

Draft Questionnaire for candidates to the 2020 ICC Judicial Election

Civil society¹ plays an important role in monitoring the election of International Criminal Court (ICC) officials. We promote fair, merit-based and transparent elections.

Please answer the questions below.

Name: Joanna Korner

Nationality: British

Nominating State: UK

Legal Background (List A or List B): List A

Gender: Female

Date: 21 September 2020

BACKGROUND

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

The ICC offers the only hope of justice for many victims of the most egregious crimes and I wish to see such victims receive the justice they deserve. I believe my experience can be of assistance in the achievement of that goal.

In a lengthy legal career, I have built up extensive expertise in domestic and international criminal law, the latter as senior prosecuting counsel for a total of 8 years at the International Criminal Tribunal for the Former Yugoslavia (ICTY). I have sat as a judge in the courts of England and Wales for more than 25 years, and presently sit in the specialist fraud court trying highly complex and lengthy cases such as large-scale fraud, serious sexual offences, gang violence and murder.

I also have proven experience working alongside colleagues from diverse legal traditions and managing multinational teams. As an expert in handling vulnerable witnesses and conducting long and complex trials, I have trained judges and lawyers from more than twenty-five countries in Africa, the Middle East, Eastern Europe, Latin America and South East Asia. I have also delivered training for UN agencies, Special Tribunal for the Lebanon, the ICTY, ICTR and the ICC in advocacy before international criminal tribunals.

¹ This questionnaire is endorsed by the following organizations: African Center for Democracy and Human Rights Studies, UNA Sweden, Alhaq, ALTSEAN-Burma, Amnesty International, Asian Legal Resource Centre, The Australian Centre for International Justice, Congo Peace Initiative, The Colombian Commission of Jurists, FIDH, Georgian Coalition for the International Criminal Court, Human Rights Watch, Justice International, Nigerian Coalition for the ICC, No Peace Without Justice, Open Society Justice Initiative, Parliamentarians for Global Action, REDRESS, Reporters sans frontiers, StoptheDrugWar.org, The Swedish Foundation for Human Rights, World Citizen Foundation, Women's Initiatives for Gender Justice, World Federalist Movement/Institute for Global Policy, and the World Renewers Organization. This questionnaire was developed with the assistance of the Coalition for the International Criminal Court Secretariat.

Finally, during my years at ICTY I took part in the early years of the development of ICL and would wish to continue to play a part in its development and consolidation.

2. What do you believe are the most important challenges and achievements of the ICC in its first 18 years?

The achievements of the ICC are considerable. At the highest level, the ICC has established the principle that international crimes will be investigated, and has challenged the concept of impunity. It has investigated and prosecuted high level suspects for some of the most egregious crimes. It has also entrenched the right of victims to participate in trials, which is critical. Whilst *ad hoc* international criminal tribunals continue to be established – the most recent being that for Kosovo – the ICC is the only permanent court to which states, organisations and individuals may refer cases for investigation.

There are of course numerous challenges it has had to overcome and continues to face. First among those is that of universality. The more we can build a successful institution with a strong track record the greater our case will be to encourage others to join us. The most recent accession of Kiribati was very welcome in that regard. I would like to see more in the future. The onus is, to a certain extent, on the Court as an institution to demonstrate why it is worth non-State Parties joining us.

There are other challenges which the Court faces. Some of the most important of these are practical, including the challenges of investigation in areas where no support is available and obtaining good evidence; the apprehension of indictees themselves (a co-operation issue in some instances). Procedural challenges are present, in particular the overall length of proceedings. Finally the production of a consistent body of jurisprudence.

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

Firstly the international community must challenge any punitive measures, such as sanctions, imposed on staff at the ICC which obstruct the Court's impartiality and independence.

Like any institution the ICC stands to benefit from periodic review and reform. The Independent Expert Review is very welcome in that regard. In addition to the points I mentioned in my previous answer, there are a number of further challenges which the Court is likely to face in the coming years. This includes: tackling long delays between commission and trial of crimes; dealing with inconsistencies approach to victim participation (it is not necessary to "reinvent the wheel" every time); improving the justice delivered to victims and others by reducing the length of Trial Proceedings and the time taken to issue judgments.

The following may improve the perception of the Court: issuing guidelines to streamline process of victim participation; greater use of judges case management powers to streamline trials; allowing amendment of Rules of Procedure and Evidence (RPE) by

judges after consultation with court users but without necessity of agreement from States Parties in every instance; improved coordination at the Court and; enhanced “One Court” principle. It may well be that the Independent Expert Review process should produce recommendations designed to deal with many of the criticisms of the Court.

It is also my view that the Court’s public messaging needs to be clear and consistent. In these days of Covid-19 and the aftermath thereof, the Court could consider further developing its digital presence and online networks to strengthen its image and communicate the work of the ICC throughout the international community.

LEGAL SYSTEM

4. The Rome Statute seeks judges representing all of the world’s major legal systems.
 - a) **Which legal system is your country part of?**
Adversarial (Common Law)
 - b) **Please describe any knowledge or experience you have working in or with other legal systems.**

At ICTY I appeared before judges and worked with lawyers who came from civil law systems. I worked as Senior Legal Advisor to Prosecutor of Bosnia and Herzegovina (BiH) and have produced reports on progress of war crimes trials there (in 2016 and 2020). Production of these reports required me to understand the BiH legal system. In addition, I have trained judges from civil law systems, (for example in South and Central America, Ukraine and North Macedonia), in aspects of trial procedure. In order for the training to be meaningful and productive I had to understand the basis of their codes of criminal procedure.

LANGUAGE ABILITIES

5. The Rome Statute requires every candidate to have excellent knowledge of and be fluent in English or French.
 - a) **What is your native language?**
English
 - 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.**
N/A
 - 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 studied French at school and worked in Toulouse for 6 months in the 1970s. I can read and write fairly fluently but my spoken French is very rusty. I am committed to making time to take a proper refresher course if elected, however it is difficult to make sufficient time just at the moment given my current commitments as a full-

time working judge attempting to deal with the backlog caused by the Covid-19 pandemic. I would make this a priority were I to be elected to the Court.

LIST A OR B CRITERIA

6. Your response to this question will depend on whether you were nominated as a List A candidate or a List B candidate.

a) For List A candidates:

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

In addition to 8 years of experience in international humanitarian law (IHL) and international human rights law (IHRL) at the ICTY, I have also taught IHL to judges and lawyers in, Cambodia, Iraq, Lebanon, Northern Macedonia, and Tunisia. IHRL to a large extent is incorporated into English criminal law and forms part of many criminal cases heard in the UK courts. I therefore have a great deal of experience in the application of international law, its sources and development.

b) For List B candidates:

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

OTHER EXPERTISE AND EXPERIENCE

The ICC is a unique institution, as such ICC judges face a number of unique challenges (including managing a regime of victims' participation and witness protection in complex situations, including 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.

7. **Is there any area of expertise, knowledge or skillset which you would like to enhance through workplace trainings?**

No judge should ever reject the opportunity of training with a view to improving their knowledge and skills. English judges are required to attend training on a regular basis. I would welcome in particular training on victim participation in trials as it operates at the ICC at present. I am also very keen to improve my French language skills. Furthermore, whilst I have extensive experience of other legal systems I would also be keen to learn more from colleagues from civil law systems about their views on the how the Court's procedures are working from the perspective of their legal system.

8. **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.**

Working as a Senior Prosecuting Trial Attorney at the ICTY for eight years, I led in cases involving leaders (*Prosecutor v. Brdjanin & Talic*, *Prosecutor v. Stakic*, *Prosecutor v. Stanisic & Zupljanin*), charged with Genocide, Crimes against Humanity and War Crimes.

All the trials were long and complex, and disclosure of evidence was a major consideration. In this role I was able to pioneer methods designed to obtain evidence from “suspect” witnesses in relation to issues of command responsibility

My work as a domestic judge, where I have presided over more than 500 trials is also relevant. I sit on the specialist fraud court. The trials with which I deal are usually long, complex, and disclosure of evidence also forms a substantial part. For instance, in one of my recent trials I had to hold three Public Interest Immunity hearings and give five written judgements on disclosure. In addition, I try cases of murder, gang violence, and serious sexual offences, which are long, complex and are increasingly reliant on new forms of evidence, such as open source video (I am about to take part in a training exercise on the admissibility of open source evidence at the Hillary Rodham Clinton School of Law, Swansea University).

Therefore, not only was I able to enhance this concrete expertise at the ICTY, but it is a skill that I will bring to the ICC, if elected. Furthermore, as already stated, I provide training to judges, lawyers and advocates around the world on the conduct of long and complex trials.

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.

I have gained invaluable experience from my work at ICTY, work in BiH and international training activities, which has allowed me to engage with people - not just lawyers and judges - from multi-national, multi-cultural, multi-disciplinary backgrounds. In particular, I believe the following experiences are especially relevant to the work of an ICC judge:

- One of team of Counsel in the ICJ case of *Bosnia and Herzegovina v. Serbia and Montenegro* [2007].
- From 2004-2005, Senior Legal Adviser to Chief Prosecutor of BiH during the establishment of Special Department for War Crimes. Responsibilities included drafting the original “orientation criteria” for prioritisation of cases; selection of international prosecutors; integration of national and international prosecutors and; liaising with other criminal justice and diplomatic agencies.
- Author of two reports, (2016 & 2020), commissioned by the OSCE to report on progress and make recommendations in respect of war crimes trials in BiH. The 2016 report “Processing of War Crimes at the State Level in Bosnia and Herzegovina” was adopted by High Judicial and Prosecutorial Council of Bosnia and Herzegovina in January 2017.
- Instructed by the ICTY and the EU Delegation in Bosnia to conduct an assessment of training needs for judges and lawyers in Bosnia, in respect of the investigation and trial of war crimes. The report was delivered in May 2013.
- Contributor to documentaries and publications on international criminal justice, such as ‘Transitional Justice and Displacement’ (Social Science Research Council, 2012), ‘The Investigator: Demons of the Balkans War’ (Vladimír Dzuro, 2019), ICTY’s legacy documentary (2015) and ‘The Court’ (2021, LooksFilm).

- Organised and conducted judicial training in ICL and Case Management for Judges in Asia, Africa, Europe, Central and South America.
- Grade “A” advocacy trainer and was Head of International Faculty of the Advocacy Training Council from 2005-2011. Organised and taught on numerous advocacy - training courses in the UK and internationally, including for the ICC, United Nations agencies, ICTY, ICTR, STL
- International Course Director of the Judicial College of England and Wales (2014-2017), where I organised and delivered training courses on a wide variety of topics including judgecraft, fair and appropriate handling of vulnerable witnesses, and the conduct of long and complex trials.

EXPERIENCE AND PERSPECTIVE RELATED TO SEXUAL AND GENDER BASED CRIMES (SGBCs)

10. Please describe any experience you may have in dealing with SGBCs, including in addressing misconceptions relating to SGBCs.

Whilst at the Bar for many years I specialised in prosecuting and defending cases of crimes of sexual violence against women, men and children. The trials at ICTY contained many such allegations and the tribunal also greatly contributed to the jurisprudence of sexual and gender-related crimes by enabling the prosecution of sexual violence as a war crime. I personally interviewed victims of such crimes.

I have also conducted numerous training courses for both lawyers and judges in the UK and overseas on the treatment of witnesses who have alleged that these crimes were committed.

EXPERIENCE AND PERSPECTIVE RELATED TO CRIMES AGAINST CHILDREN

11. Please describe any experience you may have in addressing crimes against and affecting children and related issues, including dealing with child witnesses.

See answer to Q.10 above. I should add that in domestic proceedings it is not unusual for children aged as young as 6 years to be called as witnesses in criminal trials. The Judges hold hearings ('Ground Rules Hearings') prior to trial in which they consider reports, and may hear evidence, from social workers and psychologists. Judges may give rulings relating to the methods by which the child will be examined and cross-examined and have the power to instruct the lawyers to provide them with a written list of questions they intend to ask, and may disallow some of the questions

Many witnesses classed as vulnerable, those with learning difficulties and disabilities, and victims of alleged sexual violence, are children. Due to my extensive experience catering for such witnesses in the domestic and international courts, I now give training internationally to other legal professionals on the handling of vulnerable witnesses. Upholding and promoting high standards in this area ensures that vulnerable witnesses are treated with compassion and respect.

EXPERIENCE AND PERSPECTIVE RELATED TO VICTIMS

12. Please describe any experience that you may have relevant to the right of victim participation before the ICC and reparations for victims of mass atrocities.

Although there was no direct victim participation in ICTY trials, and despite it not being a feature in domestic trials in England and Wales, the value of victim participation in ICC trials is unquestionable, and I see it as one of the principal and unique features of the Rome Statute. I have considerable experience working with victims having personally conducted interviews with them for the purpose of taking statements, and although that has not been in a courtroom setting, I have seen first-hand how important and empowering it is for victims to have their voices heard.

13. Do you have any specialised training and/or experience in providing protection and support to victims and witnesses participating in a case?

Yes. I worked closely with victims and the Victims and Witnesses Section (VWS) at ICTY. Whilst working as Senior Legal Advisor to the Prosecutor of BiH, I assisted in the establishment of a witness protection scheme. I have taken and delivered courses in the UK on vulnerable witnesses, as mentioned above in my answer to Q10 and 11.

EXPERIENCE RELATED TO FAIR TRIAL CONSIDERATIONS AND THE RIGHTS OF THE ACCUSED

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

I have spent circa 25 years as a barrister in the UK, over which period I have defended in many serious criminal cases. I have also been a part-time or full-time judge since 1993. In almost every case as both a barrister and judge there have been fair trial considerations, for example matters such as custody time limits, severance of an indictment, the admissibility of evidence, disclosure of evidence which assists the defence or undermines the prosecution case, all arise on a regular basis. As a sitting Crown Court judge in the UK, judging the most serious, lengthy, and complex domestic criminal cases, fair trial considerations and the rights of the accused are fundamental to my role.

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? Is so, please briefly describe this experience.

- Senior Prosecuting Trial Attorney at ICTY for a total of 8 years.
- One of team of Counsel in the ICJ case of *Bosnia and Herzegovina v. Serbia and Montenegro* [2007]. Unusually the Court had allowed evidence to be given. My part in the case was to deal with the witnesses, mainly experts, called by both sides
- Member of Advisory Board of Guernica 37 until my nomination for ICC. Guernica 37 is a specialist Barristers' Chambers experienced in advising and assisting States as they commence a process of structural reform and transformation following periods of political instability, post-conflict, post-authoritarian regimes or prolonged periods of state institutions controlled by systemic and structural corrupt practices.

- 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 have issued within the scope of your judicial activity or legal experience?**

IHRL, in particular ECtHR judgements, are a regular part of domestic trials and referred to in judgments. As a Senior Prosecuting Trial Attorney at ICTY, my prosecutorial work involved the direct application of international humanitarian law treaty provisions included in the ICTY Statute – including the Geneva Conventions.

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. However, I had extensive experience as a Senior Prosecutor at the ICTY in dealing with the case law of the ICTY and other ad hoc mechanisms – and the ICTY Statute is widely recognised as a significant blueprint behind the establishment of the ICC and the provisions of the Rome Statute.

EXPERIENCE AND PERSPECTIVE RELATED TO GENDER MAINSTREAMING

- 18. Could you share examples of when you applied a gender perspective in the course of your professional career?**

I apply this perspective on a regular basis to those who appear before me. This perspective encompasses giving consideration to bail conditions, the length of sitting in court, to the eventual sentence in the event of conviction

International criminal law must be seen to be transparent, inclusive and representative. Diversity enhances both the legitimacy of court and the decisions that it makes, and a diverse bench enlarges the scope of discussion when you're reaching decisions. Speaking very generally, women can often have more empathy and understanding of what it means to be a victim.

I support and encourage aspiring female lawyers to progress in their careers. For example, I recently spoke at two events on 'Women's perspectives on a career in international law', and 'Women on the International Stage: Challenges and Opportunities'.

CRITERIA OF HIGH MORAL CHARACTER, INDEPENDENCE, IMPARTIALITY AND INTEGRITY

- 19. What, in your opinion, does the Rome Statute requirement of "high moral character" mean and how do you embody these characteristics? What in your opinion would be contrary to "high moral character"?**

I interpret the requirement of "High Moral Character" to mean the possession of the virtues of integrity, independence, courage, fortitude, honesty, and loyalty. It includes treating those who appear before you in court and colleagues with fairness, consideration and courtesy. Those that lack these characteristics or fail to display these behaviours would be acting contrary to the requirement. As to how I embody these characteristics, whilst I hope that I do, I do not believe that is for me to say. Instead, I

think is a question for others who have dealt with me on a professional and personal basis.

20. **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

21. 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) **What is your opinion on this expectation?**

I agree wholeheartedly and in my professional career I have worked with people from a wide range of backgrounds and have managed and led international led teams characterised by the valuable contributions of people from diverse backgrounds.

- 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

22. **Are you aware of any formal allegations made about you related to professional misconduct, including allegations of sexual harassment, discrimination, or bullying, or any investigations regarding your alleged professional misconduct related to the same? If so, please explain.**

No

23. **Do you have any reason to believe that any current or former colleagues or professional contacts, if asked, would share concerns regarding your professional conduct?**

No

24. Article 40 of the Rome Statute and the ICC 'Code of Judicial Ethics' requires judges to be independent in the performance of their functions.

- a) **What difficulties, if any, can you envisage in taking a position independent of, and possibly contrary to, the position of your government?**

None. I think it is important to stress that whilst I am honoured to have been nominated as my country's candidate I believe very strongly in the importance of judicial independence and that this may not be compromised in any shape or form.

- b) **How would you act in cases where significant (direct or indirect) political pressure was exerted upon you and/or you and your colleagues?**

I would not feel compelled to act in response to any direct or indirect pressure. For myself, I would ignore it and would make clear that such an effort was inappropriate. For others, I would take issue on their behalf and would support them in defending their own position against any undue external influence.

25. Please describe specific measures you have undertaken to advance a work environment free of bullying, harassment, and other harmful behavior.

As Senior Trial Attorney at ICTY I led three large teams of multi-national, multi-cultural and multi-disciplinary (including young interns) persons. I held regular whole team meetings, small group and individual meetings. I made it clear that bullying, harassment and other harmful behaviour would not be tolerated and that I was always available if a complaint was to be made. Additionally in order to foster harmonious relationships within the teams, I instituted regular social gatherings outside work hours.

OTHER MATTERS

26. 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

b) To what extent are the judicial tasks described above compliant with your expectations of work standards? Please describe any potential adaptations you may require.

I have worked long hours throughout my career at the Bar, at the ICTY and in my current role. I am experienced in balancing the many challenges of a diverse and busy role and am fully prepared to continue to do so at the ICC if I am elected.

27. Please feel free to address any other points here.

Thank you.