

RESPONES TO QUESTIONNAIRE FROM CIVIL SOCIETY ON THE ICC JUDICIAL ELECTION, 2020

NAME: BELLO, ISHAQ USMAN
NATIONALITY: NIGERIA
NOMINATING STATE: NIGERIA
LEGAL BACKGROUND: LIST A
GENDER: MALE
DATE: 15TH SEPTEMBER, 2020

BACKGROUND

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

My motivation to seek election as a Judge of the ICC is rooted in my desire to contribute at the international level towards global peace specifically within the parlance of eradicating impunity and human right abuse.

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

The ICC is a permanent judicial institution set up to deal with serious crimes of international concern as contained in the Rome Statute such as genocide, crimes against humanity, war crimes and the crime of aggression. Thus, the creation of the ICC in itself was a great achievement as it is contributing to the establishment of lasting peace through reconciling societies and ending cycles of violence. By helping the entrenchment of strong legal and societal norms that prohibit massive crimes and human rights abuses, the Rome Statute system has helped us to move toward a safer world that makes accountability for atrocity crimes an integral aspect of the rule of law. This has further instilled a growing deterrent effect of the ICC's permanent presence. But more than that, the Statute allows victims to be substantially integrated into the ICC's

proceedings, with special fund established to assist such victims outside the context of the court proceedings. In essence, the ICC has been useful in creating a global conversation on justice in the wake of massive human rights violations and politically motivated atrocities.

Nonetheless, there are challenges confronting the Court in the implementation of its core mandate. Some of these include inadequate funding, personnel and logistic constrains. ICC depends completely on the support of States Parties to finance its operations, which most often include carrying out investigations and collecting evidence relating crimes committed in other regions of the world. Such operations are sometimes unnecessarily slow due largely to inadequate interventions by States Parties in terms of funding and law enforcement agencies since the Court has no executive power and a police force of its own. In particular, its Achilles' heel, so to speak is the key issue of arrest and surrender of the accused. To put it simply, there can be no trials if arrests are not made.

Poor funding has also impacted negatively on the Court's capacity to embark on a rigorous awareness campaign for States Parties as well as victims to really appreciate the work of the ICC as this would have further enhanced trust and confidence the Court. Though, one understands that the Court's budget has grown over the years, but the workload of the Court is equally increasing as the demands for justice are rising. This underscores the need for a robust intervention by States Parties. The ICC therefore can only be effective to the extent States Parties are committed to making it.

The Court needs greater international recognition and more members than the current 116 States Parties; it is, however, especially gratifying that Tunisia recently became the 116th State Party, hoping that more will follow in coming years.

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

Today, one of the challenges confronting the ICC and Rome Statute is its perceived selective or discriminatory application. There has been increasing criticism particularly from some African states that the ICC is a tool of western imperialism, which is after leaders from weak countries and ignoring crimes committed by powerful countries. Consequently, this perception resulted in some States Parties threatening to withdraw their membership. It would be recalled that in June 2009, some African countries, including Comoros, Djibouti, and Senegal threatened to

withdraw from the Rome Statute in protest against the indictment of the Sudanese President Omar Al-Bashir. A similar call was made in Kenya in 2013 following the prosecution of Kenyan Deputy President William Ruto at the ICC. South Africa also threatened to withdraw from the ICC while Burundi and Philippine withdrew its membership of the Rome Statute in protest against their preliminary examination by the ICC. As mentioned above, ICC depends on the support of States Parties to finance its operations. Thus, such threats or withdrawal of membership of the Rome Statute, being the founding treaty of the ICC, would most likely affect any form of support coming from such countries. And if the withdrawal of membership of the Rome Statute persists, in coming years, the treaty and the ICC may grind to a halt if the number of signatories deplete below what is necessary for the Statute to remain in force.

LEGAL SYSTEM

4 (a) The legal system operating in my country Nigeria is based on the English Common Law legal tradition.

(b)

LANGUAGE ABILITIES

5(a) My native language is Hausa.

(b) I have attained proficiency in both written and spoken English. In my country Nigeria, English language is the official language in schools. So basically, from elementary school to my doctorate degree classes, I received instructions and made official responses in English language. I have also been in adjudicative responsibility for over 25 years conducting legal research, writing rulings and judgments in English language.

(c) I'm not good at French.

LIST A OR B CRITERIA

(6) I was nominated under list "A" candidates. I have a cosmopolitan grasp of the relevant international law particularly the Rome Statute which is the founding treaty of the ICC. I have a Masters Degree (LLM) with specialization in Individual Criminal Responsibility under the Rome Statute. My experience in the process has been very enlightening.

OTHER EXPERTISE AND EXPERIENCE

7. Personally, I welcome every opportunity to develop or improve myself to fit into new demands in the workplace. So, I will gladly embrace the opportunity to enhance any expertise, knowledge or skill set through workplace training if the need arises especially in emerging aspects of international law and as well as the workings of the ICC.

8. As a Judge, I headed Criminal Trial Division for 14 years, during which I have handled murder cases, enslavement, torture, rape, and sexual slavery, among many others.
9. I have presented papers at various fora on the legal regimes for the protection of human rights and abuse of internal party democracy which has been one the major causes of destruction of lives and properties in Africa. In fact, my PhD Thesis is centered on the role of court in promoting internal democracy in Nigeria. I believe these experiences will be relevant to the work of an ICC Judge.

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

10. The most common sexual and gender based crimes in Nigeria include sexual harassment, physical violence, harmful traditional practices, emotional and psychological violence, socio-economic violence and violence against non-combatant women in conflict situation. There are legal frameworks in place that deal with these crimes. In particular, the victims of such crimes can access justice through the courts which include but not limited to alternative orders for interim protection, medical care, and compensation.

EXPERIENCE AND PERSPECTIVE RELATED TO CRIMES AGAINST CHILDREN

11. Children are the future of the society without which the human race will be extinct on the death of the last adult. Hence, the protection of their rights through the Family Court is one of the topmost priorities of the judiciary. At the family court, we grant rights to child offenders such as the right to legal representation, fair hearing, protection of witness and incorporation of novel guiding principles in adjudication which requires that proceedings in the Family Courts must be conducive to the best interest of the child and conducted in an atmosphere of understanding, allowing the child to express himself and participate in the proceedings. At the Family Court, we mostly use non-custodial disposition methods. We may discharge the child offender on his entering into a recognizance or place the child offenders under the care order, guidance order and supervision order. Child offenders are sometimes ordered to participate in group counseling or undertake community service under supervision. It is instructive to note that as Chief Judge, I wasted no time in making operational, the Child's Right Enforcement Procedure Rules for the FCT to give impetus to the Child's Right Act.

EXPERIENCE AND PERSPECTIVE RELATED TO VICTIMS

12. As a Judge, I have implemented on numerous occasions, legal provisions related to right of victims of crimes by affording them the opportunity to be heard, and balancing the rights of an accused person side by side those of the victims of the crime. A Judge is also expected to be patient and courteous to accused persons, victims, litigants, as well as the witnesses. He must also resist the temptation to descend into the arena by initiating any communication that is favourable to one side or less than all the parties who have a legal interest in the case before him. My experience as shared here will be relevant to rights of victims participating before the ICC as it is in *pari materia*, with Article 8 Code of Judicial Ethics of the ICC.
13. Yes, I have specialized training and experience in providing protection and support to victims and witnesses participating in a case. During my tenure as Chief Judge, I set up a Witness Support Unit for the court.

EXPERIENCE RELATED TO FAIR TRIAL CONSIDERATION AND THE RIGHT OF THE ACCUSED

14. In my 14 years as the head of Criminal Trial Division, I have in all criminal cases before me, implemented the right of accused with attention to fair trial. I have also advocated for fair trial consideration in criminal cases in the numerous workshops and conference papers I have presented over the years. Some of these papers include: Comparative Analysis of the Penal Code, the Criminal Code, The Criminal Procedure Act of Northern and Southern States, Presented at the Nigerian Law School; and Judge and Prosecutor Co-Operation in Criminal Trials, presented at the Institute Of Advanced Legal Studies, Lagos, among Others.

HUMAN RIGHTS AND HUMANITARIAN LAW EXPERIENCE

15. No, I have never worked within any international human rights bodies or courts.
16. Nigeria is signatory to a number of international human rights treaties, which have become binding laws in the country by virtue of their domestication. One of these is the African Charter on Human and Peoples' Rights. As a Judge and advocate of fair trial, I applied these treaties, or make reference to them in my presentation whenever the need arises. I have also on numerous occasions entertained cases pertaining the enforcement of the fundamental rights of citizens.

IMPLEMENTATION OF THE ROME STATUTE AND INTERNATIONAL CRIMINAL LAW

17. Yes, in convicting and sentencing some police officers on murder trial, I alluded to the need to curb impunity which is central to the mandate of the ICC.
18. In Nigeria, the jurisdiction of the High Court is quite unlimited. It includes but not limited to gender based violence. As a Judge of the High Court who headed Criminal Trial Division for 14 years, I have lost count of the number of times I presided over such issues.
19. High moral character in the context of the Rome Statute means to be upright and thoroughly decent in the discharge of judicial duties. Any action or omission not in consonance with judicial ethics both in my official capacity or personal life will amount to breach of moral character.
20. I have never resigned as a member of the Bar of any country or disciplined by the bar association of which I'm a member of.
21. (a) I completely support this expectation. It is contrary to the judicial ethics both at the domestic and international scene for a Judge to exhibit or condone biases based on race, colour, gender, religion, ethnicity, or other irrelevant cause contrary to fundamental human rights.
(b) I have never been found by a governmental, legal or professional body to have discriminated against or harassed an individual on any ground contrary to fundamental human rights.
22. No, I'm not aware of any formal allegations made about me related to professional misconduct, including allegations of sexual harassment, discrimination, or bullying, or any investigation regarding my alleged professional misconduct related to same.
23. No, I don't have any reason to believe that any current or former colleagues or professional contacts, if asked, would share concerns regarding my professional conduct.
24. (a) I will not have any difficulties taking a position contrary to the position of the government of my country because as an independent Judge, my duty is to exercise jurisdiction over issues of a judicial nature without any internal or external interference with the process. Besides, as a Judge of domestic court, I convicted top government officials irrespective of any emotional, psychological or political pressure. It will therefore not make any difference if it happens at the ICC.
(b) As a Judge, I will ignore any political pressure as I have always done. My major pre-occupation will always be to analytically interpret the law and facts, and arrive at a balanced and impartial decision. I may however, rescue myself from a case if my impartiality may genuinely and reasonably be questioned.
25. I have handled fundamental human right cases. And most importantly, I have provided rules and practice direction to facilitate fundamental human rights enforcements.

OTHER MATTERS

(a) Yes, I will serve at the commencement and for the duration of my term if elected.

(b) The judicial task described above is in compliance with my expectations of work standards.

27. I will appreciate the opportunity to bring my knowledge and experience to bear towards contributing to global peace particularly within the parlance of eradicating impunity and human rights abuse.