

ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

QUESTIONNAIRE ANSWERS

A. Nomination process

Question 1: The Statute requires every candidate for election to the Court to have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings or established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.

Could you please describe your experience and competence in the areas specified? For how long? In which capacity?

Answer 1: I was appointed as a judge in March 2013. By decree No 2013-194 of 17 May 2013 on the appointment of judges to national courts, I was appointed judge at the Regional Court (Tribunal de Grande Instance) of Impfondo, in the north of the country. In my capacity as a judge I made up the Criminal Court (Tribunal Correctionnel) along with the President and another judge, and in that capacity I was involved in trying offences (theft, fraud, breach of trust, assault and battery, manslaughter, unintentional injuries, paedophilia, offences against fauna and protected areas, trespass on domestic premises, libel/slander, public abuse, etc.) during public hearings for one year.

By order of the President of the Regional Court of Impfondo of 24 July 2013, I was appointed children's judge, in addition to my duties as a judge. In my capacity as children's judge I investigated cases involving misdemeanours and crimes involving minors and I heard certain cases alone, in accordance with the Code of Criminal Procedure. Since the children's judge is the president of the Children's Court, I presided the Children's court and heard cases involving minors collegially. I held the post of Children's judge until May 2014.

By decree No 2014-237 of 21 May 2014 on the appointment of judges to national courts, I was appointed investigating judge of the 2nd Chambers at the Regional Court of Impfondo. I held the post of investigating judge from May 2014 to March 2018, for four years in other words. During the four years I spent as an investigating judge at the Regional Court of Impfondo, I further developed my experience of criminal trials, criminal law and criminal proceedings, in addition to my investigating duties, due to the composition of the Criminal Court once again, when one of the judges was unavailable, by those acting for the Public Prosecutor each time he and his deputies were away from the judicial district and also by those acting for the President of the Tribunal when he was unavailable. As an investigating judge, I investigated cases involving misdemeanours and once the investigation was completed I would assess the charges against the major defendants and I would render either an order of acquittal or an order for reference to the Criminal Court, which would then rule on whether the defendant was guilty or not. I also investigated a number of criminal cases (murder, assassination, poisoning, assault and battery resulting in manslaughter or resulting in the amputation of a limb, aggravated theft, rape, infanticide, arson, destruction of immovable property, forgery and the use of forged public and private documents, etc.) and I would assess the charges against the accused, either to render an order of acquittal if the charges were insufficient, or to render an order to transfer the documents to the Principal State Prosecutor at the Ouesso Appeal Court if the charges were sufficient, and

ultimately for the accused to be tried by the criminal court following a re-examination of the case file by the Appellate division. Still in my capacity as an investigating judge, I was required to rule on the liberty of the accused: whether to hold the person in pre-trial custody, grant them interim or permanent release or extend their detention. As a result of the number of criminal cases investigated and referred to the Ouesso Court of Appeal, a criminal session was held in Impfondo for the first time in 2018.

By decree No 2018-104 of 14 March 2018 on the appointment of judges to regional courts, I was appointed investigating judge of the 8th Chambers at the Regional Court of Brazzaville. The 2018 statistics show that of the eleven (11) investigating judges of the Regional Court of Brazzaville, it was I who rendered the most orders to close investigations in 2018. I investigated, and I continue to investigate, numerous cases involving misdemeanours and crimes and to rule on the liberty/detention of persons prosecuted. The numerous decisions rendered demonstrate my competence in the fields of criminal law and criminal proceedings.

In short, the preliminary investigation is one stage in the criminal trial. I have seven (7) years of experience in the fields of criminal law, criminal proceedings and criminal trials. As a judge and investigating judge I am only involved in criminal cases.

Question 2: Do you have any experience or competence in handling litigation or inquiring or investigating into issues related to violence, discrimination, sexual assaults, or other similar conduct, inflicted on women and children? In which capacity?

Answer 2: I do indeed have experience and competence in handling investigations into matters involving violence and sexual assaults against women and children. In my capacity as an investigating judge, I deal with cases involving paedophilia against children, both boys and girls, under the age of 18, as well as cases involving rape committed against women and girls both under and over the age of 18. The same applies to violence against women (both under and over the age of 18). Our investigating chambers deal with numerous proceedings involving rape and paedophilia.

Question 3: Have you ever been investigated for, or charged with, allegations of corruption, criminal or administrative negligence or any other similar misconduct, including sexual harassment? Was there a conclusive determination?

Answer 3: No, never.

B. Perception of the Court

Question 1: What would be the main criticisms you are aware of in relation to the Court's proceedings?

Answer 1: It is said, for example, that proceedings at the ICC are slow and that few people prosecuted have actually been convicted. The former president of Côte d'Ivoire, Laurent Gbagbo, was acquitted by the ICC after being held in The Hague for over seven years. His former Minister for Youth, Charles Blé Goudé, was also released. Since the ICC's inception in 2002, only three accused have been found guilty by the Court, whilst prosecutions against twelve other accused were abandoned due to a lack of evidence either during the course of or at the end of their trial.

The Court is also criticised for not having a separate police force from that of the States Parties, which could easily enforce the arrest warrants it issues. As a result, many arrest warrants remain outstanding since some States Parties have refused to carry out their obligations in this regard.

Furthermore, Africans consider that the Court is hounding them and that it refuses to prosecute nationals from the major powers. From this point of view the Court is seen as a way for strong States to settle scores against weaker States.

Question 2: Do you have any suggestions on changes that could be proposed in order to improve the perception of the Court in the eyes of the international community?

Answer 2: Those who observe an institution from the outside may have a different view to those who see it close up. Some criticisms may be due to a lack of information about proceedings before the Court. I feel it would be more appropriate to make suggestions about possible improvements once I have an overall view of the Court: theoretical and practical, from the outside and from the inside.

Question 3: Which are, in your view, the most important decisions issued by the Court in the past years, that have had an important impact in relation to its perception vis-à-vis the States Parties and the public? Could you give and explain at least one positive and one negative example?

Answer 3: The decisions rendered in the case of Laurent Gbagbo et Charles Blé Goudé as well as the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*. The prolonged detention of Laurent Gbagbo and Charles Blé Goudé has been criticised (negative example) but at least the decision was rendered (positive example).

C. Judge's independence

Question 1: What in your view should be the relationship between a Judge and the authorities of his or her country of origin? Similarly, how do you envisage your future relationship with bodies such as universities, courts or non-governmental organizations with which you have been involved or to which you have been affiliated, if elected to the ICC?

Answer 1: At a national level judges are appointed by decree adopted by the Supreme Judge's Council, presided by the President of the Republic, and the first vice-president, the Minister of Justice. But in exercising our work we receive no instructions from these authorities or from other members of the executive, or from members of the legislative branch. The judges are invited to attend certain official ceremonies but they perform their duties freely. Even when there are external pressures, judges only obey the rule of law. The same applies to internal interventions within the judicial authority.

This also applies at an international level. In other words, a judge must remain independent when exercising his functions and accept no instruction whatsoever which could emanate from the authorities of his country of origin. A judge is under oath and is required to respect his oath under all circumstances. For example, under no circumstances can he report to the authorities of his country of origin on the cases he is dealing with. This independence must also apply to the courts, tribunals and other structures with which he has collaborated. I have always acted this way in any case.

Question 2: In your view, can a Judge participate in a trial involving a national from his or her country of origin? Why?

Answer 2: At a national level, the law prohibits any judge from participating in a case where doubt may be cast on his or her impartiality; for example, cases involving his or her parents, children, spouse, friends, own interests, etc. For the same reason, at the International Criminal Court judges should not participate in a trial involving a national from his or her country of origin.

Question 3: Which jurisprudence/decisions do you consider necessary, useful and appropriate to be considered during proceedings at the ICC? From national courts? From international courts? From Human Rights bodies?

Answer 3: The case law of the ICC in accordance with article 21(2) of the Statute.

Question 4: In your view, what should be the approach of an independent Judge when faced with precedents established by the Appeals Chamber of the Court?

Answer 4: An independent judge should take into consideration and refer to the case law of the Appeals Chamber regarding issues on which it has already ruled in similar cases.

Question 5: Do you consider that a Judge or a Chamber of the Court, in order to ensure efficiency, should be allowed to implement innovative procedural practices? If yes, please give examples.

Answer 5: The case law may evolve over time in light of problems encountered and the applicable legal provisions. Thus, a Judge or a Chamber of the Court, in order to ensure efficiency, should be allowed to implement innovative procedural practices. These practices often supplement a vacuum in the applicable law. These practices may even contribute to amendments to the applicable law.

Question 6: Are you used to working as part of a team? How do you envisage your working relationship with other Judges from different backgrounds and from different legal systems? How would you deal with a disagreement in relation to a certain aspect of a decision? What are your views in relation to writing separate concurring and dissenting opinions?

Answer 6: Yes, I have previously worked in a team with colleagues during our immersion course in 2011 and which led to the drafting of a joint course report. In 2013-2014, as part of the Criminal Court, we tried cases collegially, and also during seminars and workshops.

Justice is the same in all countries, what changes is the way in which it is rendered which varies from one country to another. Working with judges from different backgrounds and from different legal systems is enriching, each person has their own contribution to make.

It is not unusual to have differing points of view on an issue. Diversity of persons leads to a diversity of findings. In the event of a disagreement regarding a specific aspect of a decision to be taken, the discussion may be in-depth, prolonged, with evidence to convince the dissenting party. In the event of a persistent disagreement, the drafting of separate concurring and dissenting opinions might be envisaged. However, I prefer decisions where each person agrees.

Question 7: In which situations, in your view, should a Judge of the Court recuse himself or herself from a case?

Answer 7: Articles 41(2) and 42(7) of the Statute and rule 34 of the Rules of Procedure and Evidence provide for a few cases. For example, having a personal interest in a case, and in particular being the spouse, father or mother of one of the parties. Having close family or personal connections or a subordinate relationship with one of the parties to the case, etc.

D. Workload of the Court

Question 1: Are you prepared and available to serve at the commencement and for the duration of your term, if elected and if called to work at the Court full-time?

Answer 1: Yes, I would be fully prepared and available to serve at the commencement and for the duration of my term and even until a case being heard was closed, in accordance with article 36(10) of the Statute.

Question 2: In the event you are not called immediately to work full-time at the Court, are you prepared to do so only as of the moment when you are requested to do so, knowing that this may mean a delay of several months or a year or more from the commencement of your term as judge?

Answer 2: Yes I am.

Question 3: Work as a Judge of the ICC frequently involves many hours a day, including into the evenings and over some weekends. Holidays can only be taken at fixed periods during the year when, for instance, there are no hearings. Are you prepared for that?

Answer 3: Yes, I am fully prepared for this. My position as an investigating judge already requires me to work for longer than my set hours of 8.00 am to 6.00 pm and to draft my orders in the evenings. I am already used to this situation.

Question 4: What is your approach to writing decisions? Will you undertake this work yourself? To what extent would you delegate drafting to assistants or interns?

Answer 4: I have always drafted my decisions myself and I never delegate drafting to anybody. I will continue to do the same if I am elected. Put simply, I will undertake this work myself with pleasure.

Question 5: Which are, in your view, the decisions that could and should be issued by a Single Judge in order to expedite proceedings?

Answer 5: In application of rule 7(2) of the Rules of Procedure and Evidence, the single judge “shall make the appropriate decisions on those questions on which decision by the full Chamber is not expressly provided for in the Statute or the Rules.” For example, on 16 December 2008, Judge Ekaterina Trendafilova, in her capacity as single judge for Pre-Trial Chamber III, ruled that Jean-Pierre Bemba should continue to be detained in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

Question 6: Are you used to working under pressure from States, governmental authorities, national or international organizations, the media or the wider public? Can you provide an example?

[Response not made public at the request of the candidate]

Question 7: Are you in good health and able and prepared to work under pressure, given the Court’s heavy workload? Have you ever been on leave from your professional duties due to exhaustion or any other work-related incapacity? If yes, for how long?

Answer 7: I am in perfect health. I am not suffering from any illness. I am ready for work and able to work under pressure. No, I have never been on leave from my professional duties due to exhaustion or any other work-related incapacity. Each judge is entitled to a month of judicial

recess between August and September and I have always been free to choose the month I wanted to take my leave. Outside my annual leave I have never requested leave for exhaustion or for any other incapacity.

E. Deontology

Question 1: What is your definition and understanding of an independent Judge?

Answer 1: An independent judge only answers to the rule of law. He or she works with respect for established procedures and ensures the proper administration of justice. He or she does not allow himself or herself to be influenced by any pressure. He or she has no contact with defendants.

Question 2: In your view, what would constitute a conflict of interest for a Judge?

Answer 2: Any activities which might be incompatible with judicial office, being involved in hearing a case involving a descendant, a relative, a spouse, a friend, etc., accepting gifts, benefits, privileges or rewards which could affect the independence of a judge, accepting another appointment from one's home country or from another State during the term of office, etc.

Question 3: Should considerations relating to race, colour, gender or religion be taken into account when assessing a candidate's suitability to be a judge at the ICC? Why?

Answer 3: No, this would be contrary to human rights.

Question 4: Have you ever been the subject of disciplinary, administrative, criminal or civil proceedings in which your professional or ethical standing has been called into question? If yes, please provide details, including the outcome.

Answer 4: No, I have never been the subject of disciplinary, administrative, criminal or civil proceedings.

Question 5: Have you ever been disciplined or censured by any bar association, university faculty or similar entity of which you may have been a member? If yes, please provide details, including the outcome.

Answer 5: No, never.

Question 6: What measures and decisions would you take, if you are elected, to ensure the effective participation by victims in the proceedings?

Answer 6: All useful measures and decisions.

Question 7: In reaching a decision, how would you approach the need to balance the rights of an accused person and the rights of victims, which are both protected by the ICC's legal texts?

Answer 7: The decisions would be taken in the interest of the proper administration of justice whilst ensuring that the rights of all parties were respected.

F. Additional information

Question 1: Are you fluent in one of the working languages of the Court? Can you speak fluently in public hearings and meetings, and write your own decisions in one of the languages of the Court?

Answer 1: Yes, French. I learnt to write and speak French at school from the age of five (5). All my studies took place in French. From 2006 to 2010 I taught French in several private secondary schools in Pointe-Noire and Brazzaville. In the Republic of the Congo the working language is French. We work in this language every day and I draft and render my orders in French.

Question 2: Do you have any other nationality, other than the one indicated in your nomination, or have you ever requested another nationality?

Answer 2: I am Congolese, I have no other nationality and I have not requested another nationality.

Question 3: Have you familiarized yourself with the conditions of service (which include the remuneration and the pensions' scheme) for the Judges of the Court? Are you aware of, and do you accept, the Terms and Conditions of work?

Answer 3: Yes. I have downloaded the relevant documents and familiarized myself with them and I fully accept the terms and conditions of work.

Question 4: If elected, are you willing to participate in a financial disclosure program organized by the ICC?

Answer 4: Yes, I would be fully prepared to participate.

Question 5: Is there any other information which should be brought to the attention of the Committee and which might call into question your eligibility for judicial office?

Answer 5: I have nothing to be ashamed of, I have not concealed any information and I believe I have provided all the necessary information. If there is any other information I do not object to it being disclosed to the committee, provided it is true.

G. Disclosure to the public

Question 1: You have the option to make your answers to this questionnaire public. What is your preference in this regard?

Answer 1: I have no objection to the answers to this questionnaire being made public if necessary, apart from answer 6, point D, because I consider that the pressure which judges have to deal with ought to be managed by a limited number of people and should not be made public.
