

**Coalition for the International Criminal Court (CICC)
Questionnaire to ICC Deputy Prosecutor (Prosecutions) Candidates
2012 Elections**

10 October 2012

Conscious of the critical importance of the ICC Deputy Prosecutor (Prosecutions) role, we have prepared the following as a Questionnaire for candidates for this position.

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| Name: | Raija Toiviainen |
| Nationality: | Finnish |

Background:

1. Why do you wish to be elected Deputy Prosecutor (Prosecutions) of the International Criminal Court?

My lengthy experience in the judicial field, my experience as prosecutor in the Rwanda case and my keen involvement in activities of international forums in the sector of crime and justice have awakened within me a powerful desire to make an even greater contribution to the fight against the impunity of the perpetrators of the most serious crimes. The position of Deputy Prosecutor (Prosecutions) of the ICC offers a real opportunity to be of service to humankind in making criminal liability a real consequence of these serious crimes, and in bringing justice to the victims.

Throughout my long and varied career as a judicial official, my primary work has been to take legal decisions in the sectors of criminal, procedural and civil law. I have worked as both prosecutor and judge for several years. For the past 15 years, I have held the high-ranking position of State Prosecutor in the Office of the Prosecutor General of Finland, serving as head of the International Unit and as deputy to the Deputy Prosecutor General. I have also served as attorney in the International Unit of the Ministry of Justice of Finland (for details, please see my CV, ICC-ASP/11/17).

I was the prosecutor in the first genocide trial ever conducted in Finland. The investigation into this case was opened in 2007. The defendant was convicted by both the District Court (2010) and the Court of Appeal (2012) to life imprisonment for genocide. The Court of Appeal found the charge more extensively proven than the District Court.

The case remains ongoing, as the defendant has petitioned the Supreme Court for leave to appeal.

Since my law studies, during which I specialized in criminal law, I have always been interested in how society might be made safer by means of the criminal procedure while also maintaining full respect for human rights. I have been a keen observer of the activities and development of the ICC, as well as of other international criminal courts, for many years. In my view, establishing a permanent court to deal with the most serious crimes of concern to the entire international community was an absolutely essential step.

When the EU years ago set up the network for investigation and prosecution of genocide, crimes against humanity and war crimes, I was chosen to represent the Finnish prosecution service. An equivalent network, in which I have been a member since its inception, has been established among the Nordic countries. The International Association of Prosecutors (IAP), in which I have been active since 1998 and where I currently hold the position of Vice President for Europe, also maintains the Forum for International Criminal Justice, in which I serve as an expert. I have served as chair and facilitator in the Sessions of War Crime Meetings at IAP conferences. In 2008, I took part in an international conference organized by the ICTR in Arusha and headed by ICTR Prosecutor Hassan B. Jallow, on the topic of international cooperation in dealing with international crimes. Moreover, the University of Helsinki has also invited me to speak as an expert guest lecturer on the challenges inherent in the investigation and prosecution of international crimes.

2. *What do you think would be the biggest challenges you would face in your capacity as ICC Deputy Prosecutor (Prosecutions) were you elected as such?*

The most important issue for me has always been to carry out my duties to the best of my abilities, whether it concerns investigation, court proceedings or general administration in the Office.

As to the challenges, I see them as challenges to the whole OTP and indeed to the entire Court: cooperation of States with the ICC, effective investigation, gathering evidence, expediting the Court proceedings, working together with all organs of the court as “one Court only”.

3. *What do you believe are some of the major challenges currently facing the Court? What do you believe will be some of the major challenges in the coming years?*

The economy in most States has led to zero-growth budgets and slowed down the work in general also in prosecution services and in courts. This in turn has resulted in staff downsizing, reorganization of the workload and administrative cutbacks. I believe that similar pressures and needs for improvement also exist within the ICC.

The operations of the ICC are greatly dependent on the willingness and ability of states as well as international organizations to work together with the Court. Successful cooperation remains a key challenge and concern.

Expediting proceedings is a major challenge and an aim which is equally vital to the judicial protection of the parties and to the credibility of the ICC. The prosecutorial strategy influences this, too. Ongoing assessment of operations and leadership excellence will be required in order to strike the proper balance.

The Rome Statute provides national judicial systems with a model which, in my view, encourages the national systems to develop their legislation and to attend to the realization of criminal liability for crimes of the type in question on a national basis, in keeping with the standards of the ICC. The ICC thus also makes an important indirect contribution to the realization of criminal liability. This is also one reason why it takes continuous effort to make the activities of the ICC fruitful.

3. *What do you see as the most appropriate means through which the ICC can fulfil its mandate to end impunity for the most serious crimes of concern to the international community and contribute to the prevention of such crimes?*

I think the ICC should continue working as it already does, only more effectively and expeditiously. All organizations must pay constant attention not only to ensuring the professionalism of their staff but also to administrative improvement, and the ICC is no exception.

It would be vital for an even higher number of States to ratify the Rome Statute of the International Criminal Court and to commit themselves to the principles of the ICC. In addition, approaches should be developed to heighten public awareness of the ICC's activities. The effective investigation of crimes and efficient judicial process, considerably foster the effectiveness and relevance of the ICC's activities in respect of the entire international community.

Legal System and Language Abilities:

5. *What is the primary legal system of your country? Do you have knowledge or experience working in other legal systems?*

The Finnish legal system is based on the civil law system.

The common law system has become familiar to me at the operational level in situations where I have worked together with authorities of common law States on extraditions and mutual legal assistance.

I have become further acquainted with the common law system through EU law drafting and Council of Europe working groups. In these contexts, a knowledge of both the civil

law system and the common law system is necessary in order to cater for the particularities of both legal systems in preparation and decision-making. In addition, my involvement in the IAP has further exposed me to the common law system.

6. *The Rome Statute requires the Prosecutor to have an excellent knowledge of and be fluent in English or French.*

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

I am fluent in the English language. For several years, English has been the primary language of communication when attending to operational contacts with representatives of foreign States and when representing the Finnish prosecution service in the international arena.

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

I have not studied French and thus have no experience working in the language. I am prepared to start learning the language.

c) *Do you have a working knowledge of any other languages?*

I am fluent in reading Swedish and speak it well. I read German but would need practice with my spoken skills.

Expertise and Experience:

7. *The Rome Statute requires the Deputy Prosecutor to be a person “of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases.” Please describe your qualifications for this position.*

In Finland, high moral character is a requirement for the appointment of any civil servant, prosecutors and judges included. The relevant provision is enshrined in the Finnish Constitution. Having been appointed to a number of judicial offices over the course of my career, my character as well as my competence and experience have been firmly established.

In other respects, I respectfully refer to my CV.

8. *Please describe any previous experience you have relevant to being Deputy Prosecutor (Prosecutions), including extensive practical experience in the prosecution or trial of criminal cases?*

With regard to my managerial and leadership experience, practical experience as prosecutor and judge, and my experience with international cooperation between authorities, I respectfully refer to my CV.

With regard to the genocide case, I respectfully refer to my response to Question 9.

9. *The Court's current criminal trials are taking place in The Hague where they are geographically distant from where the alleged crimes occurred. Can you describe any experience you might have that would assist you in meeting any challenges that this might raise?*

Many of the challenges referred to in the question arose in the context of the Rwandan genocide case in which I served as prosecutor. The suspect was resident in Finland. He was apprehended and detained in April 2007. All evidence in the case, both documentary evidence and witnesses, had to be obtained from outside Finland. The pre-trial investigation materials ran to thousands of pages, exhibits numbered in the dozens, and more than 100 witnesses as well as a handful of experts gave testimony. The conduct of the pre-trial investigation, the preparation of the charge and the trial, and the execution of the trial proper were almost entirely based on cooperation with foreign States, mainly Rwanda and Tanzania. Some of the key challenges are briefly enumerated below:

Pre-trial investigation and preparation of charge

- Study of the history of Rwanda and determination of the context leading to the genocide
- discovery of reliable and sufficient evidence (including but not limited to assessment of NGO reports, Gacaca documents, reliable provenance of documentary materials, witness protection considerations, identification of individuals' clan affiliations, effect of prison conditions on individuals, identification of political influences; creating an atmosphere of trust)
- the individuals to be interviewed were located in several African States as well as elsewhere (challenges inherent in the MLA procedure, verification of interviewees' identity, security)
- identification of special characteristics associated with presentation of evidence by the defence (e.g. catering for the refugee status of witnesses, hearing witnesses in Rwanda)
- complex logistical arrangements relating to the persons to be heard
- sourcing of reliable interpreters and witness support workers (interviewees' native language-Finnish-English-French = identification of errors in translation)
- provision of forensic investigation equipment to the various States (audio and video taping of interviews, crime scene photography and other forensic investigation)
- the identification of the victims of the crime proved to be an extremely difficult task

Trial stage

- the forum for the case was Finland, yet nearly all witnesses for the prosecution testified in Kigali, Rwanda while the majority of the witnesses for the defence were heard in Dar es Salaam, Tanzania, both at the first and the second instance. In practice, this meant that the judges, prosecutors, defence attorneys (2), interpreters and forensic experts spent several weeks in Rwanda and Tanzania so as to face the witnesses in person. A video link was provided for the accused and his third attorney at a prison in Finland so that they might participate in the taking of testimony
- organizing the presentation of evidence by the defence in Rwanda (witness protection)
- most of the defence witnesses arrived in Tanzania from all across Africa; the challenge lay in organizing their travel documents and protecting their identity
- arranging inspections of the scenes of the crimes, 180 km from Kigali
- some of the testimony was taken in Finland, necessitating arrangements for the witnesses arriving from all over the world
- the challenges lay in locating skilled and reliable interpreters, attending to the logistics of the persons to be heard, and seeing to the protection and wellbeing of the witnesses
- challenges presented by the establishment of the technical environment (audio and video taping, provision of video link)

Criminal judicial assistance procedure and procedural efficiency requirements

- the process had to proceed expeditiously because the defendant was held in detention
- accomplishing of the process necessitated the submission of several mutual legal assistance requests to various States as well as numerous negotiations in order to expedite the process
- at the pre-trial investigation stage, police officers were sent abroad to conduct lengthy investigations in several foreign States. The coordination and steering of the investigation as well as the supervision of procedural efficiency required particular professionalism of me in my capacity as prosecutor. I visited Rwanda in person during the pre-trial investigation and also spent two lengthy stretches there and in Tanzania during the trial.
- monitoring the finances of the process was a challenging task

Awareness of and attention to the officials' own safety and wellbeing during the extended stays abroad were also required. Furthermore, the trial being a public one – as trials in Finland are, as a rule – media relations had to be handled.

10. Please describe the aspects of your career, experience or expertise outside of your professional competence that you consider especially relevant to the work of the ICC Deputy Prosecutor (Prosecutions).

In my view, leadership skills, decision-making skills and cooperation skills as well as personal commitment are of prime importance in the work of the Deputy Prosecutor. My skills in these sectors were rated to be very good upon e.g. when I was my appointed to my current position. A third-party professional evaluation of the said qualities conducted in 2007 also found me to have very good abilities in these sectors.

11. *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-based violence? Please describe any specific legal expertise you may have on the issue of violence against women or children.*

The Office of the Prosecutor General, where I am employed, manages and steers a team of special prosecutors focusing expressly on the investigation and prosecution of crimes against women and children. I am personally in charge of a team of key prosecutors responsible for crimes with international dimensions, and in this capacity I work closely together with the special prosecutor team for crimes against women and children. Together with the latter team, I am also responsible for coordinating the opinions of the prosecution service in international legislative projects relating to the said crime phenomenon (EU and Council of Europe). The challenges and particularities of investigating and prosecuting these crimes have thus become familiar to me.

Moreover, I am a Gender Equality Rapporteur appointed by the Council of Europe.

12. *Do you have legal expertise in other relevant areas such as the crimes over which the Court has jurisdiction; the management of complex criminal and mass crimes cases; or the disclosure of evidence?*

Please see my CV and response to Question 9.

13. *Under Article 68(3) of the Rome Statute, victims are entitled to present their views and concerns and have them considered at stages of the proceedings to be determined by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Please describe any experience you have that would make you particularly sensitive/understanding to the participation of victims in the courtroom.*

The substance of the said Article is largely in line with the Finnish justice system and familiar to me already through the application of the domestic procedure. In Finland, the victim may endorse the charge brought by the prosecutor and submit in connection with the criminal case claims arising from the crime (claims based on harm and suffering). In Finland, pre-trial investigations may be closed only after the victims of the crime and the claims arising from the crime have been determined. The victim also has a secondary right to bring charges; when charges are not brought by the prosecution service, the victim of the crime may personally have the case opened in court.

14. *Victims have a recognised right to reparations under Article 75 of the Rome Statute. Please describe any experience that you have which would be relevant to this provision.*

I am very familiar with the criminal procedural standing of victims and with the related case law.

I respectfully refer to my response to Question 13.

15. *Article 67 of the Rome Statute enumerates the rights of accused persons before the ICC. Please describe your experiences in ensuring the rights of the accused to due process and a fair and impartial trial.*

The principles expressed in Article 67 are the same which must absolutely be observed in the Finnish criminal justice process as well. International treaties concerning the procedural standing and minimum rights of the accused (International Covenant on Civil and Political Rights, European Convention on Human Rights) have been implemented into national legislation, and compliance therewith is deep-rooted in the administration of justice in Finland. The right of the individual to a fair trial is guaranteed under the Finnish Constitution. A detail worth mentioning is the duty of prosecutors, as part of their consideration of charges, to establish also the facts speaking against the guilt of the accused (objectivity principle).

The case law of the European Court of Human Rights and the Court of Justice of the European Union is widely monitored in Finland by prosecutors and judges. Respect for the rule of law has been traditionally important to Finland.

As my entire studies and career have been based on these principles, I foresee no difficulties in comprehending and realizing the rights of the accused as well as of the victim in the criminal justice process.

A noteworthy aspect of the aforementioned Rwanda case, in which the court was physically in session abroad for long stretches of time (in Rwanda and Tanzania), is the great care observed in safeguarding the rights of the defendant. While the court was in session abroad, the defendant and his personal counsel were present through every minute of the trial via a video link provided to them at the Finnish prison where the defendant was detained.

16. *Do you have any experience serving in a large, multifaceted institution and working with other departments or entities to achieve a common goal?*

a) If yes, what were the challenges in doing so?

This has indeed been familiar and in fact a matter of course for me for quite some time. I have headed teams and projects which have pulled together various organizations and

interests (one example being the values process in the prosecution service). I have also served for nearly fifteen years on the Steering Committee of the Office of the Prosecutor General and on the cooperation organ for the entire prosecution service, a task of both bodies being to reconcile disparate views into shared opinions. I have considerable experience in working with stakeholders (pre-trial investigation authorities, attorneys, the Ministry of Justice, Parliament) and have in these relations, from time to time, encountered situations necessitating a vigorous defence of the prosecution service's views and their reconciliation with mutual aims.

b) How were these challenges overcome?

In negotiations, I put my trust in an interactive and discussion-oriented approach where the stance represented by me is based on proven facts, openness and existing standards. Factual arguments, respect for the other party and constructive criticism when necessary have allowed me to achieve good results. Factors of great importance to me are careful preparation of the matters under discussion, all parties having an equal chance to be heard, and the ability to change one's mind when so warranted by new knowledge. The prime objective is nonetheless to make progress, and it has been my experience that my ability to take decisions and commit myself to them has made a positive contribution to the achievement of favourable outcomes.

17. Do you have any experience as a manager or carrying out management functions? If yes, please describe your experience delegating to, directing and supervising staff.

I respectfully refer to the managerial experience and leadership training recounted in my CV.

18. Given the broad geographical reach of the jurisdiction as well as the staff composition of the ICC, please describe any experience you have working in a culturally diverse environment or interacting with people with backgrounds that differ from your own.

I have worked together with people from culturally diverse backgrounds for the past 17 years. As a representative of the Ministry of Justice of Finland and the Finnish prosecution service, I have delivered speeches and lectures, and negotiated on and otherwise taken part in proceedings of numerous international forums (permanent and ad hoc working groups, preparatory bodies, seminars, conferences, etc.). In my experience, encounters with other cultures have proven enriching, instructive and interesting.

For details on my involvement in multicultural forums, please see my CV.

I wish expressly to emphasize my experience in international cooperation with authorities on the Rwanda case. The successful prosecution of this case called for close and

productive relationships with representatives of a number of States, in particular the Rwandan authorities. The cooperation functioned extremely well.

19. a) *Please provide us with a list of your writings and other material relevant to evaluating your experience.*

b) *Please provide us with a document containing a list of links to your writings and other material relevant to evaluating your experience.*

Defensor Legis N:o 4 / 2001: *Syyttäjän työ – kansainvälistyvä ammatti* [Prosecution – an increasingly international profession]

European Arrest Warrant – Prosecutors Manual 2003; an author and the editor of the manual (constantly updated)

International Association of Prosecutors Conference in Seoul 2004, address: *Information Technology – a Prosecutor’s View*

Freezing Order – Prosecutors Manual 2005; an author and the editor of the manual (constantly updated)

Report *Syyttäjälaitoksen arvot* [Values of the Prosecution Service] 2005; author and editor

International Association of Prosecutors Conference in the Hague 2010, address: *War crimes – whose crime is it? Exercise of Domestic Jurisdiction Finnish Experiences*

Articles in the prosecution service newsletter and lectures/addresses at courses and seminars on e.g. the following topics in the years 1997–2012:

- Scope of application of Finnish criminal law
- Normative foundation for international cooperation between authorities (international conventions and other instruments)
- International mutual legal assistance in criminal matters
- Extradition of criminal offenders
- Activities of the European Judicial Network and Eurojust
- Judicial cooperation among the Nordic countries
- Securing and execution of confiscation
- Immunity from legal proceedings
- Joint investigation teams
- Role of the prosecutor in the Finnish judicial system
- Implementation of the values of the prosecution service
- Strategy and management by results in the prosecution service

Lectures in the 1980s and 1990s on topics including the prosecution of drug offences and the revised civil procedure.

Character and Independence:

20. *Have you ever resigned from a position as a member of the bar of any country or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.*

No.

21. *Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on any grounds including because of actual or perceived age, race, creed, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status? If yes, please describe the circumstances.*

No.

22. *Do you have any experience where you have had to balance your independence in dealing with judicial matters with a complex political landscape? If yes, could you please describe how you were able to manage these competing concerns?*

No.

In Finland, the prosecution service as well as the judiciary have absolute independence and take no direction or instruction from political or other quarters in their handling of cases.

23. *The Rome Statute requires the Office of the Prosecutor to act independently as a separate organ of the Court. A member of the Office, including the Deputy Prosecutor (Prosecutions), shall not seek or act on instructions from any external source. In addition, the Deputy Prosecutor may not engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. Do you expect to have any difficulties in your taking a position independent of, and possibly contrary to, your government with respect to an investigation or prosecution?*

I respectfully refer to my response to Question 22.

I expect no difficulties in comprehending and complying with the requirement of independence. Independence is one of the principles on which the Finnish prosecution service and judiciary are built, and one which has become deeply ingrained in me through my career in these services.

24. *Do you know of any factors that would adversely affect your ability to competently serve as Deputy Prosecutor (Prosecutions), to comply with applicable ethical responsibilities, or to complete the day-to-day responsibilities that the Deputy Prosecutor (Prosecutions) is required to assume? If yes, please explain.*

Absolutely none at all.

25. *Is there any information that you would like to add that is relevant to your candidacy? If yes, please detail it below.*

I would like to express my cordial appreciation for the opportunity to respond to this questionnaire.

Thank you.