

Kam, Gberdao Gustave (Burkina Faso)

[Original : French]

Statement of qualifications

Motivation and commitment

One of the primary goals of the United Nations is to ensure universal respect for human rights and fundamental freedoms. In this context, the fight against impunity and for peace, justice and human rights in conflict situations today is of great importance. The establishment of a permanent international criminal court, following the United Nations Diplomatic Conference of Plenipotentiaries held in Rome, Italy on 17 July 1998, was a decisive step forward.

Since their independence, various different African States have had a number of ambitions in the struggle against impunity. Some struggles have found their place at the level of regional organization: combating international In this regard and for the purpose of making a rapid assessment, we note that Africa has had *ad hoc* international courts (the International Criminal Tribunal for Rwanda, (ICTR)) and mixed courts (Sierra Leone) as well as national courts of all kinds, including the Special Criminal Court in the Central African Republic and the Extraordinary African Chambers in Senegal. In addition, Africa has come under the permanent jurisdiction of the International Criminal Court (ICC), which has the broadest geographical scope. One might also mention the African Court on Human and People's Rights, especially since the Malabo Protocol, adopted in 2014, extended its jurisdiction to include fourteen crimes. Africa is well represented in the international courts.

1. The ICTR, established pursuant to United Nations Security Council resolution 955 (1994), since 1994. This Tribunal officially concluded its work in 2015. Nevertheless, a mechanism was established to address residual issues concerning the two *ad hoc* tribunals for the former Yugoslavia and Rwanda.
2. The Special Court for Sierra Leone, established pursuant to Security Council resolution 1350 (2000) and the subsequent Agreement between the United Nations and the Government of Sierra Leone, signed in 2002.
3. The Extraordinary African Chambers resulting from the Agreement between the Government of Senegal and the African Union, signed on 22 August 2012. The African Chambers are competent to prosecute and try people accused of crimes and other serious violations of international law committed in the territory of Chad between 7 June 1982 and 1 December 1990.
4. The Special Criminal Court in the Central African Republic was established for the sole purpose of prosecuting people accused of committing war crimes and crimes against humanity or other violations of international humanitarian law in the territory of the Central African Republic between 1 January 2001 and 31 December 2014.
5. The ICC, established pursuant to the adoption of the Rome Statute of the International Criminal Court on 17 July 1998, which entered into force on 1 July 2002. The great majority of cases brought before the Court today are African.

The prominent place of Africa in proceedings pending before the ICC is due to human rights violations even if this fact does not concern the whole of Africa since a majority of African

States are not prosecuted before international courts. For all of these reasons, African States should campaign for proper training for judges and for the representation of African judges and jurists in international criminal judicial bodies, as this will contribute to the dissemination of international criminal law in Africa, whether at the local or regional level.

Gberdao Gustave Kam, whose candidature for election as a judge to the ICC is hereby respectfully submitted, is a judge at the exceptional grade who enjoys the confidence of the highest authorities in Burkina Faso, having proven himself through the many national and international positions that he has held.

Mr Kam has more than 30 years of professional experience in a judicial and legal career at the national and international levels, as evidenced by his curriculum vitae. After a brilliant training at the Ecole nationale de magistrature (National School for the Judiciary) in France in 1984, he began his career as a judge at the national level as an investigating magistrate at the County Court of Bobo Dioulasso, from 1985 to 1987. He was rapidly promoted to President of the courts of Tenkodogo from 1987 to 1988, Bobo Dioulasso from 1992 to 1995 and Koudougou from 1995 to 1996. In 1996, he was appointed Public Prosecutor at the Ouagadougou Court of Appeal.

From 1998, he undertook administrative assignments in the Chancellery: as Director of Civil and Criminal and Matters and of the Seal; then as Director of Studies and Planning in February 2001, at the same time as his duties as Coordinator of the Programme to Support Consolidation of the Democratic Process, the Rule of Law and Good Governance (PADEG) from 2003.

In June 2003, he was elected by the United Nations General Assembly as an *ad litem* judge to the ICTR. When his mandate expired in July 2012, he was given new *ad hoc* assignments in the Ministry of Justice of his country. Furthermore, with the closure of the ICTR in 2011, he was elected as judge of the International Residual Mechanism for Criminal Tribunals (IRMCT) for a two-year mandate from July 2018.

His professional experience, as a judge who has served at most levels of the national courts of Burkina Faso and internationally in two bodies, has given him considerable mastery of the law and its practice that could be of use in the service of the ICC.

Although he was trained in the Romano-Germanic system generally known as civil law, he also has a good command of unwritten or Anglo-Saxon law generally known as common law. He participated in the negotiations in Rome and at United Nations headquarters in New York that led to the adoption of the Rome Statute of the International Criminal Court (1998), then in the drafting of the various instruments governing the Court, including the Rules of Procedure and Evidence and, also, the Elements of Crimes. The working environment at the ICTR enabled him to develop his legal culture beyond the legal system of Burkina Faso, due to the multi-cultural nature of the legal actors in proceedings before the Tribunal. His immersion in international criminal law and criminal procedure added a new dimension to his experience, and he developed a better comparative approach to the different legal systems in the cases in which he was involved and in accordance with the other judges with whom he worked.

Moreover, in April 2015, he was selected by the African Union Commission to preside over the Extraordinary African Assize Chamber in Dakar. This was the framework in which Hissène Habré was indicted and referred by the Indictment Chamber to the Assize Chamber for trial. On 30 May 2016, the Chamber over which Mr Kam presided sentenced Hissène

Habré to life imprisonment. This decision, which drew heavily on the jurisprudence of international criminal courts, was described as historic and revolutionary by the international community, with regard to the evolution of African criminal law and, above all, with regard to the fight against impunity in Africa.

Mr Kam thus has the assets and skills that will help the ICC to realize the objectives set for it by the international community, including by trying those accused of serious crimes in order to deter others from such crimes. His extensive professional experience as a judge at the national level and at the ICTR and the Extraordinary African Chambers are a significant asset that could only be of benefit to the Court. Moreover, his participation in the negotiations that led to the adoption of the Statute of Rome and the subsequent instruments affords him additional insight for a richer reading of the texts in their application.

He has perfect command of French, which is his first working language. However, he is also able to work in English and his experience with the ICTR in Arusha consolidated that ability.

Mr Kam is motivated by the desire to contribute to ending impunity: international crimes are committed by human beings, and it is only by punishing the individuals who commit such crimes that international law can be enforced. This fight against impunity will at the same time contribute to ending conflicts. In the armed conflicts in Sierra Leone and Rwanda, the civilian population recorded very heavy losses, primarily of the most vulnerable, namely, women and children. The punishment of these mass crimes, committed in violation of international law, has contributed to ending conflicts when all nations are treated equally. It is to be hoped that recourse to international criminal justice will be more extensive in support of national justice, in the complementary manner envisaged in the Rome Statute. Ultimately, the hope is that the work of the ICC will deter potential criminals. The international community must no longer tolerate any such egregious acts without attributing responsibility and imposing appropriate penalties on the perpetrators.

One of the criticisms levelled at the international courts is the slow pace of judicial proceedings and of judgments in these institutions and the resultant high cost. Mr Kam has also undertaken to work to reduce the time taken to hand down judgments in cases before the Court: he will draw on his many years of experience with the ICTR, the IRMCT, the Extraordinary African Chambers and the national courts to expedite judgments to the extent possible. In the Extraordinary African Chambers, he overcame the major challenge of trying the case of Hissène Habré with few qualified personnel in a relatively short time, with the decision available at the time that the judgment was pronounced.

Today one of the criticisms levelled by sceptics against international courts and tribunals relates to the slow pace of judicial proceedings, which impedes the issuance of timely judgments against high-level alleged perpetrators at the cost of victims demanding justice. His election as a judge to the ICC would give Mr Kam the opportunity to contribute to enhancing its efficiency. Mr Kam brings the experience that he has acquired through years spent as a national and international judge at various institutions, including the ICTR, the IRMCT and the Extraordinary African Chambers. As the Presiding Judge of the Extraordinary African Chambers, he was mandated to complete the trial of Hissène Habré within a specified time frame. This Chamber, which was a first in the African judicial system, was faced with a number of challenges, including the non-cooperation of defendants and the dearth of qualified

personnel with knowledge of international judicial procedures. Although one would expect such difficulties to delay proceedings, by applying his previously acquired experience Mr Kam was able to fulfil his mandate successfully and rendered the full judicial decision within a year. Thus, he is well accustomed to alleviating lengthy proceedings and comfortable with judicial systems that include a combination of civil law and common law.

Lastly, one of the other objectives of Mr Kam is to contribute to the provision of technical assistance and training to members of national courts in order to equip them with the tools necessary to fulfil their judicial duties in line with the aims of the founders of the ICC, namely that the ICC should be a court of last resort.

By appointing Mr Kam as a judge to the ICC, you will allow him to bring to the service of international justice all the knowledge that he has acquired over decades of experience, both at the national level and at the level of the most prestigious international and hybrid courts.
