

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

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

*Please answer the questions below.*

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Nationality: Uruguay

Nominating State: Uruguay

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

Gender: Female

Date: 18/09/2020

### **BACKGROUND**

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

I have a career of over 30 years as a litigator, first in the field of criminal law at the domestic level, in Uruguay, second as a litigator in the field of international law with expertise in human rights and humanitarian law at the international level, within the Inter-American system for the protection of human rights (Commission and Court). Thirdly, as an Ombudsperson and currently as Director of an intergovernmental organization.

In this stage of my life I want to serve to an institution, from my perspective, encompasses all that I have pursued in my professional and personal life. I experienced first-hand the importance of enjoying a life free of violence and the importance of accountability to enhance democracy. I know first-hand the crucial role that supranational judicial bodies play when national systems fail and the importance of a robust and independent judicial system to achieve justice fairly.

It would be an extraordinary privilege to work as a Judge with the aim of strengthening the rule of law, fair trials and of delivering justice at a global level. I would be more than honored to help collectively to advance all the efforts already underway to overcome the challenges that the Court faces. I believe that all the experience that I have along with my commitment and personal skills allow me to bring a distinctive contribution to the Court. I want to be part of and contribute to an institution that I consider fundamental for the development of the international criminal system and an institution that is developing in a crucial time when the rule of law and multilateralism needs to be enhanced today more than ever.

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<sup>1</sup> This questionnaire is endorsed by the following organizations: African Center for Democracy and Human Rights Studies, UNA Sweden, Alhaq, ALTSEAN-Burma, Amnesty International, Asian Legal Resource Centre, The Australian Centre for International Justice, Congo Peace Initiative, The Colombian Commission of Jurists, FIDH, Georgian Coalition for the International Criminal Court, Human Rights Watch, Justice International, Nigerian Coalition for the ICC, No Peace Without Justice, Open Society Justice Initiative, Parliamentarians for Global Action, REDRESS, Reporters sans frontières, 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.

My trajectory, as shown in my CV, enriches me with a solid judicial knowledge, with an extensive in Court room experience handling cases at the national and international levels, with personal skills that give me the ability to build solid channels of communications among governments, civil society and victims and with profound respect of different perspectives at work and an appreciation of working in diversity. I led national and regional organizations, a national human rights institution and currently an intergovernmental one. My vast international experience allows me to understand and appreciate different legal systems including their check and balances.

In my five-year term in Uruguay at the National Human Rights Institution and Ombudsperson Office (NHRI), when the institution was new to the country, I had to establish rules and standards, methods of work, budget, procedures and practices for the organization daily work. At the end of my term I left a reliable institution, as President.

The skills that I had already gained working in hybrid and multicultural environments, enhanced my capacity of working collegially in a collective body as the NHRI.

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

In terms of achievements, in its first 18 years the Court has had many achievements that are worth mentioning:

- The establishment of the Court implied the consolidation of a global criminal system for addressing the most serious crimes of concern to the international community.

- The Rome Statute and the Court established in the international agenda the idea that perpetrators should be held accountable regardless of their position or domestic political power, and impunity for international crimes is no longer acceptable.

- In the first 18 years the Court has shown that it is a reliable institution capable of delivering justice of high quality. Today the Court is fully operating with several situations under investigation, ongoing cases (trials and appeals), and many preliminary investigations under the Office of the Prosecutor.

- The domestication of the Rome Statute at national levels is one of the most important accomplishments.

- The participation of victims in early and further stages of investigation, prosecution and reparation is a unique achievement of the Rome Statute. The reparation system is developing, covering more than thousands of victims as beneficiaries, in collaboration with the Trust Fund for Victims, as an independent body.

- It is important to mention the Court's case-law, that now covers the use of child soldiers, armed attacks to civilian population, sexual violence, and the destruction of cultural heritage. The Al Mahdi case on cultural destruction is an example of the power of the Court to draw attention to relatively lesser known causes and legal areas. Although not the first international criminal tribunal to address cultural destruction, the ICC managed to focus attention on the international law's ability to respond to cultural destruction at a time when the need for such protection is clearer than ever. Similarly, the relevance of the Katanga case lies in the fact that this was the first time that the ICC issued a sentence for committing crimes against humanity. The Lubanga case is the first sentence issued by the ICC that punishes the recruitment of child soldiers, highlighting the gravity of the crimes against children.

As the world's first permanent international criminal court, the ICC faces different challenges. I will point out some:

-Universalization. Although the ICC is a global Court and 123 countries are States Parties to the Rome Statute, which is an outstanding achievement, it still needs to be ratified by more States to become a stronger worldwide Court. Also, this would enhance its legitimacy and effectiveness. It is essential to convince other States to become members of the Rome Statute, as well as to avoid any withdrawal.

-Cooperation. The ICC cannot work effectively without the cooperation of States. The ICC depends on it for collecting evidence, submitting information in a timely manner, protecting witnesses and victims, resettling victims under threat, complying with arrest warrants and enforcing its sentences. It is crucial to achieve a voluntary cooperation of States, compliance with Part 9 of the Rome Statute and that more States sign agreements on Privileges and Immunities.

-Security. The ICC needs to work in places with ongoing conflicts. The Court addresses investigations in conflict zones, and making sure that witnesses and victims are protected (avoiding any kind of risks of reprisal) is extremely important under a fair trial. The Court also faces threats of interference in evidence collection.

-Selectivity. The Court has limits, imposed by the Rome Statute provisions, with regards to cases in which it can exercise its jurisdiction. This has led unfortunately to a lot of criticism or misconceptions regarding an alleged selectivity.

-Expectations. Another challenge faced by the Court is being able to live up to the expectations. There are a lot of expectations in terms of the Court's capacity to deliver justice around the world and to tackle current crises, but often based on misconceptions or lack of information about the Court's competence to act.

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

The ICC and the Rome Statute system set up a unique and innovative structure with a complex institution. The International Criminal Court is a unique permanent international and multicultural institution, the main role of which is to fight against impunity at the international level, based on the principle of complementarity. The Court is composed of different organs with independent mandates and all of them need to align with the same vision towards a "One - Court principle". The Court already has made essential contributions in the fight against impunity; however, all efforts should be constantly made for its best performance, transparency, and good governance. The Court, undoubtedly, confronts internal and external challenges, which arise from different causes and are therefore multifaceted. Some of the ones that I outlined above (universalization, cooperation, security, and perceived selectivity) continue to persist and some of them arise with new investigations, prosecutions, and judicial proceedings. In addition, new challenges arose strongly in the recent past years regarding to efficiency and effectiveness, many of which are openly discussed in the public domain. The Court and the States Parties have been addressing these challenges in an on-going open-ended process. In terms of proceedings and fair and expeditious trial, the Court has improved its policies, working processes and structure, while openly reviewing its own strategies. The Court proceedings encompass issues of a complex judicial nature and none of them have an isolated impact, moreover all of them are interconnected and, therefore, affects the judicial process

and the judicial system. The introduction of the fourth edition of the Chambers Practice Manual, demonstrates that the matter of expeditiousness of proceeding is a complex one and needs to be addressed collectively.

The Assembly of States Parties, Presidency, Chambers, Registry, and Office of Prosecutor acknowledge some of these challenges and have been taking measures to address them accordingly. In previous years, a Study Group on Governance was established by the Assembly of States Parties and a Working Group on Lessons Learnt was also established by the ICC that led to some amendments to the Rules of Procedure and Evidence. In addition, the development of qualitative and quantitative performance indicators for the Court was an important step forward. There are important ongoing initiatives as stated in the Court Strategic Plan 2019/2021, OTP Strategic Plan 2019-2021, Registry Strategic Plan 2019-2021, which are all complementary. Simultaneously, interrelated efforts were undertaken by the Bureau, and States Parties, as the drafting of the “Matrix over possible areas of strengthening the Court and Rome Statute system” (2019), which is a living document for an open dialogue to review the Court functions, while having in mind its independence as judicial body. As a result, the Assembly of States Parties decided to appoint a group of independent experts to make recommendations on the road to enhance performance, efficiency and effectiveness of the Court and the Rome Statute system. The outcomes of the assessment by the Group of Independent Experts on clusters of Governance; Judiciary; and Investigations and prosecutions are expected to be reported this year for consideration of the Assembly and the Court.

I will point out three of the main challenges at the level of the Court’s proceedings that I am aware of and that have a strong impact on the efficiency and effectiveness of the Court still for the years to come:

- The length of the proceedings is perceived as too long. The challenge is to move towards a more streamlined process and to expedite judicial proceedings at all stages.
- The limited predictability of proceedings, the need to improve the process and procedures has been discussed in order to promote coherent jurisprudence without affecting judicial independence.
- The effective conduct of judicial work. The working method of the judiciary, the need to maximize efficiency in rendering decisions and judgements, while avoiding delays.

## **LEGAL SYSTEM**

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

a) Which legal system is your country part of?

Civil Law system.

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

One of the strongest values of the Court is that it brings together jurists from different backgrounds and legal systems. In its work, the Court strives for a common ground that will be nourished by different legal systems and experiences. In my view, criminal justice systems throughout the world have similar goals and face similar challenges. I am convinced that each system has features that

balance each other out to protect fairness and ensure efficacy. The challenge is to find ways to combine systems without losing the required checks and balances.

I have a track record as a litigator in the Inter-American System. For several years I held the position of Executive Deputy Director of the Center for Justice and International Law. In that capacity, I led the litigation team (making crucial decisions and overseeing cases at all stages), as well as frequently taking the role as lead litigator within the Courtroom before the Inter-American Commission and the Inter-American Court of Human Rights. I managed complex criminal proceedings on cases related to human rights violations committed during internal armed conflicts, dictatorships, and authoritarian regimes in addition to democracies in North America, Latin America, and the Caribbean. As a result of my experience, I have the required knowledge and experience working in or with other legal systems. Among other activities, I was invited to promote gender cases at the African System by INTERIGHTS in Dar es-Salam, Tanzania in 2010 and as a Judge at the Inter-American Human Rights Moot Court Competition, Academy on Human Rights and Humanitarian Law at the Washington College of Law, American University, Washington, D.C., U.S. I have studied human rights law and humanitarian law in countries with different legal systems and I hold a master's degree in International Legal Studies, Washington College of Law, American University. All of this provided me with strong foundations of theoretical and practical knowledge about different legal systems. I am confident that I will be searching for a common ground for better solutions for a Court that aspires to be relevant globally.

#### **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?

My native language is Spanish.

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.

As shown in more detail in my CV, I have undertaken extensive studies abroad in English. I studied at The Hague Academy in 1998; in 2002 I attended the Geneva Training Course in International Human Rights Law and Diplomacy and after I worked in Geneva at the Association for the Prevention of Torture (APT). I was then awarded the Hubert H. Humphrey Fellowship Program at the American University, Washington College of Law, where I completed a master's degree in Laws. Both the fellowship and the master's program required fluency in spoken and written English, as well as advanced reading comprehension skills to read complex technical legal texts. I have worked in the United States, for several years, in two different positions. I presented and participated in a wide variety of academic and legal events in English. I am a member of foundations, organizations and initiatives that work exclusively in English. The Advisory Committee on Nominations of Judges in its report of 2017 noted that I was fluent in English, (document ICC-ASP/16/7).

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 studied French in High School, and I currently have a modest passive fluency of this language, which (as a Romance language) shares many of the grammatical structures of Spanish, my mother tongue. I can read and understand but I cannot speak it at this time. I am extremely interested in gaining a deeper understanding of French, and I am confident that I will be able to improve my command of this language as part of my work and commitment.

#### **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?

I am most honored to have been nominated under list B and I also consider that I complete the requirements for list A nominations since I have established competence in criminal law and procedure, and the necessary relevant experience as a litigator, as is shown in my answers below.

b) For **List B** candidates:

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

At an early stage, when I was a young attorney I handled cases of severe human rights violations at the Uruguayan criminal courts during the period of transitioning back to democracy in my country in the mid to late '80s, which was risky and complex. It was a time when reporting atrocities at courts and seeking accountability for crimes committed during the dictatorship was unthinkable. At that time, I felt that as a lawyer I had a duty to contribute to recovering democracy and reconstructing the social fabric of the society. I decided to serve as a lawyer in seeking for justice and accountability for the wrongdoings of the past. Since then, and for many years, I handled cases within the criminal system in Uruguay which provided me, since an early stage, an extensive competence in criminal law and procedure. The decision that I made guided my life until today.

Thereafter and for more than 10 years I performed as a domestic litigator in the criminal area. I led the departments of civil and political rights of organizations dedicated to offer legal representation at the national criminal system.

- How would you describe your experience in criminal proceedings?

As I mentioned above, I was a litigator in the Court room at the national criminal system, in Uruguay, for a long period of my professional life which provided me with an in-depth knowledge of criminal proceedings. Later in life, I represented cases at the international level. Litigating a case before the Inter-American Court of Human Rights is a long process that requires the design of a sophisticated legal strategy, with arguments which involved the application of international criminal law and international humanitarian law, in terms of definitions, principles and jurisprudence. In addition, it also requires a deep knowledge of different national legal frameworks which include legal criminal

procedures and proceedings. In order to successfully represent the petitioners it is needed to know first-hand the local context where the events occurred and the legal proceeding at the national level to prove that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. I had to be extremely assertive of aspects of national proceedings during the litigation where a given case usually has an extensive national judicial file that is discussed at the supranational litigation stage. My experience and expertise are related to legal frameworks, criminal procedures and proceedings, legal questions and, in sum, I was exposed to all phases in preparing a case and presenting it in the Court room.

## **OTHER EXPERTISE AND EXPERIENCE**

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

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

I am willing to be trained as much, as necessary. I consider training to be important for all judges. Moreover, if elected as a Judge, I will encourage training to better fulfill Judges' duties, as well as exchanging experiences, lessons learned, and obtaining a more in-depth knowledge of other legal systems. Due diligence implies that "Judges shall take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office" as is established in the Code of Judicial Ethics of 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.

The cases that I litigated at the international level (and led the litigation team) were complex because prominent figures and structures at the State level were involved under the State's responsibility, sometimes important sectors of the army or the police forces, and/or high-ranking rulers, or paramilitary organizations. Some cases were complex because they affected numerous victims (massacres); others were complex because of the passage of time; the lack of access to evidence or very extensive judicial case files, among other factors. In many cases victims were in remote places relative to where the trial was taking place. Most of the cases were extremely politically sensitive. The litigation strategy required the crafting of arguments related to human rights violations and their interaction with humanitarian law, including the use of disproportionate armed force, the protection of civilians, the specific protection of women, children and displaced population during armed conflict, and others. Throughout my career, I litigated cases which contributed to establish unprecedented Court rulings. For example, the recognition of the particular violation of the right of juridical personality in a case of enforced disappearance and, in a separate case, the recognition of the status of forced disappearance of a person who was born under captivity and lived with another family, unaware of her origins, during the entire period that her fate was unknown. I personally led

the litigation of the Gelman case vs Uruguay, where the judgment issued by the Court led to the overturning of the so-called "Impunity Law" and the subsequent enactment of a Law (2011), which restored the full exercise of criminal prosecution for crimes committed as State terrorism during a dictatorship. In terms of scopes of the cases, as I mentioned, they involved enforced disappearances, torture, gender-based crimes, cases of massacres, all of which provided me with experience and expertise on cases similar to the cases addresses by the ICC. It is important to recall that the jurisprudence of the Inter-American Court, with which I have worked for many years, has been at the forefront of the human rights rulings. Indeed, it has had a tremendous influence in the jurisprudence of other international courts, including the ICC. To mention some examples, when addressing evidentiary matters and rehabilitation and reparation of victims, the ICC referred to rulings of the Inter-American Court. These two systems are different however in some issues they intersect as, for example, the application and interpretation of the exhaustion of domestic remedies rule and the principle of complementarity.

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.

I believe that I am a unique candidate because of my extensive practice as a defender of victims in national and international court-rooms, my vast experience leading complex litigation cases, my quasi-judge role as Ombudswoman and my current position directing an intergovernmental Institution. I directed governmental and non-governmental, national, and regional institutions and currently an intergovernmental one. I have worked and have lived in different environments and in multi-cultural and multi-language ones. I have been enriched by those experiences that enhanced my capacity of understanding other perspectives, legal systems, and ways of reasoning. I believe this is extremely relevant for a hybrid Court with a diverse geographical and gender composition.

As Director and later President of the Uruguayan National Human Rights Institution and Ombudsperson Office (NHRI), during the first institutional mandate, I played a key role in shaping the institutional structure and designing and implementing the strategic plan for the first five years, hired and managed personnel and submitted the budget to the Congress for the proper allocation of the funds. In such capacity, I had quasi-judicial powers, I personally addressed complaints of human rights violations, documented the cases, issued recommendations, and did the follow-up of compliance by the different State's agencies. The NHRI in Uruguay also functions as the National Preventive Mechanism of Torture (NPM, according to the UN/OPCAT). I have also worked as a parliamentary consultant on issues of human rights and legislative harmonization, and as a consultant for Foundations and International Organizations (intergovernmental, such as the OAS based in Washington D.C., and non-governmental organizations, such as the Association for the Prevention of Torture -APT based in Geneva), having been a consultant for the Inter-American Commission on Human Rights' strategic plan. In recent years, I have been a consultant to the Organization of American States (OAS) on matters related to the International Criminal Court. Likewise, I have worked as an academic at the prestigious Latin American Faculty of Social Sciences (FLACSO). Currently, I am the Executive Secretary of the Institute of Public Policies on Human Rights of the "*Mercado Comun del Sur*" (MERCOSUR), directing an intergovernmental institution, to design and develop good public policies in human rights and to serve as a technical cooperation body in



these matters. All these experiences helped me develop different skills and expertise that I consider especially important as an ICC Judge.

### **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.

I have vast academic and legal experience in dealing with issues of discrimination and gender-based violence working with psychological experts to establish the extent of trauma. I represented victims of violence in times of war and peace, including many women who had suffered forced sterilization, rape and other forms of sexual violence, victims of domestic violence and other forms of violence and women raped under deprivation of liberty. As I have often witnessed during my work, and as it is widely recognized, women and men suffer a differentiated form of violence due to their gender. Hence, I believe it is important to understand not only that these crimes are serious abuses but also, they are related to stereotypes and social roles and are, ultimately, culturally constructed. Gender perspectives in litigation, as well as the application of a gender-based analysis, are key elements in understanding the impact of these crimes. Sensitivity and knowledge in this field are essential to properly understanding the different impact of these crimes on victims, post-traumatic effects suffered by them and their (possible) latent re-victimization. In my capacity as an Ombudsperson I also dealt with gender-based inequality situations, police abuse of female inmates, just to mention a few examples. I am convinced that it is extremely important for all judges to have skills, knowledge, and sensitivity regarding sexual and gender-based crimes. My focus in these perspectives is constant.

### **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.

At the local level, in Uruguay, I worked as a counselor for children and adolescents in conflict with the criminal law under a program seeking alternative sanctions to incarceration in a non-governmental organization named Life and Education (*Vida y Educación*). This program was not only related to the legal representation of children and adolescents before the juvenile criminal system, but also to the accompanying children and adolescents after the completion of the criminal procedure and their compliance with the alternative measures issued. I also represented juveniles in criminal justice. In addition, I was a counsel for the Center of Promotion for the Rights of Children and Adolescents of the Uruguay Bar Association.

In the field of international litigation, I represented children who were abducted and given up for adoption during dictatorships and civil wars, displaced persons, children, and adolescents arbitrarily detained, children deprived of liberty subjected to torture and mistreatment.

As an Ombudsperson I addressed children and adolescents' rights and supervised the conditions of adolescents deprived of liberty under the mandate of the National Preventive Mechanism of Torture (according to UN/ OPCAT).

### **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 I indicated above, as a lawyer who represented several victims throughout my professional life, I am convinced that litigation of serious crimes must be carried out with the key participation of victims; the only ones who truly experienced the violations, the only ones who have a vivid recollection of their sufferings, the only ones in need of reparations to heal their wounds. Indeed, in litigation before the Inter-American Court of Human Rights, victim reparations are an essential part of the point of litigation. In my wide experience legally representing victims, supporting, and focusing on victims has been a key factor, while ensuring the rights of the accused person and a fair trial.

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

As I mentioned above litigating a case before the Inter-American Court of Human Rights is a long process that requires, in order to successfully represent the petitioners, to know first-hand the local context where the events occurred, to personally interview victims and witnesses multiple times, to work jointly, under the litigation strategy, with victims, experts and witnesses. I undertook the required training to better understand what the victims are going through. I learned in this regard, of appropriate measures needed to be taken to ensure their safety and their physical and psychological well-being and intimacy, as well as those of their families, including the avoidance of practices or acts that exacerbate trauma or re-victimization.

#### **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.

I believe the purpose of justice goes beyond merely issuing judgments of conviction or acquittal. Any criminal judicial system must both do justice and be seen to do justice, and to do so it must conduct trials that are thoroughly fair and that have meaningful impacts upon international, national, and local communities. For the legitimacy of any Court and for the success of the fight against impunity the appropriate balance between the rights of the accused and the need to respond to victims, should be carefully preserved. If expeditious trials or victim's participation conflict with fairness, the Court must ensure fairness. In my experience as a lawyer litigating at a national level in Uruguay, and before the Inter American Court of Human Rights, as well as in quasi-judicial function as an Ombudsperson, I am very aware of the importance of the equality of arms in order to assure a fair trial. Finally, the judge needs to assure the presumption of innocence, a fair hearing conducted impartially, the right of the accused person to contest witnesses, the importance of the disclosure of evidence that could demonstrate the innocence or mitigate the guilt of the accused, among all the rights of the accused person for his or her proper defense, based on the Rome Statute and the Rules of Procedure and Evidence provisions.

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

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

I have extensive experience. I am the Executive Secretary of the Institute of Public Policies on Human Rights (*Instituto de Políticas Públicas en Derechos Humanos- IPPDH*) of the MERCOSUR (*Mercado Común del Sur*), responsible for the fulfillment of the tasks attributed to the Institute and for its technical, administrative, financial and patrimonial management. The mandate of the IPPDH is to contribute to the strengthening of the rule of law in the States Parties through the planning and the monitoring of public policies on human rights for the consolidation of human rights as a fundamental pillar of the identity and development of MERCOSUR. My role is to cooperate with States for a more effective protection of human rights in harmony with national Constitutions and with the international human rights' legal framework.

I was a Director and President of the National Human Rights Institution and Ombudsman Office (*Institución Nacional de Derechos Humanos y Defensoría del Pueblo*) created in Uruguay by law in 2008, directed by a Board of five members elected by Congress majority. It was established in 2012, in accordance with the Paris Principles, as an independent and autonomous body of the State conducting its tasks and decisions. Created with a broad mandate, the NHRI helps the community to interact with government agencies, addresses complaints of human rights violation, and issues recommendations for the compliance by the State agencies, performs investigations and inspections (providing recommendations), provides advice and guidance to Government agencies, offers training to the public sector agencies, conducts outreach activities, works closely with international counterparts, oversees the compliance of international human rights legal framework at the domestic level, contributes to implement observations and recommendations of the human rights treaty bodies and of the special procedures of the United Nations Human Rights Council.

Previously I was the Deputy Executive Director of the Center for Justice and International Law (CEJIL), position based in Washington D.C., US. In that capacity I oversaw all of CEJIL's areas of work, working in tandem with the Executive Director to decide which cases to bring to the Inter-American Commission and the Inter-American Court of Human Rights. As second in command, I led and directed the legal representation of numerous cases and thematic hearings at the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. CEJIL has consultative status before the OAS and the United Nations, and observer status before the African Commission on Human and People's Rights.

I also worked as a National Consultant on Human Rights and Legislative Policy Office of the United Nations High Commissioner for Human Rights and the UN Development Program in Uruguay. I was a Strategic Advisor of the Strategic Plan 2017 – 2020 of the Inter American Commission on Human Rights and I am an appointed member of Genocide and Mass Atrocities Prevention, Latin America Network of The Auschwitz Institute for Peace and Reconciliation, and also I am an appointed member of The Mandela Dialogues - The GIZ Global Leadership Academy and the Nelson Mandela Centre of Memory. My extensive experience in the field of human rights and humanitarian law could be assessed in my CV. My competence in the field was confidently assessed independently in 2017, by the Advisory Committee on Nominations of Judges. The Committee noted that I had exceptional expertise and established competence in international law, including international humanitarian law and the law of human rights (document ICC-ASP/16/7).

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?

Yes. I have a long trajectory of legal experience as a practitioner in the field of international humanitarian law and human rights law with extensive experience as litigator on criminal law at the national level and as litigator of complex cases at the international level. I applied provisions of international human rights law and international humanitarian law as a practitioner in the field as well as an Ombudsperson (see previous answer of **HUMAN RIGHTS AND HUMANITARIAN LAW EXPERIENCE**). Also, I hold a *LL.M* Master of Laws in International Legal Studies and a degree in Transitional Justice and Human Rights Accountability (American University, Washington College of Law), among other studies in the field.

### **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.

In the prominent cases that I litigated, which some of them are mentioned in my CV as part of my legal expertise, I applied provisions of international human rights or international humanitarian law treaties. In addition, I also applied these provisions in recommendations issued as an ombudswoman in the National Human Rights Institution, in Uruguay. It is important to consider, in this regard, that Uruguay was the first country of Latin America to adopt a comprehensive national law of cooperation with the International Criminal Court (Law 18.026), in 2006, which implements not only the Rome Statute but also other international obligations under human rights treaties and International Humanitarian Law.

### **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?

In my professional career I have always applied a gender perspective. In addition, I have had education in the practice of gender perspective. I attended the “I-Course Workshop on Women's Human Rights, Empowering the International Promotion and Protection” at the Inter-American Institute for Human Rights, which included that participants to conduct a case or thematic study on women's rights. For the work that I presented, I was awarded in the finalist group of the 4 best studies with a scholarship to work in the field of women's rights in Washington D.C. for six months (2002).

Two undertakings are noteworthy to mention; 1) my involvement in promoting the gender litigation in Africa in Dar es-Salam, Tanzania, 2010, organized by INTERIGHTS, 2) the field mission in Colombia that culminated in the publication of “Truth, Justice and Reparation. The Rights of the Victims in the Justice and Peace Process, with a Focus on the Female Victims and Medellín” ( Report from a Mission

in Colombia) by the Swedish Foundation for Human Rights (2007) which was presented to Committees of the Swedish Parliament.

Recently, in the framework of the XXXV meeting of High Authorities of Human Rights of the Mercosur (June 2020), the Institute under my direction (IPPDH) decided to address the topic of protection of women against violence and femicide and the impact of the crisis of the COVID-19. This initiative included participation of the Ministers of Gender Affairs of different countries and the Office of the High Commissioner for Human Rights (UN Human Rights).

### **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”?

The concept of high moral character implies, in my view, that of a person who is honest, who always shows integrity in his or her actions. A person with convictions of fairness. A person who is coherent in his or her personal life with the principles he or she professes in his or her professional life.

A person who is committed to the fulfillment of institutional mandates and whose goal is the common good and not his or her own. A person who leads by example. A person with unquestionable reputation as a human being and in all facets of life. In addition, “high moral character” implies having a vision and a leadership to promote a culture of equality, diversity, respect to everyone without discrimination.

I have been living my personal and professional life guided by those principles, with integrity and independence. I was born and raised with those values in an ordinary family. I made decisions in my life to live accordingly with what I believe is for the good of all, in good faith and honoring equality for everyone. Every step of my life was built up by effort and commitment. Not in vain, I was elected to direct institutions that required multiple skills, balance, patience and determination, integrity, independence, and I was able to live up to such responsibilities.

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

No, I have 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?

Every single person deserves the full enjoyment of rights, without distinction. People are equal in dignity and discrimination on any grounds is unacceptable, in the defense, promotion, and protection of human rights. Integrity embodies that a judge shall conduct him or herself with probity and integrity in accordance with their office. The Code of Judicial Ethics of the ICC establishes, “Judges shall avoid conduct or comments which are racist, sexist or otherwise degrading and, to the

extent possible, ensure that any person participating in the proceedings refrains from such comments or conduct.”

- 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.

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 allegations made related to misconduct, including allegations of sexual harassment, discrimination, or bullying, or any investigations regarding my alleged professional misconduct related to the same.

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 do not have any reason to believe that any current or former colleagues or professional contacts, if asked, would share 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?

When a judge is elected, he or she does not represent the State that nominated him or her. His or her duty as an ICC judge is to serve with independence and impartiality to the mandate of the Court. If elected to the ICC, my relationship with my country of origin should be friendly while keeping a healthy distance. I would be extremely careful to avoid any misperception of bias. Certainly, as with any other State, I would promote awareness of the Court’s mandate and its functions and cooperation and commitment to international justice, without trespassing the limits required to preserve my independence. It is my obligation, as a Judge, to act impartially and with independence, releasing myself from any engagement that would present a conflict of interest with my role in the Court. I am very aware that judicial independence is a crucial element of the rule of law. Therefore, a judge should exercise the duty with complete independence from any influential power, parties in the trial, or pressure of any kind.

Moreover, it is not enough that the judge feels independent, he or she needs to appear to be acting with complete independence and impartiality to the eyes of a reasonable external observer. In this regard, Article 41, paragraph 2 a) of the Rome Statute (Excusing and disqualification of judges) establishes that “A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground.” The term “impartial” implies absence of bias, actual or perceived. Therefore, the existence of grounds that put the judge’s independence to question need

to be carefully assessed, it is a serious matter. If there were enough reasons, as a Judge, I would request to be excused in accordance with rule 35 of the Rules of Procedure and Evidence.

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

A judge should exercise the duty with a complete independence of any influential power, direct or indirect, inducement, influence of parties in the trial, or pressure of any kind. A judge must not only be independent, but also appear to be independent to an external reasonable observer. Independence encompasses a personal, political, and intellectual attitude. In the twenty-first century, the concept of judicial independence should not be restricted to possible pressure from governments, it also involves pressures arising from the Judicial institution itself, from its own structure, and from the public. A Judge working collegially should always remain independent from inappropriate influence arising from attitudes of other judges.

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

I have a long and successful trajectory of working collegially. Most of my positions involved working as part of multicultural legal and advocacy teams which I greatly enjoyed. I also appreciate learning different approaches to common challenges. One of my most relevant experiences was being a member and Chair of the Board of Directors of the Uruguayan National Human Rights Institution in its first mandate, where I led a group of 5 peers during my term. The close collegial dynamic of the National Human Rights Institution and Ombudsperson office tested my ability to ensure that in collective exercises the voices of different members were respected and heard. In my leadership positions in States and non-governmental, national, and regional institutions, I was able to build the necessary bridges of communication between peers, staff members, superiors, and subordinates. I consider myself a team-player, who is always willing to contribute significantly to healthy work environments. I am a person of dialogue and someone that has demonstrated pondered and fair judgment.

To preserve a work environment free of bullying, harassment, and other harmful behavior it is crucial to establish fair and effective mechanisms and procedures to address any allegations promptly. Ethical rules of zero tolerance must be established.

## **OTHER MATTERS**

1. 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 prepared and available to serve at the commencement and for the duration of my term if elected and if I am called to work at the Court full time. I am very prepared for the mission I would

be entrusted, and I feel ready to fulfill the mandate with the best of my ability, efforts, and commitment. I have faced difficult and demanding tasks before, and I have always fulfilled them working with devotion and commitment. I am most committed to undertake the expected working demands of the position as a judge at the ICC. In my work history I am most familiar and accustomed to long hours and changing schedules. Working evenings and weekends has been the norm and I am well prepared to work in such an environment.

- 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.

The judicial tasks described above are compliant with my expectations of work standards, any potential adaptations will be part of the transition to a new position and in my case, it would be an easy transition.

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

**Thank you.**