

COALITION FOR THE INTERNATIONAL CRIMINAL COURT

QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES

DECEMBER 2011 ELECTIONS

***** UNOFFICIAL CICC TRANSLATION *****

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: B R I A Modeste Martineau

Nationality: Central African

Nominating State: The Central African Republic (CAR)

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 would like to be elected at the ICC in order to put my experience in criminal justice at the service of this high international jurisdiction.

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

The biggest challenge would be the English language.

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?

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

- *The lack of cooperation regarding the implementation of arrest warrants (arrest requests);*
- *The “apparent” choice regarding cases to be prosecuted;*
- *The biggest challenges in the coming years will be the same as the current ones.*

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.

I have such qualifications in criminal justice because after a 19-year career in the judiciary, I have practiced for over 17 years at the Public Prosecutor's Department.

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).

My candidacy has been proposed following a favorable opinion of the Ministry of Justice and Morals, the Lord Chancellor and with the formal agreement of the President of the Republic, Head of State.

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?

To the French System.

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

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
*** UNOFFICIAL CICC TRANSLATION *****

Yes. I have some knowledge of the Anglo-Saxon system.

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

No difficulty, since the bottom line of the law is the same in all systems and only procedures sometimes differ.

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?

School Level. No.

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

Excellent level for my entire life.

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 acquired my competence in criminal law and procedures thanks to 17-years experience within the Public Prosecutor's Department.*
- *I have indeed served as Deputy Prosecutor, Public Prosecutor, Attorney General, Director of Public Prosecution.*

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
*** UNOFFICIAL CICC TRANSLATION *****

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

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?

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

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.

As described earlier, my occupation at the Public Prosecutor's Department of Jurisdictions allowed me to practice criminal law and procedures. Hence, I prosecuted offenses (The Magistrates' Court and Penalty Chamber as well as crimes (criminal court)). I was consecutively Deputy Prosecutor, Public Prosecutor, Attorney General, Director of Public Prosecution.

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 am the author of a bill called the "Protection of women and children against acts of violence in the CAR."

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.

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
*** UNOFFICIAL CICC TRANSLATION *****

b) Do you consider such training to be important?

Such training is important in the sense that it will help in conciliating the law with policies.

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 have never dealt with such a case.

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?

The constitution of the CAR proclaims equality of the sexes. As a consequence, making distinctions based on gender while dealing with a case is unconstitutional.

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 the Central African criminal legislation, each victim is heard before the Courts and is entitled to ask for reparations. Thus, having taken part in many criminal trials as a representative of the Public Prosecutor's office, I have built up an experience on the matter.

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?

That refers to the answer to question 14.

b) Do you have any experience in balancing victims' participation with the rights of the

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

accused to due process and a fair and impartial trial? If so, please describe.

See answer to question 14.

- 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.

No.

- 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?

No, since such matter has arisen in the cases I have dealt with.

- 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.

No, since the incorporation of the Rome Statute, especially its crimes, into the Central African legislation, none of these crimes has been brought before our jurisdictions.

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

No.

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

No.

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

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

Writing many bills such as the Penal Code, the Criminal Procedures Code, the “Protection of women and children against acts of violence”.

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.

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?

You could refer to the Ministry of Justice, the President of the Court of Cassation, the Director of Public Prosecution at the Court of Cassation, Members of the Constitutional Court.

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?

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
*** UNOFFICIAL CICC TRANSLATION *****

No.

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

The Judge's Oath prescribes impartiality. Thus, I cannot but comply with such expectation.

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?

No.

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?

Once elected, I will comply with the provisions of Articles 40 and 41 of the Rome Statute.

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?

No.

b) Do you expect to be able to perform the judicial tasks described above on your own or

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

with reasonable accommodation? If no, please describe the circumstances.

Yes, without compromise.

- 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.

Nothing specific.

Thank you for completing this questionnaire.

Modeste Martineau BRIA