

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT  
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES  
NOVEMBER 2013 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:** Justice Geoffrey Andrew Henderson

**Nationality:** Republic of Trinidad and Tobago

**Nominating State:** Republic of Trinidad and Tobago

**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 spent approximately twenty four (24) years in the criminal justice system as public service to my country. If given the opportunity, I would like to continue my service at the international level. I wish to be elected a Judge of the ICC as I am convinced that I can make a valuable contribution to the development of international criminal law and justice.**

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

**If I am elected as an ICC Judge, I could and perhaps would face challenges with the procedural juridical structure in place at the ICC. For example, I would need to become used to and be able to manipulate issues such as the admissibility of evidence, the admissibility of hearsay evidence, the two tiered system of the admissibility of documents ( where admissibility and reliability are processed on two different levels) and the difference between counsel driven and judge driven proceedings.**

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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?

**I believe that the biggest challenges currently facing the ICC is the perception held that the ICC is capable of being used as a vehicle for the unjust prosecution and unfair targeting of some leaders and that justice at the ICC is unduly affected by the political mandate of nations. However, as the ICC conducts trials that are seen by the international community as fair, as the ICC prosecutes impartially and in accordance with the law, then these notions will disappear.**

**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.

**One must be an attorney at law for a minimum of ten (10) years standing at the Bar, possessing the highest moral standards and integrity, and demonstrating by one's advocacy and legal practice, comprehensive competence in the law.**

**One is interviewed by the Judicial and Legal Service Commission, an independent commission set up under the constitution of the Republic of Trinidad and Tobago. As part of the process, the concurrence of the Law Association of Trinidad and Tobago is sought and background checks are conducted by the police service.**

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).

**Trinidad and Tobago is not a member of the Permanent Court of Arbitration. I am aware that in the past the Government had appointed an independent National Committee to evaluate persons for election to the ICC from among individuals who met the criteria for appointment to the highest judicial offices in Trinidad and Tobago. On this occasion of the election to fill the vacancy created by the elevation of Judge Anthony Carmona to the Presidency of the Republic of Trinidad and Tobago, I was**

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**invited, along with several other qualified individuals from the Judiciary and the private bar, to submit my CV and supporting documentation for evaluation and review by a specially mandated Committee. The Committee was thus able to assess my suitability for nomination for election to the ICC. In deciding to nominate me for election to the ICC in 2013, the Government was able to take into account the report of the Committee, my record of service to the criminal justice system as well as my track record and credentials as a prosecutor and as Judge of the High Court, Supreme Court of Judicature, Republic of Trinidad and Tobago.**

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 legal system**

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

**Although I have never worked in the civil law inquisitorial system, I have been exposed when I have dealt with international criminal law issues during the course of my career. In addition, I have attended and participated at international training workshops as well as interfaced with lawyers and judges from civil law systems both regionally as well as internationally.**

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

**International criminal law is an amalgam of legal systems. Necessarily therefore, there are likely challenges with working with judges from other legal systems with respect to differences in procedural rules, differences in the approach to the**

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**admissibility of documents, even differences in how to approach criminal proceedings itself ( whether judge led or party led). These are the sort of difficulties that I envision. In my view the approach must be one of communication, respect for cultural and legal diversity and the ability to make compromises while at the same time keeping a keen eye on the broader and fundamental issues of truth, accountability and justice.**

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 native language.**

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

**I cannot speak French**

**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?

**I would describe my experience as comprehensive and practical.**

**I am a trial judge sitting in the High Court, Supreme Court of Judicature where I have and continue to preside over homicide, attempted murder, sexual offences, wounding, firearm and ammunition, robberies and fraud offences. I was sworn in as Judge in January 2009. Prior to this, I was a prosecutor in the Office of the Director of Public Prosecutions where I joined at the entry level position in 1990 and over the years was promoted through the ranks culminating in my appointment as Director of Public Prosecutions in July 2002. I have extensive trial experience. I resigned as DPP in January 2009 to take up my current position as Judge.**

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**I was also an Associate Tutor at the Hugh Wooding Law School in two courses; Law of Evidence and Criminal Practice and Procedure ( this institution prepares law degree graduates for the bar exams leading to the award of the Legal Education Certificate**

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

**I have been a trial judge for almost five (5) years. I have presided over trials of varying complexity and offences during that time as described above**

**Prior to this I was a prosecutor for about nineteen (19) years. As a prosecutor, I led evidence at committal proceedings, summary trials, jury trials of varying complexity (either having regard to the fact of there being multiple accused or having regard to the legal issues raised) and presented legal submissions at appeals. As a prosecutor I would also have worked closely with investigators to see to it that there was compliance with best practice; ensuring that the best evidence was obtained and that appropriate charges were brought against the properly identified defendant.**

**I was also involved in training both locally and at regional workshops.**

**Please see my curriculum vitae.**

**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?

**Not applicable**

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

**Not applicable**

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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 am qualified for this position as I am of the view that I have extensive trial experience both as a prosecutor and as a judge. Managing trials is a skill that comes with experience. This is a value that I can contribute to the ICC; the value of having experience in managing trials on a daily basis with sometimes difficult parties, attorneys and witnesses.**

**As to aspects of my career, experience, and expertise outside my professional competence, there are several areas I consider important.**

**As a senior prosecutor and later as DPP, I was involved in the setting up of a national witness protection programme. I was part of the advisory team at the policy development stage and subsequent to that, the review of the resultant draft legislation. As DPP, I worked closely with the programme on the basis that “No Witness No Justice”**

**Additionally, I have the privilege of Chairing the Drug Treatment Court pilot Project Steering Committee comprising a wonderful multi disciplinary team that has rolled out a Drug Treatment Court Pilot Project for Trinidad and Tobago. In its second year it has already had an impact.**

**In 2010, I attended the Commonwealth Judicial Education Institute at Dalhousie Law School, University of Nova Scotia where I did an intensive judicial educators course. I am currently a Board Member of the Judicial Education Institute of Trinidad and Tobago. The JEITT provides training and educational programmes for judicial officers, court administrators and support staff.**

**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?

**Both as Director of Public Prosecutions and as High Court Judge, I have managed complex criminal cases involving multiple accused with multiple victims, multiple counts and complex legal issues sometimes involving international law, constitutional issues and criminal law. While these matters were not with respect to mass crimes in the sense that they did not emanate from post conflict positions, there**

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**have been occasions when they involved issues of transnational crimes, drug trafficking and gang warfare. As such, I have experience in managing, prosecuting and presiding over complex criminal cases.**

**In so far as disclosure is concerned, in Trinidad and Tobago, the regime for the disclosure of evidence is an on-going exercise. Throughout the course of my experience, I have received literally hundreds of disclosure requests. Indeed as Director of Public Prosecutions, my policy on disclosure was informed by my understanding that trials must never be done in secret, that ambush is neither efficient nor fair, and that open disclosure (with appropriate safeguards for witness safety) is crucial not only for the fairness of a criminal trial, but also for the perception of fairness. As Director of Public Prosecutions, I published disclosure guidelines for prosecutors and circulated these guidelines through the Law Association of Trinidad and Tobago**

- 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?

**Yes I am willing to participate in workplace training.**

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

**I consider such training to be extremely important.**

- 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.

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**Regrettably Trinidad and Tobago has some history of crimes of sexual and gender based violence. Although this is not based on armed conflict, I have always been required to deal with such crimes. Accordingly, as a prosecutor in the trenches so to speak, then as Director of Public Prosecutions and now as Judge , I have dealt with rape, incest, serious indecency and matters involving child abuse.**

- 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?

**In the course of my experience, I would have learned/observed how sexual violence affects both men and women, leaving them both traumatized: both helpless and ashamed. As prosecutor I would have dealt with this using various measures including but not limited to communication, arranging access to counselling, arranging the sequence of when to call such witnesses and even bringing them to the court room to make them more familiar with the surroundings. These have empowered reluctant witnesses. As a judge, while always careful to balance the rights of a defendant, I have also tried to ensure that the atmosphere in the court room is one that is not intimidating and one in which the victim knows that the court wants to hear what the victim has to say...one of empowerment.**

**It has worked fairly to good effect.**

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 jurisdiction, victims are only parties to proceedings when they are the complainants in the case. I do not have experience with victim participation otherwise in the trial phase. As Director of Public Prosecution in an unreported sentencing review of *The State vs. Leroy Andrews (2006)*, I made successful submissions that allowed the introduction of victim impact statements at the sentencing review stage. The victims were the children and husband of a murdered woman. Now such victim impact statements are used at the sentencing stage**

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

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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?

**See above**

- 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.

**As a trial judge there is always such a balancing act or a tension as it were. This is especially acute in cases involving sexual offences and/or offences against children. In such a case the balance is one of empowering the victim to relate the incident. This may be quite emotional. On the other hand, there is the need to caution the jury against the danger of emotion infecting the decision making process, guarding against unconscious biases and the need to approach the evidence clinically, dispassionately and objectively.**

16. In your view, what are the strengths and weaknesses of victims' participation before international criminal and human rights bodies?

**Victim participation is unique to the ICC. I can see that it will assist in the dissipation of the culture of impunity and that it can re-engineer the course of international justice to be more people oriented and more sensitive to the needs of people groups that have been affected by conflict. But victim representation is not a feature of the common law and as I understand it, neither is it in the inquisitorial system. It is a new area that is still developing. One can readily see the potential for weaknesses. The first relates to the right of an accused to a fair trial. How to balance that right with the rights of witnesses, witnesses who are victims and victims who are not witnesses is a difficult one. Also, who is a victim? In post-conflict situations with victim reparation available, there is the potential for persons willing to tell untruths in order to have themselves declared victims. These are some of the challenges that victims' participation faces. However, as acceptance for victims' participation grows in international law, the principles of victim participation will become more entrenched.**

17. Do you have any experience in working with or within international human rights bodies or courts? Please describe.

**No.**

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

**No.**

**19.** 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?

**No, not directly but there are many such fundamental human rights that are entrenched in the Constitution as well as in various aspects of the criminal justice system of Trinidad and Tobago. Such rights are applied in criminal proceedings**

**20.** 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.

**No. (Although the Rome Statute has been incorporated into domestic law through legislation)**

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

**No.**

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

**No.**

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

**See curriculum vitae**

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- c) 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.

**Not applicable**

- d) 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?

**My professional career, particularly as Director of Public Prosecutions has been reported on in my local press.**

**Other matters:**

24. 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.**

25. 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.**

26. 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.

Please send your completed questionnaire to [judicial-elections@coalitionfortheicc.org](mailto: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

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

**In Trinidad and Tobago, judges must maintain fairness and must never exhibit or condone bias or prejudice of any type. This is forbidden. I agree wholeheartedly with this expectation and have always maintained this myself. In 2013, part of the continuing education seminars conducted by our Judicial Education Institute for judges had a component devoted to unconscious bias and the need to be alive to such bias.**

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

**Trinidad and Tobago is a multi cultural, multi racial and multi religious society comprising 1.3 million people living on two islands. The differences must be accepted in a small space. As Director of Public Prosecutions and now as a Judge I have such competence in addressing issues of possible bias and ensuring that these issues neither affect the fairness of criminal proceedings...and equally important, the perception of such fairness and even handedness.**

27. 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?

**No, I do not have any such difficulties. As Director of Public Prosecutions based on the outcome of criminal investigations, I have in the past instituted criminal proceedings against sitting and former government ministers and in one case, a former prime minister. As a Judge, I have had to adjudicate on matters that concern the government. I have always addressed these issues fairly and independently. If I am appointed as a Judge at the ICC, I will continue to act independently and impartially in accordance with the law.**

- 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

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

**As a judge, I would sit not as a representative of a government but as a judicial officer sworn to adjudicate on matters before the court. Accordingly, I could if required, independently and fairly participate in a judicial decision involving a matter in which my country has an interest. Having said that, the principles relating to perceived (as opposed to actual bias) and when and in what circumstances a judge should recuse his or her self are settled.**

**28.** 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. As a sitting judge, I have the work ethic and ability to discharge such responsibilities. I am in good health and while it is no longer readily apparent, I used to run full (albeit slow) marathons as recently as 2006.**

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

**Yes.**

**29.** 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.

**No.**

**Thank you for completing this questionnaire.**