

Resolution ICC-ASP/18/Res.4

Adopted at the 9th plenary meeting, on 6 December 2019, by consensus

ICC-ASP/18/Res.4

Resolution on the review of the procedure for the nomination and election of judges

The Assembly of States Parties,

Bearing in mind the provisions of the Rome Statute of the International Criminal Court (“the Court”),

Emphasizing that the Court is a permanent international criminal court with the power to exercise its jurisdiction under the Rome Statute over persons for the most serious crimes of concern to the international community as a whole, and as such it must ensure that it maintains the highest standards in its proceedings,

Welcoming the contribution the Court has made to accountability and lasting respect for international justice, and determined to continue efforts to strengthen the Court and assist the effective exercise of its mandate,

Recalling that in its resolution ICC-ASP/1/Res.3 the Assembly agreed that it would review the procedure for the election of judges on the occasion of future elections with a view to making any improvements as may be necessary,

Affirming that it is the responsibility of States Parties to nominate and elect judicial candidates in accordance with article 36 of the Rome Statute,

Recognizing the need to amend the terms of reference for the establishment of an Advisory Committee on Nominations of Judges of the International Criminal Court in accordance with article 36 of the Rome Statute,

Emphasizing the importance of equitable geographical representation and gender balance in the organs of the Court,

1. *Stresses* the importance of nominating and electing as judges qualified, competent and experienced persons of the highest quality and of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices, in accordance with article 36 of the Rome Statute, and *decides* to strengthen the Advisory Committee on Nominations of Judges, so that it can further assist States Parties to that end;
2. *Reaffirms* the need for States Parties to assess the competencies of candidates in accordance with article 36, paragraph 3, of the Rome Statute;
3. *Requests* the Advisory Committee on Nominations of Judges to provide information and analysis to States Parties on assessing the qualities of candidates in accordance with article 36(3)(b), in advance of the nineteenth session of the Assembly;
4. *Recalls* that, under article 36(4)(a) of the Statute, nominations of candidates for election to the Court may be made by any State Party to the Statute, and shall be made either by the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question, or by the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court, and in this regard, *stresses* the need for States Parties to be consistent with their obligations under the Rome Statute;
5. *Encourages* States Parties to also take into account good practices at the national and international levels when conducting their national procedures for the nomination of candidates to the Court;
6. *Encourages* States Parties to submit information and commentary on their own existing or prospective nomination and selection procedures to the Secretariat of the Assembly, *requests* the Secretariat to make those submissions available to the Advisory

Committee on Nominations of Judges, and *also requests* the Secretariat to make those submissions publicly available where the submitting State Party has not objected to this;

7. *Requests* the Advisory Committee on Nominations of Judges, in consultation with States and other relevant stakeholders, to prepare and present at the earliest possible date, but no later than the twentieth session of the Assembly of States Parties, a compendium of submissions from States Parties, and to prepare a reference document for States Parties to use on an optional basis, which includes practices that could be taken into account when States Parties are establishing or utilizing national nomination procedures;

8. *Notes with appreciation* the work of the Advisory Committee on Nominations of Judges, and *recalls* that information and analysis presented by the Committee is to inform the decision-making of States Parties and enhance their evaluation of candidates, and is not in any way binding on them or on the Assembly of States Parties;

9. *Recalls* that States Parties should exercise their votes in accordance with article 36;

10. *Encourages* States Parties to refrain from the trading of votes;

11. *Encourages* candidates to deepen their knowledge of the Rome Statute and *welcomes* efforts undertaken by candidates, including relevant training, as appropriate; and

12. *Decides* to adopt the amendments to the procedure for the nomination and election of judges, and the amendments to the Terms of Reference of the Advisory Committee on Nominations of Judges, contained in annexes I and II, respectively, to the present resolution.

Annex I

Amendments to resolution ICC-ASP/3/Res.6 regarding the procedure for the nomination and election of judges

A. Paragraph 3

Delete the phrase “shall open 32 weeks before the elections” and insert additional text so that it reads: “The nomination period shall open on the first Monday of the calendar year when an election should take place, and shall last 12 weeks. Any extension of the nomination period shall take into account the need for the Advisory Committee on Nominations of Judges to produce its report at least 16 weeks before the elections.”

B. Insert the following as a new paragraph 6 (f)

Indicating whether the nomination is made under article 36, paragraph 4(a)(i) or paragraph 4(a)(ii), and specifying in the necessary detail the elements of that procedure.

C. Insert the following as a new paragraph 12 *bis*

All nominated candidates shall be available for interviews, including by videoconference or similar means, before the Advisory Committee on Nominations of Judges. Nominating States should endeavor to ensure that candidates make themselves available for interviews before the Advisory Committee on Nominations of Judges.

D. Insert the following as a new paragraph 12 *ter*

Once the Advisory Committee on Nominations of Judges has made its assessments of candidates, and as early as possible prior to elections, the Bureau will facilitate public roundtable discussions to be held with all candidates. The roundtable discussions shall be open to States Parties and other relevant stakeholders, and conducted in both working languages of the Court. Candidates shall participate in either of the working languages of the Court and may participate by videoconference. The roundtable discussions shall be recorded on video to be made available on the website of the Assembly of States Parties. The remaining modalities for the roundtable discussions will be determined by the New York Working Group.

Annex II

Amendments to the Terms of Reference of the Advisory Committee on Nominations of Judges, contained in the annex to document ICC-ASP/10/36¹

A. Paragraph 3

At the end of paragraph 3 insert: “any member who is a national of a State Party shall not participate in the assessment of candidates nominated by that State Party”

B. Insert the following as a new paragraph 5 bis

To that effect, the Committee shall:

(a) develop a common questionnaire for all nominees that asks them to explain: i) their experience in managing complex criminal proceedings; ii) their experience in public international law; iii) specific experience in gender and children matters; iv) track record of impartiality and integrity; and v) fluency in one of the working languages of the Court; and provide all nominees the option to make their answers to the questionnaire public;

(b) ask nominees to demonstrate their legal knowledge by presenting relevant evidence;

(c) check candidates’ references and any other information publicly available;

(d) create a standard declaration for all candidates to sign that clarifies whether they are aware of any allegations of misconduct, including sexual harassment, made against them;

(e) assess practical skills such as the ability to work collegially; knowledge of different legal systems; and exposure to and understanding of regional and sub-regional political, social, and cultural environments;

(f) document the national-level nomination processes in the nominating State Parties; and

(g) report on the above aspects.

C. Insert the following as a new paragraph 8 bis

The Committee shall also, upon request by a State Party, provide a confidential, provisional assessment of the suitability of a potential candidate of that State Party. Such a provisional assessment shall be based solely on information submitted to the Committee by the State Party concerned, and shall not require the Committee to communicate with the potential candidate. A request for a provisional assessment of a potential candidate shall be without prejudice to the decision of the State Party to nominate or not nominate that potential candidate. Any provisional assessment shall also be without prejudice to the evaluation of that individual by the Committee, should they be nominated by a State Party. The number of Committee members responsible for conducting a provisional assessment of a potential candidate shall be limited to three. In the case of a candidate being nominated by a State Party after a provisional assessment, the Committee members that conducted the provisional assessment of the candidate shall recuse themselves from the formal evaluation of that candidate.

¹ Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court.

D. Insert the following as a new paragraph 10 bis

Once the Committee has completed its work, it shall prepare a thorough and detailed report, of a technical character, that will include for each candidate:

- (a) information collected in accordance with paragraph 5 bis;
- (b) qualitative evaluation, information, and analysis, strictly on the suitability or unsuitability of each candidate for a judicial role in light of the requirements of article 36, including detailed reasons for the Committee's evaluation; and
- (c) indication of the national nomination procedure used, including if it was followed in each specific case.

E. Insert as a new paragraph 10 ter

The Committee may request States to provide further information about candidates that it requires to consider and evaluate the candidate's suitability as a judicial appointee.

F. Amend paragraph 11

The report of the Committee shall be made available to States Parties and observers by submission to the Bureau, at least 16 weeks before the elections, for thorough subsequent consideration by the Assembly of States Parties.
