

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

Conscious of the restrictions placed upon of ICC judges in making extra-curial comments which might affect the independence referred to in Article 40 of the Rome Statute and Rule 34 of the Rules of Procedure and Evidence, we invite judicial candidates to please reply to the following questions as comprehensively or concisely as possible.

Name: Eduardo CIFUENTES MUÑOZ

Nationality: Colombian

Nominating State: Colombia

List: (tick one by clicking twice on a box and selecting "Checked")

- A**
B

Background:

1. Why do you wish to be elected a judge of the ICC?

Looking back on my life no activity has provided me with such a profound spiritual joy than that of being a Judge. Looking forward, becoming a Judge of the I.C.C promises to deepen even more that sentiment and the mere chance of cherishing that destiny opens to me a horizon of complete and meaningful realization. Such a personal motivation additionally finds solid grounds in the conviction that the fight against impunity by the I.C.C., happens in the fatal absence of any other means of justice. So to be there to avoid the triumph of the authors of the worst crimes, combines both the highest personal challenge as well as the most embracing duty of all.

Criminal law, human rights and international humanitarian law have been the cornerstones of my legal career, be it as justice and President of the Colombian Constitutional Court, as Ombudsperson and head of the public criminal defense system, or as head of UNESCO's Human Rights Division. This path of decades, comprising challenging national and international socio-political contexts, has given me the legal expertise, human insight, and experience required by an ICC judge to be just, competent, and to advance the Court's mandate - at this crucial time now facing the institution.

2. What do you think would be the biggest challenges you would face if you were elected as an ICC judge?

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In the short term, my biggest challenge would be to get control of all sorts of practical skills related to the conducting of proceedings as an international judge. In the long run it would be to add juridical value to each judgment by taking stock *inter alia* of the previous decisions of the I.C.C and the ad hoc tribunals. Each decision of the I.C.C brings into play its relevance, its credibility and its legitimacy, and that depends on the excellent performance of all and each of its judges.

As new cases reach its docket, and new situations of interest emerge, the ICC faces increasing immediate challenges that need to be tackled as soon as they arise. As a newly appointed judge, I would need to quickly be able to join my colleagues at the bench in delivering international justice where it is required. Moreover, I learned during my stint at UNESCO that working with different legal traditions is an always challenging, yet stimulating experience. Lastly, I believe that some aspects of the day to day logistics at the Court could improve – this, I think, requires creative thinking that in any case complies with the Statute and the Rules: indeed a challenge to all those elected in December 2011.

3. What do you believe are some of the major challenges currently facing the Court? What do you believe will be some of the major challenges in the coming years?

I believe the ICC challenges should be addressed in two separate analytical categories. The first is its work as an international court of law. The ICC is quickly advancing on three fronts that will be crucial for its future. The pre-trial chambers are deciding procedural matters that will have an impact on the Court's future engagement; one of the trial chambers is to pronounce the first final decision; and through the appeals system the Court is setting important precedents that shape the whole system.

The second is the Court as an international institution, and its relations with member states, non – member states, international organizations and civil society. In this respect, the biggest challenge lies in the perceived rationality of the Court's selection of cases. Other challenges remain; attaining universal ratification of the Rome Statute, securing collaboration of states in police matters, and maintaining a smooth interaction with other organizations – the UN's Security Council and Secretary General, in particular.

In this respect, I believe my contribution will be to adjudicate, together with my colleagues at the bench, in justice and expertise, so as that an independent ICC commands the respect and admiration of the international community as a whole.

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.

Under Article 232 of the Colombian Constitution, in order to be a judge of the Constitutional Court, among others courts, the following requirements must be met:

1. To be Colombian by birth and a citizen in good standing.

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2. To be a lawyer.
3. Not to have been condemned by a court sentence to imprisonment, except for political crimes or crimes of strict liability.
4. To have filled, for 10 years, positions in the judicial branch or the Public Ministry, or to have exercised honorably for a like period the profession of lawyer or university professor in the legal disciplines in officially recognized institutions.

I fully comply with all qualifications, as I was deemed eligible and indeed elected judge of the Colombian Constitutional Court (1991- 2000)

5. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure under which you were nominated. Please also provide any relevant information such as the national law governing the procedure for the nomination of candidates to the highest judicial office in the nominating state (an Article 36(4)(a)(i) nomination) or the nominating letter from the Permanent Court of Arbitration national group (an Article 36(4)(a)(ii) nomination).

My nomination was made in accordance with the terms of article 36, paragraph 4 (a) (ii), of the Rome Statute. As an initial step on this occasion my name was chosen from a list of several jurists and after a process of careful examination by a panel composed of different ministries and presidential counselors.

6. 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.

Yes, the Colombian Government has provided the statement.

Legal System and Language Abilities:

7. a) Which legal system does your country belong to?

Civil Law

- b) Do you have knowledge or experience working in other legal systems?

Yes, I studied at the Parker School of Foreign and Comparative Law at Columbia University. Moreover, I was the Head of UNESCO's Human Rights Division, which required cooperation with jurists and experts from non – civil law countries.

- c) What difficulties do you envision encountering working with judges from other legal systems? How would you resolve such difficulties?

In my own experience, working with jurists from different legal systems in an international institution is a wonderful and challenging experience. It is therefore always useful, as a well-known German comparative lawyer once suggested, to do some “distancing and

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differencing”: take some distance from one’s own legal system, and bring to the forefront the differences with others that could be an obstacle to understanding.

I believe, though, that this challenge should not be overstated: it tends to decrease as time passes, and the law and practice of the international tribunal itself become the relevant framework for those working there, overshadowing domestic traditions. As the ICC evolves as an institution, as more decisions are reached, this should happen as well.

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

a) What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in English?

I am fluent in English. I have studied in the United States and have had working experiences in English.

b) What is your knowledge and fluency in French, if it is not your native language? Do you have experience working in French?

Though I lived in France and have had a good knowledge of French, I have not again had the opportunity to work in that language on a permanent basis. I wish to regain more fluency in this language.

List A or B Criteria:

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

9. a) For List A candidates:

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

Highly competent. After decades as a high court judge in Colombia, and as its Ombudsperson and law professor, I have gained significant expertise and competence in criminal law and procedure (see below).

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

Very wide. I have been in substantive issues of criminal law throughout my career, including matters of international criminal law. During my tenure as judge of one of Colombia’s highest courts, I drafted decisions defining the limits between Military Tribunals and Ordinary Criminal Justice, and I also decided on the standards on command responsibility in the context of violations of human rights and international humanitarian law, among many others.

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Moreover, I decided on dozens of cases concerning criminal due process. I drafted decisions that dealt with the limitation of the executive emergency powers based on human and international humanitarian law, and I also drafted key decisions articulating the relation between international and domestic legal orders.

As Ombudsperson, I was Head of the Public Criminal Defense Office, with hundreds of criminal defenders in my charge. I concentrated my efforts on the improvement of the public defense system and the redirection of the criminal process strategies in order to reinforce procedural guarantees and the effective protection of the parties in criminal trials, especially the victims. During these years, I also worked in the drafting and promoting of a Habeas Corpus bill. I was a member of the High-Level Criminal Process Reform Commission, which sought among others, to adopt international due process standards and to encourage more efficient criminal proceedings.

b) For List B candidates:

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

- How would you describe your professional legal experience that is of relevance to the judicial work of the Court?

Expertise and Experience:

10. Please describe your qualifications for this position. Please also 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.

As mentioned before, I was a Justice and President of the Colombian Constitutional Court (1991- 2000), Ombudsperson of Colombia, also in charge of the Public Criminal Defense system (2000 - 2003), and Director of the Human Rights Division at UNESCO. Perhaps as important, during my tenure in each of these positions, I believe I managed to transform ideas into reforms and improvements that brought actual justice and reparation to victims of human rights abuses, as well as preventing even worse offenses against wider populations.

11. Do you have legal expertise in relevant areas such as the crimes over which the Court has jurisdiction; the management of complex criminal and mass crimes cases; or the disclosure of evidence?

I hold expertise in some of such areas, acquired in managing challenging situations as Colombian Ombudsperson. There, my mandate involved the tackling of massive violations of both human rights and international humanitarian law. During my tenure, innovative

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preventive measures were implemented. Unfortunately, though, immediate reaction to gross abuses and violations was sometimes required as well, which involved coordinating actions with the Attorney's Office and its crime scene investigators, managing victims and witnesses, observing the reaction of armed forces, among all the other challenges that arise in a situation such as these. Thereafter, in the events where prosecution was initiated by the Attorney-General, our office would intervene in the criminal process. In order to prevent massive violations of human rights against civilians, I designed and put in action an early warning system which proved to be effective and which findings have been decisive as proofs of perpetration of breaches of humanitarian mandates particularly in those cases where the alarms issued were not diligently observed.

- 12.** The ICC is a unique institution, and judges serving on the court will inevitably face a number of unprecedented challenges (including managing a regime of victims' participation and protecting witnesses 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?

Certainly

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

Absolutely

- 13.** Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalised or overlooked.
- a)** Please describe any expertise and/or experience you may have in dealing with crimes of sexual and/or gender based violence.

As Dean of the Law Faculty of the Andes University I invited the most representative human rights organizations of my country to come together in order to set up a commission to defend the human rights of the civilian victims of forced displacement in the course of the armed conflict. Apart from following up governmental policies, the purpose of the commission in which I have had a very active participation was related with the process of monitoring the compliance and effectiveness of the most celebrated judgment of the Constitutional Court that had ordered the government to make a complete reshuffle of policies in this field, ordering general remedies and a strict adherence to human rights principles (tutela T-025 de 2004 that applies to more than 3.5 million displaced persons in Colombia, of which more than half are women and children). The role of the commission became essential to give support and a variety of inputs to the court (repeated *amicus curiae*), not to mention the legitimacy gained by the Court as a consequence of the assured civil acceptance. Thanks to this sort of interaction among Constitutional Court-civil society-human rights organizations, the Court multiplied the issuance of specific judicial orders directed to remedy the gravest violations of human rights of the displaced population. In this regard the description of the

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plight of the women pertaining to the forced displaced population and the evidence shown of the sexual abuses committed by the combatants against them, as it is laid down in the AUTO 092 de 2008, was so blatantly criminal that the Court ordered the National Prosecutor to open immediate investigations.

Moreover, I published “Women in the jurisprudence of the Constitutional Court”, Progress in the construction of legal equality for women in Colombia, Females series No. 4, 1995, Defensoría del Pueblo, Colombia.

b) Are there situations or cases in the past where you believe you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted? If so, to what effect?

As judge of the Constitutional Court I contributed to forge a doctrine very sensitive to the gender perspective.

14. Victims have a recognised right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. Please describe any experience that you have, which would be relevant to these provisions.

In 2011, after six years as Dean of the Law School, I decided to become associate professor at Los Andes Law school, where I led a team of researchers that, at the request of the Central Government, has rendered a complete plan of regulation to guarantee and recognize the rights of the victims of human rights violations belonging to indigenous and afro-descendant communities.

15. Under Article 68(3) of the Rome Statute, victims are entitled to present their views and concerns and have them considered at stages of the proceedings to be determined by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

a) Please describe any experience you may have that would make you particularly sensitive/understanding to the participation of victims in the courtroom?

In Colombia I have presided over diverse assemblies of victims of the internal conflict and constantly I have advocated for their rights. In the Constitutional Court I defended the active participation of the victims in the different stages of the criminal process. In time the entire Court assigned to the judicial process as specific goals those of seeking truth, justice and complete reparation to victims. Accordingly ample rights to participate in the proceedings have been bestowed on them.

b) Do you have any experience in balancing victims’ participation with the rights of the accused to due process and a fair and impartial trial? If so, please describe.

Given the nature of the judicial review displayed by the Colombian Constitutional Court, Courtroom interaction of the type of a criminal court does not exist. Through constitutional adjudication, however, the rights of victims to actively participate in the criminal proceedings

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have been firmly established and defended. Additionally, as ombudsperson, taking advantage of soft law mechanisms I organized multiple meetings with victims and channeled to the judicial competent organs their complaints and evidence collected. In some cases I issued “humanitarian resolutions”, denouncing on behalf of the victims grave breaches of the International Humanitarian Law

- 16.** Have you advocated for the adoption and/or implementation of human rights or international humanitarian law treaties or other instruments? Please describe your experience.

My first public action as Colombian Ombudsperson was to propose and promote a Constitutional amendment in order to facilitate the ratification of the Rome Statute.

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

As I mentioned above, as justice at the Constitutional Court, I drafted key decisions articulating the relation between international and domestic legal orders, which not only referred to human rights treaties or the 1949 Geneva Conventions but actually became the standard for understanding the direct effect of international human rights and humanitarian law instruments in Colombian domestic law. Thereafter, I drafted dozens of decisions that directly applied international instruments to domestic cases dealing with human rights.

- 18.** During the course of your judicial activity, if any, have you ever applied the provisions of the Rome Statute directly or through the equivalent national legislation that incorporates Rome Statute offences and procedure? If so please describe the context in which you did.

During my tenure as justice, Colombia had not yet become party to the Statute

- 19.** Have you ever referred to or applied the jurisprudence of the ICC, *ad hoc*, or special tribunals? If so, please describe the context.

During my tenure at the Constitutional Court (final year being 2000), there was no chance to apply jurisprudence of the ICC. Nonetheless the doctrine of the “constitutional block” – integration of international human rights law and international humanitarian law into the Constitution--, clearly delineated in those years has served the Court to apply principles and norms of international character as they have been interpreted by the authorized bodies such as in the case of the Ad hoc Tribunals. In my work as Ombudsperson and in general as a defender of human rights and professor of law I of course have made constant reference to such jurisprudence whenever necessary.

- 20.** Have you served on the staff or board of directors of human rights or international humanitarian law organisations? Please describe your experience.

I have not.

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21. a) Please provide us with a list of and/or links to your writings and opinions relevant to evaluating your experience.

Chapters in books

- “Study on the Monitoring of Public Policies of Demobilization and Reintegration” Criminal Policy Studies No. 2, Attorney General, 2006.
- “The ruling of the Constitutional Court of Colombia on re-election”, Human Rights, International Relations and Globalization, Ibañez Publishing Group, 2006.
- “The Ombudsperson and the Effectiveness of Human Rights in the Current Status of the Colombian Justice: Analysis and Solutions”, *Universidad Externado de Colombia*, 2003.
- “Constitutional Judicial Review of Judicial Decisions in Comparative Law” in: “Constitution and Constitutionalism Today”, on the fiftieth anniversary of Manuel García Pelayo’s Comparative Constitutional Law, Manuel García-Pelayo Foundation, Caracas, August 2000.
- “Access to Justice and Due Process”, in: “Iberoamerican Yearbook of Constitutional Justice”, Center of Constitutional Studies, Madrid, 1999.
- “New Constitution and New Constitutional Interpretation: The Case of Colombia”, in: “Challenges of Democracy in the Andean Region, Essays in our Reality”, Andean Commission of Jurists, Lima-Peru, 1998.
- “Writ of Protection (*amparo*) against judgments” in: “Compilation of the lectures given at the seminars of diffusion, dissemination and updating of constitutional justice”, compilation of Rubén López Mijangos Homer, President of the Constitutional Court of Guatemala, Centro Impresor Piedra Santa, Guatemala, 1998.
- “Effectiveness of Fundamental Rights with regard to individuals”, Constitutional Journals México-Central America, National Autonomous University of México-Constitutional Court of Guatemala, México, 1998.
- “Constitutional Justice in Colombia”, in: “Latin American Yearbook of Constitutional Justice”, Center of Constitutional Studies, Madrid, 1997.
- “Constitutional Jurisdiction in Colombia”, in: “Constitutional Jurisdiction in Latin America,” Garcia Belaunde, D., Fernández Segado, F. (Coordinators), Madrid, Ed. Dykinson, 1997.
- “Fundamental Rights and Constitutional Interpretation”, in: “New Streams of Colombian Constitutional Law”, Colombian Association of Constitutional Law and Political Science, Medellín, 1994.

Please send your completed questionnaire to judicial-elections@coalitionfortheicc.org; by fax to 1 212 599 1332; or by mail to: Coalition for the International Criminal Court, 708 Third Avenue, 24th floor, New York, NY 10017, USA

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Articles in journals

- “States of constitutional exception in Colombia”, *Ius et Praxis*, University of Talca, Chile, 2002.
- “Constitutional Court in Colombia”, *Ius et Praxis*, University of Talca, Chile, 2002.
- “Subjects of special protection in the Constitution of Colombia”, in: “Constitutional Court of Colombia”, Imprenta Nacional de Colombia, 2001.
- “The Ombudsperson's Office in Colombia: Challenges of an Ombudsperson in the midst of a context of armed conflict and lawlessness”, *Ius et Praxis*, University of Talca, School of Law and Social Sciences, Chile, 2001.
- “Report on the Constitutional Court in Colombia”, *Ius et Praxis*, Law in the Region, University of Talca, School of Law and Social Sciences, Chile, 2000.
- “Freedom of Speech in Colombia”, *Ius et Praxis*, Law in the Region, University of Talca, School of Law and Social Sciences, Chile, 2000.
- “The writ of protection (acción de tutela) in Colombia”, in: *Constitutional Actions for protection: reality and prospects in Chile and Latin America*, Humberto Nogueira Alcalá (Editor), Chile, 2000.
- “Personal Freedom”, *Ius et Praxis*, Law in the Region, University of Talca, School of Law and Social Sciences, Talca, Chile, 1999.
- “Equality in the Jurisprudence of the Constitutional Court”, *Journal of Public Law*, No. 7, February of 1997, Bogotá, Colombia.
- “Habeas Data in Colombia”, *Ius et Praxis*, University of Talca, Chile 1997.
- “Women in the jurisprudence of the Constitutional Court”, *Progress in the construction of legal equality for women in Colombia*, Females series No. 4, 1995, Ombudsperson office, Colombia.
- “The Constitutionalism of poverty”, *Dereito*, University of DH Xurídica Journal Santiago de Compostela, Volume IV, No. 2, 1995.

b) Please provide us with an electronic copy of and/or links to any writing or opinion describing your experience as outlined in questions 1a), 1b) and 5.

<http://www.corteconstitucional.gov.co/>

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e) Is there any other information in the public domain that would support your candidacy or provide additional evidence of your qualification as a judge at the ICC?

I have received several honors and recognitions, both in Colombia and abroad, for my career in human rights, including the highest honor bestowed by the Colombian Congress.

Other matters:

22. 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 not

23. Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status, or any other grounds of discrimination? If yes, please describe the circumstances.

No, I have not

24. 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, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff, Court officials and others subject to his or her direction and control to refrain from such words or conduct.

a) Do you disagree or have difficulty with this expectation?

No, I do not

b) Please provide any relevant information regarding your ability to meet this expectation.

My work in the Constitutional Court and as Ombudsperson put me in the front line of the fight against all those types of discrimination. Many of the judgments and ombudsperson resolutions of which I was author are considered in Colombia important pieces in the struggle against general and specific discrimination.

25. 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 your taking a position on any matter independent of, and possibly contrary to, your government?

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No, I do not

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

I feel I could participate. Independence from government is perhaps the most salient characteristic of my whole career. At any rate, should the case arrive that my impartiality might be doubted, I would of course recuse myself.

26. The Rome Statute requires that judges elected to the Court 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. In addition, a judge is expected to be on the bench or otherwise handle legal matters for at least seven hours per day, five days per week, and at times a judge's responsibilities may require him or her to be on the bench or at work into the evenings and on weekends. It may also include working on more than one case at a time and for Pre-Trial Division and Trial Division judges, the possibility of temporary attachment to the opposite Division.

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

27. If there are any questions you wish were asked in this questionnaire but were not, or if there are any matters that you otherwise wish to bring to the attention of the Coalition in this questionnaire, please feel free to address them here.

I believe that all the salient issues have been covered by this excellent questionnaire.

Thank you for completing this questionnaire.