

Please note that Judge Song expressed his wish to maintain the reply he submitted to the Coalition for the International Criminal Court for the first election of judges in 2003. Therefore, below is the reply to the questionnaire Judge Song submitted in 2003.

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

- Name : Sang-hyun SONG
- Nationality : Republic of Korea
- Nominating State : Republic of Korea
- List A or B : List A

*Q1. For candidates on list A:
What is your competence in criminal law and procedure? And,
What is your experience as judge, prosecutor, advocate or in other
similar capacity in criminal proceedings?*

- My legal career started with a military prosecutor. During my tenure of judge advocate I investigated criminal cases as a prosecutor and later tried criminal cases in the army as a military judge. I have competence in criminal law and procedure and extensive experience, as a judge advocate, attorney, professor of law, and judicial advisors to the Supreme Court as well as the Minister of Justice and the Supreme Prosecution Office.
- As a law professor, I have studied and taught various fields of law including procedural laws and evidence, among other subjects, for more than thirty years. I also educated the national police cadets for twenty years.
- I am well equipped with expertise in the reform of Code of Criminal Procedure, Court Rules of Criminal Adjudication, court process, case

management, the enforcement system and judicial independence. I have been closely advising the Korean Supreme Court as its longest serving advisor for more than twenty-three years. I have been also advising the Minister of Justice on criminal procedure, criminal investigation, prison reform, human rights protection and eradication of corruption, among other things, for more than twenty years.

- I have experience practicing law at an American law firm as well as in Korea.

Q2. What are the qualifications required in your nominating State for appointment to the highest judicial offices? How do you meet these qualifications

- The "Court Organization Act," Law No. 3992 of December 4, 1987, as last amended on January 29, 2001 as Law No. 6408 of the Republic of Korea, requires that justices of the Korean Supreme Court be appointed from among those persons who are licensed to practice law and have more than fifteen years experience in any of the following jobs: judge, public prosecutor, attorney, law professor, government official who worked in legal affairs.
- I passed the national judicial service examination and successfully completed the required two year apprenticeship training. I was thus admitted to the Korean bar in 1964 and am licensed to practice law since that time. I have been teaching procedural law and evidence, among other subjects, since 1972. Therefore I am more than adequately qualified for the post of Justice of the Supreme Court of Korea in accordance of the Korean "Court Organization Act." In fact I was once nominated as a Justice on the Supreme Court but turned it down.

*Q3. 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?*

- I earned both LL.M and J.S.D degrees in the United States, in addition to my legal research at the University of Cambridge in the U. K., and worked as an attorney in the United States. These accomplishments alone serve to demonstrate my knowledge and fluency in English.
- In addition, I have taught law courses in English as a visiting professor at many prestigious law schools around the world, including Harvard Law School (four times), Columbia University Law School, New York University Law School (four times), the University of Melbourne Law School, the University of Wellington (New Zealand), and the University of Florida, among others.
- Concerning the French language, I attended Sorbonne in Paris for more than half a year until the student demonstrations and a general strike in May, 1968 interrupted my legal studies in Paris. After attending a French language institute in Besancon I acquired enough command of the French language to attend law classes. Although I currently read French legal literature, my listening and speaking comprehension has yet to be revived and polished.

Q4. Do you have any specific legal expertise, including, but not limited to, violence against women or children?

- As a lawyer as well as an advisor to the government on legal issues, my main concerns were to promote access to legal services for the poor and the disadvantaged and the protection of the human rights. My article on the legal aid published in 1976 is said to have provided theoretical foundations and future directions for almost all the legal aid programs in Korea.

- In particular, I have been participating in many NGO activities and relevant government committees with particular emphasis on enhancing public awareness for protection of children and women. I have served in the following capacities:
 - Vice President and member of the Board of Directors, Korean National Committee for UNICEF (1991 - present). This committee operates many programs for children's welfare and educates the public with regard to children's rights;
 - President and member of the Board of Directors, Korea Childhood Leukemia Foundation (1991 - present). This organization provides financial and other assistance to sick children and operates various programs for children including a "school in hospital program";
 - Member of the Board of Directors, Korea Family Legal Service Center (1999 – present). The Center provides legal aid for women and children suffering from domestic violence and abuses;
 - Member, Lawyers' Committee, Amnesty International/ Korea (2001 - present). This group lobbies on behalf of political prisoners and imprisoned labor activists.
 - Member, Prime Minister's Commission on Youth Protection (2001 - present). The Commission investigates sexual exploitation of or sexual assault on minors, among other things.

Through my professional involvement in the above-mentioned NGOs for more than ten years I have developed a thorough knowledge of the issues faced by children and women, as well as the legal expertise required to offer them the full protection of the law.

Q5. Have you provided the statement required by article 36(4)(a) of the Rome Statute and the nomination and election procedure by the Assembly of States Parties?

- Yes, the government of the Republic of Korea has provided the statement to the Secretariat of the United Nations.

- Q6. *a) Please provide us with a list of your writings and opinions relevant to evaluating your experience.*
 b) Please provide us with an electronic copy of any writing or opinion describing your experience as outlined in questions 1a), 1b) and 4.

Published Books

- 1) Introduction to the Law and Legal System of Korea (1187p., English, 1983, Kyungmunsa, Seoul)
- 2) Korean Law in the Global Economy (1500p., English, 1996, Pakyoungsa, Seoul)
- 3) The Korean Civil Procedure (revised ed. 853p., Korean, 2002, Pakyoungsa, Seoul)

Articles

- 1) A Study on the Impact of the Use of Computer Technology on the Various Fields of Law, Seoul Law Journal vol. 13, No.1, pp. 35-68 (1972, The Law Research Institute, Seoul National University)
- 2) An Analytical Study of Court Cases on the Free Evaluation of Evidence Principle in Korean Procedure, Seoul Law Journal vol.15, No.2, pp. 49-90 (1974, The Law Research Institute, Seoul National University)
- 3) Reevaluation of the Legal Aid and its Modern Themes in Korean Perspective, Seoul Law Journal vol.17, No.2, pp. 69-100 (1976, The Law Research Institute, Seoul National University)
- 4) Reform of Appeal System of the Korean Court, research report submitted to the Supreme Court, pp. 1-130 (1978)
- 5) Review on the Class Action, Seoul Law Journal vol.21, No.1, pp. 103-114 (1980, The Law Research Institute, Seoul National University)
- 6) Functions of the Supreme Court and newly enacted Special Law on Expedition of Litigation, Korean Bar Association Journal, vol.74, pp. 11-19 (1982, Korean Bar Association)
- 7) A Review on the Federal Appeal System in the U.S., The Civil Case

- Commentaries vol.5, pp. 251-258 (1983, Kyungmunsa)
- 8) Domestic Courts Jurisdiction on Foreign State, Festschriften for Justice Soonwon Bang, pp. 252-270 (1984, Pakyoungsa)
 - 9) How to Diversify and Develop Legal Services Areas, research report submitted to the Minister of Justice, pp. 1-116 (1984)
 - 10) Family Court in Korea, in Nakamura ed. Family Law Litigation, pp.205-215 (1984, The Comparative Civil Law Institute, Waseda University)
 - 11) Legal Protection of Computer Software, Korean Bar Association Journal vol. 105(pp. 47-57) and 106(pp. 51-56), (1985, Korean Bar Association)
 - 12) Legal Education and Social Justice, in the University in the Future World, pp. 321-333 (1985, Yonsei University Press)
 - 13) South Korean Law and Legal Institutions in Action, in Clark ed. Korea Briefing vol. pp.125-146 (1991, The Asia Society)
 - 14) Ideology and Prospects of the Alternative Dispute Resolution, The Civil Case Commentaries, vol.14, pp. 411-441 (1992, Pakyoungsa)
 - 15) The Legal Profession in Korea: Problems and Prospects for Judicial Reform, Kobe Law Journal vol.49 No.2, pp.119-151 (1999, Kobe University Law Faculty)
 - 16) The United Nations and Human Rights, UNICEF teaching materials (1998) pp. 125-141, UNICEF/KOREA
 - 17) A Review on the Covenants on Rights of Child and Relevant Domestic Legislation, UNICEF Teaching materials (1999) pp. 101-121, UNICEF/KOREA

The third article listed above deals with legal aid and can be sent to you, although it is written in Korean.

Q7. Why do you want to be a judge at the ICC?

- Upon the decision of the Korean National Group for the PCA my government requested that I accept candidacy for the position of the ICC judge. Although I had not submitted my application to the Group, it is an honor for me to be a candidate.
- I have long envisioned a well-functioning permanent international court bringing to justice those who commit heinous crimes against humanity. Impunity has always infuriated me. As a small boy I

personally witnessed and experienced oppressive colonialism as well as the tragedy of the Korean war. I was shocked with all the senseless killing of my friends during the Korean war and the merciless torture during the colonial period. My grandfather, who was a leader of the independence movement, was tortured. He was completely naked and bitten by a well trained police dog so hard, for example, that he lost the ability to reproduce when the dog attacked his genitals indiscriminately. This experience was one of the reasons why I studied law and began dreaming of the world peace through law. As the national economy of the Republic of Korea has grown to be the world's thirteenth largest, I am convinced that my country has to do something meaningful for world peace and the protection of human rights as a responsible member of the international community. When an opportunity arose, I gladly accepted my government's nomination in order to try my best to make this dream come true.

- If elected, I will do my best to preserve the impartiality and independence of the Court. In order for the ICC to succeed as a viable and trustworthy court in the international community, I am convinced that it is necessary to ensure universality and to induce hesitant non-signatory states, including the U.S., to join the ICC, and that it is imperative to make the Court procedurally fair and free from political influence. I will speak up with no hesitation to prevent the Court from being used for politically motivated purposes.
- Also, I will contribute toward a just, fair, and effective court, with use of my expertise in the area of process management.

Q8. Why do you think you are qualified 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?

- In terms of my expertise and experience as a litigation attorney and a professor of procedural law and evidence for more than thirty years, I will be able to set an appropriate tone for the modus operandi of the

ICC, and help ensure that the cases are handled skillfully and efficiently. Thanks to wide international exposure, I am culturally sensitive and know how to listen to others and tolerate differences of perspective and opinion. When I turned 50 in 1991, my wife and I agreed to become resolute in sharing with the underprivileged. Since then she has been devoting herself to the Red Cross, and I have been actively participating in various NGOs and NPOs mainly for the protection of children and women through fund raising, education and training, international cooperation and exchange, legal aid, and campaign for their causes. I believe that my experience will make me a better ICC judge in terms of understanding the plight of children and women and spearheading the prevention of crimes against humanity.

- As an accomplished litigation lawyer, a professor of procedural law, an activist in the protection of children and women and a leader of various international as well as domestic charitable NGOs and NPOs, I think that I possess ample qualifications for ICC judgeship under Article 36(3) of the Rome Statute.

Q9. What do you think will be the biggest challenges facing you as an ICC judge?

- I do not anticipate any particular challenge ahead of me as an ICC judge. However, since there are judges from different countries with various cultural and political backgrounds, it would be a challenge for all the judges to maintain harmony in diversity. I think that I am especially well prepared to deal with intercultural differences of opinion or perspective because of my international education and experience.

Q10. What do you believe will be some of the major challenges confronting the Court in its first years?

- Internally, financial security would pose a big problem for the future of the ICC. Also, detailed procedural rules and precedents as well as modus operandi should be set up in such a way that the ICC should be able to operate smoothly and with consistent jurisprudence, so that it may be accurately perceived as just, fair and effective. Externally, the wisdom and experience of the judges will be required to address jurisdictional challenges. It is imperative that the ICC be kept from the political influences. I believe that no government should yield to the pressure of the powerful nation that did not sign the Rome Statute, nor should any government sign a bilateral immunity agreement with the nation.

Q11. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure used for your nomination

- My nomination was made strictly in accordance of Article 36 4 (a) (ii) of the Rome Statute. In addition, the Minister of Court Administration of the Korean Supreme Court, who has the authority to recommend a candidate who may be appointed to the highest offices of the National Judiciary (Article 36 4 (b) (i)), has been closely consulted throughout the nomination process.
- As far as I know, a selection committee consisting of four members of the Korean National Group of the Permanent Court of Arbitration and a high ranking judge representing the Ministry of the Court Administration of the Korean Supreme Court were set up and had a list of meetings and it decided to nominate me through careful deliberation.
 - It was decided that as a matter of selection procedure the selection committee will choose a candidate from those recommended by the relevant bodies;
 - Letters to solicit qualified candidates were widely distributed to the Supreme Court, Ministry of Justice and Korean Association of

International Law;

- After much debate and careful deliberation, the selection committee unanimously found that I was best qualified ethically and professionally to stand for the ICC judgeship.

Q12. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions.

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?

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

- I do not expect any difficulties in taking an independent position as an ICC judge even if my position is in conflict with my own government. I have always maintained my independence and integrity in my dealings with the government. I have never worked directly for or worked as a government official. Even my role in advising government ministries and the Supreme Court is a very independent and frequently critical one.
- With no difficulty whatsoever I will be willing and able to judge impartially whether an investigation by my government was genuine. It is my strong conviction that if there is no impartiality and independence, the ICC cannot survive as a viable institution.

Q13. Victims have a recognized right to participation in the proceedings in the Rome Statute. What are your views on the opportunities and challenges raised by these provisions?

- Articles 68, 75 and 79 contain the most important provisions in this regard. When I attended the Milosevic trial one day in The Hague and saw how the witnesses are protected, three issues occurred to me: adequate protection of victims, provision of opportunities for victims

to participate in the process in some way; and reparations for victims. The first two issues would have more to do with the procedural fairness and integrity of the ICC to find the factual truth, while the issue of reparations would be mainly for the benefit and well being of the victims. Since there are some legislative precedents that allow some extent of civil damages in criminal procedures, or criminal penalty in civil procedures, I do not see much theoretical difficulty in the provisions of the Rome Statute. They seem to provide most of what victim advocates want to offer. Yet it would be a challenge to establish a trust fund and to exercise the power to collect property.

Q14. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked.

a) How do you view the provisions in the Rome State defining and criminalizing acts which are committed predominately against women? How will you endeavor to ensure equal justice for women?

b) 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 been appropriate?

- It is to be noted that wherever appropriate, the Rome Statute rightly refers to or emphasizes women. I think that the Rome Statute has taken a positive step forward to ensure equal justice for women. Therefore in the spirit and letters of the relevant provisions in the Rome Statute, I will be vigilant in my efforts to accomplish equal justice and gender equality not only in the trial process, but in the administrative and daily operation of the ICC.
- As a member of the Prime Minister's Commission on Youth Protection, I advocated strongly in favor of publicizing names of those who committed various sexual crimes against minors, although most of the colleagues spoke up against the idea. A controversy erupted on the issue, and I was pressurized not to speak out on this issue. I persisted, however, and the names of such criminals are now

posted on the homepage of the Commission after careful deliberation on the circumstances surrounding each incident. In addition, I have always managed to earmark funds for wigs for girls who lost their hair due to the medical treatment for their leukemia, despite the limited financial resources available. I feel that in addition to relieving the suffering of children and others, we must also protect their dignity as human beings.

Q15. a) Did you help advocate for the adoption of human rights or international humanitarian law treaties or other instruments? Please describe your experience.
b) Have you served on the staff or board of directors of human rights or international humanitarian law organizations? Please describe your experience

- As the longest serving advisor to the Minister of Justice, I strongly urged the Justice Ministry to adopt, for example, the Convention on the Elimination of All Forms of Discrimination against Women in 1984, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and Optional Protocol thereto in 1990, the Convention on the Rights of the Child in 1991, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1994, and the Rome Statute in 2002. I was involved in the preparation of the national report on the rights of the child in commemoration of the tenth anniversary of the ratification of its Convention and also prepared to attend the UN Special Session on Children's Rights as the representative of the UNICEF/Korea, but because of the tragic events of September 11 everything was cancelled.
- Currently I serve as a member of the Prime Minister's Commission on Youth Protection. I carefully deliberated on the genuineness of the police investigation report on minor women trafficking and other sexual exploitations. In this process I visited places, met with victims and examined the police officers who wrote the report.

Q16. 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.

Q17. 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 origin, disability, marital status, socioeconomic status, alienage or citizenship status? If yes, please describe the circumstances

- I have no such a circumstance or experience.

Q18. 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 of conduct.

Do you disagree or have difficulty with this expectation?

How will you be able to meet this expectation?

- I have no difficulty with the above expectation. I have been professionally educated and trained to meet this expectation. Furthermore, our non-discrimination policy and practice are an important part of our daily operation of the law school. As the president of the Korea Law Professors Association, Inc., I drafted the faculty manual and included non-discrimination criteria. In the activities of the NGOs and government committees in which I participate, I have long been promoting and reminding others of the importance of non-discrimination policy. One of my children is a “differently abled” person, and I am acutely aware of the bias and

know how to handle the problem. My international cultivation and orientation are such that I would strive to ensure that such a policy is carried out in substance as well as form.

*Q19. Judges will be elected for a term of nine years - at the first election, one third of the judges elected will be elected by lot to serve for a term of three years (this group will be eligible for re-election), another third will be elected by lot to serve for a term of six years and the remainder will serve 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, I am now and will be able to perform all the tasks on my own or with reasonable accommodation.

Q20. 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.

- None.