

2023 ICC Judicial Elections
Questionnaire to candidates

Name: Beti HOHLER

Date: 30 July 2023

Motivation

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

I have seen first-hand how powerful and life-changing the promise of justice can be for victims of atrocity crimes and their communities. Delivering on that promise by conducting fair, impartial and expeditious proceedings motivates me to seek election as an ICC Judge.

Furthermore, I am confident that I can make a meaningful contribution to the work of the ICC as one of its Judges, effectively and efficiently managing pre-trial and trial proceedings, delivering high quality judicial reasoning, and developing consistent and coherent jurisprudence. Having practised in international and internationalised criminal courts, including the ICC, in different roles, I have a holistic understanding of the challenges that the Court is facing. More importantly, I believe I have the ability and skill to address those challenges.

I have dedicated my life to international criminal justice and am fully committed to the mandate and mission of the Court. I have worked with colleagues from all over the world, from different legal, cultural and linguistic backgrounds. Diversity is one of the Court's greatest strengths. I have the necessary mindset and character to build collegial relationships and contribute to a positive working culture in chambers.

Relevant experience as a criminal law practitioner (List A) or international law expert (List B)

For LIST A candidates

2. Please describe your experience as a judge, prosecutor, or criminal lawyer in domestic or international criminal law cases, including information on the number and types of cases as well as challenges you faced.

I am a specialist in international criminal law with extensive experience as an advocate and judicial advisor. All my professional roles are directly relevant to the judicial work of the Court.

Since 2015 I have served as a prosecuting attorney with the ICC Office of the Prosecutor (ICC OTP), and have acted in various stages of proceedings before the Court. I prosecuted the case against *Dominic Ongwen* since Mr Ongwen's surrender to the Court in 2015 until its conclusion. I have also served as

the acting Head of Unified Team and lead lawyer in the case *Prosecutor v. Joseph Kony* and as a member of Unified Team Leadership (lead lawyer) in another situation in investigation phase. These cases and situations concerned war crimes and/or crimes against humanity. They all included novel and complex factual and legal issues before the Court, large amounts of evidence, complicated fact patterns, dealing with vulnerable witnesses and, in some instances, security and cooperation challenges.

Prior to joining the ICC in 2015, I served for 3.5 years as a Judicial Advisor to international (criminal) judges in the internationalised courts in Kosovo (EU Rule of Law Mission), mostly at the appellate and supreme court level. In this role, I, *inter alia*, facilitated efforts to set up the international judges' unit at the Court of Appeals for Kosovo, newly established in January 2013, organised the work of the unit and its internal case-management and case-reporting systems. For a period of time, I was even the sole legal advisor in the unit. In this capacity I dealt with complex criminal cases that typically included multiple defendants and previously unlitigated issues of substantive and procedural criminal law. The cases related to war crimes, organised crime, terrorism, ethnically motivated crimes, corruption offences. I authored dozens of final decisions on interlocutory appeals and appeals against judgments of conviction or acquittal every year. An important part of my role was also to build efficient and effective workflows and relationships with national judges. In order to assist judges and staff, I initiated and developed a Digest of the Court of Appeals Jurisprudence. I collected and analysed key decisions and the Digest was then shared with first instance judges with the objective of developing consistent and coherent jurisprudence and provide guidance to first instance international judges. I also initiated and led trainings for court support staff about the criminal procedure and their role in it. I acted as a liaison for operational matters with other international organisations in the territory, such as UNMIK and KFOR.

Prior to my international career, I served as a Senior Associate (litigation lawyer) in a top-tier law firm in Ljubljana, Slovenia for almost two years, practising in all areas of law. I handled various types of complex litigation, was responsible for over a hundred cases at any given time, and regularly appeared in court at first instance and appellate level. I also conducted negotiations and represented clients in mediation proceedings. Prior to that, I served as a Judicial Trainee/Legal Officer with the Court of Appeals in Ljubljana, Slovenia, where I clerked for first instance and second instance criminal and civil law judges.

In addition to my experience in criminal litigation, I am involved in training judges and advocates on substantive and procedural aspects of international criminal law at national and international events. For example, I am a trainer at the annual training for national judges and prosecutors on international crimes, organised by the European Judicial Training Network and the Genocide Network. I also serve (pro bono) as the Director of Training at the Institute for International Legal and Advocacy Training (IILAT). IILAT's objective is to empower legal professionals to move more easily between national and international jurisdictions, and to empower a new generation of gender diverse and geographically diverse practitioners in international criminal justice. IILAT has in the last two years delivered free trainings for junior and advanced advocates practising before international tribunals, a masterclass on witness preparation before international criminal tribunals and several public debates.

I also publish and lecture on international criminal law. I am one of the authors of the leading Commentary of the Rome Statute in the English language and an external associate of the University of Amsterdam (LLM programme in International and Transnational Criminal Law). I have a particular interest in the relationship between national and international law. In this regard, I served on the International Law Association's Committee on Complementarity in International Criminal Law, which completed its work with a final report and a set of recommendations in 2022, and I am a long-standing Associate Editor of the Oxford Reports on International Law in Domestic Courts.

For more details about my duties and responsibilities in various roles, and other professional engagements, please refer to my Curriculum Vitae, submitted with the nomination and available on the ICC ASP website.

3. During your judicial career, please share any instances when you applied Rome Statute provisions or other international criminal or humanitarian law sources, directly or through 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 indicate any relevant judicial decision or opinion that you authored or co-authored.

At the ICC, I have been applying the Rome Statute, the Rules of Procedure and Evidence and the Elements of Crimes as well as the Regulations of the Court and other instruments regulating the work of the ICC daily for over eight years. I have also analysed and applied the jurisprudence of other international criminal tribunals and human rights courts and bodies. I also note that I have authored various publications that have discussed the legal framework of the Court, its jurisprudence, and the interactions with other areas of law.

During my time with the internationalised courts in Kosovo, I applied the national provisions relating to international crimes, some of them modelled after articles 6 to 8 of the Rome Statute. I applied international humanitarian law and relied on the jurisprudence of, in particular, the International Criminal Tribunal for the former Yugoslavia (ICTY). I advised and authored decisions on complex criminal law, international criminal law, international humanitarian law and human rights law issues. The decisions regularly included first-time interpretations of procedural and substantive criminal law in the territory.

(or)

For LIST B candidates

2. Please describe your international criminal law experience, particularly regarding legal research, legal opinions, and/or litigation concerning international criminal law matters and themes, as well as cases and situations. Please indicate any legal material, publication, or opinion that you authored or co-authored.

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3. During your international law career, have you provided legal opinions or commentaries on Rome Statute provisions or other sources of international criminal or humanitarian law? Have you commented on the jurisprudence of the ICC, *ad hoc*, or special tribunals? If yes, please indicate relevant materials and publications.

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Victims' rights

Victims of Rome Statute crimes are the *raison d'être* of the ICC, and they have the right to participate in proceedings and to reparations, as well as to be effectively protected.

4. Please describe your experience and/or expertise relevant to victims' rights to participate in criminal proceedings and to obtain reparations, as well as your understanding of such rights before the ICC.

As a practitioner from a civil law jurisdiction, I have in-depth understanding of criminal proceedings that include active participation of victims. All jurisdictions I have practiced in during my career have recognised victim participation and the right of victims to obtain reparations.

I have significant experience with victims' participation in international and internationalised criminal proceedings, including specifically at the ICC. In the *Ongwen* case, more than 4000 victims participated in the case, represented by two teams of legal representatives. I served as the Prosecution's focal point for issues related to victim participation and spearheaded the relevant litigation in this area on behalf of the Prosecution in the case. I have also worked and advised on victim participation issues in the context of article 15 and article 18 proceedings in another situation as well as, albeit to a more limited extent, in reparation proceedings in the *Ongwen* case. I have coordinated on relevant issues with the Registry's Victims Participation and Reparations Section (VPRS) and Trust Fund for Victims (TFV) and therefore have a very good understanding of their function and role in the different stages of ICC procedure.

Whilst working in Kosovo, I dealt with victim participation as part of the judiciary, advising international judges. Victims (injured parties) were entitled to, and typically did, participate in every criminal proceeding.

Understanding of victims' rights to participation and reparations in ICC framework

The Rome Statute includes ground-breaking provisions on active participation of victims in criminal proceedings and their right to reparations. I support the victim-centred approach envisioned by the Statute and recognise the value of the views and concerns of victims presented at various stages of ICC proceedings.

I consider victims' experiences to be central to the work of the Court. I believe that victim participation has a positive effect beyond the proceedings as such. When victims are not just passive observers but

play an active part in the pursuit of justice, this can in turn contribute to social reconstruction in post-conflict societies. I believe that the meaningful participation of victims can importantly contribute to the judicial process and the victims' views and concerns regarding their experiences provide the judges with valuable information and context. Hearing directly from victims can correct misconceptions or assumptions that may otherwise persist.

I have seen the benefits of victim participation at different stages of ICC proceedings. Participation of victims at different stages of proceedings does not, in itself, undermine the rights of the accused. That said, ICC Judges have the responsibility to ensure, in accordance with article 68(3), that views and concerns of victims are presented in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Whilst there is much focus on the participation of victims during confirmation of charges, trial, and appeal stages, it is valuable to hear victims' views and concerns also in earlier phases of proceedings. Over the years, victims have been authorised to make representations when a Pre-Trial Chamber is considering the Prosecutor's request for authorisation of an investigation, as anticipated in article 15(3) of the Statute. Recently, the judges have also invited views and concerns from victims in the context of article 18(2) proceedings (deferral) and when considering whether to authorise a confirmation hearing in the absence of the suspect. I find these judicial pronouncements to be a positive development in the jurisprudence of the Court.

Insofar as reparations are concerned, the right to obtain reparations is a well-established principle of international law. Its inclusion in the Rome Statute, along with the creation of the TFV, is, in my view, an important achievement. In this regard, I find that consultations with victims in the process leading to the reparations order is fundamental. Participation of and consultations with victims are vital for making sure that the reparations have the intended impact, are perceived as such, and that there is ownership of the process. This helps ensure that reparations are accessible and that they do not exclude or marginalize any group of victims. (*See for example* UN Secretary General's Guidance Note on Reparations for Conflict Related Sexual Violence, 2014).

Although participation of victims in criminal proceedings has been a constant in most civil law jurisdictions, it is relatively novel on the international plane. Currently, the substantive and procedural details of victim participation and the right to reparations remain to some extent unsettled in the jurisprudence of the ICC. Misconceptions about the impact of victim participation on the length of trials and on the rights of the accused persist amongst some practitioners and wider public. The findings of the IER Report in 2020 are noteworthy in this regard. Although acknowledging the need for improvement and making various recommendations in this regard, the independent experts concluded that "there is no basis for suggesting any curb on the right of victims to participate in proceedings of the Court." (IER Report, 2020, para. 843)

5. How would you ensure victims' statutory rights to participate in proceedings and to reparations are meaningfully achieved?

Judges play a key role in ensuring that the right of victims to participation and reparations is meaningfully implemented in a manner that is consistent with the rights of the accused and a fair and impartial trial. It is important that judges who have a solid understanding of the issues related to victim

participation are elected, and that their expertise is utilised in the best possible manner in different divisions of the Court. In this regard, I am a proponent of appointing a Single Judge for specifically addressing issues related to victim participation in the respective case(s) or situation(s), in accordance with the Statute and the Rules of Procedure and Evidence. This would ideally be a judge with solid understanding of victims' issues and relevant experience of dealing with matters related to victim participation.

Proceedings before the Court would also benefit from consolidated guidelines that are applied across chambers, ensuring consistency and predictability for parties and participants. An important step forward has been the adoption of, and subsequent amendments to, the Chambers Practice Manual, but more could be done, with ICC Judges acting collectively, building the framework for victim participation and reparations.

The concrete steps I would advocate for, that ensure victims' statutory rights to meaningful participation in proceedings and to reparations, include:

- As a rule, inviting submissions from the parties and other relevant actors (e.g. VPRS) before deciding complex issues affecting victims' rights and participation;
- Using the current standard four-page application form and the current procedure of victim status determination (so called A-B-C system of review for victim applications, introduction of which has been an important step forward in efficiency);
- Issuing a framework decision at the start of pre-trial and trial proceedings regarding victims' participation, providing guidance to the Legal Representatives of Victims and the Parties about the expectations of the Chamber and ensuring that clear procedures and timelines are in place from the very beginning;
- Designating a Single Judge (knowledgeable about ICC victim participation) to deal with victim participation issues in the situation/case;
- When deciding on legal representation (Rule 90), taking into consideration the specific dynamics in the situation country to ensure effective participation;
- Making sure that victims are fully consulted at different phases of the reparations process and that their needs are properly reflected in the reparations order.

6. Describe any specialized training and/or experience you have in providing protection and support to victims (and witnesses) participating in judicial proceedings, including expertise in assessing harm, trauma, and the risks of re-traumatization.

Throughout my career I have interviewed, examined and cross-examined traumatised and vulnerable witnesses, including former child soldiers and victims of sexual and gender-based crimes, committed in armed conflict. I have closely interacted with victims of atrocity crimes and completed different trainings related to dealing with vulnerable victims and witnesses in the courtroom.

Throughout my time with the ICC OTP, I have worked closely with colleagues from OTP internal units dedicated to well-being, safety and security of witnesses and victims, as well as with colleagues from

the Registry's Victims and Witnesses Section in relation to individual victims and witnesses, ensuring their safety, physical and psychological well-being, dignity and privacy, preventing re-traumatisation. I have authored filings on the need for protective measures and special measures for individual witnesses appearing before the Court.

Defence rights

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

Implementing the rights of the accused and fair trial considerations has been fundamental in all my professional roles, whether practising as a defence advocate, judicial advisor, or prosecuting advocate. Concerns over the need to protect the rights of the accused are not just the preserve of defence lawyers. It is vital that accused are properly represented and that criminal proceedings are fair, impartial and expeditious. I am guided by this, whatever role within the justice system I am performing.

My first working experience in international criminal law was with the ICC's Office of Public Counsel for Defence (OPCD), representing the rights and interests of the defence in ICC proceedings. In this role I conducted legal research, provided legal advice, drafted submissions, and memoranda. I also co-authored the manual for counsel practising before the ICC, produced by the OPCD at this time. In my domestic jurisdiction, I also worked on several criminal law cases, whilst practising in a top-tier law firm in Ljubljana, Slovenia. I believe that this immediate experience allows me to better understand the position of the defence and ultimately render better informed decisions.

In addition to directly acting for the defence, I also addressed fair trial considerations daily during my time with the Court of Appeals in Ljubljana, Slovenia as well as during my time with the internationalised courts in Kosovo, by ensuring that the rights of the accused persons are respected in the proceedings. Particularly in Kosovo, I needed to ensure that all procedural protections available to the accused were properly considered and reflected in the rulings and judgements. Most appeals I dealt with as an advisor to international judges in Kosovo, required a consideration of fair trial issues and whether the accused has been prejudiced. Issues like imposition and extension of detention or other restrictive measures, length of investigations, admissibility of evidence, confirmation of indictment, adequate notice of charges, applicability of statute of limitations, access to the case record were a constant in the proceedings.

Most recently, as a prosecuting attorney with the ICC OTP, the respect for the rights of suspects and accused persons has equally been a fundamental principle of my work. I have dealt with various fair trial issues in this regard, for example, issues relating to adequate notice of charges, disclosure of evidence, admissibility of evidence pursuant to article 69(4) of the Statute, implementation of the rights of the accused under article 67 of the Statute, introduction of prior recorded testimony and considering the possible application of grounds excluding criminal responsibility under article 31 of the Statute. Being a prosecutor is ultimately about being a minister of justice, acting fairly and properly.

I would also add that I have taken particular interest in the issues related to sentencing in the international criminal law context. I have written about the need for consistency and predictability in this regard as well as on aspects of enforcement of sentences under the Rome Statute; an area that has not received a great deal of attention in literature. In my view, it is important from a defence perspective that is consistency and predictability of sentencing in order that an accused person may properly understand his/her position.

Finally, I note that I have appeared as a trainer on advocacy in international criminal proceedings for defence advocates, including upon the invitation of international bar associations. I have therefore been actively and enthusiastically involved, in my own time, in helping to enhance the skills of defence advocates. I firmly believe that without adequate representation for accused persons the interests of justice cannot properly be served nor properly administered.

High moral character, independence, and impartiality

8. Share your understanding of the “high moral character” Rome Statute requirement (article 36(3)(a)), and how you embody these characteristics. What qualities or activities would be contrary to a “high moral character”?

A ‘high moral character’ in my view amounts to a personal history of fairness, respect for the rights of others and transparency. It means being honest, fair, truthful, trustworthy, reliable and courageous. It also means displaying respect for the law and observance of the law, prudent management of financial affairs, and discretion in personal relationships, social contacts and activities.

I would also refer to the six values of judicial conduct, included in the Bangalore Principles of Judicial Conduct: independence, impartiality, integrity, propriety, equality, competence and diligence. I believe that any judicial candidate must have embodied these principles throughout their career, irrespective of whether they have served as a judge or not.

In addition, and what I believe is central to my having a high moral character, is my recognition that I am human and fallible. Knowing this, I am mindful and considered in the actions I take and the impact they may have - both actual and perceived. I am always conscious that my actions not only reflect on me but also on the justice process of which I am a part. As such I have always been careful to maintain a high moral character, not only because it is what I wish to do for myself but also because I am aware of the responsibility I hold as part of the judicial process.

Regarding the last part of this question: I would consider anyone who acts contrary to the characteristics and principles listed above as not qualified for a role requiring high moral character. For example, anyone who demonstrates lack of honesty, lack of transparency, lack of discretion, unethical behaviour, lack of professionalism, unequal treatment, harassment, utters racist or misogynist remarks or succumbs to political or public pressure.

9. Have you ever been accused (formally or informally) of bullying, harassment, abuse of power, serious misconduct, including sexual harassment/misconduct, or unacceptable behavior? If so, please explain.

No, never.

10. What difficulties, if any, can you envisage in taking a position independent of, and possibly contrary to, the position of your state of nationality? How would you act in cases where significant (direct or indirect) political pressure was exerted upon you and/or your colleagues?

I do not envisage any such difficulty. I have been an international civil servant for almost 15 years and have never acted in response to any direct or indirect political pressure from any entity. I have always been independent of all sources of power or influence in society, including the media and commercial interests. As an international civil servant, I have taken the oath to serve independently and impartially and have always faithfully executed this oath.

Independence of judges is the cardinal principle of the administration of justice and crucial for the credibility and legitimacy of the Court as a whole. Therefore, every Judge of the ICC must be completely independent and must act independently from the authorities of any State, including their own, as well as independently of any other entity or person. He or she must also manifestly be seen to have that complete independence.

If encountered with direct or indirect political pressure exerted upon me, I would resist. I would also make it clear that any such attempt was inappropriate and possibly illegal (Article 70(1) of the Statute). I would also inform the Presidency so steps can be taken to address such pressure, if appropriate.

If I became aware that political pressure was being exerted on my judicial colleagues (or for that matter any other staff in chambers), I would emphasise the importance to resist and ignore such pressure, in accordance with the judicial (or staff) oath, and I would try to support these colleagues the best I could in defending themselves against external pressure. If I had genuine concerns about fellow Judges being influenced by political or other considerations and thus not acting impartially, I would take the matter up with them and, if necessary, address it through appropriate formal procedures.

11. Have you ever worked in the executive or legislative branches of government in your country? If so, please provide details about the capacities in which you served, the duration of these positions, and confidentiality obligations you may have undertaken.

I completed a short one-month internship with the Ministry of Foreign Affairs of Slovenia, Department for EU Affairs, in July 2006. I drafted briefings based on current affairs reported in the media, and prepared draft talking points for diplomats. Apart from this, I was never affiliated with the executive or legislative branch of any government.

Management and workplace culture

12. Please describe your relevant human resources management skills and experience, including: how you managed allegations of discrimination, harassment (including sexual harassment), bullying and/or abuse of authority on the part of staff members; ways you addressed chronic imbalances in geographical representation/race and gender in senior management positions; and how you grappled with issues that disproportionately affect women, minorities, and people of color.

A safe, inclusive, respectful working environment is imperative for the success of the Court. A positive workplace culture based on psychological safety boosts commitment, engagement and performance and therefore ensures better results. I have been committed to creating such environment throughout my career, irrespective of the organisation I served with or my role.

Whether a manager or not, I have attempted to create a positive working environment by, first and foremost, leading by example and maintaining the highest professional standard of behaviour, ensuring conditions for open and transparent communication, providing support to colleagues, emphasizing the meaningfulness of our work, avoiding blame culture and, importantly, always treating others with respect.

I have managed peers, junior colleagues, and administrative staff since early stages of my career. I am confident about my human resources management skills, as demonstrated by various evaluations through the years, including a recent 360-degree assessment by the ICC HR. I am committed to continuous learning and development not only in my professional field, but also in my role as a leader. My personal fields of interest include organisational psychology, techniques to improve morale and productivity in teams and management of diverse and inclusive organisational cultures.

I have not dealt with direct allegations of discrimination or harassment in my team(s). I would like to believe that this is because I have always made sure to create a safe working environment, signalling that any discrimination or harassment will not be tolerated.

As a manager, I must deal with conflicts amongst members of my team, which I do successfully. In such situations, I believe it is important to actively listen and identify the underlying issue (which may be different from the immediate complaint), and thereafter create solutions that are workable and measurable for all staff involved and that are ultimately aimed at repairing the relationship as best as possible. Open and honest communication, transparency and objectivity are crucial to ensuring psychological safety which is the precondition for any successful teamwork.

Regarding issues that disproportionately affect women, minorities, people of colour and, I would add, people with health conditions, I have acknowledged the difficulties these groups face in the workplace and have been attentive to their needs. My approach is to try to create a supportive working environment. I encourage colleagues to make use of the administrative and other arrangements available in the organisation (such as flexible working hours), where I believe they would benefit from

them. I make it a point to demonstrate inclusive leadership behaviours and have taken steps to ensure that I am a visible ally of people of colour, LGBTQI+ persons, persons with disabilities and women. I am committed to building an inclusive workplace, which for me means creating a culture that engages and supports *all* team members.

As a member of the ICC Staff Union Council and the ICC Appeals Board I have had direct exposure to some of the most pertinent issues relating to workplace culture at the ICC and have actively contributed to cross-organ initiatives aimed at highlighting and solving those issues. For example, I delivered trainings to staff on utilising formal and informal justice mechanisms available in the Court's administrative framework and I have co-designed and co-delivered an active bystander workshop, aimed at empowering staff members to stand up for each other and address inappropriate behaviour. As a staff advisor, I have also assisted several staff members who experienced harassment and bullying with navigating the administrative procedures, seeking accountability.

Finally, I have myself battled stereotypes and faced conscious and unconscious bias in workplace at different stages of my educational and professional life. I am no stranger to misogyny. This is another reason that I have done whatever I could to support women and others in the workplace, making sure everyone has fair access to opportunities.

13. If elected, what concrete measures will you take to improve the workplace culture in the ICC's judiciary? Include examples in which you acted to improve the workplace culture.

As mentioned above, I have consciously applied myself to create a safe and inclusive workplace environment in my teams and units, build inclusive working processes, as well as to, insofar as it has been in my power, ensure gender parity and equal opportunities for all staff. I am confident that I would make an equally positive contribution to the workplace culture in chambers as a Judge of the ICC.

I take contributing to positive working environment and well-being of staff very seriously. On the immediate level, I make sure to communicate openly and transparently, and to build trust. I make sure to assist staff members when they need assistance, to reward positive behaviour and address negative behaviour. When mistakes happen, I work to bring the team together to look for and implement solutions rather than apportioning blame. This in my view helps ensure building a strong team and an environment where all opinions can be freely expressed and discussed, thus ultimately leading to more considered, better decisions.

In terms of concrete measures to improve workplace culture in the ICC Judiciary, I would:

- Be open to feedback about my own performance and behaviour, from all colleagues regardless of role or level of seniority;
- Be courteous, patient, tolerant at all times;
- Encourage mentorship and peer support mechanisms within chambers;
- Maintain and demonstrate a positive and constructive approach, be solution-oriented;

- Actively engage with fellow Judges and chambers staff (legal officers, administrative staff, interns and visiting professionals) and ensure we properly define working methods and expectations in the mutual working relationship;
- Make a concerted effort to learn and understand the background and specific interests of other Judges as well as judicial support staff, their background, concerns, etc;
- Organise internal trainings and workshops for judicial support staff to assist in their professional development (depending on their interests and needs of the organisation);
- Foster social relationships (empirical studies confirm that positive social connections at work produce desirable results);
- Participate in public discussions on the topic of workplace culture and liaise with staff representative groups and networks.

14. Please share examples of when you applied a gender perspective during your professional career.

I have applied a gender perspective regularly in my career, both in terms of how I have managed and interacted with peers and subordinates, as well as in the performance of my core functions. Judges have a fundamental role to play in ensuring that individuals before them are treated equally. The same is true for investigators and lawyers and other participants in the legal process.

In my current position, I make sure that a gender perspective is reflected in the investigation and prosecution strategies and decisions I am part of. I make sure that sexual and gender-based crimes (which are not exclusive to women but do disproportionately affect women) are duly considered and, where applicable, reflected in the charging decisions. I also apply a gender perspective when it comes to identifying witnesses and the manner of presenting their evidence. I ensure that the specific needs of witnesses are considered during the interview processes.

Throughout my career I have advocated for gender parity in criminal justice systems and supported female colleagues to advance in their careers. I make sure to stand up for female and LGBTQI+ colleagues, encourage and help them to progress in their careers. I act as a mentor to young female lawyers as part of two mentorship programmes – one organised by the ICC Registry and the other by the ATLAS network. Through these formal programmes as well as informal mentoring, I have successfully mentored several young women, which is a source of great pride for me.

Finally, I apply a gender perspective in my other professional activities. For example, as Director of Training of the Institute for International Legal and Advocacy Training in The Hague, I ensure that we benefit from the presence of women (particularly women of colour) amongst faculty and participant cohorts at all our events. Moreover, when delivering trainings to national and international criminal law practitioners I make sure to engage female participants. I make sure to create a safe environment where all views are respected, welcome, and heard.

Sexual and gender-based crimes (SGBCs) and crimes against children

15. What do you consider are the main advancements in the Rome Statute regarding sexual and gender-based crimes and crimes against children, as well as the relevant jurisprudence and charges brought so far at the Court? Please describe challenges and opportunities for improvement in adjudicating these crimes, and any experience you may have in this area, including addressing misconceptions relating to SGBCs.

Main advancements and key jurisprudence

The Rome Statute includes an extensive catalogue of sexual and gender-based crimes (SGBC) and crimes against children as crimes against humanity, war crimes and genocide. Many States Parties have also amended their national criminal codes to include the complete catalogue of crimes included in the Statute. The elements of each of these crimes are explicitly defined in the ICC's Elements of Crimes. These are all important advancements.

In addition to including an extensive list of prohibited behaviour, the ICC legal framework also contains other relevant provisions to ensure that SGBC are prosecuted in an effective and gender-sensitive manner. For example, it includes important evidentiary principles specifically for cases of sexual violence, set out in Rules 70 – 72 of the Rules of Procedure and Evidence. Amongst them is one of the very few explicit exclusionary rules of evidence in the ICC legal framework: Rule 71, prohibiting admission of evidence of the prior or subsequent sexual conduct of a victim or a witness (in light of the definition and nature of crimes within the jurisdiction of the Court and subject to article 69(4)). The Rules also include other provisions, safeguarding the specific interests of victims and witnesses of SGBC. For example, article 68(2) of the Statute on conducting part of proceedings in camera or allowing presentation of evidence by electronic or other special means as an exception to the principle of public hearings, specifically refers to victims of sexual violence (as well as victims and witnesses who are children).

The Court's handling of SGBC and the OTP's practice in investigations and charging decisions have been faithfully monitored by the civil society since the Court's inception. After the OTP in 2014 promulgated its Policy Paper on SGBC, the first such policy for an international court or tribunal, SGBC started to feature more prominently in cases before the Court. In 2022, the OTP also published a Policy on the crime of gender persecution.

Various chambers of the Court have issued important decisions regarding SGBC. They include:

- *Ntaganda Appeals Judgment on Jurisdiction (15 June 2017, ICC-01/04-02/06-1962)*: finding that rape and sexual violence, committed against child soldiers in the accused's own armed group, constitute war crimes, thereby reinforcing the prohibition of sexual violence and importantly contributing to the development of international criminal law and international humanitarian law;

- *Ntaganda Trial Judgment (8 July 2019, ICC-01/04-02/06-2359) and Sentencing Judgment (7 November 2019, ICC-01/04-02/06-2442), confirmed on appeal on 30 March 2021*: first ever (confirmed on appeal) conviction for SGBC, and elaboration of sentencing principles regarding SGBC;
- *Ongwen Trial Judgment (4 February 2021, ICC-02/04-01/15-1762) and Sentence (6 May 2021, ICC-02/04-01/15-1819) and Ongwen Appeal Judgments (15 December 2022, ICC-02/04-01/15-2022 and ICC-02/04-01/15-2023)*: first ever conviction for the crime of forced pregnancy and corresponding clarification of the elements of the crime; first conviction for forced marriage as other inhumane act before the ICC and articulation of why it is a distinct crime from sexual slavery and enslavement, as well as recognition that forced marriage is a gendered crime; various other relevant findings related to SGBC and crimes against children; use of article 56 to preserve evidence of vulnerable witnesses - direct victims of SGBC and introduction of this evidence at trial.
- *Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud Confirmation of Charges Decision (ICC-01/12-01/18-461, 30 September 2019/13 November 2019)*: first ever confirmation of a charge for the crime of gender-based persecution. The crime of gender persecution was also subsequently charged (and the charge confirmed) in other cases.

The ICC Judges have also issued important decisions regarding crimes against and affecting children, namely the *Lubanga*, *Ntaganda*, *Ongwen* Trial Judgments (all confirmed on appeal). In all three cases the respective Trial Chamber convicted the accused persons for the war crimes of conscripting and/or enlisting, and using child soldiers.

Challenges and opportunities regarding SGBC and crimes against and affecting children

The challenges include understandable reluctance of SGBC victims to come forward and share their experiences due to the stigma that still surrounds SGBC. Furthermore, the charging thus far has predominantly focused on women and girls as victims. Investigating and consequently charging sexual violence committed against male victims continues to pose a challenge, as it is often even more hidden and severely underreported. Another area is the consideration of crimes targeting individuals based on sexual orientation and gender identity.

It is important that prosecutors and judges addressing SGBC use an intersectional, trauma-informed, and survivor-centred approach to fully understand and take steps to address the trauma of the victims of SGBC. Judges should use all tools available in the Statute and the Rules of Procedure and Evidence to ensure that victims and witnesses of SGBC and children can present their evidence in court effectively. The Court should learn from best practices at the national level in this regard and exchanges between international and national courts on this topic would be welcome.

My own experience dealing with SGBC and crimes against and affecting children

I have extensive experience in relation to SGBC and crimes against and affecting children, specifically in ICC proceedings, and most notably in the *Ongwen* case, where crimes against children and SGBC were at the heart of the case. In addition to dealing with substantive issues relating to these crimes, I also dealt with procedural aspects, including the first-time use of article 56 of the Statute to preserve

the evidence of direct victims of SGBC perpetrated by the accused. During the investigation, I participated in investigative interviews of victims and witnesses. During the trial stage of the proceedings, I examined victims of SGBC and former child soldiers. I also examined experts in this field. Further, I have relevant experience working on SGBC and crimes against and affecting children in another case in the same situation and directing the investigation regarding SGBC. I serve as one of the SGBC/crimes against children focal points in the ICC OTP and was a member of the ICC OTP working group on the implementation of its Policy on Children.

In addition to my ICC experience, I have also dealt with criminal cases involving sexual violence (rape, sexual assault, sexual attack against a minor) and domestic violence during my time with the Court of Appeals in Ljubljana, Slovenia. Whilst serving with the EU Rule of Law Mission in Kosovo as a judicial advisor, I worked on cases involving conflict-related sexual violence, including the first case of rape as a war crime dealt with by the EU Rule of Law Mission.

Finally, I have lectured and published on SGBC in international criminal law, as elaborated in my Curriculum Vitae. Most recently in this regard, I co-authored a book chapter titled "Achieving Justice: Accountability for sexual and gender-based violence in the practice of UN human rights treaty-bodies and international criminal courts and tribunals".

Judicial training

The ICC is a unique institution and ICC judges face many distinct challenges. Even judges with significant prior experience managing complex criminal trials may not necessarily possess all requisite skills and knowledge needed to manage these challenges.

16. In this context, is there any area of your expertise, knowledge, or skillset which you think could be enhanced through workplace training? Would you make yourself available to take part in such professional training?

If elected, I would not only take part in the trainings offered but would actively promote training and learning amongst ICC Judges.

Personally, I would welcome all training offered, but I would be particularly keen on receiving training aimed at deepening the knowledge of new and developing areas of law and certain types of evidence, such as training on forensic analysis of digital evidence, cyberwarfare, environmental crimes. I would also welcome additional training on secondary trauma and dealing with vulnerable witnesses; training related to the tracing, seizure, and forfeiture of assets.

I believe learning is imperative for any legal professional. I believe in continuous judicial training, as evidenced also by my involvement with various judicial training initiatives. Mandatory training for those holding judicial office is the norm in many national legal systems. It is especially important at the international level where judges come from different jurisdictions, have different professional backgrounds and thus very diverse experiences and skillsets.

ICC Judges should in my view embrace every opportunity to improve their knowledge and to enhance their skills. The Bangalore Principles highlight judicial competence and diligence as one of the key principles of judicial conduct. One of the manifestations of this principle in practice is, in my view, embracing learning and attending trainings. Moreover, Article 7 of the Court's Code of Judicial Ethics (2022), addressing diligence, specifically states that "[j]udges shall take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office."

National nomination procedure

17. What is the current national selection and nomination procedure for ICC judicial candidates in your country of nationality? Please provide information on the procedure, including the application process, criteria, rules and legislation, public outcome of the process, bodies or organs involved in the selection process, and any other relevant information.

I was selected to be Slovenia's candidate for the ICC Judicial Elections 2023 in a competitive, transparent, and merit-based selection procedure, regulated by the *Act on nomination of candidates from the Republic of Slovenia for judges at international courts* ("Nomination Act"). The procedure includes multiple stages and involves several national authorities: the Ministry of Justice, the President of the Republic, the Government, the Judicial Council, and the National Assembly. Candidates are ultimately confirmed in a secret ballot by the Slovenia's National Assembly (i.e. Parliament).

Article 3 of the Nomination Act stipulates that Slovenia's candidates to international courts must fulfil the statutory requirements for judicial appointment to the Supreme Court of the Republic of Slovenia or the Constitutional Court of the Republic of Slovenia and must be fluent in at least one of the official languages of the respective international court or tribunal. In addition, pursuant to Article 2 of the Nomination Act, the candidates must also satisfy specific conditions set out in the founding documents of the international court or in a binding international treaty. The authority initiating and overseeing the nomination process in Slovenia is the Ministry of Justice (Article 4, Nomination Act).

On 8 July 2022, the Ministry of Justice published the call for applications for ICC Judicial Elections 2023 in the Official Gazette (Official Gazette of the Republic of Slovenia no. 92, 8 July 2022, p. 1790). The requirements in Article 36(3)(a), (b) and (c) of the Rome Statute, in accordance with Article 36(4)(a) of the Rome Statute were specifically listed as conditions for the applicants. The deadline for applications was 30 days. The applicants were required to demonstrate in their application that they fulfil the criteria set out in the Nomination Act and in the Rome Statute. The applicants were obliged to submit a detailed curriculum vitae and a comprehensive description of all relevant professional activities.

The applications, assessed by the Ministry of Justice as complete and meeting the necessary requirements, were, in accordance with Article 6 of the Nomination Act, reviewed by the Judicial Council of the Republic of Slovenia, a constitutional body composed of judges and other legal professionals that is responsible for the selection of judges in Slovenia. The Judicial Council on 29 September 2022 formulated a reasoned opinion (Su 266/2022-12).

On 7 November 2022, the President of the Republic submitted a nomination to the National Assembly. In accordance with Article 7 of the Nomination Act, the National Assembly is the final authority in the selection process for nominations to international courts in Slovenia. A vote of absolute majority (a minimum of 46 votes) is required to confirm a judicial nomination.

On 23 November 2022, the National Assembly voted (in a secret ballot) on the President's proposal to nominate me as the judicial candidate. The National Assembly confirmed my candidature with an overwhelming cross-party majority. This result marked one of the highest votes for comparable appointments in the history of Slovenia.

Completed in The Hague, 30 July 2023.

[End]