

2023 ICC Judicial Elections
Questionnaire to candidates

Name: Ms. Wanjiru Karanja
Date: July 2023

Motivation

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

I wish to serve the international community towards promoting human rights and towards combating crimes against humanity in an effort to improve the rule of law at a global level.

Over the past 38 years I have served the Republic of Kenya as a judge at almost every level of the judicial system and my experience has been primarily in criminal law. I now seek to utilize the skills I have developed and to share my experiences with the highest international criminal court at the global level.

It is my hope that the skills I have honed over the years, including practical, and case management skills, and the jurisprudence that I have developed will be an asset to the court and help to promote and develop the rule of law.

Finally, I wish to also give a voice to the victims of atrocities so that they too can be acknowledged and find a measure of dignity in the justice system as part of the process.

Relevant experience as a criminal law practitioner (List A)

For LIST A candidates

2. Please describe your experience as a judge, prosecutor, or criminal lawyer in domestic or international criminal law cases, including information on the number and types of cases as well as challenges you faced.

I was appointed to the bench in 1985. In all my years as a magistrate and later as Judge, I have dealt with all types of criminal offences. I have determined cases involving all manner of assaults, ranging from common assaults to assault causing grievous bodily harm. I have also handled cases of manslaughter and murder, arsons and other cases involving wanton or malicious destruction to property. I have handled cases of defilement, rape and other cases related to gender based violence against women and children, and meted out appropriate sentences.

3. During your judicial career, please share any instances when you applied Rome Statute provisions or other international criminal or humanitarian law sources, directly or through 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 indicate any relevant judicial decision or opinion that you authored or co-authored.

The Rome Statute has been domesticated as part of the Laws of Kenya. International covenants are also part of our laws, though subject to the Constitution of Kenya and I have routinely applied these laws where applicable. It is also worth noting that the criminal trial procedures set out in Articles 63-71 of the Rome statute are similar to Article 50 of the Constitution of Kenya and provisions of our Criminal Procedure Code, which I have applied in the criminal trial I have conducted over the years. I have not had opportunity to apply any jurisprudence from the ICC.

Victims' rights

Victims of Rome Statute crimes are the *raison d'être* of the ICC, and they have the right to participate in proceedings and to reparations, as well as to be effectively protected.

2. Please describe your experience and/or expertise relevant to victims' rights to participate in criminal proceedings and to obtain reparations, as well as your understanding of such rights before the ICC.

The principle is that the rights of both the accused must be balanced with the rights of the victim to participate in the process and provide meaning and context, in terms of his or her experience. The victim does not take over the trial process or prosecute the case, rather he/ she provides the Court with context and shares his/her experiences.

This process involves ensuring at all times that the justice system does not depart from sound and accepted legal principles, including the rights of the accused to be presumed innocent until proven guilty, and based on the applicable legal burden and standard of proof.

Further, my vision is to advance a victim-centered approach that not only secures convictions of perpetrators but also truly acknowledges, addresses, and redresses the harm suffered by victims. I feel that the court should be more empathetic to victims, and ensure that their rights to reparation/compensation are addressed in a more timely manner.

3. How would you ensure victims' statutory rights to participate in proceedings and to reparations are meaningfully achieved?

In Kenya we recently experienced gains towards protection and meaningful participation of victims in the trial process. The Supreme Court of Kenya recently embraced participation of victims in the Court process in a precedent setting judgment. Moreover, our legislation provides that victims are able to play a meaningful role in the trial process without prejudicing the rights of the accused. Some of the protections and measures that we are

already practising, and which I am happy to share my experience with the Court include the following processes and principles:

(a)

Ensuring that the Court, administrative body or person does not discriminate against any victim on the basis of race, color, gender, age, language, creed, religion, nationality, political or other opinion, cultural belief or practices, property, birth or family status, ethnic or social origin, disability, or any other grounds;

(b)

every victim is, as far as possible, given an opportunity to be heard and to respond before any decision affecting him or her is taken;

(c)

the victim's dignity is preserved at all stages of a case involving the victim, from the pre-trial to post-trial phase;

(d)

every victim is addressed in a manner appropriate to his or her age, intellectual development, and is spoken to and allowed to speak in his or her language of choice, or through an interpreter if necessary;

(e)

every victim is treated in a manner which considers his or her cultural values and beliefs;

(f)

every victim is protected from secondary victimization in all informal, administrative and judicial proceedings relating to the victim;

(g)

every victim is accorded legal and social services of his or her own choice and if the victim is a vulnerable victim within the meaning of this Act, then he or she shall be entitled to legal and social services at the State's expense;

(h)

vulnerable victim is entitled to contact his or her family or any primary care giver;

(i)

the victim's dignity is upheld at all times;

(j)

the victim's cultural values and beliefs are respected;

(k)

the victim is not discriminated; and

(l)

the victim is protected from victimization of any sort.

Protection of victims especially where they are potential witnesses is important. Victim's pre-sentencing statements should be encouraged and considered in determining compensation awards, if any, and where feasible.

4. Describe any specialized training and/or experience you have in providing protection and support to victims (and witnesses) participating in judicial proceedings, including expertise in assessing harm, trauma, and the risks of re-traumatization.

I have dealt with assaults where women and children were the victims. I have dealt with many cases of defilement of children, some of them a few months old. I have dealt with rape matters, including gang rapes on some occasions. I have attended courses on how to handle children and other vulnerable witnesses.

Where children of tender years have to testify in defilement cases, I have ensured that they do so behind a screen to avoid direct eye contact with the accused person to avoid re-traumatization.

Defence rights

5. Please describe any relevant experience implementing the rights of the accused, including specific experience managing fair trial considerations in criminal proceedings.

Over the years, I have dealt with many cases that involve implementing the rights of the accused. One of such cases includes, a matter where I was part of the bench that declared illegal and unconstitutional the anal examinations that accused persons were subjected to after being charged with committing an unnatural offence under the Penal Code of Kenya. The Court held that the examinations violated their rights to privacy, human dignity, fair trial and freedom from torture, inhumane and cruel treatment.

My understanding is that my role as a judge demands an unwavering commitment to the rule of law and independent determination of the disputes solely on the evidence and the law. Over the years, I have been able to discharge my role impartially and fairly, upholding the rights of the accused while also conscious of the role that victims may

play in the trial process. I have done my best to ensure that neither suffers prejudice in the trial process. This process involves ensuring at all times that the justice system does not depart from sound and accepted legal principles, including the rights of the accused to be presumed innocent until proven guilty, and based on the applicable legal burden and standard of proof.

High moral character, independence, and impartiality

6. Share your understanding of the “high moral character” Rome Statute requirement (article 36(3)(a)), and how you embody these characteristics. What qualities or activities would be contrary to a “high moral character”?

To my mind, a person of high moral character is a person of high integrity; a person who is honest; fair; dependable; reliable; truthful, principled and has ability to make ethical and morally sound decisions even in difficult situations; respects and is empathetic to others regardless of their status and one who is capable of making decisions impartially and independently. I have a history of all the above. In recognition of these attributes, the Kenya judiciary has on two occasions appointed me as a member of committees appointed to probe judicial officers and a Chair of a commission accused of integrity related issues. I confirm that I embody all the above virtues.

Qualities that would be contrary to “High moral character” would include dishonesty, lack of integrity, rudeness and disrespect to other people; partiality and lack of independence in making decisions. Engaging in sexual harassment and other unethical practices.

7. Have you ever been accused (formally or informally) of bullying, harassment, abuse of power, serious misconduct, including sexual harassment/misconduct, or unacceptable behavior? If so, please explain.

No.

8. What difficulties, if any, can you envisage in taking a position independent of, and possibly contrary to, the position of your state of nationality? How would you act in cases where significant (direct or indirect) political pressure was exerted upon you and/or your colleagues?

I am guided by the Bangalore Principles of Judicial Conduct. Value No. 1 together with the Latimer House Guidelines, which broadly espouse the principles that a judge must be both

personally independent, that is free from personal pressures, and institutionally independent, that is free of pressures from the State guide me in this regard.

I would not allow myself to be influenced by any external pressures in making my decisions. As a Judge, I have always remained true to my oath of office to administer justice without fear or favour and I would uphold any such oath taken as a Judge of the ICC.

9. Have you ever worked in the executive or legislative branches of government in your country? If so, please provide details about the capacities in which you served, the duration of these positions, and confidentiality obligations you may have undertaken.

No.

Management and workplace culture

10. Please describe your relevant human resources management skills and experience, including: how you managed allegations of discrimination, harassment (including sexual harassment), bullying and/or abuse of authority on the part of staff members; ways you addressed chronic imbalances in geographical representation/race and gender in senior management positions; and how you grappled with issues that disproportionately affect women, minorities, and people of color.

My human resource management is restricted to management of several courts which I have headed over the years. I believe in frequent staff meetings and team work. I have always encouraged my staff to work as one large family and this has had very positive results. We have in place a sexual harassment policy document which all members of staff have been made aware of. I am a trained mediator and arbitrator and, on a few occasions, where members of staff have disagreed, I have managed to resolve their differences. I do not recruit staff and I can only recommend to my employer to deploy a balanced workforce taking into consideration all the factors mentioned above.

11. If elected, what concrete measures will you take to improve the workplace culture in the ICC's judiciary? Include examples in which you acted to improve the workplace culture.

As indicated above, I am a people person and team player. If elected to the ICC, I would encourage collegiality amongst the judges, Office of the Prosecutor, the registry staff and all members of the Court. I would encourage staff meetings where people can ventilate and talk about any problems they may be encountering and work together towards getting the desired solutions.

I would encourage team building activities among all cadres of staff, retreats for the judges and also mentorship of young judicial officers. I have done all the above in my work place with very positive results.

12. Please share examples of when you applied a gender perspective during your professional career.

I have applied a gender perspective mainly in custody cases where children of tender years are involved. In cases where children are older, I have invited them to my chambers for a friendly chat and endeavored to find out from them which parent they are more comfortable with.

On one occasion where a woman had been convicted for murdering her young child by male judges, I was able to convince members of my bench to consider the circumstances of the case and see if the accused suffered from post partum depression, a fact the male judges seemed not to have been aware of. Eventually, after considering this perspective, we acquitted the appellant.

- 13.** What do you consider are the main advancements in the Rome Statute regarding sexual and gender-based crimes and crimes against children, as well as the relevant jurisprudence and charges brought so far at the Court? Please describe challenges and opportunities for improvement in adjudicating these crimes, and any experience you may have in this area, including addressing misconceptions relating to SGBCs.

The Rome Statute is the first International criminal Law instrument that recognises forms of sexual violence, such as rape, sexual slavery, enforced prostitution, and enforced sterilization, as distinct war crimes. The statute is also novel in prescribing gender-based crimes as the basis of war crimes or crimes against humanity committed during armed conflicts. In particular, the Statute gives the ICC jurisdiction over gender-based crimes if they constitute acts of genocide. In this case the crimes, such as rape, can be an integral part of the destruction inflicted upon the targeted groups and may be charged as genocide. The Prosecutor must further apply and interpret the Statute in line with internationally recognised human rights, including women's human rights and gender equality. The States Parties should also consider the need to appoint judges with legal expertise on violence against women or children.

I am aware of the **Calixte Mbarushimana case** where the pre-trial court declined to confirm the rape charges by a majority decision on account of insufficiency of evidence.

The challenges involved in sustaining convictions in these matters would be lack of corroboration, particularly medical evidence. I think such challenges would be addressed by more thorough collection of evidence by the investigators, and a more empathetic approach by the trial judges. I possess the requisite experience and empathy in handling SGB crimes.

Judicial training

The ICC is a unique institution and ICC judges face many distinct challenges. Even judges with significant prior experience managing complex criminal trials may not necessarily possess all requisite skills and knowledge needed to manage these challenges.

- 14.** In this context, is there any area of your expertise, knowledge, or skillset which you think could be enhanced through workplace training? Would you make yourself available to take part in such professional training?

I am open to working with other judges from different backgrounds and legal systems, I am firm believer in collegiality and inclusivity and therefore see diversity of legal traditions, cultures, and experiences as a benefit to any knowledge gaps. I believe in continuous learning, particularly because I have only worked in a Common Law jurisdiction, which is only one of the legal systems used at the ICC.

National nomination procedure

- 15.** What is the current national selection and nomination procedure for ICC judicial candidates in your country of nationality? Please provide information on the procedure, including the application process, criteria, rules and legislation, public outcome of the process, bodies or organs involved in the selection process, and any other relevant information.

Kenya does not have any legislation in respect of nominations to international courts or tribunals. The practice however is for the country to offer the best candidate for the position. The letter declaring vacancies in international tribunals comes through the Ministry of Foreign Affairs which then forwards the same to the Attorney General. The Attorney General then sends out invitations for nominations to the judiciary, A.G's chambers, Law Society of Kenya and Academia. The name of the most qualified candidate is then forwarded to the court or tribunal in question.

In my case, the request was for the most qualified Judge with longest practical experience in handling criminal cases, preferably a woman. I fitted all those requirements, hence the nomination.

Thank you.