

CICC questionnaire to candidates for a post of judge
of the International Criminal Court.

Name: ***Tuiloma Neroni Slade***
Nationality: ***Samoa***
Nominating State: ***Samoa***
List: _ A or _B ***List A***

While the first question is relevant to either list A or list B candidates, we know that some candidates have competence that would qualify for both lists, and we would want them to show their full experience in both criminal law and international law. Question 1a) has been specifically drafted with list A candidates in mind. Likewise, question 1b) has been drafted for list B candidates. However, candidates with competence in both criminal and international law should feel free to answer any question in 1a) or 1b) to give the reader a more complete view of their background and experience.

1 a) For candidates on list A:

- How would you describe your competence in criminal law and procedure?
- How would you describe your experience as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings?

My competence in criminal law and procedure is that of a trial lawyer and prosecutor. I have had practical case-related and Court-room experience in two common law jurisdictions: New Zealand and Samoa. In a span of some 18 years to 1982, I have been involved in the preparation of cases and appeared in numerous criminal trials, in preliminary hearings before the Magistrates Court and jury trials in the Supreme Court, and in criminal appeals before the Court of Appeal. For short periods in 1980 and in 1982 I held office as Acting Chief Justice of Samoa.

As Parliamentary Counsel (1973-1975) and as Attorney-General of Samoa (1976-1982), I had responsibility for and developed competence in respect of the criminal law policy and prosecutorial strategy of the State and related legislative and law reform programmes.

I have also had extensive experience in the compilation and editing of the law reports of Samoa (1969-1983), comprising criminal law cases and other cases; and, from 1983-1993, in the compilation, editing and dissemination of a Commonwealth law bulletin and law reports series among the member States of the Commonwealth of Nations.

My general competence in criminal law and procedure has become ICC-focused, and substantively enhanced, since taking office as a Judge of the Court in The Hague, from September 2003. I have been elected Presiding Judge of Pre-Trial Chamber II. Pre-Trial Chamber II is charged with the situation in northern Uganda, and has been actively engaged in judicial work since May 2005, including the issue of the first warrants of arrest of the Court. I also serve as a member of Pre-Trial Chamber III to which the situation in the Central African Republic has been assigned.

1 b) For candidates on list B:

- How would you describe your competence in relevant areas of international law, such as humanitarian law and the law of human rights?
- How would you describe your experience in a professional legal capacity that is of relevance to the judicial work of the Court?

My competence in humanitarian law and the law of human rights is that of a generalist.

I have been closely involved, as leader of the Samoan delegation, in the Preparatory Committee on the establishment of the International Criminal Court, in the Rome Conference in 1998 and the ICC Preparatory Commission. At the Rome conference, I was coordinator for the Preamble and Final Clauses of the draft Rome Statute.

In 1995, I was agent for four countries, including Samoa, in an application to the International Court of Justice (ICJ) for intervention in the Nuclear Tests case (New Zealand v. France). In 1995-1996 I represented Samoa before the ICJ in the Requests for Advisory Opinions on the Legality of the Threat or Use of Nuclear Weapons. Our fundamental concern, and the essence of our submissions in the proceedings, was to demonstrate that the use or threat of use of nuclear weapons is illegal per se, and as being contrary to the laws of war and the principles of humanitarian law and human rights.

As Assistant Director in the Legal Division of the Commonwealth Secretariat in London (1983-1993) I was engaged in a broad range of legal work involving research and advice to member Governments, conduct of studies, meetings and programmes in connection with, amongst others, the Commonwealth schemes on mutual assistance in criminal matters and the extradition or rendition of offenders, promotion of the rule of law and international human rights standards, and the development and strengthening of Commonwealth judiciaries and legal professions.

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2. What are the qualifications required in your nominating State for appointment to the highest judicial offices? How do you meet these qualifications?

The qualifications for appointment to the highest judicial office in Samoa (that of Chief Justice) are high personal qualities in moral character and integrity, and practice as a barrister for not less than 8 years. The Chief Justice is appointed by the Head of State on the advice of the Prime Minister. (I note that these are the same requirements for appointment as Attorney-General).

I have met the qualifications completely inasmuch as I possess the required character and personal qualities, and have satisfied the professional qualifications and practice requirements. As noted above, I have held office in Samoa as Attorney-General and as Acting Chief Justice. In the context of the ICC, I have the endorsement and support of the Prime Minister for my candidature and nomination. Furthermore, I have the endorsement and support of the Samoa Law Society for my nomination.

3. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure used for your nomination.

In 2005, Samoa established a National Group, comprising the Chief Justice and the Attorney-General, to consider and approve the nomination of candidates to international judicial institutions like the ICC.

The National Group of Samoa endorses and supports my nomination. In doing so, it took into account relevant considerations, including the requirements of article 36 of the Statute, the resolution in 2004 of the Assembly of States Parties to the Rome Statute, and the relevant communication in 2005 from the Secretariat of the ASP, the proposal of the Government of Samoa to present my name for nomination for re-election to the Court and the support of the Samoan Law Society for that nomination.

4. 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, why not?

Yes

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

I am completely fluent in English.

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

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I am taking lessons to improve my knowledge and fluency in French.

6. Do you have any specific legal expertise, including, but not limited to, violence against women or children?

I bring to the Court a broad range of legal experiences, with lengthy background and working knowledge of Court-room procedures and skills in eliciting information, marshalling of complicated facts and evaluation of evidence, and trained sensitivity and respect in the handling of all witnesses, especially victims, women and children.

7. a) Please provide us with a list of your writings and opinions relevant to evaluating your experience.

The following are my relevant writings:

- *The Prohibition of Genocide under the Legal Instruments of the International Criminal Court, Nottingham Law School, UK, 2005;*
- *The International Criminal Court: Independence and Interdependence, Victoria University of Wellington Law School, New Zealand, 2004;*
- *Law Reform Potential in the Pacific Area, Australasian Law Reform Agencies Conference, Wellington, New Zealand, 2004;*
- *The Added Value of the International Criminal Court, Third Transatlantic Dialogue Conference, Brussels, Belgium, 2004;*
- *The magnitude and scope of illicit trafficking in small arms and light weapons, a paper submitted at the UN Regional Disarmament Meeting, Wellington, New Zealand, 2001;*
- *An Examination of the Kyoto Protocol from the Small Island Perspective, Tuiloma Neroni Slade and Jacob Werksman, 2000, Climate Change and Development, Yale School of Forestry & Environmental Studies, Luis Gomez-Echeverri (ed);*
- *Keynote address on Pacific Perspectives on International Law, International Law Association Conference, Wellington, New Zealand, 1999;*
- *Keynote address on UNCED+7 and Barbados, Pacem in Maribus XXVII on Oceans in the New Millennium, Suva, Fiji, 1999;*
- *Preamble and Final Clauses, Tuiloma Neroni Slade and Roger S. Clark, 1999, The International Criminal Court: The Making of the Rome Statute: Issues, Negotiations, Results, Roy S Lee (ed);*
- *The Convention on Climate Change: A view from the Small Island States, 1997, Our Planet (UNEP), Vol.9, No. 7;*
- *Opening address before the International Court of Justice in Advisory Proceedings on the Legality of Nuclear Weapons, 1996, The Case Against the Bomb, Clark R S and Sann M (eds);*
- *Keynote address on the International Climate Change Negotiations on the Berlin Mandate at the Sixth Asia-Pacific Seminar on Climate Change, Suva, Fiji, 1996;*
- *1995 Review and Extension of the Treaty on the Non-Proliferation of Nuclear Weapons, 1995, Review of European Community & International*

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- Environmental Law, Sands P (ed);*
- *The Pacific Islands Law Officers Meeting (PILOM), 1992, Melanesian Law Journal, Nonggorr (ed);*
- *Forum Fisheries Agency and the Next Decade: the Legal Aspects, 1990, The Forum Fisheries Agency: Achievements, Challenges and Prospects, Herr R (ed);*
- *Law Officers in the Pacific Island States, 1988, Law, Politics and Government in the Pacific Island States, Ghai, Y H (ed);*
- *Dissemination of Human Rights Standards in a Culturally Diverse Region, 1987, Human Rights, Information and Dissemination, UNESCO seminar publication;*
- *A Constitution in Practice [1984] New Zealand Law Journal 181;*
- *Joint-Editor, Commonwealth Law Bulletin (1983-1993);*
- *Member, Editorial Committee, Law Reports of the Commonwealth (until 1993);*
- *Compiler/Editor, Samoa Law Reports (until 1983).*

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

Not all of this material is available in electronic form. If necessary, on request, hard copies, or source/s, of specific items can be provided.

8. a) For candidates not currently ICC judges:

Please explain your qualifications for this position. What aspects of your career, experience or expertise outside your professional competence do you consider especially relevant to the work of an ICC judge?

8.b) For candidates currently ICC judges:

How do you think your experience as an ICC judge would serve you for another mandate?

The Prosecutor made his first application to Pre-Trial Chamber II in May 2005. Thus, my judicial experience in the Court is relatively short. Still, I have no doubt in my own mind of the importance of that experience to the work of the Court if I were to be re-elected for another term, and the relevance of that experience in terms of my personal contribution.

Service in the Pre-Trial Division of the Court provides unique insight and an invaluable opportunity to participate in and to contribute directly to the foundational development of the Court's jurisprudence and ground-breaking experience of the Chambers and the Judges in dealing with the first situations referred to the Court. As Presiding Judge of Pre-Trial Chamber II it has been a particular challenge, and privilege, to provide leadership in this experience.

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The legal and procedural issues now being raised before the Pre-Trial Chambers are complex and of substantive importance, particularly at a critical point in the development of the Court's jurisprudence; and fundamental to the fairness of proceedings for all participants and for the transparent and efficient functioning of the ICC and its international criminal justice system. They were issues debated in the development of the Rome Statute and many were left, unresolved, for determination by the Judges. The proper resolution of such issues by the Pre-Trial Chambers at this stage, and in time through the trial and appeal phases, will undoubtedly remain challenges for the Court as a whole in the years ahead. The situation and case work now being undertaken is providing the Judges, indeed the Court system as a whole, with greater and in-depth understanding, and with judicial experience and confidence, in dealing with the issues.

9. Why do you want to be a judge at the ICC?

My earlier involvement with the development and establishment of the Court was the expression of my personal belief and commitment to the idea of the International Criminal Court. My engagement and experience as a Judge has served to enhance that commitment. I believe I have relevant background and experience and that I can make and continue to make a positive and substantive contribution to the work of the Court. My work and experience of the Courts and judicial systems in my own geographic region, the Commonwealth of Nations and in the ICC allow for a broad and balanced perspective that I believe are directly relevant and of importance in the role and functioning of the ICC.

10. What do you think will be the biggest challenges facing you as an ICC judge?

To play my part in demonstrating to all participants before the Court, and to an expectant world at large, the judicial need, soundness and credibility of the Court. As a Judge I will need to show, at all times, by conduct and by example of competence, efficiency, fairness, impartiality and independence that the ICC is an essential international institution, above all a Court of Law, with a vital role in guaranteeing international criminal justice.

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

Every effort is required of all concerned, including the Court itself, to demonstrate the relevance of the ICC as an international criminal Court, and the fairness of its role and proceedings for all humanity. The Court by its own performance, by its personnel and institutions and manner of dealing with its workload and the issues before it, needs to gain the confidence and respect of the world's communities, government and non-government alike.

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12. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions.

12 a) Members of the Coalition for the ICC and governments are concerned about the difficulties judges might experience in interpreting articles of the Rome Statute where their government has already expressed an opinion. Do you expect difficulties in your taking an independent position?

No.

12 b) Would you be able to judge impartially whether an investigation by your government was genuine?

Yes.

13. Victims have a recognized right to participation in the proceedings in the Rome Statute and to apply to the Court to award reparations under article 75. What experience relevant to these provisions do you have?

There is need for caution given the issues now before my Chamber and/or likely soon to come before the Chamber. Suffice it to say that my general experience as a trial lawyer, as a policy maker and negotiator of the Rome Statute, including on the issues relating to the participation of victims in proceedings and their rights under article 75 and as a Judge of the Court, are all relevant.

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

What experiences have you had dealing with crimes of sexual and/or gender violence? 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? Are there situations where you did not analyze the different impacts of a situation on women and men but on reflection you now think such an analysis would have been appropriate?

Crimes of sexual and /or gender violence committed in the context of the situation in Uganda are amongst those for which warrants of arrest have been issued by my Chamber. But, again, there is need for caution against my saying much more on the matter, in this response.

In my country, I prosecuted many cases of rape and other sexual offences involving violence against women; and in my time in the Commonwealth, I was involved in the policy consultations and work for the development of Commonwealth-wide studies and programmes on violence against women, for the dissemination of information and for the promotion of gender justice.

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Yes. With hindsight and with the benefit of far greater public awareness and sensitivity on the issues that we have today, I would have been far better prepared as a law officer and prosecutor in dealing with issues of crime and sexual violence.

15.a) Did you help advocate for the adoption of human rights or international humanitarian law treaties or other instruments? Please describe your experience.

Yes. For several years from 1988 to 1992, I was closely involved with a series of judicial colloquia in the Commonwealth of Nations organized by the Legal Division of the Commonwealth Secretariat and the International Centre for the Legal Protection of Human Rights (Interights) for the promotion of international human rights instruments, aimed at the application within national systems of international human rights norms. Agreed standards enunciated by the participating Commonwealth Chief Justices and other senior judicial officers were initiated as the Bangalore Principles and subsequently applied in a number of jurisdictions.

15. b) Have you served on the staff or board of directors of human rights or international humanitarian law organizations? Please describe your experience.

No.

16. 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.

17. Have you ever been found after an administrative or judicial hearing to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status? If yes, please describe the circumstances.

No.

18. 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 and shall require staff, court officials and others subject to his or her direction and control to refrain from such words or conduct.

Do you disagree or have difficulty with this expectation?

No.

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How will you be able to meet this expectation?

By personal example and behaviour, in and out of Court.

19. Judges will be elected for a term of nine years.

A judge is expected to be on the bench or otherwise handling 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.

Do you expect to be able, now and in the foreseeable future, to perform these tasks on your own or with reasonable accommodation? If no, please describe the circumstances.

Yes.

20. Do you know of any factors that would adversely affect your ability to competently serve as a judge, to comply with a judge's ethical responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume? If yes, please explain.

No.

Thank you.

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