilian states and regions all have unique cultural traditions. The experience of judging cases concerning different regions has made me more sympathetic to other people's points of view.

Last, but not least, my experience with international judicial cooperation, acting as a Liaison Judge to the Hague Conference, broadened my horizons on the importance of different legal systems and provided me with the opportunity to see things from a different perspective. It allowed me to be in touch with different cultural environments and get along with judges from all parts of the world, also requisites for those who intend to become a part of the ICC.

#### **EXPERIENCE AND PERSPECTIVE RELATED TO SEXUAL AND GENDER BASED CRIMES (SGBCs)**

10. Please describe any experience you may have in dealing with SGBCs, including in addressing misconceptions relating to SGBCs.

Since the beginning of my career as a first instance judge, I presided over several trials of sexual and/or gender-based violence, occasions in which I had the opportunity to hear women and children who had been victims of crimes such as rape and human trafficking, an unfortunate reality takes its toll in the poorest corners of my country. Over the last ten years, as a Federal Judge at the Court of Appeals, I have also been in charge of trials related to the international trafficking of women and children.

Following the guidelines of the Palermo Protocol, the new Brazilian law on trafficking in persons (2016) has a whole chapter dedicated to the protection and care of victims, paying special attention to gender issues. Given my familiarity with the topic, I have been invited to publish articles and give lectures about that law, occasions in which I have always emphasized the need for law enforcers to raise awareness of the issue of women victims of trafficking.

In 2006, Brazil approved a federal law that established adequate punishment for acts of domestic violence against women ("Maria da Penha Law"), deemed by the United Nations one of the best in the world. In light of its significance for the protection of women, the "Maria da Penha Law" soon became one of my main topics of academic

and professional interest. Besides giving lectures and publishing articles and op-eds about it, I have also collaborated with the Brazilian Federal Prosecution Service for the publishing of a booklet disseminating information about the main points and innovations brought by that law<sup>2</sup>.

I have also been engaged with actions to fight gender prejudice within judicial system in Brazil. I am currently a member of a Gender Equality Promoting Committee, which aims at proposing innovative measures to promote gender equality at Brazilian Federal Courts. Moreover, I recently published an article in a well-known Brazilian newspaper about a concrete case of gender prejudice in which two female judges were offended by a male peer, a situation with great mediatic repercussion in Brazil.

#### **EXPERIENCE AND PERSPECTIVE RELATED TO CRIMES AGAINST CHILDREN**

11. Please describe any experience you may have in addressing crimes against and affecting children and related issues, including dealing with child witnesses.

In recent years, my Court has been dealing with an exponential increase in the number of pedophilia crimes committed through the Internet. I have tried several of those cases and dealt with large-scale investigations of pedophilia crimes, including those involving public authorities subject to the jurisdiction of the Court.

As a Liaison Judge of the 1980 Hague Convention, I have advised judges in techniques for the listening of children that fell victim to violence. These techniques (called "Testimony without Damage" or "Special Testimony") were approved in Brazil in 2017 and are currently applied by judges with the support of psychologists and social assistants. I sometimes had to recur to this procedure myself, when I needed to listen to children who were victims of sexual abuse.

I also tried cases concerning the illegal adoption of children by foreigners, and had an eight months internship at the International Centre for Missing and Exploited Children (ICMEC) – a-recognized institution in the field of child protection – as a fellow at the Humphrey Program, in the United States.

#### **EXPERIENCE AND PERSPECTIVE RELATED TO VICTIMS**

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<sup>2</sup> <http://pfdc.pgr.mpf.mp.br/atuacao-e-conteudos-de-apoio/publicacoes/mulher/cartilha-maria-da-penha-e-direitos-da-mulher-pfdc-mpf>

12. Please describe any experience that you may have relevant to the right of victim participation before the ICC and reparations for victims of mass atrocities.

Under the Brazilian legislation, victims have the right to join criminal proceedings, in the quality of Prosecution assistants. Among other things, they can require the production of evidence, inquire witnesses, and participate in oral debates. Their powers, however, are not as broad as those of the Prosecutor. Victims and their family members can also file motions to link criminal proceedings with civil lawsuits, in search of reparations. Such issues have been part of my daily professional routine for many years; thus, I can state that I am quite acquainted with matters relating to victims' participation and their right for reparations.

13. Do you have any specialized training and/or experience in providing protection and support to victims and witnesses participating in a case?

I took part in a one-year course at the Center for Judicial Studies, in Portugal, in which I had classes of "Psychology of the Testimony". On that occasion, I learned some techniques which helped me a lot in minimizing witnesses and defendants' discomfort while being inquired in a Courtroom.

Furthermore, I have practical experience applying the technique called "Testimony without Damage" or "Special Testimony", which was approved by law in 2017 (Law 13.431/2017). This legislation regulates the listening of children who were victims or witnesses of acts of violence, without causing him/her more harm than he/she had already suffered. It has also been applied in trials concerning victims of other crimes, such as human trafficking.

As a presiding judge, I have led the inquiry of the victims and witnesses in several cases, a practical experience that made me sensitive to their traumas. I have always made my utmost efforts to make them feel comfortable and avoid their revictimization, considering that this might affect their ability to testify and contribute to the pursuit of justice.

#### **EXPERIENCE RELATED TO FAIR TRIAL CONSIDERATIONS AND THE RIGHTS OF THE ACCUSED**

14. Please describe any relevant experience implementing/advocating for the rights of the accused, including any specific experience managing fair trial considerations in criminal proceedings.

The Brazilian legislation safeguards defendants' rights for a fair trial, which I have always observed while trying cases both at first instance and appeals level. My country's law also provides for the so-called "Custody Hearings", in which defendants must present before the judge immediately after his/her arrest, to be made aware of the charges against him/her and to exercise his right of defense. My Courtroom experience has always been guided by these legal imperatives, which ensure the rights of the accused as a main pillar of fair judicial proceedings.

#### **HUMAN RIGHTS AND HUMANITARIAN LAW EXPERIENCE**

15. Do you have any experience working with or within international human rights bodies or courts and/or have you served on the staff or board of directors of human rights or international humanitarian law organizations? If so, please briefly describe this experience.

The Brazilian constitution does not allow judges to exercise any function, other than teaching. Thus, since I have started my judicial career very early, I have never had the chance of working on the staff or board of directors of such institutions. However, I have a record of working side by side with a number of stakeholders in the field of human rights. I have collaborated with the Brazilian Human Rights Secretariat and the Ministry of Justice while dealing with cases of international abduction of children, violence against women, and trafficking in persons. I have also participated in lectures and seminars on human trafficking promoted by UNODC, in partnership with the Brazilian Ministry of Justice and other international organizations. Furthermore, I have an internship experience (2016/2017) at the International Centre for Missing and Exploited Children (ICMEC), a world class institution in the field of children protection.

16. Have you ever referred to or applied any specific provisions of international human rights or international humanitarian law treaties within any judicial decision that you have issued within the scope of your judicial activity or legal experience?

Throughout my whole career, I have consistently worked to hold accountable perpetrators of human rights violations, putting myself and my family at risk in many occasions for taking decisions in the interest of justice. I have applied and quoted the Palermo Protocol in several cases related to trafficking in persons, forced labor and trafficking in organs for transplantation. I have often trialed cases based on the American Convention on Human Rights (1969), known as the San Jose Pact of Costa Rica, in particular cases related to mistreatment and violence in Brazilian prisons.

#### **IMPLEMENTATION OF THE ROME STATUTE AND INTERNATIONAL CRIMINAL LAW**

17. During the course of your judicial activity, if any, have you ever applied the provisions of the Rome Statute directly or through the equivalent national legislation that incorporates Rome Statute offences and procedure? Have you ever referred to or applied jurisprudence of the ICC, *ad hoc*, or special tribunals? If yes, please describe the context in which you did.

No, I haven't.

#### **EXPERIENCE AND PERSPECTIVE RELATED TO GENDER MAINSTREAMING**

18. Could you share examples of when you applied a gender perspective in the course of your professional career?

See question n.10

#### **CRITERIA OF HIGH MORAL CHARACTER, INDEPENDENCE, IMPARTIALITY AND INTEGRITY**

19. What, in your opinion, does the Rome Statute requirement of "high moral character" mean and how do you embody these characteristics? What in your opinion would be contrary to "high moral character"?

I believe that a person of "high moral character" is one who enjoys an unblemished reputation.

I belong to the first generation in my family that was able to attend university. My grandfather was a small countryside farmer (he was a poor Spanish immigrant) and my father only moved to the city in his twenties. I grew up in a working-class neighborhood and attended both public schools and a public university. I took from my

family the inspiration of truthfulness and hard work which has to do with character, perseverance, honesty and the values of faith, respect, and love. I have been keeping those values in my mind and my heart, and I will not give them up.

When characteristics that are reproachable in an individual prevail, then you have the opposite of “high moral character”. I would mention, in particular, the corruption of values, dishonesty, and disrespect to other human beings.

20. Have you ever resigned from a position as a member of the bar of any country or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.

No, I haven't.

21. It is expected that a judge shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status.

a) What is your opinion on this expectation?

I fully agree with this expectation, which is in line with the values and principles I have been standing for during my professional life as a judge.

b) Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on these grounds? If yes, please describe the circumstances.

No, I haven't.

22. Are you aware of any formal allegations made about you related to professional misconduct, including allegations of sexual harassment, discrimination, or bullying, or any investigations regarding your alleged professional misconduct related to the same? If so, please explain.

No, I am not.

23. Do you have any reason to believe that any current or former colleagues or professional contacts, if asked, would share concerns regarding your professional conduct?

No, I do not.

24. Article 40 of the Rome Statute and the ICC ‘Code of Judicial Ethics’ requires judges to be independent in the performance of their functions.

- a) What difficulties, if any, can you envisage in taking a position independent of, and possibly contrary to, the position of your government?

I envisage no difficulties whatsoever since independence is inherent to the judicial activity. If elected to the ICC, I would perform my duties in the same way I have been doing all over my career, that is, following the due legal process and applying the necessary penalties with no regard to political issues or national positions. I would recuse myself to participate in a trial in which my impartiality might be in doubt at any level.

- b) How would you act in cases where significant (direct or indirect) political pressure was exerted upon you and/or you and your colleagues?

After 30 years in criminal chambers, dealing with pressure became my “way of life”. Either as a first instance judge, or a judge at the Court of Appeals, I have been required, on a daily basis, to manage arrest warrants, habeas corpus, complaints and the most diverse requests from lawyers. Direct interference could be characterized as a crime under the Brazilian law, yet sometimes we have to deal with indirect political pressure, especially when it comes from the media. I trust my Court experience provided me with the skills to deal with such situations. By performing firmly and independently, one can inhibit any kind of pressure and deter future attempts to interfere with judicial procedures.

25. Please describe specific measures you have undertaken to advance a work environment free of bullying, harassment, and other harmful behavior.

I currently run an office with 16 employees, and I believe I managed to create and maintain a safe workplace, free from bullying, intimidation, or harassment. I truly enjoy working as part of a team, holding weekly meetings with my staff, and addressing challenges collectively. I believe that the best way to avoid any form of inappropriate behavior is building a healthy work environment, based on pillars such as respect and

mutual trust. This is no minor challenge, however, requiring a leader's daily attention and openness to frank and productive conversations with their entire staff.

## **OTHER MATTERS**

26. The Rome Statute requires that judges elected to the ICC be available from the commencement of their terms, to serve a non-renewable nine-year term, and possibly to remain in office to complete any trials or appeals. A judge is expected to handle legal matters for at least seven hours per day, five days per week.

- a) Do you expect to be able to serve at the commencement and for the duration of your term, if elected?

Yes, I do.

- b) To what extent are the judicial tasks described above compliant with your expectations of work standards? Please describe any potential adaptations you may require.

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

27. Please feel free to address any other points here.

I would like to thank civil society organizations and the CICC for providing candidates with the opportunity to elaborate on their credentials, expertise, and experience in areas of the utmost importance for the future judges of the ICC.

**Thank you.**