

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

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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: Rosario Salvatore AITALA
Nationality: Italian
Nominating State: Italy
Legal Background (<i>mark as appropriate</i>): List A x B <input type="checkbox"/>
Gender: Female <input type="checkbox"/> Male X

Background

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

As a boy, when asked "what do you want to do as an adult?" I would invariably reply "I want to defend and support those who are suffering". At that time I wasn't quite clear whether this meant to be a medical doctor, police officer, advocate or judge. When it was time to choose my university path, Giuseppe Fava, a brave journalist, was killed in my hometown by the Mafia because of his inquiries. I was frustrated by the climate of violence, intimidation and impunity that Sicily, where I grew up, was then suffering, so I joined the Law School. At the end of my studies I was already practising in a Law firm and planned to stay at University as a researcher but violence was increasing to the point that in 1992 the most prominent Anti-mafia judges who I much admired, Giovanni Falcone and Paolo Borsellino were brutally assassinated by the Mafia, together with their bodyguards. The same year following competitive examinations, I joined the State Police as a senior officer and spent five years as chief of investigative teams on cases of serious crime, such as Mafia, organised crime, drug trafficking and violence against vulnerable persons. Five years later I joined the judiciary, in Milan (where I specialised on cases of corruption and international financial investigations) and Trapani, in Sicily (where I dealt with a variety of proceedings, mainly Mafia cases). I then continued my commitment against organised crime, terrorism and crimes against vulnerable persons in Albania, Afghanistan, several countries of the Balkans and Eastern Europe, South America, Central America and elsewhere in Asia, Northern Africa and Middle East. In 2004 my encounter at the European University Institute in Firenze with Professor Antonio Cassese, who had been the first president of the ICTY, made my keen interest for international criminal justice develop into true passion. In 2006, I was selected as Chef de Cabinet of the ICTY, but could not take the position because of my then responsibilities as principal official of the European Commission in Albania. Being a judge of the ICC to me would simply mean contributing to the fight against impunity

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and playing a role in offering some measures of redress to the victims of the most heinous crimes.

- 2. What do you believe are the most important challenges and achievements of the ICC in its first 15 years?** When the process for the establishment of a permanent international criminal court started, to the critics and the sceptics that was pure utopia. That pessimistic feeling was probably the most serious challenge to the establishment of the Court, and today the same pessimistic views can be an enemy of the Court. The best achievement is that now the Court – the first permanent international criminal judicial institution – is in existence and functions effectively. The Court has rendered a number of important decisions and judgments. In recent times it has also granted reparation to victims (e.g. in the Al Madhi case on the destruction of Timbuktu), including reparation to communities: this is at the same time symbolically important and a good opportunity for the Court to show how concrete justice can be. In its first fifteen years, the Court has responded to political challenges demonstrating that it is a solid, impartial and independent institution, able to achieve concrete progress in several cases. I believe that the Court can now look ahead with confidence and optimism, thanks to the serious work of its staff, the political commitment of State parties and the dedication of many other individuals and entities which have been tirelessly supporting international criminal justice.
- 3. What do you believe are some of the major challenges confronting the ICC and Rome Statute system in the coming years?** The Court will need to continue making substantial progress in the proceedings before it, particularly those in which defendants are in detention, with independence and impartiality. Efficiency in pre-trial, in trial and in appellate proceedings will be instrumental to strengthening the Court's credibility and making appropriate use of financial resources. Awarding reparation to victims and providing protection for witnesses will reinforce the effectiveness of the Court's mission and the ownership by the peoples. Setting high justice standards will encourage also domestic jurisdictions to do their part against atrocities. It will be important to promote implementation at domestic level and where appropriate capacity building to ensure that States that are willing to adjudicate these offences are in a position to do so. It is to States to act in this direction but the Court could provide technical support. More broadly, the main challenge to the Rome Statute system remains universality. Today two thirds of the international community (124 States) have ratified the Statute: it is indeed a very significant achievement which must encourage further commitment until the ICC truly becomes the Court of the entire human kind. It is foreseeable that political sensitiveness about the work of the Court will continue, but this would not be surprising because the Court has an objective geopolitical relevance and it normally targets high level officials. Moreover, since the precondition of the ICC jurisdiction is the inability or unwillingness of competent judicial authorities to prosecute atrocities, proceedings normally underlie very sensitive political situations.

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.** Judges and prosecutors ("magistrates") in Italy equally belong to the judiciary, enjoy the same prerogatives of independence and follow the same career

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path. Appointment as a magistrate requires winning selective and challenging written and oral competitive examinations on a vast array of legal issues. Assignment to courts and offices of the prosecutor are the responsibility of the High Council of the Judiciary, an independent body chaired by the President of the Republic, composed by two thirds of members elected by judges and prosecutors among themselves and one third of members elected by the Parliament, plus the President and the General Prosecutor of the Court of Cassation. The appointment to the Supreme Court of Cassation as a prosecutor or a judge is decided by the High Council of the Judiciary which evaluates comparatively the experience and qualifications of any magistrates who apply having a seniority of twenty years. Some positions at the Supreme Court of Cassation are made available earlier, after twelve years of seniority.

- 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.**

The Italian Government has provided the statement of qualifications required by art. 36 (4) (a) of the Rome Statute when it submitted my candidacy. My nomination was made by the procedure for the nomination of candidates to the International Court of Justice, therefore by the Italian members of the Permanent Court of Arbitration.

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?**

Romano-Germanic - Civil Law. However the criminal procedure system is mainly adversarial with some inquisitorial features and it is fairly similar to the ICC.

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

As reflected in my CV in better details, I have worked in a number of different legal systems and different countries with traditions of Civil law, of Common law and of Islamic law. I hold experience in adversarial, inquisitorial as well as mixed criminal procedure systems. I also hold substantial experience in law drafting in transition countries within institution building programmes.

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?**

Italian

- 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.**

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As reflected in my CV I have worked in many English speaking environments, within international missions and in countries where interactions with local officials and colleagues were in English language. I have conducted research and teaching activities in English language.

- 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 have a basic knowledge of 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.**

I have devoted twenty-five years to criminal law and criminal justice: as a senior investigator, a prosecutor, a judge, a consultant, a researcher and a professor. From my CV it can be appreciated that alongside main professional postings, I have conducted many other professional activities all in the field of criminal law, criminal procedure, criminal justice, human rights, international criminal law, organised crime, international terrorism and other related fields.

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

I am very passionate about criminal law, also in its international dimension, as well as human rights, geopolitics and international relations. I am aware that the work of a judge has relevant implications on the life of persons, therefore since many years I have committed myself to improving my professionalism spending substantial time daily studying and researching.

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

As reflected in my CV I have spent several years investigating, prosecuting and adjudicating criminal cases. In Italy, especially when dealing with complex cases, this means long hours in the office and in the courtroom. Courtroom activities were part of my daily routine also in other assignments. For example, in Albania I have closely advised and coached both prosecutors and judges dealing with cases of organised crime, terrorism, drug trafficking, financial crime and offences against vulnerable persons, therefore spending hours in court. In Afghanistan I have trained and advised judges and prosecutors on complex cases, with an emphasis on crimes against women, children and vulnerable persons. I have coordinated the establishment of Sections for violence against women and children at the Office of the General Prosecutor in Kabul and Herat and have trained judicial personnel accordingly. At that time I would also attend court hearings to support legal assistance for vulnerable persons and I have contributed to the founding of the Afghan Bar Association.

- b) For **List B** candidates:

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- **Briefly describe your qualifications as a List B candidate.**
I am a List A candidate. However, as reflected in my CV I had the opportunity of gaining extensive experience in international law, especially human rights law, international humanitarian law and international criminal law. I particularly refer to my assignments in post-crisis environments like the Balkans and Afghanistan where I have dealt with terrorism, crimes against humanity and war crimes. Also at the academic level I have devoted much energy to this field. Currently I have a teaching assignment at the Luiss Guido Carli University.

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

As reflected in my CV I have been heavily involved in institution building in many post-conflict countries: drafting model laws; assisting and advising prosecutors and judges on cases; and training practitioners); in international relations, as the senior adviser on international crime and crisis areas (including Afghanistan, Libya, Somalia and in the Middle East) to the Italian Foreign minister and more recently as the most senior adviser on international affairs of the President of the Senate, the second highest official in Italy; in human rights and the Rule of Law as a consultant and professor; in geopolitics as a member of the Scientific Council of the Italian Review of Geopolitics and other think tanks and as an author. On the whole I have worked in thirty countries and have had academic, research or professional interest in many more. I am of the view that an international criminal judge may benefit of the understanding of the geopolitical, social and political factors that lead to atrocities.

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.

As an investigator, a prosecutor and a judge I have managed complex and challenging cases of Mafia, drug trafficking and money laundering. Mafia cases share a number of features with proceedings on mass atrocities. They involve several defendants which are members of complex criminal organisations; evidence is demanding and includes intercepts and undercover police activities; testimonies are very difficult to achieve as witnesses and victims are intimidated; defendants are often linked with politics, economy and society. In my experience it is vital to have in place efficient systems in which witnesses and justice collaborators as well as their families are duly protected; to make wide use of special investigative means; and financial investigations should be routinely part of prosecutions, in view of confiscating assets belonging to criminals. I believe this applies to the ICC as well.

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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?

Absolutely yes

a) Do you consider such training to be important?

As mentioned, in my daily routine I devote much time to studying. I fully agree that the unprecedented challenges involved by the ICC require appropriate training and I also believe that attendance of such trainings by all ICC judges would additionally reinforce teamwork ability and develop shared understanding of complex problems.

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 had several experiences with cases of sexual violence and other crimes against women and children, both as an investigator, a prosecutor and a judge. I believe that a larger category that deserves specific attention is that of crimes against vulnerable persons, which include violent offences against persons who suffer sensitive personal situations: women, children, elderly, physically and mentally impaired. These offences are particularly repugnant because of the exploitation of victims' vulnerability. In my experience, investigators, prosecutor and judges should consider, depending on the circumstances of the case, seeking appropriate assistance of psychological experts when victims are heard during preliminary investigations or trial. On the one hand this avoids damaging psychologically the victim, on the other hand it helps preserving the spontaneity of victims' testimonies that are vital in these kind of proceedings. I believe that testimonies of children or other vulnerable victims should be taken in protected environment in special hearings, with the involvement of psychologists. In the Italian system, the protection of children requires that the parties, defence and prosecution, are not allowed asking questions directly, but they must go through the judge.

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.

Victims should always play a fundamental role in criminal proceedings. They should be allowed to participate directly with the assistance of a counsel or through a counsel to hearings, also proposing evidence and they should be recognised reparation. I have



experienced how important is the position of victims in cases of Mafia and of violence against vulnerable persons.

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?

I don't see any contradiction between victims' participation and the right to defence. It is to criminal procedure to address properly the rights of the two subjects and to the judge to interpret it in order to guarantee both. The judge is not a mere referee but has the responsibility to manage hearings in view of guaranteeing the rights of all involved subjects and achieve justice.

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.

As reflected in my CV I have worked as a consultant and lecturer with several bodies dealing with international human rights such as the Council of Europe, IOM and others. I have never served as staff or member of board of directors.

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?

I have often made application of international treaties in cases of judicial cooperation in criminal matters. Currently, as senior prosecutor in Rome, I am competent on cases of piracy, international terrorism, war crimes and other offences against Italian citizens abroad, which implies considering international law under different respects. I have also had the opportunity to study the interactions of humanitarian law with Italian law as a scholar, specifically with reference to international terrorism.

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.

I have had the opportunity to make reference to the ICTY and ICC jurisprudence to set concepts of international law relevant to domestic cases.

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

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age, race, creed, colour, 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?

I completely agree.

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, never.

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?

I would not have any hesitation. Independence is the essence of being a judge.

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?

A judge must be and also appear impartial. This is the rationale of recusal, which is provided by most legal systems. Depending on the circumstances, I would consider recusing myself if appropriate.

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, I do

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, I do

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.

I wish to thank the Coalition for this opportunity

Thank you.