

**Coalition for the International Criminal Court (CICC)  
Questionnaire for ICC Judicial Candidates  
December 2017 Elections**

*Please reply to some or all of the following questions as comprehensively or concisely as you wish.*

*To fill in the document please click in the grey box, which will then expand as it is filled in.*

Name: Khosbayar Chagdaa
Nationality: Mongolia
Nominating State: Mongolia
Legal Background ( <i>mark as appropriate</i> ): List A <input checked="" type="checkbox"/> B <input type="checkbox"/>
Gender: Female <input type="checkbox"/> Male <input checked="" type="checkbox"/>

**Background**

**1. Why do you wish to be elected a judge of the International Criminal Court (ICC)?**

Paragraph 8(a) (i) and (ii) of article 36 of the Rome Statute states that the States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for the representation of the principal legal systems of the world and equitable geographical representation.

The principle of inclusion of geographical representation in the Court should provide equitable engagement of all the Member states to the utmost extent. However, Asia still remains the most underrepresented continent among the States Parties to the Rome Statute; and Mongolia, in particular, has never participated in election for a position of a judge at International court compared to the rest of the States Parties from Asia Pacific region.

This is precisely why I always felt sad that Mongolia is still poorly involved in establishment of international criminal justice on a global scale.

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

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

**2. What do you believe are the most important challenges and achievements of the ICC in its first 15 years?**

I believe that the most important goals ICC aspires to attain since its establishment until today was proving its efficiency, freedom from political influence and its contribution to the international justice. However, the Court was successful in fighting impunity by holding the perpetrators of the most serious crimes accountable and therefore, proving its efficiency in this context. Considering the Court still lacks competent protection from political influence, ICC is capable of being used as a machine for the unjust prosecution and unfair targeting of some leaders. This suggests that justice at the ICC is unduly affected by the political mandate of nations. In regards to the judgment of ICC's contribution to the international justice, I feel it is too early to come up with a definite answer considering ICC's life span.

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

It is clear that questions two and three are closely interconnected and mutually affect each other because of some of the still existing problems before ICC. The Court faces many difficult challenges, particularly in relation to the cooperation of states and its independence from political influence.

First, it is crucial to improve the level of cooperation with both member and non-member states, which is why efforts should be made to secure such cooperation for the successful implementation of the mandate of the court. Smooth collaboration is required specifically for the execution of arrest warrants issued by the ICC.

Secondly, from the beginning ICC has had to face questions of legitimacy, including its independence from the political bodies of the United Nations. For instance, a rise in referrals from the U.N. Security Council, a highly political body, could potentially undermine ICC's reputation. There are many other issues that push the Court into the political thicket such as the geographical focus of its case-load and the codification of the crime of aggressive war. There is a possibility that the rules on the crime of aggressive war will finally be voted into effect, thus further pushing the Court into the political thicket.

In this respect, I believe I will be able to make a significant contribution to ICC through my expertise in establishing criminal justice and represent ICC accordingly by gaining the respect and admiration of the international community as a whole.

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### **Nomination Process**

**4. What are the qualifications required in the State of which you are a national for appointment to the highest judicial offices? Please explain how you meet these qualifications.**

Section 51(3) of the Constitution of Mongolia and Article 4 of the Act on the Legal Status of Judges provide that no person shall be qualified for appointment as a judge of the Supreme Court unless he/she:

- is at least 35 years old;
- has held a professional Law degree;
- has completed the Bar examination and has a valid Certificate of lawyer;
- has at least 10 years of experience as a lawyer;
- has not been accused or convicted of a crime;
- has not been afflicted with a dangerous physical or mental disorder;
- has not been appointed as the President of the State, member of the Parliament, Prime Minister, or a Minister;
- engaged in leadership positions of political parties in the six years previous to the day of the appointment;
- has demonstrated his/her advocacy and legal practice and comprehensive competence in law;
- is a person of an unblemished character whose impartiality and integrity cannot be questioned.

I was appointed and promoted to the Supreme Court in 2015 by the President of Mongolia, upon nomination by the General Judicial Council. Ethics and Qualifications Committees of the General Judicial Council examined and determined that I meet all the above requirements for the appointment to the highest judicial offices as stipulated in Act on the Legal Status of Judges, Judicial Act and in the Constitution of Mongolia.

As stated in my curriculum vitae, available on ICC's website, I meet all of the above mentioned requirements.

**5. Have you provided the statement required by Article 36(4) (a) of the Rome Statute and by the nomination and election procedure adopted by the Assembly of States Parties? If not, please provide an explanation for this omission.**

According to the paragraph 4(a) (i) of article 36 of the Rome Statute, which states that nominations of candidates for election to the Court, **nomination** shall be made "by the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question".

In line with the requirements stated in Article 51 (3) of the Constitution of Mongolia, I was selected by the General Judicial Council of Mongolia and appointed by the President of Mongolia as a Justice of the Supreme Court, which is the highest judicial office in Mongolia.

Furthermore, the selection of the final candidate among the Justices of the Supreme Court was administered by the Council of Justices of the Supreme Court, which consists of all the judges of the Supreme Court, by the method of voting. Chief Justice

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of the Supreme Court of Mongolia then informed the Mongolian Government of their final decision regarding the successful candidate.

## **Legal System**

**6. 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

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

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

Although, historically Mongolia has always belonged to a civil law system, due to recent major judicial reform, Mongolian criminal justice system has adopted multiple elements from common law jurisdiction.

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

In this capacity, I was also a member of the Governmental Committee for Drafting the New Penal Code, New Criminal Procedure Code of Mongolia, and participated in elaboration of the Tort law, Law Enforcement Act and Marshals Service law of the State.

Currently, I also act as a member of the Governmental Committee, which is responsible for drafting the amendments to the New Penal Code and New Criminal Procedure Code of Mongolia in full accordance with common law standards.

## **Language Abilities**

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

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

Mongolian

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

I have gained an excellent command of English while studying at the School of Foreign Affairs of the National University of Mongolia. I was able to dramatically improve my language skills while in US in an attempt to obtain an LLM degree and by successfully completing an internship in the US. I have also attended numerous conferences, workshops, and events in English both in Mongolia and abroad.

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Below I have mentioned some of my publications and training events conducted in English.

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

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

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

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

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

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

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

**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 have acquired intermediate level in French language proficiency (B2 level) through completion of intensive French training language course by French Alliance in Mongolia.

Below I have mentioned some of my training events in French.

23 September, 2013-07 July 2016 “Français Général” by “L’Alliance Francaise D’Oulan Bator”, Ulaanbaatar, Mongolia.

07-25 July, 2014 “Public International Law” by The Hague Academy of International Law, The Hague, Netherlands.

29 July-18 August, 2013 “ Private International Law” by The Hague Academy of International Law, The Hague, Netherlands.

**List A or B Criteria**

**8. Your response to this question will depend on whether you were nominated as a List A candidate or a List B candidate. Since you may have the competence and**

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**experience to qualify for both lists, please feel free to answer both parts of this question to give the reader a more complete view of your background and experience.**

a) For **List A** candidates:

- **Briefly describe your qualifications as a List A candidate.**

I have gained competence in criminal law and procedure as an advocate, investigating prosecutor, and as a judge.

I started my career as an advocate in criminal defense at the Mongolian Advocate's Association. Then I have served as an investigating prosecutor at the General Prosecutor's Office and have also obtained substantial experience as a judge.

In the course of my career as a judge from 2006 to 2012, I served on the bench of a first instance at the Sukhbaatar District Court. Between 2012 and 2015, I worked at the Capital City Court of Appeal, and since 2015, I was appointed as a Judge of the Criminal Division of the Supreme Court of Mongolia.

It is evident that I have attained multifaceted experience in every aspect of criminal proceedings by assuming various positions. Due to my extensive experience in the position of advocate, investigating prosecutor, and as a judge in various courts of Mongolia, I believe I meet the requirements stated in article 36 paragraph 3 (a) (i) to stand for election under List A candidate.

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

During my entire career as a judge, I served for over eleven years in various courts of Mongolia, handling over four thousand criminal cases. In the position of a judge of this Court, I have dealt with complicated and high-profile cases, which involved high level officials such as former President of the State, Head of General Police Department of the State, Head of Metropolitan Police, as well as several members of Parliament and former government ministers.

- **How would you describe your experience as a judge, prosecutor, counsel, or in another similar capacity, in criminal proceedings?**

I have established competence in criminal law and procedure and have the necessary relevant experience as an advocate, investigating prosecutor, and as a judge in criminal proceedings, thus fulfilling the requirements of article 36 (3) (b) (i).

I started my career as an advocate specializing in juvenile crimes and human trafficking, particularly involving women and children with the purpose of sexual exploitation. I also served as an investigating prosecutor for two years and was responsible for investigating crimes committed by judicial officers, special agents such as police officers, prosecutors, judges, special service agents and court marshals. In that respect, it is clear that I have attained elaborate experience in every aspect of criminal proceedings by assuming various positions including but not limited to substantial experience as a judge.

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b) For **List B** candidates:

- Briefly describe your qualifications as a List B candidate.  
N/A
  
- How would you describe your competence in relevant areas of international law, such as international humanitarian law and international human rights law?  
N/A
  
- How would you describe your professional legal experience that is of relevance to the judicial work of the ICC?  
N/A

### **Other Expertise and Experience**

**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.**

Public defense, investigation and prosecution are principal activities within the function of the Court. In order to provide effective hearings and trials a judge is supposed to know in detail how to think both as a defense counsel and a prosecutor. Despite my long standing experience in judiciary, as mentioned previously, I also obtained substantial experience in criminal defense, defending right of victims, investigation and prosecution of grave crimes, which are especially relevant to the work of an ICC judge.

Conducting preliminary examinations and investigations, for which prosecutor is responsible for, and to provide victim's unprecedented rights to participate in ICC proceedings, which is defense counsel's work - all of these activities are quite familiar to me. The judge who is competent in these areas can communicate directly with the parties during trials and extract best results from the judicial process. As a judge with this capacity, I am able to direct adjudication process in a way that criminal trial results come out in a fair outcome by accounting both prosecutors, who are trying to bring a criminal to justice, and defense attorneys, who protect the rights of the accused.

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

During the transitional period, which Mongolia faced after collapse of socialist regime, having served both as an exclusive jurisdiction case investigating prosecutor and as a judge at different judicial instances, I have managed complex criminal cases involving multiple accused with multiple victims, multiple counts and complex legal issues, sometimes involving issues of international law, criminal law and the Constitution. Among them were high-profile cases of white collar crimes, which involved high level officials such as former President of the State, several members of Parliament and Government ministers. Moreover, I handled several dozen of cases emanated from July 1 Mass disorder, which occurred after 2008 Parliament elections at the Sukhbaatar Square, which was under Sukhbaatar District court jurisdiction, my former employment at the time. As the result of the chain of number of trials, The Head of General Police Department of the State, the Head of Metropolitan Police, as well as

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several high position police officers were sentenced for different terms of incarceration for shooting to death several unarmed demonstrators; and hundreds of participants of the mass dispute were sentenced for marauding during mass disorder at the premises as well.

I also decided a number of cases in conspiracy and politically motivated murders, among which was a case involving a murder of a political leader Zorig Sanjaasuren, who was supposed to become the Prime Minister at that time, and a case involving Military General Headquarter high level officers, who were accused of illicit arms trading with North Korean army representatives. I have also resolved numerous pyramid scheme fraud cases, which were widely spread as the result of difficult socio-economic conditions after collapse of former economic structure during 1990s in Mongolia, resulting in cases each involving thousands of victims.

Human trafficking cases, particularly involving women and children with the purpose of sexual exploitation, which were taking place during this transition period, constituted substantial part of my work as a judge. As such, I have accumulated extended experience in managing, prosecuting and presiding over complex criminal cases. Disclosure of evidence is a necessary procedure by Criminal Procedure Code of Mongolia and my policy on disclosure is that trials must never be done discreetly and that open disclosure is crucial for the fairness of a criminal trial. New Criminal Code of Mongolia, member of Drafting Committee of which I was sustained, provided participants of criminal procedure with wide opportunities in disclosure of evidence, which is being currently exercised at all the courts of Mongolia nowadays.

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

**11. The ICC is a unique institution, and ICC judges will face a number of unprecedented challenges (including managing a regime of victims' participation and witness protection in situations 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.**

**a) Are you willing to participate in ongoing workplace training aimed at promoting legal innovation and coordination among all judicial chambers in adjudicating complex questions relating to law and policy?**

YES

**b) Do you consider such training to be important?**

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I consider it is absolutely necessary. Such training is very important in ensuring judicial competence and efficiency. I believe these workshops can provide the judges with the necessary juridical techniques to extract valuable results from the decision-making process.

**Experience (and perspective) related to gender crimes and crimes of sexual violence**

**12. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked. Please describe any experience you may have in dealing with sexual and/or gender-based crimes and where you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted.**

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

My involvement in this area was both as a legal counsel and as a judge, as I mentioned before, in human trafficking cases, particularly involving women and children with the purpose of sexual exploitation, which were taking place during economic and political transition period in Mongolia. Also I handled numerous cases with crimes of serious sexual and gender based violence and a myriad of cases of rape, enforced prostitution and sexual slavery.

As a judge, I have always strived to protect the rights of the weak and vulnerable persons, especially if women and children were involved. From my experience, I came to understand that victims of these sorts of crimes require a very delicate approach when being examined before the court. For instance, in cases of human trafficking with a purpose of sexual exploitation, I found it imperative to consider the consequences of being a victim of such a crime. These victims often become very vulnerable and hesitant to provide all the details of the crime, which, in turn, generates serious impact on examination of the evidence. This has to be carefully considered during an examination before the court.

**Victims-related work**

**13. Victims have a recognized right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. Please describe any experience that you may have relevant to these provisions and that would make you particularly sensitive to/have understanding of the participation of victims in the courtroom.**

Participation of victims in the criminal proceedings on equal base with prosecution and accused is a common practice in the Mongolian legal system. However, this might seem unacceptable for common law jurisdictions and might appear as a novice approach for International courts. The victims in Mongolian criminal proceedings possess practically similar rights compared to the rights of defense and prosecution:

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they can not only demand compensation but also possess the right to be present at all procedures including interrogations, tests, pre-trials and trials, and to present evidence and express their opinion regarding the guilt and punishment of the accused. From 2016 victims and their representatives by the verdict of Constitutional court of Mongolia are allowed to appeal Court decisions all the way up to the Supreme Court. According to Criminal Procedure Code of Mongolia, the damage caused by criminal action to victims must be fully compensated by the accused. Therefore, all issues on damages must be resolved within the criminal proceedings and only a few turn to separate civil law suits.

I have had a long-term extensive experience in these kinds of situations while serving on the bench of a first instance at the Sukhbaatar District Court. I have conducted trials of various complicated criminal cases, with participation of numerous victims, particularly mass fraud cases. When the court considers all measures to expand the protection of victims, it is critical to pay due respect to the rights of the defendants. Maintaining the proper balance between the rights of defendants and the rights of victims is crucial in any justice system.

**14. How would you address the need for a balance between victims' participation with the rights of the accused to due process and a fair and impartial trial? Do you have any relevant experience in dealing with this issue?**

As I mentioned before, the Court has to reconcile two requirements – the participation of victims and the right of the defendant to a fair trial. These two needs affect the fairness and legitimacy of any trial. In any criminal trial the balance between the rights of an accused to a fair trial and the rights of victims have to be properly maintained. Defense lawyers are concerned that the increased participation of victims in trial proceedings and the extension of the rights of victims will endanger the rights of defendants, eventually leading to arbitrary convictions and unreasonably harsh sentences. My personal view remains that the possibility of erroneous conviction will not be significantly increased by the protection of victims or participation of victims, especially when the opinions of victims are carefully limited so as not to influence the determination of guilt.

However, as a trial judge I noticed that during trials of complicated and highly-publicized mass fraud cases involving savings and credit cooperatives, with participation of numerous victims, and when the prosecution and victims' legal representatives are united, while the social pressure and government interests are concurrently merged, in this case, often times defendant's due process right is always endangered in connection with judge's reluctance to make rulings, which might not always work in their favor.

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

In the beginning of 2000s, Savings and Credit cooperatives in Mongolia became insolvent and bankrupt due to borrower's loan defaults during economic downturn. It was reasoned that insolvency occurred as the result of insufficient control and lack of supervision of these institutions by Financial Regulatory Commission. This lack of

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supervision also opened windows for criminals to commit fraud by establishing fraudulent financial institutions in order to illegally extract money from civilians. As the result, trust in financial system in Mongolia was lost and clients who deposited their money in those institutions organized movements to pressure the government in forcing responsibility unto the savings and credit cooperatives and claim the right to confiscate their property to compensate the damages and losses allegedly suffered. Although this was not permitted by the Criminal Procedure Code, the government promised to provide permission to place institution's property under the client's protection.

This tendency to uniformly punish all the individuals who conducted savings and credit operations and seize all of their property was prevalent in society, particularly among government officials. Because of social, and subsequently, governmental pressure, all the directors of insolvent savings and credit cooperatives, among whom were bankrupt individuals but who were not involved in fraud, were prosecuted on an equal basis.

As a judge, I emphasized two things to adhere to in the above mentioned cases: to grant equal opportunity to both parties to present their respective evidence, and ensure that statutory laws were properly applied to the facts of the case. These cases demonstrate the danger of an imbalance between the protections of victims and preserving the rights of defendants, for overzealous protection of victims could lead to miscarriage of justice. I came to realize that it is important to avoid any prejudice to the accused in allowing victims to perform their procedural rights. Any attempt to expand the rights of victims will certainly cause further debate as to the proper balance between the rights of victims and those of the defendant.

### **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.**

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

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

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

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on Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights on 5 January, 2012.

**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 may have issued within the scope of your judicial activity or legal experience?**

In the course of my career as a judge at all judicial instances, I systematically referred to international humanitarian law treaties and applied them in my judgments. According to the Constitution of Mongolia, the provisions of international treaties on human rights and international humanitarian law, to which Mongolia is a party, are preemptive over the provisions of national rules if they contradict each other. In accordance with Article 16 (14) of the Mongolian Constitution, citizens of Mongolia are guaranteed the right to appear in front of the court if they believe that the rights stipulated not only in Mongolian law, but also in the international treaties, had been violated in any way. In this regard, the Supreme Court receives a number of complaints from participants in criminal proceedings and victims that are considered to have suffered from criminal activity, about violations of human rights provisions that are not explicitly stipulated in national laws.

While working as a judge, I constantly had to refer to international treaties, interpret the provisions, and apply them to various situations. Along with my colleagues I had reached important decisions bringing human rights treaty standards into the national criminal process, which lead to the recognition of these treaties in Mongolia.

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

**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.**

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

In 2015 Criminal division panel of the Supreme Court, under my direct initiative, first time in the judicial history of Mongolia, applied Article 7(4) of Judicial Act and Article 205 (1.5) (1.6) of Criminal Procedure Code suspending a case and resorting to the Constitutional Court in order to determine whether the Amnesty law, which was passed by the Parliament and was applicable to the case, violates the Constitution in regard of

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that it allows to pardon and release all inmates regardless of which kinds of crimes they have committed.

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

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

**Other matters:**

**18.** 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

**19.** 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) Do you disagree or have difficulty with this expectation?

NO

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

**20.** Article 40 of the Rome Statute requires judges to be independent in the performance of their functions. Members of the CICC and governments are concerned about the difficulties a judge may experience in independently interpreting articles of the Rome Statute on which his or her government has expressed an opinion.

a) Do you expect to have any difficulties in taking a position independent of, and possibly contrary to, the position of your government?

NO

b) Article 41 requires a judge’s recusal “in any case in which his or her impartiality might be doubted on any ground.” Do you feel you could participate in a judicial

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by fax to 1 212 599 1332 or by mail to:

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708 Third Avenue, Suite 1715

New York, NY 10017, USA



decision involving a matter in which your government has an interest, such as on whether an investigation by your government into a matter of which the ICC was seized was genuine?

YES

**21.** 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

b) Do you expect to be able to perform the judicial tasks described above on your own or with reasonable accommodation? If no, please describe the circumstances.

YES

**22.** If there are any other points/issues you wish to bring to the attention of the CICC in this questionnaire, please feel free to address them here.

N/A

**Thank you.**