

2023 ICC Judicial Elections

Questionnaire to candidates

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Motivation

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

My primary motivations to serve as a judge of the ICC is to end impunity and improve the situation of victims through the rule of law. During my 34-year legal career I have always put these goals at the center of my work. I was deeply influenced by growing up under the Ceaușescu government in Romania, which was a totalitarian regime marked by massive human rights violations and violent political repression. These experiences fueled my resolve to fight impunity. After the fall of the Ceaușescu regime, I contributed to this goal as a newly instated prosecutor and judge, where I worked in implementing transitional justice laws. More recently, in between 2013 and 2023, I served as a judge at the European Court of Human Rights (ECHR).

The resolve coming from these early formative experiences in the fight against impunity and for victims' rights was further strengthened through my service on the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, to which I was first elected as an alternate member in 1996. This body, which was renamed the Sub-Commission on the Promotion and Protection of Human Rights in 1999 and on which I served as a full member beginning from 2000 to 2007, constituted one of the most important international fora for fighting impunity, strengthening the rights of victims of mass human rights violations and for protecting racial, national, religious and linguistic minorities. During my service on the Sub-Commission, I participated principally in drafting two of the most important documents for the development of international criminal law, namely the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*¹ and the report on the

¹ Later adopted as UN General Assembly, *Resolution Adopted by the General Assembly on 16 December 2005: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of*

*Question of the Impunity of Perpetrators of Human Rights Violations*². I was also particularly active on the Sub-Commission's Working Group on Contemporary Forms of Slavery, where I had my first personal interactions with victims crimes against humanity, and especially sexual violence, on the international level. Based on these interactions, I wrote multiple reports dealing with this issue and other manifestations of mass violations of human rights.

I continued this path as UN Special Rapporteur on Human Rights in the Democratic Republic of the Congo from 2001 to 2004. In my reports and official statements, I wanted to give a voice to the victims on the international level, especially to the most vulnerable ones such as women and children. To this end, I undertook several field visits to remote and dangerous regions of the DRC during the war, such as Ituri and North and South Kivu, where I conducted multiple interviews with victims of war crimes and crimes against humanity, including women who had suffered sexual violence and former child soldiers. In the most precarious post-conflict situations, mostly living in extreme poverty, these people expressed as their main aspiration and hope that the international community and the newly founded ICC would address their suffering and bring the perpetrators to justice. To serve these people strengthened my resolve as Special Rapporteur and I went on to publish several widely cited reports which documented the crimes with a focus on vulnerable groups and sexual violence. These interactions with these victims still constitute the main reason for my candidacy today because building and improving the ICC as an institution is a historical obligation to all those who put their hopes in it.

I also worked to fight impunity and support victims' rights in several other functions on the international level. Most importantly, during my seven years of service on the United Nations Human Rights Committee, I again focused my efforts on mass violations of human rights and humanitarian law and its victims. I also served as a focal point with non-governmental organizations, victims, and their representatives, with whom I worked in a close relationship. I deeply valued the opportunity to stay so close to those who are directly affected by the problems the Committee was dealing with because it gave my work a more immediate sense of purpose. The most lasting memory from the many interactions I had with these victims during my mandate is the sincere hope they expressed for international justice and their belief that international institutions such as the ICC would effectively serve this goal.

International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006.

² Sub-Commission on Prevention of Discrimination, *Question of The Impunity of Perpetrators of Human Rights Violations (Civil And Political)*, E/CN.4/Sub.2/1997/20, 26 June 1997.

On the regional level, I served on the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities for ten years. In this role, I oversaw the compliance with the first legally binding multilateral treaty on minority protection. Throughout my mandate, I made numerous visits to the Member States where I met with representatives of minorities to see first-hand how they live and what problems they face.

For the last ten years, I served as a judge at the European Court of Human Rights (ECHR). On the international level, this court occupies a pioneering role in defining the rights of criminal defendants and victims³ and on mass violations of human rights such as genocide, crimes against humanity, and war crimes.⁴ The ECHR’s caselaw also served as the major inspiration for the ICC’s jurisprudence on fair trial rights.

In addition to these roles in judicial and expert functions, I also engaged with these issues on an academic level as a scholar and teacher. Over the last 30 years, I published extensively on international criminal justice, transitional justice, victimhood and vulnerable groups, especially women, and the legal consequences of *ius ad bellum* and *ius in bello* violations. During my three years as a senior fellow at Yale University Law School I was afforded the opportunity to focus my scholarship on massive human rights violations and humanitarian law. I also paid particular attention to these issues in my teaching positions and public lectures, including presentations about human rights and witness protection at the ICC Assembly of States Parties, about violence against women at the UN, several universities around the world, and Impunity and Human Rights at Eurojust in the Hague. On a more general level, my academic background also provides me with an excellent understanding of the public international law issues relevant to the ICC, including international criminal law, human rights and humanitarian law.

³ See, e.g., *Salduz versus Turkey*, app. no. 36391/02, 27 November 2008 (regarding the legality of a statement made by a suspect in a criminal case in police custody without access to a lawyer); *Ibrahim et al. v. the United Kingdom*, apps. nos. 50541/08, 50571/08, 50573/08 & 40351/09, 13 September 2016 (regarding the right to access to legal counsel during criminal investigation where exceptionally serious and imminent threats to public safety mandate a delay); *Streletz, Kessler and Krenz v. Germany*, app. nos. 35532/97, 34044/96 & 44801/98 22 March 2001 (regarding the application of the *nullum crimen sine lege* principle to crimes committed by high ranking state officials and tried in a transitional justice context); *Mihalache v. Romania*, app. no. 54012/10, 8 September 2019 (concerning the application of the *ne bis in idem* principle to pre-trial procedures).

⁴ See, e.g., *Kolk and Kislyiy v. Estonia*, app. Nos. nos. 23052/04 & 24018/04, 11 January 2006 (on the deportation of civilians as a crime against humanity with references to the Charter of the Nuremberg Tribunal); *Jorgic v. Germany*, app. no. 74613/01, 12 July 2007 (on the definition of genocide in relation to the mass killings of Muslims in Bosnia and Herzegovina in 1992); *Drelingas v. Lithuania*, app. no. 28859/16, 12 March 2019 (on the definition of genocide in relation to Soviet repression of partisans and political dissidents in Lithuania); and most recently *Ukraine and the Netherlands v. Russia*, app. nos. 43800/14, 8019/16 & 28525/20, 30 November 2022 (on mass violations of human rights in the conflict in the Donetsk and Luhansk regions of Ukraine beginning in 2014).

I also pursued the fight against impunity as a member of and in cooperation with several NGOs, where my other roles permitted to do so. Among others, I served as a member of the International Commission of Jurists, as president of the Association Prix Femmes d'Europe in Romania, and as a lecturer, among others for Amnesty International, the International Federation for Human Rights, ATD Fourth World, the Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations, and the Institute for Non-Alignment Studies. This experience gave me another perspective on how to advocate for victims of international crimes and human rights violations and showed me how NGOs contribute to the fight against impunity on the international level.

I am confident that in addition to forming my profound motivation to serve on the ICC, these experiences provide me with a unique mix of academic and judicial expertise to tackle the issues facing the ICC today and in the future.

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

For LIST A candidates

N.B.: Because my qualifications most closely fit the requirements of List B, I submitted my candidacy under this category. However, I wish to highlight that I also possess over 20 years of judicial experience on the national, regional, and international levels, which includes highly relevant criminal case work. Thus, I feel that the questions presented in this section are equally pertinent to my candidacy and would like to take the liberty to comment on them.

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 served as a judge on the domestic, regional, and international level for over 20 years. My most relevant judicial experience is my service at the European Court of Human Rights from 2013 to 2023, where I sat on over 2,500 cases from a wide array of member states, and including over 1,500 criminal law cases. In this capacity, I also participated in cases involving mass human rights violations, international humanitarian law and international criminal law,⁵ fundamental

⁵ See, e.g., *Ukraine and the Netherlands v. Russia*, app. nos. 43800/14, 8019/16 & 28525/20, 30 November 2022; *Drelingas v. Lithuania*, app. no. 28859/16, 12 March 2019; *Chiragov and others v. Armenia*, app. no. 13216/05, 16 June 2015.

principles of criminal law,⁶ and the protection of minorities and vulnerable groups such as women and children.⁷ Moreover, I founded the Public International Law Group at the ECHR to provide more outreach to scholars and practitioners of general international law. I was also active in fostering inter-judicial dialogue, especially with courts from the Global South, and kept in active contact with criminal courts, including the ICC, through my involvement in the ECHR's Criminal Law Group.

I also served in Romania's national judiciary in several functions which are highly relevant to the ICC's mission. From 2010 to 2013, I served as a judge on the Constitutional Court of Romania, where I was a rapporteur on international law and human rights issues. I also sat on trial panels in over 2000 cases concerning criminal law, which further deepened my knowledge of criminal principles and procedure. Moreover, at the beginning of my career, from 1989 to 1995, I worked as a prosecutor and judge in Romania, where I got first-hand experience in criminal procedure, the prosecution of sexual offences against women and children, and the implementation of transitional justice laws.

At the universal level, I was a member of the UN Human Rights Committee from 2007 to 2013, and, from 2012-2013, its Vice-President. In this forum, I participated in the evaluation of reports on the human rights situations in specific countries and in deciding individual complaints about human rights violations in a quasi-judicial formation. Here, my main focus was likewise on mass violations of human rights, humanitarian law, and international criminal law. I also served as a focal point with non-governmental organizations and victims, with whom I worked in a close relationship.

Among the challenges I faced as a judge was sometimes intense public pressure. After certain decisions of the ECHR which concerned corruption of political figures, I was subject to personal attacks by them. Likewise, as a judge of the Constitutional Court of Romania, I participated in a highly publicized and

⁶ See, e.g., *Mihalache v. Romania*, app. no. 54012/10, 8 September 2019, which concerned the application of the ne bis in idem principle to pre-trial procedures; and *Ibrahim et al. v. the United Kingdom*, apps. nos. 50541/08, 50571/08, 50573/08 & 40351/09, 13 September 2016, which has since been criticized by human rights and international criminal legal scholars for lowering the standards of protection for the accused.

⁷ See, e.g., *Carvalho Pinto de Sousa Morais v. Portugal*, app. no. 17484/15, 25 July 2017, in which the Court found that courts had discriminated against a middle-age woman because her age and gender had been the decisive factors for lowering her compensation in a gynaecological malpractice case; *D.M.D. v. Romania*, app. no. 23022/13, 3 October 2017, which concerned ineffective proceedings regarding a domestic abuse case; *I.C. v. Romania*, app. no. 36934/08, 24 May 2016, in which the court found a violation of the prohibition of inhuman or degrading treatment because the domestic authorities had failed to take into account the particular vulnerability of a 14-year old girl with an intellectual disability when investigating her allegations of rape; *Kurt v. Austria*, app. no. 62903/15, 4 July 2019, which concerned the extent of positive obligations of a state to protect children from domestic violence.

politicized impeachment proceeding against the president at the time. However, despite incessant attacks on the court and against me personally, I did not let this pressure interfere with a disinterested analysis of the evidence and the arguments presented and rendered the decision which I thought was supported the relevant facts and law.

Another challenge presented to me was the large caseload at the Constitutional Court and the ECHR, which often stemmed from institutional or systemic problems. I am confident that the methods I learned in overcoming this challenge would prove to be very valuable at the ICC.

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.

As Special Rapporteur on Human Rights in the DRC, the Rome Statute had an immense importance for my work. Once it entered into force in the middle of my mandate in July 2002, I started to incorporate it in my reports and analyzed and applied its provisions to the ongoing situation in the DRC.⁸ The factual and legal bases laid in these reports later proved vital to further international criminal law enforcement. In this vein, I cooperated fully with the relevant criminal authorities and visited the Prosecutor of the ICC in 2003 to share knowledge and approaches to the situation in the DRC. One year later, in 2004, when the ICC Prosecutor decided to open an investigation into the situation in the DRC, he quoted from my reports. Aside from the Rome Statute itself, I applied multiple core legal provisions of international criminal law and humanitarian law in my reports for the Sub-Commission on Human Rights Reports.

At the European Court of Human Rights, I was also heavily involved in cases which turned on questions of humanitarian law and international criminal law. This included several significant inter-state cases such as *Ukraine and the Netherlands v. Russia*, which concerned the military conflict in the Donetsk and Luhansk regions of Ukraine beginning in 2014, *Drelingas v. Lithuania*, in which the court reviewed a guilty verdict for the crime of genocide committed during the Soviet era; and *Chiragov and others v. Armenia*, which dealt with human rights violations and war crimes in the disputed Nagorno-Karabakh territory and

⁸ Iulia Motoc, *Report on The Situation of Human Rights in The Democratic Republic of The Congo, Submitted by The Special Rapporteur, Ms. Iulia Motoc, In Accordance with Commission on Human Rights Resolution, 2002/14 E/CN.4/2003/43* (15 April 2003); Iulia Motoc, *Interim Report of the Special Rapporteur on the Situation of Human Rights in the Democratic Republic of the Congo, A/58/534* (24 October 2003).

thus raising complex issues of jurisdiction and the use of force in occupied territories. Likewise, I participated in the decision of multiple cases concerning fundamental fair trial principles in criminal procedure, most importantly *Ibrahim v. United Kingdom*, which concerned the right to defence during extraordinary circumstances of imminent threats of terrorist attacks,⁹ and *Mihalache v. Romania*, which deal with the application of the ne bis in idem principle to pre-trial procedures.¹⁰

I was also extensively involved with cases regarding international criminal law and fundamental principles of criminal law and procedure as a judge at the Constitutional Court of Romania, where I served from 2010 to 2013 and participated in over 2,000 decisions regarding criminal law. The Constitutional Court regularly deals with fundamental issues of criminal law through its individual complaints procedure, particularly cases concerning on fair trial rights.¹¹

(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.

During my career as an academic and internationally elected expert, I researched and published extensively on international criminal law. My most pertinent experience in this regard was my service as Special Rapporteur on Human Rights in the DRC. In this role, I authored several reports on the situation on the ground in the DRC, which were based on multiple field visits. These reports contained

⁹ *Ibrahim et al. v. the United Kingdom*, apps. nos. 50541/08, 50571/08, 50573/08 & 40351/09, 13 September 2016.

¹⁰ *Mihalache v. Romania*, app. no. 54012/10, 8 September 2019.

¹¹ See, e.g., Decision no. 637 of 19 October 2021 ; Decision no. 450 of 29 June 2021 ; Decision no. 772 of 18 November 2021; Decision no. 331 of 20 May 2021; Decision no. 120 of 2 March 2021 ; Decision no. 233 of 7 April 2021 ; Decision no. 32 of 19 January 2021, Decision no. 590 of September 30, 2021, Decision no. 136 of March 3, 2021 (regarding the principles of the legality in determining the punishment and the presumption of innocence); Decision no. 590 of 30 September 2021; Decision no. 331 of 20 May 2021 ; Decision no. 20 of January 19, 2021, Decision no. 637 of October 19, 2021, Decision no. 647 of October 19, 2021, Decision no. 205 of 25 March 2021 (regarding the right to defense).

comprehensive and in-depth legal opinions which analyzed the situation in the DRC under international criminal law. Moreover, they constituted the first internationally mandated reports to analyze the sexual violence and gender perspective of the war crimes in the region. As a result, these reports resonated intensely with the international community. They constituted an important legal and factual basis for debates in the UN General Assembly and the Human Rights Commission. Moreover, international legal fora, including the Prosecutor of the ICC and the International Court of Justice, in their separate inquiries into the situation in the DRC, relied on many of my findings. Beyond that, multiple non-governmental organizations and scholars cited the reports in their own studies.¹²

As a member of the Sub-Commission on the Promotion and Protection of Human Rights, on which I served from 1996 to 2007, I was also closely involved with drafting documents relevant for international criminal law and humanitarian law. Among these were the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*¹³ and the report on the *Question of the Impunity of Perpetrators of Human Rights Violations*,¹⁴ both of which profoundly influenced the further development of international criminal law and in particular many provisions of the Rome Statute as well as its interpretation. Beyond that, from the beginning of my academic career 30 years ago, I have continuously researched and published on diverse issues of international criminal law. My first PhD, subsequently published as a book, dealt with the crime of aggression and use of force under the UN Charter, both within the context of *ius ad bellum* and *ius in bello*.¹⁵ My second PhD dealt with these and other topics of international law and relations from an interdisciplinary

¹² See, e.g., UNICEF, *The Impact of Conflict on Women and Girls in West and Central Africa and the UNICEF Response* (2005); Human Rights Watch, *The War Within the War: Sexual Violence Against Women and Girls in Eastern Congo* (2002); Kerry F. Crawford, *Wartime Sexual Violence: From Silence to Condemnation of a Weapon of War* (2017); Stephen Nmeragini Achilihu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of the Child* (2010).

¹³ Later adopted as UN General Assembly, *Resolution Adopted by the General Assembly on 16 December 2005: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 21 March 2006.

¹⁴ Sub-Commission on Prevention of Discrimination, *Question of The Impunity of Perpetrators of Human Rights Violations (Civil And Political)*, E/CN.4/Sub.2/1997/20, 26 June 1997.

¹⁵ Iulia Motoc, *The Use of Force in International Law. The Exception of Article 2(4) as Interpreted by the Security Council* (1997) (prefaced by Professor Maurice Flory).

perspective of law and moral philosophy.¹⁶ Moreover, I conducted extensive research on the crime of genocide and its prevention within a rule of law framework, which led to several academic articles, workshops, and presentations at conferences. I also conducted extensive research in transitional justice as a senior fellow at Yale University Law School. In this capacity, I presented several papers and workshop on massive human rights violations and humanitarian law, including on the case *Association “21 December 1989” v. Romania*,¹⁷ which dealt with the violent repression of demonstrators by military and security forces in Romania leading up to the fall of the communist regime.

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.

In both my capacity as a scholar and as an international human rights expert, I gave legal opinions on a wide variety of sources of international criminal law and humanitarian law. I wrote on specific aspects of international criminal law and humanitarian law, including the International Criminal Tribunal for the Former Yugoslavia.¹⁸ I also published a book analyzing in detail the crime of aggression and several provisions of humanitarian law.¹⁹ Likewise, I published on the crime of genocide²⁰ and on women in conflict where I tackled the issue of woman in public international law.²¹ Moreover, I analyzed extensively the mass human rights violations and transitional justice mechanisms connected to real communism in Europe in a book which I co-edited.²² In addition, I edited and wrote

¹⁶ Iulia Motoc, *Ethics in International Relations - Sources of Political and Moral Philosophy* (PhD thesis, University of Bucharest, Department of Philosophy, 1999).

¹⁷ *Association “21 December 1989” v. Romania*, app. no. 33810/07, 24 May 2011.

¹⁸ See, e.g., *Crearea unui Tribunal Internațional pentru fosta Iugoslavia*, *Revista Română de Drept Umanitar* (1995).

¹⁹ See above, answer to Q. 2.

²⁰ See, e.g., Iulia Motoc, *The Prevention and Repression of Genocide And The Concept Of Justice: International Law Between Lege Ferenda And Utopia*, in K. Boustany & D. Dormoy (eds.), *Génocide(s)* (1999).

²¹ See, e.g., Iulia Motoc et al. (eds.), *Women in Public International Law* (forthcoming 2023).

²² Emmanuelle Jouannet & Iulia Motoc, *Internationalist doctrines during the years of real communism in Europe* (2012).

several publications on fair trial rights, especially international principles of criminal procedure and the rights of the accused.²³

Moreover, as a UN human rights expert specialized in mass violations, I authored several reports which touched on the intersections of human rights law, humanitarian law, and international criminal law. Most importantly, my reports as Special Rapporteur on Human Rights in the DRC contained extensive references and analyses of international criminal law – including the Rome Statute as soon as it entered into force – and humanitarian law.²⁴ While I served on the Sub-Commission on the Promotion and Protection of Human Rights, I likewise provided legal commentary and analysis on various questions of humanitarian law and international criminal law in many documents which I drafted and co-drafted. The most important of these reports formed the basis for the ICC’s approach to victims’ rights under the Rome Statute.²⁵

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.

I have gained experience with victims’ participation and reparation throughout my career, in my academic, judicial, and professional positions. My transdisciplinary academic background, most importantly my additional PhD in Moral Philosophy and my studies in psychology and ethics, provides me with an intellectual understanding of the situations of victims. Through this theoretical framework, I am capable to holistically analyze the positions of victims with

²³ Iulia Motoc & Emmanuel Decaux (eds.), *Justice and Human Rights* (2019); *The ECHR and the UN Human Rights Committee: Je T’Aime Plus, Moi Non-Plus - Some Remarks about Correia de Matos v. Portugal and the Right to Defend Oneself in Person*, in *ibid.* ; Iulia Motoc, Branko Lubarda, Paulo Pinto de Albuquerque, Robert Spano, Marialena Tsirli, & Aikaterini Lazana, *Fair Trial: Regional And International Perspectives / Procès Équitable : Perspectives Régionales Et Internationales* (2020).

²⁴ See, e.g., Iulia Motoc, *Report on The Situation of Human Rights in The Democratic Republic of The Congo, Submitted by The Special Rapporteur, Ms. Iulia Motoc, In Accordance with Commission on Human Rights Resolution, 2002/14 E/CN.4/2003/43* (15 April 2003); Iulia Motoc & Gáspár Biró, *Working Paper on Human Rights and Non-State Actors*, E/CN.4/Sub.2/2005/40 (11 July 2005).

²⁵ See also above, answer to Q. 2.

whom I interact in judicial settings and understand their positions beyond merely their legal situation.

Moreover, my legal background in civil law systems and my experience in international human rights bodies profoundly influence my views on the participation of and reparations for victims. Throughout my comparative studies and experiences with the main legal systems of the world, I have found that civil law systems place the greatest emphasis on victims both in substance and procedure, while accomplishing a balance with the rights of the accused. I witnessed first-hand the advantages of this approach while working as a judge and prosecutor in Romania in the early 1990s, especially in the context of sexual violence and in applying transitional justice laws. Additionally, I have gained experience with victims at the Constitutional Court of Romania, where victims can come directly through an Individual Complaints mechanism. This is why I am confident that I could contribute meaningfully with my national judicial experience to the Court's jurisprudence on the rights of victims.

The Rome Statute's recognition of victims' rights marked a significant shift towards the incorporation of international human rights law in international criminal law and buttress the Court's legitimacy.²⁶ Therefore, I believe that my experience with human rights mechanisms is highly relevant to the Court's work regarding victims. I gained highly relevant experience regarding victims' participation during my mandate Special Rapporteur on Human Rights in the DRC. My reports paid particular regard to the needs and rights of the victims, particularly victims of sexual violence and child soldiers. This approach, which was pioneering at the time, was recognized by several other UN bodies²⁷ and laid the groundwork for further work to strengthen victims' rights in international criminal law and human rights law. I worked within similar frameworks in the quasi-judicial procedure of the Human Rights Committee and at the ECHR. At that court, I participated in the expansion of the rights of victims, especially vulnerable groups such as women and children. Here, I focused especially on the positive obligations of the state towards victims in criminal investigations and procedures.²⁸

I am deeply convinced that my experience in victim protection in the context of a national civil law system and in international human rights bodies would

²⁶ Antônio Augusto Cançado Trindade, *The Access of Individuals to International Justice* (2011), pp. 201-204.

²⁷ See, e.g., UN General Assembly, *Situation of Human Rights in the Democratic Republic of the Congo*, A/RES/56/173 (27 February 2002); UN Economic and Social Council, *Resumed Organizational Session for 2004: Human Rights Questions*, E/2004/L.9 (19 May 2004).

²⁸ See, e.g., *D.M.D. v. Romania*, app. no. 23022/13, 3 October 2017; *I.C. v. Romania*, app. no. 36934/08, 24 May 2016; *Kurt v. Austria*, app. no. 62903/15, 4 July 2019.

provide me with a strong and effective background to guide my understanding of victims' rights under the Rome Statute. Arts. 68 and 75 of the Rome Statute clearly show influences from these legal systems. At the same time, these provisions reflect an important codification of the lessons learned from failures to properly protect witnesses at the *ad hoc* tribunals and these tribunals' innovative solutions to these problems.²⁹ Thus, I believe that victim protection is one of the areas of the Statute where judges should have a larger margin of discretion in filling the gaps and shaping appropriate relief where newly emerging problems demand it.

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

Victims' rights are the central building block of the Court's legitimacy.³⁰ Therefore, they must influence the functions of the Court in a holistic manner and judges should carefully consider the effects on victims in their decisions at every step of the procedure. In general, the Rome Statute provides a progressive framework to ensure victims' rights. It is based on several developments in the 1990s in the universal human rights system, and specifically in the Sub-Commission on Human Rights, in which I took an active part. The Sub-Commission adopted a first report in 1993 which proposed groundbreaking principles and guidelines for restitution, compensation and rehabilitation for victims of gross violations of human rights.³¹ The Sub-Commission followed this with a further report in 1997 which explicitly linked the fight against impunity to the basic victims' rights to know the truth, to participate in procedures to administering justice, and to receive reparations.³² Therefore, I feel personally connected to the project of strengthening victims' rights through the international rule of law. Moreover, I feel that as an expert in both international human rights and criminal law, I have an excellent background to further develop the rights of victims at the ICC in line with human rights law. Thus, as a judge at the ICC, I would also pay high regard to the UN General Assembly's *Basic Principles and*

²⁹ See, e.g., Donat Cattin, *Article 68*, in: Kai Ambos & Otto Triffterer, *The Rome Statute of the International Criminal Court: A Commentary* (3rd ed., 2016), paras. 2-4.

³⁰ Antônio Augusto Cançado Trindade, *The Access of Individuals to International Justice* (2011), pp. 201-204.

³¹ Starting with Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study Concerning the Right To Restitution, Compensation And Rehabilitation For Victims Of Gross Violations Of Human Rights And Fundamental Freedoms, Final Report Submitted By Mr. Theo Van Boven, Special Rapporteur*, E/CN.4/Sub.2/1993/8, 2 July 1993.

³² Sub-Commission on Prevention of Discrimination, *Question of The Impunity of Perpetrators of Human Rights Violations (Civil and Political)*, E/CN.4/Sub.2/1997/20, 26 June 1997.

Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,³³ which served as the inspiration for the interpretation and implementation of victims' rights at the ICC and still serves as the major influence at the intersection of human rights and international criminal law.³⁴

Against this backdrop, I would identify some specific points which, as a judge, I would pursue to meaningfully enhance victims' right. First, to improve victims' participation, the Court must do more to provide more access to justice for victims through outreach and communication to inform victims about their rights and how they can participate in the proceedings.

To this end, the Court's work must also become more visible within the countries where crimes took place and victims reside. To this end, the Court should use the possibility provided by Article 62 of the Rome Statute and Article 100 of the Rules of Procedure and Evidence to hold hearings outside of the Hague, security and budgetary concerns permitting. The Court should also expand its practice of visiting the situation countries outside of hearings to better understand the local context. This outreach is essential because it serves one of the most vital interests of victims. During my field visits to the DRC as Special Rapporteur, the victims I interviewed emphasized the need for mechanisms enabling a dialogic and participatory experience of giving testimony, setting the factual record, and ultimately administering justice.

Another point concerns the intervention of victims. Currently, judges at the ICC have expressed differing views on when victims can intervene. While it is clear that they may intervene at the pre-trial and trial stages, I agree with some judges who in separate opinions have argue in favor of intervention in the appeal phase.³⁵

Connected to that, I believe that the inconsistent practice of chambers on the participation of victims present another grave obstacle to their effective participation. Chambers should be allowed and required to react flexibly to

³³ UN General Assembly, *Resolution Adopted by the General Assembly on 16 December 2005: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 21 March 2006.

³⁴ See, e.g., the numerous references to the Basic Principles in ICC Trust Fund for Victims, *Situation In The Democratic Republic Of The Congo In The Case Prosecutor v. Thomas Lubanga Dyilo*, Observations on Reparations in Response to the Scheduling Order of 14 March 2012, ICC-01/04-01/06, TC I, 25 April 2012, *passim*.

³⁵ See, e.g., *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo*, Partly dissenting opinion of Judge Sang-Hyun Song, ICC-01/04-01/06-3121-Anx1, AC, 1 December 2014

Situation In The Democratic Republic Of The Congo In The Case Prosecutor v. Thomas Lubanga Dyilo, Observations.

situations, but the Court as a whole must also provide stability and predictability to the victims and their representatives and work out common standards. In this regard, I would work towards continuing the Court's work, which it began on its recent retreats, in a more permanent forum such as a working group on regulation, which could draw from the experience of both current and former judges.

Another significant obstacle for effective participation is the length of trials. Lengthy trials not only jeopardize the protection of victims and delay the access to potential reparations. They also represent a significant psychological burden because unresolved legal situations often exacerbate the trauma and force victims to revisit their suffering for longer than necessary for the administration of justice. Therefore, as a judge, I would focus my efforts on continuing the Court's work on streamlined and common timelines which it has already begun in its recent Chambers Practice Manual.

One of the most important challenges is identifying and finding the victims, both to enable their participation and to facilitate reparations. To this end, the Victims Participation and Reparations Section should be strengthened and act as the central entity for swiftly and efficiently identifying victims and their claims.

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.

I have an interdisciplinary academic background concerning the protection of victims, spanning law, psychology, and philosophy. Throughout my career, I have applied this background in practical work with and for victims as a judge and international expert. For example, as Special Rapporteur on Human Rights in the DRC, I made it my main task to give voice to the victims, especially vulnerable groups such as women and children. As a judge at the ECHR and the Romanian Constitutional Court and as a member of the UN Human Rights Committee I likewise worked extensively with victims of human rights violations. All these tasks required me sensitivity to trauma and harm and taught me how to incorporate these concerns into legal proceedings. Furthermore, I have dedicated a significant part of my extra-judicial activities on the issue of the protection of victims and witness. Most recently, I presented my views on witness protection under the European Convention on Human Rights at the ICC's 21st Assembly of States Parties.³⁶

³⁶ Iulia Motoc, *La Protection des Témoins et la CEDH*, ASP 21 Plenary session (8 December 2022), online at <https://asp.icc-cpi.int/sites/default/files/2022-12/ASP21-COOP-PLenary-SEGII-ECHR-FRA.pdf>.

Defence rights

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

Throughout my judicial and academic career, I have dedicated a great part of my work to upholding the rights of the accused and the rule of law in criminal procedures. At the ECHR, I sat on over 1,500 cases dealing with criminal law. Throughout my time on the Court, I tried to further develop its caselaw on criminal procedure and live up to the ECHR's global reputation as a pioneer in defence rights. The ICC has used this as an inspiration for cross-fertilization and has consistently referred to the ECHR's caselaw when interpreting and progressively developing defence rights under the Rome Statute, for example when defining the concept of procedural fairness.³⁷

Likewise, as a member of the Human Rights Committee, I participated in the decision on multiple cases concerning criminal procedure and the rights of the accused in the context of the universal human rights system. At the national level, I have extensive experience with criminal procedure both through my time as a trial judge and through my experience at the Constitutional Court. The Constitutional Court is the main guardian for upholding defence rights in Romania because it is open to all application by accused through individual complaints. Therefore, in my time there I participated in the decision of over 2,000 criminal cases, in which I tried to uphold the rights of the defence and bring the Romanian interpretation of these rights in line with international human rights law. Outside the judicial realm, I dealt heavily with fair trial considerations in criminal matters as Special Rapporteur on Human Rights in the DRC, where I put a special emphasis on the massive violations of defence rights committed within the military justice system.

High moral character, independence, and impartiality

³⁷ See, e.g., *Situation in Uganda in the case of the Prosecutor v Joseph Kony and others*, Decision on Prosecutor's Application for Leave to Appeal in Part Pre-Trial Chamber II's Decision on the Prosecutor's Applications for Warrants of Arrest Under Article 58, ICC-02/04-01/05-20, PTC II, 19 August 2005, para. 30; *Situation in the Democratic Republic of Congo in the case of the Prosecutor v Thomas Lubanga Dyilo*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, ICC-01/04-01/06-772 (OA4), AC, 14 December 2006, para. 38; see generally Yvonne McDermott, *Fairness in International Criminal Trials* (2016), pp. 41-103.

Nicolas A. J. Croquet, *The International Criminal Court and the Treatment of Defence Rights: A Mirror of the European Court of Human Rights' Jurisprudence?*, 11 Human Rights Law Review 91 (2011).

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”?

I am deeply convinced that in order to live up to the “high moral character” requirement, a judge must live and breathe the principles of impartiality, independence, and professionalism. To me, these values hold meaning not only as tenets of professional ethics, but they make up the very foundation of the rule of law itself for “when public judicatories are swayed, either by avarice or partial affections, there must follow a dissolution of justice, the chief sinew of society.”³⁸

A judge must carefully apply these principles to her daily judicial tasks and the challenges that it brings with them. I am convinced that in most cases, the right course of action is easily found if one adheres to these principles in good faith. For more complex situations I feel that I am uniquely prepared because I have both the theoretical education through a PhD in moral philosophy and over 20 years of judicial experience during which many challenges crystallized my understanding of the moral responsibilities of a judge.

Because of these experiences I also greatly value the relevant codifications of ethical standards which both bind international judges and can clarify the right course of action for them. For the ICC, these are primarily laid down in Article 40 of the Rome Statute and the Court’s revised Code of Judicial Ethics.³⁹ Beyond that, I also consider other instruments to provide relevant guidance, most importantly, the Bangalore Principles of Judicial Conduct,⁴⁰ the Basic Principles on the Independence of the Judiciary,⁴¹ Article 14 of the International Covenant on Civil and Political Rights and its relevant interpretations provided by the Human Rights committee,⁴² the Code of Conduct for the Court of Justice of the European Union,⁴³ and the ECHR’s Resolution on Judicial Ethics,⁴⁴ to whose

³⁸ Sir Thomas More, *Utopia* (1516).

³⁹ International Criminal Court, *Code of Judicial Ethics*, ICC-BD/02-02-21 (19 January 2021).

⁴⁰ *Strengthening Basic Principles of Judicial Conduct*, ECOSOC 2006/23, Annex.

⁴¹ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (26 August to 6 September 1985) UN General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

⁴² See Human Rights Committee, *General Comment No. 32*, CCPR/C/GC/32 (23 August 2007).

⁴³ *Code of Conduct for Members and Former Members of the Court of Justice of the European Union*, 2021/C 397/01 (30 July 2021).

⁴⁴ European Court of Human Rights, *Resolution on Judicial Ethics* (21 June 2021).

drafting I contributed principally as president of that court's Committee on the Status of Judges.

These instruments as well as my personal convictions have clear implications for the bearing of a judge. First, as regards independence, the relationship with the judge's country of origin is most crucial. On the one hand, it should be based on respect for a member of the Assembly of States Parties. At the same time, a judge should be cautious to avoid even the appearance of dependence, partiality, or bias towards any state, especially to his or her country of origin. My personal experience has confirmed the validity of these principles. During my more than two decades of service in domestic and international judicial offices, I often took positions adverse to the interests of my home country, including in cases which had major political implications and were under intensive public scrutiny and media attention. Especially under these circumstances, I have found that a maximum of independence and impartiality is not only necessary, but the most powerful tool at the disposal of a judge to preserve the legitimacy of the judicial office.

The relation to private actors, especially NGOs, is likewise an important indicator of a judge's independence. The ICC is as much a project of international civil society as it is of states. Therefore, outreach to NGOs is vital if the Court wishes to succeed in establishing a public consciousness about international criminal justice in the wider world. At the same time, too close ties might jeopardize a judge's independence or the appearance thereof. To strike a balance between these interests, as an ICC judge I would continue to accept public speaking engagements or other forms of informal cooperation with other courts, NGOs, and universities if I was convinced that these would further the legitimacy, efficiency, and public perception of the court in its institutional context. However, I would decline to hold any official functions in organizations that have dealt before the Court.⁴⁵

Regarding impartiality, I essentially agree with the definition provided in 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."⁴⁶ The first category includes, but is not limited to cases in which the judge has a personal association with one of the parties or an economic interest in the outcome of a case, harbours actual bias or prejudice concerning a party, or has personal knowledge of facts or evidence in a case.

⁴⁵ See also International Criminal Court, *Code of Judicial Ethics* Art. 10.

⁴⁶ *Strengthening Basic Principles of Judicial Conduct*, ECOSOC 2006/23, Annex, Principle 2.5.

The second case, the appearance of partiality to an objective observer, is harder to define, but judges should generally err on the side of caution because the potential risks of such an appearance can be far greater than any advantage gained by the judge participating in the relevant proceedings. However, as distinguished legal scholars and practitioners, judges at the ICC necessarily have had a long and full career before starting service at the Court. Consequently, they may have numerous professional and personal ties to individuals, organizations, and states which have dealings with the Court. I believe that a judge's former academic and civic commitments, for example voluntary work for non-governmental organizations, should not a priori create conflicts in unrelated cases in which individuals or organizations with which they had worked in the past are in some form involved. Such a rigid rule would discourage legal professionals from engaging in the kind of pro bono work that is urgently needed in the areas of human rights and humanitarian law. Rather, such situations require careful analysis in each individual case to safeguard the Court's impartiality and appearance of impartiality. In this regard, a Committee on the Status of Judges, which I would be in favor of instituting at the Court (see above, answer to B.3.), could provide guidance, predictability, and transparency regarding the judges' practice in this area.

Moreover, I am strongly in favor of instituting an independent committee on the status of judges within the Court, consisting of experienced former and current judges, which could provide guidance to individual judges and the Court as a whole in securing their independence and impartiality in non-judicial activities. In the absence of such a committee, I would seek guidance from the presidency of the Court.

Lastly, I deeply believe that professionalism demands both diligence in a judge's work and respect for the institution and its people. This encompasses collegiality with fellow judges and discretion in representing the Court. Moreover, it also entails a respectful and appreciative conduct with the Court's staff. Thus, all forms of abuse of power and improper behavior to subordinates would be highly contrary to conduct of a high moral character and would constitute a betrayal of the Court's mission.

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.

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?

During my judicial career, I often took positions against my government, most notably at the Constitutional Court of Romania and at the ECHR. Therefore, I know about the challenges of being an impartial judge, especially in well-publicized and politicized cases.⁴⁷ In contrast to the victims and witnesses who often jeopardize their safety by coming to the ICC, judges are well-protected and the difficulties that they face are relatively minor. Thus, as an ICC judge I would regard it as my most basic duty to bear any pressure or other unpleasant experiences in order to remain independent and impartial. Because of my prior experiences, I feel well-prepared to live up to this duty.

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 have never worked in an executive or legislative function within those branches of my government. From 2002 to 2003, I worked as the scientific director of the Romanian Diplomatic Academy, which is formally part of the Ministry of Foreign Affairs (MFA). However, my responsibilities were purely academic as I oversaw the post-communist transition of the Academy's educational program. Thus, this role did not entail any executive functions within the MFA. Likewise, while in some jurisdictions, prosecutorial roles are part of the executive, in Romania, as in many civil law countries, prosecutors are part of the judiciary. Consequently, during my time as a prosecutor I was not disposing of any executive functions within the Ministry of Justice.

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.

⁴⁷ See also above answers to Q. 2 & 8.

Throughout my career as an academic, judge, and internationally elected expert, I have gained a diverse range of in overseeing and managing staff.

Most importantly, at the Constitutional Court of Romania, I was intensely involved in in staffing decisions regarding the court's registry through membership in the commission on hiring and through weekly administrative plenaries. Likewise, at the ECHR, I was consulted and took active part in the hiring of lawyers for the Romanian registry unit, which at times comprised over 20 full time staff members. I was also part of the commission which oversaw the hiring process of a new Registrar and Deputy Registrar. Lastly, I presided the Committee on the Status of Judges for 7 years, in which capacity I principally participated in drafting the court's Resolution on Judicial Ethics.

In these capacities, whenever I heard about allegations of misconduct, I encouraged staff members to complain about these issues to the relevant internal mechanisms, including in circumstances in which the alleged perpetrator was in a very high position within the institutional structure. Within the ECHR, I also encouraged the recruitment of women and minorities, and the first member of the Roma people as a member of the Court's registry. Likewise, as a professor I have always tried to foster diversity among my PhD students and staff. As a judge at the ICC, I would work towards a more diversity among the staff members. I would especially encourage qualified candidates from the Global South and Africa to apply. I am convinced that programs to increase the number of staff members from these regions not only serves the goals of substantive equality and fairness. Beyond that, it also strengthens the legitimacy of the Court, which in the past was often criticized for focusing almost exclusively on Africa while being staffed predominantly by lawyers from the global North.

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.

I have worked in international environments and institutions for nearly three decades, which has provided me with insights into how multicultural workplace cultures work. Through my international work I also gained knowledge about multiple cultures which also allows me to communicate more efficiently in an international environment and resolve conflicts. Moreover, I believe that I could be of great help in improving the ICC's workplace culture because I experienced and participated in a positive transformation of the workplace culture in an international court at the ECHR. To this end, I would encourage the establishment of a committee dealing with the status of judges, as it exists at the ECHR, and thus formalize some of the Court's impressive strides in improving the workplace culture which it has begun in its regular retreats in the past years.

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

Throughout my career, I strove to include a perspective on existing imbalances and structural inequalities in society, including gender inequalities, in my judicial and extra-judicial work.

During my judicial service at the ECHR, I adopted a gender sensitive perspective in a variety of cases. For example, I participated in judgments which applied a gender perspective in finding violations of the state's positive obligation to conduct an effective investigation into cyber violence against a woman,⁴⁸ in addressing sexual harassment at the workplace,⁴⁹ and in protecting a woman from domestic abuse by her husband.⁵⁰ Most recently, in a case about freedom of expression, I warned about the dangers of depictions of violence against women and gender stereotypes.⁵¹

Likewise, as Special Rapporteur on Human Rights in the DRC, I consistently applied a gender perspective in my reports, highlighting the specific vulnerabilities of women and girls in the conflict as well as the intersectional implications for victims of sexual violence, ethnic minorities, the poor, and those infected with HIV/AIDS. I deeply believe that the empowerment of women in conflict and post-conflict situations is an imperative necessity to achieve lasting peace.⁵² Their participation in and compensation by judicial mechanisms such as the ICC is a crucial building bloc in achieving that goal and would therefore constitute one of my main priorities as a judge at the ICC.

I also followed a gender sensitive approach while serving on the UN Sub-Commission on the Promotion and Protection of Human Rights, and particularly on its Working Group on Contemporary Forms of Slavery, where I drafted several resolutions which specifically focused on the gender aspect of modern slavery and related human rights violations. Likewise, as a member of the UN Human Rights Committee, I always raised the question of violence against women in the Committees discussions of country reports.

⁴⁸ *Buturuğă v. Romania*, app. no. 56867/15, 11 February 2020.

⁴⁹ *C. v. Romania*, app. no. 47358/20, 30 August 2022.

⁵⁰ *Bălșan v. Romania*, app. no. 49645/09, 23 May 2017.

⁵¹ *Patrício Monteiro Telo de Abreu v. Portugal*, app. no. 42713/15, 7 June 2022 (opinion concordante de la juge Motoc).

⁵² See also *United Nations Security Council Resolution 1325 - Women in Armed Conflict*, S/RES/1325 (31 October 2000).

In my academic career, I have also paid special regard to gender perspectives. In this vein, I published two books on women in human rights and public international law⁵³ and held numerous lectures on women's rights in the past two decades, including at the UN University in Tokyo, the European Parliament, and the ECHR. Moreover, I served as the president of the Association Prix Femmes d'Europe in Romania.

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.

The ICC constitutes a major advancement in its substantive and procedural approach to sexual and gender-based crimes and its victims.

Substantively, the Rome Statute is the first international legal instrument which prescribes many SGBCs as separate and distinct crimes. Beyond that, the Statute also recognizes SGBCs as part of other crimes, such as preventing births within a group as an element of genocide.

The Rules of Procedure and Evidence state, for example, that consent cannot be inferred by certain circumstances such as the victim's words or conduct under coercive circumstances, or the victim's silence or lack of resistance. Evidence of the prior or subsequent sexual conduct of a victim or witness shall generally not be admitted. Article 68(1) of the ICC Statute also provides for the protection of victims and witnesses with specific regard to gender and gender violence.⁵⁴

The Statute further obligates the Prosecutor to appoint advisers with expertise on sexual and gender violence pursuant to Article 42(9) and to consider the gender of victims and witnesses as well as the nature of sexual and gender crimes in investigations pursuant to Article 54(1)(b). Concerning the judiciary, Article 36(8) calls upon the States Parties to appoint judges with expertise on violence against women and children. Furthermore, the Rules of Procedure and Evidence require organs of the Court to take gender-sensitive measures with

⁵³ Iulia Motoc et al. (eds.), *Women in Public International Law* (forthcoming 2023); Iulia Motoc (ed.), *Women's Rights: From Regional to Universal in Human Rights - Essays in Honor of Justice Bhagwati* (2009).

⁵⁴ Tanja Altujan, *The International Criminal Court and Sexual Violence: Between Aspirations and Reality*, *German Law Journal* (2021), 22, pp. 878–893

respect to victims and witnesses. Apart from the explicit criminalization of sexual violence, the ICC Statute and the accompanying documents, the Elements of Crimes and the Rules of Procedure and Evidence contain several important provisions aimed at ensuring that sexual crimes are prosecuted in an effective and gender-sensitive manner. Pertaining to substantive law, the Elements of Crimes define rape in a gender-neutral manner, clarifying that the crime does not exclusively apply to women and girls. With regard to genocide, they also clarify that the genocidal act of “causing serious bodily or mental harm” under Article 6(b) of the ICC Statute may include rape and sexual violence.

The Statute further obligates the Prosecutor to appoint advisers with expertise on sexual and gender violence pursuant to Article 42(9) and to consider the gender of victims and witnesses as well as the nature of sexual and gender crimes in investigations pursuant to Article 54(1)(b). Concerning the judiciary, Article 36(8) calls upon the States Parties to appoint judges with expertise on violence against women and children. Furthermore, the Rules of Procedure and Evidence require organs of the Court to take gender-sensitive measures with respect to victims and witnesses.

On the procedural level, under Article 54(1)(b) the Prosecutor must take into account whether a crime includes sexual violence, gender-violence, or violence against children in pursuing the effective investigation and prosecution of a crime. Likewise, the ICC’s reparations regime represents a significant advancement because it allows for easier access to reparations in one procedure without parallel litigation. This is especially important for victims of sexual and gender-based crimes because of their particular vulnerability. Because of this, I also consider the Trust Fund for Victims as a major improvement.

Within the Court’s jurisprudence, I would like to highlight some examples of the Rome Statute’s application to sexual and gender-based crimes and crimes against children. Within the context of crimes against children, I consider the *Lubanga* case of particular relevance because it clarified the elements of conscripting, enlisting and using child soldiers, especially active participation in hostilities.⁵⁵ However, it regrettably did not include victims of sexual and gender-based crimes in its reparations decision which fails to recognize the gendered aspects of most crimes within the Court’s jurisdiction and risks to discriminate women in the reparations process. On the other hand, the *Ongwen* case represents a laudable example of jurisprudence, because it recognized forced marriage, forced pregnancy, and sexual slavery as separate crimes allowing for cumulative convictions. This constitutes an important acknowledgement of reproductive

⁵⁵ *Prosecutor v Thomas Lubanga Dyilo, Judgment on the Appeals of The Prosecutor and The Defence Against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008*, ICC-01/04-01/06-1432, AC, 11 July 2008.

autonomy on the part of the Court. Moreover, this case stands for the Court’s careful consideration of the context of long-term armed conflicts and the forced recruitment of child soldiers in sentencing decisions. However, while the prosecution included children born out of forced pregnancies as a distinct group of victims,⁵⁶ the Court did not recognize their victimhood, which risked their further stigmatization as children of perpetrators. The Trial Chamber explicitly clarified in the *Ongwen* judgment that the crime of forced pregnancy protects the value of reproductive autonomy. This indicates a clear understanding of the conceptual differences between sexual and reproductive violence.

Another positive example is presented by the *Bosco Ntaganda* case. While in this case, the judges of the Appeals chamber were regrettably divided on the question of liability of indirect co-perpetration and did not consolidate this legal question, the judgment provided a carefully reasoned treatment of sexual violence, including sexual slavery, as part of war crimes and crimes against humanity.

In 2022 the Prosecutor has published the policy-crime-gender-persecution. The paper recognizes the complex nature of victimization. Only then can we successfully advance accountability for the crime against humanity of persecution on the grounds of gender under the Rome Statute.

“This new Policy takes a comprehensive approach to sexual and gender-based crimes that may amount to the crime against humanity of persecution on the grounds of gender (gender persecution). It recognizes all of its victims, namely women, girls, men, boys, including/and LGBTQI+ persons. It also recognizes that acts or crimes of gender persecution may include, but are not always manifested as, forms of sexual violence or any physical violence or physical contact. They may include psychological abuse. They may also take forms other than physical injury to persons, including acts such as cultural destruction or confiscation and prohibition of education for girls.”⁵⁷

Much attention has been devoted to sexual and gender- based crimes at the ICC in recent years. While some innovative approaches have been advanced, an analysis of the ICC’s jurisprudence reveals that a clear understanding of what constitutes an act of sexual violence or gender-based violence and the relation between these concepts has not been established. I think there are ways to improve this approach, from the way investigators and judges can be educated in this regard. There is a difficulty to work with evidence in this field.

⁵⁶ *Statement Of The Prosecutor Of The International Criminal Court, Fatou Bensouda, At The Opening Of Trial In The Case Against Dominic Ongwen* (6 December 2016).

⁵⁷ Karim A.A *Policy on the Crime of Gender Persecution* (7 December 2022)

Moreover, as someone who has investigated such crimes on the ground, I believe that cultural understanding and discussion with the communities to which these victims belong is fundamental.

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?

In over 20 years of judicial experience in various national and international institutions, I faced many challenges connected to high caseloads, public pressure, interpersonal and cultural contrasts, and dealing with suffering and hardship. I overcame these challenges by knowing my strengths and weaknesses and remaining flexible by seeking guidance and training where it was necessary. Therefore, while I feel well prepared for the tasks and challenges of an ICC judge, I am open to enhance my expertise where it is necessary to better serve the mission of the Court.

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.

On 15 November 2022, the Government of Romania approved, by memorandum, the Procedure for the nomination of the Romanian candidate for the position of judge at the International Criminal Court. For the election of judges for the years 2024-2033 at the twenty-second session of the Assembly of States Parties, interested persons had to submit their candidatures until 9 January 2023, exclusively in electronic format. The applications submitted were examined by

the Selection Committee in accordance with Article 5(2) of the nomination procedure. The Commission was composed of the following members:

- Traian Hristea, Secretary of State for Global Affairs and Diplomatic Strategies at the Ministry of Foreign Affairs (MFA), President of the Commission;
- Alina Orosan, Director General, Legal Affairs Department, MFA, member;
- George Șerban, Secretary of State in the Ministry of Justice (MoJ), Vice-President of the Commission;
- Dana Roman, Director, Directorate of International Law and Judicial Cooperation, Ministry of Justice, member;
- Daniel Grădinaru, President of the Superior Council of Magistracy (SCM), member;
- Iulian Dragomir, Judge, High Court of Cassation and Justice (ICCJ), member;
- Elena Lazăr, Lecturer, Faculty of Law, University of Bucharest, member.

The interviews were held on 27-30 January 2023, at the premises of the Ministry of Foreign Affairs, both in-person and using remote communication. The interview took place in Romanian, French, and English, and candidates had to answer questions in in these languages as well.

In accordance with Article 6(6) of the nomination procedure, the Selection Committee decides on the basis of the following criteria: a) the candidate's legal qualifications and knowledge of the Rome Statute of the International Criminal Court and ICC case-law; b) professional experience; c) ability to perform judicial functions; d) language skills; e) ability to work in a multicultural environment reflecting different legal systems; f) absence of any doubt as to the candidate's independence, impartiality, probity and integrity.

At the end of the hearings, in accordance with Article 7 of the nomination procedure, the Commission selected me as the Romanian candidate for the nomination as a Judge at the ICC, as well as two reserve proposals, by a majority vote of the members of the Commission.

Thank you.