

REFERENCE: ICC-ASP/4/S/4

The Secretariat of the Assembly of States Parties presents its compliments to the Embassy of and has the honour to refer to the decision of the Bureau of the Assembly of States Parties to the Rome Statute of the International Criminal Court, taken on 23 February 2005, to open the nomination period for the election of six judges of the International Criminal Court, from 18 July to 9 October 2005, in accordance with article 36 of the Rome Statute of the International Criminal Court and resolution ICC-ASP/3/Res.6 of the Assembly of States Parties relating to the procedure for the nomination and election of judges (see Annex I and its two appendices, attached), adopted by the Assembly of States Parties on 10 September 2004. In accordance with paragraph 13 of the resolution on the procedure for the nomination and election of judges (see Annex I), the nomination period for the election of the judges of the International Criminal Court shall, subject to its paragraphs 11 and 12, close on 9 October 2005.

Governments are requested to take into account paragraphs 3, 4 and 8 of article 36 of the Rome Statute, which provide as follows:

“3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(b) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

- (ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. ”

“4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

- (i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or
- (ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.

(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. ”

“8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:

- (i) The representation of the principal legal systems of the world;
- (ii) Equitable geographical representation; and
- (iii) A fair representation of female and male judges.

(b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.”

Governments are further requested to take into account paragraph 7 of the resolution on the procedure for the nomination and election of judges (see Annex I), which provides as follows:

“7. States that have started the process of ratification, acceptance or approval of or accession to the Statute may nominate candidates for the elections of judges of the International Criminal Court. Such nominations shall remain provisional and shall not be included in the list of candidates unless the State concerned has deposited its instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations before the end of the nomination period and provided that that State is a party to the Statute in accordance with article 126, paragraph 2, of the Statute on the date of the election.”

In addition, in accordance with paragraph 6 of the resolution on nomination and election of judges (see Annex I), each nomination should be accompanied by a statement:

(a) Specifying in the necessary detail how the candidate fulfils each of the requirements in article 36, paragraph 3(a), (b) and (c), of the Statute, in accordance with article 36, paragraph 4(a), of the Statute;

(b) Indicating whether the candidate is being nominated for inclusion in list A or list B for the purposes of article 36, paragraph 5, of the Statute;

(c) Containing information relating to article 36, paragraph 8(a)(i) to (iii), of the Statute;

(d) Indicating whether the candidate has any expertise under article 36, paragraph 8(b), of the Statute;

(e) Indicating under which nationality the candidate is being nominated for the purposes of article 36, paragraph 7, of the Statute, where a candidate is a national of two or more States.

In accordance with paragraph 2 of the resolution on the procedure for the nomination and election of judges, the Secretariat of the Assembly of States Parties has included specific information regarding the application of all minimum voting requirements in the elections (see Annex II, attached).

Nominations should be communicated through the diplomatic channel to the Director, Secretariat of the Assembly of States Parties, Room C-0690, Maanweg 174, 2516 AB The Hague, The Netherlands (or also to fax 31-70-515-8376 or via e-mail to asp@asp.icc-cpi.int). If feasible, the Secretariat would also appreciate receiving digital versions of the nominations, as well as of their accompanying statements and other supporting documentation.

Such nominations and the accompanying statements referred to in article 36 of the Statute as well as other supporting documentation, shall, in accordance with paragraph 8 of the aforementioned resolution (see Annex I), be placed on the Internet website of the Court (<http://www.icc-cpi.int>) in any of the official languages of the Court, as soon as possible after receiving them.

In accordance with paragraph 9 of the same resolution (see Annex I), a list of all persons nominated, in English alphabetical order, together with accompanying documents, will be circulated through the diplomatic channel after the nomination period closes.

The Secretariat of the Assembly of States Parties avails itself of this opportunity to renew to the Embassy of the assurances of its highest consideration.

The Hague, 18 April 2005

Annex I

Resolution ICC-ASP/3/Res.6

Adopted at the 6th plenary meeting, on 10 September 2004, by consensus

ICC-ASP/3/Res.6

Procedure for the nomination and election of judges of the International Criminal Court

The Assembly of States Parties,

Bearing in mind the provisions of the Rome Statute of the International Criminal Court,

Mindful of the Rules of Procedure of the Assembly of States Parties,

Convinced of the need to fully implement the provisions of article 36 of the Rome Statute,

Noting that in its resolution ICC-ASP/1/Res.3 the Assembly of States Parties 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,

Approves the following procedure for the nomination and election of judges of the International Criminal Court, replacing resolution ICC-ASP/1/Res.3 and parts A, B and C of resolution ICC-ASP/1/Res.2:

A. Nomination of candidates for judges

1. The Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel the invitations for nominations of judges of the International Criminal Court.

2. The invitations for nominations of judges will include the text of article 36, paragraphs 3, 4 and 8, of the Statute, the present resolution as well as specific information regarding the application of all minimum voting requirements in the elections.

3. The nomination period shall open 26 weeks before the elections and shall last 12 weeks.

4. Nominations submitted before or after the nomination period shall not be considered.

5. States Parties to the Statute shall communicate nominations for the election of judges of the International Criminal Court through the diplomatic channel to the Secretariat of the Assembly of States Parties.

6. Every nomination should be accompanied by a statement:

- (a) Specifying in the necessary detail how the candidate fulfils each of the requirements in article 36, paragraph 3(a), (b) and (c), of the Statute, in accordance with article 36, paragraph 4(a), of the Statute;
- (b) Indicating whether the candidate is being nominated for inclusion in list A or list B for the purposes of article 36, paragraph 5, of the Statute;
- (c) Containing information relating to article 36, paragraph 8(a)(i) to (iii), of the Statute;

- (d) Indicating whether the candidate has any expertise under article 36, paragraph 8(b), of the Statute;
- (e) Indicating under which nationality the candidate is being nominated for the purposes of article 36, paragraph 7, of the Statute, where a candidate is a national of two or more States.

7. States that have started the process of ratification, acceptance or approval of or accession to the Statute may nominate candidates for the elections of judges of the International Criminal Court. Such nominations shall remain provisional and shall not be included in the list of candidates unless the State concerned has deposited its instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations before the end of the nomination period and provided that that State is a party to the Statute in accordance with article 126, paragraph 2, of the Statute on the date of the election.

8. The Secretariat of the Assembly of States Parties shall place the nominations of candidates for judges, the accompanying statements referred to in article 36 of the Statute and other supporting documentation on the Internet web site of the International Criminal Court, in any of the official languages of the Court, as soon as possible after receiving them.

9. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it through the diplomatic channel.

10. Six weeks after the opening of the nomination period, the President of the Assembly of States Parties shall inform all States Parties through diplomatic channels and through specific information on the web site of the International Criminal Court on the number of candidates nominated with respect to each minimum voting requirement.

11. The President of the Assembly of States Parties shall extend the nomination period for two weeks, but no more than three times, if at the end of the nomination period any regional or gender minimum voting requirement¹ is not matched with at least twice the number of candidates fulfilling that requirement.

12. The President of the Assembly of States Parties shall extend the nomination period for two weeks at a time, if at the end of the nomination period the number of candidates remains less than the number of seats, or the number of candidates from list A or B remains less than the respective minimum voting requirement.

B. Election of judges

13. The Bureau of the Assembly of States Parties shall fix the date of the election.

14. The Secretariat of the Assembly of States Parties shall prepare, in accordance with article 36, paragraph 5, of the Statute, two lists of candidates in English alphabetical order.

15. The election of judges shall be a matter of substance, and subject to the requirements of article 112, paragraph 7(a), of the Statute.

16. The persons elected to the Court shall be the 6 candidates who obtain the highest number of votes and a two-thirds majority of States Parties present and voting, provided that an absolute majority of the States Parties constitutes the quorum for voting.

¹ To be calculated in accordance with paragraph 20(b), second sentence, and paragraph 20(c), second sentence, only.

17. When two or more candidates of the same nationality obtain the required majority, the candidate who receives the higher number of votes shall be considered elected.

18. No more than 13 candidates from list A and no more than 9 candidates from list B shall be considered elected, taking into account the number of judges remaining in office.

19. States Parties shall, in the election of judges, take into account the need for the representation of the principal legal systems of the world, equitable geographical representation and a fair representation of female and male judges. They shall take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women and children.

20. During any given ballot, each State Party shall vote for no more candidates than seats to be filled, whereby it shall observe the minimum voting requirements regarding lists A and B, regional groups and gender. At the outset of each ballot, each minimum voting requirement shall be determined or discontinued in accordance with paragraphs 21 and 22.

- (a) Each State Party shall vote for a minimum number of candidates from lists A and B. For list A, this number shall be 9 minus the number of judges from list A remaining in office or elected in previous ballots. For list B, this number shall be 5 minus the number of judges from list B remaining in office or elected in previous ballots.
- (b) Each Party shall vote for a minimum number of candidates from each regional group. This number shall be 2 minus the number of judges from that regional group remaining in office or elected in previous ballots.

If the number of States Parties of any given regional group is higher than 16 at that moment, the minimum voting requirement for that group shall be adjusted by adding 1.

If the number of candidates from a regional group is not at least double the respective minimum voting requirement, the minimum voting requirement shall be half the number of candidates from that regional group (rounded up to the nearest whole number where applicable). If there is only one candidate from a regional group, there shall be no minimum voting requirement for that group.

- (c) Each State Party shall vote for a minimum number of candidates of each gender. This number shall be 6 minus the number of judges of that gender remaining in office or elected in previous ballots. However, if the number of candidates of one gender is 10 or less, the minimum voting requirement for that gender shall be adjusted in accordance with the following formula:

<i>Number of candidates</i>	<i>Minimum voting requirement shall not exceed:</i>
10	6
9	6
8	5
7	5
6	4
5	3
4	2
3	1
2	1
1	0

21. Each minimum voting requirement shall be adjusted until that requirement can no longer be met, whereupon the use of that requirement shall be discontinued. If an adjusted voting requirement can be met individually, but not jointly, the use of all regional and gender voting requirements shall be discontinued. If, following four ballots, there still remain seats to be filled, these minimum voting requirements shall be discontinued. The minimum voting requirements regarding lists A and B shall be applied until they are fulfilled.

22. Only ballot papers observing the minimum voting requirements shall be valid. If a State Party fulfils the minimum requirements using less than the maximum number of votes allowed for that ballot, it may abstain from voting for the remaining candidates.

23. Once regional and gender voting requirements are discontinued and the minimum voting requirements regarding lists A and B are fulfilled, each further ballot shall be restricted to the most successful candidates of the previous ballot. Before each ballot, the candidate (or, in the event of a tie, the candidates) having obtained the lowest number of votes in the previous ballot shall thus be excluded, provided that the number of candidates remains at least twice the number of seats to be filled.

24. The President of the Assembly of States Parties shall be responsible for the election procedure, including the determination, adjustment or discontinuation of the minimum voting requirements.

25. Ballot papers shall be organized in a manner facilitating such an election process. The minimum voting requirements, the adjusted requirements and the discontinuation of any requirements shall be clearly indicated on the ballot papers. Before the day of the election, the President shall distribute to all States Parties copies of the instructions and samples of the ballot papers. On the day of the election, clear instructions and sufficient time shall be given for each ballot. In each ballot, before the voting process is concluded, the President shall repeat the instructions and the minimum requirements to allow each delegation to verify that its vote meets those requirements.

26. The Assembly of States Parties shall review the procedure for the election of judges on the occasion of future elections with a view to making such improvements as may be necessary.

C. Judicial vacancies

27. In the event of a judicial vacancy in accordance with article 37 of the Rome Statute, the procedures for the nomination and election of judges shall apply *mutatis mutandis*, subject to the following provisions:

- (a) Within one month of the occurrence of the judicial vacancy, the Bureau of the Assembly of States Parties shall fix the venue and date of the election, which should not be later than 20 weeks after the occurrence of the vacancy.
- (b) The nomination period shall open 12 weeks before the elections and shall last 6 weeks.
- (c) If the judicial vacancy reduces the number of judges from list A to below 9 or the number of judges from list B to below 5, only candidates from the underrepresented list can be nominated.
- (d) If at the time of the election a regional or gender minimum voting requirement is not fulfilled, only candidates that can satisfy any of the underrepresented regional minimum voting requirements as well as the underrepresented gender minimum voting requirement can be nominated.
- (e) A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36 of the Statute.

Appendix I

Illustrative tables of minimum voting requirements

The following tables are included for illustration purposes only.

Table 1: Minimum voting requirements for list A

<i>If the number of judges from list A remaining in office or elected in previous ballots is:</i>	<i>... then the minimum voting requirement for list A is:</i>
9 or more	fulfilled
8	1
7	2
6	3
5	4
4	5
3	6
2	7
1	8
0	9

Table 2: Minimum voting requirements for list B

<i>If the number of judges from list B remaining in office or elected in previous ballots is:</i>	<i>... then the minimum voting requirement for list B:</i>
5 or more	fulfilled
4	1
3	2
2	3
1	4
0	5

Table 3: Regional minimum voting requirements

<i>If the number of judges from a given region remaining in office or elected in previous ballots is:</i>	<i>... then the minimum voting requirement for that region is:</i>
3 or more	fulfilled
2	1
1	2
0	3

(Further adjustments might be necessary in accordance with para. 20(b) of the resolution.)

Table 4: Gender minimum voting requirements

<i>If the number of judges from one gender remaining in office or elected in previous ballots is:</i>	<i>... then the minimum voting requirement for that gender is:</i>
6 or more	fulfilled
5	1
4	2
3	3
2	4
1	5
0	6

(Further adjustments may be necessary in accordance with para. 20(c) of the resolution.)

Appendix II - SAMPLE BALLOT PAPER: ELECTION OF 6 JUDGES OF THE ICC

This sample ballot paper is included for illustration purposes only.

VOTE FOR A MAXIMUM OF 6 CANDIDATES				
REGIONAL GROUPS	LIST A VOTE FOR AT LEAST X FROM LIST A	LIST B VOTE FOR AT LEAST X FROM LIST B		
GENDER DISTRIBUTION: VOTE FOR AT LEAST X MALES AND X FEMALES				
	MALE	FEMALE	MALE	FEMALE
AFRICA VOTE FOR AT LEAST X CANDIDATES FROM THIS REGION	<input type="checkbox"/> Name (Country) <input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country) <input type="checkbox"/> Name (Country)
ASIA VOTE FOR AT LEAST X CANDIDATES FROM THIS REGION	<input type="checkbox"/> Name (Country) <input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country)	
EASTERN EUROPE VOTE FOR AT LEAST X CANDIDATES FROM THIS REGION	<input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country) <input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country)
LATIN AMERICA/ CARIBBEAN VOTE FOR AT LEAST X CANDIDATES FROM THIS REGION	<input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country) <input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country) <input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country)
WESTERN EUROPE AND OTHER VOTE FOR AT LEAST X CANDIDATES FROM THIS REGION	<input type="checkbox"/> Name (Country) <input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country) <input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country) <input type="checkbox"/> Name (Country)	<input type="checkbox"/> Name (Country)

Annex II

Tables of minimum voting requirements

In accordance with paragraph 2 of the resolution on the procedure for the nomination and election of judges (ICC-ASP/3/Res.6), the Secretariat of the Assembly of States Parties has prepared the following tables to reflect the application of all minimum voting requirements for the first ballot of the elections at the resumed fourth session of the Assembly of States Parties. They are based on two assumptions:

- (a) that the number of States Parties belonging to the respective regional groups does not change so as to require a readjustment of the minimum voting requirements, in accordance with paragraph 20 (b) of resolution ICC-ASP/3/Res.6. The current 98 States Parties are from the following regional groups: 27 from the Group of African States; 12 from the Group of Asian States; 15 from the Group of Eastern European States; 19 from the Group of Latin American and Caribbean States; and 25 from the Group of Western European and other States.
- (b) that the judges elected at the first resumption of the first session of the Assembly remaining in office on 11 March 2006 are the ones indicated in table 1.

In the tables, “N/A” indicates when an adjustment is not applicable. In other cases, parentheses are used to explain how a number has been determined; in a few instances, an adjustment has no practical effect.

1. Composition of the judges

Table 1: Composition of the judges

JUDGES REMAINING IN OFFICE ON 11 MARCH 2006					JUDGES WHOSE TERM OF OFFICE ENDS ON 10 MARCH 2006				
<u>Region</u>	<u>List</u>		<u>Gender</u>		<u>Region</u>	<u>List</u>		<u>Gender</u>	
Western European and other States					Western European and other States				
Maureen Harding Clark (Ireland)	A		F		Hans-Peter Kaul (Germany)		B		M
Adrian Fulford (United Kingdom of Great Britain and Northern Ireland)	A			M	Erkki Kourula (Finland)		B		M
Claude Jorda (France)	A			M					
Philippe Kirsch (Canada)		B		M					
Mauro Politi (Italy)		B		M					
African States					African States				
Fatoumata Dembélé Diarra (Mali)	A		F		Akua Kuenyehia (Ghana)		B	F	
Navanethem Pillay (South Africa)		B	F						
Latin American and Caribbean States					Latin American and Caribbean States				
René Blattmann (Bolivia)		B		M	–				
Karl Hudson-Phillips (Trinidad and Tobago)	A			M					
Elizabeth Odio Benito (Costa Rica)	A		F						
Sylvia Helena de Figueiredo Steiner (Brazil)	A		F						
Asian States					Asian States				
Georghios M. Pikis (Cyprus)	A			M	Tuiloma Neroni Slade (Samoa)	A			M
					Sang-hyun Song (Republic of Korea)	A			M
Eastern European States					Eastern European States				
–					Anita Ušacka (Latvia)		B	F	
Total:	8	4	5	7					

2. Minimum voting requirements for list A

Table 2: Minimum voting requirements for list A

<i>If the number of judges from list A remaining in office or elected in previous ballots is:</i>	<i>... then the minimum voting requirement for list A is:</i>
9 or more	fulfilled
8	1
7	2
6	3
5	4
4	5
3	6
2	7
1	8
0	9

3. Minimum voting requirements for list B

Table 3: Minimum voting requirements for list B

<i>If the number of judges from list B remaining in office or elected in previous ballots is:</i>	<i>... then the minimum voting requirement for list B:</i>
5 or more	fulfilled
4	1
3	2
2	3
1	4
0	5

4. Regional minimum voting requirements

Table 4: Regional minimum voting requirements

<i>If the number of judges from African States remaining in office or elected in previous ballots is:</i>	<i>... then the standard minimum voting requirement for that region is:</i>	<i>... plus the adjustment of adding 1, in accordance with para. 20 (b), third sentence, of the resolution</i>	<i>... then the total minimum voting requirement for that region is:</i>
3 or more	fulfilled	N/A	fulfilled
2	0 (2-2=0)	+1	1
1	1	+1	2
0	2	+1	3

(Further adjustments might be necessary in accordance with para. 20 (b) of the resolution.)

Table 5: Regional minimum voting requirements

<i>If the number of judges from Asian States remaining in office or elected in previous ballots is:</i>	<i>... then the standard minimum voting requirement for that region is:</i>	<i>... plus the adjustment of adding 1, in accordance with para. 20 (b), third sentence, of the resolution</i>	<i>... then the total minimum voting requirement for that region is:</i>
3 or more	fulfilled	N/A	fulfilled
2	fulfilled	N/A	fulfilled
1	1 (2-1=1)	N/A	1
0	2	N/A	2

(Further adjustments might be necessary in accordance with para. 20 (b) of the resolution.)

Table 6: Regional minimum voting requirements

<i>If the number of judges from Eastern European States remaining in office or elected in previous ballots is:</i>	<i>... then the standard minimum voting requirement for that region is:</i>	<i>... plus the adjustment of adding 1, in accordance with para. 20 (b), third sentence, of the resolution</i>	<i>... then the total minimum voting requirement for that region is:</i>
3 or more	fulfilled	N/A	fulfilled
2	fulfilled	N/A	fulfilled
1	1	N/A	1
0	2 (2-0=2)	N/A	2

(Further adjustments might be necessary in accordance with para. 20 (b) of the resolution.)

Table 7: Regional minimum voting requirements

<i>If the number of judges from Latin American and Caribbean States remaining in office or elected in previous ballots is:</i>	<i>... then the standard minimum voting requirement for that region is:</i>	<i>... plus the adjustment of adding 1, in accordance with para. 20 (b), third sentence, of the resolution</i>	<i>... then the total minimum voting requirement for that region is:</i>
3 or more	fulfilled (2-4=-2)	(-2+1=-1)	fulfilled
2	0	+1	1
1	1	+1	2
0	2	+1	3

(Further adjustments might be necessary in accordance with para. 20 (b) of the resolution.)

Table 8: Regional minimum voting requirements

<i>If the number of judges from Western European and other States remaining in office or elected in previous ballots is:</i>	<i>... then the standard minimum voting requirement for that region is:</i>	<i>... plus the adjustment of adding 1, in accordance with para. 20 (b), third sentence, of the resolution</i>	<i>... then the total minimum voting requirement for that region is:</i>
3 or more	fulfilled (2-5=-3)	(-3+1=-2)	fulfilled
2	0	+1	1
1	1	+1	2
0	2	+1	3

(Further adjustments might be necessary in accordance with para. 20 (b) of the resolution.)

5. Gender minimum voting requirements

Table 9: Gender minimum voting requirements

<i>If the number of female judges remaining in office or elected in previous ballots is:</i>	<i>... then the minimum voting requirement for female judges is:</i>
6 or more	fulfilled
5	1
4	2
3	3
2	4
1	5
0	6

(Further adjustments may be necessary in accordance with para. 20 (c) of the resolution.)

Table 10: Gender minimum voting requirements

<i>If the number of male judges remaining in office or elected in previous ballots is:</i>	<i>... then the minimum voting requirement for male judges is:</i>
6 or more	fulfilled
5	1
4	2
3	3
2	4
1	5
0	6

(Further adjustments may be necessary in accordance with para. 20 (c) of the resolution.)

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