



Questionnaire de l'ABCPI pour les candidats au poste de juge de la CPI en 2026

ICCBA questionnaire for ICC 2026 judgeship candidates

L'Association du Barreau près la Cour pénale internationale (ABCPI) est l'organe représentatif indépendant des conseils exerçant devant la Cour pénale internationale (CPI), chargé de promouvoir les droits de la défense, la représentation des victimes, l'égalité des armes et la bonne administration de la justice. Par le biais de ce questionnaire, l'ABCPI vise à aider les États parties et les parties prenantes à évaluer les candidats aux fonctions judiciaires de la Cour. Nous vous invitons à compléter et à retourner ce questionnaire au Directeur exécutif de l'ABCPI à l'adresse dkennedy@iccba-abcpi.org au plus tard le **17 juillet 2026**, et vous remercions par avance du temps que vous y consacrerez.

The International Criminal Court Bar Association (ICCBA) is the independent representative body of counsel practicing before the International Criminal Court (ICC), mandated to promote the rights of the defence, victims' representation, equality of arms, and the effective administration of justice. Through this questionnaire, the ICCBA seeks to assist States Parties and stakeholders in assessing candidates for judicial office at the Court. We kindly invite you to complete and return this questionnaire to the ICCBA Executive Director at dkennedy@iccba-abcpi.org by **17 July 2026**, and we thank you in advance for taking the time to provide your responses.

Questions d'ordre général / General questions

1. Pourquoi souhaitez-vous être élu(e) juge à la Cour pénale internationale?

What motivates you to seek election as a judge of the International Criminal Court (ICC)?

I bring the experience, knowledge and skills required to contribute meaningfully to the development of international criminal justice and to the effective discharge of the Court's mandate. My more than three decades of wide-ranging experience in national and international criminal law and procedure span the investigation and prosecution of the most egregious crimes as well as adjudication at the appellate level. I have the judicial temperament and courtroom experience required to adjudicate serious and complex cases. I am also able to work cohesively within a panel of judges to ensure that justice is delivered for both victims and accused persons.

2. Qu'est-ce qui vous distingue en tant que candidat(e) ?

What sets you apart as a candidate?

What sets me apart is the exceptional breadth of my experience in criminal law. I do not come from a single aspect of legal background or practice. I have worked nationally and internationally. I have been a prosecutor, an investigator, a crime analyst and a judge. I have trained and built capacity for criminal justice actors across the board, including investigators, prosecutors, defence lawyers, magistrates, judges and prison officers. I have supported legal aid for serious terrorism cases in the Sahel. I have headed an Office of the Prosecutor. I have been involved in the development of legislation for the protection of victims, and I have developed standard operating procedures for interviewing victims of serious sexual violence in conflict and victims of crimes against children. Most recently, I have been involved in developing legislation to establish a Special Tribunal for The Gambia to try perpetrators of gross human rights violations that amount to international crimes committed in The Gambia.

Such breadth of experience is distinctive in several respects. It gives me the advantage of identifying issues in any case that comes before me, weighing the evidence impartially, and considering the rights of the accused even as I listen to evidence that may be deeply distressing. My years of work in strengthening legal aid systems in the Sahel, as well as in improving conditions in penitentiaries and prisons, have given me a clear understanding of the challenges faced by persons accused of serious crimes. This understanding ensures that I do not analyse defence evidence in vacuo. I am able to place matters in their proper context as I consider the evidence before me.

3. De quelle manière votre État vous a-t-il sélectionné(e) en tant que candidat(e) au poste de juge à la CPI ?

What was the process employed by your State to select you as a candidate for ICC Judge?

The process employed in my country was the same as that used for selecting judges of the superior courts.

Upon receipt of the call for nominations through diplomatic channels, an invitation to submit expressions of interest was issued to all judges of the Superior Courts. Six judges, including myself, expressed interest. In expressing my interest in the nomination, I submitted a curriculum vitae in the required form and explained why I considered myself qualified to be nominated. All six candidates were interviewed by a panel of the Judicial Service Commission, which is the body responsible for recommending judges for appointment. I emerged as the best candidate and the Judicial Service Commission recommended that the Government nominate me for election to the ICC as judge. The recommendation was forwarded to the Ministry of Foreign Affairs and Gambians Abroad for onward transmission via the diplomatic channels.

I should underscore that the Judicial Service Commission is an independent body established under Section 145 of The Gambian Constitution to identify, among other functions, suitable persons for appointment as judges of the superior courts of The Gambia. Its membership comprises the Chief Justice as Chairperson, a judge of the Supreme Court, the Solicitor

General, a private legal practitioner of at least 5 years standing, one person appointed by the President of the Republic, and a person nominated by the National Assembly.

Questions sur vos qualifications en tant que juge / Questions on qualifications

4. **Avez-vous déjà été juge auparavant, et si oui, veuillez décrire votre expérience, en particulier en ce qui concerne la procédure préliminaire au procès, le procès et/ou l'appel des jugements.**

Have you ever been a judge before, and if yes, please describe your experience, in particular as to pre-trial proceedings, trial proceedings, and/or appeals.

I am presently a sitting Judge of the Court of Appeal of The Gambia. I also sit on an ad hoc basis as a Justice of the Supreme Court when the exigencies of the work of the Judiciary so require. On the Court of Appeal, I sit as a member of a panel of three judges, and at the Supreme Court, I sit on panels of five judges. I therefore have substantial experience in appellate proceedings.

As an appellate judge, my work involves understanding the Grounds of Appeal filed by the Appellant, reviewing the record of proceedings (which is in most cases voluminous), reviewing the briefs of argument filed by the parties, listening to and taking note of oral argument, asking questions to clarify the issues, and then synthesising the whole in order to arrive at a decision that is just and judicious. This requires that I understand the law and procedure, study the facts of the case and consider whether there was any mistake of fact or of law on the part of the trial judge. I then bring my views before my colleagues on the panel of judges during the case conference. Where we hold a unanimous opinion, one of us writes the lead judgement and the others write supporting decisions, all of which are delivered on the same day. When one judge holds a strong dissenting opinion, they will write a dissenting opinion, which is also delivered on the same day. Where we find that there has been a mistake of fact or of law, the ground or grounds of appeal succeed, and the appeal succeeds in whole or in part. The outcome may relieve the appellant of liability or, in a criminal matter, may result in an acquittal. In appropriate cases the matter is remitted for retrial before a different judge. Where the grounds of appeal raise concerns that are not supported by the evidence, the appeal fails and is dismissed.

I also deal with interlocutory applications, such as bail pending appeal, and, in civil matters, applications for a stay of execution pending the determination of the appeal. These are dealt with in similar form, and, where the justice of the case demands, they are determined expeditiously to avoid irreparable harm to one of the parties.

Sitting as an appellate judge is a serious responsibility. It allows a party to plead their case before three judges and to rectify errors that may have been committed by the lower court. In criminal cases this is particularly important. A panel of judges examines the case afresh, reviewing the evidence, the law and legal precedent to ensure that the accused had a fair hearing and that the high criminal standard of proof beyond reasonable doubt was met by the court below. It also allows the accused, where appropriate, to lead new evidence to demonstrate his/her innocence which evidence may not have been available at trial.

5. **Si vous avez été juge, pouvez-vous donner un exemple relatant un évènement ou un moment particulier qui a mis à l'épreuve votre tempérament judiciaire ?**

If you have been a judge, can you describe a time that tested your judicial temperament?

As a sitting judge, the lack of preparation by counsel can sometimes test judicial temperament. When I have a matter to hear, having read all the papers and prepared my questions to put to counsel to clarify their arguments, my colleagues and I arrive in court ready to proceed. When one of the lawyers is absent or not ready to proceed and seeks an adjournment, it can be testing. It is particularly so when the case is a criminal matter and the person concerned is serving a custodial sentence. The difficulty is acute where the lawyer who is unprepared is acting for the person in prison, because I am unwilling to strike out the matter and at the same time, I wish to see the matter determined quickly so that the person knows their fate.

Most recently, a case came before the Court in which the court below made a clear error of law. The Respondent's lawyer was painstakingly trying to defend the judgment. I drew his attention to the fact that, as an officer of the court, it was his responsibility to concede where an injustice was clear on the face of the record. He remained adamant and continued to argue with the Court. His lack of preparation was evident in the way he responded to our questions and blindly tried to defend the judgment. I was not particularly pleased with him. The miscarriage of justice was glaring, and I expected a swift resolution. Even so, I had to exercise patience in explaining to him that, in the interests of justice, his argument could not stand. The panel discussed the matter and agreed to allow the appeal summarily, with detailed reasons for the decision to be delivered at a later date. In this way the justice of the case was secured without further delay.

6. **Pour les candidats de la liste « A », veuillez décrire votre expérience en matière de droit pénal international.**

Pour les candidats de la liste « B », veuillez décrire votre expérience en matière de droit pénal et de procédure pénale.

For list "A" candidates, please describe your experience in international criminal law.

For list "B" candidates, please describe your experience in criminal law and procedure.

I am a candidate for List A, established competence in criminal law and procedure.

I began my career as a State Prosecutor in the Office of the Director of Public Prosecutions at the Ministry of Justice of The Gambia, rising to the rank of Principal State Counsel. My subsequent service as Legal Adviser in the Legal and Constitutional Affairs Division of the Commonwealth Secretariat involved extensive work on international cooperation in criminal matters and the provision of technical assistance to criminal justice institutions across the Commonwealth.

At the United Nations I held a range of senior legal positions, mostly related to criminal law and procedure. I served as Trial Attorney at the International Criminal Tribunal for Rwanda (ICTR), where I was involved in the successful prosecution of: **Simon Bikindi, Calixte**

Kalimanzira, Emmanuel Rukundo, and Augustin Ndirabatware, for genocide and crimes against humanity. I later headed the Office of the Prosecutor at the International Residual Mechanism for Criminal Tribunals in Arusha, where I oversaw the application of **Augustin Ndirabatware** for review of his conviction and sentence and initiated the contempt case against **Maximilian Turinabo et al.** I was the Senior Legal Adviser for Sexual and Gender Based Crimes and Crimes Against Children at the United Nations Investigative Team to Promote Accountability for Crimes Committed by ISIL/Da'esh (UNITAD). I was a Senior Analyst with the UN International Commission of Inquiry into the Assassination of Former Prime Minister Benazir Bhutto.

I served as Crime Prevention and Criminal Justice Officer and then Senior Legal Adviser at the United Nations Office on Drugs and Crime (UNODC). In these roles, I supported States to improve capacity to fight organised crime, drug trafficking and terrorism and strengthen the administration of criminal justice generally. I also served the United Nations as a Senior Programme Officer and Head of the Human Rights and Gender Section at the United Nations Office of Counter-Terrorism (UNOCT), where my responsibility included supporting the mainstreaming of human rights and gender into counter-terrorism efforts.

My professional experience spans the investigation and prosecution of international crimes of genocide, crimes against humanity and war crimes, organised crime and drug trafficking, crime prevention and criminal justice administration. As a judge, I have experience in adjudicating criminal matters at the appellate level. I have the unique experience of working on the creation of a hybrid Special Tribunal to try serious violations of human rights amounting to crimes against humanity. I also possess expertise in the investigation and prosecution of sexual and gender-based crimes and crimes against children. I have the experience of providing technical assistance to countries including delivery of training to criminal justice actors nationally and internationally, across all areas of the criminal justice administration chain.

7. **Avez-vous de l'expérience en salle d'audience/en matière de plaidoirie et interrogatoire de témoins, si oui, veuillez décrire.**

Do you have experience as a courtroom advocate, if yes, please describe?

Yes, I have substantial experience as a courtroom advocate. I began my legal career as a State Counsel in the Ministry of Justice of The Gambia, in which capacity I appeared before the courts prosecuting a wide range of criminal matters. I began with minor trials and progressively handled more serious cases and arguments in the higher courts. I also gained courtroom advocacy experience whilst at the Commonwealth Secretariat, where I defended labour cases brought against the Secretariat before the Commonwealth Secretariat Arbitral Tribunal. At the International Criminal Tribunal for Rwanda, I served as a Trial Attorney in the Office of the Prosecutor, in which capacity I led witnesses in court and presented arguments to the judges. I am therefore well-versed in courtroom advocacy.

8. **Avez-vous une formation ou une expérience de travail avec des victimes de violence sexuelle et sexiste ou des enfants victimes ?**

Do you have any training or experience working with victims of sexual and gender-based violence or victims that are children?

My experience in relation to victims of sexual and gender-based violence is drawn from different aspects of my work over the course of my career.

As a national prosecutor, I dealt with victims of sexual violence who were witnesses in the criminal cases I prosecuted. Although I had not received specialist training at that time, I knew that they had to be handled with additional care because of the trauma they had suffered. I recall bringing an application before a trial judge to clear the public gallery of courtroom so as to allow a victim of rape the privacy necessary to testify, as she was distraught and embarrassed to give her evidence in public.

My next relevant experience was at the International Criminal Tribunal for Rwanda. I joined the Tribunal at a time when the earlier gaps in the prosecution of sexual and gender-based crimes were being corrected, and I benefited from the specialist training provided to staff of the Office of the Prosecutor in these areas. This significantly improved my interaction with victims of sexual and gender-based violence in the trials in which I was involved.

At the United Nations Office on Drugs and Crime, I worked with experts in the development of a model law on the protection of witnesses and victims of terrorism in the Sahel, in the course of which I received further training that included the handling of vulnerable victims.

As Head of the Sexual and Gender Based Crimes and Crimes Against Children Unit at UNITAD, this earlier experience was put to good use when I led the development of standard operating procedures for the interviewing of victims and witnesses of sexual and gender based crimes and crimes against children, for use by the various investigation teams and by my own team. I also had the opportunity to interact directly with such victims, and with the parents and guardians of victims of crimes against children committed by ISIL, and I interviewed some of them and recorded their statements in accordance with the relevant protocols. In this work, we were supported by trained psychologists and trauma experts.

9. Avez-vous une formation ou une expérience en matière d'interrogatoire de suspects ou de victimes présumées ?

Do you have any training or experience interviewing suspects or alleged victims?

I have substantial experience interviewing alleged victims. As a Trial Attorney at the International Criminal Tribunal for Rwanda, I interviewed many victims of the Rwanda Genocide who were witnesses for the prosecution, and others who, although they were victims, were never witnesses. At the International Residual Mechanism for Criminal Tribunals, I interviewed witnesses who had been subjected to coercion and corruption to change their testimony. At UNITAD I interviewed victims of ISIL and Da'esh, including persons who had been abducted as children, some of whom had been subjected to sexual violence, forced marriages or had been sold as slaves in ISIL slave markets.

Earlier in my career, as a State Counsel in the service of my country, I interviewed witnesses and victims of crime in preparation for their testimony in court.

10. Avez-vous de l'expérience dans la rédaction de longs jugements ou de décisions judiciaires ?

Do you have any experience in drafting lengthy judgements or judicial/legal decisions?

Yes. As a Judge of the Court of Appeal I have drafted lengthy judgements, in which I assess the evidence, analyse the grounds of appeal and the arguments of the parties, review the law and the precedent, and arrive at a reasoned decision. In criminal matters my judgements have addressed the full range of issues arising on appeal, including the sufficiency of evidence, the proper application of the standard of proof, the admissibility of identification and confession evidence, the adequacy of the trial judge's directions to himself on the law, and the protection of the constitutional rights of the accused. In civil matters my judgements have ranged over complex questions of land law, contract, family law and judicial review, often involving voluminous records of proceedings.

In my approach to judgement writing, I begin by setting out the procedural history of the case and the issues for determination. I then summarise the evidence considered by the trial court and the submissions of the parties on appeal. I analyse each ground of appeal in turn, applying the relevant statutory and legal principles and, where appropriate, drawing on comparative jurisprudence from national and international sources. I conclude with clearly articulated findings and the order of the Court.

A recent example is the criminal appeal I describe in greater detail below in answer to question 21, in which the accused had been convicted of murder and sentenced. I wrote the lead judgement for a panel of three. The judgement traversed the trial record at length, addressed substantive questions of the right of an accused person charged with a capital offence to be represented by counsel throughout the trial, and considered the consequences of evidence having been received in the absence of defence counsel. The judgement was the product of careful evaluation of the entire record and a detailed application of the relevant constitutional and procedural law.

11. Avez-vous déjà travaillé avec d'autres juges dans une formation collégiale ?

Do you have any experience working with fellow judges in a panel?

Yes. As a Judge of the Court of Appeal, I sit on a panel of three judges. When I sit on the Supreme Court, the panel comprises five judges. In each panel, we assess the evidence together, discuss the relevant law, procedure, and precedent, and arrive at a decision. When the issues are straightforward, we can quickly agree on the outcome. Where the issues are not so clear-cut, agreement is harder to reach. In such cases we conference again and again until we reach a unanimous decision. In some cases, we are unable to reach consensus, and a dissenting opinion is given on one or more points, with the colleague who disagrees writing a separate dissenting judgement. One judge writes the lead judgement and the other provides a supporting judgement.

What I find most striking is that even where we strongly disagree, we approach the discussion in a collegial manner, focusing on the law and the facts. It is important that we treat each

other with respect. We also support one another by providing authorities and examples when one of us has read or experienced something that is helpful to the just determination of the case at hand.

12. Avez-vous de l'expérience dans l'application du Statut de Rome ou de ses codifications nationales ?

Do you have any experience applying the Rome Statute or domestic codifications of it?

Yes. The Gambia, in partnership with ECOWAS, has established a Special Tribunal for The Gambia to try serious violations of human rights committed in the country between 22 July 1994 and 31 January 2017. I was involved in the drafting of the Statute of the Tribunal and chaired the subcommittee that drafted both the Statute and the Decision of the Authority of Heads of State and Government. In executing this assignment, the Rome Statute and customary international law were our principal points of reference. I drew copiously on the crimes provided for in the Rome Statute and was guided by its principles in deciding the regime to be proposed for the Special Tribunal, including on the participation of victims in trials.

13. Comment décririez-vous votre niveau d'anglais et de français ?

How would you describe your level of English and French?

English is my working language. I speak, write and understand it fluently. I also have a very good working knowledge of French. I read, write and understand French. I express myself very well in French, albeit not as fluently as in English.

14. Comment décririez-vous votre niveau de compétence informatique et technologique ?

How would you describe your level of information-technology competence?

I am computer literate. I draft my judgements using a computer. I use the Microsoft Office applications required for my work, namely Word, Excel and PowerPoint. I can navigate the internet and use most common applications. I learn and apply new applications quickly as the need arises.

15. Quels risques l'arrivée de l'intelligence artificielle causent-ils aux procédures judiciaires ? Comment feriez-vous en sorte de protéger l'intégrité de la procédure à cet égard ?

What risks are posed to judicial proceedings by the onset of Artificial Intelligence? How would you safeguard the integrity of proceedings in this respect?

Artificial intelligence carries positive advantages. It is very helpful in research and can assist in synthesising and summarising large volumes of information. To use it well, however, one must be sufficiently familiar with the subject matter or the issues the tool distils, so as to avoid including irrelevant or inaccurate material.

That said, the use of artificial intelligence in the context of ICC judicial proceedings carries its own risks. In my view, those risks include the following:

- It will become more difficult to authenticate audio and video evidence due to the ability of artificial intelligence to manipulate images and voices.
- Documents will also become more difficult to authenticate as artificial intelligence becomes ever more adept at producing false or inaccurate documents.
- It will be harder for judges to distinguish genuine documents, videos, audio recordings, and images from those that have been generated or altered. This leaves room for objections and increases the need for expert opinion to assist the Court in determining the admissibility and evidential value of such material.
- There have been reports of lawyers who rely on artificial intelligence and submit fictitious authorities. This creates serious issues of integrity.
- Artificial intelligence has been reported to exhibit bias in how it analyses information. It has been reported, depending on the programming, to be racially biased and to display other forms of bias.

The steps that may be taken by the ICC to safeguard the integrity of proceedings include the following:

- Ensuring that all judges and their support staff are trained to understand how artificial intelligence works, how it can be used to make their work more efficient and, importantly, what to do when faced with material that is likely to have been generated by artificial intelligence.
- Putting in place clear and, where appropriate, stringent rules on authenticity and admissibility, particularly for judges sitting at the pre-trial stage where the Court must determine whether there is a sufficient *prima facie* case to warrant a trial.
- Building in human oversight by a judge for the review of material capable of having been generated by artificial intelligence, supported by experts as required.
- Putting in place rules to regulate and to discipline lawyers who provide fictitious or non-existent authorities, or other material that tends to undermine the integrity of the proceedings.

16. Avez-vous déjà démissionné en raison d'un manquement ou fait l'objet de mesures disciplinaires ?

Have you ever resigned due to a shortcoming or faced disciplinary measures?

No, I have never resigned due to a shortcoming, nor have I ever faced any disciplinary measures.

17. Vous êtes-vous déjà récusé d'une affaire ?

Have you ever recused yourself from a case?

No, I have never had any occasion to recuse myself from a case.

18. Qu'est-ce qui montre votre « haute moralité » ?

What shows your “high moral character”?

My high moral character is shown by the way I conduct myself in public and in my private life. As a judge, I execute my duties justly and judiciously, respecting the rights of litigants and judging fairly and according to law. As a private citizen, I conduct myself within the ambit of the law and respect societal norms.

I attend work daily unless I have an excusable reason to be absent. I do not seek or accept favours, and I do not do anything that might undermine my integrity as a judge. I aim to lead by example, avoiding injustice and not allowing injustice in my presence. In the courtroom, I am guided by the overriding principles of fair hearing and the rule of law, and by the need to deliver justice with the least possible delay. I interact with colleagues, lawyers, litigants and ordinary people with respect. I do not bully or sexually harass anyone. I try to be kind and supportive to colleagues. I mentor people as much as I can.

I show my moral integrity by in the life I live daily. I steer clear of illegal activity. I pay my debts. I do not misbehave and I avoid rowdy behaviour. I stand in line when required. I do not litter. These attitudes may appear miniscule, but in my considered opinion, they are very important to maintaining an ethical environment that enable integrity to flourish in any given society.

19. La CPI s'attire régulièrement des critiques pour ses déficiences relatives à la culture du lieu de travail. Comment comptez-vous, en tant que juge, contribuer à l'amélioration des conditions de travail à la Cour ?

The ICC is frequently criticized for the deficiencies of its workplace culture. As an ICC judge, how do you propose to contribute to the improvement of working conditions at the Court?

Firstly, I have experience in developing human resources policies to support efficient management of an institution, which I can bring to the Court to support any improvements that need to be done to the working conditions at the Court. I will put myself at the disposition of the Presidency and the Court's administration to support such efforts.

More generally and in a personal way, I will encourage respectful interaction between colleagues. I will treat colleagues with respect. I will be consistently kind to everyone, particularly those who are junior to me. I have a happy disposition. These are characteristics that I believe contribute to a warm and healthy working environment among my colleagues. In my immediate Chambers I will relate to those with whom I work in a respectful manner that lightens our environment, and this can spill over to others around me.

At the institutional level I will champion greater openness and frequent meetings, not only to discuss work but also to address other issues that affect the working environment. Staff should be encouraged to respect workplace relationship policies, such as the harassment policy, and to report incidents promptly rather than waiting until they escalate. I will offer mentorship and support and help resolve conflicts between staff in a fair and transparent manner. I have substantial experience of doing this in past leadership roles.

I believe that my experience, personal manners and disposition will be of real value in fostering positive change in the Court's working environment.

20. Les pressions politiques extérieures peuvent être importantes selon les affaires dont a à connaître la Cour. Quels sont selon vous les moyens de garantir votre indépendance dans ce contexte ?

External political pressure can be significant depending on the cases before the Court. In your view, what measures can be taken to ensure your independence in this context?

First, the primary responsibility for protecting judicial independence rests with the judges themselves. The focus must always be to judge fairly and without fear or favour. The Court is dealing with allegations of the most egregious crimes in the world, and the stakes are very high for both those alleged to have perpetrated them and their victims. As arbiters of justice, we must ensure that we judge only according to the facts presented before us and the law. A crime is a crime, and what matters to me as a judge is whether the evidence presented proves the elements of the crime charged and whether the defence has raised a reasonable doubt as to the guilt of the accused.

Secondly, to enable judges to operate in this way, States Parties to the Rome Statute must support the judges and assist them in guarding against political interference, whatever the cases before the Court may be. The Assembly of States Parties should have a rules-based system for dealing with situations of politically induced interference with the work of judges. Such a system will allow judges to seek protection and redress where their independence is threatened. The Assembly of States Parties must not leave it to the judges alone, or even to the Court, to deal with such situations. The judges, the Court and the Assembly of States Parties must be partners working together to strengthen judicial independence.

Questions sur les droits de la défense et l'égalité des armes / Questions on the rights of the defence and equality of arms

21. Veuillez décrire toute expérience que vous avez en matière de garantie des droits de la défense?

Please describe any experience you have relevant to ensuring the rights of the defence?

As Senior Legal Adviser and Head of the Justice Section at the United Nations Office on Drugs and Crime Regional Bureau for West and Central Africa, I supported a Legal Aid Project to provide legal assistance to indigent detainees suspected of terrorism in Niger. The Project was designed to guarantee the right of the defence to legal representation. Some of those supported had been detained for an inordinate period without access to legal representation. Through our support the lawyers were able to bring applications before the specialist Counter Terrorism Chamber of the Parquet and to have their cases heard. Many were released for lack of sufficient evidence to support the case against them.

A further experience arose recently in a criminal appeal in which I wrote the lead judgement. The accused person had been charged with murder. The record showed that defence counsel had agreed to the prosecution leading evidence in her absence, with the promise of reviewing the record afterwards and preparing for cross examination. On appeal my opinion was that this had infringed the right of the accused person, charged with a capital offence, to be represented by counsel throughout the trial as required by law. Accordingly, the evidence led in the absence of defence counsel was disregarded when assessing the evidence on appeal.

22. Que pensez-vous de l'impact des questions de l'égalité des armes et d'accès à des ressources suffisantes et adéquates pour les équipes de défense sur le droit de l'accusé à un procès équitable ?

What is your view on how issues of equality of arms and access to sufficient resources for defence teams impact the right of the accused person to a fair trial?

My view is that defence teams should be provided with adequate resources to defend their clients properly and effectively. My understanding of the principle of equality of arms is that the position of the parties must not be so skewed against one of them that that party is unable to prosecute or to defend the case effectively. The principle operates both ways. The burden, however, will always rest heaviest on the prosecution as the accuser, which must prove its case against the accused beyond reasonable doubt. The prosecution must necessarily expend more resources, time and energy in the preparation of its case, and must also disclose exculpatory evidence to the defence.

Equality of arms is not therefore equivalent to a mathematical parity of resources. It means, rather, that the defence must not be prejudiced by the absence of the resources necessary to defend its client properly. A defence that is inadequately resourced can amount to a denial of the right to a fair hearing. When such issues are brought to the attention of the Chamber, whether Trial or Appeals, the judges should examine the matter closely and make findings and orders as may be necessary to ensure that the accused person standing trial before them is adequately defended. Failure to do so can lead to injustice. A person who has not been able to defend themselves properly may be wrongly convicted, and that does not serve the interests of justice.

23. Veuillez donner votre opinion sur le caractère adéquat de la politique d'aide judiciaire du Greffe. Selon vous, y a-t-il des aspects de cette politique qui sont susceptibles d'avoir un impact sur l'équité des procédures de la CPI ?

Please give your views on the adequacy of the Registry's Legal Aid Policy. In your view, are there any areas of the policy that may impact the fairness of proceedings?

The Registry's Legal Aid Policy provides the framework by which indigent accused persons and recognised victims can access competent legal representation before the Court. The Policy has been the subject of successive reviews and reforms aimed at improving its operational adequacy with respect to team composition, remuneration, and resources for the substantive work of representation. In broad terms, it provides a workable foundation for representation, particularly at the trial and appeal stages, where the team structure and budgetary provision are most fully developed.

Nonetheless, there are aspects of the Policy that may have a bearing on the fairness of proceedings and warrant continuing attention. Three areas, in my view, merit particular reflection.

The first is the adequacy of resources for the investigative and preparatory phases of representation. Defence teams in international criminal proceedings need to conduct extensive field work, often in difficult security environments. They often have to identify, interview and protect witnesses, retain experts and obtain documentary material. Where their resources are grossly inadequate, the principle of equality of arms may be placed under strain. As I have noted in my response to question 22, equality of arms does not require mathematical parity, but it does require that the defence is not so under-resourced as to be unable to test the prosecution's case effectively.

The second area is the composition and remuneration of legal teams. Complex cases involving multiple counts, large volumes of disclosure and difficult expert questions, particularly those concerning sexual and gender-based crimes, require teams with appropriate specialist competence. The Policy need to remain flexible enough to enable defence team composition to reflect the demands of the particular case rather than to apply a uniform model. Remuneration levels must also be sufficient to retain experienced counsel and support staff across the life cycle of an international criminal case.

The third area is legal representation for victims. Victims' counsel must be funded at a level that enables genuine participation throughout the proceedings, including at the preliminary examination stage where the Office of Public Counsel for Victims plays an important role. Reparations proceedings raise distinct procedural difficulties, given their particular character and the need for expert evidence on harm and assessment, and the funding regime should reflect those features.

It is ultimately for the Chambers, in the exercise of their judicial supervision, to ensure that any inadequacy of resources does not result in a denial of a fair hearing in the particular case before them. Where the Chamber identifies a substantive risk to fairness arising from the operation of the Policy, it may intervene and make such orders as the justice of the case requires. Beyond the individual cases, the Court, the Registry and the Assembly of States

Parties must continue to engage constructively on the operational adequacy of the Policy and refine it as necessary.

Questions sur la participation des victimes / Questions on victims' participation

- 24. Veuillez décrire toute expérience ou formation que vous pourriez avoir en rapport avec le droit de participation des victimes devant la CPI.**

Please describe any experience or training that you may have relevant to the right of victim participation before the ICC.

I studied the ICC's victim participation regime when I worked with the Technical Committee that elaborated the Statute for the Establishment of the Special Tribunal for The Gambia, in considering best practices for victim participation that might be incorporated into the regime of the Statute. Many of the provisions of the Statute on this question were drawn from the ICC, with adaptations that took due account of the particular circumstances of The Gambia.

My most recent relevant experience was during a study tour to the ICC in November 2025, in which I received an introduction to the work of the Victims and Witnesses Section.

- 25. Quelle est votre opinion quant à l'étendue de la participation des victimes et à leur représentation légale devant la CPI, selon les différents stades de la procédure (y compris l'examen préliminaire, les enquêtes, la confirmation des charges, le procès, l'appel et les réparations) ? Plus précisément, considérez-vous que la représentation légale des victimes devrait être permise au stade initial de la procédure ?**

What is your view on the scope of victim participation and legal representation before the ICC across the different stages of proceedings (including preliminary examinations, investigations, confirmation of charges, trial, appeal, and reparations)? In particular, do you consider that legal representation of victims should be permitted during the early stages of proceedings?

In my view, the scope of victim participation across the various stages of proceedings at the ICC gives the judges a deeper understanding of the Situation before them. At the preliminary stages, victim participation enables the Pre-Trial Chamber to better appreciate the issues arising in the Situation in which it is asked to authorise investigations. It assists the judges to understand the gravity of the Situation under examination and to decide on the Prosecution's application. At this stage the victims are not brought forward by the Prosecution, but by a separate arm of the Court, namely the Office of Public Counsel for Victims.

During the trial phase, admitted victims may, via their legal representatives, attend and follow the proceedings, make opening and closing statements, and file written submissions. Any further participation, like questioning witnesses, accused persons and experts, is strictly controlled by the Chamber and permitted only where it will help determine the truth. It is important that the Chamber consistently maintains control of if, when and how, Victims' participation is included at the trial stage to ensure that the accused person is not unduly disadvantaged.

It is particularly noteworthy that the victims' representative does not lead the presentation of the evidence against the accused. The Prosecutor decides on the witnesses to be called. He or she may call witnesses who are themselves victims, as well as witnesses who may not apply to be considered victims. The judges evaluate the evidence before them in accordance with the rules of evidence and the elements of the crimes charged. The burden remains throughout on the Prosecution to prove its case beyond reasonable doubt. The evidence led by the accused and the defence team, and any exculpatory evidence, is also carefully analysed and considered. In my view this ensures that victim participation at the trial stage does not prejudice the minds of the judges, who must in any event explain in the judgement how the evidence has been evaluated.

At the reparations stage, the accused having been convicted and reparations falling to be considered, it is wholly appropriate for the victims to be heard so as to enable the judges to decide on the level of reparations to order. No prejudice arises at that stage.

As to legal representation of victims at the early stages of proceedings, I consider that it is appropriate. The work of the Office of Public Counsel for Victims at the preliminary stages provides an important channel through which the Pre Trial Chamber can hear from victims on the question of authorisation of investigations. Their representation at this stage assists the Court rather than impedes it.

26. De quelle manière considérez-vous que la participation des victimes a un impact sur les droits de la défense ?

How do you view victim participation as impacting the rights of the defence?

Victim participation is now a principle firmly embedded in international criminal proceedings. It was unknown to many national criminal proceedings in the Common Law tradition. I consider it fair to hear from those most directly affected by the crimes being tried before a court like the ICC.

The victims' participation regime of the ICC has a flexibility built into it that gives control of the depth and extent of participation to the Chambers especially at the Trial stage when bias is most probable. During this phase, victims admitted to participate in the proceedings, acting through their legal representatives, may attend and follow the proceedings, make opening and closing statements, file written submissions, and (subject to the Chamber's authorization) question witnesses, the accused, and experts. In certain circumstances, witnesses "may be permitted to tender and examine evidence if in the view of the Chamber it will assist it in the determination of the truth, and if in this sense the Court has "requested" the evidence". They are allowed to ask appropriate questions whenever the evidence under consideration engages their personal interests".

If applied properly, it should not adversely impact the rights of the defence.

The defence focuses on the individual criminal responsibility of the person it defends. If what the victims describe in fact happened to them, it is fair that the Court should hear from them. The role of the defence is to challenge the Prosecution's evidence regarding the culpability

of its client. In my view there should be no negative impact on the quality of the defence. Ultimately, if the Prosecution is unable to link their accounts to the accused person, no amount of victim testimony will amount to a guilty verdict.

Conversely, if the accused is found to have committed the crimes charged, it is only fair that the Court should hear from the victims affected by his or her actions and order some form of reparation for the suffering caused. The Court is a court of justice. It must have a full picture of the impact of the crimes before it.

27. Avez-vous des remarques ou des questions dont vous souhaiteriez faire part à l'ABCPI?

Do you have any other points of which you would like to apprise the ICCBA?

I am grateful to the ICCBA for its efforts to assist States Parties in selecting judges for the ICC. I also appreciate the important work that the ICCBA does in advancing the cause of justice and ensuring that the ICC exercises its mandate in a fair, balanced and judicious manner. In this way, all officers of the Court, whether judges, prosecutors or defence counsel, share the same mandate of ensuring fair and expeditious justice for the most serious crimes. If elected, my focus will be on achieving this goal and nothing else.