

**Coalition for the International Criminal Court (CICC)
Questionnaire for ICC Judicial Candidates
December 2017 Elections**

Please reply to some or all of the following questions as comprehensively or concisely as you wish.

To fill in the document please click in the grey box, which will then expand as it is filled in.

Name: NTHOMENG JUSTINA MAJARA
Nationality: LESOTHO
Nominating State: LESOTHO
Legal Background (<i>mark as appropriate</i>): List A <input checked="" type="checkbox"/> B <input type="checkbox"/>
Gender: Female <input checked="" type="checkbox"/> Male <input type="checkbox"/>

Background

1. Why do you wish to be elected a judge of the International Criminal Court (ICC)?

I have always aspired to broaden my horizons beyond the borders of Lesotho and to bring a fresh perspective to the court as a female judge from a small nation in Africa. To represent women and other minority groups as well as the SADAC region and the African continent in the ICC as I believe I can better appreciate some of the socio-legal and political issues that pertain to the most vulnerable from an African and female perspective.

More often than not victims of war crimes are the most vulnerable groups, i.e. women and young children and it is important that I and other female Judges sit in the ICC so that delivery of justice is administered by a fairly representative court.

2. What do you believe are the most important challenges and achievements of the ICC in its first 15 years?

The most important challenges are firstly, the fact that three permanent members of the United Nations Security Council, i.e. the US, China and Russia have either not signed or ratified the Rome Statute which undermines the stature and legitimacy of the ICC.

Secondly, there is a dearth of successful prosecutions since its inception, with the first one only taking place in 2003.

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Thirdly, the court is still widely perceived to be targeting African States parties only which has resulted in some loss of confidence in its neutrality.

Fourthly, some member states have threatened to withdraw from or un-sign the Rome Statute, e.g. Burundi, South Africa and the Gambia casts the ICC in a bad light as well as poses a threat to its court's legitimacy and longevity.

Fifthly, the ICC is dependent on the cooperation of member states to hand in suspects and to assist it with the gathering of information to help successful prosecution of accused persons. The lack of cooperation by States parties poses a serious challenge to its efficient functionality. e.g. the refusal by the government of South Africa to arrest the Sudanese President Omar Al Bashir so that he could be brought before the ICC to answer charges against him despite its domestic courts having issued such an order.

The achievements of the ICC are firstly, its defined roles for its different organs especially the hearings by professional judges.

Secondly, the common law decision making process which enables professional Judges (not juries) to make decisions based on legal precedence and the knowledge of the law assures States parties of a higher level of certainty in the decisions of the ICC and of the protections of the rights of individuals including defendants and victims.

Thirdly, the appeals system provides checks and balances that create an atmosphere of fairness and justice for all in the case of either a guilty verdict or an acquittal.

Fourthly, the fact that since its inception more nations have joined the ICC is a show of its growing support especially among the smaller nations.

Fifthly, the adaptability and flexibility of the court to adjust to an ever-changing world such as its ability to include new crimes that are prosecutable before it such as the inclusion of the crime of aggression.. For instance, in its Kampala Conference in 2010, the UN Security Council included genocide, war crimes and crimes against humanity as a list of possible crimes that fall under the umbrella of the court.

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

The reluctance of states parties to hand in criminals that have been indicted by the court.

If this trend continues it will result in a loss of funds expended on a semi-functional court with very few successful prosecutions.

The third is the possible withdrawal of referrals by States Parties.

There is also the ever present risk of States Parties withdrawing their membership to the Rome Statute.

The lack of participation by the three permanent members of the UN Security Council will continue to hinder the advancement of the court.

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Nomination Process

4. What are the qualifications required in the State of which you are a national for appointment to the highest judicial offices? Please explain how you meet these qualifications.

In terms of the 1993 Constitutional provisions, a person shall not be qualified to become a puisne, judges, judge of appeal or Chief Justice unless she holds or has held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in any country outside the commonwealth that may be prescribed by Parliament or a court having jurisdiction in appeals from such court; or

He holds and has held one or other of has satisfied all the requirements for a university degree of Bachelor of Laws (LLB) including the National University of Lesotho or outside Lesotho, for a minimum total of five (5) years including practicing as a Barrister or Advocate or an Attorney in Lesotho or other countries.

5. Have you provided the statement required by Article 36(4)(a) of the Rome Statute and by the nomination and election procedure adopted by the Assembly of States Parties? If not, please provide an explanation for this omission.

The statement was provided by the Government of Lesotho per information from the Ministry of Foreign Affairs.

Legal System

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

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

Lesotho is part of Roman Dutch common law legal system.

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

None, that I can recall.

Language Abilities

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

- a) What is your native language?

Sesotho.

- 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. My knowledge and fluency

English is the other official language in Lesotho. It is also a medium of communication at all tertiary institutions. It is also the principal language used in all formal courts proceedings. I also obtained my LLM Degree from the University of London (King's College), taught at the National University of Lesotho, continually

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attend national, regional and international for a where the medium of communication is primarily 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?

None

List A or B Criteria

8. Your response to this question will depend on whether you were nominated as a List A candidate or a List B candidate. Since you may have the competence and experience to qualify for both lists, please feel free to answer both parts of this question to give the reader a more complete view of your background and experience.

- a) For **List A** candidates:

- Briefly describe your qualifications as a List A candidate.

I have been a Judge of the High Court and ex officio Judge of Appeal from 2005. The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings and the power to review the decisions or proceedings of any subordinate court or inferior court, court-martial, tribunal board or officer exercising judicial, quasi-judicial or public administrative functions under any law. The High Court is also a superior court of record and thus also have appellate jurisdiction.

In the almost fourteen years (14) of service as a Judge, I have dealt with criminal matters as a court with original and appellate jurisdiction as well as powers of review as stated immediately above. I have heard a determined many criminal cases, reviews and appeals.

I was also a professional Magistrate for almost ten (10) years and during the whole time, I dealt mostly with all sorts of criminal cases.

I further taught at the University for nearly five (5) years and the courses I taught included criminal procedure and evidence as well as criminology.

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

I am quite competent and most of my decisions since I was a Magistrate were upheld with a very few overturned and or amended by the superior courts.

My experience as a Lecturer of criminal procedure and evidence as well as of criminology, have given me an added advantage in this field.

- How would you describe your experience as a judge, prosecutor, counsel, or in another similar capacity, in criminal proceedings?

My experience as a Judge is more than satisfactory in my opinion having served as such for fourteen years to-date. I have now been the Kingdom's Chief Justice for three (3) years

- b) For **List B** candidates:

- Briefly describe your qualifications as a List B candidate.

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I am a Judge of the superior courts of Lesotho and have dealt with various civil cases including those dealing with human rights violations and interpretation and application of constitutional law. I was also a Research Associate with a regional organization known as Women and Law in Southern Africa Research and Educational Trust (**Wilsa**). I carried out research on issues involving women and the law as well as publishing my findings on how the law impacts on women and their rights, including their challenges and making recommendation for amendments.

I was also involved in a lot of educational and public awareness programs including holding radio programs, public gatherings, production and distribution of materials aimed at educating the general public.

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

I was a student of international law, and human rights law up to my LLM Degree, although at that level, I specialized in environmental law. However, my experience as a women's rights activist and later as a Judge of the superior courts of Lesotho, have adequately equipped me with the requisite competency in this field.

- How would you describe your professional legal experience that is of relevance to the judicial work of the ICC?

As a judge for fourteen (14) years to-date from a Roman-Dutch common law legal system, I believe I possess sufficient knowledge, experience and skills to can competently serve on the ICC as it also applies the common law decision making system. I apply legal precedence and

Other Expertise and Experience

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 believe I have special communications and people skills. In my day to day work, as a Judge, I deal with diverse individuals including difficult offenders, traumatized victims, unprofessional lawyers etc, with whom I have to interact at different levels using different communication skills which have more often than not yielded the desired results.

As the sitting Chief Justice, and head of the Judiciary, I deal with all sorts of administrative and other challenges, including ensuring that the wheels of justice are forever turning.

I also apply inter-personal skills to keep the judges, magistrates, professional and other staff motivated in spite of the fact that the entire judiciary is seriously under-resourced, is drowning from a huge backlog of cases, salaries and other benefits are miserly and generally having to operate all the courts on a shoe-string budget.

I further have to supervise problem judges, generally oversee management as well as liaise and interact with the heads of police, the military, the academia, the Executive and other politicians, the media, the lawyer association as wells as other relevant institutions in the discharge of my functions. Some of the people are not the easiest to deal with.

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10. 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.

I have never personally dealt with war crimes, genocide or crimes against humanity but I deal with serious cases of murder, fraud, rape, brutal assaults and other human rights but within the local context only. However, I believe that this experience can be successfully applied in the bigger context of the ICC.

For instance, some of the murder cases I have dealt with are gruesome and procurement of evidence is not always simple, however, I have managed to ably and decisively deal with them.

I have also dealt with cases of sexual violence which more often than not happens away from the public eyes, but I have successfully dealt with those, such challenges notwithstanding.

11. The ICC is a unique institution, and ICC judges will face a number of unprecedented challenges (including managing a regime of victims' participation and witness protection in situations 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.

a) Are you willing to participate in ongoing workplace training aimed at promoting legal innovation and coordination among all judicial chambers in adjudicating complex questions relating to law and policy?

I am more than willing to participate. I believe that training for judges and other professional must be continuous as there are always novel areas of the law not to mention than a court that sits as a panel has to have the skills to work together as a team especially in managing complex criminal trials.

a) Do you consider such training to be important?

I consider it to be of utmost importance. What happens at the national level is definitely different from what happens at the international level. Further, different jurisdictions have different rules and procedures, norms, and practices that need to be consolidated and maximally used to better manage and navigate complex cases

Experience (and perspective) related to gender crimes and crimes of sexual violences

12. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked. Please describe any experience you may have in dealing with sexual and/or gender-based crimes and where you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted.

My experience as a women's rights activist armed with a wealth of information on the incidences of sexual and/or gender-based crimes. Not only have I dealt with those a lot as a professional Magistrate and later as a Judge, but I dealt most especially with them as an activist when I was a Research Associate with **(Wilsa)**.

Victims-related work



13. Victims have a recognized right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. Please describe any experience that you may have relevant to these provisions and that would make you particularly sensitive to/have understanding of the participation of victims in the courtroom.
14. How would you address the need for a balance between victims' participation with the rights of the accused to due process and a fair and impartial trial? Do you have any relevant experience in dealing with this issue?
The only experience I have is with regard to victims of sexual violence/rape, in bail applications where victims' evidence is also taken into consideration in determining such applications.

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.
No. The only experience I have in this connection is as a Researcher into these areas with Wilsa.
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 may have issued within the scope of your judicial activity or legal experience?
I have done a lot of that as a women's rights activist in my research and recommendations to the powers that be to review laws that discriminate against women.
The right to a fair trial and equality before the law and freedom from discrimination form part of our Bill of Rights as contained in the Constitution of Lesotho and they echo the International Bill of Rights provisions and other relevant 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.
No. I have never dealt with a case where it was necessary for me to apply such provisions.

Other matters:

18. 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.
No.
19. 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, alien, age or citizenship status.

a) Do you disagree or have difficulty with this expectation?

No. I agree with it entirely.

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.

No. I have never.

20. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions. Members of the CICC and governments are concerned about the difficulties a judge may experience in independently interpreting articles of the Rome Statute on which his or her government has expressed an opinion.

a) Do you expect to have any difficulties in taking a position independent of, and possibly contrary to, the position of your government?

No. As a Judge at the national level I have had to make decisions against the government because that is true judicial independence. Further while I may be a nominee of the government, I am still an independent judge and in my view their role ends as at making a transparent and professionally-based nomination.

b) Article 41 requires a judge's recusal "in any case in which his or her impartiality might be doubted on any ground." Do you feel you could participate in a judicial decision involving a matter in which your government has an interest, such as on whether an investigation by your government into a matter of which the ICC was seized was genuine?

Yes, I believe I can do so.

21. 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?

Yes, I do.

b) Do you expect to be able to perform the judicial tasks described above on your own or with reasonable accommodation? If no, please describe the circumstances.

Yes, I do.

22. If there are any other points/issues you wish to bring to the attention of the CICC in this questionnaire, please feel free to address them here.

Not that I can think of at present.



Thank you.