

## Draft Questionnaire for candidates to the 2020 ICC Judicial Election

Civil society<sup>1</sup> plays an important role in monitoring the election of International Criminal Court (ICC) officials. We promote fair, merit-based and transparent elections.

*Please answer the questions below.*

Name: Althea Violet Alexis-Windsor

Nationality: National of Trinidad and Tobago

Nominating State: Trinidad and Tobago

Legal Background (List A or List B): List A

Gender: Female

Date: October 14, 2020

### BACKGROUND

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

I believe that I have a contribution to make in international criminal law which can best find expression as a judge of the International Criminal Court. I would bring my experience as a judge on the national level, my experience as a prosecutor at the international level at the International Criminal Tribunal for Rwanda, my experience as Deputy Director of the Human Rights Unit of the Ministry of the Attorney General of Trinidad and Tobago and as a prosecutor at the Office of the Director of Public Prosecutions of Trinidad and Tobago. Lastly, I have an abiding desire to see the legal system provide catharsis for witnesses and victims and to be a part of the mandate of the International Criminal Court to erode impunity for breaches of international criminal law.

2. What do you believe are the most important challenges and achievements of the ICC in its first 18 years?

The most important achievement of the ICC is that it has maintained its position as a functioning reality, an internationally recognized institution and as a guardian of crimes against humanity, genocide, crimes of aggression and war crimes in countries that cannot or will not address them.

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<sup>1</sup> This questionnaire is endorsed by the following organizations: African Center for Democracy and Human Rights Studies, UNA Sweden, Alhaq, ALTSEAN-Burma, Amnesty International, Asian Legal Resource Centre, The Australian Centre for International Justice, Congo Peace Initiative, The Colombian Commission of Jurists, FIDH, Georgian Coalition for the International Criminal Court, Human Rights Watch, Justice International, Nigerian Coalition for the ICC, No Peace Without Justice, Open Society Justice Initiative, Parliamentarians for Global Action, REDRESS, Reporters sans frontiers, StoptheDrugWar.org, The Swedish Foundation for Human Rights, World Citizen Foundation, Women's Initiatives for Gender Justice, World Federalist Movement/Institute for Global Policy, and the World Renewers Organization. This questionnaire was developed with the assistance of the Coalition for the International Criminal Court Secretariat.

Additionally, the ICC is a unique institution that has granted victims the right to participate at every stage of the proceedings, including at the confirmation hearing and the sentencing. This ensures that victims have a right to effective access to justice in terms of participation and reparation, not only as witnesses for the prosecution but with an autonomous standing.

The most important challenge of the ICC in its first 18 years has been public perception that it is too focused on alleged breaches of international criminal law that occur in Africa with 10 of the 13 situations under investigation being focused on crimes allegedly committed in Africa.

3. What do you believe are some of the major challenges confronting the ICC and Rome Statute system currently and in the coming years?

Now, and in the years ahead, the ICC faces the challenge of limited resources especially in a post COVID-19 world as well as the fact that the Rome Statute has not achieved complete universality.

#### **LEGAL SYSTEM**

4. The Rome Statute seeks judges representing all of the world's major legal systems.

- a) Which legal system is your country part of?

My country follows the common law system which was adopted from England.

- b) Please describe any knowledge or experience you have working in or with other legal systems.

I experienced working with other legal systems when I worked at the International Criminal Tribunal for Rwanda (ICTR) for almost ten years. During that period of time, I worked with persons from the inquisitorial system such as Italy and Germany. I also worked with persons who worked in systems in which there were aspects of traditional law such as Nigeria and Rwanda. This provided me with on-hand experience with working with persons from other legal systems. For example, I learnt that in the inquisitorial system, the admissibility of documents is not a turgid affair but that documents can be admitted and then their reliability can be considered at the end of the trial. I learnt that hearsay is also permitted in the inquisitorial systems. I learnt to appreciate the differences between these two major systems of law, while understanding that international criminal law is not bound by national law.

In relation to my knowledge of other legal systems, I am the holder of a Master of Law from the University of Utrecht, The Netherlands in the Internationalization of Crime and Criminal Justice. In the course of this masters programme, I studied comparative international criminal law, international human rights law and international humanitarian law. I graduated magna cum laude, at the top of my class. In so doing, I was taught and did research on the origins of the inquisitorial

system as opposed to the adversarial system and how the origins gave birth to differences in relation to the development of each system. The experience of working at the International Criminal Tribunal for Rwanda enhanced this knowledge.

Therefore, I have knowledge of and experience in working with and in other legal systems.

### **LANGUAGE ABILITIES**

5. The Rome Statute requires every candidate to have excellent knowledge of and be fluent in English or French.

a) What is your native language?

English is my native language.

b) What is your knowledge and fluency in English? If it is not your native language, please give an example of your experience working in English.

I am fully fluent in English, whether spoken or written. For example, all of my decisions and rulings as a Judge of the Supreme Court of Trinidad and Tobago have been done in English.

c) What is your knowledge and fluency in French? If it is not your native language, please give an example of your experience working in French?

I have some capacity to read in French. While in Trinidad and Tobago, before I worked at the ICTR, I attended French classes at the Alliance Française, Trinidad and Tobago. When I arrived at the ICTR, I found that defence motions were written in French. In order to at least understand the gist of the motions, I again attended a French class which was offered through the agency of the ICTR. Thus, I have a limited capacity to read French. However, my spoken and written French is nugatory.

### **LIST A OR B CRITERIA**

6. Your response to this question will depend on whether you were nominated as a List A candidate or a List B candidate.

a) For **List A** candidates:

- How would you describe your competence in relevant areas of international law outside of the field of international criminal law, such as international humanitarian law and international human rights law?

I have developed competence in international humanitarian law and international human rights law on an academic and professional level. During my Masters in the Internationalization of Crime and Criminal Justice at the University of Utrecht, The Netherlands, I successfully covered courses in international humanitarian law and international human rights law.

Additionally, as a prosecutor at the International Criminal Tribunal for Rwanda for almost ten years, I prosecuted accused persons who had committed breaches of international humanitarian law and international human rights law. I was first an Assistant Trial Attorney, then Trial Attorney, then an Appeals Counsel. Thus, at the trial level, I was involved in the Butare case, the case against Gregoire Ndahimana, Athanase Seromba and Gaspard Kanyarukiga. At the appeals level, I was involved in the appeal of the Butare case, where I prepared the appeal's brief for one of the Butare six, Sylvain Nsabimana.

In so doing, I have developed competence in international humanitarian law and international human rights law.

b) For **List B** candidates:

- How would you describe your competence in criminal law and procedure?
- How would you describe your experience in criminal proceedings?

### **OTHER EXPERTISE AND EXPERIENCE**

The ICC is a unique institution, as such ICC judges face a number of unique challenges (including managing a regime of victims' participation and witness protection in complex situations, including of ongoing conflict). Even judges with significant prior experience managing complex criminal trials may not necessarily possess requisite skills and knowledge needed to manage these challenges.

7. Is there any area of expertise, knowledge or skillset which you would like to enhance through workplace trainings?

Yes. I would very much like workplace training in the area of victim participation at the International Criminal Court. I am interested in understanding how best to implement the articles of the Statute and Rules of Practice and Evidence in relation to the participation, protection, general assistance and reparations to victims while preserving and maintaining the rights of the accused persons.

8. Please provide examples of your legal expertise in other relevant areas such as the crimes over which the ICC has jurisdiction, the management of complex criminal and mass crimes cases, or the disclosure of evidence.

At the ICTR, I actively participated in the prosecution of genocide, crimes against humanity and war crimes. I was involved in the Butare case at the trial and appeal stage. This case involved six accused namely Pauline Nyiramasuhuko, Arsene Shalom Ntahobali, Joseph Kanyabashi, Alphonse Nteziryayo, Sylvain Nsabimana and Elie Ndayambaje. Pauline Nyiramasuhuko was the first woman in history to be convicted of rape as an instrument of genocide.

I was also involved in the prosecution of Athanase Seromba. He was a priest of the Nyange parish who was convicted of genocide and extermination as a crime against

humanity. He was found guilty and sentenced to 15 years by the Trial Chamber. This was extended to life imprisonment by the Appeals Chamber.

Additionally, I was involved in the prosecution of Gaspard Kanyarukiga, a businessman of Nyange commune who was convicted of genocide and extermination as a crime against humanity. He was sentenced to 30 years imprisonment, which was confirmed on appeal.

Further, I was involved in the prosecution of Gregoire Ndahimana, mayor of Kibuye province. He was convicted of genocide and extermination as a crime against humanity and was sentenced to 15 years by the Trial Chamber. This was extended to 25 years imprisonment by the Appeals Chamber.

In the course of prosecuting in these matters, I acquired legal expertise in areas such as the crimes over which the ICC has jurisdiction. In so doing, I ensured that the witnesses had been contacted by the investigators and were still willing to testify before the tribunal, I led witnesses through their examination in chief and cross-examined numerous witnesses who had been presented on behalf of the defence. This task was especially robust in the defence case of Gaspard Kanyarukiga in which the case for the accused was alibi. Demonstrating the fallacy of the alibi required vigorous cross-examination.

I also addressed areas of disclosure of prosecution material to the defence. In sum, at the ICTR, I acquired legal expertise in the areas over which the ICC has jurisdiction, in the management of cases of complex criminal and mass crimes cases and disclosure.

9. Please describe the aspects of your career, experience or expertise outside your professional competence that you consider especially relevant to the work of an ICC judge.

I have been a part of matters concerning gender issues and children. For example, I was part of a Committee set up by the Chief Justice of Trinidad and Tobago that drafted the Rules of Procedure for the Children's Court of Trinidad and Tobago. Additionally, as a member of the Judiciary of Trinidad and Tobago, I was exposed to trainings on gender inequities and inequalities; on other issues of gender sensitive adjudication as well as conscious and unconscious bias.

In Arusha, Tanzania, I volunteered for involvement in youth empowerment and mentorship through a faith-based organization. I also provided funds for purchasing books and school equipment for underprivileged children. While at the ICTR, I was exposed to trainings on the approach to and management of victims of mass atrocities, including those who had been victims of gender based violence.

Thus, over the years, in the course of my career and experience, I have been made mindful of the place of structural gender and other issues of bias that shape the approach of witnesses and witnesses who were victims to criminal offences on a national level and mass atrocities on the level of international criminal law.

## **EXPERIENCE AND PERSPECTIVE RELATED TO SEXUAL AND GENDER BASED CRIMES (SGBCs)**

10. Please describe any experience you may have in dealing with SGBCs, including in addressing misconceptions relating to SGBCs.

Throughout my professional life, I have had exposure to sexual and gender based crimes. As a prosecutor in Trinidad and Tobago, I prosecuted many cases involving sexual and gender based crimes such as sexual assaults and rape. As a prosecutor at the ICTR, I was part of the prosecution of Pauline Nyiramasuhuko who was found to have ordered the rape of Tutsi women who had taken refuge at the prefecture office.

In Trinidad and Tobago, I have had often sat as a judge in cases related to sexual and gender based cases. In the course of summing up the case to the jurors before their contemplation of the verdict, I describe in detail commonly held misconceptions about sexual and gender based crimes. In this regard, I explain to the jury that the experience of the courts has shown that sexual offences can be committed against men, women and children of both sexes and that no one “looks for” a sexual or gender based crime to be committed against them because of what they were wearing or perceptions about their physical attributes. I also explain to the jury that some victims react to the offence being committed by screaming, some by remaining silent; some speak freely afterwards but some do not. Therefore, that there are myriad reactions to sexual and gender based crimes, both by the offenders and victims. Further, that each offence is to be viewed objectively and fairly having cast aside behavioural assumptions and biases.

## **EXPERIENCE AND PERSPECTIVE RELATED TO CRIMES AGAINST CHILDREN**

11. Please describe any experience you may have in addressing crimes against and affecting children and related issues, including dealing with child witnesses.

As a prosecutor in Trinidad and Tobago, I was tasked with the prosecution of crimes against children, many of which were sexual in nature. I learnt that the approach to dealing with child witnesses is different. I learnt that the first meeting has to be introductory and not involve evidence, unless the child witness herself or himself wishes to embark upon the actual evidence. I learnt that children need to feel safe before they will feel comfortable enough to testify. I learnt that it is preferable for child witnesses to be brought to the actual court room before the trial so that the physical space loses some of its intimidatory effect. I also learnt how to present witnesses in evidence in chief who are presently adults but who had been children when the offences were allegedly committed.

## **EXPERIENCE AND PERSPECTIVE RELATED TO VICTIMS**

12. Please describe any experience that you may have relevant to the right of victim participation before the ICC and reparations for victims of mass atrocities.

My main experience relevant to the right of victim participation before the ICC or reparations for victims of mass atrocities is linked to victim-witnesses in my capacity as

a national prosecutor in Trinidad and Tobago and before the ICTR where victim-witnesses were protected witnesses.

13. Do you have any specialised training and/or experience in providing protection and support to victims and witnesses participating in a case?

My experience in this area is in applying and supporting witness protection orders at the ICTR.

#### **EXPERIENCE RELATED TO FAIR TRIAL CONSIDERATIONS AND THE RIGHTS OF THE ACCUSED**

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

I believe in and have always practiced in a milieu of respecting the rights of accused persons. In every trial, I manage fair trial issues such as the presumption of innocence, the right to silence, the right to have no adverse inference made from the exercise of the right to silence, the right to face and cross-examine one's accuser and the right to the disclosure of exculpatory and unused material in the hands of the prosecutor. I also have experience in the fair trial consideration of delay as an abuse of the process of the court.

#### **HUMAN RIGHTS AND HUMANITARIAN LAW EXPERIENCE**

15. Do you have any experience working with or within international human rights bodies or courts and/or have you served on the staff or board of directors of human rights or international humanitarian law organizations? If so, please briefly describe this experience.

I worked at the International Criminal Tribunal for Rwanda for almost 10 years. In so doing, I have experience in international human rights and international humanitarian law.

16. Have you ever referred to or applied any specific provisions of international human rights or international humanitarian law treaties within any judicial decision that you have issued within the scope of your judicial activity or legal experience?

As a judge, I have referred to Article 6(3) of the European Convention on Human Rights by way of context to demonstrate international acceptance of the rights of accused persons although Trinidad and Tobago is not a party to the Convention.

I have also referred to Article 14(3)(e) of the International Covenant on Civil and Political Rights in the context of the right of an accused person to challenge his or her accusers.

As a prosecutor at the ICTR, I referred to provisions of the Genocide Convention and Article 3 common to the Geneva Conventions.

## **IMPLEMENTATION OF THE ROME STATUTE AND INTERNATIONAL CRIMINAL LAW**

17. During the course of your judicial activity, if any, have you ever applied the provisions of the Rome Statute directly or through the equivalent 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 describe the context in which you did.

In the course of my judicial experience, I have referred to the Rome Statute directly. It was in the context of a ruling on the admissibility of the statement of a witness who had died before the matter came up for trial at High Court. I stated that the right to face one's accusers and cross-examine them is a part of international law and the common law of England. In so doing, I referenced Article 67(1)(e) of the Statute of the International Criminal Court to conclude that this is a right that is internationally recognized.

## **EXPERIENCE AND PERSPECTIVE RELATED TO GENDER MAINSTREAMING**

18. Could you share examples of when you applied a gender perspective in the course of your professional career?

I have often dealt with cases involving sexual offences against women, men and both male and female children. I have applied a gender perspective in the definition of lack of consent (Anthony Emrit). For instance, in a case in which the accused was indicted for rape and buggery against the victim who had once co-habited with the accused, I applied the perspective that although the victim had previously had consensual sexual intercourse with the accused, the jury should not hold this uncontroverted fact to mean that the victim must have consented in the case before it now.

In another case, I applied the gender perspective that lack of consent is not always communicated verbally and that in a case in which the accused was found guilty of kidnapping the victim, placing her in a house in which there were agricultural implements which could serve a dual purpose of inflicting violence, the circumstances created by the accused could be interpreted as having vitiated consent.

I also applied the gender perspective in explaining and debunking commonly held gender biases in sexual offences such as that victims of sexual offences are always female or must make a hue and a cry immediately or otherwise cannot be seen as truthful. Further, I applied the gender perspective that in a matter in which a woman is the accused, this should not in and of itself garner sympathy.

I believe that gender issues have the potential to affect the fairness of a trial and I strive to apply gender perspectives fairly and equitably.

## **CRITERIA OF HIGH MORAL CHARACTER, INDEPENDENCE, IMPARTIALITY AND INTEGRITY**

19. What, in your opinion, does the Rome Statute requirement of “high moral character” mean and how do you embody these characteristics? What in your opinion would be contrary to “high moral character”?

Article 36(3)(a) of the Rome Statute states, among other requirements, judges should be persons of high moral character. This means that a judge must be above reproach in his or her personal life, financial dealings and judicial conduct. Such a person must avoid any act that can reduce the public’s confidence in the independence, impartiality and integrity of judicial office.

20. Have you ever resigned from a position as a member of the bar of any country or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.

I have never resigned from nor have I ever been disciplined or censured by any bar association of which I have been a member.

21. It is expected that a judge shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status.

- a) What is your opinion on this expectation?

I fully endorse this expectation.

- b) Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on these grounds? If yes, please describe the circumstances.

I have never been found by a governmental, legal or professional body to have discriminated against or harassed an individual on these or any other grounds.

22. Are you aware of any formal allegations made about you related to professional misconduct, including allegations of sexual harassment, discrimination, or bullying, or any investigations regarding your alleged professional misconduct related to the same? If so, please explain.

There are no allegations, formal or informal made about me related to professional misconduct, including allegations of sexual harassment, discrimination or bullying or any investigations regarding professional misconduct.

23. Do you have any reason to believe that any current or former colleagues or professional contacts, if asked, would share concerns regarding your professional conduct?

My current or former colleagues or professional contacts, if asked, would not have any concerns to share regarding my professional conduct.

24. Article 40 of the Rome Statute and the ICC 'Code of Judicial Ethics' requires judges to be independent in the performance of their functions.

a) What difficulties, if any, can you envisage in taking a position independent of, and possibly contrary to, the position of your government?

A judge at the ICC must be independent, in that, he or she must exercise judicial function in accordance with the law and the evidence. This must be adhered to even if a decision that is made consequent upon this methodology is contrary to the government of one's country. This must be maintained even if the government in question makes statements expressing displeasure with the decisions of the judge.

b) How would you act in cases where significant (direct or indirect) political pressure was exerted upon you and/or you and your colleagues?

I believe that a judge at the national or international level must act and must continue to act in the highest traditions of the bench in relation to independence, professionalism, fairness, even-handedness and integrity in the face of political pressure whether that pressure is significant, slight, direct or indirect. He or she must do what is legally permissible and what is right with no regard to political pressure.

25. Please describe specific measures you have undertaken to advance a work environment free of bullying, harassment, and other harmful behavior.

As a manager, I have endeavoured to advance a work environment in which persons feel safe to communicate, so far as possible; have a non-contentious methodology for dispute resolution and where every person feels that he or she has a voice which will be respected while respecting the voices and points of view of other persons. I have found that by doing so, it eliminates or significantly reduces bullying, harassment and other harmful behaviour.

## **OTHER MATTERS**

26. The Rome Statute requires that judges elected to the ICC be available from the commencement of their terms, to serve a non-renewable nine-year term, and possibly to remain in office to complete any trials or appeals. A judge is expected to handle legal matters for at least seven hours per day, five days per week.

a) Do you expect to be able to serve at the commencement and for the duration of your term, if elected?

I understand that the term of service is nine years. I am fully prepared to serve from the commencement and for the duration of a nine year term. However, if the

exigencies of the work require that I commence at a later time or remain for a longer time to complete work, I am also fully prepared to serve in that capacity.

- b) To what extent are the judicial tasks described above compliant with your expectations of work standards? Please describe any potential adaptations you may require.

I have no difficulty with handling legal matters for at least seven hours per day, five days a week for that is the standard under which I work as a Judge of the Supreme Court of Trinidad and Tobago.

27. Please feel free to address any other points here.

**Thank you.**