COALITION FOR THE INTERNATIONAL CRIMINAL COURT

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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: Solomy Balungi Bossa

Nationality: Ugandan

Nominating State: Uganda

Legal Background (*mark as appropriate*): List A ☐ A B ☐

Gender: Female F☐ Female Male ☐

Background

1. Why do you wish to be elected a judge of the International Criminal Court (ICC)?
I want to be elected a judge of the International Criminal Court (ICC) because I bring value and passion for international criminal justice to it. I am a carrier judge with twenty years' judicial experience (1997 to date), nine and half of which I have served as Judge with the United Nations International Criminal Tribunal for Rwanda (UNICTR) (2003-2013), and six years as Judge with the United Nations Mechanism for International Criminal Tribunals (UNMICT) (2012 to date), three years as Judge with the African Court on Human and Peoples' Rights (ACtHPR) (2014 to date), and twenty years as Judge at the domestic level in the High Court and Court of Appeal/Constitutional Court.

My experience with both the UNICTR and UNMICT has deepened my interest, knowledge and skills in international criminal law and procedure as well as judicial practice and I aspire to use both to contribute to bringing those individuals that may have committed grave crime to account for their actions and to bring justice to the victims of such crimes. I am familiar with the substance and elements of genocide, crimes against humanity and war crimes, which both Tribunals I have worked for have jurisdiction to try. During the period I have served as Judge with UNMICT, I have dealt with a number of post-appeal issues concerning both *ad hoc* Tribunals.

Further more, hearing first hand accounts of the horrors of sexual and gender based violence that plays out in conflicts has opened my eyes to the dire need to address it for what it is, give redress to victims and put an end to impunity.

I am able to handle complex multi-accused trials and to work with people from diverse legal backgrounds.

I have long courtroom experience as a judge handling criminal matters. I am able to control proceedings to avoid needless consumption of time and to ensure a conducive atmosphere for witnesses and victims to testify without fear of being re-traumatised or putting them at risk of being identified or harmed.

I am conversant with the operation of most of the Rules of Procedure and Evidence of the ICC that are largely modeled on the *ad hoc* Tribunals and should quickly adapt to new innovations that are peculiar to the ICC. This exposure stands me in good stead to contribute to the improvement of the Rules and Regulations of the ICC.

I am familiar with deliberations in a panel setting and the collegiality that is required to ensure a quick and fair decision.

I believe that with my experience and exposure, I am in a position to contribute to the speed and quality of trials in the ICC.

Further more, now that the ICC is empowered to grant reparations, and allow participation of victims in its proceedings, I am keen to learn and implement the rules governing reparations. I bring experience on reparations from the ACtHPR, which like other human rights courts conducts trials concerning grave human rights violations committed against individuals by states and grants reparations in deserving cases.

I have rendered reparations judgments including in the case of *Norbert Zongo v. Burkina Faso* and *Issa Konate v. Burkina Faso*. In the *Zongo* case, the Court found that the state of Burkina Faso failed to investigate and prosecute those responsible for the death of Norbert Zongo and three others on account of their journalistic investigations, and that this exposed journalists to the risk of working under fear and intimidation. The ACtHPR found this a violation of the freedom of expression as well as the right to have a person's case heard by competent national courts under Articles 7 and 9 of the African Charter and article 66 if the revised Economic Community for West African States (ECOWAS) Treaty. I was part of the bench of the ACtHPR that granted reparations in the Zongo case for the mental anguish and suffering of their respective families.

In the Konate case, the ACtHPR found that the custodial sentence on defamation under the respondent state's criminal laws was a disproportionate interference with the exercise of the applicant's freedom of expression, and therefore amounted to a violation of the African Charter on Human and Peoples' Rights, the ICCPR, and the Revised ECOWAS Treaty. Again, I was part of the bench of the ACtHPR that granted reparations to Konate for his suffering.

I was part of the bench in the cases of *Alex Thomas v. Tanzania, Onyango v. Tanzania,* and *Abubakari v. Tanzania*, where the ACtHPR found the respondent state

to have violated the applicants' fair trial rights enshrined in Article 7(1) of the African Charter on Human and Peoples' Rights. The trial phase for reparations is on going in all three cases.

I have also domestic experience in criminal law and procedure of over 10 years where fair trial rights are the same as in international criminal trials. This experience will also benefit the ICC.

I have keen interest in continuing to implement international criminal norms through adjudication on international grave crime. I also believe that rendering justice and redress to victims has a bearing on and role in fulfilling the United Nations Sustainable Development Goals (UNSDG), particularly goals 3, 16 and 17. Goal 3 concerns ensuring healthy lives and promoting the well being for all at all ages. Goal 16 concerns promoting just, peaceful and inclusive societies for sustainable development. Goal 17 concerns strengthening the means of implementation and revitalizing global partnerships. If I dispense justice in international criminal law on the ICC, I will have made my contribution not only to international criminal justice but also in ending impunity and in fulfilling the stated UNSDGs, particularly with regard to women and children.

I am also keen to contribute to the non-judicial activities of the ICC, particularly on its outreach and the judicial training programs. I have participated in the UNICTR outreach program by presiding over moots for students of International Humanitarian Law (IHL) in Rwanda organized by the UNICTR, and in Arusha, Tanzania for students from Eastern and Southern Africa Universities organized by UNICTR in conjunction with the International Committee of the Red Cross. UNMICT continues to host the latter program in which, I continue to participate as judge. The process entails gauging students' performance and competence in IHL and identifying the best performing teams and individuals. I am willing to participate in similar and other activities of the ICC.

I can also have an input in the continuing judicial education and training program of the ICC. Throughout my tenure at the UNCTR, I received continuing judicial education and training concerning many aspects of trial including how to handle sexual violence and gender-based crimes.

On the whole, my qualifications and experience should bring a positively impact and enrich the proceedings of the ICC.

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

Let me start with the achievements. Since the establishment of the Nuremburg and Tokyo Tribunals and subsequently the *ad hoc* and hybrid tribunals, states, civil society and the world have refocused their attention on grave crime that shakes the human conscience. The establishment of the ICC epitomizes the peak of this valiant effort and attention. The ICC is the first standing institution with universal jurisdiction set up to enforce accountability for grave crime at the international level. One hundred and twenty four State Parties that how constitute the Assembly of State Parties (ASP) have ratified the Rome Statute that is now the bedrock of international criminal law and

justice. Building on the experience and legacy of the *ad hoc* and hybrid Tribunals, the Rome Statute has defined and included the elements of crime in Article 9 of the Rome Statute. Such definitions facilitate the work of the ICC and other courts that have domesticated the Rome Statute, in the interpretation of the crimes that they are enjoined to adjudicate upon.

The ICC has widened the scope of war crimes and has for the first time issued a judgment in the case of *Prosecutor v. Al Mahdi* finding him guilty of the war crime of intentionally directing attacks against religious and historic buildings in Timbkutu, Mali in June and July 2012.

In another first, the ICC has decided on the principles that are to be applied to reparations of victims of grave crime in the case of *Prosecutor v. Lubanga* thus entitling victims of grave crime to reparations.

The ICC has further blazed the trail of the principle of complementarity. Hitherto, the Statutes of the *ad hoc* international criminal Tribunals had placed the primary responsibility to investigate and prosecute those responsible for grave crime in the *ad hoc* Tribunals, which made referrals of cases of certain categories of lower cadre participants to concerned states. With the advent of the Rome Statute, states now bear the primary responsibility. The ICC only steps in where a state is unable or unwilling to act. States now have the first bite. Trials of perpetrators of grave crime can now take place in those domestic jurisdictions that have ratified and domesticated the Rome Statute, thus bringing justice nearer to the victims. Indeed the principle of complementarity has facilitated and inspired the prosecution of many cases in international and domestic courts, including the case of *Hissen Habre* in Senegal, before a Special Chamber set up by the African Union.

The Rome Statute has also raised the bar and standards for national legislation on grave crime. Those seeking to domesticate the Rome Statute cannot afford to ignore this bar if they are to establish an appropriate domestic legal framework. International Criminal Law embodied therein has placed duties and responsibilities on states and on combatants and non-combatants in times of conflict to ensure preservation of life and property and humane treatment for all and of bringing those who commit grave crime to account for their crimes.

Another milestone is holding steadfast the immunity principle. This principle holds that no one is above the law and that leaders are not immune from prosecution on account of the offices they hold. This principle is embodied and entrenched in the Rome Statute, which applies to all persons without any distinction based on official capacity, thus sending a strong signal to leaders that they will not be exempted from prosecution should they participate in grave crime. In particular, official capacity as head of government or parliament, an elected representative or government official shall in no case exempt a person from criminal responsibility under the Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence. Article 27(2) of the Rome Statute further provides that immunities or special procedural laws which may attach to the official capacity of a person, whether under national or international law shall not bar the Court from exercising its jurisdiction over such persons.

The immunity principle has inspired the trials by international courts of Charles Taylor of Liberia before the Sierra Leone Court, Prime Minister Kambanda of Rwanda by the UNICTR, Slobadan Milosevic of the former Yugoslavia by the UNICTY, and the indictment of sitting heads of state including President Uhuru Kenyatta and his Vice President William Ruto, and President Bashir of Sudan before the ICC.

The decision of the Trial Chamber of the ICC in the recent case of *The situation in Darfur on the case of the Prosecutor v. Bashir* has re-affirmed the principle that sitting heads of state are not immune from prosecution for grave crime.

With regard to victims, witnesses, and affected communities, the ICC is executing a stronger and novel mandate. This is especially so with women and children. Article 68 of the Rome Statute recognizes the right of victims not only to justice but to participate in proceedings against accused persons suspected of having caused their suffering and where possible receive reparations for injury suffered.

The ICC has established a Trust Fund for Victims under Article 79 of the Rome Statute that receives and disburses funds for victims including funds received from convicted persons.

Furthermore, the ICC has established a robust outreach program to ensure proper investigation and protection of victims and witnesses in ICC situation countries, and their access to justice and reparation. This has facilitated understanding by victims and affected communities of the ICC proceedings, thus promoting its image. In Northern Uganda, the ICC is giving live feeds of its proceedings in the *Dominic Ongwen* trial. This approach makes for better understanding of the ICC, its role and operations. It also underscores the importance of victims and witness' testimony.

Despite the achievements, the ICC still faces challenges. Some relate to its internal processes and management. Case management remains a major challenge. Timely and thorough investigations on prioritized crimes would avoid collapsing cases at the trial stage and improve the speed and quality of proceedings and judgments.

Continuing education and training for all the arms of the ICC is absolutely necessary. Both would improve on working methods and output. The ICC is doing its best to deal with these and other internal challenges within the means available to it.

The biggest challenges in my view are external to the ICC. The first challenge is that the Rome Statute is yet to be ratified universally. Access to the international justice system is therefore limited to the states that have ratified the Rome Statute, except in those cases where the United Nations Security Council (UNSC) decides to refer a matter to the ICC like it did in the case of President Bashir of Sudan.

Furthermore, even some of the countries that have ratified the Rome Statute are yet to domesticate it. This is still the case with some African countries. This makes it difficult to pursue justice at the domestic level and to fully implement the complementarity principle. It may also result into an overwhelmed ICC, whose capacity is already limited, given the number of ongoing conflicts and the limited available funds for its operations. The ASP and the ICC with the support of the CICC need to strengthen efforts to ensure domestication of the Rome Statute and on building capacity for states

and their institutions, in particular, the justice, law and order sector, to internalize and apply international criminal law. This will make it easier to pursue justice for victims at the domestic level and to fully implement the principle of complementarity.

Another challenge relates to the threat by some African states to quit the ICC. This has called into question the cohesion of the ASP as it has generated rifts within its ranks. This stems from the failure of some African states to arrest President Bashir, despite a standing warrant of arrest and may be a result of failure to understand the duties and obligations of state parties under the Rome Statute and the overriding principle that victims of grave crime need to access justice. It points to the need for an enhanced dialogue between states within the ASP and national institutions and civil society. The decision of the ICC Trial Chamber in characterizing the failure of South Africa to arrest Bashir as being contrary to its international obligations under the Rome Statute is a step in the right direction.

There is a threat to the immunity principle. The African Union (AU) states have enacted the Protocol on Amendments to the Statute of the African Court of Justice and Human Rights (the Malabo Protocol) of 2014. It has not yet secured the requisite 15 ratifications that would make it operational. Only five states have so far signed it. This Protocol has expanded the jurisdiction of the African Court of Justice and Human Rights beyond the original jurisdiction of a court of justice and human rights. It now includes international criminal jurisdiction. This is a positive development in that it enables Africa to respond to grave crime through a mechanism of its own, where a state is unable or unwilling to act. It could offer justice to victims in this regard. It also expands the scope of international crimes to include aggression, among others.

However, the Malabo Protocol threatens to water down the immunity principle embodied in the Rome Statute by exempting leaders and their close associates from prosecution. The immunity clause in the Malabo Protocol provides that no charges shall be commenced or continued by the African Court of Justice and Human Rights against any serving African Head of state or government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions during their tenure of office. The Malabo Protocol does not define the term “senior state official”. This provision is in direct conflict with Article 27(2) of the Rome Statute that I have already cited. The ICC will have a big problem reconciling both provisions, with the international obligations of the State Parties, when the Malabo Protocol becomes operational.

The ICC has another challenge of raising adequate funding for its operations. The world atmosphere is currently characterized by conflict situations including in Africa, the Middle East, Afghanistan, Ukraine and Georgia. Grave violations of humanitarian law and other grave crimes provoked by the conflicts might require the intervention of the ICC. This will be difficult with the limited available funds. Some countries still fail to pay their dues to the ICC on time, while its major funders insist that there should be no rise in the budget of the Court. This has implications for the expansion of the work of the Court if situations that should be addressed are left unaddressed because of inadequate funding. The ICC will be seen to have failed the victims of grave crime. The ICC is a precious baby that needs to be nurtured and states need to consider seriously obligations that they have willingly assumed.

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

The biggest challenge confronting the ICC and the Rome Statute system is politics and the worsening political landscape. States, including super powers are retreating from multilateral cooperation. The ICC requires cooperation of all states, even if they are not state parties to the Rome Statute in order to confront impunity with all its ramifications. Some powers have demonstrated that they are against multilateralism by speaking against it and some others have withdrawn from such treaties.

Another major challenge is deepened dialogue within the ASP and the world at large on prevention of conflicts. States with different legal cultures have previously come together for the greater good of humanity and established international and regional norms that seek to create a world free of senseless violence, that is at peace and where all persons, regardless of their gender or social status are able to enjoy the fruits of their labor without discrimination hence the existence of treaties including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of discrimination Against Women, the Torture Convention and the African Women Protocol. States have even set targets to govern their development as is exemplified by the UNSDGs. This demonstrates strength in unity. Unfortunately, this strength is not sufficiently exploited with regard to grave crime and the ICC.

States should take a serious stance against violent crime within and without its borders and deepen dialogue to prevent and manage conflicts. There exist permissive tolerance levels of violence in society especially against women and children, even during peacetime. States should assist in transforming societal attitudes that view violence as a means of solving problems. They should enact appropriate domestic laws that contribute to the prevention of conflict including domestic violence, criminal laws and criminal procedure codes acts, matrimonial property acts and all necessary laws to minimize violence.

At both the domestic and international levels, states, civil society and communities need to deal with prevention of conflicts by addressing their sources, which vary. Conflicts may be caused including by political, economic, social, cultural or environmental problems. Whatever the source, women and children suffer disproportionately as they are targeted for rape, sexual violence and other gender based crimes. Rape is used as a weapon of domination and destruction of ethnic groups. Men may also be targeted in different ways. It is therefore important for states to come to grips with the consequences of conflict, which include massive loss of lives, moral and physical torture, senseless violence, damage to property, institutions, land and the economy and destruction of the social fabric. The adage that prevention is better than cure still holds true today.

There is need to re-invigorate, re-focus and deepen the debate on the reasons for setting up the ICC (which appear to receding in the minds of some), the relationship of state parties to the ICC, their duties and obligations especially to the victims of grave crime in their own backyards and beyond, if meaningful complementarity is to be achieved.

State Parties also need to focus on the larger picture of the UNSDGs. Furthermore, for the dialogue to continue to be meaningful, it should be based on democracy and on equality of state parties.

The ASP and the CICC should continue to galvanize states to build capacity for institutions and civil society, to adopt inclusive social and economic development policies, conflict management mechanisms, and involving people in decision making at all levels.

Another negative aspect is that the interest and commitment of states, particularly the Super Powers to eliminate grave crime and enforce accountability appears to be waning or even lacking. Some members of the UNSC do not subscribe to the Rome Statute and may instead of making a referral decide not to do so if it does not suit their interests, thus weakening the protection given to victims in countries that are not parties to the Rome Statute. Thus perpetrators of grave crime continue to go scot-free including in Syria, Iraq, the Central African Republic, Afghanistan, and Burundi. It is also unfortunate that some members of the UNSC have been implicated in what is happening in some of the complex conflicts that are ongoing around the world. However, the UNSC has already referred the cases of Libya and Darfur to the ICC and need to be commended in this regard.

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.

The qualifications required in Uganda for appointment to the highest judicial offices are be found in Chapter 8 of the Constitution of Uganda (the Constitution) that provides for the administration of justice. Under Article 129(1) of the Constitution, the Supreme Court, the Court of Appeal, the High Court and such subordinate courts as the law may establish by Parliament shall exercise judicial power in Uganda. Justices on the Supreme Court, the Court of Appeal and the High Court constitute the highest judicial officers in Uganda.

With regard to my current designation, I am a sitting justice of Appeal. Article 142(1) of the Constitution provides that the Chief Justice, the Deputy Chief Justice, the Principal Judge, a justice of the Supreme Court, a justice of Appeal and a judge of the High Court shall be appointed by the President acting on the advice of the Judicial Service Commission and with the approval of Parliament. I was appointed in accordance with that procedure.

The qualification requirements for the Court of Appeal are based on its jurisdiction. Article 134(2) of the Constitution provides that the Court of Appeal has jurisdiction to hear appeals from such decisions of the High Court as may be prescribed by law.

The qualifications for appointment of a justice of Appeal are laid down in Article 143(d) of the Constitution that provides that a person shall be qualified for appointment as a justice of Appeal, if he or she has served as a judge of the High Court or a court having similar or higher jurisdiction or has practiced as an advocate for a period not less than ten years before a court having unlimited jurisdiction in civil and criminal matters or is a distinguished jurist and an advocate of not less that ten years' standing.

I meet the above qualification requirements in that I have combined legal and judicial practice experience of more than thirty years, twenty of which I have served as a judge in international, regional and national courts.

I am a sitting judge of the UNMICT, the ACtHPR, and the Court of Appeal/Constitutional Court of Uganda. I have previously served as Judge with the UNICTR, the East African Court of Justice (EACJ) and the High Court of Uganda. The EACJ is a court of justice for the East African Community (EAC) nations of Kenya, Uganda, Tanzania, Rwanda and Burundi. At the time I served on it, only three partner states of Uganda, Kenya and Tanzania constituted the EAC. It has jurisdiction to hear applications for the interpretation of the EAC Treaty and to hear disputes on employment of staff. It also has jurisdiction to entertain cases that challenge acts or Acts of states and institutions that are alleged to violate the EAC Treaty. It further has human rights jurisdiction that has not yet been operationalized.

Before I became a Judge, I was a private legal practitioner before the Courts of Judicature in Uganda for 10 years (1988-1997). I also lectured at the Law Development Centre of Uganda from August 1980 to August 1997. The Law Development Centre is a post-graduate institution that trains and prepares lawyers for the bar and bench.

During the years I spent in private legal practice, I was also an activist on human rights, gender equality and gender justice.

I continue membership in professional organizations to update my knowledge of substantive law and emerging issues and to hone my skills as judge and activist.

Given my legal and judicial practice experience and exposure as a judge and advocate, I consider that I possess the necessary qualifications and experience as Justice of the Court of Appeal of Uganda.

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.
Yes. I have 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 State Parties.

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?
My country Uganda is part of the common law legal system having been a protectorate of the British Empire during the colonial period.

b) Please describe any knowledge or experience you have working in or with other legal systems.
I have worked as Judge in a hybrid system with UNICTR and UNMICT that combine the common law and civil law systems. My experience in the United Nations Criminal Justice system is coming to 13 years. I served nine and half

years as trial judge with the UNICTR and have so far served six years as judge with UNMICT.
I am also a sitting judge with the ACtHPR, which is a human rights court with similar jurisdiction to the European Court of Human Rights and the Inter-American Court of Human Rights. My work in the ACtHPR has exposed me to the procedures and practice of human rights courts, the substance and jurisprudence of human rights and the concept of reparations for grave violations of human rights.

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?
My native language is Luganda, one of many local languages spoken in Uganda.

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 have excellent knowledge of both the spoken and written English language.

Regarding my experience with the English language, Article 6 of the Constitution provides that the official language of Uganda is English. It is the language of instruction from primary education through tertiary education. It is also the language of the Courts of Judicature. As a result, I have received all my education in the English language from elementary, primary and university education.

I have conducted lectures for students in the English language. I also conduct judicial proceedings and written judgments at the international, regional and national levels in English. I am therefore completely fluent in it.

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 elementary knowledge of the French language. I have no experience working in the French language.

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 am a judge with twenty years' judicial experience and exposure to: international and national criminal law and judicial practice, rules of procedure and evidence in international and national law, international human rights law,

international humanitarian law and constitutional law. I have acquired this experience through serving as judge on various international, regional and national courts with jurisdiction to try cases on genocide, crimes against humanity and war crimes. I have served for nine and half years' as trial judge with UNICTR; six years as Judge of UNMICT; three years as Judge with ACtHPR; five years as Judge on the East African Court of Justice; four years as Judge of the Court of Appeal/Constitutional Court of Uganda, and sixteen years as Judge of the High Court of Uganda.

As a judge on the two international criminal courts mentioned above, I have sat in pre-trials involving preparation of cases for trial. This entailed hearing the parties and making decisions on all preliminary motions including challenges to jurisdiction, alleged defects in the indictment, seeking severance of counts joined in one indictment, seeking separate trials and objections based on refusal of a request for assignment of counsel.

Regarding full trials, I have dealt with full trials and sentencing judgments, depending on whether the accused has pleaded guilty or not. Trial judges could be different from or be the same as Pre-Trial Judges for any case. I have sat in the following sentencing judgments:

(i) *Prosecutor v. Paul Bisengimana Case No. ICTR-00-6—T*
Bisengimana was Bourgmestre of Gikoro commune in Kigali-Rural prefecture. He was convicted on his own plea of guilty of aiding and abetting the commission of extermination as a crime against humanity. He was sentenced to 15 years' imprisonment.

(ii) *Prosecutor v. Joseph Nzabirinda Case No. ICTR-2001-77-T*
Nzabirinda was a former youth leader in Butare prefecture. He was found guilty of murder as a crime against humanity on his own plea of guilty and sentenced to 7 years' imprisonment.

I have participated in the following full-trials:

(iii) *Prosecutor v. Emmanuel Ndidabahizi Case No. ICTR-2001-71-1*
Emmanuel Ndindabahizi was Minister of Finance in the Interim Government that governed Rwanda between April and July 1994. He was charged with genocide, extermination as a crime against humanity, and murder as a crime against humanity. He was found guilty of genocide, extermination and murder as a crime against humanity and sentenced to imprisonment for the remainder of his life.

(iv) *Prosecutor v. Pauline Nyiramasuhuko et-al Case No. ICTR-97-21*
This was a joint trial of 6 accused persons who were initially separately indicted but accused of the same or different crimes committed in the course of the same transaction. It was the biggest and most complex trial in the UNICTR.

The accused served in various administrative capacities during the events of April to July 1994 in Rwanda. Pauline Nyiramasuhuko was Minister for Women's Development in the Interim Government. Her son, Shalom Arsene Ntahobali was an Interehamwe/student. Officials in the administrative echelons

included Sylvain Nsabimana (Case No. ICTR 96-21) *Prefet* of Butare Prefecture, Lieutenant Colonel Alphonse Nteziryayo (Cae No. ICTR-97-29), of the Rwandan National Army, who replaced Sylvain Nsabimana as Prefet of Butare Prefecture; Joseph Kanyabashi (Case No. ICTR-96-15), the long-serving Bourgmestre of Ngoma Commune; and Elie Ndayambaje (Case No. ICTR-96-8), Bourgmestre of Muganza Commune.

Pauline Nyiramasuhuko was convicted of genocide, conspiracy to commit genocite, rape as a crime against humanity (making her the first woman to be convicted of rape) and violence to life as a war crime. She was sentence to life imprisonment.

Ntahobali was found guilty of genocide, extermination as a crime against humanity, and other inhuman acts as a crime against humanity. He was sentenced to life imprisonment.

Sylvain Nsabimana was found guilty of genocide, extermination as a crime against humanity, and violence to life as a war crime. He was sentenced to 25 years' imprisonment.

Joseph Kanyabashi was found guilty of genocide, direct and public incitement to commit genocide, extermination as a crime against humanity, persecution as a crime against humanity, and violence to life as a war crime. He was sentenced to 35 years' imprisonment.

The sentences were reduced on appeal on account of the length of the trial.

(v) *Prosecutor v. Callixte Nzabonimana Case No. ICTR-89-44D-T*
I presided over the trial of Callixte Nzabonimana, who was Minister of Youth and Associative Movements in the Interim Government. The Prosecution charged him with genocide, conspiracy to commit genocide, direct and public incitement to genocide, and extermination and murder as crimes against humanity. All charges stemmed from his alleged activities in Gitarama prefecture during the events of April to July 1994. The Trial Chamber found him guilty of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and extermination as a crime against humanity. He was sentenced to imprisonment for the remainder of his life. The Appeal Chamber upheld this verdict and sentence.

(vi) *Prosecutor v. Augustin Ngirabatware Case No. ICTR-99-54-T*
Ngirabatware was Minister of Planning among other responsibilities in the Interim Government. The Prosecution charged him with genocide, conspiracy to commit genocide and extermination and rape as crimes against humanity. He was sentenced to 35 years' imprisonment. The Appeal Chamber found

him not guilty of rape and reduced the sentence to 30 years' imprisonment.

I have sat on various benches that heard contempt and false testimony cases in the UNICTR. The Trial Chamber in the case of *Nyiramasuhuko et al.* investigated two allegations of false testimony and issued an indictment in the case of witness QA.

In the case of *Nzabonimana,* the Trial Chamber ordered investigation by independent *amicus curiae* to establish whether efforts were made to influence the testimonies of witnesses ANAU and ANAS, and whether the identity of witness ANAT had been disclosed by the defense. Based on the *amicus* report, the Trial Chamber found a *prima facie* case of contempt of the Tribunal against the defense investigator for threatening witness ANAS and a *prima facie* case against Co-counsel for the defense for attempting to bribe witness ANAU. It therefore initiated contempt proceedings against both and directed them to be prosecuted by independent *amicus curiae* to be appointed by the Registrar.

I have sat as a member of the respective benches that prepared the following cases for trial:

(vii) *Prosecutor v. Tharcisse Rwenzaho Case No.ICTR-97-31-DP*
(viii) *Prosecutor v. Hormidas Nsengimana Case No. ICTR-01-69*
(ix) *Prosecutor v. Augustin Ngirabatware Case No. ICTR-99-54T*

In UNMICT, I have sat on a Pre-Trial bench that prepared the case of *Prosecutor v. Stanisic and Simatovic Case No. MICT-15-96-PT.*

I have also handled various post-appeal applications that concern the two former *ad hoc* Tribunals.

As a member of various Pre-Trial, Trial Chambers and Post-Appeal Chambers, I have issued a substantial number of decisions concerning the above cases that can be found on the transcripts or websites of the two Tribunals.

Throughout my judicial carrier, I have rendered many judgments that have addressed complex legal issues and advanced the status of women, the rights of victims of simple and grave international crime, and human rights abuses.

Prior to joining the bench, I practiced law for 10 years as advocate of the Courts of Judicature in Uganda. I represented accused persons and appellants in the High Court and Court of Appeal respectively on charges including murder, rape, kidnapping with intent to murder, defilement and armed robbery. I have therefore engaged in active criminal law practice from the beginning of my carrier.

I also lectured at the Law Development Center of Uganda for 17 years. This is a post-graduate institution that imparts practicing skills and ethics to lawyers in preparation for deployment as practicing lawyers and magistrates. It is also responsible for publications including law reviews and law reports. I mainly taught the Law of Domestic Relations.

As a human rights activist, I represented indigent women in court including concerning their rights to matrimonial property, divorce and custody of children, inheritance rights and separation.

Through activism, I founded and/or chaired or was member of various international, regional, and national non-governmental organizations dealing with human rights, constitutional governance, and the rights of people living with HIV and AIDS. They included the International Bar Association Human Rights Institute, the International Commission of Jurists, the International Association of Women Judges, the African Center for Democracy and Human Rights Studies, the East African Law Society, Kituo cha Katiba (the East African Center for Constitutional Development), the Uganda Law Society, the Legal Aid Projects of the Uganda Law Society and the Legal Aid Clinic of the Lae Development Center, the Uganda Network on the Law, Ethics HIV and AIDS, and the National Organization for Civic Education and Election Monitoring. I have also chaired Uganda Government institutions linked to human rights including the Law Council and the Interim National Steering Committee on Community Service.

I have served as trainer with the Jurisprudence of Equality Project with the International Association of Women Judges.

I am a member of professional organizations including the International Commission of Jurists, the International Association of Women Judges, the Uganda National Association of Women Judges, the International Federation of Women Lawyers (FIDA) Uganda, the Uganda Judicial Officers Association and the International Governance Alliance.

The above experience speaks to my long judicial carrier in criminal law, human rights especially as they relate to women and children and constitutional governance.

- How would you describe your competence in criminal law and procedure?
  As outlined above, my competence in criminal law and procedure is high and intense. Conducting pre-trials, trials or appeals requires knowledge of the substance of criminal law, procedure and evidence. I have been practicing all for the last 30 years first as an advocate at the bar for 10 years and subsequently as a judicial officer for 20 years.

As an advocate, I represented accused persons and appellants on various charges including kidnapping with intent to murder, rape, defilement (rape of minors), manslaughter, and armed robbery charges in the High Court and Court of Appeal of Uganda. Proof of elements of the offence is essential for discharging the standard and burden of proof.

As a trial Judge of the High Court of Uganda until August 2013, I sat in many criminal trials involving charges of murder, manslaughter, rape, defilement, and aggravated robbery as part of my docket. The offences and elements are laid down in the Penal Code Act and other laws. I am also familiar with criminal procedure as laid down in the Trial on Indictments Act and the Criminal Procedure Code Act and the jurisprudence that has interpreted their application. Both Acts govern criminal proceedings at the domestic level. I thus know the rules governing the issuance of indictments, the content of indictments, trial preparations, how to handle guilty pleas, confessions, and evidence of children, examination in chief, cross-examination and re-examination of witnesses, fair trial principles including the right of accused: to be present; to be represented by Counsel of his/her choice or to be granted legal representation, the right to be tried by an impartial and competent court, the right to keep silent, the right to present a defense and to call witness, equality of arms and judgment writing.

As an appellate Judge of the Court of Appeal, I handle criminal appeals from decisions of the High Court and subordinate courts.

As a judge with UNICTR and UNMICT, I have heard and decided cases in international criminal law concerning several accused persons. The offences I have dealt with include genocide, crimes against humanity, and war crimes. I have addressed complex legal issues in single and multi-accused trials.

Some of the interpretations that we have made as a bench on individual criminal responsibility and superior/command responsibility have widened the net to catch big fish that would otherwise go unpunished. As an example, we distinguished aiding and abetting by tacit approval from aiding and abetting by omission in the *Nyiramasuhuko et al* case concerning Sylvain Nsabimana's culpability.

On all the benches and in all the trials on which I have sat, fair trial rights came sharply into focus. They are basically the same in international and domestic proceedings and the jurisprudence generated at UNICTR and UNMICT covers most aspects of it, especially with regard to disclosure of evidence and equality of arms.

Furthermore, my service as a Judge with UNMICT has enabled me to handle more cases from both the UNICTR and UNICTY and thus consolidate my knowledge of international criminal law and procedure. I have handled a pre-trial in the re-trial of the case of *Prosecutor v. Stanisic and Simatovic MICT-15-96-P5.* In this case, the Pre-Trial chamber grappled with the difficult question of the scope of a re-trial and the nature of the evidence that can be admitted as proven from a previous trial. The trial is ongoing.

I have handled many post-appeal applications including requests for early release, review of judgment, and variation of protective measures from both *ad hoc* Tribunals in my capacity as UNMICT judge.

I have also participated in amendments to the Rules of Procedure and Evidence through plenary sittings of UNICTR and UNMICT.

As Judge of the ACtHPR for the last three years, I have handled and decided many applications alleging human rights violations against state parties to the African Charter that have made a declaration entitling individuals and NGOs to access the ACtHPR. Most of the cases entail examination of domestic criminal proceedings to determine whether they comply with Article 7 of the African Charter and Article 14 of the ICCPR, both of which concern the right to a fair trial. The cases heard in this regard include *Alex Thomas v. Tanzania (20 November 2015), Onyango v. Tanzania (18 March 2016), and Abubakari v. Tanzania (3 June 2016).* I continue to sit in many other ongoing cases that are challenging fair trial rights in domestic proceedings.

Before I joined the bench, I was a human rights activist and represented many indigent women in court to ventilate their rights including security in the home, matrimonial property, custody of children and inheritance rights.

I have rendered may judgments that have addressed complex legal issues and advanced the rights of victims of simple and grave international crime and addressed and redressed human rights violations.

- How would you describe your experience as a judge, prosecutor, counsel, or in another similar capacity, in criminal proceedings?
Being a judge in criminal proceedings is a heavy responsibility as it entails managing the proceedings in a timely and fair manner and hearing all the parties without fear or favor. Balancing speedy and fair justice with judicial economy is a challenge.

  Criminal proceedings may be long and complex and require stamina, perseverance and resourcefulness. Adherence to ethical conduct, ensuring freedom from bias, actual or perceived, and independence of mind are extremely important aspects of a judge's work. Justice should be dispensed based only on the facts and the law.

  Preparation is essential for timely and successful completion of any criminal proceedings. This entails reading all necessary materials and understanding the facts and issues before the trial starts. This goes hand in hand with timely and pertinent investigations by the prosecution and defense, whatever stage of the proceedings the trial may be. Lack of preparation by the parties or judge may result into delays thus denying the parties timely justice.

  It is important for parties to know the extent of the full case against them so that they can make adequate investigations and preparations. In this regard, timely disclosure of materials and evidence on which either party intends to rely is of

the utmost importance. Disclosure from the prosecution should include those materials that are favorable to the defense case and vice versa.

The accused should be present during his/her trial, unless he/she deliberately chooses not to attend court proceedings. The court then has to make a decision to proceed without him/her after affording him/her opportunity to appear. There may also be occasions where the conduct of the accused leads to a decision that his/her right to be present during trial is forfeited. In my experience, such a decision should however not be taken lightly. In the *Nzabonimana* case, the accused initially refused to attend trial. The trial was adjourned on three occasions to enable him make up his mind. When he refused to turn up, we ordered the trial to proceed in his absence. He however subsequently turned up for the rest of his trial.

In domestic trials conducted under the common law system, more attention is paid to the accused than to the victims of crime. Victims are viewed more as witnesses than as the center and focus of the trial. One therefore needs to take special care to ensure that the victim understands and follows the proceedings and that his/her concerns about the trial are addressed.

A courtroom is an intimidating atmosphere for victims and witnesses. A word of welcome from the bench goes a long way in putting them at ease. Brief explanations on how the proceedings will unfold are required as they facilitate understanding of the nature of court proceedings and enable them to give their testimonies in a conducive atmosphere. This was the practice in the UNICTR.

All must observe courtesy and etiquette in the courtroom. It requires the judge to lead by example. This can be a challenge where counsel is rude, vulgar or/and impolite or when a witness avoids answering questions. Reining in such a counsel or witness requires resoluteness and firmness. Remaining even-tempered in the face of discourteous behavior is not easy but all conduct that might derail the proceedings must be nipped in the bud.

Complex international criminal trials call for understanding of the context in which has taken place and hearing experts to throw light on such context might be inevitable. Whether a conflict is non-international or international matters as it affects the nature of the offences that may be committed. In the Butare trial, the Trial Chamber heard 6 experts who were very helpful in identifying the conflict and interpreting some of the landmark occurrences.

In conflict situations, the overriding principle is the preservation of life in dignity, which requires protection of non-combatants and even combatants in certain situations, and prisoners of war and avoiding wanton destruction of property.

Handling of a protected witness and ensuring that he/she is not identified is also a challenge and requires careful attention to all questions put by the parties and to answers by the witness. When such a witness renounces protection, it is equally important to ensure that she/he understands and appreciates the implications of testifying in her/his name.

Minors and women who are victims of sexual violence need more sensitivity, attention and protection to encourage them to overcome their fears and testify. As much as possible, their testimony should be heard in camera and handled in such a way that their dignity and security is preserved. Questions that are meant to embarrass or bring into disrepute the character of victims of sexual violence should be disallowed. Defense counsels are wont to discredit the character of such victims, which is of no consequence in international criminal law.

Witnesses should testify freely. A judge should not allow counsel to ask leading questions so as to preserve the veracity of witnesses. No minimum or maximum number of witnesses is required to prove a fact. However, as Judge or as a trial chamber, I/we have to decide on what is a reasonable number and this may be a challenge. This is usually done taking into account the number of charges against the accused person. It is however not the responsibility of a judge or trial chamber to pick which witness should testify. That is the duty of counsel calling the witness.

Control of proceedings to avoid needless consumption of time is embodied in the rules of international criminal tribunals and is of the utmost importance. It is the duty of a judge to allow counsel to put only those questions that are relevant to the party's case. This requires concentration, alertness and attentiveness on the part of the judge. It is important to ensure a courtroom atmosphere that will facilitate a speedy but fair trial.

Control also entails making spontaneous but well-thought out decisions including on objections and matters of law that may arise during trial with or without prior notice. In a panel setting, it is necessary to consult colleagues before most interlocutory decisions are made. However, there might be decisions that it is prudent as presiding judge to make including where the questions is obviously leading or irrelevant, in order to facilitate timely completion of trial and in the interest of judicial economy. Some decisions may require short adjournments if they require extensive consultations.

Ensuring equality of arms is another challenge. All parties should be afforded the same time, facilities and opportunities to present their respective cases. The accused should be provided with Counsel where if the offence is serious and carries a heavy penalty and he/she in unable to pay for one. In international criminal trials, the accused must be provided with Counsel if he/she is unable to pay for one of his/her choice. Unfortunately, in most instances, the prosecution has more human and financial resources than the defense. This therefore remains a challenged principle.

At the end of the evidence phase, parties should be given an opportunity to address the court on their respective cases before the court passes judgment.

Judgment writing is both an art and a science. Often, judgments are long and making them short and readable without omitting the necessary details is a challenge. It is important for me as a judge not to give any indication of my position on the case until judgment is delivered.

If an accused is found guilty, it behooves me to hold a sentencing hearing and take into account mitigating and aggravating circumstances as well as the convict's personal circumstances before I sentence her/him. Even with the assistance of jurisprudence, deciding on appropriate sentence is a challenge as circumstances and culpability may differ.

A good judgment must show an appreciation of the facts, the law and the evidence. It must also take into account the submissions of the parties.

Judgment should be delivered in timely fashion so as not to delay justice.

Hearing and judging cases is a stressful job and a judge has to find a way of dealing with stress outside working hours. As a judge, I need security of the person and of tenure and I have to be brave and fearless. It is however fulfilling when justice is done in a case, either by convicting the accused or acquitting her/him.

b) For **List B** candidates:
- Briefly describe your qualifications as a List B candidate.

I am a jurist of more than thirty years experience, first as law teacher, a private practitioner in criminal law and subsequently as a judge hearing and deciding criminal cases at the international and national levels. I have experience and exposure to international and national criminal law and judicial practice, rules of procedure and evidence, international human rights law, international humanitarian law and constitutional law. I have acquired this experience through serving as judge on various international, regional and national courts. I have served as follows: nine and half years' as trial judge with UNICTR; six years as Judge of UNMICT; three years as Judge with ACtHPR; five years as Judge on the East African Court of Justice; four years as Judge of the Court of Appeal/Constitutional Court of Uganda, and sixteen years as Judge of the High Court of Uganda.

As a judge on the two international criminal courts mentioned above, I have sat in pre-trials involving preparation of cases for trial. This entailed hearing the parties and making decisions on all preliminary motions including challenges to jurisdiction, alleged defects in the indictment, seeking severance of counts joined in one indictment, seeking separate trials and objections based on refusal of a request for assignment of counsel.

Regarding full trials, I have dealt with full trials and sentencing judgments, depending on whether the accused has pleaded guilty or not. Trial judges could be different from or be the same as Pre-Trial Judges for any case. I have sat in the following sentencing judgments:

(i) *Prosecutor v. Paul Bisengimana Case No. ICTR-00-6—T*
Bisengimana was Bourgmestre of Gikoro commune in Kigali-Rural prefecture. He was convicted on his own plea of guilty of aiding and abetting the commission of extermination as a crime against humanity. He was sentenced to 15 years' imprisonment.

(ii) *Prosecutor v. Joseph Nzabirinda Case No. ICTR-2001-77-T*

Nzabirinda was a former youth leader in Butare prefecture. He was found guilty of murder as a crime against humanity on his own plea of guilty and sentenced to 7 years' imprisonment.

I have participated in the following full-trials:

(iii) *Prosecutor v. Emmanuel Ndidabahizi Case No. ICTR-2001-71-1*
Emmanuel Ndindabahizi was Minister of Finance in the Interim Government that governed Rwanda between April and July 1994. He was charged with genocide, extermination as a crime against humanity, and murder as a crime against humanity. He was found guilty of genocide, extermination and murder as a crime against humanity and sentenced to imprisonment for the remainder of his life.

(iv) *Prosecutor v. Pauline Nyiramasuhuko et-al Case No. ICTR-97-21*
This was a joint trial of 6 accused persons who were initially separately indicted but accused of the same or different crimes committed in the course of the same transaction. It was the biggest and most complex trial in the UNICTR.

The accused served in various administrative capacities during the events of April to July 1994 in Rwanda. Pauline Nyiramasuhuko was Minister for Women's Development in the Interim Government. Her son, Shalom Arsene Ntahobali was an Interehamwe/student. Officials in the administrative echelons included Sylvain Nsabimana (Case No. ICTR 96-21) *Prefet* of Butare Prefecture, Lieutenant Colonel Alphonse Nteziryayo (Cae No. ICTR-97-29), of the Rwandan National Army, who replaced Sylvain Nsabimana as Prefet of Butare Prefecture; Joseph Kanyabashi (Case No. ICTR-96-15), the long-serving Bourgmestre of Ngoma Commune; and Elie Ndayambaje (Case No. ICTR-96-8), Bourgmestre of Muganza Commune.

Pauline Nyiramasuhuko was convicted of genocide, conspiracy to commit genocite, rape as a crime against humanity (making her the first woman to be convicted of rape) and violence to life as a war crime. She was sentence to life imprisonment.

Ntahobali was found guilty of genocide, extermination as a crime against humanity, and other inhuman acts as a crime against humanity. He was sentenced to life imprisonment.

Sylvain Nsabimana was found guilty of genocide, extermination as a crime against humanity, and violence to life as a war crime. He was sentenced to 25 years' imprisonment.

Joseph Kanyabashi was found guilty of genocide, direct and public incitement to commit genocide, extermination as a crime against humanity, persecution as a crime against humanity, and violence to life as a war crime. He was sentenced to 35 years' imprisonment.

The sentences were reduced on appeal on account of the length of the trial.

(v) *Prosecutor v. Callixte Nzabonimana Case No. ICTR-89-44D-T*
I presided over the trial of Callixte Nzabonimana, who was Minister of Youth and Associative Movements in the Interim Government. The Prosecution charged him with genocide, conspiracy to commit genocide, direct and public incitement to genocide, and extermination and murder as crimes against humanity. All charges stemmed from his alleged activities in Gitarama prefecture during the events of April to July 1994. The Trial Chamber found him guilty of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and extermination as a crime against humanity. He was sentenced to imprisonment for the remainder of his life. The Appeal Chamber upheld this verdict and sentence.

(vi) *Prosecutor v. Augustin Ngirabatware Case No. ICTR-99-54-T*
Ngirabatware was Minister of Planning among other responsibilities in the Interim Government. The Prosecution charged him with genocide, conspiracy to commit genocide and extermination and rape as crimes against humanity. He was sentenced to 35 years' imprisonment. The Appeal Chamber found him not guilty of rape and reduced the sentence to 30 years' imprisonment.

I have sat on various benches that heard contempt and false testimony cases in the UNICTR. The Trial Chamber in the case of *Nyiramasuhuko et al.* investigated two allegations of false testimony and issued an indictment in the case of witness QA.

In the case of *Nzabonimana,* the Trial Chamber ordered investigation by independent *amicus curiae* to establish whether efforts were made to influence the testimonies of witnesses ANAU and ANAS, and whether the identity of witness ANAT had been disclosed by the defense. Based on the *amicus* report, the Trial Chamber found a *prima facie* case of contempt of the Tribunal against the defense investigator for threatening witness ANAS and a *prima facie* case against Co-counsel for the defense for attempting to bribe witness ANAU. It therefore initiated contempt proceedings against both and directed them to be prosecuted by independent *amicus curiae* to be appointed by the Registrar.

I have sat as a member of the respective benches that prepared the following cases for trial:

(vii) *Prosecutor v. Tharcisse Rwenzaho Case No.ICTR-97-31-DP*
(viii) *Prosecutor v. Hormidas Nsengimana Case No. ICTR-01-69*
(ix) *Prosecutor v. Augustin Ngirabatware Case No. ICTR-99-54T*

In UNMICT, I have sat on a Pre-Trial bench that prepared the case of *Prosecutor v. Stanisic and Simatovic Case No. MICT-15-96-PT.*

I have also handled various post-appeal applications that concern the two former *ad hoc* Tribunals.

As a member of various Pre-Trial, Trial Chambers and Post-Appeal Chambers, I have issued a substantial number of decisions concerning the above cases that can be found on the transcripts or websites of the two Tribunals.

Throughout my judicial carrier, I have rendered many judgments that have addressed complex legal issues and advanced the status of women, the rights of victims of simple and grave international crime, and human rights abuses.

Prior to joining the bench, I practiced law for 10 years as advocate of the Courts of Judicature in Uganda. I represented accused persons and appellants in the High Court and Court of Appeal respectively on charges including murder, rape, kidnapping with intent to murder, defilement and armed robbery. I have therefore engaged in active criminal law practice from the beginning of my carrier.

I also lectured at the Law Development Center of Uganda for 17 years. This is a post-graduate institution that imparts practicing skills and ethics to lawyers in preparation for deployment as practicing lawyers and magistrates. It is also responsible for publications including law reviews and law reports. I mainly taught the Law of Domestic Relations.

As a human rights activist, I represented indigent women in court including concerning their rights to matrimonial property, divorce and custody of children, inheritance rights and separation.

Through activism, I founded and/or chaired or was member of various international, regional, and national non-governmental organizations dealing with human rights, constitutional governance, and the rights of people living with HIV and AIDS. They included the International Bar Association Human Rights Institute, the International Commission of Jurists, the International Association of Women Judges, the African Center for Democracy and Human Rights Studies, the East African Law Society, Kituo cha Katiba (the East African Center for Constitutional Development), the Uganda Law Society, the Legal Aid Projects of the Uganda Law Society and the Legal Aid Clinic of the Lae Development Center, the Uganda Network on the Law, Ethics HIV and AIDS, and the National Organization for Civic Education and Election Monitoring. I have also chaired Uganda Government

institutions linked to human rights including the Law Council and the Interim National Steering Committee on Community Service.

I have served as trainer with the Jurisprudence of Equality Project with the International Association of Women Judges.

I am a member of professional organizations including the International Commission of Jurists, the International Association of Women Judges, the Uganda National Association of Women Judges, the International Federation of Women Lawyers (FIDA) Uganda, the Uganda Judicial Officers Association and the International Governance Alliance.

The above experience speaks to my long judicial carrier in criminal law, human rights especially as they relate to women and children and constitutional governance.

- How would you describe your competence in relevant areas of international law, such as international humanitarian law and international human rights law?
I am highly competent in international humanitarian law and international. My experience as Judge with UNICTR and UNMICT has exposed me to the substance and application of the rules of war and the jurisprudence of the two *ad hoc* Tribunals that has interpreted and clarified the provisions of and the Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1949. I have also had opportunity to study and apply the jurisprudence of hybrid tribunals on international humanitarian law to concrete cases, given that the *ad hoc* Tribunals and hybrid tribunals have similar jurisdiction to bring to account individuals who commit genocide, crimes against humanity and war crimes.

  I know that war crimes are considered to be grave violations of international humanitarian law and that the main purpose of the provisions of The Hague and Geneva Conventions cited above is the protection of persons not directly participating in conflict by affording them minimum protection. Whether they are non-combatants or combatants, they are considered to be protected persons. I also know that violation must be connected to armed conflict.

  Furthermore, it is important to identify the nature of the conflict i.e. whether it is international or non-international or a mixture of both. Conflicts may be complex. Non-international conflicts that involve armed groups within a national territory may morph into international conflicts or vise versa. Also, the two types of conflict may occur on the same territory or on different territories. Furthermore, one type of conflict may cease only for another type to start or continue. The distinction between non-international and international conflict is becoming blurred by the complex nature of the current conflicts including that of Syria, Iraq, Somalia and Afghanistan, where there may be a mix of both international and internal armed conflict. This brings into question the arbitrary distinction that is made between them and makes it difficult to apply different rules to each.

The Geneva Conventions also prevent wanton destruction of property that is not justified by military necessity. In the case of *Prosecutor* v. *Al Madhi,* the ICC has found *Al Madhi* guilty of wanton destruction of property.

Regarding my experience with international human rights dates back to the year 1988 when I became a practicing advocate and a human rights activist. In this capacity, I represented many indigent women in court including concerning their rights to security in the home, matrimonial property, divorce, and custody of children, inheritance rights and separation.

Through activism, I founded and/or chaired various international, regional, and national non-government organizations dealing with human rights, women's human rights, constitutional governance, and the rights of people living with HIV and AIDS. They include; the International Bar Association Human Rights Institute, the East African Law Society, Kituo cha Katiba (the East African Centre for Constitutional Development), the Uganda Network on Law, Ethics, HIV and AIDS, the National Organization for Civic Education and Election Monitoring, and the Legal Aid Clinics of the Law Development Centre and the Uganda Law Society. I also chaired human rights related Uganda Government institutions including the Law Council and the Interim National Steering Committee on Community Service.

On the international scene, I have served as a member and honorary member of the International Commission of Jurists and Chairperson of the International Bar Association Human Rights Institute. I am a member of the African Centre for Democracy and Human Rights Studies, the International Association of Women Judges, the National Association of Women Judges, the Uganda Chapter of the International Federation of Women Lawyers (FIDA), the Uganda Judicial Officers Association and the International Governance Alliance.

As a judge of the African Court on Human and Peoples' Rights, I hear applications that concern alleged violations of human rights by state parties to the African Union Charter. Violation of any human rights instrument ratified by the state party will trigger the jurisdiction of the Court. Individuals and NGOs can access the Court if the state party concerned has made a declaration entitling them to submit a case to the Court.

I also continue to sit in judgment of Constitutional cases that challenge the actions of government or institutions as constituting torture or inhuman and degrading treatment in violation of the Constitution of Uganda.

- How would you describe your professional legal experience that is of relevance to the judicial work of the ICC?
  My professional legal experience is highly relevant to the judicial work of ICC in in that I have 30 years' experience in handling criminal law, criminal procedure international criminal law, international criminal procedure and evidence, international humanitarian law first as a legal practitioner and subsequently as a judge at the international and national levels.

My experience with the UNICTR and UNMICT now coming to 14 years is of direct relevance given that the UNICTR and UNMICT have similar jurisdiction with the ICC to handle crimes including genocide, crimes against humanity and war crimes. They also apply similar Rules of Procedure and Evidence.

My experience with the African Court on Human and Peoples' Rights is equally relevant. The Court handles applications of alleged human rights violations, including of fair trial principles and gives reparations in deserving cases.

At the national level, I have handled criminal trials and appeals since I became a Judge in 1997.

At the bar, I appeared for accused and appellants in the Courts of Judicature for 10 years.

As a human rights activist and human rights Judge, I am sensitive to gender issues and the dire need for gender justice. I am also aware of the interplay between human rights and international human rights law.

Since I have a firm grasp of the substance of criminal law and of the Rules of Procedure and evidence at the national and international levels and also of international human rights law, my experience is highly relevant to the ICC.

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 am an activist on human rights and gender justice. I have also been trained as a trainer with the Jurisprudence of Equality Project by the International Association of Women Judges that seeks to train judicial officers to improve access of women to justice, taking into account their status in society as a people that are discriminated; whose voices are not often heard and who face bottlenecks to achieve equality with the men.

I have also participated in issuing provisional measures that have preserved life and land rights at the ACtHPR, which is empowered to grant provisional measures in cases of extreme urgency. In the Libyan case of *Seif Gaddafi*, the ACtHPR on which I sat as part of the bench granted provisional measures to preserve his life from a threatened execution.

In the case of *The African Commission on Human and Peoples' Rights v. Republic of Kenya,* the ACtHPR ordered the respondent state to immediately reinstate the restrictions it had imposed on land transactions in the Mau Forest Complex and refrain from any act or thing that would or might irreparably prejudice the main application until its final determination.

The ACtHPR also hears cases of alleged violations of human rights by states against its peoples and in appropriate cases declares the violations established and awards reparations. The Court also handles advisory opinions if asked to

so the AU, its organs, member states, and any African Organization recognized by the AU on any legal matter concerning the African Charter.

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 sat in judgment of 11 accused persons at the UNICTR and handled 4 pre-trials with UNICTR and UNMICT. I have also handled post-appeal applications. In the process, I have handled crimes over which the ICC has jurisdiction including genocide, crimes against humanity and war crimes. Some of the trials have been complex and involved mass crimes including extermination and genocide, and the disclosure of evidence.

I will start with the case of *Pauline Nyiramasuhuko et al*, in which I sat as part of the trial Bench. This case concerned six accused persons who served in various administrative capacities, during the events of April to July 1994 in Rwanda and is generally known as the Butare trial. Pauline Nyiramasuhuko was Minister of Women's Development in the Interim Government. Her son Shalom Arsene Ntahobali was an Interehamwe/student. Officials in the administrative echelons included Sylvain Nsabimana (Case No. ICTR 96-21) Prefet of Butare prefecture, Lieutenant Colonel Alphonse Nteziryayo (Case No. ICTR-97-29) of the Rwandan National Army (who replaced Sylvain Nsabimana as Prefect of Butare); Joseph Kanyabashi (Case No. ICTR-96-15), the long-serving Bourgmestre of Ngoma Commune; and Elie Ndayambaje (Case No. ICTR-96-8), Bourgmestre of Muganza Commune.

The Prosecution charged each of them with conspiracy to commit genocide; genocide, complicity in genocide, the crime against humanity of extermination, murder, persecution, and other inhumane acts; and violence to life as a war crime. Except for Ntahobali, all were also charged with direct and public incitement to commit genocide. The prosecution also charged Pauline Nyiramasuhuko and Shalom Ntahobali her son, with rape as a crime against humanity, and with outrages upon personal dignity as a war crime.

This case concerned mass killings in the entire Butare Prefecture. This is also the place where President Sindikubwabo of the Interim Government launched the genocide in April 1994.

This was the longest and most complex trial at the UNICTR. The Prosecution and the six accused persons presented a total of 189 witnesses. Almost 13,000 pages of documents were tendered in evidence, resulting into 913 exhibits. The proceedings generated more than 125,000 transcript pages. The judgment excluding the annexes was 1468 pages.

The parties made many written and oral applications including those concerning disclosure of evidence during the trial. The Trial Chamber made decisions on all of them that can be found in the transcripts or on the UNICTR website.

Depending on what event the witnesses were testifying on, certain defenses would turn against others and it required careful and skillful handling by the Trial Chamber, to ensure completion of the trial without stalling or collapsing the case.

Examining the evidence against each of the accused, identifying the charges that were proved and writing the judgment took a considerable amount of time.

Other cases I have outlined above in which I participated also involved mass killings. *Bisengimana* was convicted of aiding and abetting the commission of extermination as a crime against humanity: *Nzabirinda* was convicted of murder as a crime against humanity; *Ndindabahizi* was convicted of genocide, extermination and murder as a crime against humanity; *Nzabonimana* was convicted of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and extermination as a crime against humanity; and Ngirabatware was convicted of genocide, direct and public incitement to commit genocide, and rape as a crime against humanity.

The benches in those cases also entertained many objections relating to admission of evidence that Counsel alleged not to have been disclosed in time. The objections were fewer with the latter cases of *Ngirabatware* and *Nzabonimana*, who were arrested later than those in the *Nyiramasuhuko et al* case. By the time of their arrest, the Prosecution had more experience than it had in the *Nyiramasuko et al* and earlier cases and handled disclosures of evidence in a timelier manner.

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 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.

a) Do you consider such training to be important?
I consider such training important. The law and the world in which it operates are dynamic. There is need to keep abreast of emerging legal and policy issues and even crimes and consolidate knowledge and skills, no matter the experience. There is always something new to learn. From my experience, exposure to regular judicial education and training improves and facilitates the work of a judge.

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

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.

The experience I have in dealing with sexual and/or gender-based crimes has been on rape and defilement in domestic and conflict situations, domestic violence and disputes on matrimonial property.

I was part of the Trial Chamber that applied a gender perspective in the case of *Nyiramasuhuko et al*. The Trial Chamber realized that rape and sexual violence were used as a weapon against women to eliminate the Tutsi population and to dehumanize them. It would have convicted Nyiramasuhuko for rape as genocide if the prosecution had charged it in the indictment and stated so.

At the domestic level, gender-based violence in inheritance matters, where relatives of the deceased seek to dispossess wives and children of property, is rampart. In a patriarchal society, the majority of men and women consider that women should not inherit land or any possession and that they constitute part of the possessions of men.

The same situation obtains in divorce proceedings. Men and society do not consider women as equal partners in setting up a home, despite constitutional provisions that provide for equal rights during marriage and its dissolution.

In the judgments I have rendered, I have made it clear that women are equal partners who are entitled to inherit property and to have a share of the property to which they contributed during the subsistence of the marriage and that contribution does not have to be monetary. They are also equally entitled to participate in the upbringing of their children.

Another example of gender based violence that I have handled concerns men who murder women for alleged adultery or use of money they have genuinely worked for like selling produce or a goat. Again, this stems from the cultural belief that all property and resources belong to the husband for whom, a wife should work without pay forever. This is not a defense to criminal charges and many have ended up being convicted.

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.
I have handled victims of simple and grave crime at the international and domestic levels in my carrier as private legal practitioner and judicial officer. In the latter capacity, they have been complainants and witnesses. Victims would have already gone through a lot of trauma before they come to court. There is dire need to avoid re-traumatizing them, especially when they are minors, victims of sexual and gender-based violence, violent crime or have lost their loved ones. I have handled them

carefully and courteously as witnesses and ensured their dignity, safety and importance of their testimony.
I handled victims of sexual and gender-based violence in private legal practice as clients. I counseled them and their families and represented them in courts of law.

I have handled human rights abuse cases in the ACtHPR and handed down reparations.

I have not had experience of victims' participation in criminal proceedings except as witnesses. It is something I look forward to learning since the ICC has already set down guidelines in this regard.

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?
I have no relevant experience regarding victims' participation. I have however read the jurisprudence of the ICC in this regard. I understand that victims' participation should not prejudice the accused that is entitled to due process and a fair and impartial trial. In this regard, victims must apply to participate and be allowed to do so by the trial chamber. Counsel provided by the Registrar or Counsel of their own choice may represent them. The trial chamber must approve any intervention by victims. Further developments in this new area are awaited, depending on how the rules set down in the *Lubanga* case play out.

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? Is so, please briefly describe this experience.
I have 3 year's experience working as Judge with the ACtHPR. I have also served various international human rights bodies as member or chairperson. They include the International Commission of Jurists, the International Bar Association Human Rights Institute, the International Association of Women Judges, the African Center for Democracy and Human Rights Studies, the East African Law Society, Kituo cha Katiba (the East African Center for Constitutional Development) and the Legal Aid Projects of Uganda Law Society, FIDA and the Law Development Center.

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?
Yes. I have applied the International Covenant of Civil and Political Rights, the African Charter on Human and Peoples' Rights, the African Charter on Democracy, the Torture Convention, and Article 3 to the Geneva Conventions and Additional Protocol 1 to the decisions I have cited above in the UNICTR and the ACtHPR.

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.
I have not applied the provisions of the Rome Statute or through the equivalent national legislation that incorporates the Rome Statute offences and procedure directly.

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, alienage or citizenship status.

a) Do you disagree or have difficulty with this expectation?
I do not disagree with this expectation or have any difficulty with it. A judge should be free of actual or perceive bias and should not be prejudiced lest she/he become discriminatory. Baggage from cultural or social background should not be imported into decision making or any conduct of a judge, be it in private or official capacity.

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.

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?
I do not expect to have any difficulties in taking a position independent of, and possibly contrary to the position of my government. I am supposed to be elected in my own right as a judge although nominated by my government. As a judge, I am supposed to reach decisions independently.

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?
Bias may be actual or perceived. In some jurisdictions e.g. in the ACtHPR, when a case concerns one's country, the concerned judicial officer is not allowed to sit in it to avoid the appearance of bias. I would not recuse myself in each and every case. It would depend on the circumstances of

each case and whether I would be perceived as biased if the decision is made in favor of my government.

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?
I expect to serve at the commencement of and for the duration of my term, if I am elected. I am not sure of the reporting date, but if I am elected, I expect to have finalized my work three months after election.

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.
I expect to be able to perform the judicial tasks described above on my own.

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.
I may have been long and sometimes repetitive. This has been done for avoidance of doubt.

I have failed to mark as appropriate the boxes on Legal Background and Gender. I have therefore typed the answers outside the respective boxes.

Thank you.