

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?

Having joined the judiciary in 1982 and completed my career as a judge in 2022, I worked as a judge for forty years.

My first post was as an investigating magistrate. This involved applying the Code of Criminal Procedure and the Criminal Code, assessing whether the facts were criminal offences and what provisions needed to be applied to build a solid case file.

During my career as a judge, criminal law and procedure were always at the heart of my concerns as a judge, although part of my career also involved civil law, only the level of responsibility changed. After ending my career as an investigating magistrate in 1994, criminal trials, mainly facts involving the theft of bovines, were one of my responsibilities.

Having become an appeal judge (President of the Chamber), my responsibilities now included the Criminal Courts: prosecuting cases, drafting decisions in full.

Later, as President of the Court of Appeal, my role included organising the criminal courts: preparing the selection of assessors (or juries), selecting cases to prosecute, appointing the appropriate judge, carrying out the administrative tasks to ensure that the criminal sessions were successfully completed.

Having been appointed to the Court of Cassation, the concerns and texts to be examined remained the same, only the jurisdiction changed. My role now involved ensuring that the judges applied criminal laws correctly, whether criminal law or criminal procedure. There was a large volume of criminal cases. My work included drafting reports on criminal case files as an advisor at the Court of Cassation, then drafting judgments as President of the Chamber.

In 2018, the Haute Cour de Justice [High Court] of Madagascar was set up, which is responsible for trying criminal cases against senior government officials. My role as President of that Court, was to ensure that it functioned. Not only was it necessary to establish the administration of the Court, but also to draft its rules of procedure to supplement and clarify the connections between the different sections of the Court. We had to organise numerous workshops to clarify the provisions of the Code of Criminal Procedure and texts specific to the Court.

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To summarise, during my forty-year career, I spent only two years in administrative roles, as a Director in the Ministry of Justice. Other than that I have always been a judge.

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?

As a judge I was familiar with cases involving crime. These were attacks by armed gangs (armed with firearms and bladed weapons) committing violence against entire villages, to raid bovines mainly. In these sorts of cases the villagers would often also complain of sexual violence against women.

Nominated as an expert to draft texts on national reconciliation, we received support from the South African experts who had worked on the case of Rwanda and who shared their experiences on the use of rape as a weapon of war.

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?

As I have never been the subject of a complaint for criminal or administrative corruption or negligence, there has been no conclusive determination in this regard.

B. Perception of the Court

1. What is your view of the International Criminal Court and its dual nature as a judicial entity and as an international organisation? In your view, what are the main differences between the ICC and the two ad hoc tribunals for the former Yugoslavia and for Rwanda?

The International Criminal Court was established by a treaty on 17 July 1998 and entered [into force] in July 2002. The treaty (the Rome Statute) established a court, or a Tribunal tasked with prosecuting the most serious crimes. Ordinarily the judicial system (Courts and Tribunals) is one of the pillars of a State. It cannot be conceivable for a State to have no organisation or system which is responsible for enforcing laws that are passed to ensure that order reigns.

Similarly, if we believe that there is an international order, at least as far as criminal matters are concerned, this must be underpinned by a judicial system to ensure that order is maintained, particularly when national judicial systems are defective for whatever reason.

This was the case for Rwanda, when its judicial system collapsed following the genocide, and likewise in the former Yugoslavia. In light of the odious crimes committed, and in light also of the international community's outrage regarding these crimes, it established the two international ad hoc tribunals. Ad hoc because the Rome Treaty, which established the International Criminal Court, did not yet exist.

Unlike the two ad hoc tribunals, the International Criminal Court has jurisdiction on the territories of States Parties for crimes defined by the Rome Statute and in

complementarity with the national courts which thus had priority jurisdiction. The jurisdiction of the two ad hoc tribunals was limited to the territory of Rwanda and Yugoslavia and, in particular, they had full jurisdiction over the facts which fell within the scope of the reason for which they were established. The ad hoc tribunals were able to request that the national courts refer cases to them.

In brief, this is the major difference between the International Criminal Court and the two ad hoc tribunals.

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

The main criticism of the Court is that it is slow. The slow process of justice is a recurring criticism in almost all judicial systems, which means that the decisions taken, beyond the context thereof, are unpopular.

In addition to the slowness, the place of judgment is also a problem for some. The Hague is too far away, which makes it difficult for victims to follow developments in their case, and even generates a degree of suspicion in terms of the sincerity of the proceedings, not to mention the fact that those involved in the trial are unable to understand the proceedings as they often speak local dialects.

Similarly, the proceedings chiefly rely on cooperation between the International Criminal Court and the States where the facts occurred, where the victims live, and where occasionally the perpetrators have sought refuge. Such cooperation is sometimes difficult because it is not a priority for the States.

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?

The ICC was established by an international treaty and includes almost all States. Paradoxically, it is the focus of criticism by the international community. However, it is also supported by those same States, one example being the declaration by the African group pledging support for and trust in the ICC.

A group for the ICC was also formed etc. and is very active in organising meetings and proposals to improve the ICC to ensure that it is more effective.

These actions are on the right track and will help to improve the image of the ICC.

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?

The last decision which generated a lot of discussion about the International Criminal Court is the one which involved President Laurent Gbagbo and his minister Charles Blé Goudé. The decision to acquit shocked many people as many believed that they were guilty and could not understand why they were acquitted. The press also stirred things up by denouncing the International Criminal Court's modus operandi and thus its very existence.

The case of Lubanga Dyilo, however, by recognising the guilt of the President of the Union des Patriotes Congolais, enhanced respect for the International Criminal Court. The enlisting of child soldiers and in particular their use in armed conflict is now recognised as a war crime. Prosecuting such acts is therefore established.

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 judge at the International Criminal Court belongs to a court which is no longer national and works full time for that Court. There can be no relationship other than one of courtesy and cooperation. An international judge may be required to have contact with the authorities of his or her country of origin for cooperation purposes. However, this cannot be a condescending relationship or one where the judge is compromised.

In this context, and even beyond, it is necessary to stay in touch with the courts and tribunals with which we have been affiliated. Those contacts may be useful when it comes to reaching out to them in the context of raising awareness on cooperation between the International Criminal Court and the national courts and tribunals, which in some cases will be involved in the International Criminal Court's proceedings.

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

I was a national judge. Therefore, the cases we were responsible for obviously involved nationals.

A judge must be as independent as possible. A judge is nobody's friend. One of my mentors always said that a judge is only friends with the law. He or she judges without any distinction of race, colour, gender, religion or origin.

However, the International Criminal Court has a different stature. It is frequently accused of being political, indeed the crimes which come before it are such that they could only be the product of a political decision or the ideology of a group or nation. Be it the crime of genocide, crimes against humanity or war crimes and even more so the crime of aggression, these are crimes against a group of people or a nation by another group or nation and are underpinned by a political goal. The fact that a judge belongs to this group or nation poses a problem in terms of his or her independence. Similarly this poses a problem as far as public opinion is concerned. Yet justice is not simply being rendered but being seen to be rendered independently.

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?

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The ICC is tasked with rendering its decisions in accordance with the provisions of the Rome Statute, the Rules of Procedure and Evidence and also bases them on case law and other decisions and even doctrine.

It is clear that as with any court it takes into consideration previous decisions of the Court to avoid being criticised for flip-flopping; indeed this is the concern of any court: to ensure that its decisions are predictable to a certain extent. An unpredictable court would be the focus of criticism.

The Courts and Tribunals which have already dealt with the matter are useful to consult. They have already discussed and developed a theory on the matter.

Human rights bodies have worked extensively on the specific issue of human rights and it would be a great loss not to make use of their work.

National courts and tribunals, although they should not be under-estimated, have a more national focus than an international one, which limits the scope of their discussions to a certain degree, whereas the Court is more international and handles international concepts more frequently.

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?

Although a judge is independent even within the Court, the fact remains that he or she is part of the Court. As previously mentioned, the decisions of the Appeals Chamber can only contribute to discussions. The judge exercises his or her independent judgment in accordance with the law.

It is then for him or her to expand on the extent to which precedents are similar to these precedents or not. It all rests on the justifications and grounds for his or her decision.

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 so, please give examples.

The Rome Statute and Rules of Procedure and Evidence should be applied strictly.

If there are innovations to be made, they should not water down the provisions of the two afore-mentioned texts. Innovations may be found when the more they are applied, a way is found for them to improve the functioning of the Court.

6. How do you envisage working with hybrid criminal proceedings, which are different to those you are familiar with in your national functions? How do you envisage your working relationship with other Judges from different backgrounds and from different legal systems?

The International Criminal Court by its very creation appears to be working as part of hybrid proceedings, with criminal law on the one side and international law on the other.

It is true that our experience mainly involves domestic criminal law.

However, there are judges at the Court who have been chosen precisely for their international experience and skills. Chambers in most cases render decisions in a collegial fashion. Skills complement one another.

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This combination of skills and in particular the diversity of the different legal systems represented at the Court is inspiring. It is never too late to learn from others for personal development. We start off as a rough stone, and in the end we will be a polished stone which forms part of the structure of society.

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?

In the system in which I worked, decisions by the Appeals Chambers were collegial with three (3) judges. At the Court of Cassation, a chamber consists of five (5) judges and in my last post we would adopt our decisions with around thirty judges. All these decisions sometimes came about after difficult discussions.

Occasionally views and positions differ but persuasion plays a key part. To guarantee that everyone has given their view on the case before the Court, our principle involves the most junior member in terms of rank or experience speaking first and so on; once each member has given their opinion discussions then begin and each member has an opportunity to develop their position, either based on facts or on the law.

At the International Criminal Court, different opinions do not pose a real problem as the decisions of the Court will reflect the views of the majority and the minority. Although it is still interesting to try to reach a decision which is unanimous or the product of a consensus.

Our practice in the event of differing opinions where these could not be reconciled is that the minority can publish its divergent position. Publishing the points of view of the minority compared to those of the majority enriches the doctrine.

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 no longer have any commitments and given that terms of office, as defined by the Rules of the Court, begin in March, I am available immediately.

The commitment I make in my approach to join the Court is valid for the duration of my term.

2. 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 judicial system in Madagascar lacks judges. According to a study by the Ministry of Justice of Madagascar, each judge has the workload of three judges. We often take work home to be able to complete it. It is not unusual for judges to work at weekends.

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Personally, I still have almost six [omission] of leave not taken during the course of my career because there was no point in going on holiday to then come back to an even heavier workload.

3. The Court has two working languages. What is your view on this? How can the judges of the International Criminal Court better respond to the challenges arising from a multicultural environment?

As an international organisation it is entirely reasonable to have several working languages. The worry would be that judges who make up the Court, who each have their own language, do not understand one another in their day-to-day work. This is the problem, which is easily surmountable, which exists at the Court.

However, beyond this it is also necessary to understand and make oneself understood by persons standing trial. That is why article 50 of the Rome Statute provides for the possibility of using a language other than the working languages.

The Court is multicultural in nature because of the scope of its jurisdiction and the will of States Parties which are aiming to make it global. This involves the judges who are part of the Court being as eclectic as possible to have a detailed understanding of the facts referred to the Court, coming from different backgrounds and also being able to converse with defendants from a range of backgrounds. It is up to the judges to communicate between themselves.

In order to do so, the judges of the Court need to have a space where they can have discussions. This increases our interest in terms of joining the Court because diversity can only be rewarding. Rewarding on a personal level, which goes without saying, but a sense of reward that will also benefit the international community and also the community of origin of the judges themselves. How can one not envisage returning to one's own community and bringing back one's experience from the International Criminal Court. Ultimately there will be dissemination and assimilation of the various differences to eventually achieve improvements at an international level.

It is also worth pointing out that judges must be able to travel, not only from an intellectual point of view, which goes without saying, but also in the primary sense of the word, to see the cultural reality of other cultures. Travel broadens the mind.

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?

To render a decision we need to answer the question of whether in light of the facts of the case submitted to us the law targeted by the Prosecutor should be applied. The first step is therefore to analyse the facts to then determine if there was bad faith or an intent to harm. Only then is it possible to determine whether the law applies. A judge can carry out this work when the case is simple, but for related or complex cases he or she requires assistance. My experience is that for a complex case it took over three years to complete.

As cases coming before the Court are fairly complex, it is appropriate for assistants or interns to assist the judge to untangle the complexities of the facts and how those involved are intertwined in these facts. The assistant or intern

will then set out the chronology of the facts and establish the position of each protagonist in the process which led to these facts.

A second aspect of the work involves also carrying out research on doctrines associated with the article of the law in question and on precedents related to the case in question. The role of the intern or assistant in this work will be to suggest the various positions of the doctrine and the precedents associated with the case submitted and they will substantiate the proposal based on its relevance.

This is only a proposal at this stage. This was also my approach when I was Chamber President at the Court of Cassation, and legal advisors played this role. Ultimately it is for the President to draft the final version in light of the contributions (with discussions) from aides (assistants or interns).

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

The Chambers of the Court are made up of three judges for the Pre-Trial and Trial Chambers and five judges for the Appeals Chamber. Although there is no provision for a Single Judge in the latter two chambers, in some circumstances there may be a Single Judge in the Pre-Trial Chamber.

The Single Judge primarily deals with administrative decisions, but there may be some legal decisions.

Administrative decisions include each time there is a simple notification such as when the Prosecutor informs the Chamber that he or she does not intend to open an investigation. This is not a decision in the strict sense of the term, but a role which could add to the load of the Chamber and slow down its operations. The task which has been devolved to the Pre-Trial Chamber, which involves checking whether the person appearing before the Court has been informed of the crimes of which they stand accused and their rights under the Rome Statute, is also classed as administrative.

The order on the disclosure of information for the purposes of a hearing does not require a collegial decision by the Chamber either, nor does the non-disclosure of such information to safeguard the private life of the victims or of witnesses or the interests of a State (e.g. Intelligence and national security matters).

A Single Judge can take other more legal decisions. Issuing a warrant of arrest to ensure that a person granted release appears before the Court.

Measures concerning the safeguarding of evidence could also be taken by a Single Judge, which would make it possible for the Prosecutor [omission], for example if there was a risk of evidence disappearing or rendering an order which might be necessary for the purposes of the investigation (appointing experts, granting leave for counsel to participate in the proceedings, appointing a duty counsel, etc.).

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?

Since the start of my career as a judge, I have always come under all sorts of pressures.

Right at the start I dealt with a case which involved trying the president of a village community for rebelling against the enforcement of a legal decision. The

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president had the support of the most senior administrative authorities. I received an invitation, or rather a summons, to meet an envoy (Director of Protocol of the Office of the President of the Republic). On the other hand, colleagues wanted the rule of law to prevail.

Another example involved the pastor of a foreign sect, who had bibles burnt in a public space to challenge the writings of the bible. We were in a very Catholic and Christian town. Public opinion soon ignited in the town. As First President of the Court of Appeal, I had to intervene directly; in fact, the other judges shirked their responsibilities.

In another vein, in my role as First President of the Supreme Court, I had to organise the election of a representative of the Supreme Court to the Conseil Electoral National Indépendant (CENI - National Independent Electoral Council), the political authorities had obviously set their sights on controlling the CENI and wanted to see their candidate elected, even though another candidate was by far the favourite. Pressure was soon applied to the chief of the Supreme Court but the favourite was elected.

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 have not been prescribed any permanent medical treatment to date. No leave for medical reasons has ever been requested or granted during the course of my career.

A heavy workload has always been the working environment for judges, of which I am one, in Madagascar.

E. Deontology

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

An independent judge is one who takes decisions in accordance with the law, without interference other than the facts before them. They must also conduct themselves in such a way as to ensure that their conduct in the workplace or outside does not catch up with them. However, they cannot be a hermit because they must keep abreast of what is going on in society and thus assess the actions of others and these contacts must assist them with decision-making.

Judges are also independent from the authorities which appointed them. That independence, which can be described as institutional, is essential to ensure that the only institution a judge serves is justice. A judge must be independent but must also appear to be independent.

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

A conflict of interest for a judge lies in being a judge and a party. The judge cannot be a party to the trial in which he or she is participating, or even have an indirect interest.

There is also a conflict of interest when their family is involved in the trial. There are provisions which prohibit a judge from ruling in such situations.

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It is for a judge to recuse themselves; they must avoid the parties to the proceedings requesting a recusal.

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?

Considerations relating to race, colour, gender or religion should not dictate the appointment of a judge at the ICC. Does the Human Rights Declaration not support this? It would be outrageous for the Court, which is mainly tasked with defending human rights, to exclude itself from the application of the principles set out therein.

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.

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

Complying with the provisions of the Rome Statute is essential, particularly article 68 thereof. In addition, care will be taken to ensure that the victims have access to the conduct of proceedings, and that they are kept informed about the progress of their case.

It is also important to guarantee their safety when they are in a position to identify their persecutors. They are not safe from retaliatory measures by them or their allies.

It is also important to protect their privacy so that they are not stigmatised. Stigmatisation hinders evidence collection as victims prefer to remain silent. Therein lies the strength of persecutors, especially in cases of sexual violence. They need to be given advice as they may not be in a position to present their case

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?

Both the victims and the accused have rights which must be respected and which are set out in the Rome Statute.

The presumption of innocence requires both parties to be treated equally. The route to follow would therefore be to comply with the legal texts of the ICC and ensure that they are complied with.

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 working languages of the Court?

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The language of the education system in Madagascar is French.

The decisions of the Courts and Tribunals in which I have worked have been drafted entirely in French.

We occasionally held hearings in French when the parties or one of the parties was a foreigner.

During the course of my career I gave courses in French, to judges and to lawyers.

Meetings with technical and financial partners to which I am invited are generally in French.

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 that of my birth, i.e. Malagasy, and to date I have made no request to acquire 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 internal rules of the Court and I continue my application to join the Court with full knowledge of what is required.

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

Transparency in general is a key aspect for earning the trust not only of the public but also of the authorities, and financial disclosure is even more important.

As judges, we had an obligation to declare our assets every two years in Madagascar.

Financial disclosure is neither a hindrance nor a burden.

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?

No.

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 problem with my answers being made public.

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