

Draft Questionnaire for candidates to the 2020 ICC Judicial Election

Civil society¹ plays an important role in monitoring the election of International Criminal Court (ICC) officials. We promote fair, merit-based and transparent elections.

Please answer the questions below.

Name: **Gocha LORDKIPANIDZE**

Nationality: **Georgian**

Nominating State: **Georgia**

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

Gender: **Male**

Date: 27/09/2020

BACKGROUND

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

International law continues to be my professional and personal project through which I sought to contribute to extending the reach of rules-based international order and international justice. Driven by this conviction, I have been involved in negotiating the ICC Statute and other instruments of the Court in 1997-2002.

I believe, all those who negotiated the ICC Statute bear a special responsibility both for the outcome of these negotiations and making the Court successful in practice especially at this critical juncture. For me, this is the primary motivating factor to become a judge of the International Criminal Court. In doing so I am encouraged by the examples of the framers of the ICC Statute who served or continue to serve as judges with the Court.

Hence, I am keen to bring my experience as well as moral and professional assets gained throughout my career into the judicial practice of the ICC.

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

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

I believe the creation of the ICC as a permanent institution of international criminal justice is a great achievement in itself. At close look, even the biggest challenges for the Court appear to be a blessing in disguise:

- **ICC must, as all Courts would do, resolve difficult questions of interpretation and application of law.** The current trend shows that the Court as a permanent institution of international criminal law is increasingly called to adjudicate complex issues of public international law such as jurisdiction, recognition and statehood. This trend attests that along with candidates from list A with criminal law expertise, candidates from list B with international law background remain in great demand. Nothing more illustrates better the complex interaction between international criminal law, international law and human rights than the decision by the Pre-Trial Chamber in the *Bangladesh/Myanmar* situation, finding that the Court may assert jurisdiction pursuant to article 12(2)(a) of the Statute if at least one element of a crime within the jurisdiction of the Court or part of such crime is committed on the territory of a State Party to the Statute.

There also needs to be understanding that even those decisions of the Court that are criticized may contain the seeds of what then becomes consistent judicial practice to contribute to the increased effectiveness of the Court machinery. Sometimes the Appellate Chamber appears (for instance in *Bemba*) to have been setting stringent standards for the Prosecutor's team though – all in the benefit of administration of justice as the Prosecution has to prepare the case and supply it with the evidence based on these standards. Nothing to be afraid of the Court decisions taken by narrow margin or even dissenting opinions because it is a part and parcel of the judicial practice of the Court provided they are taken within the common judicial culture;

- **Efforts to continue to consolidate a common working/judicial culture amongst Judges.** The marriage of the civil and common law traditions manifested in the text of the Statute is not enough as there needs to be common understanding of Statute and international law in the wider context as a culture of legal thinking. Selection of ICC judges at ease with both ways of civil and common law traditions appears to be a way out.

In building common judicial practice ICC as the institution of “many firsts” in international criminal justice project, has faced with a variety of novel substantive and procedural challenges², in particular:

- (i) The length of proceedings at the ICC has considerable impact on the rights of the accused and the rights of the victims. The Court itself acknowledged this challenge in the *Bemba* case as to the seriousness of the consequences entailed

² Song, S-H, ‘International Criminal Court-Centered Justice and Its Challenges’, MJIL, 7(1), 2016, 8-13.

by the absence of statutory limits as to the duration of the proceedings or custodial detention;³

(ii) Many Acquittals and Few Convictions. Certain criticism is leveled at the ICC because of relatively many acquittals and few convictions. Further, some argue that the ICC has problems with prosecuting high-level perpetrators while others draw attention that criminal actions or inactions of the highest political and military political and military personnel is always hard to establish.⁴ At the same time, there are also views that the fairness of any criminal justice system must be judged by acquittals and not by convictions.⁵

(iii) Duplication in terms of procedures. Another challenge is possible duplication in terms of procedures in particular to pre-trial and trial procedures. Unlike the *ad hoc* Tribunals, the ICC procedures envisage two preparatory: (i) the pre-trial stage before the Pre-Trial Chamber, which ends with the decision on the confirmation of charges, and (ii) the trial preparations, which are conducted by the Trial Chamber. Both the confirmation of charges and the trial form part of a process which aims to prepare the case for adjudication by the Court. Hence, the pre-confirmation and post-confirmation activities ought to be coordinated, to the extent possible, in order to avoid duplications and reduce the time required for the preparations for trial. The Pre-Trial Chambers have interpreted their mandate as requiring a rigorous confirmation process and decisions that go into great detail with respect to various legal and evidentiary matters. Once the case has been confirmed, however, the Trial Chambers have been cautious to take charge of the preparations of the case for the trial that the Chamber is to conduct. Consequently, extensive and time-consuming preparations have taken place twice, albeit for different procedural purposes.

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

See the response to Question 2.

Nevertheless, I share the optimism that the Court will gradually live up to the promises of effective international criminal justice.

LEGAL SYSTEM

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

a) **Which legal system is your country part of?**

³ Decision on Mr Bemba's claim for compensation and damages, ICC-01/05-01/08, PTC II, 18 May 2020.

⁴ As noted by Adrian Fulford "[T]he evidence-trail leading to the General at his headquarters and the politician in his office is often imperfect: identifying what a figure in authority did or did not know, or did or did not order, is frequently hard to establish [...]." See 'Foreword', in Olásolo H, *The Criminal Responsibility of Senior Political and Military Leaders as Principals to International Crimes* (Hart 2009).

⁵ Acquittals by the International Criminal Court by Richard Goldstone, Freya Baetens, Anthony Abato, January 18, 2019 at <https://www.ejiltalk.org/acquittals-by-the-international-criminal-court/>.

Georgia is part of the civil law system, also referred to as continental law system with elements of the case law system such as European Court of Human Rights under the European Convention on Human Rights.

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

I hold two master degrees in law from the UK and US universities where I learnt a great deal about common law systems in those countries. In 2003-2004 I studied US Constitutional Law as a part of my LLM curricula at Harvard Law School.

I have been involved in the negotiations of the ICC Statute and other instruments, including ICC Rules of Procedure and Evidence as derived from both civil and common law systems. As a Deputy Justice Minister with international courts falling under my portfolio I have developed an extensive experience in litigation before the European Court of Human Rights since 2012 that is based on the case law tradition.

In my role as a Fulbright visiting scholar with Columbia University School of Law in 2007-2008 and then adjunct professor at Columbia University in 2009-2013 I had to deal with particular aspects of common law systems.

LANGUAGE ABILITIES

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

a) What is your native language?

Georgian.

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

My command of English is demonstrated by the two master degrees in law from the English speaking countries (University of Essex - United Kingdom, Harvard Law School - United States) as well as my 29 years of professional and academic experience in an English language environment.

In particular, I have more than 20 years experience of working with international courts and international organizations as:

- 1) Second Secretary of the Division of International Organizations; Deputy Head and then Head of UN Division at the Ministry of Foreign Affairs of Georgia in 1992-1999;
- 2) Counsellor, Senior Counsellor and then Acting Deputy Permanent Representative at Permanent Mission of Georgia to United Nations in 1999-2003;
- 3) Adviser in the Minister's Secretariat, then Ambassador-at-Large at the Ministry of Foreign Affairs of Georgia 2004-2005;

- 4) Foreign Affairs and International Law Adviser to Prime-Minister of Georgia in 2005-2007;
- 5) Member of the Gender Equality Commission of the Council of Europe since 2014 until present;
- 6) Substitute Member of the The Venice Commission of the Council of Europe (European Commission for Democracy through Law) since 2019 until present;
- 7) Deputy Minister of Justice of Georgia since 2012 until present;
- 8) Member of the Board of Directors of the Trust Fund for Victims of the ICC.

In addition, I have pursued research, taught a postgraduate course and led workshops in English at the Columbia University Law School (New York) in 2007-2013

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

I know basic French. Currently I am taking an intensive course in French language.

LIST A OR B CRITERIA

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

- a) **For List A candidates:**

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

- b) **For List B candidates:**

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

I have extensive experience of working on the issues of international courts and international organizations in international criminal law: 12 years with the ICC; 3 years with issues related to ICTY; 2 years with ICTR.

In particular, I contributed to national measures to enhance Georgia's co-operation with international tribunals in 1997, including proposals concerning changes and amendments to the legislation of Georgia (including in criminal law and procedure).

Furthermore, serving as a focal point of the Georgian negotiating team on the Rome Statute, I made major contributions to shaping Georgia's positions, especially as regards continued international crimes, drafted the mandate of the Georgian delegation for negotiation of the Rome Statute at the Rome Conference, proposed and advocated Georgia's joining of the Like-minded Group of States, and as Georgia's representative I worked on proposals and supported the Group on substantive issues of the Rome

Statute, including the inherent jurisdiction of the Court over the 'core' crimes of genocide, crimes against humanity, war crimes etc.

I also participated in negotiations leading to the adoption of the Rome Statute in 1998. Following the Rome Conference, as a legal counsellor at the Permanent Mission of Georgia to the UN participated in the work of the Preparatory Commission for the International Criminal Court in New York (1999-2002) on the relationship agreement between the Court and the UN, the Financial Regulations and Rules of the Court, the Agreement on the Privileges and Immunities of the Court, and the Rules of Procedure and the crime of Aggression.

In my current capacity as Deputy Minister of Justice since 2012 I represent Georgia in relations with the International Criminal Court as regards cooperation with the ICC system. I led efforts at the national level to ratify the amendments of crime of aggression (Kampala Amendments) finalized in 2014. Consequently, contributed to elaboration of the respective changes to the Criminal Code of Georgia. In particular, Georgia implemented crimes under the jurisdiction of the Court by incorporating them into already existing crimes under the Criminal Code.

Furthermore, in order to strengthen the criminal law framework in Georgia, led efforts to conclude the following international agreements with the ICC:

- 1) Agreement on cooperation between the Government of Georgia and the Office of the Prosecutor of the International Criminal Court (entry into force: 10 October 2016);
- 2) Agreement between the Government of Georgia and the International Criminal Court (entry into force: 26 July 2017);
- 3) Agreement between the Government of Georgia and the International Criminal Court on the Enforcement of Sentences of the International Criminal Court (entry into force: 24 January 2019).

As a Deputy Minister of Justice of Georgia I supervise the Department in charge of litigation before the European Court of Human Rights (ECtHR) and UN Treaty-Based Bodies. In this capacity, since 2012, I have developed an extensive experience in leading and handling litigations. During this period I have worked on numerous cases related to criminal law and procedure, such as: obligations to conduct thorough and effective investigation at domestic level; apprehension and custody; detention; gathering of evidence; interrogation standards; fair trial standards in criminal proceedings (including equality of arms, burden of proof, admissibility of evidence, rights of defence and victims); domestic violence; violence against women; right not to be tried or punished twice (*ne bis in idem*); no punishment without law; lawfulness of detention; extradition, etc.

It is also my mandate to coordinate execution of ECtHR judgments/decisions and decisions of UN committees related to criminal law. This includes systemic efforts to address individual cases as well as prevent future violations.

Here are some other noteworthy developments that I have led or been involved in with respect to criminal law and procedure:

- (i) drafting of the first Human Rights Strategy of Georgia for 2014-2020 to cover key challenges and identifying needs to reform judicial system and amend criminal law;
- (ii) drafting the amendments to Criminal Code of Georgia;
- (iii) drafting the Juvenile Justice Code of Georgia adopted in 2015;
- (iv) drafting the package of laws on protecting women from violence to harmonise the Georgian legislation with the Istanbul Convention on preventing and combating violence against women and domestic violence in 2017;
- (v) Coordinated efforts in the preparation of guidelines for law enforcement agencies on human trafficking issues, with a focus on the identification of THB victims, the treatment of women and child victims;
- (vi) Under the auspices of Inter-agency Humanitarian Commission of Georgia, led efforts to further develop the legal framework on missing persons in times of armed conflict, putting in place relevant instruments to combat and prevent sexual and gender-based violence during and after armed conflict.

Moreover, I have more than 11 years of academic and research experience relevant to the ICC. I have taught courses or pursued research relevant to the ICC and its practice at some of the world's leading academic institutions and universities: in 2002, I carried out a research project on problems of definition of the crime of Aggression in the context of the Preparatory Commission for the International Criminal Court at the Max Planck Institute for Foreign and International Criminal Law, Freiburg, Germany; I conducted a research project on deficient acts of international institutions in international law, including UN and ICC cross-cutting practices, as a Fulbright visiting scholar at Columbia University Law School, New York.

- **How would you describe your experience in criminal proceedings?**

Being a List B candidate, I have not participated in criminal proceedings as a judge, however, as described above, I have extensive experience in proceedings before the European Court of Human Rights, among others, related to criminal law issues.

OTHER EXPERTISE AND EXPERIENCE

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

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

Experience and knowledge of judges of the International Criminal Court must satisfy the requirements of Article 36 of the ICC Statute. Yet, given the diversity in experiences and backgrounds of judges it is important to build and strengthen common judicial culture

and collegiality amongst judges even before they start performing their duties. Therefore it is proposed to organize special seminars for incoming and serving judges together to focus on comparative reasoning of international criminal courts/tribunals, including best practices on testimony analysis, evidence assessment, addressing witnesses and victims as well as getting familiarized with courtroom management at the ICC.

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

Since 2012 I have managed and litigated 3 inter-state cases before the European Court of Human Rights related to 1) mass deportations on the basis of ethnic grounds; 2) deliberate and indiscriminate attacks against civilians; 3) murder of prisoners of war; 4) ill-treatment of prisoners of war and civilians; 5) unlawful deprivation of liberty of civilians; 6) mass destruction and pillaging of property on ethnic grounds; 7) forced displacement of civilians on ethnic grounds; 8) administrative practice of massive harassment, detention, assault and murder of civilians on ethnic grounds.

The experience of leading such complex mass violation cases furnished me with a valuable legal expertise related to crimes against humanity and war crimes as well as gathering and disclosure of evidence.

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

My extensive experience in academia and diplomacy will be relevant to the work of an ICC judge. ICC being both an international court and international organisation, is largely dependent on cooperation and support from States Parties. A judge can consolidate support from the states through delivering quality judgements to serve goals of international justice and strengthen the Court in international relations.

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

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

As a co-chair of the Inter-agency Gender Commission, I contribute and coordinate inter-agency efforts to draft and meet commitments under the action plans on gender equality, violence against women, and domestic violence, and UN Security Council resolution 1325 on women, peace and security.

My track-record also includes drafting the Human Rights Strategy of Georgia (2014-2020), with a strong element of women's rights, gender equality and the fight against violence against women in the capacity of a co-chair of the Inter-agency Council;

coordinating inter-agency efforts in the preparation of guidelines for law enforcement agencies on human trafficking issues, with a focus on the identification of THB victims, the treatment of women and child victims, and providing/offering needs-based assistance to victims in the framework of the Inter-agency Council against Human Trafficking; leading efforts in the Inter-agency Humanitarian Commission (IHL) of Georgia to further develop the legal framework on missing persons in times of armed conflict, putting in place relevant instruments to combat and prevent sexual and gender-based violence during and after armed conflict, protecting IDP women from sexual, domestic and gender-based violence, and ensuring their access to medical, psychological and legal assistance services.

As a Deputy Minister of Justice of Georgia, I supervise the Department in charge of litigation before the European Court of Human Rights (ECtHR) and UN Treaty-Based Bodies. In this capacity, I have developed an extensive experience in leading and handling litigations and friendly settlements since 2012. During this period I have worked on numerous cases related to violence, discrimination, sexual assault and alleged violation of the rights of women and sexual minorities before the ECtHR and the UN committees. It is also my mandate to coordinate execution of ECtHR judgments/decisions and decisions of UN committees. This includes systemic efforts to address individual cases as well as prevent future violations.

Here are some other noteworthy developments I have been a part of in that regard:

- (i) Led the drafting of the first Human Rights Strategy of Georgia for 2014-2020 to cover key challenges and addressing discrimination and violence-related, as well as gender sensitive issues;
- (ii) Led Ministry of Justice of Georgia team which drafted the first comprehensive anti-discrimination law adopted in 2014;
- (iii) Contributed to drafting the package of laws on protecting women from violence to harmonise the Georgian legislation with the Istanbul Convention on preventing and combating violence against women and domestic violence in 2017;
- (iv) Coordinated efforts in the preparation of guidelines for law enforcement agencies on human trafficking issues, with a focus on the identification of THB victims, the treatment of women and child victims;
- (v) Under the auspices of Inter-agency Humanitarian Commission of Georgia, led efforts to further develop the legal framework on missing persons in times of armed conflict, putting in place relevant instruments to combat and prevent sexual and gender-based violence during and after armed conflict;
- (vi) As an adjunct-professor at Columbia University School of International and Public Affairs (SIPA) has focused on women's rights and gender mainstreaming.

Last but not least, during my tenure, at its 74th session of 2019 the Committee on the Elimination of Discrimination against Women (CEDAW) adopted a decision to close the execution proceedings in the case "X and Y v. Georgia". Hence, the Committee welcomed the complex measures conducted by the Government of Georgia led, among others, by the Ministry of Justice in the course of fighting against domestic violence/gender based crimes (inter alia, the payment of compensation to the applicants, the implementation of the recommendations of the mentioned Committee,

etc.). All the aforementioned unequivocally confirms the recognition of the success of the measures taken by Georgia by the UN Committee.

Further I am actively involved in the interagency efforts in combating misconceptions relating to SGBCs including via media platforms, public events and campaigns, participating in parliamentary sessions, delivering public lectures, etc.

EXPERIENCE AND PERSPECTIVE RELATED TO CRIMES AGAINST CHILDREN

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

The complex inter-state cases I have led before the European Court of Human Rights since 2012 related to mass violations and crimes against or affecting children merit mention. In particular the children witnessed or were subjected to 1) mass deportations; 2) bombings and shellings; 3) mass destruction and pillaging of property 4) forced displacement.

As a Board Member of the Trust Fund for Victims of the ICC, since 2018 I have been involved in providing target-oriented assistance and reparations programmes for the victims, including children in situation countries.

At the national level, I have been involved in drafting Georgia's first separate Juvenile Justice Code, adopted in 2015. The new Code expanded the alternatives to criminal prosecution, such as diversion and mediation, and diversified the sanctions available to judge to ensure that the detention and imprisonment are used only as the measures of the last resort as derived from the principle of the best interests of the child and other international standards under the UN Convention on the Rights of the Child and relevant international instruments. According to the Juvenile Justice Code, juvenile justice procedures are administered only by professionals specialized in juvenile justice such as investigators, prosecutors and judges, mediators, social workers etc. The Code also determined in details the role and procedures of participation of the psychologist in the juvenile justice process, preparation of individual assessment report, free legal aid for juveniles including witnesses, annulment of criminal record of a juvenile, etc.

Hence, to address the crimes against and affecting children, I have been involved in:

- 1) establishing the enabling legislation and relevant institutional framework at the national level;
- 2) litigating before the European Court to redress the harm to the child victims and
- 3) policy-making as a Board member on providing assistance or reparation programs by the Trust Fund for Victims of the ICC.

EXPERIENCE AND PERSPECTIVE RELATED TO VICTIMS

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

As a current Board Member of the ICC Trust Fund, I am involved in governing the Trust Fund for Victims (TFV) and implementing its two-fold mandate with respect to reparations and assistance to victims and their families in ICC situation countries.

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

I have extensive experience in assisting victims of serious crimes both in terms of policy and practice. In my current capacity as a Board Member of the ICC Trust Fund, I am involved in governing the Trust Fund for Victims (TFV) and implementing its mandate with respect to reparations and assistance to victims and their families in ICC situation countries. This entails in particular working on filings with the Court, prepared by the TFV Secretariat.

My track-record also includes: drafting the Human Rights Strategy of Georgia (2014-2020), with a strong element of victims' rights, gender equality and the fight against violence against women, as a co-chair of the Inter-agency Council against Human Trafficking; coordinating inter-agency efforts in preparing guidelines for law enforcement agencies on human trafficking issues, with a focus on the identification of THB victims, the treatment of women and child victims, and providing/offering needs-based assistance to victims in the framework of the Inter-agency Council; leading efforts in the Inter-agency Humanitarian Commission (IHL) of Georgia to further develop the legal framework on missing persons in times of armed conflict, putting in place relevant instruments to combat and prevent sexual and gender-based violence during and after armed conflict, protecting IDP women from sexual, domestic and gender-based violence, and ensuring victims' access to medical, psychological and legal assistance services.

I have also represented Georgia and led interstate litigation before the European Court of Human Rights (ECHR), and directed matters in the execution of ECHR decisions with respect to victims of violations of the European Convention on Human Rights.

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

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

In my capacity as a Deputy Justice Minister with responsibility covering a wide range of human rights issues I have been involved in drafting and provided general advice on compliance with international human rights standards of the criminal law reforms.

This includes:

- the amendments to the Code of Criminal Procedure of Georgia for consolidating and reinforcing the principle of equality of arms - adopted in June 2013;
- overhaul of the Georgian model of plea bargaining to ensure a fair and truly voluntary plea bargaining process for the defendant. In particular, the amendments (i) empowered judges with an increased authority to scrutinize the

plea bargaining procedures by raising standard of proof to be carried by the prosecution, (ii) made the plea-bargaining process more transparent by requiring the prosecution to produce minutes of plea bargaining, and (iii) raised the victim's role in the plea bargain procedures. The amendments were adopted in July 2014;

- the legislative amendments to the Code of Criminal Procedure adopted in July 2015 to bring it in compliance with international and common European standards and the OSCE/ODIHR recommendations. These amendments introduced a periodic automatic judicial review of the pre-trial detention;
- the amendments of 21 July 2018 to the Criminal Procedure Code, according to which the power of a judge in case of subjecting an accused/a convict to torture, to degrading and/or inhuman treatment was determined. In particular, pursuant to article 191¹ of the Code, if, at any stage of a criminal proceeding, a judge suspects that an accused/a convict has been subjected to torture, to degrading and/or inhuman treatment, or if the accused/the convict himself/herself has stated it before court, the judge shall apply to an appropriate investigative body to take appropriate action. In addition, if a judge suspects that an accused/a convict has been or may be subjected to torture, to degrading and/or inhuman treatment, the judge shall be authorised to charge, by a ruling, the General Director of the Special Penitentiary Service with the duty to take extreme measures necessary for providing security to such an accused/a convict.

Furthermore, I supervise the litigation before the ECtHR and execution of the cases regarding, *inter alia*, right to a fair trial (Article 6 (criminal limb) of the European Convention of Human Rights). This process requires in-depth understanding of theory and practice of Article 6 of the ECHR.

Significant individual and general measures in the framework of execution of the cases related to the rights of the accused carried out under my supervision.

HUMAN RIGHTS AND HUMANITARIAN LAW EXPERIENCE

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

Since December 2018 I have been serving as a Board member of the Trust Fund for Victims of the ICC, a body with the humanitarian mandate of reparative justice providing assistance and reparations to victims of crimes under the Rome Statute.

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

See response to Question 6 (B) attesting to that human rights policy in Georgia as pursued and made through various interagency councils I am a member/chair of, as well as leading litigations before the European Court of Human Rights make application of

ICCPR, ECHR, CEDAW and other human rights instruments a part of my regular, everyday duties. These practice has been complemented by preparing implementing legislation of these human rights instruments by the team under my supervision at the Ministry of Justice of Georgia - an Antidiscrimination Law of Georgia passed by the Parliament of Georgia in May 2014 and the package of draft laws establishing the procedure for granting compensation under the decisions of the UN treaty based human rights bodies passed in June 2016.

Equally importantly, out of three interstate cases brought by Georgia before the European Court of Human Rights two concern interplay of human rights (ECHR) and humanitarian law (Geneva Conventions) henceforth their application.

I have also represented Georgia and led interstate litigation before the European Court of Hum Rights (ECHR), and directed matters in the execution of ECHR decisions with respect to victims of violations of the European Convention on Human Rights.

IMPLEMENTATION OF THE ROME STATUTE AND INTERNATIONAL CRIMINAL LAW

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

Georgia is a situation country under the ICC investigation. Therefore, given my mandate of a Deputy Justice Minister of Georgia in coordinating and managing the country's cooperation with the ICC, each step undertaken on behalf of Georgia since 2012 at the stage of preliminary examination and further to the stage of the Court authorized investigation constituted a practice of direct application of the Rome Statute and procedure.

Furthermore, at the oral hearing of the case *Natsvlishvili v. Georgia* before the European Court of Human Rights in October, 2013, under my instructions the Georgian agent referred to ICTY and ICTR, as to institutions with jurisdiction over crimes against humanity, genocide and mass murders and known by strong procedural safeguards, yet where plea agreement had become a standard practice (having in mind *Prosecutor v. Dražen Erdemović*, Case No. IT-96-22-Tbis, Second Sentencing Judgment (5 Mar. 1998); *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-S, Sentencing Judgment (2 Dec. 2003); *Prosecutor v. Omar Serushago* Decision Relating to a Plea of Guilty, Case No. ICTR.-98-39-S).

In addition, in the written observations the Georgian agent under my instructions referred to wide range of cases from the ICTY jurisdiction, including: 1) *Galic case* as a good example of the difficulty involved in establishing facts related to armed conflicts;⁶

⁶ ICTY, *Prosecutor v. Galic*, IT-98-29, Trial Chamber, judgment of 5 December 2003.

2) *Tadic case* in terms of attribution of the acts of a military or paramilitary group to a State;⁷ 3) *Gotovina case* with respect to margin of error in conducting hostilities.⁸

EXPERIENCE AND PERSPECTIVE RELATED TO GENDER MAINSTREAMING

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

I served as an academic adviser – adjunct professor for a team of graduate students of Columbia University’s School of International and Public Affairs (SIPA) in New York to have produced a report – Gender Mainstreaming in Education in Georgia Analysis and Recommendations in 2011. The team examined existing policies and practices in the Georgian education system and assessed adaptations necessary to make the system gender equitable.

Currently as a Deputy Justice Minister, I continue promoting and applying gender mainstreaming almost on a daily basis while drafting legal acts and shaping policy. The Strategy and 2019-2020 Strategy for the Development of Penitentiary and Crime Prevention Systems is one of the very recent examples. The particular goals, activities and indicators (like designing Multi-agency Public Protection Agency – MAPPA, correctional programs for perpetrators and convicts committed crimes against women and girls, etc.) of the strategy and action plan serve to integrate gender aspects in the penitentiary, probation and crime prevention systems.

As to capacity development and sensitisation of the management of the Ministry of Justice (MoJ) of Georgia, including penitentiary on gender issues, I have delivered the training for the top management of the Ministry on human right based approach and gender mainstreaming in December 2019.

CRITERIA OF HIGH MORAL CHARACTER, INDEPENDENCE, IMPARTIALITY AND INTEGRITY

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

As stated in the preamble of the Bangalore Principles of Judicial Conduct the public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society. The moral authority of the judiciary *in toto* is derived from the high moral character of each and every individual judge which eventually leads to public confidence.

While escaping easy definition, I believe, this criterion is intrinsically linked with the notions of humanity and fairness as building blocks of the strong personality of a judge and its internal independence which externally needs to be backed by institutional guarantees of independence.

⁷ ICTY, *Prosecutor v. Tadic*, IT-94-1, Appeals Chamber, judgment of 15 July 1999.

⁸ ICTY, *Prosecutor v. Gotovina*, IT-06-90-T, Trial Chamber, judgment of 15 April 2011; ICTY, *Prosecutor v. Gotovina*, IT-06-90-A, Appeals Chamber, judgment of 16 November 2012.

There is consensus over the idea that high moral character means moral stability - the judges, as tireless defenders of justice, must be morally consistent. Retaining moral stability is one of the greatest challenges for a judge which should be pursued on a daily basis as they have to represent high moral standards.

As to the second limb of the question, every conduct of the judge violating the principles of independence and impartiality, trustworthiness and the standard of being ethical is contrary to the “high moral character” no matter in court or out-of-court. The judges should pursue the principle of “high moral character” in their daily life in and outside of the court thus building a public confidence.

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

Never

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

- a) **What is your opinion on this expectation?**

I absolutely agree with this expectation. This shall be the minimum standard of every judge’s judicial conduct either domestically or internationally.

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

Never

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

I am not aware of any formal allegations in this respect.

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

I have no reason to believe that any current or former colleagues or professional contacts may have concerns regarding my professional conduct.

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

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

As a judge of the ICC I will continue to have relationships with those I have personal or professional ties with, though in a manner that preserves integrity, impartiality and independence of the court. In particular, as a general guiding principle, I would avoid to the maximum extent any relationships with the authorities of my country of origin as it might give rise to the appearance of partiality, save multilateral forums (conferences, seminars or symposiums), where I may be assigned a mission to represent the Court.

My standard for any such relationships is to assess each situation on a case by case basis from the objective observer’s standpoint and act accordingly with the understanding that independence of judges under Article 40 of the Rome Statute and the ICC ‘Code of Judicial Ethics’ requires to represent the genuine interests of justice and not narrow interests of any country or society. There may be circumstances, where the judge should recuse herself/himself if the case is in any way related to his country of origin – for example, when an individual is charged and the judge’s participation and position might have a significant impact on the way the decision of the chamber (when the case is examined by 3 judges) is seen⁹.

Given this premise, I do not foresee difficulties in acting independently from the Government that have nominated and supported me. In all other circumstances where my colleagues might reportedly come under pressure as a responsible member of the team I will discuss the issue with fellow judges and principals of the Court to find the best way of handling the issue and reinforce integrity and independence of the Court.

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

At a policy level I have a shared responsibility together with other Deputy Justice Ministers for implementation of the Antidiscrimination Law of Georgia of 2014 in the system of the Ministry of Justice of Georgia, including a work environment. The law prohibits harassment, including sexual harassment in every setting. In order to raise awareness, trainings and workshops are organized by my team at the Ministry of Justice

⁹ In other circumstances, when the case not related to the country of origin of the judge or when an individual participates as an expert or witness, there would be not sufficient grounds for recusal. Moreover, it would be even inappropriate from the judge to request a disqualification because it might affect the proper administration of justice. Unreasonable recusals, definitely, do not serve the interests of victims and international justice.

of Georgia to prevent and eliminate any possible attempts of bullying, harassment and other harmful behaviour.

OTHER MATTERS

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

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

I will be able to serve at the commencement and for the duration of my term, if elected.

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

I am fully prepared for such work standards and even more I have got used to it throughout my 20 years-long career at public service and academia.

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

I would propose the Early Intervention Policy for the Court System (“EIPCS” or “Policy”) i.e. drafting a unified policy paper with the purpose of building a Court-wide system to provide early and coordinated intervention capabilities for the Court to effectively carry out its mandate. Victims, State-Parties, Situation Countries, NGOs, local communities would be beneficiaries of this Policy¹⁰. By creating and then effectively pursuing the EIPCS, the Court System would attain greater legitimacy as it would be capable of *exercising and be seen effectively exercising* its powers under the Statute and relevant regulations through developing judicial practice and effectively using available policy instruments. In my opinion, the legitimacy of the ICC is intrinsically linked with a foundational question: how effectively is the Court achieving its inherent values, that is, peace and justice? Here I would offer several elements.

ICC engaging Courts in the States-Parties of the Statute. The rationale is in the spirit of positive complementarity to provide Highest Courts in the States Parties with a procedural avenue to request advisory opinions from the Court from questions of principle to the interpretation and application of the Statute. The requesting court may seek an advisory opinion only in the context of a case pending before it. This definitely would enhance the legitimacy of the Court amongst States Parties, local society and

¹⁰ The EIPCS would be policy tool for understanding, managing and meeting the expectations and interests that the international community has towards the Court. Certainly, the international community is not monolithic, being composed of the stakeholders referred above with each of them shaping their own views about the Court. The Policy would therefore welcome pluralistic views, and foster dialogue to understand how to enhance the Court’s *legitimacy*.

NGOs at the earliest stage of ICC engagement, and provide a unified front in the quest of international justice.

Pre-Trial Chamber and the Registry. Normally, the early intervention system would be put in motion at the same as an investigation, save in exceptional circumstances that may warrant its activation at the preliminary examination stage. In the light of the developing practice of the Court, this would be in principle possible as demonstrated – for example, by the decision of Pre-Trial Chamber I of 13 July, 2018 ordering the Registry to establish public information and outreach activities for the benefit of the victims in a situation under the preliminary examination. This proves that intervention is possible at the preliminary examination stage even before the identity of victims and the jurisdiction of the Court are established¹¹. This standard established by the Pre-Trial Chamber I attests to the need of drawing a coherent Outreach and Communication Strategy for the Court system (OTP, Pre-Trial Chamber, Trial Chamber, Registry, TFV) as soon as the matter gets at the preliminary examination stage to be changed *mutatis mutandis* at subsequent stages of proceeding. In other words, the Court needs to work on presenting a unified front of words and actions before its primary stakeholders, among which victims occupy a special place.

Trust Fund for Victims, ASP and NGOs. Under this Policy of the Court system, the Trust Fund for Victims is to develop a corresponding Policy of Early Deployment and Action. Importantly, the Trust Fund for Victims is one of the first to travel to the field, and one of the few with a capacity to intervene for the benefit of victims at such an early stage. It is important to not lose sight that the Trust Fund's actions are perceived as actions of the whole Court system. To pursue this policy, the TFV must have requisite funding dedicated for this task (not necessarily means increased funding) and support from the ASP. To expedite the process it may have elaborated a list of prequalified partners/NGOs in the field that will drastically reduce the length of procurement procedures and empower the victims and local actors in the situation countries.¹²

Trial Chamber, Trust Fund for Victims, Victims, other International Organizations. Trial Chambers have an important role in developing proper judicial practice under this overarching Policy so that the Court can navigate through seemingly conflicting undercurrents of the ICC legitimacy – length of investigation and proceedings on one hand and guarantees of fair trial under the Statute on the other. The length of

¹¹ Remarkably, the Chamber resorted, *inter alia*, to Article 21, Article 68(3) (Protection of Victims and Witnesses and Their Participation) of the Statute, Rule 85 of the Rules of Procedure and Evidence to focus on the considerations of legitimacy as necessary “for the Court to be able to properly fulfil its mandate, it is imperative that its role and activities are properly understood and accessible, particularly to the victims of situations and cases before the Court. Outreach and public information activities in situation countries are quintessential to foster support, public understanding and confidence in the work of the Court. At the same time, they enable the Court to better understand the concerns and expectations of victims, so that it can respond more effectively and clarify, where necessary, any misconceptions”

See para. 7 of the Decision of Pre-Trial Chamber I (No: ICC-01/181/1113July2018) Situation in the State of Palestine, https://www.icc-cpi.int/CourtRecords/CR2018_03690.PDF.

¹² TFV activities in this respect reflect the same interplay of the values built-in the Statute – peace and justice as corresponding to the two-fold TFV mandate on assistance and reparations. By definition, TFV's assistance programs are directed towards helping affected communities to consolidate peace and stability, whereas reparations lead to achieving justice when the Trial Chamber makes a decision over the harm and victims' entitlement to receive reparations. Assistance and reparations are distinct though in some circumstances the dividing line appears to be blurred as in the *Bemba* case, when the assistance was the only thing left for the Court system to address the harm to the victims in a broad sense and mitigate the negative perception of the Court that might have been caused by Bemba's acquittal.

investigations and proceedings are definitely a challenge to the legitimacy of the Court, in particular, in the eyes of the victims of protracted conflicts, locals and civil society, whose perception may harden as time goes. Current practice in reparations offers a valuable lesson on how to save time so that reparations reach victims earlier, and to save the Court's resources. Namely, I advocate for a more frequent use of rule 98(4) RPE under which the Court may order that an award for reparations be made through the TFV to an approved organization. One major advantage of this rule is that it would save lengthy procurement and negotiations which ultimately take time away from the victims' right to receive prompt reparations. In this respect a lesson learned from *Al Mahdi* appears to be valuable for both the TFV and the practice of Trial Chambers in the future¹³.

Trial Chambers and Appellate Chamber. The length of proceedings is just one aspect of the Court's legitimacy to influence internal and external perceptions of the ICC that have resuscitative efforts of the judges in October 2019 to adopt a consistent set of internal guidelines regulating the timing of key decisions at the pre-trial, trial and appeals stages, thereby enhancing the efficiency and predictability of proceedings.¹⁴ These guidelines made their way into the *Chambers Practice Manual*. It would be desirable to further streamline the practice whereby, as suggested by some experts, Trial Chambers arrive at verdicts and pass sentences in a single judgment at the conclusion of the trial with the understanding that there are no statutory requirement that these two decisions subject to Article 74 and Article 76 of the Statute be delivered on separate occasions¹⁵. Establishing the practice of the Court seems to be a reasonable way to foster changes within the statutory framework without having to amend the ICC Statute. The decision of the ICC Appeals Chamber in the *Gbagbo and Blé Goudé* case of 28 May, 2020 holding that the continuation of proceedings in the absence of the accused, when that absence is deliberate, is not prohibited neither by the Statute, if properly interpreted, or by general principles of law as long as the right to fair trial is scrupulously respected is a good case in point.¹⁶ It does show that, even with respect to the trial *in absentia* the balance between the need to speed up the trial and the respect of the rights of the accused can be found through an innovative interpretation and judicial courage of the ICC judges to contribute to the improved perceptions of the Court.

In concluding, it has to be noted that the improvement of the perception of the Court in the eyes of a large international constituency of stakeholders is dependent on the ability of the Court System to reconcile and harmonize in practice – peace and justice as independent values protected by the ICC Statute.

¹³ Involvement of the selected organization(s) would also have improved the perception of the Court amongst victims, local society and specific international organizations. As suggested, not only it is possible to have prequalified partners under the TFV policy of early deployment and action, but also advance arrangements and agreement with other international organizations can be put in place with a view of coordinating actions in the area of reparative justice.

¹⁴ See ICC Press Release of 7 October, 2019, ICC judges hold retreat, adopt guidelines on the judgment drafting process and on the timeframe for issuance of key judicial decisions at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1485>.

¹⁵ What can be done about the length of proceedings at the ICC? by Benjamin Gumpert and Yulia Nuzban, November 8, 2019 at EjiTalk <https://www.ejiltalk.org/part-ii-what-can-be-done-about-the-length-of-proceedings-at-the-icc/>.

¹⁶ See para. 70, LA CHAMBRE D'APPEL Composée comme suit : M. le juge Chile Eboe-Osuji, juge président M. le juge Howard Morrison M. le juge Piotr Hofmański Mme la juge Luz del Carmen Ibáñez Carranza Mme la juge Solomy Balungi Bossa SITUATION EN RÉPUBLIQUE DE CÔTE D'IVOIRE AFFAIRE LE PROCUREUR c. LAURENT GBAGBO ET CHARLES BLÉ GOUDÉ, No ICC-02/11-01/15 OA 14 Date : 28 mai 2020 at https://www.icc-cpi.int/CourtRecords/CR2020_02491.PDF.