

**Coalition for the International Criminal Court (CICC)
Questionnaire for ICC Judicial Candidates
December 2017 Elections**

Please reply to some or all of the following questions as comprehensively or concisely as you wish.

To fill in the document please click in the grey box, which will then expand as it is filled in.

Name: Tomoko AKANE
Nationality: JAPANESE
Nominating State: JAPAN
Legal Background (<i>mark as appropriate</i>): List A <input checked="" type="checkbox"/> B <input type="checkbox"/>
Gender: Female <input checked="" type="checkbox"/> Male <input type="checkbox"/>

Background

1. Why do you wish to be elected a judge of the International Criminal Court (ICC)?

I wish to serve as a judge of the ICC to join its endeavor to put an end to impunity of the criminals who commit the most serious crimes of concern to the international community and thus to contribute to the prevention of such crimes with the following two main reasons.

First, I believe I can definitely contribute to the work of the ICC based on my work experience as a public prosecutor and government attorney in Japan for over 35 years. In dealing with various kinds of criminal cases, I have compiled my expertise on criminal law and procedures, not only in investigation but also in the court process. With my expertise in the work of prosecutions and for the court, I am also confident that I am able to ease victims' pain incurred by the crime during the proceedings.

Second, I wish to contribute through the work as a Judge of the ICC to bring more justice to the international community based on my many years of experience in the field of international cooperation. Over the years I have been involved in the international technical legal assistance and capacity building for criminal justice practitioners such as public prosecutors and judges in developing countries through the activities of the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders affiliated with the United Nations (UNAFEI) and of the

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Research and Training Institute of the Ministry of Justice, Japan. Through my experience, I came to learn that the criminal justice practitioners in many countries work very hard to develop their own criminal justice system, to fight against heinous crimes and to end impunity, but there are a lot of hindrances to achieving such goals. I also learned that the rule of law is crucial for the realization of criminal justice, but that it is not easy to achieve it in many parts of the world. The work of ICC which requires international cooperation by the States Parties would definitely assist such endeavors in the respective countries through their corroborated efforts, and thus, I wish to be a member who could contribute to the work of the ICC.

2. What do you believe are the most important challenges and achievements of the ICC in its first 15 years?

In my view the most important challenges and achievements of the ICC in its first 15 years are closely related to each other. The most important achievement was the creation of the ICC and the start of its operation as the first ever permanent international criminal court, based on the Rome Statute, with the aim of ending impunity in the world. The number of States Parties to the Rome Statute has become 124 to date, but there is still room to achieve its goal of becoming truly universal. Since it first opened the Trial Chamber, the Court has dealt with more than 20 cases in 10 situations in total, in accordance with the Rome Statute. The Court concluded its proceedings on some of the cases and continues to deal with the remaining and incoming cases. While observing these achievements, the ICC has been facing challenges such as critical comments or dissatisfaction expressed by some States Parties on the work of the ICC including slow proceedings speed and concentration of cases in certain parts of the world. In my view, however, it is inevitable that the ICC will reach the next stage of its development and to gain more cooperation from its States Parties and non-States Parties.

3. What do you believe are some of the major challenges confronting the ICC and Rome Statute system in the coming years?

As mentioned above, 10 situations were brought to the ICC in accordance with the Rome Statute and the Court was able to deliver decisions in some cases to those criminals who committed the most serious crimes over which the ICC has jurisdiction. It could be argued that the increase in the number of cases dealt with by the Pre-trial and Trial Chambers embodies the growing trust in the work of the Court by the States Parties. But the number of the situations that the ICC could deal with has been limited. How to gain more cooperation to support ICC's investigations and court proceedings continues to be one of the major challenges that ICC and the Rome Statute system will face in the coming years. In more concrete terms, such challenges are: 1) how to deal with cases more efficiently and effectively, and 2) how to gain more cooperation from States Parties and non-States Parties.

As for the first point, it is to be noted that the ICC has already made efforts by itself to expedite its proceedings within the existing resources and in accordance with the Rome Statute. There might be, however, further room for improvement, while protecting the human rights of all parties and strictly following due process of law.

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As for the second point, it is obvious that the ICC needs cooperation from the States Parties for the execution of the work with enforcement measures in the course of investigations, collecting evidence and execution of the sentences. If the ICC does not receive sufficient cooperation from States Parties, the investigation and court proceedings would not be conducted efficiently, or at least delayed.

If these challenges are treated appropriately, the ICC will receive more trust in its work from the States Parties.

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.

The highest judicial office in Japan is the Supreme Court of Japan. The Court Act of Japan specifies qualifications required for the appointment to the Justices of the Supreme Court. According to the Court Act, the Justices are appointed from learned persons with extensive knowledge of law, who are not less than forty years old. In the case of public prosecutors as well as judges and practicing lawyers, they can be appointed as the Justices, if they have 20 years or more work experience. Since I have served more than 35 years as a public prosecutor, I sufficiently fulfill the aforementioned work experience criteria. In addition, I have been successful in pursuing my career as a public prosecutor: I was appointed Director-General of the Research and Training Institute of Ministry of Justice, one of the highest positions to which a public prosecutor can be assigned.

I have also amassed my expertise and experience through my career as a public prosecutor in dealing with various types of cases at every stage of the proceedings. I was also engaged in international cooperation including legal technical assistance and capacity building.

With this background, I am recognized as fulfilling all the required qualifications for the Justices of the Supreme Court based on my long and successful career as a public prosecutor.

5. Have you provided the statement required by Article 36(4)(a) of the Rome Statute and by the nomination and election procedure adopted by the Assembly of States Parties? If not, please provide an explanation for this omission.

Yes. The Government of Japan has provided the required statement, which is already uploaded on the website of ICC-ASP 2017 Nominations - Election of six Judges.

Legal System

6. The Rome Statute seeks judges representing all of the world's major legal systems.

- a) Which legal system is your country part of?

Japan is part of civil law system, but incorporates some important elements from common law system.



The Criminal justice system in Japan is in principle based on the civil law system, thus the statutory law is the primary source of law in Japan, while precedents are also taken seriously into consideration and regarded as a part of the law. The legacy of civil law can be observed throughout the Japanese legal system. For example, a role of judges is not only conducting the proceedings but is also very influential in fact-finding and in the final decisions; i.e., judges sometimes intervene with questions during the witness testimony, if they feel it necessary to verify the witness's testimony or to confirm the truth. The roles of prosecutors in criminal proceedings are in principle based on the civil law system. They are given greater roles in investigation and in making decisions whether to prosecute compared to those in common law systems. Prosecutors often interview defendants and witnesses by themselves and take statements from them. Prosecutors should also represent the public interest, and therefore must be impartial.

As for the criminal substantive law in Japan, a huge influence from civil law can be observed. .

In terms of the procedures in court and procedural law, Japanese criminal justice system has incorporated important elements from the common law system, such as adversarial proceedings in the court, and evidential rules including hearsay rules and exclusionary rules.

- b) Please describe any knowledge or experience you have working in or with other legal systems.

I studied criminal justice at postgraduate level at the graduate school of Jacksonville State University in the United State of America and acquired a master's degree. Through my studies there I obtained knowledge of criminal law and the criminal justice system of the United States.

Through my experience in engaging in legal technical assistance and capacity building in other countries, mainly in Asia and Africa, including those countries which practice the common law system, I acquired knowledge of other criminal justice systems including practices under such systems.

Language Abilities

7. The Rome Statute requires every candidate to have excellent knowledge of and be fluent in English or French.

- a) What is your native language?

Japanese

- b) What is your knowledge and fluency in English? If it is not your native language, please give an example of your experience working in English.

I have used English extensively as a professional working language in a broad range of situations. In addition to my academic background of graduating with a master's degree from the graduate school of Jacksonville State University in 1990, I worked for UNAFEI for more than 7 years, where English is one of the working

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languages in speaking, reading and writing. With this background, I have the ability to work in English as an ICC judge.

- c) What is your knowledge and fluency in French? If it is not your native language, please give an example of your experience working in French?

I learned French as a second foreign language in my university days, and I have a fair knowledge of French, which is sufficient for reading documents written in French.

List A or B Criteria

8. Your response to this question will depend on 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.

- a) For **List A** candidates:

- Briefly describe your qualifications as a List A candidate.

Since my appointment as a public prosecutor or government attorney with the Ministry of Justice of Japan in 1982, I have been assigned to a number of Public Prosecutors Offices all over Japan and have dealt with various kinds of criminal cases in all aspects, such as investigation, prosecution, trial, appeal and retrial phases, and with the execution of the convicts phase, as well.

- How would you describe your competence in criminal law and procedure?

(1) Establishing my competence through training

After I passed the bar examination during my undergraduate years, I participated in the training courses at the Legal Training and Research Institute of the Supreme Court right after my graduation from Tokyo University. During the two-year training, I learned practical theories and legal skills not only for the prosecutors, but also for practicing lawyers and judges. After passing the final examination, I obtained the bar qualification and was appointed as public prosecutor by the Minister of Justice.

(2) Establishing my competence through work as a public prosecutor

With the expertise that I have accumulated throughout my career as a public prosecutor over 35 years, both in investigation as well as in prosecution and trials, I am competent in criminal law and procedures in Japan. Upon my appointment as Chief Prosecutor of Hakodate District Public Prosecutors Office, I led the investigations and prosecutions within its jurisdiction. Just to mention some of my activities, I, in my capacity as public prosecutor of the Supreme Public Prosecutors Office, advised and instructed less experienced colleagues from all over Japan how to conduct investigation and prosecution, mainly on complex and important economic/financial criminal cases, or brutal organized crime cases.

(3) Establishing my competence through other activities

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I taught criminal law and procedure as professor at two law schools for three years. I also taught my students about trial procedures and practices through mock trials.

As the representative of the Supreme Public Prosecutors Office, I also served as a special member of the Legislative Council of the Ministry of Justice for deliberation on revision of the Juvenile Act and other criminal law

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

As previously mentioned, I have been dealing with various kinds of criminal cases through investigation, prosecution, trials and appeals, since my appointment as a public prosecutor in 1982. As for my experience as a prosecutor in criminal proceedings please refer to a)(2) above.

b) For **List B** candidates:

- Briefly describe your qualifications as a List B candidate.

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

Although I am not a candidate of list B, I was given opportunities to acquire the necessary knowledge of international law as a government attorney. I have also referred to international law on human rights/humanitarian law when I dealt with criminal cases, because all criminal cases involved the human rights aspects of the persons concerned. I paid particular attention to victims' human rights which were badly infringed upon by the criminal acts, while keeping in mind that the basic human rights of the accused should be protected.

Since I have been engaged in international cooperation in the legal field, I have also referred to international law as well as relevant treaties including the Convention on the Rights of Child. Furthermore I enjoyed opportunities to contact with legal experts who work for human rights issues in their countries.

As for international humanitarian law, I attended a number of seminars held by universities or those organized by the Japanese International Law Society. I also participated in international conferences on international criminal law and international humanitarian law.

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

Other Expertise and Experience

9. Please 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.

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I served as Vice Chairperson of the International Affairs Experts Committee established under the auspices of the Supreme Public Prosecutors Office, and planned and organized research and lecture events related to international investigation and international cooperation (mutual legal assistance) in criminal matters which also involved international humanitarian laws and international human rights laws.

I also have experience in international legal technical assistance and capacity building for developing countries through activities of UNAFEI and the Research and Training Institute of the Ministry of Justice.

These experiences deepened my knowledge of criminal law and procedures and practices thereof not only in Japan but also in other countries.

- 10.** Please provide examples of your legal expertise in other relevant areas such as the crimes over which the ICC has jurisdiction, the management of complex criminal and mass crimes cases, or the disclosure of evidence.

I have profound experience in management of complex and mass crimes cases, in particular of economic and financial crimes, including tax evasion cases, corporate fraud, corruption cases, illegal manipulating of stock markets which are usually committed meticulously and by using the influence of the organization or person in power. I also have experience in dealing with complex organized crime such as international drug trafficking, assassination of executive members of rival organized crime groups, etc.

I have also dealt with murder cases, rapes, and other violent crimes which included multiple people and groups, through which I gained expertise in the protection of victims including women and children, disclosure of evidence and so on.

- 11.** The ICC is a unique institution, and ICC judges will face a number of unprecedented challenges (including managing a regime of victims' participation and witness protection in situations of ongoing conflict). Even judges with significant prior experience managing complex criminal trials may not necessarily possess requisite skills and knowledge needed to manage these challenges.

- a) Are you willing to participate in ongoing workplace training aimed at promoting legal innovation and coordination among all judicial chambers in adjudicating complex questions relating to law and policy?

Yes, I am willing to participate in such training.

- a) Do you consider such training to be important?

Yes. In principle, anytime and anywhere updating our knowledge and skill as judges is necessary, in particular for ICC judges. Since the ICC might often deal with unprecedented cases and the victims with various social and cultural backgrounds, ICC judges need to be flexible in their consideration to the extent needed while keeping legal consistency. In order to meet such challenges in an



appropriate manner, it is useful and important for ICC judges to participate in such trainings.

Experience (and perspective) related to gender crimes and crimes of sexual violence

12. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked. Please describe any experience you may have in dealing with sexual and/or gender-based crimes and where you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted.

I have plenty of experience in dealing with crimes of sexual and/or gender violence, including gang rape cases, abductions, and murders.

In dealing with such crimes, I was able to develop mutual trust with the female victims, and that enabled me to conduct smooth proceedings, while protecting the fundamental rights of the accused. I as a public prosecutor never applied a gender-biased perspective during the proceedings, but female victims might have had better feelings when female prosecutors took care of them.

Victims-related work

13. Victims have a recognized right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. Please describe any experience that you may have relevant to these provisions and that would make you particularly sensitive to/have understanding of the participation of victims in the courtroom.

I have a good understanding of the participation of victims in the courtroom, because there is a standard procedure to accommodate victims' participation in the courtroom under the Code of Criminal Procedure of Japan.

14. How would you address the need for a balance between victims' participation with the rights of the accused to due process and a fair and impartial trial? Do you have any relevant experience in dealing with this issue?

Both victims' participation and rights of the accused to due process are important. I don't believe balancing between victims' participation and the protection of the rights of the accused is controversial and difficult. As mentioned earlier, under the Code of Criminal Procedure of Japan, victims' participation is allowed under certain conditions and is appropriately operated by the court and participating parties with a good balance with the rights of the accused.

Human rights and Humanitarian Law experience

15. Do you have any experience working with or within international human rights bodies or courts and/or have you served on the staff or board of directors of human rights or international humanitarian law organizations? If so, please briefly describe this experience.

No, I don't have such experience.



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

No.

Implementation of the Rome Statute and International Criminal Law

17. 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? Have you ever referred to or applied jurisprudence of the ICC, *ad hoc*, or special tribunals? If yes, please describe the context in which you did.

No.

Other matters:

18. 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.

19. It is expected that a judge shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status.

- a) Do you disagree or have difficulty with this expectation?

No.

- b) Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on these grounds? If yes, please describe the circumstances.

No.

20. 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 taking a position independent of, and possibly contrary to, the position of your government?

No. Independency is a crucial element that the Rome Statute requires for ICC judges. I would surely abide by this requirement under the Rome Statute in pursuing my duties if elected.



- 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 on whether an investigation by your government into a matter of which the ICC was seized was genuine?

Yes, I feel I could participate in such a judicial decision. At the same time, I am ready to follow the Presidency's decision of excusal from the exercise of a function under the Rome Statute in case of such a situation, if the Presidency so decides at my request in accordance with the Rome Statute.

- 21.** The Rome Statute requires that judges elected to the ICC be available from the commencement of their terms, to serve a non-renewable nine-year term, and possibly to remain in office to complete any trials or appeals. A judge is expected to handle legal matters for at least seven hours per day, five days per week.

- a) Do you expect to be able to serve at the commencement and for the duration of your term, if elected?

Yes. If elected to ICC judge, I would be able to serve at the commencement and for the duration of my full term.

- 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.

Yes.

- 22.** If there are any other points/issues you wish to bring to the attention of the CICC in this questionnaire, please feel free to address them here.

Bringing justice to criminals has been my lifetime mission and by doing so, I believe that I could ease victims' pain incurred by the crime, to a certain extent. I also firmly believe that continuous efforts and consistent application of criminal law by criminal justice personnel contributes to building safer society with fewer crimes. Based upon my career as criminal justice practitioner and as a public prosecutor in Japan for over 35 years, I believe it is my next mission to contribute to the work of ICC by utilizing my expertise and experience in the international criminal field. It would be a great honor if such an opportunity were given to me.

Thank you.