

Hon. Jst. Miatta Maria Samba

ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

QUESTIONNAIRE

A. Nomination process

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?*

I have established competence in criminal law and procedure with significant experience as an investigator, prosecutor, advocate/legal practitioner and a Judge in domestic and international criminal proceedings. I hold an LLM in International Human Rights Law and Democratisation in Africa from the Centre for Human Rights, University of Pretoria, South Africa and a Bachelor of Laws (LLB) (Hons) and Bachelor of Arts degree from Fourah Bay College, University of Sierra Leone.

Between 2002 and 2006, I worked for the Special Court for Sierra Leone (SCSL)¹ as an Associate Prosecutor, assisting in prosecuting persons who bore the greatest responsibility for the commission of war crimes, crimes against humanity and other serious violations of international humanitarian law, committed in Sierra Leone, beginning 30 November 1996 as proscribed by the Statute of the SCSL and its Rules of Procedure and Evidence. I assisted in the successful prosecution of three members of the Civil Defence Forces (CDF).²

From October 2010 to June 2015, I was a Senior Prosecutor at the Anti-Corruption Commission of Sierra Leone, prosecuting corruption offences as proscribed by the Anti-Corruption Act, No. 12 of 2008 and the Criminal Procedure Act, Act No. 32 of 1965. I led the prosecution team that successfully prosecuted and led to the conviction of the then sitting Mayor of Freetown, the capital of Sierra Leone, for corruption offences in the *State vs. Herbert Akieremi George-Williams and Others* (2012). I worked on a number of other cases³ and directly supervised six prosecutors in the Commission.

Since April 2018, I have served as a Judge of the Court of Appeals of Sierra Leone. I am also assigned to the General Criminal Division and the Special Anti-Corruption Division of the High Court of Sierra Leone (the court of first instance/trial court), hearing and determining criminal matters at both the trial and appellate levels applying the relevant applicable criminal laws and procedural rules including the Sexual Offences Act 2012. Some judgments I delivered as a sole Judge or in a panel may be found at www.sierrali.org.

¹ An ad hoc International Criminal Tribunal set upon pursuant to an agreement between the United Nations and the Government of Sierra Leone. See the *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone* (UN-Sierra Leone Agreement), to which was annexed the *Statute of the SCSL* (SCSL Statute), was signed on 16 January 2002. See the *UN-Sierra Leone Agreement* and the annexed *Statute of the SCSL*, reprinted in 2178 U.N.T.S. at p. 138 and 145. The legislative history of the SCSL is available in *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, UN Doc. S/2000/915, 4 October, 2000.

² A local militia group, which was one of the warring factions during the civil war in Sierra Leone.

³ The other cases I was worked in either as the lead prosecutor or part of the prosecution team are as follows: *The State v Philip Conteh, Lansana Zanto Kamara and Allieu S. Kamara*; *The State v Philip Lukulay*; *The State v Victor Hugo Kamara, Robert Paine and Abraham John*; *The State v Hamza A Sesay and Sarah Finda Bendu*; *The State v Edward Yamba Koroma, Manso I. Kargbo, Dominic K. Jusu and Alimamy S. Kamara*; *The State v Alieu Sesay, Fatmata Sesay, Sammy Cole and Gloria Gabissi*; *The State v Gladys Happiness Koroma*; *The State v Tamba John Charles, Komba Marrah and Tamba Fayia*; *The State v Josiah Paris, Kelfala Yansaneh, Mohamed Tejan Kallah and Albert Sombie*; to name but a few.

Due to my experience and performance in domestic and international criminal proceedings, in December 2019 I was appointed as a Judge of the Residual Special Court for Sierra Leone (RSCSL),⁴ established to continue with the mandate of the SCSL, hear and determine applications of detainees and witnesses and uphold the legacy programme of the SCSL.

When I was in private legal practice between 1999 and 2000 and between 2010 and 2015, I worked with Legal Access through Women Yearning for Equal Rights and Social Justice (LAWYERS)⁵ and represented victims of human rights violations including victims of sexual violence especially sexual penetration of children on a *pro bono* basis. Working with the Institute for Human Rights and Development in Africa (IHRDA)⁶ based in The Gambia and Campaign for Good Governance⁷ based in Sierra Leone, we filed two communications with the African Commission of Human and People's Rights⁸ for violation of refugee rights against the Republic of Guinea and the State of Libya. Whilst working in the law firm of Wright and Co,⁹ I worked on a brief to determine the status of Liberian refugees in Sierra Leone and provided legal assistance to the United Nations High Commission for Refugees (UNHCR) in Sierra Leone.

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?

Article 36(8)(b) of the Rome Statute encourages States Parties in the selection of Judges, to take into account the need to include Judges with legal expertise on specific issues, including violence against women and children. I have vast experience and competence in handling litigation and investigations into issues related to violence, discrimination, sexual assaults inflicted on women and children. Most of my litigation experience covered crimes committed or involving sexual and gender-based violence against women and children.

As previously stated, between 2002 and 2006, I worked for the UN-backed Special Court for Sierra Leone. I worked in the capacities of an Investigator, Witness Management Co-ordinator and Associate Prosecutor. During this period, I was involved in the investigations of atrocity crimes, including acts of violence against women, sexual offences and other related conduct, including 'forced marriages' and the recruitment and use of child soldiers in front line hostilities during the civil war in Sierra Leone, the said conducts were offences within the jurisdiction of the Special Court for Sierra Leone. During our investigations, we realised that women and young girls including children were taken as bush wives and forced into marriage, particularly by the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council, two of the three warring factions during the civil war in Sierra Leone. The victims were used as sex slaves and impregnated.¹⁰ Our investigations were multifaceted and contextualized, with an understanding of how Sexual and Gender-Based Violence fit into the larger crime pattern. As a result of our work, the Special Court obtained the first convictions in an international or internationalized

⁴ The residual functions of the RSCSL are broadly divided into two categories: "ongoing functions" and "ad hoc functions." The ongoing functions of the Residual Special Court include: witness protection and support including responding to threats related to testimonies given before the SCSL and provision of appropriate protection and support measures; the maintenance, preservation and management of the archives; and supervision of prisons, including inspection of the conditions of imprisonment as well as tracking time served and dates of release including early release and pardon. The ad hoc functions of the RSCSL include: the potential trial of Johny Paul Koroma, (the only person indicted by the SCSL not in custody) or his transfer for trial at a competent criminal tribunal; review of convictions and acquittals as requested by convicted persons; hear and determine contempt of court proceedings; provide Defence Counsel (when required) for residual proceedings; and the prevention of double jeopardy. See <http://www.rscsl.org>

⁵ For more information on Legal Access through Women Yearning for Equality Rights and Social Justice (LAWYERS), see <https://namati.org/network/organization/legal-access-through-women-yearning-for-equality-rights-and-social-justice-l-a-w-y-e-r-s/>

⁶ See website <https://www.ihrda.org>

⁷ See website <https://slcgg.org>

⁸ See website <https://www.achpr.org>

⁹ See website <https://wrightandco-sl.com>

¹⁰ See Judgment, *Prosecutor v. Sesay, Kallon and Gbao*, SCSL, Trial Chamber, para 168 (Mar. 2, 2009); Judgment, *Prosecutor v. Brima, Kamara and Kanu*, SCSL, Trial Chamber, para 714 (June 20, 2007); Judgment, *Prosecutor v. Brima, Kamara and Kanu*, SCSL, Appeals Chamber, para 195 (Feb 22, 2008).

tribunal for the crimes against humanity of sexual slavery and forced marriage as an inhumane act. This decision was confirmed by the Appeals Chamber.¹¹

As Witness Management Co-ordinator for the Office of the Prosecutor of the SCSL, I managed witnesses, including vulnerable witnesses who were victims of sexual violence and child soldiers recruited by the warring factions in Sierra Leone.

I was part of the team that prosecuted members of the Civil Defence Forces,¹² who were alleged to be among those most responsible for the commission of war crimes and crimes against humanity inflicted on women and children. We gained convictions on the prosecution of members of the Civil Defence Forces which comprised of three defendants although one died before the completion of the case. Conviction was gained against the two defendants.

Between 2006 and 2010, I worked for the International Criminal Court in the capacity of a Field Operations Officer for the Office of the Prosecutor based in Uganda. My primary duty was to manage witnesses of the Office of the Prosecutor, most of whom were vulnerable witnesses and victims of sexual violence. I was also the custodian of exhibits for the Office of the Prosecutor and I assisted investigators who went out in the field to gather information and evidence for crimes within the Court's jurisdiction, for the OTP.

In private legal practice and my human rights work through LAWYERS, the leading gender equality advocacy organisation in Sierra Leone - made up of mostly female lawyers, I represented victims of sexual violence, particularly children in court. Due to limited resources, legal practitioners had to undertake or provide constant supervision of the investigation, monitor the preservation of evidence and then lead the prosecution with a "*fiat*" from the Office of the Attorney-General and Minister of Justice.

As a Judge assigned to the General Criminal Division of the High Court, I hear and determine criminal matters, including sexual assaults against women and children using my experience and expertise in getting victims of sexual violence to testify without fear in a conducive environment. Some of the judgments I delivered in respect of sexual violence cases can be found at www.sierrali.org.

Further, working with the Institute for Human Rights and Development in Africa (IHRDA), I led a team to investigate alleged violations and discrimination of the rights of Sierra Leonean refugees by the Republic of Guinea during the civil conflict in Sierra Leone. After a successful investigation, we filed a communication against the Republic of Guinea with the African Commission of Human and Peoples' Rights which was held to be admissible. The Commission found that the Republic of Guinea violated Articles 2, 4, 5, 12(5) and 14 of the African Charter and AU Convention Governing Specific Aspects of Refugee Problems in Africa, Article 4 of the 1969 OAU Convention Governing Specific Aspects of the Refugee Problem in Africa and recommended that a Joint Commission of the Sierra Leonean and the Guinea Governments be established to assess the losses by various victims with a view to compensate the victims.¹³

Also, between May and October 2002, through the Campaign for Good Governance, I was involved in the investigation involving rights of Sierra Leonean refugees, mostly women and children, whose rights as refugees were alleged to have been violated by the State of Libya during the conflict in Sierra Leone. After a successful investigation, we filed a communication against the Republic of Libya with the African Commission of Human and Peoples' Rights, which was declared admissible by the Commission.

¹¹ Valerie Oosterveld, 'The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments' <https://www.lawschool.cornell.edu/research/ILJ/upload/Oosterveld-final.pdf>

¹² *Prosecutor v. Moinina Fofana and Alieu Kondewa* (CDF), SCSL.

¹³ See website <https://www.achpr.org/sessions/descions?id=160>

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?*

No.

B. Perception of the Court

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

The States Parties to the Rome Statute set an ambitious mandate for the ICC, that is, accountability for atrocity crimes with the core mission of providing credible justice. In the 18 years of carrying out this ambitious but critically important mandate, the Court has been faced with criticisms, including concerns expressed on the quality of investigations and prosecution, controversial judicial decisions, unresolved institutional disagreements, lack of accountability for poor performance. In the Assembly of States Parties (ASP) resolution on the review of the ICC and the Rome Statute system,¹⁴ the challenges may have been constructively categorized into three clusters of governance, judiciary, investigations and prosecutions.

With the Independent Expert Review ongoing, I am minded to keep an open mind to potential recommendations the Committee may have in their Report by 30th September 2020 to improve the work of the Court. I will however highlight under the judiciary and the judicial process cluster, criticism related to the Court's proceedings, namely: efficiency of the judicial process; development of process and procedures to promote coherent and accessible jurisprudence and decision-making; and working methods of the judiciary.

On efficiency in the judicial process, one issue which may have raised eyebrows is the delay in delivering judgments. I take particular note of the discharge of the charges against the then former President of Ivory Coast, Laurent Gbagbo and his co-defendant.¹⁵ It took the Trial Chambers I six months to file the written full reasons for the acquittal of Mr. Laurent Gbagbo and Mr. Charles Blé Goudé, and the delay may have left the victims and the affected community stunned, and impact adversely on the Court's proceedings, including the issue of appeal.

On coherent and accessible jurisprudence and decision-making, it is noted that concerns have been expressed on inconsistent decisions on similar legal and factual questions. The Appeals Chamber in the Bemba case,¹⁶ by majority, acquitted Jean-Pierre Bemba Gombo from the charges of war crimes and crimes against humanity overturned his conviction by Trial Chamber III. Legal commentary on the case shows that the Appeals Chamber Judges may have deviated from the accepted standard for appellate review of a trial chamber's factual findings. One of the questions which arose from the decision was whether the Appeals Chamber analysis of command responsibility for remote commanders was without proper "legs" in the jurisprudence.

A more general criticism that adversely affects the Court's proceedings, is cooperation with the Court. The Court can hardly be effective if there is a lack of support from State Parties for investigations and prosecutions, which feed into the judicial proceedings. The Court, therefore, needs support. Since the commencement of its operations, under the various trigger mechanisms contemplated by the Rome Statute, the Office of the Prosecutor (OTP) has prepared 28 case files of which 3 cases concerning 2 defendants concluded with convictions while a third case resulted in a guilty plea. 2 other cases led to acquittals while charges against 3 other suspects were either not confirmed or were withdrawn, partly due to lack of cooperation. As of today, 18 individual OTP case files are still open. Of these, 5 of the proceedings involving 6 defendants are ongoing in the trial phase. Most important is that there are 12 other cases pending in pre-trial stage; 9 of the 12 concern suspects that are at large. The accused have not been arrested by States Parties and

¹⁴ ICC-ASP resolution on the review of the ICC and the Rome Statute system, (resolution ICC-ASP/Res.7).

¹⁵ *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* (ICC-02/11-01/15).

¹⁶ *The Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08).

transferred to the ICC despite repeated ICC requests for their arrests and surrender. It seems that the ASP must be in a position to take significant measures against States Parties deemed not to have fulfilled their obligations under Article 112 of the Rome Statute, following the several judicial findings of non-cooperation.

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?

To enhance the Court in the perception of the international community, I will suggest augmenting outreach engagements, particularly in situation countries. By outreach, victims will be informed about their rights as provided by the Statute in respect of participation at proceedings and their right to reparation. They will be informed as to how to contact the Court, through applications and will be advised on protective measures in respect of their safety and that of their loved ones in the event that they choose freely to testify as to what goes on in the fields and how or what they suffered in the hands of the Accused persons. Outreach will also provide public information on the core mandate of the ICC, the situations it can investigate and its role in the prevention and punishment of atrocity crimes on the basis of complementarity. Outreach being a two-way learning process will also help the Court learn and better under the context on the ground.

Effectiveness and efficiency can also be fundamental to public perception. The public may not be aware of the “zero-growth” budget issue that may have an adverse impact on investigation and prosecutions, especially for situation countries. Further, the challenge of non-cooperation is often outside of public discussions, therefore the overall impact on the proceedings may not be informed of the challenges. Addressing these challenges may be vital to improving the public perception of the Court. I would suggest that measures be taken by the ASP to address judicial findings of non-compliance. A well-functioning ICC with its mandate explained and States Parties cooperating will see its core mission and work appreciated by the public.

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?

In my 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 include the following:

First, the Appeals Chamber interpretation of articles 15 and 53(1)(c) and 53(2)(c) of the Rome Statute and its decision granting the Prosecutor permission to open up investigations in Afghanistan.¹⁷ The interpretation given to the words “interest of justice” as they appear in articles 53(1)(c) and 53(2)(c) of the Rome Statute must be read in the context of justice to the victims in particular and appreciating the status as regards the age of the accused at the time of the commission of the offence. It seems to me that the OTP considers the issue of peace and security as a responsibility for the United Nations Security Council; the Prosecutor has not in any of its policy papers considered the issue of peace and security as a reason for the use of its discretion in not opening or opening an investigation or refusing to institute or instituting a prosecution of any offence within the Court’s jurisdiction. Of importance is the hope given to the international community and States Parties, that the Court will exercise its mandate where crimes under its jurisdiction are committed by citizens of States Parties and/or within the territories of States Parties or where non-States Parties accept the jurisdiction of the Court in respect of crimes under the Court’s jurisdiction committed by its citizens and/or within its territory.

Second, the Appeals Chamber judgment in the *Jordan referral re Al-Bashir*¹⁸ appeal in respect of article 87(7) of the Rome Statute which sends a clear message to States Parties and the public at

¹⁷ *Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan* (ICC-02/17-138, 05 March 2020, Appeals Chamber Decision).

¹⁸ *The Prosecutor v. Al-Bashir, ICC-02/05-01/09 OA2, Judgment in the Jordan Referral re Al-Bashir Appeal* (May 6, 2019).

large that no one, notwithstanding the official capacity can hide under the cloak of immunity after committing crimes within the jurisdiction of the ICC. Article 27 of the Rome Statute is clear on the irrelevance of official capacities of suspects before the Court. This decision reiterates the decision of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the prosecution of Slobodan Milošević, then President of Serbia and the decision of the Special Court for Sierra Leone in respect of the prosecution of Charles Taylor, the then President of Liberia where the official capacities as sitting Presidents of the respective countries were argued and submitted by their counsel as giving them immunity against their prosecutions at the said courts.

Third and the one negative example would be with reference to the Pre-Trial Chamber's decision in its application of Article 53(1)(C) and 53(2)(C) in the Afghanistan situation.¹⁹ Both Articles are clear as it is in the Rules that the exercise of discretion not to investigate or prosecute any particular decision based on the 'interest of justice' rests with the Prosecutor and not the Pre-Trial Chamber. That the Pre-Trial Chamber decided that the issues of admissibility and jurisdiction were met but yet failed to grant the Prosecutor permission sought to open up investigations in Afghanistan where it is alleged crimes within the Court's jurisdiction were committed, have had an important impact in relation to the Court's perception vis a vis the States Parties and the public at large.

C. Judge's Independence

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?***

It is my considered view that a Judge of the Court must not be subject to the direction or control or take instructions from authorities from his or her country of origin. A full-time Judge should not be engaged in any other work outside the work of the ICC, including acting as arbitrators or other conflicting roles, whether remunerated or not, even on stipulated judicial holidays. However, it will be good for an ICC Judge to give lectures at learning institutions, including universities, to help explain the jurisprudence of the court. In doing so, the Judge must avoid addressing questions dealing with cases before the court. A Judge must avoid any situation, real or perceived, that may impugn on his or her independence.

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

Articles 40 and 41 deal with the question of the independence of Judges and circumstances under which they can be disqualified. Articles 3, 4 and 5 of the ICC code of conduct for judicial ethics also deals with these issues. However, there is the question of actual and apparent bias, especially in an international criminal trial involving a national from his or her country of origin. In the national proceeding under the Rome Statute on the principle of complementarity, this would be a moot point. Although not disqualified, in order to avoid the perception of bias, it will be prudent for a Judge of the ICC to recuse him/herself from participating in a trial involving a national from his or her country of origin.²⁰ As Judges, we must be seen to be impartial and help to promote the work of the Court; we must uphold the credibility and integrity of the Court and avoid any perception of bias.²¹

¹⁹ *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan* (ICC-02/17-33, 12 April 2019, Pre-Trial Chamber II).

²⁰ I hold this view despite the decision in the ICTY case of *Prosecutor v VOJISLAV ŠEŠELJ*.
https://www.icty.org/x/cases/contempt_seselj2/presdec/en/101007.pdf

²¹ See SCSL jurisprudence on the appearance of bias in *Prosecutor v. Sesay et. al.* SCSL-2004-15-PT-AR15-58, "Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber", 13 March 2004 (Appeals Chamber). The motion was filed on 27 February by counsel acting for an ex-RUF member, Issa Hassan Sesay, and was subsequently joined in by counsel for Morris Kallon and Augustine Gbao. The motion asked that Justice Robertson be disqualified from serving on the court on the basis of comments he made about the RUF in a book which he wrote prior to his appointment as a Judge of the Special Court. The Court ruled that Justice Robertson will remain

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?

By the provisions of article 21 of the Rome Statute, the Court shall in the first place, apply the Rome Statute, Elements of Crimes and the Statute's Rules of Procedure and Evidence. In the second place, the Court shall apply, where appropriate, applicable Conventions and the principles and rules of International Law, including Human Rights Law and Humanitarian Law. The Court can, therefore, apply jurisprudence/decisions from international courts and human rights bodies including the African Human Rights Court and Commission on Human & Peoples Rights, the European Commission on Human Rights, the Inter American Courts and Commission, to name a few. The Appeals Chamber of the ICC, for example, applied the jurisprudence of the Special Court of Sierra Leone in respect of the trial of Charles Taylor, the then President of the Republic of Liberia in holding that there is neither State practice nor opinion juris that supports the existence of Heads of State immunity under customary international law *vis a vis* an international Court.²²

Appreciating the principles of complementarity under the Rome Statute, failing both applicable laws referred to above, the Court can apply principles of law derived by the Court from national laws of legal systems, including where appropriate the national laws of States that would normally exercise jurisdiction over the crimes within the jurisdiction of the Court, provided that these national principles are not inconsistent with the Rome Statute and with international law, including human rights law, humanitarian law and internationally recognized norms and customs. The Court can also rely on and apply principles and rules of law as interpreted in its own previous decisions.

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?

In my view, the Appeals Chambers decisions are the reference point to an independent Judge of the ICC and so an independent Judge must abide by the decisions of the Appeals Chambers. There is no particular rule that a Trial Chamber must be bound by the decisions of another Trial Chamber, but a precedent on the same facts and law set by an Appeals Chamber must bind a Trial Chamber faced with similar facts and law as previously decided by the Appeals Chamber for legal certainty and consistency.

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.

Procedural justice (or procedural fairness) is defined as the fairness of processes used by those in positions of authority to reach specific outcomes or decisions.²³ It is said to encompass four pillars – fairness in processes, transparency, impartiality in decision making and providing an opportunity for all sides to be heard. Procedural justice is concerned not only with what people do, but also with how they do it.

Judges are expected to apply the rules of procedure of the Court and manage a case/matter based on these rules. Failure to deal with procedural justice will result in loss of trust and legitimacy. Even though the rules of most courts are very comprehensive, yet it is impossible for them to

on the Appeals Chamber but he will not sit on any case involving the three ex-RUF members. In delivering the statement, Justice George Gelaga King found that while the quotes Justice Robertson's book did show an appearance of bias, that was limited to the RUF.

²² The *Prosecutor v. Al-Bashir*, ICC-02/05-01/09 OA2, *Judgment in the Jordan Referral re Al-Bashir Appeal* (May 6, 2019).

²³ See Bottoms, Anthony, and Justice Tankebe. 2012. Beyond procedural justice: A dialogic approach to legitimacy in criminal justice. *Journal of Criminal Law and Criminology* 102.1: 119–170.
<https://www.oxfordbibliographies.com/view/document/obo-9780195396607/obo-9780195396607-0241.xml>

address every possible scenario. In the course of trials, circumstances and situations may arise where a Judge may need to innovate with respect to the procedure. In doing so, the Judge must ensure that he promotes efficiency and does not create any perception of bias or unfairness. Examples will include but are not limited to the following:

- a. Most rules of procedure did not make provision for situations such as the current COVID19 pandemic and other unforeseen situations. When such situations occur, in order to prevent undue delay in the trial which may lead to injustice, a Judge may be allowed to innovate.
- b. During trial, many interlocutory objections could be raised by parties for various reasons, including tendering of evidence that may disclose a protected witness' identity. Such objections would not warrant a day's adjournment. Judges could take a few minutes to stand down and return with a decision for redaction on the document, for example.
- c. Where witness protection measure has been compromised; this will require a quick decision to protect the witness by, for example, ordering other means of restoring a witness' protection.
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?***

I am an excellent team player who listens and appreciates the views of others. I worked for the SCSL and the ICC, both international criminal tribunals, and I am now a Judge of the RSCSL, where the Judges diverse legal backgrounds from the principal legal systems recognized in international law. I worked with (and still do work at these international institutions) people from different backgrounds, different cultures and legal traditions, as a team.

Currently, I am a Judge of the Court of Appeals in Sierra Leone and mostly sit to hear and determine matters with two other Judges in a panel. In some instances, I am empanelled by the Chief Justice of Sierra Leone at the Supreme Court, where I sit to hear and determine matters with four other Judges. Therefore, working as part of a team is quintessential for appellate level judicial experience, which is required at all levels at the ICC.

Further, I am a great listener. I will be receptive and open to listening to different opinions and showing appreciation for divergent views and reasoning. I will hope that my views and opinions will also be considered and appreciated by colleagues. In the event that we disagree in relation to certain aspects of a legal or factual question, I will respectfully make my disagreement known to colleague Judges and write a separate dissenting or a concurring opinion in relation to the aspect of disagreement.

Judges may disagree in respect of certain aspects of a decision but reach the same conclusion. They could also come to entirely different conclusions. I have been and still sit as a Judge of a Trial Court where I am used to writing my own judgments based on the evidence presented before me and the applicable law. As an Appeal Court Judge, I sit with two other Judges. In some instances, I am the presiding Judge of the panel. As such, I usually have the responsibility to write judgments after deliberations of the facts as presented before us and the applicable laws. I believe that it is a brilliant idea for Judges to write dissenting opinions if they disagree with the views of other Judges on a panel because sitting on a panel of three is teamwork; differing views must be appreciated. In like manner, I believe every Judge on a panel must be allowed to contribute in making a determination to cases/evidence heard. Diversity of opinion enriches the jurisprudence of the Court.

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

Article 41 of the Rome Statute provides for excusing or disqualification of a Judge.

- a. A Judge must recuse him/herself from a case if he/she has a personal interest in a matter before him or her which may involve close family relations, such as a spouse, parent or children or where a Judge has professional or subordinate relationship with any party to a matter before him or her.
- b. A Judge must also recuse him or herself from a case if he or she has previously been involved in any capacity before the Court or in a related criminal case. For example, a Judge who has sat as a pre-trial Judge, in any case, cannot sit as a trial Judge in respect of that same case because he or she may have formed an opinion in respect of the matter which may affect his or her impartiality.
- c. A Judge must recuse him or herself from a case where he or she has previously been involved at the national level involving a person being investigated or prosecuted.
- d. A Judge must also recuse him or herself from a case wherein the performance of his or her duties, before taking office as a Judge of the ICC, he had formed an opinion on the case in question, on the parties before him or her without having heard or seen the evidence, oral and/or documentary, or on their legal representatives, that any reasonable person would believe could adversely affect the required impartiality of the Judge.
- e. Further, in my view, a Judge must recuse him or herself from a case where he or she has expressed an opinion through the communications media, or during a presentation or in writing which conduct may cause any reasonable person to believe could adversely affect his required impartiality. This brings my mind to the disqualification of the Honourable Justice Geoffrey Robertson at the Special Court for Sierra Leone from sitting on the panel of the RUF case.²⁴ On 27 February 2003, a Motion was filed by Counsel acting for the ex-RUF member, Issa Hassan Sesay who was subsequently joined on by Counsel for Morris Kallon and Augustine Gbao asking that Justice Robertson be disqualified from serving on the Court on the basis of comments he made about the RUF in a book *Crimes Against Humanity*, which he wrote prior to his appointment as a Judge of the Special Court for Sierra Leone and in which he referred to the RUF as ‘*Dogs of War*’. Any reasonable man would believe that by his writing, the Judge had formed an opinion against the RUF and his impartiality as a Judge sitting on that case was questioned by the RUF Accused persons. The Court ruled that Justice Robertson will remain on the Appeals Chamber but that he will not sit on any case involving the three ex-RUF members. In delivering the statement, Justice Gelega-King found that while the quotes in Justice Robertson’s book did show an appearance of bias, that bias was limited to the RUF.²⁵

D. Workload of the Court

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?***

I am a sitting Judge in my home country, and I will be prepared and available to serve at the commencement and duration of my term, if elected and if called to work at the Court full-time.

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?***

In the event that I am not called immediately to work full time at the Court, I am prepared to work as of the moment I am requested to do so even though that may mean a delay of several months or a year or more from the commencement of my term as a Judge.

²⁴ “*Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber*”, 13 March 2004 (Appeals Chamber).

²⁵ Ibid. Also see also *Prosecutor v Sam Hinga Norman - Decision on the Motion to Recuse Judge Winter from the Deliberation in the Preliminary Motion on the Recruitment of Child Soldiers (SCSL-2004-14) [2004] SCSL 17 (28 May 2004)* <https://sierrali.org/sl/judgment/special-court/2004/17-0>.

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?***

The Judiciary of Sierra Leone goes on civil vacation between July and September each year. Criminal matters that I hear and determine only go on two weeks' vacation on each of the four sessions of the Court's calendar year. The Court of Appeals does not go on vacation save for two weeks during the Christmas and Easter vacations. As a Judge, I am used to working long hours into the evening and at times, during weekends. I use to represent children who were victims of sexual violence in Court on Saturdays because of the nature of the cases. I am therefore prepared to work many hours a day including the evenings and over some weekends and take holidays as fixed during the year.

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?***

Judgment writing is more than considering what is on paper by way of testimony and documentary evidence; it entails observing the demeanour of witnesses and analysing the evidence and testimony of witnesses. While I will appreciate the assistance of assistants/interns, I will instead limit their assistance in helping me with additional research. Having observed the demeanour of witnesses, analysed the evidence, had discussions with my colleague Judges and as an experienced Judge, I will be in a better position to write my own decisions.

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

In my view, decisions that should be issued by a single Judge for purposes of ensuring the preparation of a trial in order to facilitate the fair and expeditious conduct of trial proceedings include the following: Ensure proper disclosure between the parties; order protective measures where necessary; deal with applications by victims for participation in the trial; scheduling matters, with the exception of setting the date of the trial; dealing with the conditions of detention and related matters; **decisions on applications for arrests and surrender of suspects**; decisions on applications for temporary release/bail of accused persons pending trial; decisions on contempt proceedings; decisions on early release of convict(s); and dealing with any other preparatory matters that must be resolved which do not otherwise fall within the exclusive competence of the Trial Chamber.

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?***

Whilst the Court must be seen not to delay trials, at the same time, the Judges must be careful not to allow external pressure and influence to affect their performance. Our focus must be on dispensing justice and not be pressured by States Parties because this could interfere with a Judge's judicial independence. However, there are certain matters including corruption matters, which attract the public including government, international organisations and the media. For instance, I sat as a single Court of Appeals Judge on an application to bail in the case, *The State v Edward King and Soriba Kamara* (2019) pending the hearing of the substantive appeal. Both accused persons had pleaded guilty to a count each against them at the High Court (trial court) but were not afforded their right to a plea in mitigation or neither to allocutus. A particular adverse media coverage followed after admitting the convicts to bail based on the law, while I looked into the substantive matter, which was a question on a point of law. My colleagues and I have heard the substantive appeal, with me as the presiding Judge, and our judgment is pending. Significantly, I have not allowed the pressures of a journalist to influence or affect my work. In addition, I heard and determined at the trial stage politically exposed persons, hugely followed by the public, monitored by civil society organisations and reported on by the media. The public cared to know the fate of this politically exposed person before my Court. The pressures did not

derail my effort of paying attention to the evidence before me, oral and documentary, to return the appropriate verdict.

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?***

I appreciate that the Court has a heavy workload and yes, I am in good health and able and prepared to work under pressure. I have never been on leave from professional duties due to exhaustion or any work-related incapacity.

E. Deontology

1. ***What is your definition and understanding of an independent Judge?***

Generally, on the question of establishing standards of ethical conduct for Judges, the foundation for a robust definition and understanding is the 'universal' United Nations Basic Principles²⁶ and the Bangalore Principles of Judicial Conduct,²⁷ which identify six core values of the judiciary, namely: independence, impartiality, integrity, propriety, equality, competence and diligence. Without rehashing the existing literature already on independence including regional standards, which covers institutional²⁸ and personal independence (principles 1–4, 6 and 7 of the Bangalore Principles), I wish to share personal perspectives as follows:

- a. A Judge must be independent in the performance of his or her function. An independent Judge will not engage in any activity that is likely to interfere with the performance of his or her work as a Judge. An independent Judge is free from external influence; one who is impartial and a Judge with individual independence. It is also important to have corporate independence; that a Chamber of Judges are free from external influence or pressure, including threats from coercive actions. In essence, an independent Judge will not engage in any activity that will create doubt in the public's minds or which will affect confidence in his or her independence.
- b. By accepting to be a Judge at the ICC, a Judge accepts the terms and conditions of service including acceptance to serve the Court full-time at the seat of the Court or wherever the Court may decide to sit, if at all, at any particular time. By serving the Court full time therefore, an independent Judge must not be engaged in any other occupation of a professional nature.

²⁶ "In 1985, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles (subsequently endorsed by the General Assembly in its resolutions 40/32 and 40/146) as the minimum guarantee of an independent judiciary". UNGA report on the 'Independence of Judges and lawyers Note by the Secretary-General' (A/74/176) p.5, para 13.

²⁷ The Bangalore Principles of Judicial Conduct submitted to the Commission the Human Rights at its fifty-ninth session (see E/CN.4/2003/65). "In its resolution 2006/23, on strengthening basic principles of judicial conduct, the Economic and Social Council noted the complementary nature of the Bangalore Principles to the Basic Principles and requested UNODC to develop a commentary on the Bangalore Principles", Id paras 20-21.

²⁸ On the institutional arrangements for judicial independence, see General Comment No.32 (2007), where the Human Rights Committee states "that the requirement of independence in article 14(1) of the International Covenant on Civil and Political Rights refers, in particular, to the procedure and qualifications for the appointment of Judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. Accordingly, States are required to take specific measures guaranteeing the independence of the judiciary, protecting Judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of members of the judiciary and disciplinary sanctions taken against them"; *The Judicial Integrity Group*, "Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct - The Implementation Measures", (Lusaka, January 2010) 3. See 'Commentary on the Bangalore Principles of Judicial Conduct' (United Nations Office on Drugs and Crime 2007).

2. ***In your view, what would constitute a conflict of interest for a Judge?***

Conflict of interest is one instance where a Judge may be perceived or regarded not to be impartial. This may include the Judge's behaviour on the bench or his or her associations and activities outside the court, essentially when the personal interests of the Judge (or of those close to him or her) conflict with the Judge's duty to adjudicate impartially. A conflict of interest for a Judge would be a reason why such a Judge must recuse herself/himself from sitting on and determining matters in which he or she is actually conflicted or maybe so perceived by a reasonable observer, including:

- a. Where a Judge has personal interest in a matter before him or her which may involve close family relations like a spouse, parent or children or where a Judge has professional or subordinate relation with any party to a matter before him or her.
 - b. Where a Judge has previously been involved in any capacity before the Court or in a related criminal case. For example, a Judge who has sat as a pre-trial Judge in any case cannot sit as a trial Judge in respect of that same case because he or she will be conflicted.
 - c. Where a Judge has previously been involved at the national level involving a person being investigated or prosecuted before him or her.
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?***

State Parties are guided by the Rome Statute in the assessment of candidates' suitability to be Judges at the ICC. Consideration certainly should not be given to requirements outside of the Rome Statute and applicable resolutions of the ASP. The Rome Statute, however, provides in article 36(8)(a) & (b) that in the selection of Judges, States Parties must take into account, representation of the principal legal systems of the world, equitable geographical representation, and a fair representation of female and male Judges including those with legal expertise in dealing with specific issues including violence against women and children.

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.***

I have never been the subject of disciplinary, administrative, criminal or civil proceedings in which my professional or ethical standing has been called into 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.***

I have never been disciplined by any bar association, university, faculty or any similar entity of which I may have been a member.

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

Victims' right is the cornerstone of the Rome Statute system as it is clear on its recognition of the rights of victims to participate in proceedings before the ICC so as to express their views and concerns and to bring to the Court their own explanation as to the crimes they suffered. They provide Judges with information about exactly what goes on in the field and their role of participation affords them local ownership of the Court's proceedings.

If elected, in a bid to ensure the effective participation of victims in proceedings, I will adopt the following measures appreciating the need for confidentiality and concealment with interactions with the victims lest they or their family be left at risk as to their security.

- a. In respect of protection, the victim must be assured of his or her protection as well as the protection of his or her loved ones whose lives or properties may be at risk because of his or her testimony. The Court has several protective measures that can be granted to witnesses who appear before the Court and other persons who may be at risk on account of a victim's participation at proceedings. The Court's protective foundation is built on good practices that are aimed at concealing a witness' interaction with the Court from their community and the general public.
 - b. The Court must protect victims who participate in proceedings where the Witness and Victims Unit advise the Court on appropriate protective measures and security arrangements for victims who appear before the Court and others who may be at risk on account of testimonies given by victims/witnesses. These procedural measures which can be applied by the Court in the protection of victims/witnesses may include voice/face distortion or the use of pseudonyms. The Court can order separate special protective measures for traumatised witnesses, who may be victims, a child, elderly persons or victims of sexual violence including facilitating the testimony of witnesses by allowing a psychologist or family member to be present while the witness testifies or the use of a curtain to shield the witness from direct eye contact with the Accused.
 - c. Protective measures are used to make witnesses who may be victims safe and comfortable during proceedings. Protective measures apply to all parties including the Prosecution, Defence and the Victims equally with all parties bound by confidentiality and respect to protective measures.
 - d. The victim participating as a witness must be informed that even when protective measures are applied, they would still be cross-examined.
 - e. In extreme cases, a victim/witness may require relocation to a different country for which such victim or witness will need to enter into the Court's Protection Programme through which the witness and his or her close relatives are relocated from the source of threat.
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?***

While a victim can be a witness, not all witnesses are victims. Where so applicable, I will be dealing with victims' rights in the light of the rights of a witness but with the necessary empathy, and due recognition to the additional parts victims play in ICC Proceedings. The right of an accused is provided for by article 67 of the Rome Statute. Accused persons are by law, presumed innocent until proven guilty by the Court. There is a need, throughout the proceedings to balance the rights of the accused and the rights of victims. Accused persons have a right to be present in the courtroom during trial and they have a right to public, fair and impartial hearing of their case. In light of the above, the Rome Statute sets out a series of guarantees in Article 67 for the Accused and in Article 68 for the protection of victims and witnesses and their participation in the proceedings. The rights of the accused therefore includes his or her right to be informed promptly and in detail, in a language which he fully understands and speaks, about the nature, cause and content of the charge against him or her; a right to enough time and adequate facility for him to prepare his or her defence and a right to communicate freely and in confidence with his or her Counsel; a right to be tried without undue delay and not to be compelled to confess guilt and to remain silent; an accused silence must not be considered as his guilt or innocence.

In respect of balancing the right of the accused person's right to public hearing provided for in Article 67(1) of the Rome Statute for example with the victim's right to protective measures, the Chambers or the Court may conduct any part of the proceedings in camera or in the case of a victim of sexual violence or a child who is a victim, allow the presentation by other means including by electronic means, having regard to all the circumstances, including the view of the victim.

An accused has a right to cross-examine victims who participate in proceedings and to obtain the attendance of victims who may serve as witnesses against him or her for purposes of examination on his or her behalf and to raise defences and present other evidence admissible under the Rome Statute. In respect of balancing the accused' right to see and cross-examine a victim and a victim's right to a protective measure of participating in proceedings by other means other than in-person therefore, the accused' right to see and cross-examine the victim must be explained to the victim; the victim will remain protected from public view where he or she needs such protective measure. The victim may remain protected by other measures including permitting the presence of a psychologist or a family member in the Court where the victim will be testifying, where for example the victim is a victim of sexual violence or is a child. The right of the accused to question the victim however must be maintained in which instance, a Judge or Chamber could allow for a victim, while being protected from public view, to testify by way of video link and be cross-examined on behalf of the accused through the same link.

An accused person has the right for the victims to disclose to the Defence any evidence in their possession or control including exculpatory evidence which may show or tend to show the innocence of the accused or to mitigate the guilt of the Accused or which may affect the credibility of the Prosecution's or victim's evidence against any particular Accused. Where the disclosure of evidence may lead to serious security risk of a witness or his or her family, the Court may, as a way of balancing the right of the accused and the right of the victim, make certain protective orders (including redactions) which said orders must not be prejudicial or inconsistent with the right of the accused to such disclosure and a fair and impartial hearing.

The Court must allow the views and concerns of the victims to be presented and considered at appropriate stages of the proceedings, but as a way of balancing the right of the victim and that of the Accused, the Court must allow these views and concerns in a manner which is not prejudicial to or inconsistent with the right of the accused where the personal interests of the victims are affected.

Both the victim and the accused have a right to be represented/assisted by Counsel and the right to present evidence on their own behalf and to use language which they fully understand and speak and like the Victim, where the Accused does not have the means to afford the services of a lawyer which is his or her right to a fair trial, the Court must assign legal assistance to the Accused, much as the Court would to a victim. The Office of Public Counsel for the Defence and the Office of Public Counsel for Victims promote, represent and research the rights of the defence and victims and endeavours to achieve equality of arms at all stages of an investigation and trial.

F. Additional information

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?***

I am fluent in the English language. My primary, secondary, undergraduate and postgraduate education were all in the English language. I have lectured criminal law at the University of Sierra Leone in the English language. English language is the official language of the Judiciary of Sierra Leone. I have done presentations in English language. Being a Lecturer and a Judge, I can speak fluently in public hearings and meetings and I write my own decisions in the English language.

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

I am a Sierra Leonean. I have no other nationality other than what is indicated in my nomination. I have never requested another nationality.

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?***

I am aware of the Conditions of Service for Judges of the Court including the remuneration and pensions' scheme and I do accept the terms and conditions of work.

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

If elected, I am willing to participate in a financial disclosure program organised by the ICC.

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?***

There is no other information which should be brought to the attention of the Committee and which might call into question my eligibility for judicial office.

G. Disclosure to the public

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

I hereby give my consent and note the importance of public access to this questionnaire to enhance transparency in the process of election of Judges to serve at the Court. States Parties must be provided with every relevant information to inform their decision-making.
