

**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: Howard Morrison

Nationality: British

Nominating State: United Kingdom

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?

I have been engrossed by the ICC since I first became involved as a practitioner in international criminal and humanitarian law in 1997 as defence counsel at the ICTY. I attended the ICC prepcoms in 2001 to advocate for organic defence rights in the Rome Statute and became immersed in the whole concept. Since then I have been a constant advocate for the ICC including leading a 5 day conference in Damascus in 2005 organised by the British Council to explain and encourage Syrian legal interest and in 2005 and 2006 I undertook similar duties in respect of Iraqi, Egyptian and Jordanian judges and lawyers in situ. I have spoken in respect of the ICC at conferences in the UK, USA, Holland, Sicily, Australia, Tanzania and South Africa. Having been fortunate enough to serve as a judge at the ICTY my commitment to international criminal and humanitarian law and the international judiciary and the ICC has strengthened even more. In consequence I am left with but one burning ambition and that is to serve people worldwide as a judge at the International Criminal Court. I am immersed in the law and procedure and lecture on international law topics widely and frequently. Immodest though it may appear I believe that I could put myself forward as either a list A or a list B judge. Once the current judges due to leave have actually left there will be but one judge from a common law background in the ICC judiciary. That may be thought to be a gross imbalance, considering the requirement for both major legal systems to be fairly represented.

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

Assisting in the maintenance of absolute judicial independence and, by proper court and trial management and sound judging, the ensuring of professional legal practice and adherence to fair trial norms. Accommodating the rights of the victims rationally into the proceedings and making it plain that the court is a vehicle for transparently fair trials by the maintenance of the highest standards by all parties and the evolution and refinement of appropriate jurisprudence to show that the court and concept not only works efficiently and fairly but is seen to do so.

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?

In my view the two major challenges lie in persuading major nations to join with the ICC in the end of impunity for egregious crimes by advocacy and example and dealing with misconceptions concerning any perceived bias in prosecutorial policy. For the short-term future those are likely to remain problematic but there will be the inevitable battles for a sufficient budget and a requirement for the court to be fiscally and administratively efficient and seen to be so. In times of global recession the importance of the latter can only come more sharply into focus. By being seen as a senior criminal court delivering real justice the ICC will strengthen its international public appeal and encourage greater membership.

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 basic qualification is 10 years admission as a lawyer and moral and character requirements. In practice much longer experience is required and there is a stiff selection process which I already successfully completed in order to be appointed to the UK bench. I meet the requirements because I am in fact a Circuit Judge in the UK in both criminal and civil jurisdictions and I hold all the authorisations necessary to conduct any seriousness of criminal trial including that which is nominated as being a Class 1 offence.

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).

The procedure undertaken for my nomination followed that which is used for the nomination of candidates for appointment to the highest judicial offices in England, Wales and Northern Ireland. The United Kingdom used a transparent process for selection, involving

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advertisements and a selection panel of senior members and representatives of the judiciary of England and Wales, the Northern Ireland Department of Justice, the Scottish Government, the Ministry of Justice and the Foreign and Commonwealth Office.

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.

Legal System and Language Abilities:

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

Common law

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

I have extensive experience of other legal systems. As well as prosecuting, defending and judging in the UK I served as a Resident then Chief magistrate of Fiji, Senior Magistrate of Tuvalu, Attorney General of Anguilla, and defence counsel at the ICTY and ICTR. I have worked extensively with lawyers from many other jurisdictions, both common and civil law. It is difficult to be exact but it would exceed 40 individuals. I have also been an advocate before both common law and civil law judges at the ICTY and ICTY. As Senior Judge for the Sovereign Base Areas in Cyprus I had to become familiar with their unique jurisprudence and for my short sojourn as a judge of the Special Tribunal for the Lebanon I spent many hours absorbing Lebanese law to enable me to participate fully in the drafting of the STL Rules of Evidence and Procedure. I am currently engaged in giving expert pro bono advice to the defence unit of the STL as to the adequacy of their defence counsel requirements. As a judge of the ICTY, both first instance and appellate [Hartman: Lukic and Lukic], I of course have to apply the jurisprudence of the ICTY.

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

I have worked extensively over many years with judges from very varying legal systems [and of course do so at the ICTY on a daily basis] and would claim to do so not only without difficulty but to enjoy the variety such work engenders. Any difficulties which do arise are quickly resolved by the application of proper respect and esteem and by adequate communication, as in most walks of life.

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?

Mother tongue English

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

I read French well. Many of the documents I had to deal with in 4 years practice at the ICTR were in French and no other language. I speak reasonable French. My written French is extremely rusty and constantly demonstrates to me the complexities of a beautiful but demanding language. I recently completed a course run by the Alliance Francaise de La Haye and am embarking upon another in 2012.

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?

At a very high level. I was appointed Queen's Counsel in the UK : that comes to some 8% of the Bar. I was a Grade 4 prosecutor for the Crown Prosecution Service [highest grade], a Grade A prosecutor for Customs and Excise [highest grade] and I prosecuted for the Serious Fraud Office. I defended in many high profile serious cases having some 27 years in practice at the Bar.

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

Very extensive. As well as 27 years at the Bar I have had some 21 years as a part-time and full time Judge. As a part-time judge I was already authorised to try rape cases, an authorisation normally only granted to those appointed as full time judges. My practice has included some 13 years of involvement with international criminal and humanitarian law as defence counsel and judge. I also lecture on specific topics within that discipline.

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?

Although not a list B candidate I would assess my competence as extremely high. I deal with it on a daily basis and teach it on occasions.

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

Again, although not a list B candidate I would describe my professional legal experience as custom-made for the ICC

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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 emphasise my extensive and varied legal career history as already outlined above including many years as an advocacy teacher/trainer for Grays Inn. I have also worked as a volunteer teacher in Africa [Ghana], a volunteer recruiter and trainer in Zambia and Malawi and extensive teaching and lecturing world wide. I also do advocacy training including [before being a full time judge] training advocates at the ICC and extensive advocacy and advocacy teacher training for Gray's Inn, in particular a focused advocacy training program for newly qualified young black lawyers in South Africa. I actively support the Sir Richard May Trust to provide funds for interns to the ICC and ICTY/R. I have travelled for work and interest purposes to over 60 different countries and consider myself in that regard as empathetic to peoples of varying races and religions. I was involved as a committee member of the Race Relations and Equal Opportunities Committees of the UK Bar Council for some 10 years. I am dedicated to the concepts of equality and fairness which I consider very relevant to the work of an ICC judge. I am an active Friend of the St Philips Centre, a UK based mutli-faith centre which promotes understanding and contact between all faith groups and non-faith groups such as humanists

- 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 do. I have had such experience in the UK where I prosecuted serious crimes requiring acute application of disclosure responsibilities. I have managed [and now manage] complex trials and mass crime cases as both prosecution and defence counsel and as a judge in the UK [holding a Long and Complex Trial authorisation] and as a judge of the ICTY

- 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' 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?

Very willing. I have been involved in advocacy and judicial training for over 20 years. I enjoy training and have done so in a variety of countries and academic institutions over the past two decades.

- b)** Do you consider such training to be important?

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It is essential. In the UK it is properly compulsory.

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.

I was appointed a trial judge in rape cases even when sitting as a part-time judge in the UK as I had years of experience in dealing with such cases, including sexual offending against children at the Bar. I would estimate that I dealt with over 400 such cases as both a lawyer and as a judge. I was a syndicate leader at a Judicial Studies Board Serious Sexual Offence seminar and attend a number of such seminars as a participating judge.

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?

All sexual offences cases to a greater or lesser extent involve a specific gender perspective and victims can be male or female, children or adults. I would claim that I had the reputation of dealing with such cases sensitively and effectively.

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.

Having dealt with at least 3000 criminal cases in my career at the Bar and Bench all of which of course impacted on individuals singly or collectively as victims I am very aware of the position of victims and the desirability of victim participation in a rational and effective way. I recently attended an IBA conference where I spoke on the provisions of Article 75. I am currently writing a chapter on a book to be published in 2012 on that topic.

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 very extensive practical trial experience as both counsel and as a judge. This was a particular feature of my defence work at the ICTY, especially in the Celebici and Nikolic cases, and the ICTR in particular where many Tutsi victims were witnesses and requires great sensitivity and understanding in dealing with their testimony to make sure that there experience did not amount to a repetition of any original suffering. As a judge one is always very acutely aware of that position and required to enter the arena to prevent [for instance] inappropriate cross-examination whilst maintaining fair trial rights.

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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.

This occurs in every contested criminal trial and many civil actions involving [for instance] personal injury. I also spent years dealing with family law cases as a lawyer and judge and the same principles are to be found there, especially when as a judge one is called upon to decide who should have long term custody of [sometimes abused] children. I have had 34 years active experience of these issues at the Bar and Bench.

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.

Frequently at conferences and seminars in the UK, USA, Australia, Sicily, Germany, Holland, Syria, Tanzania, Egypt, Jordan, UAE and South Africa. I have advocated for ratification of the Rome Statute, lectured on the provisions of the ICCPR and Geneva Conventions and the ECHR.

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?

Yes as a judge of the ICTY and have referred to ECHR decisions frequently in cases in the UK as well as the UK Human Rights Act 1998.

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.

Yes. Through the similar provisions of the ECHR and UK Human Rights Act. I have done this in abuse of process decisions in the UK as a judge in particular and as a judge at the ICTY when invoking the established jurisprudence.

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

Many many times as both defence counsel at the ICTY and ICTR and as a judge of the ICTY. Done on a daily basis.

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

I was a long standing member of the UK Bar Council Race Relations and Equal Opportunities Committees which deals, in effect, with human rights issues. I also served as an ad-hoc judge on the Bar Council Disciplinary board which dealt on occasions with sanctions against those breaching, inter alia, human rights requirements.

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

There are a plethora of decisions in the public domain on the ICTY website to which I have contributed. I am on the Advisory Board of the Journal of International Criminal Justice. In May 2010 I edited a symposium at JICJ vol 8.No 2 May 2010 Oxford Journals.

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.

For example:

Essays on ICTY Practice and Procedure in Honour of Judge Kirk McDonald IHL series 200
Defence of Alleged Genocidaires. A Commentary, OUP 2009

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?

For example:

Member of the Expert Advisory Group of Amsterdam University on International Criminal Procedure

Member of the British Institute for International and Comparative Law

Member of the Commonwealth Judges and Magistrates Association

Holding Redlich Distinguished Visiting Fellow, Monash University

Visiting lecturer at Amsterdam VU and Scuola Superiore, University of Catania

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.

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

None

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

Many years of impartial judging in the UK and internationally and service on the Bar Council Committees as outlined above

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?

Absolutely none at all

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?

If there was a shadow of rational doubt I would recuse myself.

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?

Having been in receipt of a letter informing me that newly elected judge might not be required to perform duties for a considerable period after election, and with the caveat of finishing cases at the ICTY [which will be certainly be considerably sooner than some reports suggest] , yes. As I currently work an average of 55 hours a week, often coming in a weekends, the workload holds no worries. I already live in The Hague.

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.

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Yes. I do already.

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.

Only that the ICC is a senior criminal court and needs staff and judges with the appropriate long-term practical experience of such institutions.

Thank you for completing this questionnaire.