

## 2023 ICC Judicial Elections

### Questionnaire to candidates<sup>1</sup>

**Name: Nicolas Guillou**

**Date: 28 July 2023**

#### Motivation

1. What motivates you to seek election as a judge of the International Criminal Court (ICC)?

I am standing for election as a judge of the International Criminal Court (ICC) to put into practice the values which I believe are inseparable from the fight against impunity through the complementarity of judicial systems.

- *I am convinced that international justice must be the same for all, on every continent, and that it must relentlessly reject double standards as well as any form of alignment with political or economic interests; a justice system that is fair and universal.*
- *I also believe in a justice system that brings strength to the most vulnerable, that takes into account the vulnerability of victims, the fragility of affected populations and their need to be attended and listened to; as well as in a justice system that protects their cultural heritage, their environment and the safety of the planet.*
- *I also believe in an inclusive and multilingual justice system, which fairly represents women and men from all countries and all social backgrounds; a justice system which reflects the world's different legal systems and is enriched by their diversity.*
- *I also believe in an efficient justice system, which respects a reasonable trial time for the accused and meets victims' expectations; a justice system which the States and peoples of the world can confidently cooperate with.*
- *Lastly, I believe in a collegial and participatory justice system, in which civil society organizations are fully included; a justice system that guarantees legal security and respect for human rights.*

My experience as a judge, chief of staff and independent expert within several international criminal jurisdictions, as well as my decade-long daily practice of international criminal law, have enabled me to develop such a vision of the justice system as well as the means to put this vision into practice

- *As a pre-trial judge in the specialized chambers for Kosovo since 2019, I have handled cases involving crimes against humanity, war crimes and offences against the administration of justice. I have issued more than 350 written and oral decisions, including decisions confirming indictments, authorizing search warrants and seizures, authorizing witness protection measures, admitting victims, as well as on other matters relating to the pre-trial stage of criminal cases. My functions are in fact very similar to those of the ICC Pre-Trial Chamber.*
- *I practice in both French and English-speaking jurisdictions, both in countries with civil law and common law systems. Having been a pre-trial judge in France and a liaison magistrate in the*

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<sup>1</sup> This is a translated version of the candidate's answers. To access the original French version, please follow this [link](#).

United States, I have extensive experience when it comes to comparative criminal procedure, international criminal cooperation, as well as the hybridization of legal systems.

- *I also have a long experience in judicial diplomacy.* As diplomatic advisor to the French Minister of Justice and Chief of Staff to the President of the Special Tribunal for Lebanon, I negotiated international conventions and agreements, particularly in the field of judicial cooperation, both between States and with international criminal jurisdictions.
- *I have extensive experience working in multicultural contexts.* I have worked in national jurisdictions, in several ministries, in embassies, in international organizations, as well as in international jurisdictions. I have managed teams of lawyers from various countries. I have also taken part in numerous capacity-building projects to support the principle of complementarity.
- *I have taken part in numerous research projects on the future of international criminal justice,* notably on the hybridization of judicial systems and the development of new incriminations such as the crime of ecocide.
- *Lastly, I have taken part in several projects aimed at strengthening the effectiveness and quality of international criminal justice,* such as the 2017 Paris Declaration on the effectiveness of international criminal justice, the 2020 Independent Expert Review of the ICC (IER), as well as the 2022/2023 Ethica project on the integrity of international criminal judges

As a candidate for the next judicial elections of the ICC, I would be honored to contribute to strengthening the efficiency of the proceedings and the effectiveness of defendants' and victims' rights, and, more generally, to contribute to reinforcing the coherence and credibility of the complementarity system set up by the Rome Statute.

## **Relevant experience as a criminal law practitioner (List A) or international law expert (List B)**

### *For LIST A candidates*

2. Please describe your experience as a judge, prosecutor, or criminal lawyer in domestic or international criminal law cases, including information on the number and types of cases as well as challenges you faced.

*As a pre-trial judge in France,* I have dealt with a wide variety of criminal cases, including murders, kidnappings, acts of torture cruelty, rapes and sexual assaults, drug trafficking, armed robberies, as well as economic and financial crimes. Some 80 new cases were brought before me every year. At the time, I handled several highly complex and high-profile cases (Gateau-Mathey case, disappearance of Estelle Mouzin).

*As criminal affairs advisor to the French Minister of Justice,* I followed the preparation of close to 10 bills, as well as the parliamentary debates surrounding them and their defense before the Constitutional Council. I coordinated several reforms related to criminal procedure, violence against women and children, and prison law, amongst others

*As liaison magistrate in the United States,* I oversaw international criminal cooperation, especially on terrorism, organized crime, financial crime, cyber-criminality and child pornography. I handled some 60 international letters rogatory every year, as well as requests for extraditions and transfers of prisoners to serve their sentences in France. I was also responsible for the consular protection of French prisoners who were on death row, and went to Guantanamo twice to analyze trials before the military commissions

*As a judge in the specialized chambers for Kosovo, I was involved in 4 cases: one case of crimes against humanity and war crimes (4 defendants, 10 counts of accusation), two cases of war crimes (1 defendant and 4 counts of accusation in each case) and one case of offence against the administration of justice (2 defendants and 4 counts of accusation). One of the defendants was an acting Head of State at the time I confirmed the indictment and signed the arrest warrant.*

3. During your judicial career, please share any instances when you applied Rome Statute provisions or other international criminal or humanitarian law sources, directly or through national legislation that incorporates Rome Statute offences and procedure. Have you ever referred to or applied jurisprudence of the ICC, *ad hoc*, or special tribunals? If yes, please indicate any relevant judicial decision or opinion that you authored or co-authored.

*Rome Statute:* As an expert of the Independent Expert Review of the ICC (IER) assigned to the governance cluster, I have worked extensively on the articulation of the different actors' powers within the Court in application of the Rome Statute. We proposed several reforms to the Court's legal framework to improve its operation and working environment. This experience enabled me to acquire a very detailed understanding of the legal framework applicable before the ICC

*Jurisprudence of the ICC and of international criminal jurisdictions:* As a judge in the Specialized Chambers for Kosovo, I frequently cite the jurisprudence of the ICC, of other international criminal jurisdictions, as well as of human rights protection bodies, both in terms of substantive and procedural law. This includes the following

- On the question of the application of international humanitarian law, specifically regarding arbitrary detention in a non-international armed conflict:  
[Decision on Motions Challenging the Jurisdiction of the Specialist Chambers](#) (p. 59-71)
- On the question of the definition of a joint criminal enterprise and of the responsibility of direct supervisors under customary international law:  
[Decision on the Confirmation of the Indictment](#) (p. 45-54)
- On the question of the definition of the offence of enforced disappearances:  
[Decision on Motions Challenging the Jurisdiction of the Specialist Chambers](#) (p. 71-76)

*Judicial practices:* I have also implemented several protocols or judicial practices that have been developed at the ICC, including

- The protocol governing the handling of confidential information during investigations and contacts between a party or participant and witnesses of the opposing party or participant:  
[Decision on Framework for the Handling of Confidential Information during Investigations](#)
- The principles on the disclosure of evidence and redactions: [Framework Decision on Disclosure of Evidence and related matters](#)
- The "A-B-C" approach regarding the admission of victims to take part in proceedings:  
[Framework Decision on Victims' Applications](#)

## **Victims' rights**

Victims of Rome Statute crimes are the *raison d'être* of the ICC, and they have the right to participate in proceedings and to reparations, as well as to be effectively protected.

4. Please describe your experience and/or expertise relevant to victims' rights to participate in criminal proceedings and to obtain reparations, as well as your understanding of such rights before the ICC.

*My practice at the Specialized Chambers for Kosovo in terms of victim participation is similar to the one that is being implemented at the ICC: I have always tried to ensure the widest and most effective participation possible within the legal framework of the court.*

*As Pre-Trial Judge, I have arranged victims' participation in framework decisions to clarify their rights (e.g. [Decision on Victims' Participation](#)). I have ruled on the admission of victims and their rights, granting them:*

- Access to the entire case file, including all public and confidential information, filings, transcripts and evidence, excluding any *ex parte* document;*
- The right to be informed of all items contained in the case file, including any confidential filing, transcript and disclosure of material evidence, excluding any item distributed *ex parte*;*
- The right to be informed about relevant developments in the case in a way that does not reveal non-public information;*
- The right to participate in hearings: victims were systematically represented by a legal representative, enabling them not only to assert their rights, but also to better understand the judicial process;*
- The right to make oral and written submissions when their interests are at stake. I have always allowed victims' legal representatives to speak at hearings and to submit written submissions whenever they felt that the victims' voice should be heard.*

*Victims' participation at the ICC: Provided for in article 68(3) of the Statute, victims' participation was intensely debated during the Rome negotiations, given the various legal traditions on the matter: victims do not generally participate in criminal proceedings in common law systems, whereas they can be parties to the trial in civil law systems. While the Statute explicitly provides for their participation at certain stages of the proceedings (articles 15(3) and 19(3) in particular), the final compromise provides for a participation that enables victims to obtain reparations, without them being full parties to the proceedings. In the absence of a very detailed legal framework on victims' participation, it is the judges themselves who have gradually specified such modalities, the Statute giving them broad prerogatives to determine the subjects on which victims may present their views as well as the timing and modalities of their intervention.*

5. How would you ensure victims' statutory rights to participate in proceedings and to reparations are meaningfully achieved?

In my opinion, several innovations should be encouraged, while others could be considered.

*Improving the application process: Simplifying the application forms and terminology, using the victims' own language, having the Victims' Participation Unit move to rural areas, or even using mobile applications for countries with sufficient infrastructure – such concrete measures could help facilitate victims' access to the Court. In the Independent Review of the Court (IER), we also proposed that victims who were already participating in a case should automatically be allowed to participate in any other case opened against another suspect for the same facts in the same situation (Recommendation 338). We have also proposed that the Registry's Victims' Participation Section be given more time to go out into the field to identify victims and create a dialogue with them. I also feel that it would be important to tailor the gathering of applications to the context of each case, by checking with the different sections of the Court in charge of victims that the processes are best suited to each situation country, community and type of crime (sexual offences and gender-based violence in particular). Finally, I think it would be*

helpful if the Court were to cooperate more closely with civil society organizations, which often have an excellent knowledge of the context and of the affected populations.

*Streamlining the analysis of applications' admissibility:* The Court's Chambers have adopted the so-called "ABC" approach, which consists of mandating the Registry to classify applications into three groups: applicants who can clearly be qualified as victims (Group A), those who cannot clearly be qualified as such (Group B), and those requiring a specific determination by the Chamber (Group C). I have introduced this practice, which facilitates the work of the Chamber and speeds up decision-making, as Pre-Trial Judge at the Kosovo Specialized Chambers. I believe that this practice could now be standardized by being incorporated into the Rules of Procedure and Evidence. This would provide greater predictability for victims and the court registry, enabling them to anticipate the work involved with collecting applications.

*Speeding up the reparations phase:* Two innovations could be considered to enhance the efficiency of the reparations' procedure. The first one would consist in creating a specific chamber responsible for reparations, which would allow to specialize the judges, harmonize the jurisprudence, and speed up the proceedings. Alternatively, a second option would consist in allowing the chamber that ruled on the criminal case to make decisions on reparations, in order to benefit from the judges' detailed knowledge of the case. To make this possible, it would be useful to mandate the Registry's Victims' Participation Section to collect applications for compensation during the trial phase, as already envisaged by Regulation 56, and not only after the judgment. Indeed, victims who do not participate in the proceedings can also apply for compensation, which means that the victims' legal representative during the proceedings does not have the opportunity to gather all the necessary elements. If the legal representative can prepare the compensation applications of participating victims, the Victims' Participation Section could start collecting applications for reparations during the trial, to enable the chamber to rule on reparations more quickly.

*Developing the confiscation of assets:* The confiscation of convicted offenders' assets, which is provided for in the Statute, should they be solvent, could lead to better compensation for victims. This could make up for the lack of resources available within the Trust Fund for Victims. Full cooperation between the Registry and States would allow confiscation decisions to become more effective.

6. Describe any specialized training and/or experience you have in providing protection and support to victims (and witnesses) participating in judicial proceedings, including expertise in assessing harm, trauma, and the risks of re-traumatization.

*Hearings of vulnerable victims:* As a pre-trial judge, I have led the investigation and preparation of numerous criminal cases involving sexual violence and assault against women and children. These cases have led me to frequently interview vulnerable victims, and to set up protocols that factored in their fragility and avoided multiple interviews to prevent retraumatization.

*Victim and witness protection measures:* As a judge in the specialized chambers for Kosovo, I have handed down numerous decisions concerning victim and witness protection: partial anonymity, blurring of the image and/or distortion of the voice, regulating the public nature of the proceedings, removing information in the evidence that could identify the victim - I have ordered such measures to protect witnesses against any form of pressure or threat.

*Assessment of prejudice:* As a French magistrate, I have been trained to assess harm caused to victims in criminal cases. In addition, during the Independent Review of the ICC (IER), we also made proposals to improve reparations in response to harm caused to victims. We proposed incorporating standardized, streamlined and uniform procedures and best practices applicable to the reparations phase into the Chambers Practice Manual (recommendation 343). We also proposed to identify reparations experts and to register them on the list of experts (recommendation 350), and to clarify the roles between the Chambers and the Trust Fund for Victims (recommendation 352).

## Defence rights

7. Please describe any relevant experience implementing the rights of the accused, including specific experience managing fair trial considerations in criminal proceedings.

*As a pre-trial judge in the Specialized Chambers for Kosovo,* I must ensure that defendants' rights are respected. Whether at initial hearings or at status conferences, I have systematically made sure that the rights of the accused were effective. Among all the rights of the defense, I can more particularly cite the following:

- Regarding the right to interpretation and translation of evidence,* I have systematically ensured that the any relevant pleading and piece of evidence was translated; I have also made sure that the accused understood the proceedings;
- Regarding the right to legal counsel,* I have always allowed defendants sufficient time to organize their defense, by consulting their counsel before deciding on a timeframe for the proceedings, and by allowing counsel to file pleadings on any aspect relevant to the defense;
- Regarding the right to be informed of the nature and the cause of the accusation,* I have always made an effort to require the prosecutor's office to clarify the scope of each incrimination in the indictments, notably in terms of time, space and victim category; I have also ensured that the evidence is organized according to the element which constitutes each offence and according to the crime scene, by requesting evidence summary tables to enable the defense to prepare effectively for the trial;
- Regarding the right of access to evidence,* I have consistently ensured that the disclosure of evidence was made as early as possible in the proceedings, to enable the defense to prepare for the pre-trial phase and avoid having to prepare a defense for a case that keeps evolving until the end of the trial;
- Regarding the right to be tried within a reasonable time,* I have put in place effective procedural timetables, based on the disclosure of evidence from the onset of the pre-trial phase, and I have organized the transfer of cases to the trial chamber in such a way as to enable trials to start less than three months after their transfer.

*As liaison magistrate in the United States,* I was also involved in consular protection for several prisoners on death row. I worked with non-governmental organizations to build a strategy for negotiating the commutation of convicts' sentences, through collaborating with religious organizations and victims. Such a dialogue was essential to ensure that prosecutors' offices did not oppose the commutation of death sentences into prison terms as a matter of principle.

## High moral character, independence, and impartiality

8. Share your understanding of the "high moral character" Rome Statute requirement (Article 36(3)(a)), and how you embody these characteristics. What qualities or activities would be contrary to a "high moral character"?

*Ethics of international criminal judges:* The requirement of high moral character is translated into the adherence to the ethical principles applicable to judges in general, and to international criminal judges in particular. These principles are first and foremost reflected in the code of judicial ethics for the judges of the Court, which particularly recognizes the principles of independence, impartiality, integrity, confidentiality, and diligence. As a national and international judge, I have always respected the ethical principles associated with my status. In 2022 and 2023, I also took part in the Ethica project, for which I was scientific coordinator: supported by the Nuremberg Academy, the Syracuse Institute and the French National School of Magistrates, together with the Presidents of international criminal jurisdictions, we drew up 25 ethical principles applicable to international criminal judges, on topics such as judges' use of social networks and judges' interaction with States and non-governmental organizations. The aim was to supplement the principles set out in existing ethical codes with practical recommendations for international criminal judges.

*Activities contrary to a high moral character:* Without being exhaustive, we might mention, for instance, situations involving conflicts of interest or suspected conflicts of interest, the making of decisions at the request of a State or organization, or the failure to respect the confidentiality of pleadings or of information that is not meant to be public. In my view, any prohibited behavior affecting the Court's working environment and staff, including harassment, sexual harassment and discrimination, should also be added to the list

*Guaranteeing the effectiveness of ethical principles:* When assigning cases, judges must always ask themselves whether they appear to be impartial in view of their previous positions or commitments. Judges must demonstrate transparency by informing the Presidency of any grounds which may affect their impartiality. A judge should not hesitate to inform the parties and to step aside, if necessary, in order to ensure trust in the judicial process. In the independent review of the Court, we also proposed to create an ethics committee, which would have a preventive and advisory role, particularly to examine potential situations of conflict of interest (recommendation 112).

*Preventing conflicts of interest:* I am very much in favor of participating in a financial transparency program, which is already enforced for certain positions at the Court. I should point out that I have authored recommendation 110 of the Independent Experts' Report (IER), which proposes to expand financial transparency measures to judges. In the same recommendation, I have also proposed to complement this system with a declaration of interests which would cover new judges' activities over the last three to five years, including their previous professional activities, membership to any board, committee or supervisory body for any organization, and membership to or participation in any association, political party, trade union, non-governmental organization, or foundation.

9. Have you ever been accused (formally or informally) of bullying, harassment, abuse of power, serious misconduct, including sexual harassment/misconduct, or unacceptable behavior? If so, please explain.

No.

10. What difficulties, if any, can you envisage in taking a position independent of, and possibly contrary to, the position of your state of nationality? How would you act in cases where significant (direct or indirect) political pressure was exerted upon you and/or your colleagues?

*A judge's relations towards their country of origin:* Article 40 of the Statute and article 3 of the Court's Code of Judicial Ethics stipulate that judges shall exercise their functions in complete independence and uphold the independence of their office and the authority of the Court. They must therefore be independent from the authorities of their country of origin, which implies that they must not receive any instructions from them, nor place themselves in a situation of dependence with regards to them. They must therefore never refer to ongoing cases or situations in which the Court is involved. They should also exercise caution when interacting with their own States, particularly when planning to attend events organized or sponsored by these States which may have an interest in pending or potential proceedings or investigations. Under no circumstances should they discuss the substance of cases pending before their court.

*Taking positions that are different or contrary to those of my State of nationality:* I have been selected as a judicial candidate by an independent governmental or parliamentary panel from my country of origin. I am not running as candidate to defend the positions of my State of nationality, nor to represent its interests at the Court. As I currently do in my capacity as an international judge in the Specialized Chambers for Kosovo, I intend to exercise my jurisdictional functions in complete independence, and I have no difficulty in taking positions that might be contrary to those of my State of nationality. During the Independent Expert Review (IER), we also did not hesitate to take positions that diverged from those of our State of nationality.

*Political pressure:* It is essential not to give in to any form of direct or indirect pressure from governments or other interest groups. This entails always informing the Presidency of any destabilization attempt, and supporting colleagues who may be subject to pressure. If necessary, such attempts could also be made public in order to put a stop to this type of practice.

11. Have you ever worked in the executive or legislative branches of government in your country? If so, please provide details about the capacities in which you served, the duration of these positions, and confidentiality obligations you may have undertaken.

*As a magistrate assigned to drafting legislation:* I was assigned to the Civil Affairs Department of the French Ministry of Justice from 2006 to 2009. My duties mainly involved drafting bills and decrees in domestic law, and negotiating European and international law in the fields of intellectual property and corporate law.

*Ministerial advisor:* I also worked as advisor to two ministers between 2009 and 2012: first as criminal advisor to the Minister of Justice, then as legal advisor to the Minister of Foreign Affairs, and finally as diplomatic advisor to the Minister of Justice. My duties mainly involved advising ministers on draft criminal policy standards and bulletins, preparing ministerial talks and trips, monitoring bills in parliament, and inter-ministerial meetings on draft texts or on France's positions in international negotiations.

## Management and workplace culture

- 12.** Please describe your relevant human resources management skills and experience, including: how you managed allegations of discrimination, harassment (including sexual harassment), bullying and/or abuse of authority on the part of staff members; ways you addressed chronic imbalances in geographical representation/race and gender in senior management positions; and how you grappled with issues that disproportionately affect women, minorities, and people of color.

*Experience in human resources management in an international context:* As Chief of Staff to the President of the Special Tribunal for Lebanon, I managed a multicultural team of lawyers and assistants. I sat in numerous recruitment panels and participated in the organization of discrimination and harassment prevention programs, which were made compulsory. I also worked with the UN's Office of Legal Affairs to adopt a disciplinary mechanism for judges, as well as a code of ethics. These instruments, which had not been foreseen when the tribunal was set up, seem essential to me for ensuring a healthy working environment and preventing any behavior contrary to ethical codes of conduct.

*Management methods:* In all my professional roles, I have consistently ensured equal treatment for men and women and created a safe and inclusive working environment which encourages diversity and respects difference. I believe in building a culture of trust within a team, where each member is listened to, valued and respected, and where everyone can manage their own agenda and working methods autonomously. Such a flexible approach has always gone hand in hand with high expectations in terms of work quality and meeting deadlines. But I have found that the productivity of the team and the quality of the work were always enhanced through a dynamic, respectful, and flexible working environment.

*Promoting geographical and gender balance:* In my recruitment experience, I have always ensured that, at equal levels, balance between nationalities, men and women, but also languages and legal systems, was guaranteed. In the Independent Review of the ICC (IER), we encouraged the Presidency and the Registry to ensure cultural diversity, in particular with regards to the geographical representation of regions other than Western Europe, among the Chambers' legal officers (recommendation 29). We also proposed to ensure geographical and gender balance in terms of management positions, through the appointment of a Deputy Registrar from a different gender and geographical group than the Registrar (recommendation 77). We also suggested that all recruitment panels include at least one woman and one staff member from an under-represented geographical region (recommendation 91).

*Dealing with issues affecting specific groups:* According to me, dialogue is the first step in addressing these issues. We need to understand the challenges that may affect certain groups in order to resolve them. I believe that we need a human resources management policy that is both proactive and based on trust, so that everyone can express the difficulties they may be facing.

- 13.** If elected, what concrete measures will you take to improve the workplace culture in the ICC's judiciary? Include examples in which you acted to improve the workplace culture.

*Examples of measures taken to improve workplace culture:* As part of my duties at the Special Tribunal for Lebanon and as a judge in the Specialized Chambers for Kosovo, I took a flexible approach to working hours. Being aware that parents of young children could often be called upon in the afternoon, I always allowed lawyers to work staggered hours if necessary, to make it easier for them to combine their family and professional lives. I also encouraged my teams to

always give feedback on their working environment and methods, as well as on my management style. I did not hesitate to carry out 360-degree evaluations to ensure that I was always improving my management style and team organization.

*Proposals to improve the workplace culture at the ICC:* We have made numerous proposals to improve the workplace culture at the ICC in the ICC Independent Review (IER). After hearing many testimonies of bullying behavior amounting to harassment, we proposed to introduce a zero-tolerance policy towards harassment and sexual harassment (recommendation 130), the appointment of more women to management positions (recommendation 88), and the creation of an ombudsperson position (recommendation 118). I believe that we can go even further by contacting candidates' references more systematically in the recruitment process, and by holding more regular consultations on the workplace environment, including surveys or interviews, to share ideas on possible improvements. We also need to develop prevention and awareness programs for everyone working at the court, including judges, occasional contractors, and interns.

**14. Please share examples of when you applied a gender perspective during your professional career.**

*Promoting a culture of gender equality in the working environment:* In all of my management positions, I have always carefully ensured an inclusive and equitable working environment between women and men. In particular, I have applied a gender perspective in the following situations:

- In the recruitment process,* by strictly ruling out any preconceived idea linked to a potential maternity leave or to time devoted to raising children. I have also favored team compositions that ensured a balance between men and women, and have always insisted on having selection panels made up of both men and women.
- In terms of career development:* I believe that one's professional life must be combined with their personal life. As a manager, it is essential not to exclude women and young parents from certain opportunities. In practice, this means avoiding scheduling meetings at the end of the day, showing flexibility in terms of working hours, and ensuring a balance in the promotion of employees;
- In the fight against all forms of discrimination, harassment and sexual harassment:* In my opinion, this constitutes an absolute priority in international organizations. Such prohibited behavior can have extremely serious consequences for staff and their families, but also impacts the quality and pace of their work. In practice, we need a zero-tolerance policy for such behavior, supported by prevention and information measures. We also need to enable victims to report this kind of behavior without any fear of reprisals, regardless of the level of the people involved, including judges

*Taking transgender people into account in the judicial process:* As a pre-trial judge in France, I was confronted with the question of where to incarcerate a transgender person (assigned male at birth and identifying as female), who had begun hormonal treatment but had not yet undergone surgery. At the time (in the early 2000s), this subject was seldom discussed in prison systems, because gender identity was not recognized by the prison administration in the absence of changes to the civil registry and in the absence of surgery. I took the decision not to incarcerate the accused into a men's prison, which would have matched their civil status. Instead, I ordered her incarceration into a women's prison, to ensure her protection and safety. At the same time, I asked the prison to set up a specific detention regime to ensure the safety and privacy of the prison's female inmates. Provisions included individual cell confinement for the accused,

separate hours for the use of sanitary facilities, and reinforced psychological and social counseling. I felt that this approach was best suited to reconcile the fundamental rights of both the accused and the other inmates.

### Sexual and gender-based crimes (SGBCs) and crimes against children

- 15.** What do you consider are the main advancements in the Rome Statute regarding sexual and gender-based crimes and crimes against children, as well as the relevant jurisprudence and charges brought so far at the Court? Please describe challenges and opportunities for improvement in adjudicating these crimes, and any experience you may have in this area, including addressing misconceptions relating to SGBCs.

*Jurisdictional experience in SGBV and crimes against children:* As a pre-trial judge, I have dealt with numerous cases of rape, sexual assault and violence against women and children. I have interviewed many victims, worked with many psychiatrists and psychologists on these issues, and have always allowed women's and children's protection associations to make their voices heard and participate in proceedings where appropriate

*Implementation of legislation on violence against women:* As part of my duties as criminal advisor to the French Minister of Justice in 2009/2010, I coordinated the parliamentary follow-up to the law on violence against women, violence within couples and the impact of such violence on their children. This law created the incrimination of psychological violence in French law and victim protection orders. It also enabled the use of electronic bracelets to ensure the removal of perpetrators of violence

*Advancements in the Rome Statute concerning gender-based violence and crimes against children:* Firstly, the Rome Statute provides for a number of sexual crimes, in line with the Akayesu case before the ICTR and Furundzija case before the ICTY: the underlying crimes of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity, are integrated in the definition of crimes against humanity (art. 7(1)(g) of the Statute) and in the definition of war crimes, both in international and non-international armed conflicts (art. 8 (2)(b)(xxii) and art. 8 (2)(e)(vi)). The Rules of Procedure and Evidence also make major advances in terms of the provision of evidence of sexual violence. Rule 70 stipulates that consent can never be inferred from the words or behavior of a victim where their ability to freely give genuine consent has been impaired, or where they are incapable of giving genuine consent. Consent cannot either be inferred from the silence or lack of resistance of the victim of alleged sexual violence. Lastly, the credibility, respectability or sexual availability of a victim or witness can in no way be inferred from their previous or subsequent sexual behavior. It should also be noted that the ICC Prosecutor's Office adopted a Policy Paper on Sexual and Gender-Based Crimes in 2014, and a Policy Paper on Crimes Against or Affecting Children in 2016. Both documents are currently the subject of consultations aimed at improving the effectiveness of investigations.

*Potential improvements:* I believe that article 56 of the Statute could be used to allow victims of sexual violence to be heard in closed session as early as the pre-trial phase and to avoid their re-victimization during the trial. Used in the Ongwen case, this procedure could ensure better protection for vulnerable victims, while safeguarding the rights of the accused, since statements would be made before judges and in adversarial proceedings. This practice could also be used for witnesses and victims who are minor children close to reaching majority. I also feel that the

question of recognizing intergenerational damage could be raised in the context of certain conflicts.

### **Judicial training**

The ICC is a unique institution and ICC judges face many distinct challenges. Even judges with significant prior experience managing complex criminal trials may not necessarily possess all the requisite skills and knowledge needed to manage these challenges.

- 16.** In this context, is there any area of your expertise, knowledge, or skillset which you think could be enhanced through workplace training? Would you make yourself available to take part in such professional training?

*Participation in professional training sessions:* As a French magistrate, I take part in continuing education trainings on various topics annually. In fact, continuing education is an ethical obligation. I am very much in favor of this kind of training, particularly in areas that are constantly evolving, such as digital evidence, autonomous weapons of war, or on jurisprudential advances in certain jurisdictions, such as regional human rights protection jurisdictions. In fact, I would have no objection to these training courses being followed jointly with lawyers from the chambers. During my time as Chief of Staff at the Special Tribunal for Lebanon, we set up regular lunchtime conferences for both judges and Chambers lawyers, on a wide variety of subjects.

*Experience in continuing education:* I regularly lead and take part in continuing education sessions for the French National School of Magistrates, particularly in the fields of international criminal justice and comparative law. I have also run training sessions aimed at magistrates from other countries, such as Sudan, and for the Special Criminal Court in Central African Republic.

### **National nomination procedure**

- 17.** What is the current national selection and nomination procedure for ICC judicial candidates in your country of nationality? Please provide information on the procedure, including the application process, criteria, rules and legislation, public outcome of the process, bodies or organs involved in the selection process, and any other relevant information.

*National nomination procedure:* The selection was made by the national panel of the Permanent Court of Arbitration. Indeed, France has always chosen to select ICC candidates using the same procedure as for International Court of Justice candidates, as stipulated in article 36 (4)(a)(2) of the Rome Statute.

*2022 selection process:* The selection panel, chaired by Gilbert Guillaume, former President of the International Court of Justice, first issued a call for applications on July 11, 2022, both [online](#) and addressed to all French magistrates. Candidates were asked to prepare an application file covering the following: studies, diplomas, other qualifications, relevant professional activities, works and publications, languages spoken, and level achieved. The deadline to apply was August 31, 2022. The panel made an initial selection of applications, and invited the shortlisted candidates for an interview in October 2022 (similar to the interview with the Advisory Commission which examines candidates running for judge positions). The selection was finalized by the independent panel in early November 2022.