

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 started my career as an examining magistrate at the Court of First Instance in Ouagadougou in Burkina Faso from July 1996 to September 2003. During this period of more than five years, I was able to gain experience in the investigation and prosecution of sensitive and complex crimes at the national level. I was then appointed to the bench from October 2003 to September 2004. Throughout that year, I held hearings, made orders and handed down judgments in procedural matters, as well as on the merits in criminal, civil and commercial cases.

Subsequent to this period of practice in the courts, I joined the Chancellery, where I was Head of Department in the Legislation and Documentation Division of the Ministry of Justice from 2004 to 2008. In this role, I contributed to the implementation of the Ministry of Justice's action plan by, amongst other things, drafting bills creating new courts and collecting case law.

From 2008 to 2014, I was Head of the Legal and Institutional Affairs Department of the National Financial Information Processing Unit in Burkina Faso. In this capacity, I was instrumental in implementing Burkina Faso's national policy on combating money laundering and the funding of terrorism.

With a view to enriching the professional experience I had acquired at the national level, I have elected to pursue my career at the international level. Consequently, from February 2014 to August 2017, I was Prosecution Adviser to the Prosecution Support Units (PSU) of the United Nations Organisation Mission for the Stabilisation of the Congo (MONUSCO) in the Democratic Republic of Congo (DRC). In these roles, I supported Congolese investigating magistrates in the application of the military criminal code, the military judicial code (equivalent to the code of criminal procedure) and the Rome Statute.

Since November 2017, I have been an international investigating judge at the Special Criminal Court of the Central African Republic (SCC – CAR). Created in 2015, this hybrid court has jurisdiction to investigate, prosecute and judge serious human rights violations and serious violations of international humanitarian law committed on the territory of the Central African Republic since 1 January 2003. I practice international criminal law on a daily basis, implementing in particular the Statute of the Special Criminal Court of the Central African Republic, the Rules of Procedure and Evidence before the said Court, the Central African Penal Code, the Central African Code of Criminal Procedure and the Rome Statute. In applying these main legal documents, I mainly resort to international human rights law, international humanitarian law and international public law.

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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?*

In my function as a national investigating judge, I have already acquired experience related to sensitive and complex crimes, namely murders, assassinations, rapes, intentional assault and battery against women and children, including against minors.

At the international level, in my capacity as an adviser for the prosecution of international crimes and an international investigating judge, I have acquired an experience in the practice of inquiry and investigation of international crimes, in particular war crimes, crimes against humanity and, most notably, crimes of sexual violence as a weapon of war, including on minors and children up to eight years old.

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

B. Perception of the Court

1. *What is your perception of the International Criminal Court and its dual nature as a tribunal and an international organisation? What do you perceive to be the main differences between the ICC and the two ad hoc Tribunals for the Former Yugoslavia and Rwanda?*

At the judicial level, my vision would be to contribute as a judge to the effectiveness of the Court in delivering justice to victims within a reasonable timeframe, balanced with respect for the rights of the accused. On extra-judicial issues, but which have an influence on the judicial level, my vision would be to lead reflections in appropriate or informal frameworks with the aim of improving cooperation between the Court and the States Parties as well as between the Court and other international organisations.

The Court's dual nature as a court and an international organisation should not pose a problem if the judiciary retains its independence and does not interfere in the administrative field and vice versa.

For the sake of effectiveness and efficiency, it would be useful to strengthen external control without infringing and encroaching upon the independence of the judges and the prosecutor's office. For instance, the Special Criminal Court, where I work, has made provision in its Rules of Procedure and Evidence for an external audit service which, at least once a year, examines and assesses the operation of the Court in depth, particularly with regard to the progress of ongoing proceedings, identifies judicial difficulties and, at the end of its mission, issues reports and recommendations.

Some of the differences between the ICC and the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are that, while the former is permanent and created by the Rome Statute, an international treaty signed on 17 July 1998 that came into force on 1 July 2002, the latter two are ad hoc and created by resolutions of the United Nations Security Council, respectively Resolution 827 of 25 May 1993 and Resolution 955 of 8 November 1994.

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Furthermore, while the ICC is founded on the principle of complementarity with national jurisdictions, the ICTY and ICTR operate on the principle of primacy. It is important to note that, notwithstanding the principle of complementarity of the ICC with national jurisdictions, the organic law of the Special Criminal Court of the Central African Republic (SCC-CAR) granted the primacy of the ICC over the latter.

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

In addition to the traditional factors of slowness and complexity, the main criticisms of the Court's procedures can be summarised as follows:

The length of proceedings, from the preliminary examination and investigation by the prosecutor's office to the trial and appeal phases, and the low number of cases tried;

The complexity of proceedings, particularly those at the pre-trial and trial chamber stages;

The distance between the seat of the Court and the places where the events occurred;

The relative effectiveness of victims' participation in trials.

The lack of the universality of the power to initiate proceedings, which is a consequence of the Court's provisions limiting the Court's jurisdiction to States Parties, albeit with the possibility for the Security Council to refer a case to the Court.

The factors of dissatisfaction of the victims linked either to the imbalance between the damage suffered by them and the compensation awarded to them, or to the publicity surrounding the compensation, which may put at risk the victims who have benefited from it.

3. *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?*

One proposal would be to set time limits for the proceedings and to specify the body or organ within the Court that will be responsible for monitoring these time limits. At the Special Criminal Court (SCC), the Office of the Special Prosecutor and the Investigation Chamber, which conduct inquiries and investigations, are bound by deadlines for concluding their cases, although there are exceptional possibilities for extending deadlines;

It would also be desirable to encourage the Court's policy of collective damages and compensation;

Another suggestion would be to strengthen the Court's independence on the question of the opportunity to prosecute, bearing in mind that the question of opportunity is already partly settled by the principle of complementarity. Furthermore, given that the Court is a permanent court and that the crimes within its jurisdiction are not subject to any statute of limitations, the Court could be more pragmatic as well as action-oriented and choose the most appropriate time to prosecute.

In concrete terms, in situations where the competent national jurisdictions could be effective, it would be more appropriate for the Court to support these jurisdictions in the

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prosecution of international crimes and not to undertake the prosecution itself. In cases where national courts are unable to do so, the Court, while taking action, must play for time so as not to compromise its efficacy and image.

It would also be desirable for the Court to carry out awareness-raising and information initiatives to explain its limitations, which are often poorly understood, so that the public and civil society can become more familiar with the work of the ICC. These initiatives and activities should be carried out in all member states, especially those in which international crimes have been perpetrated, and not only in states where a situation is open.

4. *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?*

Positive examples: The appeal judgment in the Bosco NTAGANDA case, situation in the Democratic Republic of Congo.

The Prosecutor v. Ntaganda, trial opened in September 2015 and whose sentence was confirmed on appeal on 30 March 2021. This decision fostered a good perception of the Court, in that despite the duration of the proceedings, it has provided answers to the questions of war crimes by rape and sexual slavery of individuals under the age of 15, the enlistment and conscription of children under the age of 15 and their use as active participants in hostilities.

The Prosecutor v. Dominic Ongwen, trial commenced on 6 December 2016. On 6 May 2021, Trial Chamber IX sentenced Dominic Ongwen to 25 years' imprisonment for crimes against humanity and war crimes. The decisions of Trial Chamber IX on guilt and sentence were confirmed on 15 December 2022 by the Appeals Chamber. The Ongwen case focused on sexual violence and set a precedent.

Negative example: The appeal judgment in the *Prosecutor v. Bemba et al*, concerning the situation in the Central African Republic II, including the trial opened in September 2015 for offences against the administration of justice in the context of the *Prosecutor v. Jean-Pierre Bemba Gombo*. It resulted in a conviction handed down on 19 October 2016 and then a decision by the Appeals Chamber on 8 March 2018, which acquitted some of the defendants. This decision raised questions among the victims, who felt that they were not served justice following such lengthy proceedings. Similarly, there is food for thought regarding the Appeals Chamber's assessment of the factual elements of Jean Pierre Bemba's responsibility as a hierarchical person in command.

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?*

As a matter of principle, judges are independent in the exercise of their functions; even when they act as a national judge, they have an obligation to assert their independence. The same principle applies to ICC judges in relation to the authorities of their country of origin.

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The principle of judicial independence is enshrined and established in Article 40 of the Rome Statute, which states that:

- “1. The judges shall be independent in the performance of their functions.*
- 2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.*
- 3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.*
- 4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges.”*

I am not affiliated to any academic institution or non-governmental organisation. Besides, were I affiliated to the latter and elected a judge of the ICC, I would terminate my activities and devote myself entirely to my duties as a full-time judge of the ICC. I am currently a judge at the Special Criminal Court and if I were elected a judge at the ICC, I would give up my duties at the SCC.

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

In principle, a judge may participate in a trial involving a national of his or her country of origin, if the judge retains his or her independence and if the Court has confidence in the independence of its judges. But, as a precaution, such participation should be an *ultima ratio*, a last resort, and strictly apply when there is no other solution.

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

In principle, proceedings before the ICC may take into account the case law and decisions of national courts and tribunals, international courts and tribunals, and even human rights bodies. However, these decisions and case law can only be taken into account if they do not contradict and conflict with Article 21 of the Rome Statute, which gives primacy to the Rome Statute, the Elements of Crimes and the ICC Rules of Procedure and Evidence. For instance, with regard to national decisions and jurisprudence, it is necessary to take scrupulous account of the provisions set out in paragraph 1.c. of Article 21 of the Rome Statute.

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?*

The precedents set by the Court's Appeals Chamber must serve as a guide, in conformity with paragraphs 2 and 3 of Article 21 of the Rome Statute, but must be open to adjustment in each individual case pursuant to the evolution of the law and the *opinio juris*.

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.*

As a matter of principle, a judge is required to apply the law, and any innovation must comply with the applicable law.

For example, the law applicable to the Special Criminal Court contains numerous provisions previously unknown in the national law of the Central African Republic. The implementation of these provisions has required innovations on the part of the judges, and some of these have been adopted as practical guidelines. **With respect to the care of**

witnesses giving evidence and testifying in proceedings, in the absence of a directive, the law firm I co-manage issued an order for the psychological care of an accused person, even though the texts do not include accused persons amongst those who can benefit from such care.

6. *How do you envision your work in the context of a hybrid criminal procedure, which differs from the one you are familiar with in your national functions? How do you conceive or view your working relationship with other Judges from different backgrounds and from different legal systems?*

As a judge at the Special Criminal Court (SCC), which is a hybrid court by virtue of its composition and also by the procedure applicable before it, I have earned the experience of working in the context of a hybrid criminal procedure, which distinguishes itself from that which I know within the framework of my national functions.

The SCC is made up of magistrates and judges originating in different backgrounds and different legal systems, and even when they stem from the same legal system, the case law are different and diverge.

On the legal and judicial level, the approach consists in knowing and understanding the legal systems and the case law of each other in terms of comparative law and to see which approach is best suited to the text of the SCC that we want to apply.

On the cultural level, the approach is acceptance, recognition, understanding and tolerance of the other.

7. *Are you used to working as part of a team? 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 working in a team insofar as in the context of the Special Criminal Court, and according to the requirement of the principle of hybridity, the examining chamber is made up of two judges, one of whom is national and the other international, with the obligation to carry out substantive acts collectively with good coordination and a vision for achieving the common goal of justice. However, there can be disagreements and Article 42 of the Organic Law as well as Article 22 of the Rules of Procedure and Evidence of the SCC provide that, in the event of disagreement, the two judges can draw up a report regarding the disagreement.

Disagreement between judges of the same chamber is quite normal because opinions may differ on the reasoning, even if the same conclusion is reached, or the judges may not have the same reading of the facts and the applicable law, leading them to diverging or opposing conclusions. In the case of the ICC, the texts, among others, paragraph 4 of Article 83 of the Rome Statute, as well as practice offer solutions, namely the drafting of concurring, dissenting or separate opinions. However, these solutions are only useful in the event they are not just exercises in rhetoric. In fact, they can contribute to the advancement of the law by promoting the working efficiency of and saving judicial time, so as not to use up judicial time unnecessarily.

The legal system of Burkina Faso where I come from does not provide for the drafting of separate concurring and dissenting opinions. However, it is noteworthy to mention in this context that the advantage of these opinions makes it possible to avoid unnecessary tensions and paves the way for an evolution and development of the jurisprudence through the diversity of thoughts and ideas on the same issue. Nonetheless, care should be taken not to break the confidentiality of the deliberations.

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 have already signed a commitment stating my availability to carry out my duties on a full-time basis which my government has forwarded to the ICC Secretariat. If elected and called upon to exercise my functions as a judge of the Court on a full-time basis, I would be available and willing to assume my functions from the commencement and for the entire period of my mandate.

2. *Working 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?*

Owing to my functions as a national judge, then as a judge in a hybrid and internationalized court, I have experienced the workload as well as long working hours, including evenings and certain weekends. I am also aware that, due to service requirements, vacations can only be taken at certain fixed time periods of the year.

3. *The Court has two working languages. What is your opinion on this? How could the judges of the International Criminal Court better respond to the challenges of a multicultural environment?*

The two working languages of the Court, namely French and English, are crucial for as well as reinforce the technical legal work of the Court insofar as each of the two languages carries one of the two legal and case-law systems which are promoted and enhanced within the realm of the Court. With respect to the cultural environment, the challenges can be easily met insofar as, though all the judges are not perfectly bilingual, each judge has knowledge of the other language before working at the ICC or works on improving his level and his knowledge while carrying out his duties at the ICC.

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?*

The judge is solely responsible for the decisions he makes. Hence, he must assume his responsibilities while using the support of assistants and trainees within the limits of their existing responsibilities. For the drafting of decisions, I have systematically made use of a participatory approach under my direction. This is how I develop a decision plan with the main lines of reasoning by identifying the applicable texts that I submit to the team for discussion to stimulate other thoughts and reflections prior to delegating the research tasks. I personally undertake the editorial work, but with reasonable openness to assistants and interns in accordance with their responsibilities under the terms of reference of their functions.

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

In general, the single judge can render pre-trial decisions. Before other jurisdictions such as the ad hoc Tribunals for the former Yugoslavia and for Rwanda, the single judge has been consecrated for the initial appearance, the confirmations of the initial act, the orders relating to various questions such as the health of the accused persons, and the guarantee of certain fundamental rights.

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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?*

The first investigation files of the Special Criminal Court date back to 2019. National or international organizations, the media and even the general public began to express their displeasure at the slow-paced progression of the processing of the SCC files. Being in charge of the investigation, I did not let myself be carried away by the pressure exerted on me. Notwithstanding the fact that it is true that the judge is the one who leads the investigation of the file, it is well established that the file also leads the judge, and thus he or she must remain serene for the sake of rendering the truth manifest. I thus have the experience of working under pressure, but I know how to remain calm and independent.

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, willing to work, and able to work under pressure given the Court's heavy workload.

I have never taken time off in connection with my professional duties for reasons of exhaustion or for any other incapacity to work.

E. Deontology

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

An independent judge is a judge who submits only to the rule of law in the exercise of his functions. Hence, he is not swayed by any kind of family, social and political pressure and does not allow himself to be guided by personal interests or gains.

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

The conflict of interest for a judge is when the latter finds himself or herself in a situation where the requirements and rules of ethics of his or her profession are confronted with conflicting non-professional interests in such a way as to prevent him or her from delivering quality justice serenely, or to sow the seeds of suspicion with respect to his or her independence and impartiality as a judge.

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?*

Any form of discrimination in the assessment of the abilities of candidates nominated for the position of a judge at the ICC must be prohibited; otherwise, it could seriously damage the image of the Court as well as the universality which it seeks.

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

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

Out of legal and judicial caution, I will first assess the current state of case law on the issue that I will deal with taking the interests of victims into account and considering the use of new technologies, but with absolute respect for the protection of victims and confidentiality.

6. *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?*

My approach would be that all rights are in principle equal unless there are compelling reasons to limit one in relation to the other, on a case-by-case basis, but with absolute respect for the fundamental texts of the ICC.

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 French, which is one of the Court's working languages. I can speak fluently in public hearings and meetings, and write my decisions in the French language myself.

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

I have only had one nationality since my birth, namely the Burkinabe nationality. I have never applied for 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?*

I have availed myself of the information regarding the Conditions of Service of the judges of the Court and I accept the Terms and Conditions of work and employment.

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 the judicial office?*

I have no other information that would call into question my eligibility for judicial office to bring to the attention of the Committee, yet I see no harm in the committee seeking any other information about me.

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 objection whatsoever with respect to making my answers to this questionnaire public, because I believe it would be in the interest of the Court or the candidate selection process.

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