

ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

QUESTIONNAIRE

A. Nomination process

1. The Statute requires every candidate for election to the Court to have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings or established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.

Could you please describe your experience and competence in the areas specified? For how long? In which capacity?

Over 20 years experience as a lawyer specializing in litigation and court work; 5 years as a Criminal prosecutor including as Senior Prosecutor in the Attorney Generals Office, Samoa; over 20 years experience as a judge of the Civil & Criminal courts at all levels, I am currently the Senior Justice of the Samoa Supreme Court and a Justice of the Samoa Court of Appeal; former Vice-Chair and a member of the UN Committee on the Rights of the Child, Geneva, Switzerland for 8 years.

2. Do you have any experience or competence in handling litigation or inquiring or investigating into issues related to violence, discrimination, sexual assaults, or other similar conduct, inflicted on women and children? In which capacity?

Investigated, prosecuted, defended and presided over many many criminal cases involving offences of violence, discrimination, sexual assaults and barbaric behaviour of all kinds against women and children of all ages. Even in the idyllic Pacific, these things occur. I also have considerable experience in dealing first-hand with such matters and related issues in my time on the UN Committee on the Rights of the Child..

3. Have you ever been investigated for, or charged with, allegations of corruption, criminal or administrative negligence or any other similar misconduct, including sexual harassment? Was there a conclusive determination?

Never.

B. Perception of the Court

1. What is your vision of the International Criminal Court and its dual nature as a court and an international organization? How do you see the main differences between the ICC and the two *ad hoc* Tribunals for the former Yugoslavia and for Rwanda?

To be truly international, the Court should reflect the diversity of the world and have representation from all regions.

More work needs to be done to promote and ensure universal ratification of the Rome Statute and international acceptance of the value and significance of the ICC and how its work needs to expand.

*Greater recognition required to be given to the **indirect** impact of war crimes, etc on victims especially women, children and those belonging to vulnerable groups.*

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ICC is a permanent creature established by the Rome Statute whereas the Rwanda and Yugoslav Tribunals were ad hoc and temporary bodies set up by the UN for specific purposes.

2. What would be the main criticisms you are aware of in relation to the Court's proceedings?

Lengthy delays in cases; lack of recognition of the Court by some of the worlds major powers; lack of an enforceable mechanism for decisions; poor record of convictions; disharmony and dissension amongst judges.

3. Do you have any suggestions on changes that could be proposed in order to improve the perception of the Court in the eyes of the international community?

Improving its conviction record by perhaps focusing on mid-level defendants first, for example as done by the UN Yugoslavia Tribunal culminating in the successful prosecution of high profile and higher-level defendants; re-examine the necessity for a Pre-Trial Chamber investigation and inquiry; fostering a closer working relationship among the judges; requiring stronger leadership from senior judges; strengthen its ties, and co-operation and support from State Parties.

4. Which are, in your view, the most important decisions issued by the Court in the past years, that have had an important impact in relation to its perception vis-à-vis the States Parties and the public? Could you give and explain at least one positive and one negative example?

One of the most important cases of the Court was that of Thomas Lubanga in 2012 where the Court recognised that the enlisting and use of children as child soldiers was a war crime and a crime against humanity. However because he was a child soldier himself, the penalty on Lubanga was arguably relatively lenient.

One failure of note is the paralysis of the Court in relation to war crimes allegedly committed during the 2008 invasion of Georgia by the Russian Federation. An investigation was commenced in August 2008 but 15 years later, no concrete results have emerged except the issue of a small number of arrest warrants by the office of the Prosecutor. Significance of this includes the fact that this was the 1st non-African investigation launched by the ICC and it was directed at a Permanent Member of the UN Security Council. It should have been targeted for absolute success not abject failure.

C. Judge's independence

1. What in your view should be the relationship between a Judge and the authorities of his or her country of origin? Similarly, how do you envisage your future relationship with bodies such as universities, courts or non-governmental organizations with which you have been involved or to which you have been affiliated, if elected to the ICC?

There should be no ongoing relationship between an ICC Judge and his country of origin and he should disqualify himself from sitting on any matter that may potentially involve his country. All ties to his country must be severed except to the extent required for say for example speaking on the role, importance and work of the Court or campaigning for support/funding for the Court. He then speaks as a "representative" or advocate for the work of the Court.

2. In your view, can a Judge participate in a trial involving a national from his or her country of origin? Why?

Absolutely not. Because of the real likelihood and danger of bias, as well as the perception thereof.

3. Which jurisprudence/decisions do you consider necessary, useful and appropriate to be considered during proceedings at the ICC? From national courts? From international courts? From Human Rights bodies?

International courts and Human Rights bodies and institutions; in particular in relation to international law principles concerning armed conflict. National courts only insofar as they are not inconsistent with the Rome Statute and are relevant to the work of the Court; perhaps on settled principles of law or concerning procedural issues or matters of definition from differing jurisdictions. The usefulness of such material should be evaluated on its merits and in accordance with the circumstances of each case.

4. In your view, what should be the approach of an independent Judge when faced with precedents established by the Appeals Chamber of the Court?

If the precedent be directly on point, it should in the interests of uniformity and consistency be followed unless there be some strong reason for departure. In the least, it should be treated as being of the highest persuasive value.

5. Do you consider that a Judge or a Chamber of the Court, in order to ensure efficiency, should be allowed to implement innovative procedural practices? If yes, please give examples.

These should be first discussed with fellow judges and the President of the Court and where necessary with the administrative staff of the Court. Due regard must also be had to the impact of proposed changes upon existing rules of procedure and how to incorporate them.

6. How do you envisage working with a hybrid criminal procedure, different from the one you experienced in your national functions? How do you envisage your working relationship with other Judges from different backgrounds and from different legal systems?

No problem with adaptation to the new procedure. Or to working with judges from different backgrounds. In the course of a 40 year legal career, I have worked with judges and lawyers from all over the world. I was also surrounded by people from every part of the globe during my 8-years as a member of the UN Committee on the Rights of the Child in Geneva.

7. Are you used to working as part of a team? How would you deal with a disagreement in relation to a certain aspect of a decision? What are your views in relation to writing separate concurring and dissenting opinions?

As the longest serving Senior Justice of the Samoan courts, I have worked alongside and in a supervisory capacity with colleagues and persons, including politicians, at all levels of the Legal System. Differing views are to be expected in a judicial atmosphere and the challenge is organizing and/or massaging them to achieve unanimity without sacrificing the essence of a decision. Separate or dissenting opinions are always a measure of last resort.

D. Workload of the Court

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1. Are you prepared and available to serve at the commencement and for the duration of your term, if elected and if called to work at the Court full-time?

Yes.

2. Work as a Judge of the ICC frequently involves many hours a day, including into the evenings and over some weekends. Holidays can only be taken at fixed periods during the year when, for instance, there are no hearings. Are you prepared for that?

I am used to that!

3. The Court has two working languages. What is your opinion about this matter? How could multilingual challenges be better addressed by International Criminal Court judges ?

In the Committee on the Rights of the Child, we had 3 working languages – English, French and Spanish. That essentially covered all areas and aspects of communication and it is important to note that our Latin and Central American colleagues are not all necessarily fluent in English or French. The significance of language cannot be over-estimated in the context of an international judicial and legal environment involving differing legal systems and approaches. Ideally the ICC should have these 3 as its official languages.

4. What is your approach to writing decisions? Will you undertake this work yourself? To what extent would you delegate drafting to assistants or interns?

I have always researched and written my own decisions. I have found it also promotes clarity of thought.

5. Which are, in your view, the decisions that could and should be issued by a Single Judge in order to expedite proceedings?

Decisions on non-substantive procedural issues, timetabling and other administrative matters.

6. Are you used to working under pressure from States, governmental authorities, national or international organizations, the media or the wider public? Can you provide an example?

Very much so!

In the aftermath of Samoa's 2021 General Elections, a Constitutional Crisis arose due to the refusal by the previous Government, who had been in power for almost 40 years, to relinquish control to a new democratically elected government. The Samoan Courts were called upon to deliver at short notice and in a highly charged political atmosphere a number of Rulings on the supremacy of the Rule of Law and the Samoa Constitution. A useful Summary of these decisions and those times is contained in an article 'Guardians of the Constitution: Upholding Judicial Independence during Samoa's Constitutional Crisis' by local lawyer and political commentator Ms Fiona Ey at <https://www.tandfonline.com/doi/full/10.1080/00223344.2022.2058477>. I was then Senior Justice of the Samoa Supreme Court.

7. Are you in good health and able and prepared to work under pressure, given the Court's heavy workload? Have you ever been on leave from your professional duties due to exhaustion or any other work-related incapacity? If yes, for how long?

Health good, never been on leave for exhaustion/incapacity.

E. Deontology

1. What is your definition and understanding of an independent Judge?

One who delivers impartial justice to all without fear or favour.

2. In your view, what would constitute a conflict of interest for a Judge?

This occurs where your personal interests conflict or could potentially conflict with your professional duties, e.g. presiding over the trial of a close relative or friend; in the case of the ICC, a fellow countryman or colleague accused of criminal conduct.

3. Should considerations relating to race, colour, gender or religion be taken into account when assessing a candidate's suitability to be a judge at the ICC? Why?

No; except for gender insofar as considered necessary in order to achieve the gender equality contemplated by art 36(8)(iii) of the Rome Statute.

4. Have you ever been the subject of disciplinary, administrative, criminal or civil proceedings in which your professional or ethical standing has been called into question? If yes, please provide details, including the outcome.

No.

5. What measures and decisions would you take, if you are elected, to ensure the effective participation by victims in the proceedings?

Representation as an absolute minimum; in person where-ever possible and practical, on-line being another option; the right to address the Court in person or via a legal advocate; the right to make representations to the Court on relevant issues; proof of notification of proceedings.

6. In reaching a decision, how would you approach the need to balance the rights of an accused person and the rights of victims, which are both protected by the ICC's legal texts?

The rights of both are to be protected and respected in accordance with inter alia Part 6 of the Rome Statute. Where they conflict in the course of a trial, the rights of the accused are paramount.

F. Additional information

1. Are you fluent in at least one of the working languages of the Court? Can you speak fluently in public hearings and meetings, and write your own decisions in one of the working languages of the Court?

No problem. I am fluent in English.

2. Do you have any other nationality, other than the one indicated in your nomination, or have you ever requested another nationality?

As disclosed in my application form, I am also a New Zealand citizen.

3. Have you familiarized yourself with the conditions of service (which include the remuneration and the pensions' scheme) for the Judges of the Court? Are you aware of, and do you accept, the Terms and Conditions of work?

Yes.

4. If elected, are you willing to participate in a financial disclosure program organized by the ICC?

Yes.

5. Is there any other information which should be brought to the attention of the Committee and which might call into question your eligibility for judicial office?

No.

G. Disclosure to the public

1. You have the option to make your answers to this questionnaire public. What is your preference in this regard?

I have no preference, I leave that to the Advisory Committee. I have no objection to these answers being made public.
