

Ndungu, Njoki Susanna (Kenya)

[Original : English]

Statement of Qualifications

This statement is submitted in accordance with article 36 paragraph 4 (a), of the Rome Statute of the International Criminal Court; paragraph 6 of resolution ICC-ASP/3/Res.6, and its amendments, on the procedure for the nomination of candidates for judges.

Judge Njoki Susanna Ndungu is the candidate of the Republic of Kenya for election of a Judge of the International Criminal Court. She is nominated for inclusion in List A, relating to candidates with the qualifications in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate, or in other similar capacity, in criminal proceedings.

- (a) Specification in the necessary detail of how the candidate fulfils each of the requirements in article 36, paragraph 3 (a), (b) and (c), of the Statute, in accordance with article 36, paragraph 4 (a), of the Statute

- i) *High moral character, impartiality and integrity (article 36, paragraph 3 (a))*

Judge Njoki S. Ndungu is a person of high moral character, impartiality and integrity. This has been demonstrated in more than three decades of her professional life. In recognition of this, she has received global awards from the United Nations and the International Commission of Jurists. She has also received National honours awarded by the Government of Kenya.

- ii) *Qualifications required in their respective States for appointment to the highest judicial offices (article 36, paragraph 3 (a))*

Judge Njoki S. Ndungu is a serving judge of the Supreme Court of Kenya, the highest judicial authority of the Republic of Kenya. She therefore possesses the qualifications required for the appointment to the highest judicial office in Kenya.

- iii) *Established competence in criminal law (article 36, paragraph 3 (b))*

As a Judge of the Supreme Court of Kenya, the country's apex court with final appellate jurisdiction over criminal matters, Judge Njoki S. Ndungu has, for over fifteen years, participated in and authored landmark judicial opinions that have significantly shaped Kenya's criminal jurisprudence. Her decisions have addressed complex issues including fair trial rights, the admissibility and evaluation of evidence, legality and proportionality of sentences, the protection of constitutional rights of accused persons, and the meaningful participation of victims in criminal proceedings. Through her jurisprudence, Judge Njoki S. Ndungu has contributed to the development of a victim-centred and constitutionally grounded criminal justice framework in Kenya.

She also served as State Counsel in the Office of the Attorney General (then incorporating the Office of the Director of Public Prosecutions), where she advised on and prosecuted serious criminal offences, including capital offences. In this role she appeared before Magistrates' Courts, the High Court of Kenya, and the Court of Appeal (then the apex court), thereby acquiring extensive practical experience in criminal litigation and prosecutorial practice.

Her expertise in criminal law is further distinguished by her internationally recognised leadership in the development and advancement of laws addressing sexual and gender-based violence. As a Member of Parliament, Judge Njoki S. Ndungu, sponsored and successfully steered the enactment of Kenya's Sexual Offences Act, a landmark piece of legislation that fundamentally transformed the country's legal framework for addressing sexual violence, strengthening evidentiary standards, protections for survivors, and accountability for perpetrators. Following the enactment of the law, she has played a leading role in promoting its implementation through extensive capacity-building and judicial education initiatives at the national, regional, and international levels. Judge Njoki S. Ndungu has trained judges, prosecutors, investigators, and justice sector actors on the interpretation and application of sexual offences law, including complex issues relating to evidentiary standards, admissibility of evidence, consent, survivor protection, and the prosecution of sexual violence in conflict and post-conflict settings. Through these engagements, she has contributed to strengthening the ability of justice systems to respond effectively to sexual and gender-based crimes.

Taken together, Judge Njoki S. Ndungu's judicial service at the highest court, her prosecutorial experience, her legislative leadership in criminal law reform, and her international work on sexual violence and accountability demonstrate her deep and established competence in criminal law, consistent with the requirements of article 36(3)(b) of the Rome Statute.

iv) Language requirements (article 36, paragraph 3 (c))

Judge Njoki S. Ndungu has an excellent command of the English language and basic proficiency of written and spoken French.

(b) Indication of the nomination procedure under article 36(4)(a)(i) or (ii)

Judge Njoki Ndungu was nominated pursuant to the procedure for nomination of candidates for appointment to the highest judicial offices in Kenya. This procedure is set out under article 166 (1)(b) of the Constitution of Kenya. Pursuant to that provision, the President shall appoint judges, "in accordance with the recommendation of the judicial service commission."

The Chief Justice of the Republic of Kenya, after receiving notification from the Attorney-General informed all judges of the upcoming election of judges to the International Criminal Court and invited applications for expressions of interest. A total of three candidates including Judge Njoki S. Ndungu expressed their interest and the Chief Justice forwarded their names to the Judicial Service Commission for determination of suitability. Upon consideration of the three candidates who had expressed interest, and having found them all suitable, the Judicial Service Commission recommended the names of the three candidates to the President of the Republic of Kenya. The President, in exercise of his powers under the Constitution, then nominated Judge Njoki S. Ndungu as Kenya's candidate for election as a judge of the International Criminal Court.

(c) Indication of nationality under which the candidate is nominated (article 36, paragraph 7)

Judge Njoki Ndungu is a Kenyan national and does not possess the nationality of any other State. She has been nominated by the Republic of Kenya.

(d) Gender and Geographical Representation (article 36, paragraph 8 (a))

Judge Njoki S. Ndungu is female, and she comes from the Africa Region.

(e) Legal expertise on specific issues including but not limited to violence against women and children (article 36, paragraph 8 (b))

Judge Njoki S. Ndungu is widely recognised for her extensive expertise in the legal and institutional responses to violence against women and children and other gender-based crimes, developed through more than three decades of work across the judiciary, legislative institutions, international organisations, and humanitarian bodies. Her career has been marked by sustained leadership in advancing legal frameworks, institutional reforms, and judicial approaches that strengthen accountability for sexual and gender-based violence, enhance the protection of victims and vulnerable populations, and promote survivor-centred justice. Through her contributions at the national, regional, and international levels, she has developed specialised competence in issues that lie at the heart of the mandate of the International Criminal Court, including crimes involving sexual violence recognised under articles 7 and 8 of the Rome Statute, as well as the protection of victims, witnesses, and displaced populations.

Over the course of more than three decades, Judge Njoki S. Ndungu has developed deep and internationally recognised expertise in addressing violence against women and children, gender-based crimes, and the protection of vulnerable populations through her work in civil society, national and regional legislatures, international organisations, humanitarian institutions, and the Judiciary of Kenya. Across these roles, she has consistently led legal and institutional reforms addressing violence against women and children while advancing the protection of refugees, displaced persons, and other vulnerable groups.

Her work has focused on strengthening legal and institutional responses to sexual and gender-based violence including crimes such as rape, sexual slavery, forced pregnancy, enforced prostitution, and other forms of sexual violence, which are recognised under articles 7 and 8 of the Rome Statute of the International Criminal Court as crimes against humanity and war crimes. Judge Njoki S. Ndungu has developed expertise in procedural and evidentiary standards in sexual offences cases, survivor-centred approaches to justice, victim participation in criminal proceedings, and mechanisms for victim protection and reparations for survivors of gender-based crimes.

Her leadership in legislative reform addressing sexual violence is widely recognised. As a Member of Parliament in Kenya, she championed key legislative initiatives aimed at strengthening legal protections for women and children against sexual violence. In 2004, she moved the motion adopted by Parliament supporting the ratification of the International Conference on the Great Lakes Region Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children, reinforcing Kenya's commitment to regional accountability frameworks addressing sexual violence.

In 2006, Judge Njoki S. Ndungu sponsored and successfully steered through the Kenyan Parliament, the Sexual Offences Act, 2006, one of the most consequential legislative reforms in Kenya's criminal justice system. The Act established a comprehensive legal framework addressing sexual violence, strengthened evidentiary standards, expanded definitions of sexual offences, enhanced protections for survivors and vulnerable witnesses, and introduced stronger penalties for perpetrators. The legislation significantly strengthened access to justice for survivors of sexual violence and has informed legal reform and judicial training initiatives across Africa.

In addition, she introduced amendments to employment legislation aimed at strengthening protections for working families, including provisions introducing maternity and paternity leave benefits, further advancing gender equality and social protection for vulnerable groups.

Judge Njoki S. Ndungu's expertise in gender justice also has a strong regional dimension. While serving with the African Union's Conflict Management Centre, she played a leading role in processes relating to the development of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). This landmark regional instrument established robust legal protections against gender-based violence, discrimination, and harmful practices affecting women across the African continent.

Her mandate within the African Union also involved analysing preventive mechanisms for addressing human rights violations in conflict and post-conflict situations and integrating rights-based approaches within peace processes across the continent. This work strengthened her expertise in addressing conflict-related sexual violence and promoting accountability for serious human rights violations occurring in conflict settings.

Judge Njoki S. Ndungu's expertise in the protection of vulnerable populations is further informed by her humanitarian work. As National Protection Officer with the United Nations High Commissioner for Refugees (UNHCR), she worked on refugee protection law and refugee status determination while also leading initiatives addressing gender-based violence in refugee settings. Her work included training judicial officers, humanitarian personnel, and refugee communities on preventive measures and protective responses to sexual violence within refugee camps.

Her work with civil society organisations also addressed issues relating to abductions, trafficking, slavery, and the protection of child soldiers, including the development of human-rights-based programming for displaced populations and refugees. These engagements provided practical exposure to the intersection between humanitarian protection, armed conflict, and gender-based violence, areas that are directly relevant to the work of the International Criminal Court.

Judge Njoki S. Ndungu also played an important role in the broader accountability discourse following Kenya's 2007–2008 post-election violence, during which widespread atrocities, including sexual violence against women and children, were documented. In this context, she was a strong advocate for the development of institutional mechanisms capable of addressing international crimes. In particular, she supported the establishment of the International Crimes Division of the High Court of Kenya, envisioned as a specialised judicial mechanism to prosecute international crimes, including crimes against humanity and conflict-related sexual violence.

During this period, she also engaged in international advocacy to raise awareness of the atrocities committed during the violence, including delivering a congressional address in the United States highlighting the devastating impact of the violence on women and children and emphasising the importance of justice, accountability, and institutional reform.

Her judicial service has further consolidated this expertise. As a Judge of the Supreme Court of Kenya, the country's apex court with final appellate jurisdiction over criminal matters, she has contributed to the development of indigenous jurisprudence relating to victim participation in criminal proceedings, interpretation of fair trial rights, evidentiary standards in criminal trials, and the legality of criminal convictions and sentences.

In this role, she regularly engages with complex factual records, applies advanced legal reasoning, and safeguards due process while maintaining the delicate balance between the rights of accused persons and the imperatives of survivor- and victim-centred justice, responsibilities that closely mirror the adjudicative functions of the International Criminal Court.

Judge Njoki S. Ndungu's expertise in sexual and gender-based violence has also been recognised internationally through her extensive work in capacity-building and advisory roles with United Nations agencies, including UN Women, UNFPA, UNDP, UNICEF and IPPF, where she has trained justice sector actors and advised governments across multiple African countries on strengthening legal responses to gender-based violence and improving institutional frameworks for survivor protection and accountability.

Through her legislative leadership, humanitarian engagement, regional legal work, judicial service, and international advocacy, Judge Njoki S. Ndungu has earned global recognition as a leading expert on violence against women and children and the protection of vulnerable populations. Her experience

demonstrates strong competence on issues that lie at the core of the mandate of the International Criminal Court under article 36(8)(b) of the Rome Statute, particularly in relation to sexual and gender-based crimes, victim protection, reparations, and accountability for serious violations of international law.

Judge Njoki S. Ndungu has also provided important institutional leadership within the Judiciary of Kenya in areas closely linked to constitutional governance and public confidence in the justice system. As Chairperson of the Judiciary Committee on Elections (JCE), she has overseen the development of specialised training curricula and capacity-building programmes to prepare judges to hear and determine election petitions. Through this work, she has contributed to strengthening the Judiciary's institutional preparedness to adjudicate electoral disputes in a manner that safeguards constitutional order, enhances public confidence in electoral justice, and promotes peace and stability during electoral cycles.

She also serves as Chairperson of the Judiciary Employee Protection and Inclusivity Committee (EPIC), the first committee of its kind within the Judiciary mandated to oversee the implementation of policies protecting judicial officers and staff from sexual harassment while promoting dignity, equality, and inclusivity within the institution. Through this role, she has contributed to strengthening internal accountability frameworks and fostering a safe and respectful working environment within the justice sector.

Overall, Judge Njoki S. Ndungu's extensive experience in criminal law, legislative reform, gender justice, humanitarian protection, and judicial leadership demonstrates a profound commitment to accountability, the protection of vulnerable populations, and the advancement of victim-centred justice. Her work across national, regional, and international institutions reflects deep engagement with the legal and institutional challenges associated with prosecuting serious crimes, including sexual and gender-based violence and other violations recognised under international criminal law. These experiences collectively demonstrate strong competence in areas that lie at the core of the mandate of the International Criminal Court, particularly in relation to the prosecution and adjudication of crimes affecting women, children, and other vulnerable groups.

- (f) The commitment of the candidate to be available to take up full-time service when the Court's workload so requires

Judge Njoki S. Ndungu is committed to take up full-time service when the Court's workload so requires.