

2023 ICC Judicial Elections **Questionnaire to candidates**

Name: Keebong PAEK

Date: 29 July 2023

Motivation

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

Bringing justice is what I have endeavoured to do in Korea as a prosecutor and a lawyer for the past 32 years. I am hoping to continue to do this by serving the international community.

Before I started my career as a prosecutor in 1992, I studied international law at graduate school. However, after a few years of hard work at the prosecutors' office, international law was no longer at the forefront of my mind. Nonetheless, in 1997-1998, I had the opportunity to study abroad with the support of the Korean Ministry of Justice. I did an LLM at Columbia Law School in New York and naturally learned about the ICC, as the adoption of the Rome Statute was then being discussed at the UN. In fact, my LLM dissertation was on the independence of the ICC Prosecutor. After returning to Korea, I worked at the Ministry of Justice and took charge of ICC-related matters, drafting the implementation bill for Korea's ratification of the Rome Statute and attending ICC Preparatory Commission sessions. Later, despite having returned to the prosecutors' office, I was selected as a government representative and attended the Kampala review conference. My PhD dissertation was on the law of evidence at the ICC, and I have written books and articles on the ICC and the international criminal law.

I have great respect for international criminal justice and the International Criminal Court. While working for implementation of justice in Korea, I always had in mind a desire to do so for the international community as well. Based on a deep knowledge of court jurisprudence, a global mindset acquired through working at the United Nations Office on Drugs and Crime (UNODC) and a sense of fairmindedness and mutual respect, I would like to contribute, beyond the borders of Korea, to ending impunity for mass atrocities and bringing justice for victims. I am confident that I am now prepared and competent enough to work as a Judge at the ICC. It would be a great honor to work to achieve international criminal justice.

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

For LIST A candidates

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

At the prosecutors' office, I worked as both a director and a prosecutor in various departments dealing with general criminal matters, public security, intellectual property, tax, customs, crime by public officials and violent crimes. On top of the *proprio motu* authority to commence

investigations, the prosecutors in Korea reviewed all criminal cases under police investigation and finally decided whether or not to indict, after supplementary investigation if necessary. The directors of the prosecutors' office reviewed all the cases in their departments. Therefore, the total number of cases I dealt with at the prosecutors' office would be several tens of thousands.

At the Ministry of Justice, I dealt with mutual legal assistance and extradition in relation to the cases under investigation by prosecutors or the police. The charges ranged from economic crimes such as tax evasion, embezzlement and fraud, to violent crimes such as murder and sexual violence. These cases numbered about twenty in total.

As a criminal lawyer, I have handled law enforcement and regulatory matters involving white collar crime, cross-border litigation, multinational investigations, extradition and mutual legal assistance, cross-border asset recovery and Interpol Red Notices, and represented defendants before the court, prosecutors' office, police, customs office, tax office and labor office. There have been about one hundred fifty to two hundred cases in total.

As a private lawyer, I have conducted internal investigations on behalf of companies on employee misconduct, such as embezzlement and fraud, as well as harassment, discrimination and abuse of authority, and suggested disciplinary sanctions and remedial measures to the companies. The total number of cases is twenty-five to thirty.

I have faced a number of different challenges in my different roles in the prosecutor's office and as a private lawyer. In conducting criminal/internal investigations as well as defence, the most important challenge was to deal with the evidence and apply the proper legal criteria. Strict requirements for search and seizure, protection of personal information, attorney-client privilege and the integrity of digital forensic evidence were some of the key issues to pay attention to – a mistake in complying with legal requirements and following correct procedures could lead to failure of the whole case.

In addition, when dealing with a big case, prosecutors work as a team and lawyers do the same. Depending on each person's role as a team leader or a member, efficient leadership, effective division of work, cooperative relationships and individual dedication are crucial for the success of the investigation or the defence. I always emphasized this to team members and reminded them of it if the work was not proceeding well.

Finally, in dealing with mutual legal assistance, extradition and cross-border asset recovery, it was always a challenge to understand and deal with the counterpart officials, regardless of whether the request was made by them or to them. I endeavoured to establish mutual understanding with the counterparts on various issues such as different legal standards or requirements, diverse approaches to criminal investigations and trials, and the unique practices and culture of each country. Frequent and clear communication with full explanations and the early exchange of supporting material was essential for the successful performance of the work.

- 3. During your judicial career, please share any instances when you applied Rome Statute provisions or other international criminal or humanitarian law sources, directly or through national legislation that incorporates Rome Statute offences and procedure. Have you ever referred to or applied jurisprudence of the ICC, *ad hoc*, or special tribunals? If yes, please indicate any relevant judicial decision or opinion that you authored or co-authored.**

While I was working at the Ministry of Justice in 2002, I drafted the implementation bill for Korea's ratification of the Rome Statute. The bill included provisions on the mental and material elements of crime, responsibility of commanders and other superiors, scope of jurisdiction, non-applicability of the statute of limitations and cooperation with the ICC.

I have had the opportunity to refer to the Rome Statute on a number of different occasions. When I was working as a Korean prosecutor, I researched the ICC's jurisprudence on hearsay evidence, prepared legal briefs and argued that that ICC's flexible approach in relation to the hearsay rule stipulated in Article 69(2) of the Rome Statute and Rule 68 of the Rules of Procedure and Evidence (the "Rules") should be referred to, if I had to request the court to admit the prosecution's hearsay evidence.

On the other hand, when I worked as an attorney for victims in a trial, I would cite the victim participation system stipulated in Article 68(3) of the Rome Statute and Rules 89 to 93, in order to get more opportunity to proactively speak and submit legal briefs on behalf of the victims.

As a defense attorney, when the prosecutor was reluctant to disclose evidence, I would ask the prosecutor to refer to the strict disclosure system of the ICC and to allow as much access to the prosecutor's evidentiary documents as possible.

I have also cited other international conventions during my legal career. For example, as a defence attorney, I dealt with a case of the alleged violation of the Korean Law on the Regulation of Manufacture, Use and Import of Biological or Chemical Weapons and Material. Through argument based on the Biological Weapons Convention and the Chemical Weapons Convention, which were implemented by the Law above, I advocated that the conduct at issue was for peaceful purposes and accordingly justified pursuant to the gist of the two Conventions.

Furthermore, I drafted the implementation bill for the ratification of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation while working at the Ministry of Justice. The bill was adopted in 2003, and was later applied in the Piracy off the Coast of Somalia case involving a Maltese-flagged chemical carrier operated by a Korean shipping company in 2011.

(or)

For LIST B candidates

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

N/A

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

N/A

Victims' rights

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

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

While working as a private attorney in Korea, I filed criminal complaints on behalf of victims and helped them make statements at the investigative agency as well as testify in court. I also prepared and submitted legal briefs with detailed descriptions of the crimes and damages to the investigative agency and the court. When necessary, I attended trials on behalf of victims and made arguments.

In addition, the Korean criminal procedure law has a system in which victims may apply for a compensation order during criminal trials. I assisted victims of fraud and other crimes to file applications for and receive such compensation orders.

I feel that a victim's right to participate, stipulated in Article 68(3) of the Rome Statute and Rules 89 to 93, is one of the greatest innovations in the history of international criminal tribunals. In particular, the right of victims to intervene in proceedings is stipulated in Articles 15(3), 19(3) and 82(4).

Accordingly, victims whose personal interests are affected by the crimes under ICC jurisdiction can participate in the ICC judicial proceedings, even at the investigation stage, as long as a causal link between the victim's harm and the charge is established. While organizations or institutions can participate as victims only when they have sustained direct harm, natural persons can participate no matter whether their harm is direct or indirect.

When victims apply for participation, it is the current practice of the Court to review the applications through A-B-C approach. When it is not clear whether an application meets the requirements, it falls in the category of C and is reviewed by the Chamber upon the Prosecutor or the Defense counsel's request.

Usually legal representatives, on behalf of the victims, attend the trial, make opening and closing statements, submit legal briefs of views and concerns, request and examine witnesses and provide opinions on the appropriate sentence. In order to do so, legal representatives are granted access to court materials, and it is usually recommended for a group of victims to select an appropriate common legal representative.

Since there is a possibility that victim participation can delay the proceedings and put an undesirable burden on the accused as well as the Prosecutor, the Chamber should try to strike a balance between the victims' right to participate and the accused's fundamental right to a defence. According to Article 68(3), victims' participation should not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

On the other hand, reparations to victims, stipulated in Articles 75, 79, 110(4)(b) and Rules 94 to 98, are also an innovative system adopted by the Rome Statute. The process consists of the Chamber's issuance of a reparations order, authorization of the implementation plan and approval of the reparations project.

The Court has established principles relating to reparations through several decisions, with respect to individual accountability, fair treatment of victims, standard and burden of proof for causal link, proportionality between the liability of the offender and the harm, and the victims' participation and consultation with victims. The recent principles established in the Ntaganda case are notable in terms of the gender inclusive approach to sexual crimes, the 'do no harm' principle, the acknowledgement of transgenerational harm, the indication of several categories of victims for prioritized reparations and the transformative reparations.

The types of reparations can be individual and/or collective. Recently, a collective reparations order with individualized components was issued in the Ntaganda case. The modalities of reparations include, but are not limited to, restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition and symbolic reparations. The amount of monetary award should be based on the appropriate calculation of the number of potentially eligible or actual victims. The responsibility of co-principals is acknowledged as joint and several in the Katanga case and the Ntaganda case.

Several issues are yet to be resolved. The whole reparations process is too prolonged, and the division of work between the TFV and VPRS is unclear. Victims of crimes which are not included in the charge are not entitled to reparations. The criteria determining to what extent the Chamber will supervise and intervene through the whole reparations process is yet to be established.

Further efforts to streamline the process and standardized jurisprudence on the reparations orders should be made. More expertise and resources should be developed, and active assistance programmes should be implemented by the TFV independent of the actual prosecutions before the Court in order to fill in the gap, which exists in the current reparations system.

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

I will try to simplify and standardize the application procedure for participation in order to reduce the burden for victims and expedite the process, by way of introducing a shorter application form, more delegation of authority to the Registry and early designation of legal representatives. Through discussion, in particular, with the VPRS, the OPCV and the TFV, a more efficient model will need to be sought. Regarding the requirements for victims, I will consider a flexible approach in determining 'indirect' harm so that victims in need are not improperly excluded, and adopt a more victim-inclusive method to reduce victims' burden of proof.

During the judicial proceedings, I will pay thoughtful attention to the views and concerns presented by the victims and lead the proceedings to ensure effective and meaningful participation by the victims' legal representatives. Taking a reasonable approach in dealing with legal representatives' applications for access to court materials and providing clear guideline for their participation will be conducive to this end. In addition, the victims' rights to lead evidence before the trial will be respected, as long as it is not prejudicial to the rights of the accused.

For effective and timely reparations to victims, I will actively guide the VPRS and the TFV, endeavour to expedite the proceedings and conduct appropriate oversight. Just as delayed justice is not actual justice, I believe, delayed reparations are not desirable, as this will result in a frustration and a lack of trust from victims.

Regarding the reparations orders, I will pay particular attention to vulnerable victims. Keeping in mind gender and child sensitivity, I will take a gender/child inclusive approach in making the reparations order and reviewing the implementation plan and reparations project with appropriate consideration of the views of victims and affected communities. The requirements, procedures and application deadline for reparations will need to be less strict than those for participation of the victims.

In deciding appropriate types and modalities for reparations, I will endeavour to gain a comprehensive understanding of the background of the crime and circumstances of the victim community as a whole and consider ultimate transformative reparations.

At the same time, considering the criticism that victims' rights to participate and to reparations can be a contributor to prolonged court procedures and a burden on the accused as well as the Prosecutor, I will also endeavour to efficiently manage related procedures while ensuring an appropriate balance between the rights of the victims and the accused.

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

When working as a prosecutor, I was educated at the Korean Legal Research and Training Institute on the protective measures available to vulnerable victims, in particular victims of sexual violence and crimes against children. These included the provision of security guards by the police, making anonymous witness statements and providing financial assistance for the relocation of witnesses. Accordingly, in the cases of serious violent crimes, I often used the protection measures for victims in consultation with the police.

I was also trained on how to get assistance from psychological consultants in the interrogation of vulnerable victims. In addition, I was educated on the protocol for victims' participation to enable them to express views in the trial stage, as well as vulnerable victims' rights to be accompanied by a trusted person for court testimony.

Separately, the prosecutors' office in Korea operates a victim assistance system. Victims can get compensation, financial and residential support, and psychological therapy. I informed victims of this system and supported their applications for assistance.

When working as a private attorney, I was particularly attentive to victims' rights to participate in court trials and get a copy of the trial material. On behalf of the victims, I used the case material to develop and submit legal briefs containing victims' views and concerns.

Another action I took as an attorney for victims is explained above in the first two paragraphs of the response to Question 4.

Defence rights

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

As a defence attorney, it is not easy to effectively defend the rights of the suspect in a criminal investigation since the police and the prosecutors have much more resources and broad authority, including the power to conduct search and seizure. During coercive measures of search and seizure based on warrants, I tried to secure the rights of the suspect as much as possible by presenting arguments related to the relevancy requirement for seizure, the limited scope of search indicated in the warrant, and the protection of attorney-client privilege.

During the forensic review process of digital evidence seized by the investigation agency, I tried to identify evidence for exclusion from final seizure which, I argued, was irrelevant to the charge or beyond the scope of the warrant. When necessary, I filed an appeal against the search and seizure and got approval from the appeals court to exclude several items from seizure.

It is also not easy to fully exercise the accused's rights in the court process. The prosecutor tries to prove guilt with abundant evidence obtained through the investigation, and the judge is interested in the efficient proceeding of the trial. From the accused's point of view, it is difficult to convince the judge on the necessity of accepting defence evidence to the extent satisfactory to the accused.

I always had in-depth discussions with the accused prior to the trial, sufficiently interviewed the potential witnesses, established a clear defence strategy and plan together with the accused and prepared legal briefs, witness examination questions and presentation material to ensure efficiency in the trial. Without sufficient preparation, the rights of the accused cannot be fully implemented in the formal trial process.

Sometimes I found it useful to get and submit opinions from relevant experts. In order to ensure a balanced trial, support from experts is helpful to overcome the prejudice which may have been established through the prosecution's case, and to persuade the judges to make a fair decision.

High moral character, independence, and impartiality

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

Judges should conduct trial proceedings and make judgments independently and impartially according to the law and their conscience. To this end, I believe that judges must follow what they believe is right, in line with the law. They need to have courage not to yield to any pressure, a sense of balance to consider conflicting rights and interests, moderation so as not to veer too much in any biased direction, and self-restraint in order to avoid arbitrary decisions. A high moral character encompasses all of these elements.

I will embody these elements with a sense of commitment to serve and contribute to international criminal justice. In addition, it would be desirable if compliance training is provided within the ICC to the judges on the value and importance of these elements. This will lead to independent, fair and reasonable judgments, and ensure trust and support from the general public, including those involved in the trial.

On the other hand, dishonesty, cowardice, prejudice, arrogance, and dogmatism are contrary to high moral character and must be avoided to ensure fair judgments.

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

No.

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

From the moment of election and taking the judicial oath, a Judge becomes a member of the Court, i.e., an international civil servant, who is expected to consider the Court's mandate as the top priority and perform his/her mission independently from the state of nationality. An ICC Judge should carry out his/her duties in strict accordance with the law and his/her conscience. This is what I will do, without regard to any political pressure from any person or state. I believe in the rule of law, which will ensure the fairness of the trial and develop the international community's and stakeholders' confidence in the ICC.

Even if there is significant political pressure, or if I encounter a case involving the interests of my state of nationality or of its people, I have no doubt that I will judge objectively and fairly according to the law and my conscience. If there is a situation where there may be even a slight concern about performing the work independently, or if there is such an appearance, I will recuse myself.

Judgments based on the law and conscience, without succumbing to pressure, are the way to implement the rule of law and build trust in the Court. I am confident that not only myself, but also all the members of the ICC Judiciary, will perform the work in such a manner. If I find it necessary to review and respond to any such pressure, I will raise the issue with the Presidency. If necessary and appropriate, the Presidency of the Court will need to raise the issue with the Assembly of States Parties for consideration.

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

At the Ministry of Justice, I worked as Deputy Director of the International Criminal Matters Division for three years and as Director of the International Legal Matters Division for one and a half years.

During this time, as a government representative, I attended inter-governmental conferences on international criminal matters, such as the Ad Hoc Committee meetings for the negotiation of the UN Convention against Transnational Organized Crime and the UN Convention against Corruption, UNODC conferences, UN terrorism conferences and ICC Preparatory Commission meetings. I also conducted trade negotiations with foreign countries such as FTA negotiations and WTO discussions related to the legal market, investment protection and intellectual property rights, and attended UNCITRAL conferences.

I also attended bilateral meetings for the negotiation of mutual legal assistance treaties, extradition treaties and the Korea-US Status of Forces Agreement and dealt with requests by and to foreign governments for mutual legal assistance and extradition. I also composed bills for international conventions such as the Rome Statute and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation as well as the Foreign Legal Consultant Act, a legislative tool to enable foreign lawyers to work in Korea.

In addition, I made an assessment report on human trafficking and sexual exploitation in Korea for domestic and international review.

During this course of work, I dealt with confidential information such as the Korean government's negotiation strategies and foreign government's requests for extradition and legal assistance. I protected the confidentiality until it was time to make public comments or issue press releases after conclusion of the work. Protecting confidentiality is a strict obligation for government officials, and I took this obligation very seriously when performing my duties at the Ministry of Justice.

Management and workplace culture

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

While working as head of the department at the prosecutors' office, I put together a task force, which consisted of several prosecutors and investigators, to carry out collective investigations of serious crimes. To ensure successful investigations based on effective cooperation, I considered the expertise, experience and seniority of each prosecutor and investigator and created a team with a systematic organizational structure. I reminded all the members of the team of the value of mutual respect and understanding, guided them to support each other and coordinated with the team on an ongoing basis.

In addition, when I worked as head of the division at the Ministry of Justice, I always emphasized the importance of mutual respect and consideration to the members of the division. I encouraged them not to hesitate to use the whistleblowing channel or consult with me if they were harmed due to other colleagues' misbehaviour.

At that time when I was at the prosecutor's office, there were only a small number of female prosecutors and investigators, and some directors showed high preference for male prosecutors and investigators. In contrast, I tried to manage my department with a good gender balance and encouraged mutual understanding when carrying out our work.

While working as a private attorney, I have conducted internal investigations into company employees' misconduct, including embezzlement and fraud, as well as discrimination, harassment, bullying and abuse of authority. Based on the outcome of these investigations, I have recommended to the companies disciplinary action against the wrongdoers and provided training sessions on the appropriate workplace culture, gender perspective and compliance issues. Often times, I have prepared and provided companies with a compliance manual or guidelines in

accordance with the Labor Standards Act, the Gender Equal Employment Act and the Work-Family Balance Management Act.

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

I will try to create more opportunities for informal small group meetings with judicial colleagues as well as staff members to enhance mutual understanding, as I did at the prosecutors' office and the Ministry of Justice. As international civil servants belonging to the same organ, I am sure frequent and open talks among members of the Court will be helpful to prevent misunderstanding and promote effective decision-making.

In addition, I will recommend to the Registry to invite prominent social figures and experts for education and training, not only on workplace culture but also on various topics such as international politics, economics, humanities and anthropology, so that members of the ICC will become more knowledgeable and open-minded. This is what I did in the prosecutors' office and it was helpful to improve working relationships and the workplace culture.

Furthermore, as a private attorney, I established a compliance system and provided a whistleblowing channel with contact points for companies. I will consider getting assistance from outside service providers and discussing the adoption of a similar internal compliance and whistleblowing system at the ICC.

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

While working as a prosecutor, I conducted investigations into a variety of serious criminal cases, such as crimes of murder, assault and sexual violence. One notable case was a gang rape involving a female teenager. According to the Korean Criminal law and jurisprudence, in order to punish someone accused of the crime of rape, it must be proved in principle that irresistible force or threats were used against the victim. If the victim consents voluntarily, then the crime of rape cannot be established. In this case, the four teenaged suspects argued that they did not use force or threats and that the victim did not resist. The outcome of the police investigation was not enough to prove that the suspects physically or even verbally threatened the victim.

Keeping in mind the vulnerability of the victim, and taking a gender inclusive approach, I arranged for a psychological consultant affiliated with the prosecutors' office to help the victim to feel comfortable and to understand why and what she needed to talk about at the prosecutors' office. After the victim talked with the consultant for a couple of hours, she gave detailed comments to the investigator on the crime committed against her and the harm she suffered physically and mentally. In particular, she mentioned that she panicked when surrounded by the suspects in an isolated area and thought that if she resisted, then they would seriously injure or even kill her.

I indicted all the suspects with assertion that there was no genuine consent due to the coercive environment. The victim was not called upon to testify as a witness, and all four of the accused pled guilty. I believe that since the victim's written statement made at the prosecutors' office was so strong, the defence counsel advised the accused not to contest the charges.

While working as a private attorney, I conducted internal investigations on behalf of companies. The following case is an unfortunately common example.

A female employee was sexually harassed by a male supervisor. He made sexual jokes to her in the absence of other employees, and continually urged her to meet outside of work for drinks or meals. He also sent her sexual photos by SNS. Initially, she was afraid that he would retaliate or that her colleagues would bully her if she reported this to the company. Despite her repeated appeals to stop, the offender continued to harass her, and she finally reported him through the company's whistleblowing channel.

When I was asked to take charge of this case, I first advised the company to keep confidential the victim's personal information and the fact that she had reported the harassment. I informed the victim of this so that she felt comfortable to describe in detail what had happened to her. Then I explained to her about the need to reinforce her statement, and she recommended a reliable witness who would not divulge her report.

After I heard from the witness, I interviewed the alleged offender. At first, he adamantly denied the allegation, but after I explained my plan to conduct a forensic review of his office computer and smartphone upon his consent, he finally admitted to the offence. Based on the results of the investigation, the company took disciplinary action against the offender, and the victim was moved to another department pursuant to her request.

I feel that the concept, meaning and implication of a gender perspective are changing and developing depending on the times and circumstances. In addition, the gender inclusive approach applied to a specific case should take into account the nature of the crime and the personal character and circumstances of the victim, as well as the culture of the society to which the victim belongs.

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

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

It is very significant that the Rome Statute has included various forms of sexual and gender-based crimes such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other form of sexual violence as crimes against humanity and war crimes. It is also notable that persecution on the ground of gender is included as a crime against humanity in the Statute. Furthermore, SGBCs may be considered to constitute genocide under Article 6(b), as "causing serious bodily or mental harm to members of the group".

Accordingly, for the first time at the ICC, in the Bemba case, the accused was found guilty of war crimes and crimes against humanity of rape and others by the Trial Chamber, though this was later reversed by the Appeals Chamber. In addition, in the Ntaganda case, war crimes and crimes against humanity of rape and sexual slavery were recognized, and the same recognition occurred in the subsequent cases, including the Ongwen case, where the accused was found guilty of forced marriage and pregnancy as well. Separately, in the Al Hassan case, the first indictment for the crime

of gender persecution was confirmed by the Pre-Trial Chamber; this is currently pending in the Trial Chamber.

On the other hand, the Rome Statute recognized children as persons with individual rights pursuant to the 1989 Convention on the Rights of the Child and included provisions of criminalization such as (a) conscription, enlistment or use of children under the age of fifteen years to participate actively in hostilities, (b) forcible transfer of children and prevention of birth, and (c) trafficking of children as a form of enslavement.

In the Lubanga case, the accused was found guilty of the war crimes of conscripting and enlisting children under the age of fifteen years and using them to participate actively in hostilities. Moreover, in the Ntaganda case, the accused was found guilty of war crimes and crimes against humanity of rape and sexual slavery against child soldiers who were on the same side of the armed forces as the accused.

In such cases, victims of sexual violence or gender-based crimes were often reluctant to testify because they were afraid of the social stigma. In the case of child victims, they often lacked the ability to make statements or, over time, did not remember the details of the harm they suffered. In this sense, special care is needed in dealing with those victims, and it is notable that Article 42(9) stipulates that the “Prosecutor shall appoint advisers with legal expertise on issues ... including ... sexual and gender violence and violence against children”.

Therefore, when investigating those crimes and asking victims to testify in court, appropriate assistance and protection measures should be pursued depending on each victim’s circumstances. To this end, Article 68(1) stipulates that the “Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses [with] ... regard to all relevant factors, including age, gender ... and health, and the nature of the crime, in particular, ... where the crime involves sexual or gender violence or violence against children”.

Furthermore, in order to ease the difficulty of testifying in court, conducting proceedings in camera or by video-link can be considered, as stipulated in Article 68(2), particularly “in the case of a victim of sexual violence or a child who is a victim or witness”.

An even more flexible approach regarding the hearsay rule can be considered. The Prosecutor should think of a video recording investigation at the early stage of the investigation and use the results as evidence in court. In this regard, Rules 88(1) and 112(4) stipulate that ... a Chamber may, ..., “order special measures ... to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence ...” and that, when questioning, the Prosecutor may choose to use procedures such as recording, in particular when this “could assist in reducing any subsequent traumatization of a victim of sexual or gender violence, a child or a person with disabilities in providing their evidence ...”.

Overall, the Rome Statute was adopted with thoughtful attention to the punishment of sexual and gender-based crimes and crimes against children, as well as to protect victims’ rights and prevent the risk of re-traumatization. In addition to the specific measures stipulated for the investigation and the trial stages, it is highly recommended that the Prosecutor and the Chamber ensure the charges fully reflect the nature of the SGBCs and crimes against children, including by way of cumulative charges, and the appropriate sentence is rendered, especially when the vulnerability and defencelessness of victims was abused.

While special consideration should be given to the cruelty and gravity of the crime and protective measures for victims in case of sexual crimes, it is crucial to pay attention to the motive and driving factors behind gender-based crimes, which are often related to gender discrimination and prejudice prevalent in the community. In dealing with gender-based crimes, a gender-based perspective and analysis should be taken during the investigation and trial stages, and gender inclusive reparations should be sought, in order to transform the mindset and culture of the people in the community.

On the other hand, with regard to child victims, special attention should be given to individual profile of the victim as well as to the victim's social and cultural context. Not only the victims' views, but also those of their parents, caregivers and experts should be fully considered. Under the 'do no harm' principle, a child-sensitive approach should be taken.

However, occasionally, some victims are not active in providing statements and evidence and may not seem to strongly want the perpetrators to be punished. This may not actually be the case, but rather the intention may be to avoid additional investigations and testimony, or it may be due to social pressure or fear of social stigma. Therefore, it is important to understand the particular background without falling into misconceptions, and to take the appropriate supportive measures.

Similar consideration should be given when investigating sexual crimes and reviewing the consent of the victim. Though lack of the victim's consent is not an element of the sexual crime, which the Prosecutor must prove, it can be used by the defence as a ground for excluding or reducing the responsibility of the perpetrator. No active resistance from a victim can be misconstrued as voluntary consent. In this sense, in cases of sexual violence, note should be taken of Rule 70(a),(b) and (c), which states that consent cannot be inferred by "any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victims' ability to give voluntary and genuine consent" or "where the victim is incapable of giving genuine consent" or by "the silence of, or lack of resistance by, a victim ...".

In the first half of the response to the question 14 above, I described my personal experience to overcome challenges and my experiences in this area.

Judicial training

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

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

I have gained knowledge about victim participation and reparations through a review of court decisions and research material. However, I have not had first-hand experience reviewing applications for victims' participation or the implementation plan and reparations programmes for victims in real-life cases. I look forward to the opportunity to gain practical experience to better understand this.

On another note, I have basic knowledge of French, but I am not fluent. Considering that it is one of the official working languages of the Court, I would like to have the opportunity to learn it in more depth.

I will happily make myself available to take part in professional training to enhance my skills and knowledge in these areas.

National nomination procedure

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

Committee for the Nomination of Candidates for Election to the ICC

The Government of the Republic of Korea selects its candidates for election as Judges of the ICC through the Committee for the Nomination of Candidates for Election to the ICC (the "Committee"). The Committee consists of the members of the Korean national group at the Permanent Court of Arbitration (PCA) and the Chief Justice (or his/her representative) of the Supreme Court of Korea. This procedure allows for the elements of both Article 36(4)(a)(i) and (ii) of the Rome Statute.*

* In accordance with Article 36(4)(a)(ii) of the Rome Statute, the members of the national group of Korea at the PCA nominating candidates for the ICJ under the ICJ Statute become members of the Committee. In addition, in accordance with Article 36(4)(a)(i), the Chief Justice of the Supreme Court, who makes recommendations to the President of Korea for the appointment of Supreme Court Justices, the highest judicial officers in Korea, becomes a member of the Committee.

Recommendations for the Selection of Candidates

The Committee invites the Supreme Court, the Ministry of Justice, the Korea Society of International Law, the Korean Bar Association, the Korean Criminal Law Association and the Korea Law Professors Association to recommend possible candidates, and informs them that the recommended persons are required to have high moral character, impartiality and integrity, possess the qualifications required for appointment as a Supreme Court Justice**, and fall under List A and/or List B, according to Article 36(3) of the Rome Statute.

** In order to be eligible to be appointed as a Justice of the Supreme Court of Korea, a person shall have been in one or more of the following positions for at least 20 years and be at least 45 years of age. (Article 42 of the Court Organization Act (Qualification for Appointment))

- Judge, prosecutor, or attorney-at-law
- Person who is admitted to the bar and has been engaged in legal affairs at a government agency, local government, a public organization as set out in Article 4 of the Act on the Management of Public Institutions, and/or a corporation
- Person who is admitted to the bar and has been in a position higher than assistant professor in jurisprudence at an authorized college or university

Each entity recommending such a candidate submits a recommendation statement including a full description of how the candidate fulfils the Rome Statute's requirements, details of the candidate's excellent knowledge of and fluency in at least one of the ICC's working languages, his/her international experience and expertise, a comprehensive curriculum vitae and other relevant documents.

Review and Final Selection

After the recommendations have been submitted, the Ministry of Foreign Affairs holds a meeting of the Committee, and the Committee selects the final candidate by consensus or secret ballot after thorough discussions. In selecting a candidate, the Committee takes into account the qualities of the candidate as the top priority and comprehensively considers the candidate's experience in relation to List A and/or List B of the Rome Statute, professional or academic expertise, international experience, reputation and his/her availability for the term of appointment as an ICC Judge.
