



**Coalition for the International Criminal Court (CICC)
Questionnaire to ICC Judicial Candidates
2009 Elections**

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

Name: Silvia A. Fernandez de Gurmendi

Nationality: Argentine

Nominating State: Argentina

List: A or B

Background:

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

I have been involved in the negotiations and set up of the Court since 1994. Now that the Court has entered into a judicial phase I hope I will be able to contribute to its success from the position of judge

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

Challenges are slightly different depending on the division. Appeals judges are specially challenged by the need to establish sound legal policies and legal strategies for the court. Pre-trial judges have a particular role to play in relation to complementarity, ensuring expeditious confirmation proceedings, effective protective measures for victims and witnesses and adequate interaction with the Office of the Prosecutor. Trial judges must ensure expeditious and fair trials without prejudice to the participation of victims and all parties.

Pre-trial and trial judges are faced with the challenge of obtaining full cooperation from States and other actors.

3. 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?

- Improving interaction between and within the organs of the Court.
- Enhancing legitimacy of situation and case selection

- Obtaining sufficient cooperation from the international community
- Administering justice impartially and effectively
- Achieving universality.

List A or B Criteria:

While this question is relevant to either list A or list B candidates, we know that some candidates have competence that would qualify for both lists. Candidates with competence in both criminal and international law should feel free to answer any question in 4 a) or 4 b) to give the reader a more complete view of their background and experience.

4 a) For candidates on list A:

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

Participated in the entire negotiating process for the establishment of the ICC. In particular, presided over the entire international drafting process of the criminal procedure of the Rome Statute and Rules of Procedure of Evidence (1994-2000). Participated on behalf of OTP in the drafting of the Regulations of the Court (2003). Professor of International Criminal Law at the University of Buenos Aires. Has published extensively on criminal proceedings before the ICC and related matters

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

Participated as lawyer in ICC- OTP as special adviser and head of the Jurisdiction, Admissibility and Cooperation Division. Duties and responsibilities included participating in the Executive Committee, which is in charge of the overall management of the Office of the Prosecutor, provides advice on policies, strategies and situation and case selection, and supervises investigative teams. Among other duties and functions I was in charge of the elaboration of legal reports on jurisdiction and admissibility of situation and cases; participated in the elaboration of legal briefs and in proceedings before the judges; recommended cooperation strategies for situations and cases; elaborated systems for the reception and follow up of communications of crimes and for obtaining cooperation and judicial assistance.

As Director General for Human Rights and Deputy Director for Human rights performs functions as counsel for the State in litigation before Interamerican Court of Human Rights and Interamerican Court of Justice, which include cases related to alleged human rights violations committed in domestic criminal proceedings

4 b) For candidates on list B:

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

Twenty year practice as a lawyer and diplomat in international law, humanitarian law and human rights. Legal adviser to the Permanent Mission of Argentina to the UN and representative to the Sixth Committee and other legal committees of the GA and Security council (1994-2000) and deputy legal adviser at the Ministry of Foreign Affairs. Currently director general for human rights and previous

deputy director general for human rights with duties and responsibilities related, i.e, to regional and international human rights bodies, transitional justice and genocide prevention.

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

See 4 a) and 4 b) above

Nomination Process:

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

I have more than 8 years as a practising lawyer as required by our Constitution.

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

In accordance with our implementing legislation of the Rome Statute I was appointed following the procedure applied for nominations of judges at the Supreme Court which requires:

- 1) Publication by the Government of the nomination proposal in two national newspapers.
- 2) Broad consultations with professional associations, academia and ngos
- 3) Period of 20 working days to allow for objections or expressions of support
- 4) Public Hearing at the Senate open to participation of ngos and the general public.
- 5) Approval by Senate by a qualified majority (2/3)

- 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, why not?**

Yes

Legal System and Language Abilities:

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

Argentina has a civil law system. Yes, I presided over the drafting of the ICC procedure which is a hybrid system that combines elements of the main legal systems.

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

Bridging gaps between legal systems, cultures and values was an essential part of my work as a diplomat and negotiator for the last 20 years, including in particular during the drafting of the ICC criminal procedure. Furthermore, a deep knowledge of the ICC system should assist in dealing with divergent views at the Court.

9 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 English. I have extensive working experience in this language.

9 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 am fluent in French and have extensive working experience in this language as well.

Expertise and Experience:

10. Please explain your qualifications for this position. What aspects of your career, experience or expertise do you consider especially relevant to the work of an ICC judge?

I consider my 14 years involvement in the ICC process and my deep knowledge and practical experience in the ICC proceedings, including in particular with relation to complementarity and cooperation, especially relevant to work as an ICC judge.

11. Do you have any specific legal expertise, including, but not limited to, violence against women or children? Enforced disappearances, right of the truth and right to identity.

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

a) What experiences have you had dealing with crimes of sexual and/or gender based violence?

I participated in the substantive jurisdiction provisions and chaired the negotiations of the procedural relevant provisions of the Statute and Rules of Procedure and Evidence (including measures during investigation and prosecution, witness protection, evidence, participation and reparation).

I am currently involved in several cases before regional and universal bodies related to sexual crimes and violence against women. Part of my current functions include recommending legal and practical measures for effective remedy and non repetition for these type of offences.

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?

See a)

c) Are there situations where you did not analyze the different impacts of a situation on women and men but on reflection now think such an analysis would have been appropriate?

I cannot think of any situations.

13. Victims have a recognized right to participate in ICC proceedings and to apply for reparations under Article 75. What experience relevant to these provisions do you have?

I chaired the negotiations on victims participation and reparations under the Statute and the Rules of Procedure and Evidence . I also chaired the Paris Seminar on Victims that led to most of the provisions now contemplated in the Rome Statute and complementary instruments

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

This has been and essential part of my entire diplomatic career. I have helped through negotiations, participation in international campaigns in favour of certain treaties (including the Rome Statute) and the introduction of resolutions and declarations in multilateral fora (including most recently draft resolutions on Right to the Truth and Genetics and Human Rights before the Human Rights Council and the OAS).

I have also advocated domestically for the ratification and implementation of human rights and international humanitarian law treaties. I am a member of the national commission for the promotion of humanitarian law and I have drafted implementing legislation of the Rome Statute.

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

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

- "The Legal Status of UN Peacekeepers in the Field: Security and Safety/Criminal and Disciplinary Law", *Contemporary International Law Issues: Conflicts and Convergence*, 1995 Joint Conference of the American Society of International Law/Nederlandse Vereniging voor International Recht, TMC. Asser Instituut, The Hague, The Netherlands.
- "Elementos para el establecimiento de una corte penal internacional eficaz e independiente", *Revista del Instituto Interamericano de Derechos Humanos*, Costa Rica, Nr. 23, enero-junio 1996.
- "The Role of the Prosecutor", en Roy S. Lee (ed.), *The International Criminal Court, The Making of the Rome Statute, Issues, Negotiations, Results*, Kluwer Law International, The Hague/London/Boston, 1999.
- "The Criminal Procedures - The Negotiating Process", Roy S. Lee (ed) *The International Criminal Court, The Making of the Rome Statute, Issues, Negotiations, Results*, Kluwer Law International, The Hague/London/Boston, 1999.
- "Iniciativas de las Naciones Unidas para combatir el terrorismo internacional", *Revista del Instituto de Relaciones Internacionales*, Universidad de la Plata, Año 9, Nr. 17, Junio Noviembre 1999.
- "La creación de la Corte Penal Internacional", *Revista del Instituto de Relaciones Internacionales*, La Plata, Año 9, Nr. 19, Junio-Noviembre 2000.

- "La Corte Penal Internacional", en CICR, *Adaptación de la Legislación Interna para la sanción de las infracciones contra el derecho internacional humanitario*, Informe de la Reunión de Expertos de Países Iberoamericanos, Madrid, 10-12 de marzo de 1999, Madrid/Bogotá 2000.
- *The Elements of Crimes and the Rules of Procedure and Evidence of the International Criminal Court*, R.Lee (ed), associated editor with H. Friman, H. von Hebbel y D. Robinson, Transnational Publishers Inc, N.York, 2001
- "The Elaboration of the Rules of Procedure and Evidence", *The Elements of Crimes and the Rules of Procedure and Evidence of the International Criminal Court*, Transnational Publishers Inc, N.York, 2001
- "Definition of Victims and General Principle", *The Elements of Crimes and the Rules of Procedure and Evidence of the International Criminal Court*, Transnational Publishers Inc, N.York, 2001
- "The Rules of Procedure and Evidence", *European Conference on the Rome Statute of the International Criminal Court*, NPWJ, Roma, 2001.
- "The Role of the Prosecutor", *The Rome Statute of the International Criminal Court, a Challenge to impunity*, M. Politi and G. Nessi (eds) Ashgate-Dartmouth, Alderhshot/Burlington, USA/Singapore/Sidney, 2001
- "The Rules of Procedure and Evidence of the International Criminal Court" (with H. Friman), *Yearbook of International Humanitarian Law*, Instituut Asser, The Hague, 2001
- "El acceso de las víctimas a la Corte Penal Internacional", *La Corte Penal Internacional*, La Casa de las Américas, Madrid, 2002
- "The Working Group on Aggression of the Preparatory Commission for the International Criminal Court" in *Fordham International Law Journal, (Twenty-Fifth Memorial Issue. The Eve of the International Criminal Court: Preparations and Commentary)*, March 2002.
- "El Estatuto de Roma de la Corte Penal Internacional: Extensión de los crímenes de guerra a los conflictos armados de carácter o internacional y otros desarrollos relativos al derecho internacional humanitario", *Revista Lecciones y Ensayos*, Argentina, 2004 .
- "The International Criminal Court and the Crime of Aggression: From the Preparatory Commission to the Assembly of States Parties and Beyond: An insider's view", M. Politi and G. Nessi (eds), *The International Criminal Court and the Crime of Aggression*, Ashgate, 2004
- "National Report (Argentina), The Rome Statute and Domestic Legal Orders", Claus Kress, Bruce Broomhall, Flavia Lattanzi, Valeria Santori (eds). *Constitutional Issues, Cooperation and Enforcement*, Volume II, Nomos Verlagsgesellschaft, Baden-Baden, 2004

“Rules of Procedure and Evidence and Regulations of the International Criminal Court” (with Hakan Friman), José Doria, Hans-Peter Gasser Cherif Bassiouni (eds), *The Legal Regime of the International Criminal Court, Essays in Honour of Professor Igor Blischchenko*, Martinus Nijhoff Publishers, 2009

16 b) Please provide us with an electronic copy of any writing or opinion describing your experience.

I am sorry but I have not kept any publication in electronic form.

Other matters:

17. 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

18. 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. NEVER

19. It is expected that a judge shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon 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.

a) Do you disagree or have difficulty with this expectation? I agree fully.

b) How will you be able to meet this expectation? By my personal conduct and oversight of staff

20. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions. Members of the CICC and governments are concerned about the difficulties judges might experience in interpreting articles of the Rome Statute where their government has already expressed an opinion.

a) Do you expect difficulties in your taking an independent position?

Not at all. My nomination is put forward by the state and not by a particular government.

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

Of course. See above.

21. 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. 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

22. 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.