

**Answered Questionnaire for a candidate to the 2020 ICC Judicial Election, CHAGDAA  
KHOSBAYAR**

Name: Chagdaa Khosbayar

Nationality: Mongolia

Nominating State: Mongolia

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

Gender: Male

Date: 25 September, 2020

**BACKGROUND**

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

Paragraph 8(a) (i) and (ii) of article 36 of the Rome Statute states that the States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for the representation of the principal legal systems of the world and equitable geographical representation. The principle of inclusion of geographical representation in the Court should provide equitable engagement of all the Member states in the Court to the utmost extent. However, although judicial appointments to the ICC have to be made on considerations of diversity, the diversity rule of the court did not guarantee equal representation of all regions of the world until today. A review of all ICC nominations to date reveals different pictures. Slightly more than half of all ICC States Parties have nominated at least one candidate for election to the Court and just ten states, which account for less than one percent of the ASP's overall membership, have nominated nearly half of all the ICC judges to serve to date. These figures suggest an alarming concentration of the ICC's judiciary in only a handful of states, as well as scant engagement of the majority of States Parties in the judicial selection process. Remarkably, too few ICC States Parties from Asia, in particular, nominate candidates to the bench and have participated in election for a position of a judge at the ICC compared to the rest of the States Parties from other regions. This is precisely why I always felt sad that Asian continent, in particular, Mongolia is poorly involved in establishment of international criminal justice on a global scale.

In order to be perceived as legitimate, the norm of geographic diversity on international courts must embrace true diversity—not just diversity fostered by geopolitical realities. Otherwise, the legitimacy of the Court might be undermined by a justifiable fear that judges from particular geographic regions that dominate judgeships on the bench might harbor conscious or subconscious biases towards or against certain causes.

As a young lawyer, I have always aspired to serve as a judge at ICC and have believed that Mongolia will be participating successfully in this important election someday I have prepared myself my entire life to be worthy of representing my country on an international level and have fully dedicated myself to the public service, and my efforts have always been focused towards pursuing the respect of the rule of law.

My lifetime professional experience of working in the positions of advocate, investigating prosecutor, and as a judge in all instances of judiciary, including extensive practice in managing the most serious, complex cases in Mongolia, gives me the right to believe that I am sufficiently qualified to fulfill specific requirements reflected in the Rome Statute. Apart from my professional capacity, I am ready to bring all my energy and devotion to contribute to the final goal – to meeting the expectations of the international community and affirming that the establishment of the ICC was worth the efforts and costs. In this respect, I am confident that I can make a significant contribution to the work of the ICC.

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

In 18 years since the Rome Statute's entry into force, the ICC has been confronted unprecedented challenges that needed to be honestly addressed. From a strong criticism that the ICC is unduly affected by the political mandate of nations, the string of acquittals, dismissed charges, contraversial decisions of ICC chambers and lengthy proceedings to a continued lack of prosecutions outside the African continent and concerns about its limited impact in investigations of alleged crimes committed by nationals of powerful state or non-state actors, lastly, lack of solution for speedier and more efficient criminal proceedings, the Court has struggled to meet the promise that attended its creation.

Firstly, I believe that the one of the most serious challenges following after the ICC since its establishment until today was freedom from political influence. The ICC is operating in a highly political environment, making the independence of the ICC from political pressure very important. Considering the fact that the Court still lacks competent protection from political influence, ICC is capable of being used as a machine in a truly political purpose through unjust prosecution of some leaders of some states.

Also, a growing number of acquittals, dismissed charges and controversial judicial decisions have underscored what appears to be a bench caught up in an infighting and mutual distrust. These developments have led some jurists, scholars and representatives of non-governmental organizations who follow the Court closely to highlight there are signs of a lack of collegiality within the ICC judiciary itself, as well as a climate of rivalry between the judges, and, put more bluntly, there is a "judicial meltdown" at the Court.

Eighteen years since its establishment, the ICC should be a robust just, faire and effective institution; well-placed to meet the challenges that will inevitably arise when it investigates the allegations of crimes committed by powerful state or non-state actors.

The independence of the Court as an institution is particularly relevant when it comes to the selection of situations that are to be investigated and brought to trial. The ICC's focus should move from African cases in the future, and it is obvious that the ICC is currently doing this. In recent years, the ICC opened several investigations in situations outside Africa ,remarkably, towards Asian continent.

In conclusion, I have observed that due to very complex cases and procedures before the ICC, the large number of victims, and external factors such as lack of cooperation

and intimidation of witnesses, the criminal proceedings before the Court are very long. Despite some objective reasons, the excessive length of proceedings conflicts with the fundamental right to be tried within a reasonable time. From the perspective of the right to a fair trial, such length cannot be justified.

The ICC is the first standing institution with universal jurisdiction set up to enforce accountability for grave crime at the international level. Its existence and judicial activities in prosecuting mass atrocity crimes in a world run by politics and particular interests is a great victory for humanity.

I believe that the most important goals the ICC aspires to attain since its establishment until today was proving its efficiency and contribution to the international and national justice at the global scale. However, the Court was successful in fighting impunity by holding the perpetrators of the most serious crimes accountable and therefore, proving its efficiency in this context.

The Court has made important contributions at the global level to the promotion of the rule of law and human rights. The Rome statute resonates far from the walls of the ICC. Using the mechanisms of complementarity and subsidiary jurisdiction, the ICC has greatly contributed to the implementation of international standards in national judicial systems.

The Rome Statute has raised the bar and standards for national legislation on grave crime. Perpetrators of grave crime can now take place in those domestic jurisdictions that have ratified and domesticated the Rome Statute, thus bringing justice nearer to the victims. Therefore, the ICC cannot be evaluated based only on the number of cases and criminal proceedings, but also on its impact on national prosecutions and on crime prevention. The ICC stands as a leading institution in efforts to end abuse and exploitation of children and women, reduce all forms of violence at the national level.

Although the number of ICC cases is modest, the Court's case law has already substantially contributed to the development of international criminal law and international humanitarian law. Besides the already-mentioned ICC case law on victims, ICC judges have rendered important decisions related to sexual violence, defense rights and fairness of proceedings, the admissibility and legality of evidence, the competence of the Court to compel a country to secure the compulsory appearance of a witness, the test for the assessment of complementarity, head-of-state immunity and the obligation to cooperate with the ICC, as well as crimes related to the use of child soldiers in war and to the destruction of cultural heritage.

We are witnessing progress in achieving universality and the full implementation of the Rome Statute, bearing in mind that we have to limit our expectations and that reaching the final goal will be a long historical process.

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

It is obvious that questions two and three are closely interconnected because some of problems mentioned in the previous answer still exist currently before the ICC. Except challenges such as lack of freedom from political influence, concentration of cases and lack of effective mechanisms of investigation into situations, where involved nationals of powerful states and non-member states, the Court faces many difficult challenges

that need to be resolved properly, particularly in relation to the cooperation of states, universality of the Rome Statute, and worsening political situation of the world.

First, it is crucial to improve the level of cooperation with both member and non-member states, because the ICC has adjudicative jurisdiction, but it does not have enforcement jurisdiction. Therefore, it depends entirely on state cooperation for the collection of evidence and for the presence of the accused. Non-execution of the Court's requests can have a very negative impact on its credibility and can render it powerless.

The Rome Statute is yet to be ratified universally. Access to the international justice system is therefore limited to the states that have ratified the Rome Statute, which means there is still big room to achieve its goal of becoming truly universal. The lack of jurisdiction over ICC crimes undermines the Court's global mandate and damages the Court's reputation. Achieving the universality and full implementation of the Rome Statute is certainly the most important and yet most difficult task from a global perspective.

One of the major challenges confronting the ICC and the Rome Statute system is politics and the worsening political landscape. States, including super powers are retreating from multilateral cooperation. Some powers have demonstrated that they are against multilateralism by speaking against it and some others have withdrawn from such treaties. In my opinion, the situation has worsened after activation of aggression amendments of the Rome Statute and the ICC has expanded the scope of international crimes to include aggression, among others, that pushed the court into the political thicket.

Addressing these issues honestly the ICC will meet the expectations of the international community and affirm that the establishment of it was worth the efforts and costs.

## **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?**

While Mongolia always regarded as a country with strong civil law traditions, during the major legal reform, which was taken place after the collapse of socialist regime, the legal system of Mongolia has adopted multiple elements from common law jurisdictions. However, Mongolia officially belongs to civil law jurisdiction.

5. **Please describe any knowledge or experience you have working in or with other legal systems.**

I have acquired substantial knowledge about principles and values governing common law system while completing an LLM program at Brigham Young University and continued with internship at the Fourth District Court of Provo in the USA.

Due to the chain of radical reforms that took place recent years within legal system of Mongolia there is a legitimate ground to consider the system has turned into kind of mixed pattern.

By virtue of extensive knowledge of the US common law system, I was one of the few who were able to drive radical reform of the criminal law system in Mongolia through active participation in establishment of the new legal framework and a common law approach to Mongolian criminal justice.

## LANGUAGE ABILITIES

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

a) **What is your native language?**

I believe that I qualify as a native speaker of two languages: Mongolian and Russian. I have formed thoughts and have spoken Russian since I was born, so I consider myself as a native speaker of the language.

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

I have gained an excellent command of English while studying at the School of Foreign Affairs at the National University of Mongolia. I was able to critically improve my language skills while in the US in an attempt to obtain a LL.M degree and by successfully completing an internship in the US. I have also attended numerous conferences, workshops, and events in English both in Mongolia and abroad. Below I have mentioned some of my publications and training events conducted in English.

-“Comparisons of Simplified procedure of Criminal proceedings in Civil law countries to Plea bargaining process and Adjudication by plea in Common law jurisdictions”, “The Scale of Justice” trimonthly law magazine by The Association of Mongolian Judges #3, December 2011, at 12-18.

-“Is it possible to have the Jury System in Mongolia?”, “Mongolian Law Review” by National Legal Institute #1, March 2011, at 35-45.

-“Adjudication by Plea in Civil law jurisdictions”, “Rule of Law” periodical law journal by National Legal Institute magazine #2, June 2009, at 77-80.

-07-22 July, 2014 “International Private Law” summer courses by the Hague Academy of International law, The Hague, Netherlands

-22 July-11 August, 2015 “International Public Law” summer courses by the Hague Academy of International law, The Hague, Netherlands

-04-16 December, 2011 “Translation and Interpreting Training in English” by Inlingua language Centers, Fort Lauderdale, Florida, USA

-October 9-30, 2008 International Visitor Leadership Program by United States Department of State Bureau of Educational and Cultural Affairs, Washington, D.C. 20547

-01 September, 2005-01 September, 2008 “Special permission for the interpretation during investigative, pretrial and trial proceedings into English language” by The Training Center of the Ministry of Justice and Internal Affairs, Mongolia.

-01 September, 2001-01 July, 2003 Advanced English Proficiency Training by National University of Mongolia, School of Foreign Service

## LIST A OR B CRITERIA

7. 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?**

I have acquired substantial amount of knowledge in international law while completing a program, considerable part of which consisted of international humanitarian law and international human rights law, to obtain a Master in International law degree at the School of Foreign Service of the National University of Mongolia.

Besides I studied in international law, I have had some experience in practicing international humanitarian law and international human rights law at the national level. I was personally involved in the campaign for abolishment of the death penalty in Mongolia, when I served as a defense counsel and concurrently acted as a member of Amnesty International.

In the course of my career as a judge at all judicial instances, I systematically referred to international humanitarian treaties and human right treaties, and applied them in my judgments in accordance with Article 16 (14) of the Mongolian Constitution, that says citizens of Mongolia are entitled the right to appear in front of the court if they believe that the rights stipulated not only in Mongolian law, but also in the international treaties, had been violated in any way.

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

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

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

Notwithstanding I have managed complex high-profile cases, including high level corruption cases, murder of unarmed demonstrators by police, conspiracy and politically motivated murder, illicit arms trading and many other criminal cases involving complex legal issues, it must be regarded that I have not used provisions of the Rome Statute during my legal career, so far as the scale of the crimes and the number of victims involved in cannot be considered as reached the gravity threshold established in the Rome Statute. However, implementation of the Rome Statute will be the exact area in which I would like to enhance my knowledge and expertise through workplace trainings at the place.

**9. 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.**

During the transitional period, which Mongolia faced after the collapse of socialist regime, having served as a defense lawyer specializing in crimes of human trafficking involving women and children with purpose of sexual exploitation, and an investigating prosecutor who is responsible for investigating exclusive jurisdictional cases as well as a judge at all instances of judiciary, I have managed complex criminal cases involving multiple accused with multiple counts, multiple victims, and complex legal issues, including international law, criminal law and the Constitutional matters. Among them there were high-profile cases of white-collar crimes, which involved high level officials such as former President of the State, several Parliament members and Cabinet ministers.

Moreover, I handled several dozen of cases emanated from July 1 Mass disorder, which occurred after 2008 Parliament elections at the Sukhbaatar Square, which was under Sukhbaatar District court jurisdiction, my former employer at the time. As the result of the chain of number of trials, The Head of General Police Department of the State, the Head of Metropolitan Police, as well as several high position police officers were sentenced for different terms of incarceration for shooting to death several unarmed demonstrators; and hundreds of participants of the mass dispute were sentenced for marauding during mass disorder at the premises as well.

I have also adjudicated number of cases in conspiracy and politically motivated murders, among which was a case involving murder of a political leader Zorig Sanjaasuren, who was supposed to become the Prime Minister at that time, and a case involving high level military officers from General Military Headquarter, who were accused of illicit arms trading with North Korean army representatives. I have also resolved numerous pyramid scheme fraud cases, which were widely spread as the result of difficult socio-economic conditions after the collapse of former economic structure during 1990s in Mongolia, resulting in thousands of victims. Human trafficking cases, particularly involving women and children with the purpose of sexual exploitation, which were taking place during this transition period, constituted substantial part of my work as a judge too. As such, I have accumulated extended experience in defending, prosecuting and managing, presiding over complex criminal cases.

Disclosure of evidence is a mandatory procedure by Criminal Procedure Code of Mongolia and my policy on disclosure is that trials must never be done discreetly and open disclosure is crucial for the fairness of a criminal trial. New Criminal Code of Mongolia, member of Drafting Committee of which I was sustained, provided participants of criminal procedure with wide opportunities in disclosure of evidence during pretrial hearings, which is being currently exercised at all the courts of Mongolia nowadays.

To describe some of my specific legal expertise in areas over which the ICC has jurisdiction, I was a member of the Governmental Committee for Drafting the New

Penal Code, New Criminal Procedure Code of Mongolia, and in this capacity, I actively participated in establishing the legal framework of and a new approach to Mongolian criminal justice and contributed to consolidating the priority of the principles of Non-applicability of statute of limitations, Universal Jurisdiction and Complementarity for the crimes within the jurisdiction of the International Criminal Court, which were never previously established; and a dozen of Amnesty laws approved since 1990s, which could have been applied on ICC crime offenders if there were such inmates in the State.

**10. 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.**

Public defense, investigation and prosecution are principal activities within the function of the ICC. International criminal justice system as any national criminal justice system builds on effective prosecution and good advocacy. Despite my long standing experience in judiciary, as mentioned previously, I also obtained substantial experience in criminal defense, investigation and prosecution of serious crimes, which is relevant to the work of an ICC judge. Judges need strong skills to effectively oversee complex cases involving adversarial parties, from every aspect of law and from each position of parties as a defense lawyer as well as a prosecutor. In order to provide effective hearings and trials a judge is supposed to know in detail how to think both as a defense counsel and a prosecutor. Conducting preliminary examinations and investigations, for which prosecutor is responsible for, and to provide victim's unprecedented rights in criminal proceedings, that belongs to defense counsel's work - all of these activities are quite familiar to me. The judge who is competent in these areas can control a courtroom when a situation becomes intense and extract best results from the judicial process. As a judge with this capacity, I am able to direct adjudication process in a way that criminal trial results come out in a fair outcome by accounting both prosecutors, who are trying to bring a criminal to justice, and counsels, who protect the rights of the accused or victims.

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

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

One of the outcomes of difficult socio-economic conditions formed after the collapse of legal and political systems in Mongolia in 1990s was the increase of illegal activities that subsequently undermined the security of the most vulnerable groups of the society - women and children.

My involvement in the area of SGBCs was both as a legal counsel and as a judge, particularly, handling human trafficking cases, involved women and children with the purpose of sexual exploitation, which were taking place during economic and political transition period in Mongolia.

Having served as a victim's counsel specializing in crimes of human trafficking with purpose of sexual exploitation, I have participated and defended the rights of women



and children in many complex criminal cases involving multiple accused with multiple counts, and multiple victims; as well as cases concerning implicate legal matters, including issues surrounding international law, criminal law, and Constitutional law.

Also as a judge I handled numerous cases of serious sexual and gender based violence and multitude of cases involving rape, enforced prostitution and sexual slavery and I have always strived to protect the rights of the weak and vulnerable persons, especially if women and children were involved. As such, I have accumulated significant experience in defending, managing and presiding over complex criminal cases related to sexual and gender based crimes.

From my experience, I came to understand that victims of these sorts of crimes require a very delicate approach when being examined before the court. For instance, in cases of human trafficking with a purpose of sexual exploitation, I found it is imperative to consider the consequences of being a victim of such a crime. These victims often become very vulnerable and hesitant to provide all the details of the crime, which, in turn, generates serious impact on examination of the evidence. This has to be carefully considered during an examination before the court. Taking into account that the process of being a witness is a significant point of re-victimisation, also knowing from my experience at which points in the questioning process victims display heightened emotionality, including distress, I often considered the extent to which the current domestic rules of evidence and procedure can be applied appropriately and consistently. Accordingly I have being collected best practice in order to develop proposals for changes to domestic law and process.

The court responses to sexual and gender based crimes have been repeatedly criticized in Mongolia. From my observations to explore what is actually happening in rape and sexual assault trials I can say that SGBC misconceptions are still routinely used at trial and influenced court judgments. From my view, misconceptions related to SGBCs are used in three identifiable ways, to distance the case from the classic SGBC stereotype, to discredit the victim, and to emphasize the aspects of the case that were consistent with SGBC misconceptions.

It is argued that, while the Court has in many aspects contributed to a more effective protection of victims against SGBC, by revealing misconceptions relating to SGBCs, defining SGBCs in a new understanding and by clarifying what constitutes modern SGBCs, the challenge remains to overcome the public and private divide in assessing the level of severity of SGBCs, and to conceptualise SGBC a form of gender-based discrimination.

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

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

As I mentioned before, my career as a jurist started from taking position of an advocate handling juvenile crimes and working on human trafficking cases. One of the negative consequences of the collapse of socialist legal and political system in Mongolia was the increase of illegal activities that subsequently undermined the security of the most vulnerable groups of the society, which were predominantly women and children. Having served as a victim's counsel specializing in cases of crime

of human trafficking involving children, I have participated and defended the rights of children in many complex criminal cases involving multiple victims. My involvement in this area was both as a legal counsel and in a capacity of a judge. I want to reinforce the fact that human trafficking cases, involving children constituted abundant part of my work as a judge. As such, I have accumulated significant experience in defending, managing and presiding over complex criminal cases related to the rights of children. As a judge, I have always aspired to protect the rights of the defenseless, and those falling under the category of vulnerable persons when the victims of such crimes, who are children, deserved more attention.

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

**13. 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.**

Victims have a recognized right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. The fact that victims are included as participants in the process, and not merely the objects of the prosecution's case, is some recognition that an equitable justice requires that victims are heard in dignity, that their concerns and needs are taken into account alongside the rights of the accused allowing for a fair and impartial trial. The broad wording of the provisions on victim participation in the ICC's constitutive documents suggests that the drafters intended to leave wide discretion to the judges in shaping the Court's victim participation scheme.

Participation of victims in the criminal proceedings on equal base with prosecution and accused is a common practice in the Mongolian legal system. However, this might seem unacceptable for common law jurisdictions and might appear as a novice approach for International courts. The victims in Mongolian criminal proceedings possess practically similar rights compared to the rights of defense and prosecution: they can not only demand compensation but also possess the right to be present at all investigation and adjudication procedures including interrogations, forensic analysis proficiency tests, pre-trials and trials, and to present evidence and express their opinion regarding the degree of the guilt and appropriate sentence of the accused. From 2016 victims and their representatives by the verdict of Constitutional court of Mongolia were allowed to appeal Court decisions all the way up to the Supreme Court. According to Criminal Procedure Code of Mongolia, the damage caused by criminal action to victims must be fully compensated by the defendant. Therefore, all issues regarding damages must be resolved within the criminal proceedings and only a few turns to separate civil law suits.

I strongly believe that my long term experience in judiciary of my home State will be helpful in addressing consideration for victims' interests, defining a more comprehensive, concerted and defined approach towards victim participation. Furthermore, practical issues such as victim participation at the investigation stage and its implications, identification of the applicants, the legal representation of victims, collective participation of large victim groups and the form and modalities of presentations need to be assessed. I am dedicated to find solutions and to take attempts to develop a more consistent approach to victim issues and to devise and

establish a meaningful victim participation that respects to the fullest extent possible the rights, needs and interests of victims.

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

States have a responsibility to respect the fundamental rights of victims, assist them in accordance with their special needs, and protect them from further harm. Witnesses must be protected from threats, intimidation, corruption, or bodily injury and States are obliged to strengthen international cooperation in this regard.

I don't have any specialised training in this specific area, however I have particular experience in it. As I mentioned before active participation of victims in the criminal proceedings on equal base with prosecution and accused is a common practice in our legal system.

According to Criminal Procedure Code of Mongolia, a judge presiding over a case has a duty to provide measures for the protection of persons whose cooperation with the court is crucial to achieving successful prosecution of criminal offenders. Such measures may include as follows: assistance before and during trial to cope with the psychological and practical obstacles of testifying; protective measures before, during and after hearing or trial for "at risk" witnesses and court procedures to ensure the witness' safety while testifying;

I have had a long-term extensive experience in these kinds of situations while serving on the bench of a first instance at the Sukhbaatar District Court. I have conducted trials of various complicated criminal cases, with participation of numerous victims, in particular, mass fraud cases.

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

**15. 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 the course of my career as a trial judge some times I experienced situations where fair trial right of the accused is endangered. I have noticed that during the chain of trials of complicated and highly-publicized mass fraud cases involving hundreds of savings and credit cooperatives, with participation of thousands of victims, and when the prosecution is abusive and united with victims' legal counselors, while the social pressure and government interests are concurrently merged, in these situations, often times defendant's due process right is undermined seriously in connection with judge's reluctance to make rulings, which might not always work in defendant's favor even in a case where he is innocent.

Personally, I faced such challenges at these trials, which required of me to maintain the balance between the prosecution and the defense of the accused by successfully coping with excessive influence from above mentioned factors.

In the beginning of 2000s, savings and credit cooperatives in Mongolia became insolvent and bankrupt due to borrower's loan defaults during economic downturn. It was reasoned that insolvency occurred as the result of insufficient control and lack of

supervision of these institutions by Financial Regulatory Commission of the current government. This lack of supervision also opened windows for criminals to commit fraud by establishing fraudulent financial institutions in order to illegally extract money from civilians. As the result, the trust in financial system in Mongolia was lost and clients who deposited their money in those institutions organized movements to pressure the government in forcing responsibility unto the savings and credit cooperatives and claim the right to confiscate their property to compensate the damages and losses allegedly suffered. Although in violation of the Criminal Procedure Code the government promised to provide permission to place institutions' all property under the client's safeguard.

This tendency to uniformly punish all the individuals who conducted savings and credit operations and seize all of their property was prevalent in society, particularly among government officials. Due to public's hostility to the directors of insolvent savings and credit cooperatives, which was at the highest level, the government subsequently presses to prosecute them on an equal basis even though many of them were bankrupt individuals but not involved in fraud. By that time, Mongolia had seen mass trials on fraud charges of hundreds of people not involved in any criminal act.

As a judge, I emphasized two things to adhere in the above mentioned cases is that to grant equal opportunity to both parties to present their respective evidence, and ensure that statutory laws were properly applied to the facts of the case. These cases demonstrate the danger of an imbalance between the protections of victims and preserving the rights of defendants, for overzealous protection of victims could lead to miscarriage of justice. I came to realize that it is important to avoid any prejudice to the accused in allowing victims to perform their procedural rights. While judges always have a critical role to play in protecting the victims in court, their role in protecting the rule of law and human rights must be all the more fundamental.

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

16. **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.**

As stated earlier, in the beginning of 2000s I served as a defense counsel and concurrently acted as a member of Amnesty International. I was personally involved in the campaign for abolishment of the death penalty in Mongolia. I have defended persons who had been accused of aggravated murders and rape of children that often culminated in the death sentence. Along with my colleagues, I have advocated against the death penalty through a variety of means including conducting studies regarding the philosophical bases to refuse capital punishment and sending emails to all parliament members, and urging judges not to use this kind of ultimately inhuman, cruel and degrading punishment.

When I started serving as a judge from 2006, I continued to keep my belief relating to capital punishment in the course of my professional activity, and published an article on the same issue. I was appointed as an instructor judge in the judicial training center and continued urging judges to put an end to exercise capital punishment and use an alternative sentencing.

During my career at the Supreme Court of Mongolia, Mongolian Bar Association had asked me along with the rest of the Criminal division judges to draft and send a proposition to the Standing Committee on Legal Affairs of the Parliament of Mongolia on amendments to Criminal Code of Mongolia to abolish death penalty for all crimes. The Parliament reviewed the proposition and abolished the death penalty passing the Law on Ratification of the Second Protocol to the International Covenant on Civil and Political Rights on 5 January, 2012.

17. **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?**

In the course of my career as a judge at all instances of judiciary, I systematically referred to international humanitarian law treaties and applied them in my judgments. According to the Constitution of Mongolia, the provisions of international treaties on human rights and international humanitarian law, to which Mongolia is a party, are preemptive over the provisions of national rules if they contradict each other. In accordance with Article 16 (14) of the Mongolian Constitution, citizens of Mongolia are entitled the right to appear in front of the court if they believe that the rights stipulated not only in Mongolian law, but also in the international treaties, had been violated in any way.

In this regard, the Supreme Court of Mongolia receives a number of complaints from participants in criminal proceedings and victims that are considered to have suffered from criminal activity, about violations of human rights provisions that are not explicitly stipulated in national laws. Along with my colleagues I made important Supreme Court Judgments bringing human rights treaty provisions into the national criminal justice, which lead to the recognition of basic human right principles stipulated in these treaties in Mongolia.

While working as a judge, I constantly had to refer to international treaties, interpret the provisions, and apply them to various situations. In my daily work as a judge, I encounter many cases which direct me to the provisions of the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention against Corruption, the Convention Against Illicit Traffic in Narcotic Drugs, and Psychotropic Substances and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

When I acted as a member of the Government Committee for Drafting the new Penal Code, new Criminal Procedure Code of Mongolia, I was among them who were able to participate in consolidating of human rights treaty standards into the national criminal process.

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

18. **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.**

I have not directly applied provisions of the Rome Statute in the course of my profession, however, I have referred to the jurisprudence of the ICC.

In 2015 Criminal division panel of the Supreme Court, under my direct initiative, first time in the judicial history of Mongolia, applied Article 7(4) of Judicial Act and Article 205 (1.5) (1.6) of Criminal Procedure Code suspending a case and resorting to the Constitutional Court in order to determine whether the Amnesty law, which was passed by the Parliament and was applicable to the case, violates the Constitution in regard of that it allows to pardon and release all inmates regardless of which kinds of crimes they have committed.

According to Article 10 (1) (2) of the Constitution of Mongolia, Mongolia “shall adhere to the universally recognized norms and principles of international law and pursue a peaceful foreign policy” and “shall fulfill in good faith its obligations under international treaties to which it is a Party”. Since Constitutional court has not made clear ruling regarding this particular request, while acting as a member of the Government Committee for Drafting the new Penal Code, new Criminal Procedure Code of Mongolia, with the assistance of the committee members I was able to establish the legal framework of and a new approach to Mongolian criminal justice and assumed a key position in consolidating the priority of the principles of Non-applicability of statute of limitations, Universal Jurisdiction and Complementarity for the crimes within the jurisdiction of the International Criminal Court.

Currently, I am acting as a member of the Governmental Committee, which is responsible for drafting amendments to the new Penal Code and new Criminal Procedure Code of Mongolia in full compliance with treaty standards.

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

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

As State authorities, judges can send powerful messages to society that violations of women’s right will not be tolerated and will be treated no less seriously under the law than any other human rights abuses. The acts of individual judges contribute to the overall identity of the justice system whether it is perceived as impartial, fair and just. In order to ensure that women have equal access to justice, judges should adopt a gender-sensitive approach to their work and ensure that they interpret the law in line with substantive notions of equality and international human rights.

I have particular legal expertise in gender sensitive crime cases such as human trafficking involving woman and girls, which were taking place during the transition period in Mongolia and resulted in hundreds of victims. My involvement in this area was both as a legal counsel and as a judge, so as I mentioned before working in first instance of judiciary I handled numerous cases of crimes of serious sexual and gender based violence and a multitude of cases of rape, enforced prostitution and sexual slavery. Prior being appointed as a judge, I served as an advocate predominantly dealing with victims of human trafficking cases, involving women and girls, in particular, with the purpose of sexual exploitation. As such, I have accumulated significant experience in applying of gender perspective, defending, managing and presiding over complex criminal cases involving the rights of women and girls.

Taking a gender sensitive approach to justice may at first glance appear to conflict with judges' duty of impartiality. In fact, impartiality does not require a gender blind approach. Disparate impact of laws on woman is not unjust and it is legitimate for judges to use differential treatment in law and policy in order to ensure an equitable outcome.

In criminal cases concerning violence against women, victims are involved in trials in the capacity of witnesses for the prosecution. It is important to bear in mind that the specific dynamics of gender-based violence, and in particular domestic violence, mean that the victim not only knows the offender but has had an intimate relationship with him. Because of this relationship, there is a high risk of repeated and escalated abuse, retaliation and threats against the victim. Thus, it is critical that victims receive protection from courts throughout the entire legal process.

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

20. **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”?**

The requirements of high moral character should be regarded as being of equal importance as the requirements of competence and experience that are essential for practicing legal profession, in particular, to discharge judicial duties. Indeed, the moral integrity of a judge of the ICC is of primary importance in executing the mandate of the Rome Statute, in being able to ethically and effectively exercise ICC jurisdiction over those responsible for international grave crimes, including the redress of sexual and gender-based crimes.

I would like to define the expression of “high moral character”, in particular, as a pattern of behavior that is consistent with the highest judicial ethical standards and that shows an absence of deceit or morally reprehensible conduct. An ICC judge cannot possess personality traits which suggest the likelihood of future misbehavior adversely affecting the international justice system.

During my over 20 years of serving in law enforcement, prosecution, and all instances of judiciary I have never been disciplined or censured by any governmental, professional disciplinary committees indicates that I embody the characteristics of “high moral character » with complete confidence.

Although the high moral character requirement typically has been defined in terms of qualities of truth, a high sense of honor, granite discretion, of the strictest observance of fiduciary responsibility, in the contrary to “high moral character” or moral turpitude can be defined as baseness, vileness or depravity in the duties which one person owes to another or to society in general.

While there is an important focus on sexual misconduct, I would like to emphasise that there is a wide range of unacceptable and disqualifying unethical conduct across genders, including but not limited to abuse of authority, corruption, racism, ableism, homophobia, sexual assault and other forms of violence.

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

No, I have never resigned from a position as a member of the bar of any country and I have not been disciplined or censured by any bar association in which I was involved.

22. 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?**

Judicial independence requires complete impartiality from the judge's side. When adjudicating disputes between parties, the judge must be free from any connection, bias or bias that affects - or may be seen as affecting - his or her ability to rule independently.

Impartiality concerns not only the actual absence of bias and prejudice, but also absence of their perception. This twofold aspect is reflected in the often repeated words that justice must not only be done, but also be clearly noticed. The most important thing here, a judge must possess such strong personal qualities that can help him overcome obstacles that prevent him from staying unbiased.

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

No, I have never been found by a governmental, legal and professional body to have discriminated against or harassed an individual on above mentioned grounds.

23. **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.**

Yes, on September 12, 2019, a resident of Ulaanbaatar, Mongolia, Ganbold Ts, filed an allegation to the Disciplinary Committee of the General Judicial Council, condemning the entire Collegium of Criminal Judges of the Supreme Court of Mongolia, of which I was a member, of misconduct involving offensive conduct during a hearing of the case in which the applicant participated as a defendant. The Disciplinary Committee reviewed the application in accordance with the Disciplinary Rules for Judges and the Law on the Status of Judges and concluded that there were no grounds to believe that the law and regulations had been violated and the presiding judge along with other members of the Collegium exercised their power in full compliance with the Criminal Procedure Code.



It was common practice in Mongolia among lawyers to file disciplinary allegations against a panel of judges, who are in charge of a case in defense of which the lawyers involved, before various instances of state, legal or professional disciplinary and ethical bodies to postpone or delay a trial in order their clients would be eligible for the Statute of Limitation. From January 20, 2020, when the Mongolian Parliament has approved an amendment to the Criminal Procedure Code regarding the calculation of terms of limitations, the statute of limitations applies only to the investigation stage of the criminal process, but not to the adjudication stage in the courts.

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

No, not to my current knowledge. I have no reasons to believe that my current and former colleagues, or professional contacts would share concerns regarding my professional conduct, which might compromise my eligibility for the judicial office. I don't have any objections in terms of asking my close professional contacts about my professional conduct.

**25. 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?**

The independence of a Judge of an international tribunal shall not be undermined by any inappropriate or unwarranted interference from a State of which the judge is a national. It is the duty of all governmental and other institutions to respect and observe the independence of the Judge.

Nevertheless, there is still a disparity between exercising these principles and current reality, which demonstrates that these principles should be firmly embedded. Throughout the history, the government has always had its own interests in a judicial process, particularly in anticipating that court decisions will potentially influence the interests of the State or States they have friendly relations with.

In my view, during the tenure of serving as a Judge of the Court one should completely disregard political interests of the country of origin and refrain from any situation, which might question and compromise the Judge's ability to properly perform judicial duties in an impartial manner, while interacting with government officials and authorities. The judge is then to refer to the specific ICC statutes and regulations imposing ethical standards on matters concerning conflict of interest, particularly within the context of maintaining appropriate relationships between a Judge and authorities of the same origin. I would not hesitate to claim that the Judge would have to suspend his/her rights as a citizen of the home State and temporarily refuse the right and duties provided by the citizenship in order to maintain the mindset of an international citizen, who is impartial in its very sense when dealing with authorities of the home State. Nevertheless, it is also important to note that such affiliation will not

serve as a prejudice to the obligations of an international judge to encourage own State to cooperate and support the ICC in this sense.

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

Judges at the ICC will have high probability to have been subject to political pressures that could affect the independence of their position. There are two reasons to suppose in this way, these are ICC judges are selected by the representatives of State Parties, which always have own interests and influences, and controlling over the important court decisions that will affect particular interests of State Parties is in these judges' hand.

If judges, in case of serious political pressure was exerted upon them, do not take any action and simply surrender to the pressure and do exactly what politicians and other powerful interests want, this would be a complete abandonment of the judicial function and contrary to constitutional and legal requirements and traditions. Collectively and individually they have an ultimate duty to protect the integrity and independence of the judicial institution.

There are some actions that a judge can take and respond to the pressure. A judge who faced a political pressure might approach Chief Judge because he has accepted duty to respond, on behalf of the judges and personnel or the administration, to unlawful outside pressure upon the judges, the court, to the attacks on the court's judgments, personnel and the justice itself. Such statements may have strong impact to displace the menace at least for a time. There is another solution, to hire the media and press officers to expose the situation to the public. Taking hand of help of united national and international legal professional organizations such as the Bar, the Prosecutorial Office is powerful method to defend himself from political pressure for a judge. Can be included other international human right organisations. They have obligation to defend the judiciary, to remind politicians, the media and others of the precious heritage of judicial neutrality and independence. Individuals and politicians who have high reputation in society should do in appropriate cases.

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

Every judge must seek a way to address an issue integral to ensuring and promoting wellbeing, equality and diversity in the legal profession. The legal profession must uphold morality and integrity, so that it may advise upon and adjudicate cases of bullying and sexual harassment. However, the legal profession itself is not immune from these concerns. It is not that thing to shield and tolerate that some individual judges, through their behavior, create a workplace environment that contains elements of bullying, particularly in relation to judicial assistants and law clerks. Their descriptions of bullying included ridicule and derogatory language, undermining work results, constant unproductive criticism, and abuse of power or position.

The courts should address these issues proactively by implementing appropriate policies and internal training to ensure the vast majority of incidents are properly reported. Lack of accountability is often associated with the profile or status of the

offender, followed by fear of consequences on the part of victims. It was found that respondents working in the judiciary were more likely to be silent than other legal professions.

My personal experience in terms of struggling effectively with this kind of harmful behavior in our judiciary was very specific. If judicial assistants and law clerks belong to a minority group due to ethnicity, religion and gender, these circumstances place them at increased risk of being exposed to workplace bullying in a more severe way. Few months ago I accepted upon me the moral obligation to eliminate inappropriate workplace conditions created by co-workers and even some judges related to my judicial assistant who is a member of ethnic minority and religion. The situation has seriously affected his mental stability and work productivity so heavy as he chose to leave the profession entirely.

Firstly, I have approached to the Council of Judges to ensure resident judges and senior members of the Council are aware of what is taking place in our judiciary and with further establishment of awareness of patterns. At the followed meeting I have proposed adoption of amendments to the Code of Conducts of Judges and the Rules of Behavior of Judicial Personnel which are main framework of ethics and morals in the national courts. The amendments reflected the idea that ethnicity, gender and religion factors should be counted as aggravating elements of bullying and harassments.

Next my step towards fixing the situation was consulting with court staff, which included sharing information, providing them reasonable opportunity to express their views. Consultation enabled judges and other personnel to have input in developing policies and procedures for workplace bullying that are best suited to the needs of the courts.

Demanding the severe cases of bullying related to the assistant should be taken seriously and properly investigated, brought before a disciplinary panel and sanctioned if appropriate, was important part of my work at this stage. Even the complaints were rejected on the basis that it would not require disciplinary action to be taken, we have broke the popular belief confronting the bully might not always be the best solution and could make things worse, responding contrary to it we have sent a clear message to judges and other judicial personnel that the courts are serious about confronting workplace bullying and contribute to a positive workplace culture where unreasonable behavior is not tolerated. Judicial assistants and law clerks too are entitled to an environment free from bullying, harassment and prejudice.

## **OTHER MATTERS**

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

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

Yes, I am fully prepared to serve both at either the commencement as well as for the duration of my term if called to full-time work at the Court.

**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 acquainted with the work standards and fully accept them. I confirm that it would not pose any problems for me and I have no reasons to believe that any potential adaptations I may need for further service at the Court.

**28. Please feel free to address any other points here.**

N/A

**Thank you.**