

**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: Henrietta Joy Abena Nyarko Mensa-Bonsu
Nationality: Ghanaian
Nominating State: Ghana
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 be elected a judge of the ICC on account of the contribution I believe could make to the work of that distinguished court. I see the work of the ICC as a natural progression from my work on human rights and post-conflict reconstruction of Rule of Law sector, as well as my expertise in Criminal Law and Criminal Justice. I have relevant experience in the field, having served in a Peacekeeping Mission as the deputy Head of Mission, and as a member of the High Level Independent Panel on Peace Operations. In academia, I have studied and taught Criminal Law and Criminal Justice for thirty odd years, and authored texts on those subjects. This background is certain to come in handy in helping to develop the jurisprudence of the Court. Again, having become familiar with the challenges in establishing credible judicial systems for exacting accountability from leaders and eminent citizens of States which have experienced violent conflict or massive human rights abuses, it would seem that one of



the ways of promoting criminal accountability would be to promote the strengthening of judiciaries around the world. This can be done through the instrumentality of the ICC, with its mandate to do capacity building to operationalise its principle of complementarity.

Further, having been involved in the work of Truth Commissions I have been confronted by the dissatisfaction of victims with restorative justice measures, and have come to the realisation that without criminal accountability, the pain and hurt of victims cannot be sufficiently assuaged to make sustainable peace a reality. In sum, that restorative justice must occur in tandem with retributive justice so as to provide sufficient deterrence to would-be perpetrators, that they would have to account for their actions someday, thereby helping to prevent mass atrocities and save vulnerable populations from crimes by those with the greatest responsibility and opportunity so to do.

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

The most important challenges have pertained to building the institution itself to live up to the billing; securing sufficient and predictable funding for its activities; improving the speed of its processes as the patience and resolve of the international community has worn somewhat thin, having had to wait for some twelve years before its first conviction; maintaining the support of its supporters and funders whilst seeking to win over its detractors. Above all, having to work to regain confidence that has been lost, particularly among its African States parties in view of a relentless propaganda war by its detractors alleging a display of bias against Africans, has been a challenge.

In terms of achievements, the ICC has managed to establish structures and develop processes and policies for the administration of international criminal justice. By its advocacy, it has reached out to a number of jurisdictions to enlist their help in executing its processes. It has also been working with some judiciaries to strengthen their capabilities and to encourage the infusion of norms of international justice into their domestic jurisdiction. Further, it has begun to add to the jurisprudence developed by

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previous ad hoc Tribunals, and expanded the scope and reach of crimes against humanity and War Crimes. In particular, by extending its protection to cultural artifacts which constitute part of the world's heritage, it has broadened the concept of crimes against humanity to encapsulate a more holistic sense of 'humanity' than existed before.

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

In the coming years, some of the issues that have dogged its steps in the first fifteen years would remain, requiring tailored action to address each of those issues as far as lies within its power. In addition, the challenge of maintaining the support of the Security Council for its work would be critical to its success. In recent times, the Special prosecutor has not minced words in complaining to the Security Council about its perceived lack of action in respect of the non-cooperation of States in enforcing arrest warrants; and that this has the effect of undermining the credibility of the ICC. Unfortunately, this is set to continue unless there is a dramatic shift in the posture of the Five Permanent members of the Security Council. Funding will continue to be an issue as the main financing States appear to be experiencing some fatigue in view of their own economic difficulties. Therefore the ability of the ICC to cut costs and to "do more with less" will be a constant source of pressure on its operations.

#### **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 Qualifications for appointment to the Supreme Court of Ghana as set down under the Constitution are:

- High moral character;
- proven integrity: and
- one's standing as a lawyer of not less than fifteen years standing.

I meet these requirements as I am a lawyer of some thirty-four years standing – having been called to the Ghana Bar in December, 1982; I am a person of proven integrity. I have served on numerous committees within the University and on other public boards

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and disciplinary committees without ever attracting a single accusation or allegation of impropriety or wrong-doing. In 2002, I was appointed to serve as a Commissioner on the National Reconciliation Commission (NRC) – a position that required me to have had a track record of proven integrity. I have continued to retain these qualities, and the confidence of the legal community in Ghana. I am known and respected in the legal community in Ghana and Liberia for my professional competence and work ethic. My texts on Criminal Law and Criminal Justice are used as core texts in all law Faculties in Ghana, and my writings have been cited in a number of cases in the Superior Courts of Ghana. In consequence, I was nominated in 2014 by the Ghana Bar Association to be considered for appointment as a Justice of the Supreme Court.

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, a statement has been provided.

### **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?

(a) Ghana is a part of the Common Law system

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

I have only had association with the American Legal System which has the Common Law as its root. I have not worked in any other legal system.

### **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?

My native language is Akan.



- 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.

English is the official language of Ghana and so English was the means of instruction during the period of my education in Ghana. I attended graduate school at Yale Law School in the United States of America. I have taught Law at the University of Ghana in English for almost three decades; and all my academic writings are in English. I worked for four years as the Deputy Special Representative of the Secretary-General for Rule of Law in the United Nations Mission in Liberia (UNMIL) where the mode of communication was English.

- 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 only working knowledge in French, having studied French in School. I can read and understand non-technical French. However, except for attendance at conferences I have not worked 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.

I hold a Bachelor of Laws Degree (LL.B) from the University of Ghana and Master of Laws (LL.M) from Yale University. I undertook the professional Qualifying Law Course at the Ghana School of Law and was called to the Ghana Bar in 1982.

I have since worked as an academic and consultant on various aspects of Ghana Law.

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



Very competent as that is the area of my specialization. I have taught Criminal Law for almost three decades and have researched and authored textbooks, book chapters and journal articles on Criminal Law and Criminal Justice. I was a member of the Committee of Eminent Jurists of the Organisation of African Unity (OAU) on the Lockerbie Case; and a member of the African Union's Committee of Eminent Jurists on the Hissene Habre Case. I have also served on the Police Council of Ghana.

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

I have no experience in conducting criminal trials. However, having served for two years as a Commissioner on Ghana's NRC – a position not unlike a judge in an appellate court, I have significant experience in the handling of public proceedings dealing with wrongdoing by highly placed officials. I am also accustomed to the pressures of close public scrutiny and factioned antagonism during high-profile public hearings. As an ITAC to the Liberian TRC, I was exposed to the challenges of dealing with powerful war lords against whom allegations of egregious human rights abuses had been made, but who were still powerful enough to mount vigorous contestation to the truth and reconciliation process.

b) For **List B** candidates:

- Briefly describe your qualifications as a List B candidate.

I was a member of the National Reconciliation Commission of Ghana (NRC) – a Truth Commission established to investigate human rights abuses during periods of non-democratic governments. I was also the ECOWAS Nominee on the International Technical Advisory Committee (ITAC) of the Liberian Truth and Reconciliation Commission (TRC). This entailed working with human rights law and international humanitarian law to make determinations of liability of perpetrators. Further, as Deputy Special Representative of the Secretary-General for Rule of Law in UNMIL, I had administrative oversight of the Human Rights Section of UNMIL. The head of this Section was dual-hatted, as being both a staff member of the Mission as well as a member of the UN Country Team in Liberia, being the representative of the Office of the High Commissioner for Human Rights (OHCHR). This Section had responsibility for the work of the TRC; monitoring the



human rights situation in Liberia, as well as helping to nurture a culture of human rights through public education and awareness creation; and helping to prepare Liberia for its first Universal Periodic Review (UPR). The Human Rights Section was also tasked with assisting Liberia to develop a human rights institution to be, among other functions, a successor-body of the TRC to ensure the implementation of the recommendations of the TRC. The Section's assistance to Liberia to actualize the establishment of the Human Rights Commission, as well as the initial training of the new Commissioners was accomplished under my watch.

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

I am very competent in those areas of law as I have worked with them in the various capacities in which I have served.

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

As Deputy Special Representative for Rule of Law, I also had oversight of the Legal and Judicial Systems Support Division (LJSSD) which had among its functions responsibility for helping to strengthen the legal sector to strengthen the capacity of the legal and judicial institutions, as well as administering the Travel Ban list for named persons who were under sanctions from the Security Council.

I also had oversight responsibility for the Corrections Section whose mandate was to help re-establish the Corrections System in Liberia to conform to international standards for the treatment of prisoners. Assistance to Liberia to improve standards within the Sector, including the feeding of prisoners and avenues for rehabilitation and extending to seeking funding from the Peacebuilding Commission to support the building of a new Correctional Centre which could uphold international standards were major undertakings under my watch.

The work of Truth Commissions is akin to the work of the ICC as it involves investigations into gross human rights abuses as well as making recommendations on reparations to victims of such abuses.

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**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.

I have administrative experience having worked in both large and small organizations. I was a Commissioner of the National Reconciliation Commission of Ghana; and second in command in UNMIL which was a Peacekeeping Mission of over 13,000 military personnel over 400 police personnel and nearly 1,000 other civilian personnel. I have been Vice-Dean and Acting Dean of the Faculty of Law of the University of Ghana; and I am currently Director of the Legon Centre for International Affairs and Diplomacy (LECIAD) of the University of Ghana. I, therefore, understand the processes for the preparation and use of institutional budgets and management of personnel and resources to achieve institutional goals. The ICC as an institution, has to be administered, its personnel has to be managed and its funding acquired and used in the most judicious manner possible, to achieve its mandate. Therefore my experience as a manager and administrator would be useful for the non-judicial aspects of the work of the ICC.

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.

In my work with Truth Commissions I have had to deal with both perpetrators and victims of egregious human rights abuses akin to crimes against humanity. Although a quasi-judicial Hearing is not the same as a Criminal trial, and the standard of proof is much lower than in a criminal trial, the skills-set for sifting through a mass of evidence and applying the law to determine a perpetrator's liability for an event as well as being able to come to conclusions on reparation for victims are similar.

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.

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- 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?

I certainly would be willing to participate in workplace training as no one could possibly possess all the knowledge there is on any subject. Having been an educator for much of my working life means that I am a great believer in constantly pushing the bounds of existing knowledge. The special nature of the ICC means that it has to deliver justice in as coherent a manner as possible and do so in accordance with evolving principles and standards of law and justice. Therefore, in-service trainings as such not only increase collegiality among the judges and between the body of judges and their staff, but would also enable coherence in output and service delivery.

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

I consider such training absolutely important. Every institution has its own culture as well as peculiarities. Therefore periodic workplace training is critical to the ability of its staff, particularly new staff, to fit into the mould and carry on its functions. Given the multicultural backgrounds of the judges and staff of the ICC, trainings should help build a common understanding and ethos to facilitate collaboration and continuity in the court's work. Training is thus critical to ensuring the maintenance of standards in any institution, particularly one with a mandate as special as that of ICC's, and therefore participation must be required of all staff.

**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.

As NRC Commissioner and also as Advisor to the Liberian TRC, I was involved in developing policies and modes of operation that were gender-sensitive. Tasks that involve crimes committed against women require sensitive handling and the creation of

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safe spaces for women to be able to engage in the process. Whether it is in setting up in-camera hearings for victims of rape or instituting measure to make the process more welcoming and less threatening to women and children, a Truth Commission has to provide special arrangements to ensure same, and I gave attention as Commissioner in Ghana and also as Technical Advisor in Liberia. I was also involved in the planning and execution of the Women only Town Hall meetings at the beginning of the work of the TRC to solicit (especially in rural areas) women's support and involvement in the work of the TRC.

In the area of Reparation policy, gender-sensitivity is a critical requirement as women and men are differently impacted by events of the same kind. Therefore, the reparation policies developed by the NRC of Ghana, had gender considerations as the underlying philosophy.

As head of the Rule of Law sector in the United Nations family in Liberia, cooperating with the Ministry of Gender and the Attorney-General's Office to reduce the incidence of Rape, especially of minors; as well as facilitating the prosecution of Rape was a major commitment. The expansion of Women and Children units within police stations; the implementation of gender-sensitive policies at the borders to protect female traders; and the construction and inauguration of the Sexual and Gender-based violence (SGBV) all took place under my watch.

### **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.

My work in Transitional Justice (TJ), in particular, Truth Commissions – which is a victim-centred restorative justice mechanism - has exposed me to the critical need to involve victims in all its phases of work, especially in its pre-Hearing, Hearing and post-Hearing phases. Consequently, Truth Commissions do not exclude victims and

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their concerns in the manner that regular criminal prosecutions do. In the same vein, the determination of reparations, as provided under Art 75, should be victim-influenced as each victim's circumstances would play a role in determining what would be fair and just reparation for any wrongs suffered. For these reasons, I have every expectation that victims would be encouraged to participate in the proceedings; and would support measures to enhance victim participation to the greatest extent possible.

- 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?

The special nature of the ICC means that as a criminal court, it has a responsibility to respect the rights of the accused and ensure a fair trial, whilst at the same time ensuring the participation of victims in the mode of restorative justice. Thus, the processes have to be sensitive to the interests of both groups to ensure that the participation of victims is not achieved at the expense of the accused. I would ensure that any material that could be prejudicial to the fair trial interests of the accused, would be incorporated but only after a fair assessment of the evidence of culpability had been done by the court. This way, findings of culpability could be made without prejudicing the interests of the accused, whilst the participation of the victim could ensure a need-based approach to the post-conviction/acquittal outcome of the case.

### **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.

Yes, I have the requisite experience. I was the head of the Rule of Law Sector (which included the Office of Human Rights) in the United Nations Mission in Liberia (UNMIL). The Office of the Coordinator for Humanitarian Affairs (OCHA) was also represented in the Mission as the mandate of the Mission covered the UN's humanitarian activities as well. Indeed, in the Rule of Law sector, there was good



cooperation with the International Committee of Red Cross (ICRC) in improving conditions in the Correctional Centres.

I also serve on the Executive Committee of the International Human Rights Network (INHRI) of Academies and Learned Societies – a body that seeks to protect the interests of Scientists and other members of Academies and other societies of Learning who suffer repression from their governments on account of their work or standing as academics, by sending letters expressing concern when such situations are brought to the attention of the Network.

- 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?

In the course of presentations on Rule of Law in Peace Keeping at both UN and ECOWAS Senior Mission Leadership Courses I instruct the participants on International Human Rights and International Humanitarian Law Instruments and their significance in the maintenance of Rule of Law.

#### **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 am not a judge and have, therefore, given no judicial decision on the Rome Statute. However, I have written and presented lectures on the ICC as a subject at international and domestic fora.

#### **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, I have never resigned nor been censured by any Bar Association.

- 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, 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, I do not disagree with, nor have any difficulty with this expectation as I believe everyone is entitled to respect irrespective of who or what they are.

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.

I have never indulged in discrimination or harassment, nor been found by any governmental, legal or professional body to have discriminated against, or harassed anyone on any of the above grounds

**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 do not expect to have any difficulty in taking a position independent of, and contrary to, the position of my government. I believe my government is fully aware of my independence of mind and strength of character and would, therefore, not seek to interfere with the manner of discharge of my duties as 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?

I do not have the slightest difficulty in participating in any decision in which my government has an interest. I believe my government has put me forward to serve the interests of justice, and not any partisan, parochial or sectional interest. Should I ever find myself unable to act with integrity, I would certainly exercise my option of recusal.



**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, I would be available to serve the term at its commencement and for its duration.

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.

I expect to be able to perform judicial tasks on my own or with reasonable accommodation. I have no difficulty with working long hours or as needed.

**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.

There are no further issues I wish to bring to the attention of the CICC. However, I am available for any further inquiries that CICC might require.

**Thank you.**