

COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS

Conscious of the restrictions placed upon of ICC judges in making extra-curial comments which might affect the independence referred to in Article 40 of the Rome Statute and Rule 34 of the Rules of Procedure and Evidence, we invite judicial candidates to please reply to the following questions as comprehensively or concisely as possible.

Name: Chile Eboe-Osuji, PhD

Nationality: Nigeria

Nominating State: Nigeria

List: (tick one by clicking twice on a box and selecting "Checked")

- A**
- B**

Background:

1. Why do you wish to be elected a judge of the ICC?

(a) Nigeria has never had a judge on the Court. She has made significant contributions in support of the ICC since the creation of the Court.

(b) At my own personal level, I have a body of experience that would assist in a modest contribution to the work of the Court. A summary of the experience is described below.

- I have been a criminal law barrister for over 25 years now, with criminal practice experience gained in criminal trials in both Nigeria and Canada, both of where I am a barrister.
- Over 15 of those years have been devoted almost exclusively to the practice of international criminal law and human rights law, on the international plane.
- I have many years of experience working as a senior judicial legal officer in the Chambers of the International Criminal Tribunal for Rwanda. The capacities in which I worked were Head of Chambers, Senior Legal Officer in Chambers, and Head Legal Officer in the Appeals Chamber of the same Tribunal.

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

- My work in Chambers entailed both helping the judges of the Tribunal in judging the cases before them, such as participating and making contributions in judges' deliberations, drafting countless decisions and judgments, as well as supervising and guiding junior lawyers in drafting numerous decisions and judgments under the direction of the Judges. I also helped on many occasion to stabilise new judges who just arrived from national jurisdictions with little or no experience and familiarity in international criminal law.
- I currently work as the Legal Advisor to the UN High Commissioner for Human Rights. My work entails giving legal advice on a daily basis to the High Commissioner (and other senior officers and colleagues in the Office of the High Commissioner) on matters of international law, human rights law, international criminal law and international humanitarian law.
- In addition to my current functions as the Legal Advisor to the High Commissioner, I also hold a concurrent appointment as Principal Appeals Counsel in the Office of the Prosecutor of the Special Court for Sierra Leone, assisting the Chief Prosecutor of the Special Court for Sierra Leone in prosecuting the appeals in the case against Charles Taylor, the former President of Liberia.
- I have also worked in the past as Senior Appeals Counsel in the Office of the Prosecutor of the Special Court for Sierra Leone.
- As well, I have worked as Senior Prosecution Counsel (Trials) at the International Criminal Tribunal for Rwanda.

(c) The Statute of Rome calls for special regard to be given to candidates with special experience and familiarity with protection of women and children in armed conflicts. These are areas in which I have unique experience. I summarise such experience below:

- As senior judicial legal officer (in the capacities of Head of Chambers and Senior Legal Officer) in Chambers of ICTR, I actively participated in many of the judges' deliberations in their judgments on charges of sexual violence, and supervised the drafting of the judgments in that regard.
- As a senior international prosecutor, I have prosecuted cases of sexual violence against women at both ICTR and the SCSL.
- At the SCSL I led the aspect of the prosecution appeal in the *CDF Case*, concerning the charge of use of child soldiers by Kondewa, being one of the first cases in the history of international criminal law, concerning use of child soldiers.

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

- I have published numerous scholarly articles on protection of women against sexual violence in armed conflicts. I have a book soon to be published on the subject.
- As part of my continued legal education, I returned to school as a mature student to complete a PhD studies. My PhD dissertation concentrated in sexual violence against women.

(d) I expect that all the foregoing will put me in good stead to make a positive contribution to the Court's judicial work.

2. What do you think would be the biggest challenges you would face if you were elected as an ICC judge?

I have always had difficulty leaving the office in time to for the family dinner or joining the family fun times. I worry that the habit will continue if I'm elected as a judge. That will indeed be my greatest challenge.

3. What do you believe are some of the major challenges currently facing the Court? What do you believe will be some of the major challenges in the coming years?

The Court is still a very young institution. Not all stakeholders are sure of what to make of it; and what their relationship is with it. There remains a palpable level of wariness about the Court. A majority of the Permanent Members of the Security Council have not ratified the Court's Statute. Other large States have still not ratified. The African Union now has a difficult relationship with the Court. All these are sources of challenges for the Court; and they need to be overcome.

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 Nigeria, the highest judicial offices are justices of the Supreme Court of Nigeria. The requirement is membership at the Bar for at least 15 years. I was called to the Nigerian Bar in September 1986 – i.e. some 25 years ago.

5. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure under which you were nominated. Please also provide any relevant information such as the national law governing the procedure for the nomination of candidates to the highest judicial office in the nominating state (an Article 36(4)(a)(i) nomination) or the nominating letter from the Permanent Court of Arbitration national group (an Article 36(4)(a)(ii) nomination).

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

The Attorney-General of Nigeria (being the nominating authority in Nigeria) and the Minister of Foreign Affairs (being the transmitting authority) are perhaps the best persons to answer this question. But I shall try my best to answer it.

One notes, in the first place, that one of the procedures indicated in article 36 of the Rome Statute is the procedure for nomination of candidates for the highest judicial offices in the nominating country. In that connection, the act of nomination, on the one hand, is to be distinguished from the act of appointment/election of the candidate following the nomination. In Nigeria, elevation to the Supreme Court of Nigeria proceeds in the following way: (a) the Attorney General of Nigeria, being the chief law officer of the country, nominates a candidate to the President of Nigeria for appointment; (b) the President next makes the appointment, after consulting with the National Judicial Council; and (c) the Senate confirms the appointment.

My nomination for the ICC judicial election was made by the Attorney-General of Nigeria, with a variation made necessary by the fact that in place of nomination to the President who appoints to the Supreme Court, my nomination was made to the ASP of ICC who elects to the ICC Bench. The nomination was next transmitted to the Ministry of Foreign Affairs, in order that the nomination would be duly communicated to the ASP through diplomatic channels. The Ministry of Foreign Affairs then transmitted the nomination to the Secretariat of the ICC ASP. The Minister of Foreign Affairs does not transmit Nigerian nominations, unless such nominations have complied with Nigeria's internal procedures.

6. 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, the Government of Nigeria has provided the Statement of Qualifications.

Legal System and Language Abilities:

7. a) Which legal system does your country belong to?

Nigeria belongs to the common law system. So, too, does Canada, where I am also a member of the Bar. I will therefore be one of the representatives of the common law legal system, if elected.

- b) Do you have knowledge or experience working in other legal systems?

In addition to my native professional common law background, I also have working familiarity with the continental civil law system, by virtue of my

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

experience working closely with lawyers and judges from the civil law system since 1997—at the ICTR, the Special Court for Sierra Leone, and the Office of the High Commissioner for Human Rights; as well as through education gained by virtue of my research and writings.

c) What difficulties do you envision encountering working with judges from other legal systems? How would you resolve such difficulties?

I do have some experience dealing with differences of legal systems, in virtue of my work in an international legal institution in the past decade and more. Such differences usually involve a hint of professional chauvinism where some lawyers and judges—from both systems—tend to claim the comparative superiority of their own systems, where each system has a different way of solving a particular problem. My own preferred approach is to identify the comparative degrees of ease/difficulty and convenience/inconvenience of the solutions offered by either system, and then make a decision according to the relative ease and convenience of the particular solution, regardless of which system offers that solution. I will employ the same method on the Bench.

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

a) What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in English?

English is my usual and primary language, as well as the dominant working language in Nigeria and Canada, both of where I studied and practiced law.

b) What is your knowledge and fluency in French, if it is not your native language? Do you have experience working in French?

I have at least an intermediate knowledge of French. My residence in Geneva for over 12 months now has given me further confidence in spoken French. I have never been put in the position of having to work only in French; but if the occasion arises, I can manage, albeit with a moderate level of difficulty.

List A or B Criteria:

Your response to this question will depend 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.

9. a) For List A candidates:

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

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

Extremely high.

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

Extremely high. I have been a courtroom lawyer for over 25 years. I have had professional experience in criminal cases from the multidimensional perspectives of the prosecutor, the defence counsel and senior judicial officer assisting judges. In other words, I have alternated my functions in the various capacities that exposed me to such perspectives. I started professional career as a defence counsel in Nigeria and Canada; then I worked for several years as a prosecutor at the ICTR and Special Court for Sierra Leone; and then as senior judicial officer in the Chambers of the ICTR where I worked as the most senior lawyer that assisted the judges in judging the various cases before them. [Please see both my curriculum vitae and my statement of qualifications available on the ICC-ASP website.]

b) For List B candidates:

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

Again, extremely high. Since 1997, I have concentrated my practice in the areas of international law, international criminal law, international humanitarian law, and human rights law. I am currently the Legal Advisor to the UN High Commissioner for Human Rights; I have taught international criminal law at the University of Ottawa; I am frequently invited as expert speaker or guest lecturer in international criminal law; I have researched and written extensively on the subjects—these include two books and numerous book chapters and journal articles on topics of international criminal, international humanitarian law, and human rights law.

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

Very relevant. First, my experiences as a trial lawyer and appellate lawyer are highly relevant to the judicial work of the Court, given that a judge with a trial lawyer's or appellate lawyer's experience is best equipped to understand and deal with lawyers who appear before him in a case. A judge is better able to command respect of counsel, if counsel perceive the judge as familiar with the 'tricks of the trade', so to speak. Second, my experience as a senior judicial officer in Chambers (as Head of Chambers and senior legal officer) at the ICTR is also very relevant to the judicial work of the Court, in the sense that I have had to assist the judges precisely with decision making and decision/judgment drafting in the actual cases they have had to judge. Without overstating my role, it

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

can safely be said that I have seen the judges, and assisted them, in all aspects of their work. In my capacity as senior judicial officer in Chambers at the ICTR, I have participated in countless judicial deliberations and the drafting of as many decisions and judgments.

Expertise and Experience:

10. Please describe your qualifications for this position. Please also 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) Outside of the strict substantive professional experience and competence, I have a passion for legal research and writing. I conduct my own legal research and write my own papers and books. I believe that these aptitudes will stand me in good stead as a judge at the ICC.

(ii) There is also a certain ethno-cultural life experience that will stand me in good stead on the Bench of the ICC. I do have a bi-cultural experience. I was born and raised in Nigeria; but I have lived a good part of my adult life in both Western and African societies—in equal parts. My background as an African will enable me understand and process better some of the cultural dimensions of the cases before the Court that come from Africa. Similarly, my alternative Western cultural affinity will also not only enable me bridge some of the possible cultural fault lines between receiving the raw evidential data and integrating such data into a more just decision-making of the entire Bench in the case. The importance of this perspective to judicial decision-making at the ICC must not be under-estimated.

11. Do you have legal expertise in relevant areas such as the crimes over which the Court has jurisdiction; the management of complex criminal and mass crimes cases; or the disclosure of evidence?

(i) Yes, I have expertise in genocide, crimes against humanity and war crimes. I have extensive experience prosecuting those crimes at the ICTR and the SCSL. As a former senior judicial officer in Chambers, I also have extensive experience assisting Trial and Appellate Judges of the ICTR in judging those cases. I have also taught the subjects as an adjunct lecturer in international criminal law at the University of Ottawa, Canada.

(ii) I am one of the most experienced international lawyers on the subject of the law of aggression. The experience was acquired in my work as Special Legal Advisor to the delegation of Nigeria to the Special Working Group on the Definition of the Crime of Aggression. And I have done some independent research and writing on the subject.

12. The ICC is a unique institution, and judges serving on the court will inevitably face a number of unprecedented challenges (including managing a regime of victims’

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

participation and protecting witnesses 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?

Yes.

b) Do you consider such training to be important?

Absolutely. As apposite as it is, one need not rationalise the need for such training in the terms that judges with significant prior experience may not necessarily possess some needed skills. That is indeed the case. But, beyond that, continuing education and skills updates are very important aspects of professional development. It is for that reason that certain legal professions require their members to undergo certain amounts of continuing legal education (CLEs) every year. It is indeed for that reason that I returned to school as a mature student for a PhD study that aimed to consolidate what some might see as already-possessed significant experience in relation to sexual violence against women during armed conflicts.

13. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalised or overlooked.

a) Please describe any expertise and/or experience you may have in dealing with crimes of sexual and/or gender based violence.

In addition to my general legal experience as a criminal lawyer, and more particular experience as an international criminal lawyer, I do have a sub-specific expertise in matters relating to violence against women and children. My expertise in this regard was gained from my work summarised below:

I. Cases

(a) as senior prosecution trial counsel at the ICTR, I prosecuted the offence of rape in *P v Semanza*

(b) I also prosecuted the offence of 'rape as torture' in *P v Semanza*

(c) as senior prosecution appeals counsel at the Special Court for Sierra Leone, I co-wrote appellate brief on issue of forced marriage in *P v Brima et al* (SCSL) (although I would have preferred a clear international legislation on the subject)

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

(d) I also co-wrote appellate brief on issue of duplicity of indictment regarding sexual slavery and sexual violence in *P v Brima et al* (SCSL)

(e) as senior prosecution appeals counsel at the Special Court for Sierra Leone, I co-wrote appellate brief on issue of Trial Chamber's denial of leave to amend indictment to add counts of sexual violence in *P v Fofana & Kondewa* (SCSL)

(f) I also co-wrote appellate brief on issue of Trial Chamber's denial of leave to lead evidence of sexual violence during the trial in *P v Fofana & Kondewa* (SCSL)

(g) I also co-wrote appellate brief on issue of Trial Chamber's acquittal on count of use of child soldiers in *P v Fofana & Kondewa* (SCSL)

II. Scholarly Research and Writing

In addition to the actual litigation that I had conducted on questions of sexual violence against women and protection of children during armed conflicts, I returned to school as part of my own continuing legal education, with a special focus on protection of women from sexual violence against during international armed conflicts. The PhD dissertation was extensively revised and augmented for publication as a book, to be published by the famous Dutch publisher Martinus Nihjoff later this year.

b) Are there situations or cases in the past where you believe you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted? If so, to what effect?

Yes, indeed, and in respects too numerous to describe here.

In addition to my prosecution work and assistance to judges in judgment drafting, I have written a whole book on the subject, with the sole purpose of demonstrating precisely that gender differential.

For instance, I have written and argued as follows: (i) The current law on superior responsibility in international criminal is flawed in its requirement that a superior is not to be held liable for the conduct of a subordinate, unless the superior knew that the subordinate was 'committing or about to commit' the crime. Applied as a gender-neutral proposition, the principle might seem harmless. But it is not harmless when one considers that armed conflicts pose a perennial danger of rape and sexual abuse of women. In view of this perennial danger, the better formulation of the principle should not rest liability of the superior on the present or

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

imminent knowledge of the subordinate's crime. The responsibility should engage a duty on the superior to put all reasonable measures in place to prevent rape or other sexual abuse of women during war. Failure to do that should trigger the responsibility. (ii) The requirement of the Prosecution to prove lack of consent in rape cases, as part of the case for the prosecution, is also problematic in the context of rapes committed during armed conflicts. Since armed conflicts invariably involve the reign of violence, which, in the nature of things, vitiates consent, the burden of proving presence of consent in rape cases committed during armed conflicts should be shifted to the Defence. (iii) I have also urged for a definition of rape during armed conflicts in a manner that removes emphasis from proof of absence of consent; with the view to emphasising the significance of violence during armed conflicts. Shifting the emphasis to violence in armed conflicts will significantly reduce the burden of the inquiry upon the female victim of rape during an armed conflict.

14. Victims have a recognised right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. Please describe any experience that you have, which would be relevant to these provisions.

- In my work in the Office of the High Commissioner for Human Rights, I have dedicated special attention to the question of reparation, especially for women victims of SVIAC.
- I also have a specific chapter dedicated to that issue, in my upcoming book.

15. Under Article 68(3) of the Rome Statute, victims are entitled to present their views and concerns and have them considered at stages of the proceedings to be determined by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

a) Please describe any experience you may have that would make you particularly sensitive/understanding to the participation of victims in the courtroom?

I have done research and writing on the subject. My latest consideration of the matter appears in my article entitled 'Changing the Characterisation of Crimes after Commencement of Trials at the ICC' published in (2010) 49 *International Legal Materials* 474.

b) Do you have any experience in balancing victims' participation with the rights of the accused to due process and a fair and impartial trial? If so, please describe.

That issue was a matter of pivotal engagement at all times in my work as a prosecutor at the ICTR and SCSL, and as a senior judicial officer helping judges in judging cases at the ICTR. One encountered it in discharging disclosure obligations, witness protection orders, hearings in public, etc.

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

16. Have you advocated for the adoption and/or implementation of human rights or international humanitarian law treaties or other instruments? Please describe your experience.

- My work as the Legal Advisor to the UN High Commissioner entails assisting her in her mandate to protect human rights all over the world. That mandate of the High Commissioner specifically entails advocating for the adoption of human rights treaties of various kinds.
- The work of the High Commissioner, and my assistance to her as her senior legal policy advisor, also entails using every opportunity to advocate the adoption of the Rome Statute.
- One specific instance of such advocacy from me came in the form of my recent participation in Doha, Qatar, in the first regional conference on the ICC; where I added my voice to the call upon States in the Middle East and North Africa region to ratify the Rome Statute.

17. 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 context of your judicial activity or legal experience?

All the time.

18. 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? If so please describe the context in which you did.

- Application of international criminal law instruments has been the staple part of my work as a prosecutor at the ICTR and SCSL, and as senior judicial legal officer in the trial and appeals Chambers of ICTR. I constantly had to work with the texts of the Statutes of those Tribunals and of the ICTY. The text of the ICC Statute and the Elements of Crimes were constantly referred to as well, by way of support to the equivalent norms in the Statutes of the older tribunals.
- In my advisory role in the Office of the High Commissioner for Human Rights, I have often had to work with the provisions of the Rome Statute, including in providing technical legal information to States Parties who requested them.
- I have also extensively worked with the text of the Rome Statute in my experience as a lecturer in international criminal law at the University of Ottawa, and in my own research and publications.

19. Have you ever referred to or applied the jurisprudence of the ICC, *ad hoc*, or special tribunals? If so, please describe the context.

Please send your completed questionnaire to judicial-elections@coalitionfortheicc.org; by fax to 1 212 599 1332; or by mail to: Coalition for the International Criminal Court, 708 Third Avenue, 24th floor, New York, NY 10017, USA

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

Yes, on occasions too numerous to mention; in virtue of my work as a prosecutor at the ICTR and SCSL, as senior judicial officer in the trial and appeals Chambers of ICTR, my current work as the Legal Advisor to the UN High Commissioner for Human Rights, international criminal law lecturer, and legal academic commentator.

- 20.** Have you served on the staff or board of directors of human rights or international humanitarian law organisations? Please describe your experience.

Yes, I am the Legal Advisor to the UN High Commissioner for Human Rights. But I have never served as a member of staff or board of an NGO.

- 21. a)** Please provide us with a list of and/or links to your writings and opinions relevant to evaluating your experience.

Books and Mimeographs

- C Eboe-Osuji (ed), *Protecting Humanity—Essays in International Law and Policy in Honour of Navanethem Pillay* [Leyden, Brill: 2010]
- C Eboe-Osuji, *Sexual Violence in Armed Conflicts: the Response of International Law* [Leyden, Brill: forthcoming 2011]
- C Eboe-Osuji, *International Criminal Law: an Inside View of an Edifice Under Construction* [unpublished mimeograph].
- C Eboe-Osuji, *Spirit of Sankey—Commentary on Aspects of Canadian Constitutional Law* [unpublished mimeograph].

Articles and Books Chapters

- 'From Sympathy to Reparation for Female Victims of Sexual Violence in Armed Conflicts' [forthcoming in the *African Journal of Legal Studies*.]
- "Grave Breaches" as War Crimes: Much Ado About ... "Serious Violations" [available on the website of the ICC Office of the Prosecutor Guest Lecture Series]
- 'Alibi in International Criminal Law as Viewed through the Prism of Common Law' (2011) 22 *Criminal Law Forum* 35—102
- 'Prosecution of Sexual Violence against Women: a necessary component of post-conflict strategy of justice and social reconstruction in Colombia' in K Ambos, *Selección y priorización como estrategia de persecución en los casos de crímenes internacionales: Un estudio comparado* [Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Primera edición, Bogotá, 2011]
- 'Changing the Characterisation of Crimes after Commencement of Trials at the International Criminal Court' 49 *International Legal Materials* (2010) p 474 *et seq*

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

- 'Another Look at the Intent Element of the War Crime of Terrorism' *Cambridge Review of International Affairs Cambridge Review of International Affairs*, 1474-449X, First published on 27 July 2010.
- 'Navi Pillay in Her Age' in C Eboe-Osuji (ed), *Protecting Humanity*.
- 'Nigeria's Jurisdiction to Prosecute Johnny Paul Koroma for War Crimes Committed during the Sierra Leone Civil War' (with Angela Nworgu) in C Eboe-Osuji (ed), *Protecting Humanity*.
- 'State Immunity, State Atrocities and Civil Justice in the Modern Era of International Law' (2007) xlv *Canadian Yearbook of International Law* 223.
- 'Crimes against Humanity: Directing Attacks against a Civilian Population' (2008) 2 *African Journal of Legal Studies* 118—129
- 'Rape as Genocide: Some Questions Arising' (2007) 9 *Journal of Genocide Research* pp 251-273.
- 'The Role of the Security Council in Prosecuting the Crime of Aggression: an African Perspective' (2007) 34 *The Monitor-Journal of the Coalition for the International Criminal Court* 8.
- 'Superior or Command Responsibility – A Doubtful Theory of Criminal Responsibility at the Ad Hoc Tribunals' in Deceaux *et al*, *From Human Rights to International Criminal Law*[The Hague: Brill, 2007] 105.
- 'International Law, Mercenary Activities and Conflict Prevention In Africa' [Co-author: Adama Dieng] in Deceaux *et al*, *From Human Rights to International Criminal Law* [The Hague: Brill, 2007] 617.
- 'Vague' Indictments and Justice at the International Criminal Tribunals: Learning from the World of Common Law' in C P M Waters (ed), *British and Canadian Perspectives on International Law* [The Hague: Brill, 2006] 105.
- 'Rape and superior responsibility in international law' [http://www.icc-cpi.int/library/organs/otp/050620_Chile_presentation.pdf].
- 'Murder as a Crime against Humanity at the Ad Hoc Tribunals: Reconciling Differing Languages' [(2005) *Canadian Yearbook of International Law* p 145].
- 'Genocide, Justice and the Forensic Sensibilities of the International Committee of the Red Cross' *Chinese Journal of International Law* (2006) Vol 5, No 1, p 149.
- 'Crimes Against Humanity: from *Finta* to *Mugesera*' or 'In Sync at Last: Canadian Law and International Law of Crimes Against Humanity', Canadian Council on International Law website (November 2005) http://www.ccil-ccdi.ca/index.php?option=com_content&task=view&id=124&Itemid=76
- 'The World Our Stage: Practice at the Bar of International Law' *The Advocates' Society Journal* (summer 2005) pp 14—16.
- 'Complicity in Genocide' vs 'Aiding and Abetting Genocide': Construing the Difference in ICTR and ICTY Statutes (2005) 3 *Journal of International Criminal Justice* 56—81.

Please send your completed questionnaire to judicial-elections@coalitionfortheicc.org; by fax to 1 212 599 1332; or by mail to: Coalition for the International Criminal Court, 708 Third Avenue, 24th floor, New York, NY 10017, USA

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

- 'Kleptocracy: a desired subject of international criminal law that is in dire need of prosecution by universal jurisdiction', *African Perspectives on International Criminal Justice* (2005) p 121.
- 'Crimes against Humanity: the End of Im[m/p]unity in a New Order of International Criminal Law' *AFLA Quarterly* (October—December 1999) p 15.
- 'The Jurisdiction to Prosecute Foreigners for Crimes Against Humanity Committed Abroad' *AFLA Quarterly* (April—June 2000) p 12 [Co-author: Suzanne Schairer].
- 'World War against Aviation Terrorism ... the Role of Canada' in MATTE (ed) *Arms Control and Disarmament in Outer Space: Towards a New Order of Survival*, vol iv, 59.
- 'The Duty to Defend an Unnamed Insured - Even the Fourth Generation Driver' (1996) 14 *Canadian Journal of Insurance Law*, p 65.
- 'Repeal of the Ontario Employment Equity Laws: A Lesson in Denial of Equal Protection of the Laws' in Agocs, *Workplace Equality: International Perspectives on Legislation, Policy and Practice* (2002) p 109 [Co-author: Elizabeth McIsaac].
- 'Healing the Rift: the Impasse between the African Union and the International Criminal Court' <<http://ceboe-osuji.blogspot.com/2010/03/healing-rift-impasse-between-african.html>>
- 'The Proper Burden of Persuasion for the Issuance of an Arrest Warrant at the International Criminal Court' <<http://ceboe-osuji.blogspot.com/2010/02/evidential-correct-standard-for-arrest.html>>
- 'A Thought for Kampala: Kleptocracy' <<http://ceboe-osuji.blogspot.com/2010/02/thought-for-kampala-kleptocracy.html>>
- 'Responsibility of States for Genocide Crimes', *Law Times* 17 May 2007
- 'Defining and Analysing Rape in International Criminal Law: an Unsettled Tug-of-War?' [pending publication]
- 'Forced Marriage: an International Crime?' [pending publication]
- 'Burning as a Mode of the War Crime of Pillage' [pending publication]
- 'Interlocutory Appeals at The International Criminal Tribunal for Rwanda' [pending publication]

b) Please provide us with an electronic copy of and/or links to any writing or opinion describing your experience as outlined in questions 1a), 1b) and 5.

- 'Rethinking Superior Responsibility for the Rape of Women during Armed Conflicts' available at <<http://www.ila2006.org/Eboe-Osuji.pdf>>
- 'Grave Breaches as War Crimes' available at <<http://www.icc-cpi.int/Menu/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Network+with+Partners/Guest+Lectures/>>

c) Is there any other information in the public domain that would support your candidacy or provide additional evidence of your qualification as a judge at the ICC?

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

Other matters:

22. 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

23. Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status, or any other grounds of discrimination? If yes, please describe the circumstances.

No

24. 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, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff, Court officials and others subject to his or her direction and control to refrain from such words or conduct.

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

No

b) Please provide any relevant information regarding your ability to meet this expectation.

This proposition directly reflects the human rights ethos. I am the Legal Advisor for the UN High Commissioner for Human Rights. Inquiries may be made of the High Commissioner, not only in relation to this issue, but also in relation to my general qualification for the position of an ICC judge, given her own past experience as a judge at the ICC and the ICTR.

25. 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 your taking a position on any matter independent of, and possibly contrary to, your government?

Most certainly not. It is quite a normal and regular occurrence for the Governments to express their positions and for judges to decide legal questions in cases before them, according to their conscience; regardless of Government's views. Indeed, judges do frequently render decisions and

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

judgments against their own Governments in litigations in which their Governments are parties. This happens frequently in US, UK, Canada and Nigeria. There is no reason to presume that this will be any different at the ICC, where Governments are usually not parties to the litigation, simply because a particular Government has nominated a particular ICC judge for election. It is a matter of professionalism and integrity for the judges concerned. The CICC must allow ICC judges these presumptions of professionalism, pending when a particular judge by his or her conduct behaves otherwise. Indeed the legal maxim *omnia praesumuntur rite esse acta* recommends this presumption for ICC judges.

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 whether an investigation by your government on a matter of which the ICC was seized was genuine?

Most certainly. Every element of the answer that I have given to Question 25(a) fully applies here as well. Additionally, the very doctrine of complementarity that underpins the ICC jurisdiction contemplates that an ICC judge should be able to sit in cases in which his or her country has an interest. The ideal complementarity scenario is that these cases are decided at the national level. Under that ideal scenario it would be national judges that would try the cases within their jurisdictions. Where a particular case reaches the ICC because the Government has failed to investigate the case and bring it before national courts, the ethos of complementarity and its attendant juristic appurtenances remain at play; especially in the sense there is no known principle that should prevent judges from the relevant country from participating in the adjudication of the cases at the ICC. Lastly, it is to be recalled that at the ICJ, judges whose States are parties to cases before that Court are never disqualified on account of their nationality. Indeed, the *ad hoc* judge system serves the purpose of giving States parties to ICJ litigation to appoint their own nationals to sit in judgement in cases before the Court.

26. The Rome Statute requires that judges elected to the Court 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. In addition, a judge is expected to be on the bench or otherwise handle legal matters for at least seven hours per day, five days per week, and at times a judge's responsibilities may require him or her to be on the bench or at work into the evenings and on weekends. It may also include working on more than one case at a time and for Pre-Trial Division and Trial Division judges, the possibility of temporary attachment to the opposite Division.

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

Yes.

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

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 would perform them on my own. I do not require reasonable accommodation.

27. If there are any questions you wish were asked in this questionnaire but were not, or if there are any matters that you otherwise wish to bring to the attention of the Coalition in this questionnaire, please feel free to address them here.

The questionnaire is much too long to complete. Hopefully, people will take the time it takes to read it.

Thank you for completing this questionnaire.