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Report to the Bureau on the review of the procedure for the nomination and election of judges

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I. Background

1. This report is submitted pursuant to the mandate given to the facilitation of the New York Working Group of the Bureau (“Working Group”) on the review of the procedure for the nomination and election of judges based on resolution ICC-ASP/18/Res.6, in which the Assembly of States Parties (“Assembly”) decided “to continue to review the procedure for the nomination and election of judges as set forth in resolution ICC-ASP/3/Res.6 as amended, with a view to making any improvements as may be necessary, taking into account the work conducted so far as reflected in the facilitator’s report” and requested “the Bureau to update the Assembly, at its nineteenth session, on the progress of the review of the procedure for the nomination and election of judges”.¹
2. On 6 February 2020, the Bureau appointed via a silence procedure Ms. María Beretta (Uruguay) and Mr. Luke Roughton (New Zealand) as the co-facilitators for the review of the procedure for the nomination and election of judges.²
3. The Working Group held one intersessional meeting to exchange views on the proposed modalities for the public roundtables for judicial candidates, on 27 July. To mitigate the impact of the COVID-19 pandemic, the meeting was convened virtually via the Court’s WebEx platform. The Working Group adopted the current report via a silence procedure.
4. The Working Group received comments from States Parties, Observer States and civil society organizations by 8 May on the proposed modalities for the public roundtables for judicial candidates that had been submitted by the co-facilitators on 21 April. Based on the co-facilitators’ revised proposal dated 21 July accommodating the comments received, the first meeting of the Working Group was convened on 27 July with the aim of discussing and finalizing the modalities. Through the meeting and further consultations and the reflection of their outcome in the final draft by the co-facilitators, the Working Group adopted the modalities for the public roundtables on 7 August via a silence procedure, which the Bureau approved at its seventh meeting, held on 11 September.
5. Under the approved modalities, the public roundtables were held on 3 to 6 November with 19 judicial candidates who had been nominated by States Parties in accordance with the Rome Statute and relevant rules adopted by the Assembly.

II. Discussions in the New York Working Group

6. At the meeting of the Working Group, held on 27 July 2020, delegations discussed the modalities of the public roundtables for judicial candidates based on the proposal put forwarded and revised by the co-facilitators in consideration of the comments that they had received from States Parties, Observers and civil society organizations.
7. Regarding the timing of the public roundtables, the majority of delegations expressed their preference for the roundtables to be held in October, as soon as the report of the Advisory Committee on nominations of judges of the International Criminal Court was issued, given the extension of the deadline from 15 August to 30 September for that report, in light of the challenges imposed by the COVID-19 pandemic. Some delegations expressed the need for time for the report of the Committee to be reviewed by capitals before the roundtables were held, for example 15 working days after the issuance of the report, and to allow the preparation of questions by moderators. A view was expressed that the roundtables should be convened as early as possible in early September, given the shortage of time left in connection with the process of elections. Some other delegations were flexible on the question of timing, while placing value on an early date. One delegation suggested a possibility of strengthening the report of the Committee by having the roundtables in advance of its issuance.
8. Regarding the venue of the roundtables, delegations agreed that they would be held virtually, considering the restrictions on in-person meetings under the COVID-19 pandemic, while being aware of the importance of having in-person roundtables in the future to properly

¹ ICC-ASP/18/Res.6, annex I, paras. 6(a) and 6(b).

² Decision of the Bureau of the Assembly of States Parties, 7 February 2019, available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-2019-Bureau-1-b.pdf.

assess the candidates. Some delegations stressed the provision of simultaneous interpretation and a delegation further noted that at least one moderator should be fluent in French and could ask questions in French.

9. Regarding the moderation of the roundtables, some delegations preferred that the moderators be chosen among Bureau members. The majority of delegations supported the idea that moderation should include civil society representation. A view was expressed that for the equal treatment of candidates, the same moderators should preside over all sessions.

10. Regarding the format of the roundtables, delegations underscored the importance of equal opportunity to all candidates in terms of the allocation of time to each candidate and the methodology of posing questions in the sessions of the roundtables. Some delegations stated that geographical representation and gender balance were important in considering the composition of candidates in each session. Another delegation asked how to achieve the goal of random distribution in dividing candidates into sessions.

11. Regarding questions to be posed to candidates during the roundtables, delegations discussed the ways to prepare and arrange questions, including whether or not questions could be shared with candidates in advance of the roundtables, and to what extent. As in discussions about the format of the roundtables, delegations requested that a methodology guaranteeing equal treatment of all candidates in posing questions within a particular session and between sessions be applied, including by rotating or changing the order in which questions were delivered to candidates and by levelling questions or making variations to them. Some delegations emphasized that only general questions could be allowed because the questions directed to a particular candidate might hamper the principle of equal treatment. A delegation suggested that questions should be asked without attribution. Delegations supported the idea that all the questions collected should be published after the conclusion of the roundtables. Some delegations proposed that the duplication of questions, including those questions already asked by the Advisory Committee on nominations of judges, should be avoided. A view was expressed that priority should be given to the questions raised by States Parties both in the process of advance collection and during the roundtables.

12. The co-facilitators suggested as a way forward that they would conduct further consultations and propose the final version of the modalities for the public roundtables for judicial candidates.

13. The co-facilitators also solicited views or comments on the possible topics to be dealt with further by the Working Group during 2020. In response, a delegation stated that due to challenges posed by the COVID-19 pandemic, it would be desirable to get back to any remaining topics in 2021. No delegation opposed this view. The delegation of Belgium stated that the proposal it had previously made, most recently in 2019, was still on the table for discussions when ready. The co-facilitators noted that all the outstanding issues previously intended to be discussed in 2020 would remain on the table.

14. At the conclusion of the 27 July meeting, the co-facilitators conducted further informal consultations and placed under a silence procedure the final version of the modalities that reflected the outcome of the first meeting and the informal consultations. The modalities were adopted by the Working Group on 7 August 2020. The adopted modalities for the public roundtables for judicial candidates were approved by the Bureau in its seventh meeting, held on 11 September.

III. Conclusions and recommendations

15. The Working Group recommends that meetings be held throughout 2021, including, if necessary, to discuss the issues involving the implementation of resolution ICC-ASP/18/Res.4, further discuss the remaining issues that could not be dealt with during the intersessional period covered by the current report and the report of 2019,³ and to report thereon to the twentieth session of the Assembly in 2021.

16. The Working Group concludes its intersessional work by recommending to the Assembly the inclusion of the language in the omnibus resolution (annex I).

³ ICC-ASP/18/31.

Annex

Draft text for the omnibus resolution

1. Paragraph 6 of annex I (Mandates) of the 2019 omnibus resolution (ICC-ASP/18/Res.6) is replaced by the following:

“(a) *decides* to continue to review the procedure for the nomination and election of judges as set forth in resolution ICC-ASP/3/Res.6, as amended, with a view to making any improvements as may be necessary, taking into account the work conducted so far as reflected in the facilitator’s report;¹ and

“(b) *requests* the Bureau to update the Assembly, at its twentieth session, on the progress of the review of the procedure for the nomination and election of judges;”

¹ Report to the Bureau on the review of the procedure for the nomination and election of judges (ICC-ASP/19/XX),