

2023 ICC Judicial Elections
Questionnaire to candidates¹

Name: RAJAAONA Andriamanakiandrianana

Date: 04 July 2023

Motivation

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

A prosperous and thriving humanity in a secure and peaceful world - this summarizes the UN's objectives. The values and commitments of the Republic of Madagascar are also perfectly aligned with this vision.

Justice is of paramount importance in a world marked by conflicts which severely impact the most vulnerable individuals and communities. Besides, the international community's growing demand for legitimate international restorative justice and the complexity of the cases brought before the ICC require judges of the highest level of qualification.

In line with the Republic of Madagascar's commitment and with my profound conviction that I can contribute a valuable stone to the building of this world, I have answered the call for applications for the judiciary elections of the International Criminal Court.

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.

During my forty-year career as a magistrate, I have always held the function of judge.

As a pre-trial judge for almost ten (10) years, the cases that came into my chambers included misdemeanors as well as blood crimes. Although it is difficult to get an exact figure, approximately four to five crimes were committed every two months. These crimes were essentially linked to cattle thefts. In order to grasp this phenomenon, one must understand that cattle play a central role in Malagasy society. Cattle rustling is a social phenomenon, which aim is to assert one group's superiority over another by launching armed gang attacks on another village to steal their cattle, thereby undermining the influence of that other group, and vice versa.

These thefts are regularly followed by the murder of group leaders, as well as kidnappings and sexual violence.

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

The main difficulty for a pre-trial judge is to gather evidence of such crimes. As they tend to be linked to conflicts between groups or clans, witnesses do not come rushing to the door. Instead, the fear of reprisals and expected revenge against the other group take precedence.

As my career evolved, I later got to judge these types of crimes as President of the Special Bovine Criminal Court, in addition to other types of crime, whether blood-related or white-collar crimes, for some twenty (20) years. At some point, as First President of a Court of Appeal, organizing criminal court sessions was part of my duties. I had to select the cases that would go to trial, allocate them to the most appropriate judge, prepare the list of assessors (jurors), and undertake the administrative and, above all, financial steps required to hold the sessions.

In judging this type of crime, the challenge was to strike the right balance between the victims' right to reparations and the perpetrators' understanding of their conviction, as this social phenomenon falls within the framework of habits and customs, which, albeit obsolete, remains latent. Some groups are indeed unable to understand why a heavy penalty has been imposed. Yet, a sanction only becomes effective when it is understood and accepted. The same applies to victims, who expect reparations to be made, not only to restore their rights, but also to ensure that the perpetrators are punished commensurately with the victims' misfortune and the pain they have suffered. Victims, whoever they may be, always feel immense grief in such cases.

As I continued my career at the Court of Cassation, my role was no longer to judge cases, but to verify whether the judges had applied the law correctly. Cases are still referred to the Court of Cassation. Whether as a rapporteur or Chamber President, files pertaining to the above-described crimes came back to my desk.

Even as First President of the Supreme Court, I have dealt with such cases, particularly when it comes to deciding whether to suspend the execution of Criminal Courts' judgments and rulings. Even then, the dilemma of weighing the right penalties against victims' interests remains.

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.

As a national judge, it was unlikely that the crimes described in the Rome Statute would come to my attention. Moreover, Madagascar has never experienced any civil or military war. The crimes described in my answer to question 1 are not crimes provided for and punishable under the Rome Statute. Besides, as an island, Madagascar has not experienced any influx of refugees, victims, nor of potential defendants. Its island status also protects it from war spreading from neighboring countries.

As a result, I have not had the occasion to apply the rules laid down in the Rome Statute or other rules of international criminal law.

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.

As a magistrate, I was appointed as an expert to sit on the committee that was tasked with drafting the National Reconciliation texts.

Although Madagascar has never experienced civil war, other than a short period of dissension within the army, which resorted to arms in 2002 and was followed by a series of reprisals and ill-treatment of the defeated side, it took a change of regime in 2009 to address the 2002 events. The notion of National Reconciliation came to the fore and the Expert Committee for the Elaboration of National Reconciliation Texts was born. We worked extensively on human rights, on the Geneva Conventions, on the definition of victims and reparations. We have also worked with South Africans, who supported our work and shared with us their experience on the aftermath of apartheid, as well as on the Rwandan genocide.

The philosophy behind the creation of the ICC is underpinned by the rights of the victims of the crimes defined by the Rome Statute, whose rights to reparation and to participate in a trial are inalienable. They are entitled to a fair trial, which means that they are entitled to have their case heard and judged publicly within a reasonable time before an independent court. They have the right to be heard before a court and for their grievances to be discussed publicly.

However, in such trials, victims often lack the necessary knowledge to make their voices heard, and are thus offered the assistance of a counsel from the onset of the proceedings. This right to counsel is also important for victims, as they cannot simply go to trial without any guarantee that their rights will be defended as effectively as possible.

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

The notion of victim is well defined in the Rules of Procedure and Evidence. It is up to the Pre-Trial Chamber to recognize or deny one's victim status. As soon as the decision to recognize this status is taken, the rights of the victim must be carefully respected. Particular attention must be paid to the modalities of victims' participation in the trial, as defined by the Rules of Procedure and Evidence. Attention to protective and special measures should also be given at the Pre-Trial Chamber level, so that victims can be completely at ease once they participate in the trial.

The Registry also has this responsibility. The Registry's office therefore needs to be monitored to ensure that it fulfills its role not only in issuing various notifications, but also in helping to find legal counsel and assistance, including financial assistance for indigent victims. Such support is key, as finances constitute a major barrier in terms of access to justice.

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.

As a national judge, I am responsible for assessing the damage caused by crimes and misdemeanors. I hand down decisions that restore victims' rights, usually in the form of

compensation. The most difficult part consists in determining the value of moral damages, while material damages can be assessed by experts.

In any case, I always mobilize the classes taken at the Institut d'Études Judiciaires. My knowledge of forensics and bodily trauma, as well as psychology courses I have taken on neuroses and psychoses and their triggers, allow me to make a sensible interpretation of expert reports.

Apart from this initial training, I did not follow any other specific training.

Defence rights

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

Our criminal procedure requires that the accused is always assisted by a counsel. The code of criminal procedure also stipulates that the accused must be notified of the charges at least ten days before the trial, as well as of the list of witnesses to be heard during the trial.

As President of Criminal Courts, I have always respected these requirements arising from our code of criminal procedure.

As First President of the Court of Appeal and organizer of the Criminal Courts within my jurisdiction, and in order to comply with the provisions of the Code of Criminal Procedure, I was responsible for contacting the Bar Association to appoint a lawyer to defend the accused if they had not chosen a counsel. As such, it was also my responsibility to make the financial arrangements to ensure that court-appointed lawyers received their allowance.

Similarly, when organizing the Criminal Courts, it was also necessary to arrange the selection of cases and the appointment of judges to preside over the Criminal Courts, in order to meet these deadlines.

The Court of Cassation, in which I also served, systematically overturns any failure to comply with these provisions.

This is necessary to respect the rights of the accused and to ensure a fair trial.

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"?

Morality is the ability to distinguish between right and wrong. In practice, morality is translated into ethical rules. Demonstrating high moral character depends on behavior which is in line with these ethical rules.

Convinced that judges can only exercise their function properly if they show ethical behavior, that justice can only be rendered and accepted if the person issuing it respects ethical principles, and determined to have a respected and respectable justice system, I co-founded, together with like-minded people from the Observatoire National de l'Intégrité, of which I was the Co-Founder and Chairman of the Board of Directors, the Mouvement pour l'Éthique et la Déontologie de

Madagascar, a platform aimed at assisting magistrates in the field of ethics and deontology. In addition, I was selected to attend a training-of-the-trainers workshop in Vienna on the Bangalore principles, following which workshops on the subject were organized for the Malagasy judiciary.

Magistrates are advised to apply the law as well as to respect these same laws in their daily life. Failure to respect the law, both in the way a judge should apply it and in their day-to-day behavior, can only harm the image of a judge's high moral character. The same would apply to actions driven by passion rather than reason. Judges must manage their image for reasonable observers.

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, without any hesitation.

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?

In a fair trial, the judge is impartial, and only considers facts and the rules applicable to them. While the judge is indeed presented by their State of nationality, they remain a judge first and foremost.

Judges are elected for a term of office, which I believe, offers them protection in this type of situation. They can only be removed or dismissed in cases provided for by the Rome Statute, by the Rules of Procedure and Evidence and by the Regulations of the Court.

The Court is often criticized because it is perceived to be political, since its decisions can impact a country's internal or external politics. The crimes covered by the Rome Statute are essentially actions stemming from a group or a state's ideology. Naturally, the repression of such actions will have a political impact.

The Court was created to preserve the "peace, security and well-being of mankind", and to prevent the repetition of the crimes defined in the Rome Statute, beyond any political considerations.

Admitting that pressure is exerted on members of the Court would amount to States and the Court itself admitting that the Court is a political jurisdiction. This cannot happen, or else the Court would lose its essence and fail to be effective.

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.

I was fortunate enough to be appointed as a Director within the Ministry of Justice for a year. My role consisted in promoting integrity within the Ministry of Justice, which encompassed the judicial and prison administrations.

My program consisted, firstly, in setting up a deontological support mechanism for the judicial staff, through:

- a) The creation of a code of ethics for the prison service, as the judiciary already had its own code of ethics.
- b) The creation and operationalization of an Ethics and Deontology Committee (EDC), still active to this day, tasked with advising magistrates faced with an ethical dilemma.

Secondly, by attempting to set up a Prisons Observatory. I had begun to work with civil society to define workstreams, the observatory's competencies and composition, etc., with a trial run in the Majunga jurisdiction. Unfortunately, the experiment could not be completed because the Ministry and civil society were unable to agree on the resources to be allocated.

Thirdly, the department was responsible for carrying out administrative inquiries where necessary, and for submitting the results of its investigations to the Minister of Justice for any appropriate follow-up. This required ensuring the full confidentiality of the information gathered so as not to stigmatize magistrates vis-à-vis their colleagues or the executive power.

On a day-to-day basis, the department was responsible for dealing with the grievances reaching the Ministry.

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

In my last position, I had almost 300 staff under my authority, including almost 130 magistrates, the rest consisting of registry and administrative staff. Naturally, discord appeared between them. Magistrates would either abuse their position to intimidate or harass staff, or discord would develop between magistrates from different backgrounds.

In order to address such situations, it was necessary to listen carefully. By listening to the complainant, it is possible to detect the real motive of their action. Indeed, abuse, intimidation or abuse of power sometimes only constitute the tip of the iceberg. For instance, a chief clerk who harassed his clerk under false pretenses (e.g. discrimination on grounds of origin) was presented as racist. After careful listening and discussions, I realized that other people of similar origin as the harassed clerk were not subjected to the chief clerk's behavior. Listening carefully to the chief clerk, too, suggested that he was in fact afraid that the other person would apply for his job. The clerk simply had to reassure the chief clerk for the harassment to stop.

The department (Justice) in which I worked was made up of almost 52% women and 48% men. Naturally, women are rising to leadership positions. As such, the Attorney General and President of the Court of Cassation were women, together with the Attorney General of the Capital's Appeals Court, and the Capital's Public Prosecutor and Court President, and we have always encouraged and favored female candidates. The chief clerks of the Court of Cassation, Court of Auditors, Appeals Court and Capital's Court are all women. Of the 10 administrative staff in my office, 6 were women, including the head, who was also in charge of public procurement. The fact that there were not more women in leadership positions was only due to a lack of applications

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.

Workplace culture is essential in any company. It has been found that those who have one are much more productive than others.

It is essential that group members feel a sense of belonging to a clan: the ICC clan. My experience at the High Court of Justice, of which I was the first President, is a case in point. Madagascar's High Court of Justice (HCJ) was only set up in 2018, even though it had been provided for in every constitution since 1960. Members of the said Court were therefore skeptical about its effectiveness. The trick consisted in creating a space for exchange between members after each monthly meeting, where anything and everything could be discussed. The members came from a variety of backgrounds, including magistrates, civil administrators, economists, etc. No subject was taboo, but everything had to be done in good spirits and comfort

Once we were all on good terms, we were able to set objectives and begin working. We were also able to set a goal – which is what drives a company – which was adopted by mutual agreement, if not unanimously, at least by consensus.

By setting objectives, we give ourselves the means to achieve them. Innovative proposals then come naturally. As exchanges also happen naturally, discussions enable the development innovative working practices.

This is how workplace culture develops. This is how we, at the High Court of Justice, eventually referred fourteen cases to the National Assembly. It should be noted that the HCJ is in charge of preparing and judging cases related to senior government officials (members of government, heads of institutions, President of the Republic).

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

In my last position, one of my duties was financial management, meaning that procurement was part of my tasks. The appointment of the person in charge of procurement was motivated by a gender perspective, as a woman was selected for the post.

Similarly, in the department I headed at the Ministry of Justice, out of three department heads, two women were appointed out of five candidates.

In the same vein, at the High Court of Justice, of which I was President and head of administration, out of two candidates, a woman was chosen to be secondary authorizing officer.

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.

Under the Rome Statute, rape is punished in two distinct situations: rape as a crime against humanity, and rape as a war crime.

It can be punished as a crime against humanity if the rape was committed during a systematic attack against the civilian population, and as a war crime if the rape was perpetrated during a war covered by the Geneva Conventions.

The crime of rape is thus punishable under any circumstances.

The jurisprudence has clearly defined the difference between common law rape and rape as a crime against humanity or as a war crime, by requiring a causal link between rape and war or attacks on the civilian population as defined by the Rome Statute.

Jurisprudence has also ruled out, in the case of war, that rape can be excused if it has been perpetrated against potential victims of that war. Thus, raping one's opponent falls into the category of a war crime, since rape does not fall into the category of risks run by a soldier participating in combat. Rape is rape and not a fact of war.

Rape perpetrators also sometimes highlight the characteristics of the victim, especially in terms of morals. Proposals are currently being put forward to make it inadmissible to plead the victim's lack of morals or provocative attitudes. Perpetrators can also mobilize the excuse of the victim's consent, which they deem confusing. Legislation on the determination of consent could also help analyze consent in relation to the circumstances of the case. For example, a victim cannot give consent during an attack, a situation of widespread looting, etc.

Such potential improvements could help tackle preconceived ideas about rape.

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?

Despite my long experience as a judge, it is always necessary to keep abreast of the latest doctrinal developments. But above all, it is true that ICC trials are exceptional both in terms of their scale and of the challenges involved.

Indeed, they do not simply rely on individual offences, but also on questions of quasi-political organization. Indeed, the crimes covered by the Rome Statute generally result from the application of an ideology, and thus, of a political group. Geopolitical knowledge is therefore necessary to properly assess the facts and take the right decision.

This challenge must be met, because the ICC prosecutes facts that are as diverse as the world's cultures. The ICC is multicultural, both in its composition and in the facts that fall within its jurisdiction.

ICC trials are unique in that they engage the international public opinion and mobilize considerable resources. Managing such trials constitutes a real challenge, which is why it is necessary to master the art of "managing major cases".

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.

The Ministry of Justice launched a call for applications. It is eventually up to the Ministry to select the candidate it feels meets the criteria and profile of an ICC judge.

Thank you.