



Reference: ICC-ASP/20/SP/37

The Secretariat of the Assembly of States Parties presents its compliments to States Parties and has the honour to refer to the decision of the Bureau of the Assembly of States Parties, taken at its third meeting, on 12 May 2021, regarding the election of members of the Advisory Committee on Nominations of Judges, which will take place at the twentieth session of the Assembly, on the basis of a recommendation of the Bureau.

The Bureau decided to fix the nomination period, which would run for 12 weeks, from 7 June to 29 August 2021 (Central European Time). Nominations received by the Secretariat before or after the nomination period shall not be considered.

Nominating States are requested to include a statement as to how candidates fulfil the criteria established in the terms of reference of the Advisory Committee (annex I).

Article 36, paragraph 4 (c), of the Rome Statute provides as follows:

“(c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee’s composition and mandate shall be established by the Assembly of States Parties.”

Resolution ICC-ASP/10/Res.5, entitled “Strengthening the International Criminal Court and the Assembly of States Parties” provides as follows:

“19. Welcomes the report, adopted by the Bureau pursuant to paragraph 25 of resolution ICC-ASP/9/Res.3¹, decides to adopt the recommendations contained therein, and requests the Bureau to start the process of preparing the election, by the Assembly of States Parties, of the members of the Advisory Committee on nominations of judges of the International Criminal Court in accordance with the terms of reference annexed to the report;”

Regarding the composition of the Committee, the terms of reference² provide as follows:

“A. Composition

1. The Committee should be composed of nine members, nationals of States Parties, designated by the Assembly of States Parties by consensus on recommendation made by the Bureau of the Assembly also made by consensus, reflecting the principal legal systems of the world and an equitable geographical representation, as well as a fair representation of both genders, based on the number of States Parties to the Rome Statute.
2. Members of the Committee should be drawn from eminent interested and willing persons of a high moral character, who have established competence and experience in criminal or international law.
3. Members of the Committee would not be the representatives of States or other organizations. They would serve in their personal capacity, and would not take instructions

¹ Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court (ICC-ASP/10/36).

² Ibid., annex, as amended by resolutions ICC-ASP/13/Res.5, annex III, and ICC-ASP/18/Res.4, annex II.

from States Parties, States or any other organizations or persons. Any member who is a national of a State Party shall not participate in the assessment of candidates nominated by that State Party.³

4. The Committee will designate a coordinator to chair its meetings and organize its work.”

In the report of the Advisory Committee on Nominations of Judges on the work of its sixth meeting,⁴ the Committee made the following recommendation concerning its future composition:

“The Committee recalled that in accordance with its terms of reference, its members would normally be designated for three year terms, with the possibility of being re-elected only once and that the same terms of reference sought “to stagger membership and provide continuity”. Bearing this in mind, along with the fact that several of the members could not be nominated for re-election in 2018, the Committee requests States Parties to consider nominating and re-electing members that can provide that continuity and thus contribute to the future work of the Committee through the *acquis* accumulated so far.”

In the report on the work of its sixth meeting, the Committee also made the following recommendation concerning fair representation of both genders, which was subsequently included as paragraph 70 of resolution ICC-ASP/16/Res.6, entitled “Strengthening the International Criminal Court and the Assembly of States Parties”:

“70. *Recalling* the terms of reference of the Advisory Committee on Nominations of Judges of the International Criminal Court adopted by the Assembly via resolution ICC-ASP/10/Res.5, para. 19, *requests* States Parties which may be considering nominations of their nationals as members of the Advisory Committee to bear in mind that the composition of the Committee should reflect, *inter alia*, ‘a fair representation of both genders’.”

Nominations shall be communicated through the diplomatic channel to the Secretariat of the Assembly of States Parties, International Criminal Court, Oude Waalsdorperweg 10, 2597 AK The Hague, The Netherlands (or via fax to +31 70 515 8376 or via e-mail to asp@icc-cpi.int). If feasible, the Secretariat would appreciate receiving an electronic copy of the nomination and supporting documents.

The Hague, 20 May 2021

³ As amended by resolution ICC-ASP/18/Res.4, annex II.

⁴ ICC-ASP/16/7, annex II.

Annex I

Terms of reference of the Advisory Committee on nominations of judges of the International Criminal Court¹

A. Composition

1. The Committee should be composed of nine members, nationals of States Parties, designated by the Assembly of States Parties by consensus on recommendation made by the Bureau of the Assembly also made by consensus, reflecting the principal legal systems of the world and an equitable geographical representation, as well as a fair representation of both genders, based on the number of States Parties to the Rome Statute.
2. Members of the Committee should be drawn from eminent interested and willing persons of a high moral character, who have established competence and experience in criminal or international law.
3. Members of the Committee would not be the representatives of States or other organizations. They would serve in their personal capacity, and would not take instructions from States Parties, States or any other organizations or persons. Any member who is a national of a State Party shall not participate in the assessment of candidates nominated by that State Party.²
4. The Committee will designate a coordinator to chair its meetings and organize its work.

B. Mandate

5. The Committee is mandated to facilitate that the highest-qualified individuals are appointed as judges of the International Criminal Court.
 - 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

¹ These Terms of Reference were originally adopted by the Assembly of States Parties via resolution ICC-ASP/10/Res.5, para. 19, and subsequently amended by resolutions ICC-ASP/13/Res.5, annex III, and ICC-ASP/18/Res.4, annex II. Amendments are reflected via footnotes.

² As amended by resolution ICC-ASP/18/Res.4, annex II.

(a) report on the above aspects.³

6. Committee members would normally be designated for three year terms, with the possibility of being re-elected only once. Four of the first members designated shall be asked to serve only for one three year term, so as to stagger membership and provide continuity. In the event of a vacancy, an election shall be held in accordance with the procedure for the nomination and election of members of the Advisory Committee on Nominations. The procedure shall apply *mutatis mutandis*, subject to the following provisions:

- (a) The Bureau of the Assembly of States Parties may fix a nomination period which is shorter than the one used for other elections;
- (b) The Bureau of the Assembly of States Parties may elect the member; and
- (c) A member elected to fill a vacancy shall serve for the remainder of the predecessor's term and may be re-elected.⁴

6 *bis*. For a period of three years after the end of the mandate or after the resignation of a member of the Committee, that person shall not be nominated as a candidate for election to the Court.⁵

7. The work of the Committee is based on the applicable provisions of the Rome Statute and its assessment of the candidates will be based strictly on the requirements of article 36, paragraphs (3) (a), (b) and (c).

C. Working methods

8. The Committee will convene in person, by correspondence, or via remote links, once candidates have been nominated by States. The members of the Committee shall ensure the confidentiality of all communications during the process.

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.⁶

9. The Committee may proceed to communicate with all candidates, including by interviewing, both orally and in writing, with regard to their qualification in accordance with the Rome Statute.

10. The evaluation procedure of the Committee shall be transparent. To that purpose, the Committee shall regularly and in detail brief the Bureau on its activities. The States Parties to the Rome Statute would be kept informed through the reporting procedures of the Bureau, and by briefings to the New York and The Hague Working Groups.

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:

³ Ibid.

⁴ As amended by resolution ICC-ASP/13/Res.5, annex III.

⁵ Ibid.

⁶ As amended by resolution ICC-ASP/18/Res.4, annex II.

- (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.⁷

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.⁸

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.⁹

12. Information and analysis presented by the Committee is to inform the decision-making of States Parties and is not in any way binding on them or on the Assembly of States Parties.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

Annex II

List of Advisory Committee on Nominations members elected at the seventeenth session of the Assembly

- (a) Mr. Ahmad Mohammad Binhamad Barrak (State of Palestine);
- (b) Mr. Corneliu Bîrsan (Romania);
- (c) Mr. Bruno Cotte (France);**
- (d) Mr. Adrian Fulford (United Kingdom);**
- (e) Ms. Lucy Muthoni Kambuni (Kenya);
- (f) Ms. Sanji Mmasenono Monageng (Botswana);
- (g) Mr. Enrique Eduardo Rodríguez Veltzé (Plurinational State of Bolivia); and
- (h) Mr. Sang-Hyun Song (Republic of Korea)*
- (i) Ms. Sylvia Helena De Figueiredo Steiner (Brazil).

The terms of the members run until 5 December 2021.

The Committee members would normally be designated for three-year terms, with the possibility of being re-elected only once.

* Appointed at the eighteenth session.

** Having been a member for two terms, this member cannot be re-elected.
