

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS
*** UNOFFICIAL CICC TRANSLATION *****

Conscious of the restrictions placed upon of ICC judges in making extra-curial comments which might affect the independence referred to in Article 40 of the Rome Statute and Rule 34 of the Rules of Procedure and Evidence, we invite judicial candidates to please reply to the following questions as comprehensively or concisely as possible.

Name: Ajmi BEL HAJ HAMOUDA

Nationality: TUNISIAN

Nominating State: TUNISIA

List: (tick one by clicking twice on a box and selecting "Checked")

- A**

- B**

Background:

1. Why do you wish to be elected a judge of the ICC?

It is wonderful to work in the framework of a sui generis system that borrows the positive aspects of both Common Law and Romano-Germanic systems, a system that is supposed to prejudice the rights neither of the accused nor of the victims. To take part in the work of the ICC is, for me, the crowning of a long career and will meet my desire to serve the international community. I have to admit that being part of the ICC bench would be a great honor for me.

2. What do you think would be the biggest challenges you would face if you were elected as an ICC judge?

The lack of jurisprudence due to the absence of any precedents given by the Court.

3. What do you believe are some of the major challenges currently facing the Court?

The implementation of its mandates

Winning the confidence of states, either parties to the Statute or not

Overcoming the erroneous criticisms and denigrations that mix politics with the law and judiciary.

4. What do you believe will be some of the major challenges in the coming years?

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS
*** UNOFFICIAL CICC TRANSLATION *****

- *To strengthen the cooperation of States and intergovernmental organizations with the Court in order to make the global objective of fighting against impunity more effective.*
- *To make the principle of complementarity effective*
- *To ensure that countries with big populations such as China, India, Russia and the United States become states parties.*
- *To have an enforcement power.*
- *To encourage States to ratify the Rome Statute and to sign the APIC.*

Nomination Process:

- 5.** What are the qualifications required in the State of which you are a national for appointment to the highest judicial offices?

Seniority in the judiciary as well as 5 years of experience to become the President of a Trial Chamber, 10 years of experience for a President of Appeal Chamber and 15 years of experience for the President of the Supreme Court.

Personally, I am registered in Tunis Bar and practicing since 1974. I registered as a counsel for the Supreme Court in 1985.

- 6.** Please explain how you meet these qualifications.

My seniority at the bar allows me, according to the statute of the judiciary and the law governing the legal profession, to accede to the position of magistrate of the Supreme Court. During my entire career, I forged close ties with the judiciary, either by means of the courts, the university, through associations or the Superior Institute of the Judiciary; in other words, the judicial world is not something unknown to me. The bar, the faculty of law and the court, although independent from each other, are complementary. Similarly, commentaries of jurisprudence for students during university lectures, as well as the almost daily practice of litigation in court, enables us to be well equipped to carry out a trial before a court.

Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure under which you were nominated. Please also provide any relevant information such as the national law governing the procedure for the nomination of candidates to the highest judicial office in the nominating state (an Article 36(4)(a)(i) nomination) or the nominating letter from the Permanent Court of Arbitration national group (an Article 36(4)(a)(ii) nomination).

My nomination has been made by Tunisia in accordance with the Article 23, paragraph 3 of the Statute of the Court and in accordance with paragraph 6 of the resolution ICC-ASP/3/Res.6.

- 7.** 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, I did. Please find it in the attachment.

Legal System and Language Abilities:

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS
*** UNOFFICIAL CICC TRANSLATION *****

- 8. a)** Which legal system does your country belong to? Do you have knowledge or experience working in other legal systems?

The system of Tunisian courts belongs to the Romano-Germanic legal system. Due to my studies in France to prepare my postgraduate programme and my PhD thesis and the fact that I was often invited or associated as a professor by foreign universities, I was given the opportunity to become a specialist in comparative law.

In 1984, I undertook a study trip to the USA in order to familiarize myself with the system of this country and, specifically, the criminal justice system. Moreover, I did two series of trainings concerning the ICC sui generis system (in The Hague in May 2011 and in Tunis in September 2011).

- b)** What difficulties do you envision encountering working with judges from other legal systems? How would you resolve such difficulties?

The criteria required by the Court for the recruitment of judges who will assume the function of judging, allow for an ironing out of differences and to deliberate with serenity. What is important for a judge is to deliver justice with a capital J.

The best mean to resolve difficulties lies in listening to others putting forward their arguments, in the discussion of arguments for and against, and backing the majority at the end of the deliberations.

- 9.** The Rome Statute requires every candidate to have 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 English?

Medium level for comprehension and reading. However, I worked in English and as part of a team while being a lawyer.

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

Very good level. I carried out all my studies from primary school to university in French. I teach and I publish in this language.

List A or B Criteria:

Your response to this question will depend 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.

- 10. a)** For List A candidates:

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

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS
*** UNOFFICIAL CICC TRANSLATION *****

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

An experience of 36 years at the bar. I very often had the occasion to counsel for those accused and for victims, at all stages of trial proceedings, from investigation to judgment. Moreover, I am a founding member of the only two Tunisian associations of criminal sciences. At the university, since my recruitment in 1973, I teach and give some conferences at on the different branches of criminal law (general criminal law, procedure, special criminal law, international criminal law...) I used to be the President of the criminal sciences section. I wrote and published on criminal law. Moreover, I participated in the reform of the criminal code and I wrote the criminal part of the child protection code (see CV attached).

b) For List B candidates:

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

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

Expertise and Experience:

11. Please describe your qualifications for this position. Please also 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.

*36 years at the Bar (beginning from the simple Justice of the peace until the criminal chamber of the Supreme Court or military courts or juvenile courts).
An academic career, for 40 years, rich with experiences and lessons, that began in France before continuing as a tenured teacher in Tunisia and visiting professor abroad (France, Algeria, Canada, Italy, Malta...).*

*During my career, I supervised and was in charge of several magistrates, lawyers, teachers, high civil servants and students to finalize their studies or research.
In parallel, I took part in human rights initiation days for magistrates.
Moreover, in May 2011 in The Hague, I attended a counsel training organized by the ICC and I participated at the same time at the Ninth Seminar of Counsel organized by the ICC.
In September 2011, I participated in Tunis in my third seminar on the ICC entitled "better understanding of the ICC system".*

12. Do you have legal expertise in 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 send your completed questionnaire to judicial-elections@coalitionfortheicc.org; by fax to 1 212 599 1332; or by mail to: Coalition for the International Criminal Court, 708 Third Avenue, 24th floor, New York, NY 10017, USA

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS
*** UNOFFICIAL CICC TRANSLATION *****

Not really, except when I was a jury member for the Charles Rousseau competition on fair trial, evaluating the presentation of a complex criminal case on mass crimes.

13. The ICC is a unique institution, and judges serving on the court will inevitably face a number of unprecedented challenges (including managing a regime of victims' participation and protecting witnesses in situations of ongoing conflict). Even judges with significant prior experience managing complex criminal trials may not necessarily possess requisite skills and knowledge needed to manage these challenges.

a) Are you willing to participate in ongoing workplace training aimed at promoting legal innovation and coordination among all judicial chambers in adjudicating complex questions relating to law and policy?

Yes, of course.

b) Do you consider such training to be important?

Affirmative. Very important.

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

a) Please describe any expertise and/or experience you may have in dealing with crimes of sexual and/or gender based violence.

In my region, North Africa, before the beginning of the armed conflict in Libya, there were not these types of events, meaning that I have never faced any experience of violence against women.

b) 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?

15. Victims have a recognised right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. Please describe any experience that you have, which would be relevant to these provisions.

The procedural code allows victims, either directly or indirectly, to take civil action before ordinary tribunals to claim reparation, which is not possible before special tribunals such as military jurisdictions or juvenile courts.

16. 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

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS
*** UNOFFICIAL CICC TRANSLATION *****

Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

a) Please describe any experience you may have that would make you particularly sensitive/understanding to the participation of victims in the courtroom?

In rape cases or murder cases in which identifying the real guilty party is particularly difficult due to group fighting before the murder.

b) Do you have any experience in balancing victims' participation with the rights of the accused to due process and a fair and impartial trial? If so, please describe.

17. Have you advocated for the adoption and/or implementation of human rights or international humanitarian law treaties or other instruments?

Yes.

Please describe your experience.

I campaigned to introduce the fundamental principles stated in the Convention on the Rights of the Child into national legislation. I have also always defended the rights for women to preserve their bodily integrity against prostitution, sexual exploitation and violence.

In parallel, I defended the rights of inmates to have a prison life that preserves their dignity.

18. 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 context of your judicial activity or legal experience?

In my written or oral statements, I always referred to the [New York] Convention on the Rights of the Child, the Geneva Conventions on Protection of Civilian Persons, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Action against Trafficking in Human Beings and exploitation of prostitution, the European Convention of Human Rights, the International Covenant on Civil and Political Rights...

19. 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? If so please describe the context in which you did.

No.

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS
*** UNOFFICIAL CICC TRANSLATION *****

20. Have you ever referred to or applied the jurisprudence of the ICC, *ad hoc*, or special tribunals? If so, please describe the context.

No.

21. Have you served on the staff or board of directors of human rights or international humanitarian law organisations? Please describe your experience.

No.

22. a) Please provide us with a list of and/or links to your writings and opinions relevant to evaluating your experience.

List attached with my CV.

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

Please find some samples as it is very hard to find some old publications in such a short time.

c) Is there any other information in the public domain that would support your candidacy or provide additional evidence of your qualification as a judge at the ICC?

Other matters:

23. 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.

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

No.

25. 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, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff, Court

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS
*** UNOFFICIAL CICC TRANSLATION *****

officials and others subject to his or her direction and control to refrain from such words or conduct.

a) Do you disagree or have difficulty with this expectation?

No.

b) Please provide any relevant information regarding your ability to meet this expectation.

Any information given by a colleague, whatever position he may have, may be taken into account if it is useful.

26. 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 your taking a position on any matter independent of, and possibly contrary to, your government?

No.

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 whether an investigation by your government on a matter of which the ICC was seized was genuine?

Yes.

27. The Rome Statute requires that judges elected to the Court 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. In addition, a judge is expected to be on the bench or otherwise handle 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. It may also include working on more than one case at a time and for Pre-Trial Division and Trial Division judges, the possibility of temporary attachment to the opposite Division.

a) Do you expect to be able to serve at the commencement and for the duration of your term, if elected?

Yes.

b) Do you expect to be able to perform the judicial tasks described above on your own or with reasonable accommodation? If no, please describe the circumstances.

Yes.

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**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS
*** UNOFFICIAL CICC TRANSLATION *****

28. If there are any questions you wish were asked in this questionnaire but were not, or if there are any matters that you otherwise wish to bring to the attention of the Coalition in this questionnaire, please feel free to address them here.

Thank you for completing this questionnaire.