



**CICC questionnaire to candidates for a post of judge
of the International Criminal Court.**

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

Name: Judge Erkki Kourula
Nationality: Finnish
Nominating State: Finland
List: _ A or _B: List B

While the first question is relevant to either list A or list B candidates, we know that some candidates have competence that would qualify for both lists, and we would want them to show their full experience in both criminal law and international law. Question 1a) has been specifically drafted with list A candidates in mind. Likewise, question 1b) has been drafted for list B candidates. However, candidates with competence in both criminal and international law should feel free to answer any question in 1a) or 1b) to give the reader a more complete view of their background and experience.

1 a) For candidates on list A:

- **How would you describe your competence in criminal law and procedure?**
- **How would you describe your experience as judge, prosecutor, counsel or in other similar capacity, in criminal proceedings?**

Although a candidate on list B, perhaps it may assist if I also include here examples of my competence and experience in criminal law and procedure. Having been elected as a judge of the International Criminal Court (“ICC”) at the first elections in February 2003, I was called to serve full-time in November 2003 and was assigned to the Appeals Division. My competence and experience in criminal law and procedure have therefore further developed during this period. We have been working on and confronted issues of criminal law and procedure, for example in the context of the drafting of the Regulations of the Court in relation to which I was chairperson of the judges’ drafting and working group. We also continue our preparatory work in both the Appeals Division and among all of the judges where necessary.

Other experiences prior to my time at the ICC include the following. I was trained on the bench and worked as a judge in Finland for a year dealing exclusively with criminal

cases, including rape and murder. I also continued, during my academic career until my time in the Ministry for Foreign Affairs, to work on occasion as a counsel in court cases as permitted under the Finnish legal system. During my time as Director General for Legal Affairs in the Legal Department of the Finnish Ministry for Foreign Affairs I acted as the Agent of the Government of Finland in cases brought against Finland before the European Court of Human Rights in Strasbourg, some of which contained criminal law elements.

1 b) For candidates on list B:

- **How would you describe your competence in relevant areas of international law, such as humanitarian law and the law of human rights?**
- **How would you describe your experience in a professional legal capacity that is of relevance to the judicial work of the Court?**

I have been actively engaged in issues of public international law, including international humanitarian law and the law of human rights, throughout my academic and professional career. I have in the course of my career held senior positions and I believe that I have a wealth of experience and knowledge of relevance to the judicial work of the Court. I believe that I have brought substantial experience, qualifications and competence in addition to a strong dedication to its work.

I was actively involved in the negotiations on the Rome Statute from 1995 to 1998 as head of the Finnish delegation to the Preparatory Committee and as head of the Finnish delegation to the Rome Conference. In this context I also held several international positions of trust, including at the Rome Conference where I was coordinator for jurisdictional issues and a member of the enlarged bureau. I was also Chair of an informal working group for the establishment of the ICC (Syracusa 1995 and 1996) and a participant in consultations for the establishment of the ICC (Zutphen 1998).

As a member of the first panel of judges elected, called to serve full-time at the ICC in November 2003, I have been an active member of the Court throughout my term. The Regulations of the Court were adopted by the judges in 2004, a process in which I contributed including, as stated above, as chairperson of the judges' drafting and working group, and in my involvement in the preparation of a report on the Regulations for the Assembly of States Parties and its presentation to the Assembly. I have been an active member of several working groups within the Court and have substantially contributed to various issues that have arisen within the Court, an example being the Code of Judicial Ethics. I have been elected by the Appeals Division to serve as the Appeals Division judge on the Advisory Committee on Legal Texts and I have served as coordinator for victims' issues among the judges.

Prior to serving as a judge at the ICC, I served in the Finnish Ministry for Foreign Affairs between 1985 and 2003 in various legal capacities, culminating in my appointment as Director General for Legal Affairs in 2002. In that capacity I had

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principal responsibility for advising the Government on issues of international law, including international humanitarian law and the law of human rights. I was the Agent of the Government of Finland in cases brought against Finland before the European Court of Human Rights and before the Court of Justice of the European Communities and I also served as Chairman of the Finnish National Committee on International Humanitarian Law. I was also adviser for the Government of Finland before the International Court of Justice.

Before then, I served as Permanent Representative of Finland to the Council of Europe, Strasbourg (1998-2002), Deputy Director General for Legal Affairs (1995-1998), Minister Counsellor and Legal Adviser to the Permanent Mission of Finland to the United Nations, New York (1991-1995), Director of the International Law Division of the Ministry for Foreign Affairs (1989-1991) and Counsellor and Legal Adviser to the Ministry for Foreign Affairs (1986-1989).

When working in New York I followed closely the developments that led to the establishment of the international criminal tribunals for the former Yugoslavia and Rwanda and was later a member of a ministerial delegation to the ICTY in The Hague (1997) and head of a Finnish evaluation mission on the performance of the ICTR, Arusha (1998). I participated extensively in the process of Security Council reform at the United Nations as Special Adviser to the Chairman of the working group dealing with various aspects of Security Council reform (1993-1995). I was also the Chairperson of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (1994) and was a member of the Finnish delegation to the United Nations General Assembly (Sixth Committee) (1986-1990 and 1995-1997).

In Strasbourg, I was closely involved in the protection of human rights and the rule of law. I was, from 2000-2002, the Chair of the Council of Europe's Rapporteur Group on Human Rights and the Chair of the Council of Europe's Rapporteur Group on National Minorities. In addition, from 1999-2002, I was the Council of Europe's Rapporteur on Relations between the Council of Europe and the United Nations.

I have a PhD in international law from the University of Oxford and was a Professor of International Law at the University of Lapland, Rovaniemi. I have had various research posts in the fields of international, constitutional and administrative law (University of Helsinki, University of Oxford, Academy of Finland and United Nations, Geneva, 1972-1982, 1984-1985). I taught international humanitarian law over a period of fifteen years at the University of Helsinki and at the courses organised by the Finnish Red Cross and at the Finnish Military Academy.

I have been a member of the International Law Association since 1977 and have also served as Vice-Chair of the International Law Association (Finnish branch) from 1995-1998. Throughout my career, I have contributed to the academic discourse on current issues of international law, especially on the activities of the United Nations and its bodies, and certain key questions relating to the implementation of the Rome Statute. I

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have, over the years, spoken by invitation at numerous international conferences and seminars on international law, primarily on international humanitarian, human rights and criminal law as well as the law of international organizations. This has included the annual lectures and research periods at The Hague Academy of International Law (1972, 1975 and 1977). I have also contributed to publications and articles on key issues related to implementation of the Rome Statute, including the rights of victims, in addition to publications and articles on the United Nations, collective security systems, peacekeeping and civil crisis management. Details of some selected papers may be found below.

2. What are the qualifications required in your nominating State for appointment to the highest judicial offices? How do you meet these qualifications?

In accordance with section 11, subsection 1 of the Finnish Act on Judicial Appointments (Act No. 205/2000), members of the Supreme Court and the Supreme Administrative Court must be eminent legal experts fulfilling the following requirements. The candidate must be a righteous Finnish citizen who has earned a Master's degree in law at a Finnish university and who by his or her previous activities in courts of law or other functions has demonstrated the professional competence and the personal characteristics necessary for successful performance of the duties inherent in the position of a judge. Candidates may obtain the necessary qualifications in legal professions other than those constituting part of the judiciary. Such professions include positions as practising lawyers, prosecutors, research fellows and university lecturers, as well as legal officers responsible for legal drafting. In addition, international duties and certain administrative and law enforcement duties may provide the necessary qualifications.

I have an LLM and an LL.Lic from the University of Helsinki and, as noted above, a PhD in international law from the University of Oxford. I have also served, as stated, as a judge in Finland dealing with criminal cases and have served full-time as a judge at the ICC since November 2003. My qualifications as well as my experience in the legal profession qualify me for appointment to the highest judicial offices in Finland. In addition, as former Director General for Legal Affairs at the Ministry for Foreign Affairs, I held a public office for which section 125 of the Finnish Constitution requires skill, ability and irreproachable conduct.

3. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure used for your nomination.

I was nominated as the Finnish candidate for election to the ICC by the procedure provided for the nomination of candidates for the International Court of Justice, in accordance with Article 36(4)(a)(ii) of the Rome Statute.

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4. 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, why not?

Yes.

**5. What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in this language?
What is your knowledge and fluency in French, if it is not your native language? Do you have experience working in this language?**

Having studied and worked abroad in English-speaking and French-speaking environments, I am fluent in both working languages of the Court.

As for other languages, in addition to my mother tongue, Finnish, I am fluent in Swedish and German and understand Dutch. I can also use Russian and understand Spanish, the other official languages of the Court.

6. Do you have any specific legal expertise, including, but not limited to, violence against women or children?

As seen above, I have obtained specific legal expertise in the course of my academic and professional career in international law, criminal law, constitutional law and administrative law. I have specific legal expertise in issues relating to victims and, concerning women and children, I have gained expertise as a result of various experiences and work in the course of my career.

Prior to my time at the ICC, while continuing my research in international law, I was able to provide legal assistance to victims of violence, in particular during my time in Thailand in the early 1980s when my wife worked for the UNHCR in Aranyaprathet/Bangkok as coordinator for Cambodian refugee women and children. In that context I had my first encounter with women and children in distress and provided legal advice in relation to aspects of refugee law (e.g. the right to asylum, issues related to resettlement and the status of internally displaced persons).

I also followed closely the preparatory work for both the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), and have been involved in the subsequent implementation of these two instruments. I was a member of our national team which prepared and defended the first Finnish Report to the CEDAW Committee. I also participated in preparing and defending other national human rights reports (Human Rights Committee and Torture Committee).

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In my previous positions as Director General for Legal Affairs and Deputy Director General for Legal Affairs, I supervised all Finnish reporting to the human rights treaty bodies of the United Nations and the Council of Europe. My country has over the years been a strong advocate of the rights of women and children.

Finally, as stated, I have served as coordinator for victims' issues among the judges, an issue of specific relevance for the ICC.

7. a) Please provide us with a list of your writings and opinions relevant to evaluating your experience.

Papers

On a personal note, I would like to point out that as with many other candidates, I am faced with the problem that even if I have written many memoranda, opinions, court briefings etc. almost on a weekly basis they often remain confidential and cannot be used as writings relevant to evaluating my experience.

However, selected examples of some relevant papers are:

- *UN Reform in the 21st Century; a Fork in the Road (with Pirkko Kourula), in "Kansainvälistyvä oikeus" (Lapin yliopistopaino, Rovaniemi 2005), 231-241*
- *Questions and Observations Relating to the International Criminal Court, in "Nordic Cosmopolitanism" (Martinus Nijhoff Publishers, Leiden/Boston 2003), 327-340*
- *Reflections on Certain Key Issues pertaining to the Statute of the International Criminal Court (ICC), in "Establishment of the International Criminal Court" (Publications of the Ministry for Foreign Affairs 6/2000, Helsinki 2000), 25-33*
- *Questions and Reflections: Contemporary Security Concerns (with Pirkko Kourula), in "Liber Amicorum Bengt Broms" (Publications of the Finnish Branch of the International Law Association No. 9, Helsinki 1999), 208-221*
- *A series of articles on the United Nations, on the maintenance of international peace and security and on collective security, in Volume VI "Encyclopaedia Iuridica Fennica" (Helsinki 1998), 502-506, 733-737, 999-1018, 1053-1068*
- *The Identification and Characteristics of Regional Arrangements for the Purpose of the United Nations Charter, Doctoral Thesis (University of Oxford 1987)*
- *Peace-keeping and Regional Arrangements, in "United Nations Peace-keeping: Legal Essays" (Sijthoff & Noordhoff, Alphen aan den Rijn 1978), 95-123*

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- *Oikeudellisen yhdenvertaisuuden periaate erityisesti silmällä pitäen Suomen oikeutta ja kansallisia vähemmistöjä, (in Finnish, translation: The Principle of Equality before the Law with Special Reference to the Status of National Minorities under Finnish Law), Licentiate of Laws Thesis (University of Helsinki 1974)*
- *Kansainvälisen tuomioistuimen neuvoa-antava tuomiovalta, (in Finnish, translation: Advisory Jurisdiction of the International Court of Justice), LLM Thesis (University of Helsinki 1971)*

Speeches/lectures since serving as a judge at the ICC

Prior to my time at the ICC and throughout my career I have spoken and lectured on many occasions. Since serving as a judge at the ICC, I have also actively contributed to outreach on behalf of the Court both in The Hague and abroad. I have, for example, represented the President at the Inter-Parliamentary Union meeting in Manila in 2005, in addition to speaking before various audiences on issues concerning the Court in many cities including Tokyo, Prague, Stockholm, Kiev, Helsinki, Rome, Firenze, Lecce, Oslo, Uppsala, Odense and Paris.

7. b) Please provide us with an electronic copy of any writing or opinion describing your experience as outlined in questions 1a), 1b) and 5.

**8. a) For candidates not currently ICC judges:
Please explain your qualifications for this position. What aspects of your career, experience or expertise outside your professional competence do you consider especially relevant to the work of an ICC judge?**

**8. b) For candidates currently ICC judges:
How do you think your experience as an ICC judge would serve you for another mandate?**

Throughout my tenure at the ICC, I have, as stated, been an active member of the Court. I have worked to make a significant contribution and play my part in assisting the Court during the initial period of its existence. My experience thus far has demonstrated to me how important it is to understand the range of complex issues involved in establishing an effective permanent international criminal court. I have had the privilege of being involved in many aspects of this development (indeed also in the past) and this has enabled me to obtain insights into the functioning of this Court which I believe are invaluable. I believe that I am thus well placed to continue this work as the Court now becomes a fully operational judicial body.

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These insights, my experience, and my ongoing work, coupled with my past experiences prior to becoming a judge at the ICC, will enable me to continue to contribute positively as a judge of the ICC.

9. Why do you want to be a judge at the ICC?

We have gone from the hope of having a permanent international criminal court to actually seeing it come into existence and really begin its work. As a result of my work in the past - including that directly related to the ICC in Rome and prior to Rome - and now in the role which I continue to play as a judge in what is a crucial institution in today's world order, I am fully aware of the importance of this achievement.

The ICC is in the position to make a major contribution to the fight against impunity for the most serious crimes of international concern. With the assistance of the international community it is a serious and effective institution capable of delivering justice and establishing individual accountability for international crimes.

Throughout my career I have been committed to the ideals which the ICC represents, something which is illustrated by the path which I have taken. I believe that I have important and relevant experience gained both before becoming a judge at the ICC and while continuing to serve as a judge at the ICC. I believe that I have made a positive contribution to the work of the Court and am fully committed to continue to do so and to play my role in the ongoing evolution of the Court.

10. What do you think will be the biggest challenges facing you as an ICC judge?

Our task as judges is to ensure that we properly and fully fulfill our mandates. Challenges have and will confront us in the course of our tenures and we must face them in an impartial, independent, diligent and professional manner.

11. What do you believe are currently some of the major challenges facing the Court, and what do you believe will be some of the major challenges in the coming years?

The ICC is now a reality. It has had to move to a time of actual implementation of what has been created. Challenges facing the ICC include both those arising from implementation of its mandate in general and the quest for universality. Challenges will continue to confront the Court in the years to come and will need to be addressed by it with strength.

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12. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions.

12 a) Members of the Coalition for the ICC and governments are concerned about the difficulties judges might experience in interpreting articles of the Rome Statute where their government has already expressed an opinion. Do you expect difficulties in your taking an independent position?

No.

12 b) Would you be able to judge impartially whether an investigation by your government was genuine?

Yes.

13. Victims have a recognized right to participation in the proceedings in the Rome Statute and to apply to the Court to award reparations under Article 75. What experience relevant to these provisions do you have?

As stated above, I have gained experience in this regard both prior to my time at the ICC and while at the ICC, where I served as coordinator for victims' issues among the judges.

14. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked.

What experiences have you had dealing with crimes of sexual and/or gender violence? Are there situations or cases in the past where you believe you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted? If so, to what effect? Are there situations where you did not analyze the different impacts of a situation on women and men but on reflection you now think such an analysis would have been appropriate?

During the ICC negotiations we (my delegation at the time) participated actively in the efforts to include provisions relevant to this issue in the Rome Statute. While serving as Permanent Representative to the Council of Europe, I dealt with human rights issues, some of which related to gender violence. While serving in the Legal Department of the Ministry for Foreign Affairs, I was involved in certain sensitive forensic investigations which also related to sexual and gender violence.

15 a) Did you help advocate for the adoption of human rights or international humanitarian law treaties or other instruments? Please describe your experience.

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My experiences while serving as a judge at the ICC with regard in particular to the Regulations of the Court and also the Code of Judicial Ethics have been recounted above. As also stated, the establishment of the ICC and the adoption of the Rome Statute was a major exercise in which I participated actively from the beginning as Head of the Finnish delegation and in which I also held several international positions of trust.

Otherwise, I have participated in numerous convention negotiations and had numerous drafting experiences throughout my career and in each position, starting from the Vienna Convention on the Law of Treaties and International Organizations or between International Organizations (1986). I have followed closely the drafting of quite a number of international human rights and humanitarian law treaties. In addition to other treaties already mentioned, I participated from the very start in the preparation of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

15 b) Have you served on the staff or board of directors of human rights or international humanitarian law organizations? Please describe your experience.

I would note in particular my work in Strasbourg, where I was closely involved in the areas of the protection of human rights and the rule of law. I was, as has been stated, Permanent Representative of Finland to the Council of Europe, which is the main European human rights organisation. I was, from 2000-2002, the Chair of the Council of Europe's Rapporteur Group on Human Rights and the Chair of the Council of Europe's Rapporteur Group on National Minorities. In addition, from 1999-2002, I was the Council of Europe's Rapporteur on Relations between the Council of Europe and the United Nations.

As stated above, I have been a member of the International Law Association since 1977 and have also served as Vice-Chair of the International Law Association (Finnish branch) from 1995-1998. I have also served as Chairman of the Finnish National Committee on International Humanitarian Law.

16. 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.

17. Have you ever been found after an administrative or judicial hearing to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, color, gender, sexual orientation, religion, national

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origin, disability, marital status, socioeconomic status, alienage or citizenship status? If yes, please describe the circumstances.

No.

18. 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 and shall require staff, court officials and others subject to his or her direction and control to refrain from such words or conduct.

Do you disagree or have difficulty with this expectation?

How will you be able to meet this expectation?

No.

19. Judges will be elected for a term of nine years.

A judge is expected to be on the bench or otherwise handling legal matters for at least seven hours per day, five days per week, and at times, a judge's responsibilities may require him or her to be on the bench or at work into the evenings and on weekends.

Do you expect to be able, now and in the foreseeable future, to perform these tasks on your own or with reasonable accommodation? If no, please describe the circumstances.

Yes.

20. Do you know of any factors that would adversely affect your ability to competently serve as a judge, to comply with a judge's ethical responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume? If yes, please explain.

No.

Thank you.

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