

## 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 developed competence in criminal proceedings and areas of international humanitarian law and human rights law by dint of my experience as a judge on the national level and as a prosecutor on the national and international level. I have also developed competence as the holder of an LLM in the Internationalization of Crime and Criminal Justice from the University of Utrecht, the Netherlands as well as in the post of Deputy Director, Human Rights Unit, Ministry of the Attorney General, Trinidad and Tobago.

At present, I am a Judge of the Supreme Court of Trinidad and Tobago. I began my judicial career in September 2013. As a Judge, I am fully competent in criminal law and procedure at the national level. From 2013 to now, I have done more than 90 cases including murder; sexual offences against adults and against children; drug trafficking, firearm offences and fraud. At the pretrial level, I deal with pretrial issues such as abuse of process applications, applications to admit witness evidence, applications to admit or to not admit documentary evidence and applications to admit the evidence of witnesses who are deceased or too afraid to testify.

At the trial level, I oversee the entire case, sitting as a single Judge. In that regard, I hear the case for the prosecution and if there is an application that the Defence has no case to answer given the insufficiency of the evidence of the prosecution, I also rule on that motion. If overruled, I would then hear the case for the Defence. Thereafter, I would hear legal arguments in relation to what issues ought in law to be left to the jury. This is in the absence of the jury. Finally, I would sum up the case to the jury, explaining my role, their role and using the specific factual background of the case, explain the applicable law to the jury. At the end of my summation, the jury is given the opportunity to decide upon the final verdict in the case. If the jury finds the accused not guilty, I release the accused. If the jury finds the accused guilty, I would hear a plea in mitigation from the counsel of the accused, hear sentencing arguments from the prosecution and go on to sentence. Further, since a recent change in legislation, I have been embarking on judge alone criminal trials in which the judge is both

the tribunal of law and fact. Thus, as a Judge of the Supreme Court of Trinidad and Tobago for almost 7 years, I have honed my knowledge of criminal law and procedure and case management at the pretrial and trial stage.

I was a prosecutor on the national level in Trinidad and Tobago for about 5 years. In that capacity, I prosecuted persons for murder, sexual offences, breaches of environmental law, fraud and drug and firearm offences. This post entailed detailed preparation of cases, including preparing for any possible legal arguments that arose in the course of the trial, actually embarking upon the trial, delivering an opening speech to the jury, putting the State's witnesses before the trial judge and responding to any legal arguments made by the Defence. Finally, in every criminal trial, my role included legal submissions to the trial judge in relation to the proposed parameters in law of the judge's summation as well as closing arguments to the jury. Upon leaving the Office of the Director of Public Prosecutions to take up a posting at the International Criminal Tribunal for Rwanda, I had ascended to the post of Senior State Counsel at the Office of the Director of Public Prosecutions.

Also at the national level in Trinidad and Tobago, I was Deputy Director of the Human Rights Unit in Trinidad and Tobago for one year. In that position, on behalf of Trinidad and Tobago, I participated in the preparation of the country reports in obedience to the Convention on the Rights of the Child, the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights and the Convention for the Elimination of all Forms of Discrimination against Women. In this capacity, I was involved in the practical application of what it means for a country to adhere to its human rights obligations.

Finally, in relation to the practice of international criminal law, I was a prosecutor at the International Criminal Tribunal for Rwanda for almost ten years. I was first an Assistant Trial Attorney, then Trial Attorney, then an Appeals Counsel. At the ICTR, I was part of prosecutorial teams that prosecuted persons for breaches of international humanitarian law and international human rights law. Thus, at the trial level, I was involved in the Butare case, the case against Gregoire Ndahimana, Athanase Seromba and Gaspard Kanyarukiga. At the appeals level, I was involved in the appeal of the Butare case, where I prepared the appeal brief for one of the Butare six, Sylvain Nsabimana.

Educationally, I am the holder of an LLM in the Internationalization of Crime and Criminal Justice from the University of Utrecht, the Netherlands. I achieved the highest marks in that year in international humanitarian law, international human rights law and comparative international criminal law. I graduated magna cum laude, at the top of my class. Therefore, during my LLM, I delved deeply into the legal principles that undergird the International Criminal Court.

Therefore, from the combination of my professional and educational endeavours, I am competent in criminal practice and procedure, international humanitarian law and international human rights law.

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?

On the level of international law, I prosecuted rape as a crime against humanity. I was a part of the Butare case at the International Criminal Tribunal for Rwanda which involved, *inter alia*, the successful prosecution of Pauline Nyiramasuhuko for rape as a crime against humanity. In that regard, I interviewed witnesses who had been victims of sexual offences comprising rape as a crime against humanity. These women had been subjected to violence, discrimination and sexual assaults based on their gender and their ethnicity.

On the national level, while I was a prosecutor at the Office of the Director of Public Prosecutions, I was heavily involved in the prosecution of sexual offences against women and men and also against male and female children.

As a judge of the Supreme Court of Trinidad and Tobago, I have sat on trials involving adult female victims of sexual offences and male and female children who were victims of sexual offences and gender based violence.

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?

I have never been investigated for, or charged with any allegation of corruption, criminal or administrative negligence or any similar misconduct, including sexual harassment.

## **B. Perception of the Court**

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

I am aware of criticisms that the Court has not adjudicated upon a sufficient number of cases, has not had enough successful prosecutions and is a Court that is concentrating on the prosecution of breaches of international law alleged to have occurred in Africa.

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?

In my view, there are misconceptions about the reach of the Court, about what the Court can do and what the Court cannot do. My first suggestion therefore is one of public outreach, with the target audience as widely spread as possible, including governments, civil society, NGOs and ensuring a platform that is easily accessible to citizens.

As part of this public outreach, the Court can support judicial reforms in national jurisdictions of affected countries. The ICC cannot prosecute every person who is suspected of having committed an offence under the Rome Statute. It may assist the public perception of the ICC if after a suspect has been transferred to the Hague, that the Court continues to support local legal institutions.

Secondly, I suggest increasing the geographical presence of the Court so that there are more ICC “embassies” to make information gathering and sharing and “on the ground” collaborations easier.

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?

I would begin with the positive. I think that when the Court found Mr. Bosco Ntaganda guilty of war crimes and crimes against humanity and sentenced him to 30 years, this had a positive effect on the perception of the Court as a strong court that can bring offenders to justice. This conviction sent a message to the States Parties and the public that the ICC is an integral part of the global fight against impunity and that no one is above the law.

In relation to an important decision issued by the Court which some argue had a negative impact on the perception of the Court by States Parties and the public, I would put forward the 2018 decision of the Appeals Chamber in the case of Jean-Pierre Bemba to uphold the appeal. Initially, when Mr. Bemba was found guilty, many persons in the international community were pleased and felt that the judgement demonstrated that those in military command were to be held responsible for the breaches of the rank and file officers. Therefore, such persons were disappointed with the judgement of the Appeals Chamber

### 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?

A country of origin should not be permitted to influence how a judge rules on any issue. A Judge must be independent. Further, except for being a member of the Caribbean Association of Women Judges, I do not have any affiliation with any university or any court other than the Supreme Court of Trinidad and Tobago. That affiliation is as an ordinary member. My membership in that organization has no influence on my work now and would have no influence on my work at the ICC if elected.

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

I do not think a Judge should participate in a trial involving a national from his or her country of origin. I believe that a Judge is able to divorce his or her mind from national partisan allegiances. However that may be so, a Judge sitting in a trial involving a national from his or her country of origin runs the risk of being perceived as showing favouritism or unnecessary antipathy because of perceptions of personal allegiances and biases. For this reason, although personally, I believe myself capable of putting aside national partisan loyalties, in order to continue to preserve the integrity of the Court's international reputation and for perceptions of impartiality and independence, I do not think that a Judge should participate in a trial involving a national from his or her country of origin.

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?

I consider the decisions and jurisprudence from the stated bodies to be useful and appropriate to be considered during proceedings at the ICC. However, I would first consider ICC Appeals Chamber decisions, then treaties, decisions from human rights bodies, principles of international law and decisions of other international courts. I consider jurisprudence from national courts to be useful but at times not appropriate if the context of the law is of specific national applicability. However, national law, especially in relation to general principles of criminal law can be considered.

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, precedents of the Appeals Chamber can certainly be followed by an independent Judge. However, such precedents ought not to be followed slavishly and without recourse to the specific factual and legal matrix of the case the trial judge is adjudicating upon. So, notwithstanding my belief that the precedents of the Appeals Chamber can generally be followed for consistency of approach, there should be room for an independent Judge to distinguish the facts of his or her own case from the facts that founded the decision of the Appeals Chamber. In so doing, an independent trial judge may not follow a precedent from the Appeals Chamber. However, for certainty in the law, a Judge may wish to consider how to build his or her judgment upon what has been already been decided by the Appeals Chamber.

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.

Yes. I consider that a Judge or a Chamber of the Court should be allowed to implement innovative procedural practices where necessary. Firstly, if the

stated procedure is workable in the particular factual context, then it should be utilised.

However, there are times when some innovation may be required within the rules. Therefore, a Judge or a Chamber of the Court, while not arrogating from the Rules of Practice and Procedure, may consider coming up with innovative procedure using the same Rules of Practice and Procedure.

For example, Rule 16 (1)(d) of the ICC's Rules of Procedure and Evidence states that the Office of the Registrar may make gender sensitive decisions in relation to the participation of victims in the proceedings. The Rule states broadly that the Registry may make all such arrangements to facilitate victim testimony.

A Judge or Chamber can rely on Rule 16 (1)(d) and consider how this Rule can be interpreted to foster greater efficiency. For example, such a Judge or Chamber can implement a procedural practice about bringing that victim to the Court before the date of testimony and allowing the victim to become comfortable with a designated person who would then be responsible for taking charge of the baby during the testimony of the victim. In this way, the evidence would not be truncated and the victim would be less likely to be overly concerned about the welfare of her child and therefore be more likely to testify comfortably.

This genus of innovation may redound to the efficacy of the proceedings. This is the genus of innovative procedural practice that a Judge or a Chamber of the Court can make in order to ensure efficiency.

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 used to managing a team of supporting professionals who facilitate my work in court. The management of the judicial team is integral to the efficacy my work. I strive to work amicably with my team. In my jurisdiction, trial judges sit alone as a judge of the law with a jury or as a judge in a trial without a jury sitting as a judge of law and facts.

With respect to working with my fellow judges, in Trinidad and Tobago, there are only 8 criminal court judges that serve the High Courts in the capital of Port of Spain, in the southern city of San Fernando and in the administrative centre of Tobago, Scarborough. It has been my experience that coordinating with, talking to, engaging with and listening to my brother and sister judges has contributed significantly to my knowledge and understanding of the law and legal process. Collegiality is key.

The legal system in Trinidad and Tobago is distinctly common law in the English legal tradition. However, during my masters program at the University of Utrecht, I was particularly interested in comparative international criminal law. I am still keen to continue learning about other legal systems. Therefore, I do not look askance at other legal systems but rather, I look forward to learning and contributing to the melding of legal norms of international criminal law that are a mixture of different legal traditions.

In relation to a separate concurring opinion, in my view, if all the judges agree about the outcome and there is agreement in relation to the method by which the individual decisions have been arrived at, then I do not see the need for a separate concurring opinion. If I agree in large part with the view of the majority, it will oftentimes be unnecessary to write a separate decision, if the outcome is the same. However, even if the outcome is the same, if having weighed up the issues, I find that there is a principle of law that I feel should be noted and which is not canvassed in the majority ruling, there may be the need to write a separate concurring decision.

In relation to a separate dissenting opinion, it is clear that disagreements will come among foremost legal minds who feel strongly about the issues. In my view, the solution is to put aside notions of the supremacy of one's own national system of law; to be willing to listen to the views of others and to know that it is not a weakness to change one's mind after listening to the views of another. In this way, disagreements can be worked out so that the Court can as often as possible have a unanimous decision.

However, if having done all, unanimity is impossible, then I believe that it is sometimes necessary to write a dissenting opinion setting out the legal rationale for the disagreement.

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

A Judge should recuse himself or herself from a case if he or she has an obvious conflict of interest such as it is a case from his or her national jurisdiction. Further, a Judge should recuse himself or herself from a case if the circumstances of the case are such that they may reasonably affect the confidence that the parties may have in the independence and impartiality of the Judge.

#### **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?

If elected, I am prepared and available to serve at the commencement and for the duration of my term, if called upon to work at the Court full-time for the full nine year term.

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?

If elected as a Judge of the International Criminal Court, I shall be ready to take up the work of the Court and to serve in a full-time capacity. However, should there be an unavoidable delay of several months or a year or even more, while I eagerly await being called upon to serve on a full-time basis, I shall continue working in my present position as a judge of the Supreme Court of Trinidad and Tobago.

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?

Work as a Judge in my national jurisdiction requires all of the above so that I am prepared to work many hours in one day, including evenings and over some weekends. I have no difficulty with taking vacation when there are no hearings. I understand that there is a short Easter break, a short Christmas break and a longer summer break.

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?

I believe in writing decisions myself. Assistants and interns assist greatly in research and structure. However, even if an assistant or intern were to set out the general structure in terms of stating what the law is, the actual decision, the conclusion and the finding is for me. That is my approach.

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

In order to expedite proceedings, a Single Judge can issue decisions and orders to parties to set out the legal basis of their cases; to state which parts of the case are being contested and which parts are being accepted and set approximate time-periods for oral submissions. In other words, a Single Judge can make decisions to expedite the proceedings by robust case-management which ensures that the issues have been canvassed and dealt with. In this way, when the matter goes to trial, its progress can be smoother and quicker.

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?

As a Judge in Trinidad and Tobago, I am not used to working under pressure from States, government authorities, national or international organizations.

However, I am used to working under the scrutiny of the media and the wider public. For example, in sitting upon a case in which a police officer was alleged to have raped a 14 year old young lady inside the physical building of the police station, the case, and when the jury found him guilty, my sentence, was reported by the media and commented upon by members of the public, some of whom agreed strenuously and others who did not agree. The comments were reported on print and radio media and across the Caribbean region and could not have failed to come to my attention. Notwithstanding the above, I adjudicated upon the attending issues in the case without acceding to any public or media pressure.

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 am in good health and I am prepared to work under pressure. I have never been on leave from my professional duties due to exhaustion or any other work-related incapacity.

#### **E. Deontology**

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

My understanding of an independent Judge is a Judge who exercises his or her judicial function on the basis of his or her own independent assessment of the facts after a careful reading of the applicable principles of law. Such a Judge exercises his or her judicial function having consciously determined that the assessment is free from any extraneous influences, inducements, pressures, threats or interference from any one or from any organisation.

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

A conflict of interest arises when as a question of fact or as a question of perception, there is a conflict between the Judge's self-interest and the duty to impartially and independently adjudicate on any matter.

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?

Firstly, any consideration of race, colour, gender or religion must fall away and bow before the altar of competence. Therefore, a person should not be considered suitable to be a Judge at the ICC on the sole basis of race, colour, gender or religion. Further, one's race, colour, gender or religion should not be a bar to one's suitability if competence is already established.

Nevertheless, all things being equal in relation to competence, I believe that there is a place for disaggregation in respect of race, colour, gender and religion.

These are physical and social constructs that have the capacity to make different persons see the same data in different ways and to make assessments from points of view that are not obvious to other persons. The International Criminal Court is an international court. Therefore, it may redound to the benefit of the Court to consider the stated physical and social constructs with a view to ensuring that differing viewpoints are represented at the Court. In my view, this course can assist in enhancing the work of the court as people from varying systems, of differing races, genders, colours and religions stand together for the promotion of the underpinning pillar of the ICC, to end impunity.

However, competence must never be sacrificed in order to accede to any notion of equality of representation in relation to race, colour, gender and religion. The persons best suited in relation to their professional and educational accomplishments should be considered.

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 or censured by any bar association, university faculty or similar entity of which I 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?

If elected, I would want to hear from the victims, as well as from their legal representatives. However, I am cognizant that all the victims to mass atrocities cannot be heard. Nevertheless, using the familial or tribal or social context of the victims, I would hear victims who can speak on behalf of the group. For example, a victim group may be represented by a village elder or a leader in the community. However, this may not be applicable in allegations of sexual violence where a person's feelings on the issue are best articulated by the victim.

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?

Victim participation is a laudable inclusion in the Rome Statute and in ICC cases. In reaching a decision to have a victim participate in the proceedings, I would try to balance the rights of the accused and the rights of victims. For example, I would take account of factors such as how far the case for the prosecution has progressed to ensure that the prosecution has at least framed its case based on the witnesses before the evidence of victims is called, lest the Judge be affected even by unconscious bias before hearing the witnesses upon whose evidence the Chamber will rely.

Further, I would be careful to note what evidence was testified to by the victim and to ensure that no decision in relation to the guilt or innocence of the accused relies upon directly or indirectly, the evidence of a victim. Victims should be heard but not at the expense of negatively impacting upon the case for the accused. Victims and their attorneys cannot be seen to be prosecuting the accused.

#### **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 my mother tongue of English. I can therefore speak fluently in public hearings and meetings and write my own decisions in English.

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

My only nationality is from my birth country of Trinidad and Tobago. I have never sought nor requested any other 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?

Yes, I have familiarized myself with the conditions of service, including remuneration and the pensions' scheme for the Judges of the Court. I am aware of and accept the terms and conditions of work. In that regard, I have familiarized myself with Article 49 of the Statute of the International Criminal Court and Part III of ICC-ASP/2/10 which deal with Conditions of Service and compensation and Staff Regulations.

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 organized 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?

I know of no such information.

**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 have no difficulty with making my answers to this questionnaire public.

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