

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

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
TOGETHER FOR JUSTICE**

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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 Anthony Thomas Aquinas Carmona S.C.

Nationality: Citizen of Trinidad and Tobago

Nominating State: The Republic of Trinidad and Tobago

List:

- A
- B

Background:

1. Why do you wish to be elected a judge of the ICC?

It is my considered belief that the combination of my educational background and experience empower me to make a significant contribution to the work mandate and success of the ICC as a Judge.

When I represented the Republic Trinidad and Tobago during the preparatory discussions in order to table the Rome Statute at the General Assembly level my interest and commitment to the ICC was cemented.

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At the preparatory meetings, where I acted as the legal adviser to President Arthur N R Robinson (referred to by the President of the ICC Tribunal at a Caricom ICC Session in Trinidad May 16 to 17 2011 “as the grandfather of the ICC”) on criminal matters I had the benefit of listening to attorneys from the Office of the Prosecutor and officials from the Registrar Office of the Ad Hoc Tribunal ICTY (the first of its kind since Nurenburg trials) and it gave a “matter of factness” to the preparatory meetings. We were not engaged in the esoteric but in discussions to put an end to international impunity and it was taking form as the ICC.

The interventions by the ICTY personnel in those discussions pellucidly illustrated the need for international justice and that it begins with the man in the mirror, be he judge, prosecutor or defence attorney.

It propelled my enthusiasm and I felt I can make a positive difference by not standing on the side line applauding the efforts of some but by coming on board.

As a participant, I developed in those ICC preparatory meetings a deeper appreciation not only of the potential role of the ICC in the International Community but of the rationale underlying the provisions of the Rome Statute. Since those preparatory discussions (sessions) on the ICC, I have wanted to contribute to the tenets of international justice espoused in the ICC Statute to put an end to impunity for the most serious international crimes. The opportunity presented itself when I was appointed Appeals Counsel (P4G8), Office of the Prosecutor at the ICTY/ICTR in Den Haag in 2000.

A wish however to be part of the international criminal justice system must be supported by competence and experience. My experience both nationally and internationally has given me full competence to be a judge of the ICC. I was a prosecutor at the national level for some eighteen (18) years in Trinidad and Tobago finally leaving at the position of Deputy Director of Public Prosecutions to take up the UN appointment. During my career as a high level national prosecutor, I was entrusted with office management, staff management, managing sensitive and sometimes politically coloured criminal cases and the prosecution of the most complex criminal cases in the High Court and the Court of Appeal. As Deputy Director of Public Prosecutions, I became fully competent in criminal law and procedure at the national level. I was awarded “Silk” and the Status of Senior Counsel in 2000.

My next posting was Appeals Counsel at the International Criminal Tribunal for the former Yugoslavia. At the ICTY, I was involved in international criminal law in a multi-cultural, multi-jurisdictional and multi-linguistic environment. At the ICTY, I was exposed to and became fully competent in international criminal law and international human rights law. The ICTR Appeals chamber was not in operation at the time and I was part of a very diligent and competent appellate team preparing and filing appellate briefs on behalf of the Office of the Prosecutor at the ICTY and ICTR.

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My next posting is my current position of High Court Judge of Trinidad and Tobago where I presided over and managed complex multi-accused cases involving murder and sexual offences, amongst others for some eight (8) years. It is against this background of experience in the criminal justice system nationally, regionally and internationally that I feel compelled to offer my services for an even greater good to ensure that international impunity does not go unchecked. Further, it is common knowledge that with the impending departure of Judges on the present panel it does appear that only one common law Judge would remain. This certainly will create an untoward imbalance given the tacit recognition that all legal systems must be properly represented at the ICC.

I give the assurance if elected to the ICC, I will endeavour to ensure that trials would be just and fair, due process and the rule of law followed assiduously concomitant with adherence to the rules of practice and procedure under the ICC Statute.

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

One of the biggest challenges I may face as an ICC judge, if elected would be how to balance the need for justice to be done in a procedurally accurate manner with policy considerations. It is becoming more difficult for judges world-wide to divorce themselves completely from policy considerations. Therefore, the challenge is to take appropriate measures to ensure judicial fairness and relevance whilst giving appropriate consideration to policy considerations without compromising judicial integrity. As a High Court Judge, this is a challenge that I have successfully managed. I am of the view that I am well placed to manage the inherent challenges. Therefore, whatever the political machinations of any State Party or other State, I shall perform my judicial duties in conformity with dictates of the ICC Statute.

Judicial independence and ensuring fair trials will continue to be challenging issues. Accused persons that are charged under the ICC Statute will invariably be persons of some notoriety and the perception of justice is just as important as actual justice. A Judge has to be fearless and vigilant in evoking proper standards in the conduct of criminal proceedings. Additionally, the matter of disclosure in International Criminal Trials raises conflict between the right of a State Party to ensure that its national security is not compromised against the need for appropriate disclosure to assist an accused defence. At the ICTY/ICTR this was an on-going problem with NATO. Only recently at the ICTR Judges had deep concerns with lack of disclosure impacting on the fairness of a trial. This remains a contentious area of the law in International Criminal Trials and will continue to be so.

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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?

The challenges which the ICC is currently facing are many. The biggest challenge involves international acceptance by States of the ICC as a new emerging international judicial body. There are many States that have not signed to the Statute. Many States have signed the Rome Statute but have not ratified it.

Some States view the ICC as a challenge to national sovereignty. Article 1 of the Rome Statute prescribes that the ICC would be governed by the principle of complementarity. Some States have expressed reservations about this principle especially as it is within the competence of the Court to determine the ability and willingness of State Parties to properly investigate or prosecute crimes within the Statute's jurisdiction.

Additionally, there have been challenges with respect to state cooperation in executing warrants. Some of the major challenges in the coming years will still revolve around international acceptance in various ways. For instance, whether some major powers will ratify the Treaty. Also, the ICC will have to dispel the current notion held in some quarters that the Court is handing down politically motivated victor's justice. This is especially so as the warrants issued by the ICC are for the arrest of highly placed politicians who may enjoy some level of political support in their home countries or regions. The international community must not allow the dangerous perception to flourish that it is engaged in pursuing selective justice when invoking the mandate and the strictures of the ICC.

Some commentators advance that the ICC is not as vigilant and proactive in its stance to address the diverse violations of international humanitarian law and international human rights law that occur outside the African continent. As much as the African continent has some of the longest and bitter running conflicts resulting in grave loss of innocent lives and the ICC cannot be indifferent to same, this growing perception of selective justice harbours the risk of undermining the institutional legitimacy of the ICC. There is a need to be more forthright. Impunity in any part of the world reverberates through the entire world and affects humanity as a whole.

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The fact that the ICC has to rely invariably on State parties which are sometimes recalcitrant in their commitment and does not possess police forces at its disposal to effect arrest warrants, militates against the ICC's capacity to deliver prompt justice and justice must be prompt to be effective and to be deterrent.

That capacity to deliver justice must not be subject to waiver. The ICC is not a political entity but a judicial one and in the same way judges in national jurisdictions operate independent of political agenda and influence, the ICC has to display a similar feature pivotal to a just fair and equitable international criminal justice system. Warrants of apprehension continue to lay in abeyance on the premise that if executed, it can lead to further destabilization in geopolitical regions. The ICC must maintain its focus of being a judicial entity with its mandate intact and hold firm to the complementary nature of peace and justice. Impunity cannot and must not have value. It cannot be international currency for peace, stability and justice in any region.

In my view, in order to dispel the notion that the ICC is a foreign court issuing foreign judgments, it may be beneficial to hold some part of the judicial process, such as the confirmation hearing in the State of the accused persons, notwithstanding the challenge of security concerns.

In the future, the present concerns relating to national sovereignty, State acceptance and issues with the complementarity principle are likely to still be major challenges.

Budgetary considerations in this period of international economic downturn can be a challenging affair and can impact on the utility and efficiency of the ICC if proper resources are not made available. This is of concern as it relates to the Office of the Prosecutor. On diverse occasions Prosecutor Moreno has bemoaned this dilemma and the corresponding negative impact on the effective utility of his Office.

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.

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One must be an attorney at law of minimum ten (10) years standing at the Bar, possessing the highest moral standard, and integrity, demonstrating by one's advocacy and legal practice comprehensive competence in the law and also must have advanced the jurisprudence of Trinidad and Tobago and possibly the region.

As part of the process, the concurrence of the Law Association of Trinidad and Tobago is sought and investigations and security checks are quietly done by the Special Branch (police) to ensure that nothing untoward is in one's past or present.

One is interviewed by the Judicial and Legal Services Commission (JLSC), an independent, non political body consisting in the main of former judges and a very senior attorney at the bar. I was granted "Silk" and made a Senior Counsel in 2000 and this would have factored in the decision making process.

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 nomination 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 had applied to the independent National Committee appointed by Government in 2002 to be considered for selection as Trinidad and Tobago's first nominee for election to the ICC from among individuals who met the criteria for appointment to the highest judicial offices in Trinidad and Tobago. This Committee was thus able to assess my suitability for nomination for election to the ICC. Therefore, in 2011 the Government was able to take into account the Report of that Committee as well as my record of service to the ICTY and ICTR and my track record and credentials as a prosecutor and as a permanent Judge of the High Court in the Judiciary in Trinidad and Tobago in deciding to nominate me for election to the ICC.

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.

This was provided for in the official notification of my nomination and candidature.

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Legal System and Language Abilities:

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

(a) **Common Law legal system**

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

(b) I have never practiced law in a national jurisdiction other than my own. However, whilst at the ICTY, although no legal system has pre-eminence over the tenets of international criminal law, I became well versed in the civil law inquisitorial criminal law traditions that exist in Europe. The ICTY Statute has civil law features that played a major role in the dispensing of justice. For example the civil law (practice and procedure) as it relates to hearsay evidence allowed for the admissibility of “exceptional” hearsay evidence which normally would not be admitted in the common law system.

I have attended and participated in International Fora, Symposia and Training Workshops under aegis of regional and international organizations, as well as NGO's and institutions interfacing and interacting with lawyers, judges and technocrats from various criminal justice system (common law and civil law) gaining knowledge and experience of “other legal systems”. Among conferences attended were the Eight United Nations Congress on Crime Havana, Cuba and many conferences under the auspices of CICAD, San Jose, Costa Rica, the Inter-Governmental Working Group on Crime Prevention and Criminal Justice System at Vienna International Centre, Austria, 5th -9th August 1991 and also in Paris, France 1992, Preparatory Meetings (Sessions) on the Establishment of an International Criminal Court (ICC) and the Regional Seminar in Training and Judicial Co-operation Against Drugs for French Speaking and English Speaking Justice Officials of the Caribbean Region, under the aegis of the United Nations International Drug Control Programme (U.N.D.C.P.) and the French Government Forte-de-France, Martinique – Vide Curriculum Vitae.

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

I do not believe in the paramountcy of any criminal justice system. There are definite benefits emanating from civil criminal justice systems since delay has become the staple diet of common law criminal justice systems burdened by juries and other procedural anathema. Mutual respect remains the cornerstone of positive interpersonal interaction

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and it should be no different among lawyers and judges. Fostering mutual respect has its challenges but they can be resolved.

Having studied other legal systems, and also being part of the negotiations on the Rome Statute as well as interacting with judges and other legal officers from various legal systems, I do not envision any challenges. On the contrary, the interaction would enrich the work of the ICC and our own discussions. There would also be a more productive interaction with attorneys, officers of the Court, witnesses, and we all operate with one endeavour and we have one common denominator that justice be done.

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?

Excellent. It is my mother tongue.

I possess a Bachelor of Arts in English (Special Hons) and International Law and Politics. I was also a Lecturer in the Department of Language and Linguistics at the University of the West Indies, St. Augustine between 1981 – 1983 teaching English.

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

None. However I have a working knowledge of Spanish.

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?

Comprehensive, extensive and practical.

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- a) **I have been an Attorney at Law for some twenty-one (21) years and some eight (8) years as a Judge of the High Court.**
- b) **I was granted “Silk” appointed Senior Counsel in 2000.**
- c) **I have gained my experience and competence through the following promotions in the independent Office of the Director of Public Prosecutions (non-political). I was promoted from State Counsel I- II- III Senior State Counsel, Assistant Director of Public Prosecutions, Deputy Director of Public Prosecutions and Acting Director of Public Prosecutions during my eighteen (18) year career at the office of the Director of Public Prosecutions before taking up my appointment as an Appeals Counsel (P4G8) at the ICTY and ICTR based in, Den Haag , The Netherlands for some three and half years. As a Deputy Director of Public Prosecutions in Trinidad and Tobago, I have prosecuted in major and complex criminal trials, murder, rapes, corruption misbehavior in public office very successful in over 90%. As an Appeals Counsel at the ICTY/ICTR I was part of a very successful team prosecuting Appeals on War Crimes, Crimes against Humanity and Genocide.**
- d) **On leaving the ICTY/ICTR I returned to Trinidad and Tobago to take up a substantive appointment as a High Court Judge in the Criminal Division where I have been for some eight (8) years.**
- e) **I have been to multifaceted conferences, symposia and workshops nationally, regionally and internationally that dealt with complex criminal law areas interfacing with Attorneys and Judges and technocrats from international jurisdictions both civil and common law as is reflected in my Curriculum Vitae.**

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

3rd Jan 2001-2004 As Appeals Counsel at (Office of the Prosecutor), ICTY and ICTR successfully prosecuted and prepared appeals on behalf of the Office of Prosecutor concerning war criminals consisting of generals, camp commanders, soldiers and politicians convicted of war crimes, crimes against humanity and genocide. Adduced fresh evidence on appeal from diverse international witnesses.

1983-2001 As State Attorney and Deputy Director of Public Prosecutions I acted as a Minister of Justice at all times in the conduct of prosecutions. Prosecuted in major and complex cases in the Magistrate and Supreme Courts, prosecuted Police and Public officials when required and

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defended Police and Public Officers against cross charges in the course of duty.

Prosecuted in the Magistrate Courts, High Court and Court of Appeal in Trinidad and Tobago from the inception of practice but for twelve (12) years appeared almost exclusively in the Court of Appeal (Criminal Division).

Appeared in the High Court and Court of Appeal in civil appeals when required.

Assisted in Criminal Appeals to the Privy Council, London, England liaising and advising attorneys representing the State in London.

Supervised subordinate professional staff, advising, training and guiding them. Supervised some thirty (30) State Attorneys in the Office of the DPP viz Assistant Directors of Public Prosecution, Senior State Attorneys and State Attorneys.

Prepared, draft and vetted indictments.

Prepared code of conduct for State Prosecutors in the form of Prosecutorial Guidelines.

Advised the Director of Public Prosecutions on all complex legal issues, matters and cases.

Advised on Nolle Prosequi, discontinuance in criminal cases and general evidential sufficiency for prosecution.

Appeared on behalf of the State in Extradition matters and contentious Bail Applications in Court of Appeal. Recommended revision and amendments to existing laws as a member of Legislative Review Committee.

Facilitated requests and assistance to and from regional and international bodies and organizations. Replied to legal submissions made to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.

Advised the Office for Strategic Services, (OSS) Organized Crime and Narcotics Unit (OCNU) Ministry of National Security departments in the fore of interdiction of drug trafficking and money laundering activities.

Representative of the Office of the Director of Public Prosecutions at Cabinet appointed Technical Advisory Committee on Alcohol and Drug Abuse (TACADA) and Chairman of Legal Sub-committee from 1988 to

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1999 the Committee shouldered with the mandate of implementing the National Drug Strategy Master Plan 1995-1999 and onward.

Lectured to police officers, customs and public offices of all ranks at training seminars vis-à-vis the criminal law, methods of investigation, legal responsibilities and corresponding pitfalls and on the effective implementation of legislation new and old.

Advised the Police Department when warranted on the conduct of criminal investigations and recommend criminal charges accordingly. Review police files to determine sufficiency of evidence and prevent any abuse of process.

Assisted as necessary on the civil side in litigation work and constitutional motions. Advised other Government Departments, e.g. Ministry of Works and Transport, Ministry of Labour, Ministry of Health, Ministry of Agriculture inclusive of Forestry Divisions, Customs and Excise Department prosecuting at times on their behalf.

Member of Inter-ministerial Governmental Team reviewing /formulating legislation for the purpose of expediting the criminal justice system since 1992 whose mandate, inter alia, was putting the necessary legislative and administrative measures in place that led to the ratification of the 1988 Vienna Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances by Trinidad and Tobago

Member of the Trinidad and Tobago/Venezuelan Mixed Commission on the Prevention Control and Suppression of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances - 1990 to 1999.

Member of Trinidad and Tobago Working Group on Regional Justice Protection Programme 1996 to 2000.

Represented the Office of the Director of Public Prosecutions on the Legislative Review Committee (Cabinet appointed) formulating and vetting multifaceted pieces of legislation, viz., Criminal Procedure (Criminal Procedure (Plea Agreement) Bill, Criminal Injuries Compensation Bill, Criminal Procedure (Amendment) Bill, D.N.A. Bill, Indictable Offences (Preliminary Enquiry) Bill, Dangerous Drugs Bill, Proceeds of Crime Bill, The Central Authority and Counter-Drug Trafficking and Money Laundering Task Force Bill, Bail Act, Mutual Assistance in Criminal Matters Bill, International Criminal Court Statute and all criminal related legislation.

Advised the office of the Attorney General and the Ministry of Foreign Affairs on International/Regional Conventions and Treaties.

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SOME OF THE CRIMINAL CASES (MURDER) REPORTED IN THE WEST INDIAN LAW REPORTS I HAD PROSECUTED AT BOTH TRIAL AND APPELLATE LEVELS:

They represent some of the progressive jurisprudence I have put forward and as a result they find themselves in the West Indian Law Reports.

**Ashby (Glen) v THE STATE 45 West Indian Law Reports 360
Wanzar (Michael) v THE STATE 46 WIR 439
Gonzales (Franklyn) v THE STATE 47 WIR 355
Harrynarine Maharaj v THE STATE 47 WIR 416
Raffick Sahadath v THE STATE 47 WIR 399
Hollis Ramnath v THE STATE 47 WIR 419
Teesdale (Kenneth) v THE STATE 47 WIR 409
Williams (Hubert) v THE STATE 48 WIR 32
Bhola Nandlal v THE STATE 49 WIR 412
Lester (Kurt) v THE STATE 50 WIR 452
Murphy (James) v THE STATE 50 WIR 457
Phillip Chotolal and Others v THE STATE 52 WIR**

NOTABLE CASES PROSECUTED AT EITHER TRIAL LEVEL OR APPELLATE LEVEL:

- (a) First successful prosecution in the British Commonwealth of a Senior Magistrate Patrick Jagessar for corruption – sentenced to a maximum punishment of two (2) years hard labour affirmed by Court of Appeal and Privy Council, London, England**
- (b) First successful prosecution at Court of Appeal in the West Indies of a Justice of the Peace for corruption, one Farouk Ali- sentenced to maximum ten (10) years hard labour.**
- (c) Felicia Constantine and Corporal Ronto Williams v The State Criminal Appeals Nos. 88 and 86 of 1997 (Trinidad and Tobago (unreported in West Indian Law Reports). Appeal successfully argued – Found guilty of conspiracy to murder state witness after botched attempt at poisoning whilst under State protective custody and each sentenced to the maximum 10 years hard labour.**

The following cases represented at the time the only two successful appeals by the State in Trinidad and Tobago under the Administration of Justice (Miscellaneous Provisions Act) 1996 which gave the State the right of appeal in criminal matters. I represented the State on both occasions.

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- (d) The State v Garfield Timothy Joseph Cr. App 124 of 1997 (unreported) – Placed on a non-custodial bond after pleading guilty of unlawfully killing step daughter – Sentenced to three years hard labour on Appeal.**

- (e) The State v Anthony Amoroso Centeno Cr. Appeal No. 198 of 1997. Placed on a non-custodial bond after being found guilty of manslaughter – Sentenced to three years hard labour on Appeal.**

FEATURES OF WORK AT INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY), THE HAGUE, THE NETHERLANDS AS APPEALS COUNCIL IN THE OFFICE OF THE PROSECUTOR

- Review Judgements and Orders of the Trial Chambers and advise on Grounds of Appeal.**
- Undertake or direct extensive analysis and research of legislation relevant to grounds of appeal and the implication for future cases and draft Notices of Appeal.**
- Review Trial Records and drafts or direct drafting of Briefs of Appeal.**
- Attend to pre-appeal stages, including contacts with Defence Counsel and Registry. Attend Status Conferences re Cases on Appeal.**
- Ensure compliance with Orders and Directives of the Appeals Chamber and appear as co-counsel at hearings before the Appeals Chamber.**
- Assist in the preparation of the oral argument and in the presentation of the oral submissions before the Appeals Chamber.**
- Conduct appeal proceedings on behalf of the Prosecutor before the Appeals Chambers of the Tribunal including evidentiary appellate hearings.**
- Conduct research and prepare cases for appeal trials.**
- Advise the Prosecutor on the substance and strategy of appeals and related matters.**
- Draft and prepare briefs on appeals.**
- Evaluate briefs and provide independent advice to a Prosecutor and the Prosecution Section on appeals.**
- Provide high level and policy advice on appeal cases to the Prosecutor.**
- Act as Appeals Coordinator for assigned cases, Appeals Coordinator for Legal Interns.**

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- Instructing and supervising P2 and P3 and case managers when required.**
- Assume responsibilities when P5 is absent/on leave.**
- Advise Trial Teams on the form of Indictments and respond to substantive interlocutory appeals at trial and other related trial issues.**
- Advise investigators assigned to the Appeal Section.**
- Liaise with the Legal Advisory Section (LAS) and Trial Teams on International Legal Issues to ensure consistency and predictability in the International Criminal Law.**
- Draft and prepare appeal briefs in matters from the International Criminal Tribunal for Rwanda.**
- Assist when required re legal issues in Appeal Briefs emanating from the International Criminal Tribunal for Rwanda (ICTR).**
- Executive Member of Staff Counsel elected body responsible for the affairs of Staff at the ICTY for the two year term 2001-2003.**
- Vice President of the ICTY Staff Union 2003-2005 defending UN personnel at disciplinary proceedings in New York.**
- Chairman and sometimes member of assigned UN lawyers vetting and interviewing international lawyers for appointments at the ICTY.**

INTERNATIONAL CRIMINAL CASES AT ICTY AS I HAVE HAD CONDUCT OF AS APPEALS COUNSEL:

Prosecutor v Dragoljub Kunarac, Radomir Kovic and Zoran Vukovic – Lead Counsel and Appeals Coordinator (Completed and Judgement given on 12th June 2001 – all grounds of appeal dismissed). Conviction and sentence affirmed on three Appellants.

Prosecutor v Zoran Kupreskic, Mirjan Kupreskic, Vlatko Kupreskic, Drago Josipovic and Vladimir Santic – Co-Counsel (Completed and affirmative Judgement given 23rd October 2001. Appeal dismissed, conviction and sentence affirmed on Josipovic and Santic.

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Prosecutor v Mucic et al (“Celebici Prison Case”). Appeals Coordinator and co-counsel. Appeal dismissed, conviction and sentenced affirmed on three appellants 2003.

Prosecutor v Dragoljub Krnojelac (“KP Don Prison Case”). Appeals Coordinator and co-counsel. Appeal complete conviction and sentenced affirmed.

Prosecutor v Kvočka et al (“Omaska Prison Case”). Appeals Coordinator and co-counsel. Appeal complete conviction and sentenced affirmed.

b) For List B candidates:

- How would you describe your competence in relevant areas of international law, such as international humanitarian human rights law?

I am not a List B candidate but I will describe my competence as quite satisfactory having worked as an Appeals Prosecutor at the ICTY/ICTR in Den Haag.

I am of the view that I have demonstrated (a) competence in international criminal law, international humanitarian law and international human rights law based on my experience and qualifications as an Appeals Counsel handling all the substantive appeals with other Appeals Counsel at the ICTY, preparing and filing appellate briefs for the ICTR. The Constitution of Trinidad and Tobago has incorporated international standards of human rights

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

In my capacity as Appeals Counsel (P4G10) the offences that were the basis of the indictment incorporated categories of crimes against humanity war crimes, genocide and other international humanitarian law as specified in the ICTY/ICTR Statute.

I have held the substantive post of Deputy Director of Prosecution and during my career vetted hundreds of indictment inclusive of capital murder, rape, incest, robbery, conspiracy corruption and misbehaviour in public office. I have prosecuted a substantial amount of the abovementioned and been assiduous in ensuring due process, and justice for all. I have discontinued prosecution for diverse reasons on the altar of fairness and justice.

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I have been a judge of the High Court for some eight years dealing with complex criminal trials of great national notoriety. I do not run with hounds and the foxes in dispensing justice. My integrity remains unimpeachable.

I have prosecuted successfully a Senior Magistrate who was sentenced to two years hard labour for corruption. I exercise my responsibility without fear or favour.

The excellent job done by the lawyers in the Appeal Section of the Office of the Prosecutor resulted in various successes being accomplished by the ICTY and this bodes well for the ICC. I am proud to have been part of that complement of competent Appellate Lawyers. The successes we achieved are as follows:-

- a) “Spearheading the shift from impunity to accountability”;**
- b) “Establishing the facts”, highlighting the extensive evidence-gathering and lengthy findings of fact that Tribunal judgments produced;**
- c) “Bringing justice to thousands of victims and giving them a voice.”**
- d) “The accomplishments in international law”, describing the fleshing out of several internationally criminal concepts which had been ruled on since the Nuremburg Trials; and**
- e) “Strengthening the Rule of Law”, referring to the Tribunal’s role in promoting the use of international standards in war crimes prosecutions.**

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.

Vide Curriculum Vitae. I have already mapped out my qualifications for said position in answering aforementioned questions. Additionally, I am currently engaged in spearheading the Introduction of Drug Treatment Courts in Trinidad and Tobago. I am also engaged in a Project referred to as the Bail Boys Project for the last two (2) years where the Court has engaged in Interventionist Measures to prevent recidivism among young criminals between the ages of 15 and 25. It has involved imposing curfew restrictions, sessions in anger management and self esteem by trained Psychologist, Re-education and Literacy Training and making employment available on completion of training and re-education with the collaboration and assistance of companies and institutions. This is the only Court in Trinidad and Tobago engaged in this type of rehabilitation involving also family members of accused persons. This has been done under the aegis of the Bail Act. As a member of the Legislative Review Committee I have also played a significant role in ensuring that the ICC Statue has become law in Trinidad

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and Tobago coupled with other implementing legislation for an effective efficient criminal justice system. I have been a Senior Tutor in Politics in the Department of Government University of the West Indies UWI for approximately four (4) years.

I have also been a Representative of the Office of the Director of Public Prosecutions (1988-2000) at Cabinet appointed Technical Advisory Committee on Alcohol and Drug Abuse (TACADA) and Chairman of Legal Sub-Committee from 1988-2000. TACADA was mandated to implement the National Drug Strategy Master Plan consistent with UNDCP policy guidelines incorporating integrated strategies in the area of Demand Reduction, healthier lifestyles, drug interdiction and law enforcement. This has given me a very balanced approach in dispensing justice and adds to my capacity to be fair and just.

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?

Yes. Vide above. I have prosecuted on Appeal all the crimes (War Crimes, Crimes against Humanity and Genocide) under the Statute at the ICTY. As a Prosecutor and as a Judge of the High Court I have been involved in a milieu of internationally recognized crimes like murder and rape, some very complex in nature.

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?

Training of any kind will always be relevant as one can learn from best practices. Inputs from Experts, Academia, and Jurists would on the whole provide invaluable assistance moreso, in developing and international jurisprudence.

Having worked in the Office of the Director of Public Prosecutions for some eighteen (18) years, this has been a common feature, with a view to augmenting one's competence as a prosecutor. With the advent of novel or amended legislation, it has been a practice to have such workplace training within the Judiciary. The Trinidad and Tobago Judiciary has established a Judicial Education Institute that continues to organize workshops to train Judges in various aspects of the law, criminal practice and procedure and computer training. This has been facilitated through local and international experts. We also have wellness workshops and seminars.

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In this regard, I am a very strong advocate of ongoing training for Prosecutors, Support Staff, Officials, and Judges of the International Criminal Court.

b) Do you consider such training to be important?

Yes, as it would build capacity and enhance efficiency and effectiveness. It would also build an intellectual pool for Judges so that their can be a healthy and comprehensive development of International Jurisprudence.

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

a) Please describe any expertise and/or experience you may have in dealing with crimes of sexual and/or gender based violence.

Issues on women and children are very important. I have prosecuted at trial level and appeal level egregious crimes committed against women in Trinidad and Tobago. Early in my career I recall reading the seminal work by Susan Brownmiller, "Against Our Will," a book that fully sensitized me to the psychological and sociological trauma women face when raped. It cemented my position for defending the vulnerable and the voiceless in society.

At the ICTY/ICTR I came to I came to terms with the wanton and egregious abuse and violence meted out to women and children and I appeared on appeal in many matters at the ICTY where the rights of these abused women and children were vindicated by the just conviction of the perpetrators. As an Appeals Counsel at the ICTY, I met some of those victims coming out of the Former Yugoslavia. Needless to say, it was an experience in outrage but my approach however, was clinical since as a Prosecutor due process, the rule of law and the presumption of innocence have always been hallowed mantra in my career.

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?

Through my career, I have had to deal with rape victims and situations of domestic violence and murder both in my capacity as Deputy Director of Public Prosecutions and as a Judge of the High Court. Rape victims experience unimaginable trauma and often depend on the Prosecutor of the Court for Justice and when justice is served it goes a long way in their regaining self-esteem and self-respect. I have built up both as a Prosecutor and Judge a reputation for dealing fairly and seriously with serious crimes inclusive of rape with the required sensitivity, but I am fair and in so doing I am not a creature of skewed compassion.

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Additionally the laws in Trinidad and Tobago create the environment of sensitivity by ensuring that all crimes of a sexual nature are heard in camera and the past sexual history of any victim is irrelevant and no corroboration is required in proof of a criminal sexual complaint.

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.

I have been fortunate while at the ICTY to fully appreciate the impact and benefit of Article 75. In Trinidad and Tobago I was a member of the Legislative Review Committee that approved the Compensation for Victims Act conscious of the impact that crime has on the lives of victims of crime. Under this particular Act a Compensation Board chaired by a High Court Judge is established to hear and assess applications from victims as it relates to compensation. Apart from this resource available to a victim of crime, Under Trinidad and Tobago law, a Criminal High Court Judge has the power to award a maximum of \$50,000 (TT) to a victim and I have had, on diverse occasions to invoke this statutory power as a form of just redress.

In an attempt to appease the proverbial angry gods, where monetary compensation will not suffice, I have had cause to revert to a traditional form of “human reparation” in the Criminal High Court where both the victim and accused are family members. I am the only Judge to date in Trinidad and Tobago to have used a Hindu traditional form of reconciliation, mediation and justice between the accused and the victim called the “panchayat” where senior persons in the community are given the responsibility of resolving issues as they relate to the sentencing of a family member found guilty of a crime against another family member. It represents a type of social engineering process to prevent future violence in the said community where possibilities do exist. It does not relate ipso facto to Article 75 but it is a method I have used in the local jurisdiction to affect justice for a victim and by extension the community.

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?

Vide above. At the appellant level of the ICTY victims have given evidence and been allowed to present their views if they were not available at trial. My experience at the ICTY / ICTR in Den Haag has fully sensitized me to the process. In Trinidad and Tobago the victim’s role is restricted to the sentencing phase of the trial where the victim outlines

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the impact the crime has had in the form of a “victim impact statement” normally done in statutory form and it assists judges in assessing the aggravating features of the crime.

- 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.

Under the common law system that obtains, adversarial as it is, in all trials, the victim is a witness and the accused if he elects to give evidence and they are both subject to cross examination where the cogency, compellability and credibility of the evidence can be tested to determine where the truth lies and whether there is merit in the criminal allegation or the defence. The participation of the victim does not vitiate due process, presumption of innocence and rule of law.

In sexual offences cases involving rape and incest, I have had to address, emotional outburst and safety concerns of victims. I have had to place restrictions on the movements of accused persons as part of the Bail Conditions and to pre-empt any possible attempt at perverting the course of public justice. In aforementioned circumstances, it is often the responsibility of the Trial Judge to direct the jury that a particular matter will not be decided on the basis of emotion but evidence and they must view the evidence clinically and objectively before arriving at their verdict, remembering that under the presumption of innocence, an accused person does not have to prove his innocence but the State must do so and the standard is beyond a reasonable doubt.

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.

The Republic of Trinidad and Tobago has never experienced armed conflict. There is, however, an awareness of International Humanitarian Law (IHL) within the domestic judicial arena. Human Rights Provisions are entrenched in the Constitution of Trinidad and Tobago. I was part of the process advocating implementing legislation for the International Criminal Statute to become national law. This has been accomplished. In my capacity as Deputy Director of Public Prosecutions I have had to reply to legal submissions made to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.

17. Have you ever referred to or applied any specific provisions of international human rights or internationally humanitarian law treaties within any judicial decision that you may have issued within the context of your judicial activity or legal experience?

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There are many fundamental human rights provisions that are entrenched in the Constitution and the Criminal Justice system of Trinidad and Tobago consistent with International Conventions and Treaties. These rights are endemic to the common law jurisdiction and they are applied daily in trials, bail applications, habeas corpus applications or other judicial protocols.

I have had to refer in my judgements to cases coming out of the European Convention on Human Rights (ECHR) in areas of double jeopardy, due process, the rule of law, sentencing and bail. As an Appeals Prosecutor at the ICTY /ICTR I have had to refer to such cases as well.

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.

Not in Trinidad and Tobago.

As much as there has not been a situation warranting the application of the provisions of the Rome Statute directly, Trinidad and Tobago is the only country in the Caribbean that has incorporated the Rome Statute as part of its National Law.

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

In the area of the sentencing principles advocated by the jurisprudence of the ICC. I have also liberally expanded the role of victim impact statements at the sentencing stage and addressed the area of prison conditions under the Bail Act and I have received jurisprudential assistance from the Ad Hoc Tribunals.

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

No. However, I had membership in the Association of International Prosecutors since 2000.

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

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Have you any documented articles; opinions which show your knowledge, skills?

I have presented diverse papers and opinions at international fora and workshops and panel discussions in my area of expertise. Vide Curriculum Vitae. Only recently, I did so at a Caricom Regional Workshop on the ICC in Port of Spain, where I was a panelist with the President of the ICC discussing the work of the ICC and other International Criminal Tribunals.

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.

Additionally, my opinions have often taken the form of written judgements on diverse issues of law, abuse of process, autrefois acquit, contempt and admissibility of evidence. I have sent copies of same. See Vide Attachments.

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, 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

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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?

Absolutely not.

This is a legitimate expectation given the rationale, spirit and purpose behind the establishment of the ICC, the Ad hoc Tribunals and other special courts.

My oath as a High Court Judge of Trinidad and Tobago demands same and my former role as the Deputy Director of Public Prosecutions and Acting DDP also.

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

My country has prided itself on its Human Rights record – fundamental freedoms and rights being enshrined in the Trinidad and Tobago Constitution. We possess diversity and cultural openness.

We are a cosmopolitan nation and often our diversity and peace of our peoples have often been cited as our forte as a nation. It is in this context that I perform my duties and responsibilities without fear, bias, favour or ill-will.

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?

There would not be a difficulty as the Government would be aware of the importance of being independent and the need to support the ICC Statute as well as the Rules of the Court. I would like to illustrate some features of independence I have displayed in criminal matters and quasi criminal matters I have had conduct of.

As the Assistant Director of Public Prosecution, I have had to prosecute a Senior Magistrate for corruption, a Magistrate I appeared before on diverse occasions in the Magistrates Court of Trinidad and Tobago. He was sentenced to two years hard labour.

Additionally, I have prosecuted a Justice of the Peace who was sentenced to ten years for corruption. I am currently engaged as a One-Man Tribunal determining whether a Senior Judicial Officer committed misconduct in office.

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I have been a One-Man Disciplinary Tribunal where I found guilty the Chief Administrator of the Tobago House of Assembly of misconduct in his office. He lost his job. The House of Assembly generally is responsible for the running of affairs of our sister island of Tobago. I also found the Director of Planning and another Senior Civil Servant not guilty.

I have also prosecuted Senior Civilian Servants and other Lawyers for criminal offences. Living in a small country places immense pressure on one's capacity to be independent. During my career not only have I invoked the independence of the office I occupied, I also practice it unflinchingly.

I believe I have the capacity to disengage myself and be clinical, objective and dispassionate in dispensing my responsibility and duty as a Judge and I will do so independently when interpreting and applying articles of the Rome Statute notwithstanding a contrary opinion expressed by my country's government.

Governments do consist of politicians who come and go. Politicians enjoy a transient existence. The rule of law and due process are sacrosanct and in the context of one's responsibility as an ICC Judge, one's allegiance must be to the ICC and the spirit of the Statute.

- 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?

I have to live up to the mandate ascribed to Judges. One is always as a Judge non-political and looks at the merits of the matter. One's appointment and tenure further supports one's independence.

I have had to recuse myself from doing matters both as a Prosecutor and Judge in Trinidad and Tobago being such a country with a very small population. However, I gave a written judgment on recusal in a contract murder trial where my life was threatened by the leader of a criminal gang and particular information came to my knowledge which unwittingly was published by the press and I felt looking at the law on recusal and the circumstances that fairness demanded my recusal. I am quite au courant with the jurisprudence on recusal and I will have no problem in participating in any judicial decision involving a matter in which my country has an interest. Recusal must not be willy-nilly invoked.

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

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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.

- 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.

The experiences over the years with the DPP and on the Bench in Trinidad and Tobago, as well as my work as Appeals Counsel at the ICTY/ICTR, have ensured that I am equal at multi-tasking. I am methodical and thorough. Time management will be critical and I have been able to do so professionally.

I undertake most of my research but judges in my jurisdiction have the assistance of a Judicial Research Assistant who must be an Attorney at Law of competence. They are helpful and play an important role in the efficiency and expedition of trials in the Criminal Justice System. Because of their research and administration capabilities, a Judge is able to stay longer in the Court dealing with matters at hand.

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.

Issues:

- 1. There is a need for greater dissemination of information on the ICC especially in States which are not parties to the Rome Statute.**
- 2. In future, as someone from a small country and a region with porous borders, I would like to one-day see the International Criminal Court prosecuting accused persons charged with the trafficking of drugs and the trafficking of persons. Small countries are extremely vulnerable to the machinations of drug and human traffickers.**

Thank you for completing this questionnaire.

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