

## Advisory Committee on Nominations of Judges

### Compendium of national nomination procedures

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# 1. Argentina

[Original: English]

## **The Argentine procedure to propose candidates for the election of judges of the International Criminal Court.**

Argentine national legislation on the Implementation of the Rome Statute (Article 28 of Law N° 26.200) establishes that when the Argentine Republic proposes candidates for the elections of judges of the International Criminal Court, they will be appointed through the procedure regulated in article 99, paragraph 4, of the National Constitution, to the appointment of the judges of the Supreme Court of Justice of the Nation. This last article establishes that the President of the Nation appoints the judges of the Supreme Court with the agreement of the Senate by two thirds of its members present in a public session, called for that purpose.

Additionally, Decree 222/2003 establishes that this faculty that the Constitution confers on the President of the Nation will be exercised according to the following procedure, whose application authority is the Ministry of Justice and Human Rights of the Nation:

The name and the curricular background of the person or persons considered for the position will be published in the Official Gazette and in at least 2 newspapers of national circulation, during 3 days. Simultaneously with such publication, that information will be disseminated on the official website of the Ministry of Justice and Human Rights of the Nation.

The persons included in the aforementioned publication must present a sworn statement with a list of all their own assets, those of their spouse and/or those of the live –in partner, which constitute the assets of the marital partnership and those of their minor children, in the terms and conditions established in the article 6 of the Public Function Ethics Law N° 25.188 and its regulations.

In addition, they must attach another statement in which they will include a list of civil associations and commercial companies of which they are or were part in the last 8 years, the law firms to which they belong or belonged, a list of clients or contractors of at least the last 8 years, within the framework of what is allowed by current professional ethics norms, and in general, any type of commitment that may affect the impartiality of their criteria for their own activities, activities of their spouse, their ancestors and their descendants in first degree, in order to allow an objective evaluation of the existence of incompatibilities or conflicts of interest.

Also, citizens in general, non-governmental organizations, professional colleges and associations, academic and human rights entities, may within 15 days from the last publication in the Official Gazette, submit to the Ministry of Justice and Human rights of the Nation, in writing and in a founded and documented manner, the positions, observations and circumstances that they consider of interest to express regarding those included in the pre-selection process, with a sworn statement regarding their own objectivity regarding the proposed. Irrelevant objections from the perspective of the purpose of the procedure or that are based on any type of discrimination will not be considered.

Regardless of the presentations, in the same period of time, opinion may be requested from relevant organizations in the professional, judicial, academic, social, political and human rights fields for the purposes of their assessment.

A report regarding compliance with tax obligations of the eventually proposed persons will be required, preserving fiscal secrecy, to the Federal Public Revenue Administration.

In a period that must not exceed 15 days from the expiration of the period established for the presentation of the positions or observations, the National Executive Power will dispose on the elevation or not of the respective proposal, making merit of the reasons of the decision taken.

In case of a positive decision, the respective appointment with everything acted, will be sent to the Honorable Senate of the Nation, for the purposes of the agreement.

## 2. Belgium

[Original: English and French]

According to article 36, paragraph 4, i), of the Rome Statute, the nomination of the Belgian candidate for the next elections of judges at the International Criminal Court (ICC) took place pursuant to the selection process provided for by article 42 of the Act of 29 March 2004 on cooperation with the International Criminal Court and Criminal Tribunals.

This selection process is inspired by the procedures applied in domestic law for the selection and appointment of magistrates in Belgium and is adjusted to the specificities of the elections of judges for the International Criminal Court. This procedure guarantees an impartial intervention by the High Council of Justice (HCJ), responsible for drawing up the ranking of candidates in two lists of profiles as set up in Article 36, § 3, (b), i) and ii), of the Rome Statute.

The HCJ is a federal body enshrined in the Constitution and established in 2000. The HCJ consists of 44 members, each appointed for a four-year term of office. Every four years, 22 magistrates are elected by all the magistrates in Belgium and 22 non-magistrates (8 lawyers, 6 university professors and 8 representatives of the civil society) are appointed by the Senate. At the end of their office, members may apply for re-election, only once.

One of the three key tasks of the HCJ is to organise the judiciary entrance examinations and makes recommendations to the Justice Minister on the nomination of judges. This task is carried out by the nominations and appointments boards of the HCJ.

The HCJ is totally autonomous with regard to its functioning and operates independently of the government, as well as of the judiciary and the parliament.

The text of above mentioned Article 42, which determines the selection process of a candidate by Belgium for the elections of judges at the ICC, is as follows: [UNOFFICIAL TRANSLATION]

*« Art. 42. § 1. A vacancy for the post of judge at the International Criminal Court shall be published in the Belgian Official Journal when the Council of Ministers, on a proposal of the Minister of Justice, decides to put forward a candidate for such an election. The announcement published in the Belgian Official Journal shall set out the qualifications of candidates on the basis of Article 36 of the Statute and indicate the deadline for applications to reach the Minister of Justice.*

*§ 2. When the deadline comes to pass, the Minister of Justice shall ask the joint nominations and appointments board of the High Council of Justice to draw up two lists of candidates, one ranking the applicants having the qualifications specified in Article 36, Paragraph 3(b)(i), of the Statute, the other ranking applicants who are part of the category specified in Article 36, Paragraph 3(b)(ii), of the Statute. Both lists shall be established after the candidates have been heard by the joint nominations and appointments board. That board shall transmit the lists within 60 clear days as from the date of the transmission of the applicant files by the Minister of Justice. However, only one of those lists shall be drawn up if the vacant posts relate to only one of the categories referred to in Article 36, Paragraph 3(b), of the Statute.*

*§ 3. At the end of the 60-day period referred to in Paragraph 2 above, the King shall have 60 clear days to choose, by a decree discussed in the Council of Ministers, the candidate who will be put forward by Belgium for the vacant seat. His choice must be the person ranked first on the list, in the case of a single list, and one of the two persons ranked first on either list where two lists have been established pursuant to Paragraph 2 above.*

*§ 4. The King can, by decree discussed in the Council of Ministers, oppose the choice of the board with a reasoned refusal. The board shall have 15 clear days to submit one or two new lists of candidates pursuant to Paragraph 2. At the end of that time period, the King shall have 30 clear days either to choose, by a decree discussed in the Council of Ministers, the candidate who will be presented by Belgium for the vacant seat according to the same procedure as referred in Paragraph 3, in fine, or to decide, by a decree discussed in the*

*Council of Ministers, having recourse to a reasoned refusal, not to put forward any of the candidates proposed, and thereby to close the procedure. »*

Pursuant to this provision, the decision to put forward a candidate for Belgium at the occasion of the next elections of six judges of the International Criminal Court was made by the federal Council of Ministers on January 17, 2020 on a proposal tabled by the Minister of Justice.

A call for candidates regarding the vacancy for the post of judge at the International Criminal Court was subsequently published in the Belgian Official Journal on January 21.

This announcement mentioned the required qualifications for this post, as set out in Article 36 of the Rome Statute.

Twelve applications have reached the Minister of Justice in the legal deadline, accompanied with detailed documents indicating the merits of each candidate. These were transmitted on February 6 to the joint nominations and appointments board of the High Council of Justice (HCJ) in order to draw up two lists of candidates, one ranking the applicants having the qualifications specified in Article 36, Paragraph 3(b)(i), of the Rome Statute, the other ranking applicants who are part of the category specified in Article 36, Paragraph 3(b)(ii), of the Statute.

Eleven candidates have been heard by the joint nominations and appointments board of the High Council of Justice on March 11, as one of the candidates withdrew his application in the meanwhile.

The ranking lists drawn up by the board of the High Council of Justice were then transmitted to the Minister of Justice, allowing the federal Council of Ministers to make a choice on one of the two persons ranked first on either list to be the candidate of Belgium for the next elections of judges.

According to the decision made by the Council of Minister on March 20, the candidate who was ranked as first on the list of applicants having the qualifications specified in Article 36, Paragraph 3(b)(i), of the Rome Statute, being Mrs Laurence Massart, First President of the Court of Appeal of Brussels, has been nominated by Royal Decree adopted on March 23 (published in the Belgian Official Journal on March 25).

This nomination was transmitted on March 27, 2020 to the Secretariat of the Assembly of States Parties to the Rome statute, indicating that the candidate is being nominated for inclusion in list A for the purposes of article 36, paragraph 5, of the Statute.

### **3. Bolivia**

[Original: English]

The Embassy of the Plurinational State of Bolivia presents its compliments to the secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court and, with reference to the Secretariat's note verbale ICC-ASP/20/SP/40, dated 21 June 2021, has the honour to inform the Secretariat that the Ministry of foreign Affairs of the Government of the Plurinational State of Bolivia has the following selection procedure for national nominations:

- Socialization of the vacancy to competent institutions.
- Identification of suitable profiles, it is taken into account that they are recognized jurists, with a high sense of ethics, morality, impartiality and integrity, with extensive experience in courts and in international human rights law and international humanitarian law.
- Definition of the candidate or suitable candidate and presentation of his profile to the corresponding authorities.

The Embassy of the Plurinational State of Bolivia avails itself the opportunity to renew to the International Criminal Court – Secretariat of the Assembly of States Parties – the assurances of its highest consideration.

## 4. Brazil

[Original: English]

The Permanent Mission of Brazil to the United Nations presents its compliments to the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court and, with reference to the Note Verbale ICC-ASP/19/SP/27, has the honor to submit the following information on Brazil's national procedure for the nomination of candidates for election as a judge of the Court:

- Brazil played an active role in the negotiations that led to the adoption of the Rome Statute and has a steady commitment to end impunity for the perpetrators of the most serious crimes of international concern, and thus to contribute to the prevention of such crimes.

- An original member of the International Criminal Court (ICC), Brazil has been actively engaged in the works of the Assembly of State Parties. Since the Court was established, in 2002, Brazilian legal experts provided contributions in different areas. Federal judge Sylvia Steiner served as ICC judge from 2003 to 2016, and is currently a member of the ICC's Advisory Committee on Nominations of Judges. Professor Leonardo Nemer Caldeira Brant was also a member of the Advisory Committee, from 2013 to 2014. In December 2019, Prosecutor Cristina Romanó was selected to serve on the Independent Expert Panel on the ICC review process. In 2018 and 2019, three Brazilian citizens (Marcos Zilli, Érico Oliveira and Marília Santos) worked as visiting professionals at the ICC. Additionally, in June 2019, the first mission of Brazilian federal judges to the ICC took place to work on topics of international criminal law.

- Brazil has already presented three candidates for judge at the ICC, in 2003, 2014 and 2020: one male and two female; two on list A and one on list B. Brazil has followed the procedure provided for under article 36 of the Rome Statute for the nomination of candidates. There is no additional requirement established by the Brazilian national legislation in that regard.

- In 2014, Professor Leonardo Nemer Caldeira Brant's nomination as a list B candidate followed the procedure provided for in article 36, paragraph 4 (a) (ii) – “by the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court”. On their turn, Ms. Sylvia Steiner and Ms. Mônica Sifuentes, both Federal Judges at Courts of Appeals, were nominated, in 2003 and 2020, as list A candidates in accordance with article 36, paragraph 4 (a) (i) – “by the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question”. According to the Brazilian Constitution, Federal Judges at Courts of Appeals are nominated by the President among native Brazilian citizens, aged more than thirty-five years, who have been lawyers or prosecutors for more than ten years, or federal judges with over five years in office. The current selection model of federal judges in Brazil follows a democratic and isonomic method, through public tenders based on technical legal knowledge assessments.

## 5. Burkina Fasso

[Original: French]

In accordance with the provisions of article 36 of the Rome Statute, nominations of candidates for election as judge to the International Criminal Court may be submitted by any State Party “(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.”

Burkina Faso has selected the first option whereby national candidates are selected in accordance with the procedure for the nomination of candidates for appointment to the highest judicial offices in Burkina Faso.

The procedure to nominate Burkina Faso’s candidate for the elections due to be held at the 19<sup>th</sup> session of the Assembly of States Parties at the Headquarters of the United Nations Organization in New York from 7-17 December 2020, involved the Ministry of Justice informing all judges within the ministry that a call for nominations for the election of judges at the ICC was open.

Following a selection process by the Ministry of Justice and the opinion of the Supreme Judicial Council (*Conseil Supérieur de la Magistrature*), the application of Judge Gberdao Gustave KAM was selected on the basis of his integrity, his commitment and his experience on a national and international level.

The nomination was submitted to the Secretariat of the Assembly of States Parties to the Rome Statute by the government of Burkina Faso.

This nomination has also been approved by the Economic Community of West African States (ECOWAS).

## 6. Chile

[Original: English]

I am referring to the note from the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court, dated 21 June 2021, regarding the submission of information and comments from the States Parties on their existing or prospective nomination and selection procedures pursuant to resolution ICC-ASP/18/Res.4, entitled “Resolution on the review of the procedure for the nomination and election of judges”.

We would like to inform you that Chile does not have a regulated procedure for the presentation of candidatures to international organizations. However, there are a number of elements to be considered when proposing candidates at the international level, i.e. academic training, professional career, professional and personal skills and abilities; and also a thorough analysis of the candidate's compliance with each of the requirements for the position.

The decision-making process, by the competent authorities, is based on the principle of equal conditions between the candidates.



## 7. Colombia

[Original: English]

### **National procedure for the nomination of judges of the International Criminal Court**

The following general remarks are submitted with reference to paragraph 6 of Resolution ICC-ASP/18/Res.4:

Paragraph 6 (f) of Resolution ICC-ASP/3/Res.6 stipulates that every nomination for the election of judges of the Court should be accompanied by a statement indicating whether the candidate is being nominated in accordance to subparagraph 4 (a) (i) or subparagraph 4 (a) (ii) of article 36, and should specify in the necessary detail the elements of that procedure.

In this context, the Institutional Affairs Group of the Ministry of Foreign Affairs is responsible for nominations. The procedures for the identification of candidates for nomination and the national selection process prior to their nomination are as follows:

The selection of those individuals who are to be put forward for election as judges of the International Criminal Court must follow the procedure laid down in the *Rome Statute of the International Criminal Court* (the “Rome Statute”). This procedure, which is specified in article 36, paragraphs 4 (a) (i) and (ii), of the Statute, reads as follows:

“[...] *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 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. [...]*”

In this context, the procedures referred to above in (i) and (ii) would be the two nomination procedures stipulated in article 36 of the Rome Statute.

In the first of these cases, candidates should be selected pursuant to the procedures for the election of high court judges, as provided for in Act 270 of 1996, the Statutory Act on Administration of Justice (“*Ley Estatutaria de la Administración de Justicia*”). It should be pointed out, however, that the procedure differs for every Court, as follows:

In the case of the Supreme Court of Justice, the highest Court of Ordinary Jurisdiction, Article 15 of the Act stipulates that: “*The Supreme Court of Justice is the highest Court of Ordinary Jurisdiction and is composed of twenty-three (23) judges, elected by that Body for individual eight-year terms of office, from lists of more than five (5) candidates who comply with the constitutional requisites, for every vacancy that might arise, to be presented by the Administrative Chamber of the High Council of the Judiciary.*”

The Council of State, which is the supreme Administrative Court, follows a similar procedure. Article 34 of the reference Act provides as follows: “*The Council of State is the supreme Administrative Court and shall be composed of thirty-one (31) judges, elected by that Body for the individual terms of office provided for in the Political Constitution, from lists of more than five (5) candidates who fulfil the constitutional requirements, to be drawn up for every vacancy that might arise and submitted by the Administrative Chamber of the High Council of the Judiciary.*”

The Constitutional Court, which is the Court responsible for safeguarding the integrity and pre-eminence of the Constitution, follows a different procedure. Article 44 of the Act provides as follows: “*The Constitutional Court is composed of nine (9) Judges, elected by the Senate of the Republic for individual eight-year terms of office, from lists of three candidates who are put forward as follows: three (3) by the President of the Republic, three (3) by the Supreme Court of Justice, and three (3) by the Council of State.*”

It should be noted that all the above references are provided for informative and interpretative purposes in the context of the provisions of the Rome Statute, since only one of these procedures should be followed when interpreting the provisions of the Rome Statute and putting forward a nomination pursuant to subparagraph (i).

On the other hand, and as concerns subparagraph (ii), the Rome Statute makes reference to the procedure provided for the nomination of candidates for appointment as judges of the International Court of Justice. In this case, Article 4 of the Statute of the International Court of Justice provides as follows:

*“[...]1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.*

*2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.*

*3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council. [...]*”

In this regard, pursuant to the stipulations of article 36, paragraph 4 (a) (ii), nominations of candidates for election as judges of the International Criminal Court are presented by the National Group of Colombia in the Permanent Court of Arbitration (PCA), that is, by the members for Colombia of the PCA.

In this case, the members of the National Group of Colombia in the PCA, who are persons with established competence in international law and of high moral character, nominate as a candidate a person, or persons, qualified to carry out the functions of a member of the Court, upon the corresponding assessment of the candidate(s)’s competencies pursuant to the stipulations of paragraph 3 of article 36 of the Rome Statute.

Colombia wishes to underscore, in this context, the importance of putting forward candidates with the highest qualifications, competencies and experience as well as of high moral character, impartiality and integrity, and who possess the qualifications required for appointment to the highest judicial offices, in accordance with article 36 of the Rome Statute.

## 8. Costa Rica

[Original: Spanish]

The Embassy of Costa Rica to the Kingdom of the Netherlands very warmly greets the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court, and has the honor to refer to the communication with reference number: ICC-ASP/19/SP/27, dated April 17, 2020, which refers to paragraph 6 f) of resolution ICC-ASP/3/Res.6, according to which each nomination for the election of Judges of The Court must be accompanied by a declaration indicating whether the candidacy is presented pursuant to Article 36, paragraph 4 a) i) or ii), and specifying in detail the elements of that procedure.

At the time of the submission of Mr. Sergio Gerardo Ugalde Godínez's nomination, the Government of Costa Rica also submitted information on the selection procedure in the document titled "Statement of Qualifications", and stated that it complies with paragraph 6 f) of resolution ICC-ASP/3/Res.6.

Pursuant to such Statement of Qualifications on the national selection procedure, Mr. Ugalde was subjected to a double scrutiny. He first underwent the nomination procedure carried out by the National Group in the Permanent Court of Arbitration, in accordance with paragraph 4, a), ii), of article 36 of the Rome Statute, a procedure that involved an extensive evaluation of the applicant's capabilities and experience. On January 16, 2020, the National Group in the Permanent Court of Arbitration submitted to the Ministry of Foreign Affairs and Worship an assessment of Mr. Ugalde's qualifications, recommending to the government of Costa Rica his nomination for the post of judge of the International Criminal Court.

Additionally, the Executive Power -the President of the Republic acting jointly with the Minister of Foreign Affairs-, in accordance with the Law for the "Promotion of Cooperation and Judicial Assistance with the International Criminal Court", carried out a separate evaluation process to that conducted by the National Group in the Permanent Court of Arbitration, a process that lasted more than 6 months, first by the Ministry of Foreign Affairs and Worship, and later by the Presidency of the Republic.

In the case of the evaluation carried out by the Executive Power, Mr. Ugalde submitted information consistent with that required by Article 36 of the Rome Statute, and thorough evidence supporting his qualifications and his extensive experience in professional legal functions related to the judicial work of the Court. He was also interviewed for this purpose. The Ministry, in turn, prepared a set of technical criteria that was submitted to the consideration of the Presidency of the Republic. The Presidency, with the inputs received, performed another evaluation, the result of which was to endorse the nomination.

Costa Rica performed a broad and serious evaluation process, which consisted of multiple assessments, with the objective of nominating a candidate who not only fully complies with the requirements of the Rome Statute, but who also represents the country's commitment in relation to its resolute endorsement of the mission and values of the Rome Statute and the International Criminal Court.

Costa Rica notes that the procedure followed in the nomination is the one established by Article 36 of the Rome Statute. Such a procedure, regulated as it is, satisfies the national practice of carrying out an exhaustive scrutiny of the candidate's personal and professional qualities. In this case, the scrutiny was carried out by several entities, different from each other, over a period of several months. Likewise, Costa Rica notes that it made public, since October 2019, the evaluation process of the candidacy for the post of Judge of the International Criminal Court.

The Government of Costa Rica requests that this information provided be published by the Secretary and by the Advisory Committee on Nominations of Judges.

Likewise, the Government of Costa Rica supports that the Advisory Committee on Nominations of Judges makes suggestions to improve any aspect of the procedure for the selection and nomination of candidates for the position of Judge of the International Criminal Court, and at the same time communicates that it deems it appropriate that any proposal should be adopted as a generally applicable rule for all nominations, in order to provide

consistency in the application of the mechanism by all the States Parties, and to insure its proper functioning.

The Embassy of Costa Rica to the Kingdom of the Netherlands avails itself of this opportunity to reiterate to the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court the assurances of its highest consideration.

## 9. Czech Republic

[Original: English]

Annex  
to Government Resolution  
No. 478 of 14 June 2010

### **Rules for the selection of a candidate for the position of Judge of the International Criminal Court**

A candidate for the position of Judge of the International Criminal Court (hereinafter referred to as the “Court”) in terms of the Rome Statute of the International Criminal Court<sup>1</sup> shall be selected through a selection process pursuant to the following rules:

#### **Article 1**

##### **Timetable of the selection process**

The call for applications for nomination as a candidate for the position of Judge of the Court shall be published by the Ministry of Foreign Affairs (hereinafter referred to as the “Ministry”). The interval between the publication of the call on the Ministry website pursuant to Article 3 (1) below and the deadline for the submission of applications shall be at least two months. The nomination shall be presented to the Government by the Minister of Foreign Affairs as a rule eight months before the anticipated date of the election of the Judge.

#### **Article 2**

##### **Qualification requirements for candidates**

- (1) A candidate for the position of Judge of the Court shall:
  - (a) be a national of the Czech Republic or a national of any State Party to the Rome Statute,
  - (b) be a person of high moral character and possess the qualifications required in the Czech Republic for appointment to the highest judicial offices,<sup>2</sup>
  - (c) 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 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,
  - (d) offer a guarantee of independence and impartiality in exercising the functions of Judge of the Court after his potential election,
  - (e) have an excellent knowledge of and be fluent in at least one of the working languages of the Court.<sup>3</sup>
- (2) A candidate for the position of Judge of the Court should:
  - (a) have an active knowledge of the other working language of the Court,
  - (b) be a person whose potential election would not result in the necessity to disqualify him from the Court’s cases.

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<sup>1</sup> Published in the International Treaties Journal No. 84/2009.

<sup>2</sup> The qualification requirements for the position of Judge of the Constitutional Court, Supreme Court or of the Supreme Administrative Court shall be applied *mutatis mutandis*.

<sup>3</sup> The working languages are English and French (Article 50 (2) of the Rome Statute).

### **Article 3**

#### **Submission of applications**

- (1) The Ministry shall take the appropriate measures to give the call for applications the widest possible publicity; in particular, it shall publish the call on its website and notify it, in an appropriate manner, to courts, Public Prosecutor's Offices and to Deans of the Faculties of Law of public higher education institutions in the Czech Republic.
- (2) In the call for applications the Ministry shall specify the particulars to be included in the application as well as other details regarding their submission.
- (3) The individual applicants shall submit their applications to the Ministry within the deadline set in the call.

### **Article 4**

#### **Composition of the Selection Board**

- (1) The Selection Board shall consist of the Minister of Foreign Affairs, who shall be its Chairperson, the Minister of Justice, the Presidents of the Constitutional Court, Supreme Court and of the Supreme Administrative Court, the Supreme Public Prosecutor, the Public Defender of Rights, and members of the National Group in the Permanent Court of Arbitration.
- (2) A person who has submitted an application shall not be entitled to sit on the Board. In case the Minister of Foreign Affairs submits an application, the Board shall elect a Chairperson from among its members.
- (3) If necessary, for reasons other than those referred to in paragraph (2) above, the individual members of the Board may each designate an alternate from his respective institution. This rule does not apply to members of the National Group in the Permanent Court of Arbitration.
- (4) The Selection Board shall constitute a quorum if at least 6 members are present.

### **Article 5**

#### **Meetings of the Selection Board**

- (1) Meetings of the Board shall be convened by the Minister of Foreign Affairs within two months after the deadline set by the Ministry for the submission of applications. Resolutions of the Board shall be adopted by a majority of votes of members present; in case of equality of votes, the Chairperson of the Board shall have the casting vote.
- (2) Any applications that manifestly fail to comply with the requirements specified in Article 2 (1) above or that have been delivered after the deadline set in the call for applications shall be excluded.
- (3) The Board shall review the submitted applications and exclude any incomplete applications in cases where the applicant has not given any satisfactory reason for his failure to include any of the particulars specified in the call for applications pursuant to Article 3 (2) above.
- (4) The Board shall then interview the applicants whose applications have not been excluded pursuant to (2) above. During the interview it shall comprehensively evaluate the applicant's qualifications for the position of Judge of the Court and determine his motivation. It may ask for additional documents and decide to carry out an additional assessment of linguistic qualifications for the position.
- (5) From the remaining applicants, the Board shall select the one who best meets the requirements specified in Article 2 above.
- (6) The Board shall draw up a record of its deliberations, stating the reasons for its decisions. The Ministry shall inform the applicants about the result of the selection process not later than one month after the decision on the selection of a candidate.
- (7) In case the candidate renounces his candidacy or ceases to meet the requirements specified in Article 2 (1) above, the Board shall select a substitute candidate without undue delay.

**Article 6**  
**Approval of the candidate**

(1) The candidate shall be approved by the Government at the request of the Minister of Foreign Affairs.

(2) In case the Government does not approve the candidate, the Czech Republic shall not nominate any candidate for the given term, unless the Ministry of Foreign Affairs decides to repeat the selection process. In such case, and in the case of extraordinary elections, the deadlines mentioned in Article 1 above shall be reduced accordingly.

**Article 7**  
**Scope of application**

These Rules shall apply, *mutatis mutandis*, to the selection of candidates for the position of Prosecutor of the Court.

## 10. Dominican Republic

[Original: English]

### Declaration - National procedure

The Government of the Dominican Republic submits for consideration by the States Parties the candidacy of Judge Ramón Horacio GONZÁLEZ PÉREZ to one of the six judicial vacancies which are open in the International Criminal Court (ICC) for the period 2021-2030 in the elections to be held during the nineteenth session of the Assembly of States Parties to the Rome Statute, scheduled to take place on 7-17 December 2020 at the United Nations Headquarters in New York (United States of America), pursuant to the requirements stipulated in Article 36 of the Rome Statute.

In accordance with the stipulations of article 36 (a) (i)<sup>4</sup> of the Rome Statute, Judge Ramón Horacio GONZÁLEZ PÉREZ was selected by the procedure for the nomination of candidates for appointment to the highest judicial offices.

The constitutional requirements for judges of the Supreme Court of Justice are as follows:<sup>5</sup>

- to be a Dominican citizen by birth or origin;
- to be over thirty-five years of age;
- to be in possession of full civil and political rights;
- to hold a degree or doctorate in Law;
- to have practiced law, or taught law at a university, for a minimum period of 12 years, or to have carried out, for that same period, the duties of Judge within the Judiciary, or of Public Prosecutor.

Judge González participated as a candidate in the most recent electoral process organized in the year 2019 by the National Council of the Judiciary of the Dominican Republic in order to fill the vacancies that were open in the Supreme Court of Justice.

Likewise, and with regard to the above requisites, it is worth noting that Judge González entered the Judiciary in the year 2001, and held the position of Presiding Judge of the Criminal Chamber (Second Chamber) of the Court of Appeals, National District, and Second Substitute of the President of said Court, which he obtained through the established procedure for the judicial service in said Institution. Furthermore, and in the academic field, he has taught Criminal Law, Criminal Procedural Law, Public and Private International Law, and Diplomatic and Consular Law since before 1983 in the foremost Universities of the country.

#### Selection process

In the month of February 2020, the General Office of Legal Affairs (*Dirección General Técnica*), the General Office of Administration and Judicial Service (*Dirección General de Administración y Carrera Judicial*) and the National Judicial School of the Judicature (*Escuela Nacional de la Judicatura del Poder Judicial*) identified national judges (both male and female) who complied with the requisites set out in the Rome Statute, to the end of their participation in the present election. In the month of March, a formal proposal was submitted to the Judicial Council, identifying two candidates whose professional career and moral values complied with the highest standards.

A dossier was prepared for each of the two judges, containing relevant information provided both by the candidate judges themselves and by the Human Resources and teaching areas in the National Judicial School; these dossiers documented their careers, including their compliance with the criteria determined by the Court.

In its Regular Session No. 010-2020, held on 24 March 2020, the Judicial Council examined this item of the agenda and selected retired Judge Ramón Horacio González Pérez, Presiding

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<sup>4</sup> Rome Statute. Article 36: Paragraph 4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made [ ... ]: (i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question.

<sup>5</sup> Constitution of the Dominican Republic (year 2015). Article 153.



Judge of the Criminal Chamber (Second Chamber) of the Court of Appeals, National District, as the Judiciary's candidate before the Ministry of External Affairs for election as Judge/Member of the International Criminal Court. It also issued instructions regarding the notification to the Ministry of External Affairs of the candidacy proposed by the Judiciary to said body for consideration as the Dominican Republic's candidate.

Upon receipt of said documentation, after noting that the selection process had been carried out in compliance with the requirements stipulated by the International Criminal Court, and having obtained the support of the Chamber of Deputies for the candidacy of Judge Ramón Horacio González Pérez, the Ministry of External Affairs proceeded to deposit the nomination of this candidate before the corresponding body.

## 11. Ecuador

[Original: English]

### **Information on the national procedure for the nomination of Doctor Íñigo Salvador as a candidate for election as judge of the International Criminal Court for the period 2021-2030**

According to the practice and procedures in place in the Republic of Ecuador, the National Government proposes candidates for dignities and elected positions for international organisations through the Ministry of Foreign Affairs.

In accordance with article 261 of the Constitution of the Republic of Ecuador [TRANSLATION] “the central Government shall have exclusive competence over international relations.” In accordance with the Constitution, article 2 of the Organic Law of the External Service (Ley Orgánica del Servicio Exterior) determines that “(...) it is the responsibility of the Head of State, as the supreme authority over foreign representation and over the country’s sovereign rights, to lead both international action and the External Service. As the authority that directly reports to the Head of State, it is the responsibility of the Minister of Foreign Affairs to collaborate directly with the Head of State on international policy-making and to execute the resulting policies”

Accordingly, article 4 (8) of the Organic Law of the External Service establishes that “it is the responsibility of the Ministry of Foreign Affairs especially (to manage): the treaties and all other international instruments (...)” signed and ratified by Ecuador. Ecuador signed the Rome Statute of the International Criminal Court on 7 October 1998, and ratified it on 5 February 2002. Furthermore, on 25 September 2019, Ecuador ratified the Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression.

The procedure for the election of candidates by the Ministry of Foreign Affairs has been perfected based on years of internal practice and it consists of a strict mechanism to select the most capable, competent and upstanding Ecuadorian citizens for the international organisation they are being selected to serve.

Said system has served throughout the years to select prominent Ecuadorian citizens to serve international bodies and organisations, including

Ambassador Jaime Merchán Romero, member of the United Nations Committee on Economic, Social and Cultural Rights; Doctor Luis Valencia Rodríguez, member of the United Nations Committee on the Elimination of Racial Discrimination; Ambassador Francisco Carrión Mena, member of the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families; Doctor Julio Prado Vallejo, member of the United Nations Commission on Human Rights; Doctor Sara Oviedo, member of the United Nations Committee on the Rights of the Child, amongst others.

In view of the aforementioned, when the Secretariat of the Assembly of States Parties informed the Ministry of Foreign Affairs, in December 2019, that a nomination period was to be opened for the election of six judges of the International Criminal Court (ICC), the Ministry determined the interest of the Ecuadorian State to add to the strengthening of the international justice regime which the ICC embodies. It is noteworthy, in addition, that never has an Ecuadorian citizen served as judge for this international organisation.

Once the State had adopted the decision to contribute by nominating a candidate who was sufficiently qualified for the position, a screening of candidates was carried out and the curriculum vitae of said candidates reviewed and qualified. Said screening process showed that Doctor Íñigo Salvador was unequivocally the best qualified candidate.

The nomination of Doctor Íñigo Salvador was submitted for consultation to the members of the Ecuadorian National Group to the Permanent Court of Arbitration in The Hague, namely Doctor Carlos Estarellas Velásquez, Doctor José María Pérez Nelson, Doctor Diana Salazar Méndez and Doctor Gonzalo Salvador Holguín who, after reviewing the candidate’s curriculum vitae, unanimously decided to support his nomination (Annex 1). Concerning their professional credentials, Doctor Estarellas Velásquez is a distinguished lawyer,

university professor and specialist in international law from Guayaquil; Doctor Salazar Méndez is currently Attorney-General of Ecuador (Fiscal General del Estado); Doctor Pérez Nelson is a lawyer who specialises in international mediation and arbitration and works at a law firm in Paris; and Doctor Salvador Holguín, is head of Legal Advice of the Ecuadorian Ministry of Foreign Affairs.

The Presidency of the Republic of Ecuador was informed of the unanimous recommendation of the members of the Ecuadorian National Group to the Permanent Court of Arbitration in The Hague, and took note of the nomination procedure coordinated by the Ministry of Foreign Affairs, and of the support of the members of the Ecuadorian National Group to the Permanent Court of Arbitration in The Hague and did not object to the nomination of the candidate.

Subsequently, the Foreign Minister submitted the nomination in accordance with the terms of the note sent by the Secretariat of the Assembly of States Parties.

Hence, as described above, the procedure for the nomination of Doctor Íñigo Salvador Crespo as candidate for the election of judges of the ICC followed the national custom for the nomination of international dignities, whilst at the same time complying with article 4 of the Rome Statute of the International Criminal Court and, hence, with paragraph 4 a) ii) of article 36 of the Rome Statute: “*Nominations of candidates for election to the Court may be made by any State Party to this Statute and shall be made either: (...) (ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court*”.

On a different note, it is noteworthy that Doctor Íñigo Salvador possesses the highest moral character and is reputed in the Republic of Ecuador for the integrity and impartiality he has shown throughout his professional and academic career. He was appointed State Attorney General by the Council for Public Participation and Social Control, the body in charge of nominating the highest authorities of the public entities as determined by the Constitution of the Republic of Ecuador, and which is independent of all other State functions [Annexes 2, 3 and 4: Resolution of Appointment by the Council for Public Participation and Social Control, Certificate of Inauguration before Ecuador’s National Assembly and Agreement for Inauguration at the “Procuraduría General del Estado” (Office of the State Attorney-General), respectively].

Article 433 of the Constitution requires that candidates to the nomination of State Attorney-General fulfill the same criteria as to serve as magistrate of the Constitutional Court, the highest jurisdictional body in the country, namely:

1. *Be an Ecuadorian national and in possession of political rights;*
2. *Hold a university law degree which is legally recognised in the country;*
3. *Have practiced with particular integrity the profession of attorney, judge or university law professor for a minimum of ten years;*
4. *Manifest integrity and ethics, which shall be assessed through a merit selection procedure with citizen oversight and rebuttal; and*
5. *Not belong or have belonged, over the past ten years, to the executive board of any political party or movement.”*

The nomination of the Ecuadorian candidate for the election of judges of the ICC submitted by the National Government is hence in accordance with the national procedures and customs for international nominations as described above. It is also founded upon the fact that Doctor Íñigo Salvador holds the highest qualifications and competences in legal matters.

Doctor Salvador is an expert in both International Law and International Criminal Law, as well as in International Law of Armed Conflict and International Humanitarian Law. He has been a lecturer for all of the aforementioned. The Ecuadorian candidate has also served as Dean of the Law School of the Pontifical Catholic University of Ecuador, one of the most renowned and prominent Law Schools in Ecuador.

Doctor Salvador has also been an instructor at the International Committee of the Red Cross in Ecuador, Peru and Bolivia, as specified in the candidate’s supporting documents

(curriculum vitae and statement of qualifications), which are officially published on the website of the Secretariat of the Assembly of States Parties to the Rome Statute.

Doctor Salvador has studied Juridical Sciences and holds a PhD from the Pontifical Catholic University of Ecuador. Additionally, he studied at the Graduate Institute of International Studies in Geneva (Switzerland), where he obtained a Master's degree in International Relations, specialising in International Law. He also holds a Master's degree in International Relations, with a specialization in international negotiations and conflict management from the Universidad Andina Simón Bolívar in Quito.

Furthermore, he has completed specialisation courses on International Humanitarian Law and International Criminal Law at renowned institutions such as the International Institute of Humanitarian Law in San Remo (Italy) and the Geneva Academy of International Humanitarian Law and Human Rights.

Concerning his professional background in the field of Criminal Law, he served as Assistant to the Secretary of the 3rd Chamber of the Supreme Court of Justice in Quito and then as State Attorney-General. As far as his professional academic activities are concerned, since 2006 Doctor Salvador has been a lecturer at the Pontifical Catholic University of Ecuador for International Criminal Law and has been a visiting lecturer at the Diplomatic Academy of the Ministry of Foreign Affairs in Ecuador, where he taught a course on *International Criminal Law: Principles and Institutions*.

In the field of International Law, he served as a career diplomat for the External Service and worked in several departments at the Ministry of Foreign Affairs, namely the United Nations, International Treaties and Meetings and Maritime, and Air and Space Sovereignty. He was later delegated to the Permanent Mission of Ecuador to the United Nations Office at Geneva (Switzerland).

In his independent law practice, he has dealt with International Law cases, in particular in the field of judicial settlements of conflicts between States before international tribunals and arbitration, intellectual property, mining, oil, claims and compensation negotiations, Environmental Law, Andean Community Law and he has furthermore provided general advice on relations with the Ecuadorian Public Administration, amongst others. Doctor Salvador was the Ecuadorian lawyer in the legal team that advised the Government of Ecuador in the "Case concerning Aerial Herbicide Spraying" (Ecuador v. Colombia).

Between 1992 and 1996 he served on the United Nations Compensation Commission (UNCC) of the Security Council as lead lawyer and head of the "A" Claims Unit.

Since 2018 he has been a member of the Inter-American Juridical Committee, one of the main organs of the Organization of American States (OAS) to develop American International Law.

Amongst his most relevant publications are the books "*Derecho Internacional Penal. Estudios en perspectiva*" a (International Criminal Law. Studies in perspective), as well as numerous academic articles.

Additionally, Doctor Ínigo Salvador is highly regarded and widely respected in Ecuador because of his personal involvement in promoting policies and protocols for protection against sexual harassment and mobbing in the numerous capacities in which he has acted at a national level. He is hence regarded as one of the leading specialists in the field in his country.

## 12. Finland

[Original: English]

In 2010, the Act on Judicial Appointments (205/2000, as amended by Act 741/2010) was supplemented with a new Chapter 3a, containing provisions on the nomination of candidates for offices of judges and members in international courts and in the Court of Justice of the European Union. The purpose of legislating on the issue was to enhance transparency and consistency in the Finnish decision-making procedures so that they will continue to ensure nominations of the best possible candidates.

In 2016, provisions concerning the nomination of candidates for offices of judges and members in international courts and in the Court of Justice of the European Union were included, largely unchanged, in a stand-alone new Act (676/2016, as amended by Act 37/2019), which entered into force on 1 January 2017.

According to the Act, vacant offices for which Finland intends to nominate a candidate must be announced and published in an appropriate manner. In principle, only persons who have submitted their application for the office concerned can be nominated as candidates.

In addition, the Act contains provisions on a special Panel of Experts that the Government appoints for the task of preparing such nominations, including the making of assessments of the applicants. The Panel has a mandate of six years at a time. It consists of nine members representing the Prime Minister's Office, the Ministry for Foreign Affairs, the Ministry of Justice, the Supreme Court, the Supreme Administrative Court and the Office of the Prosecutor General, the units engaged in legal education and research at universities and the Finnish Bar Association (the Panel also contains a second member representing the Ministry responsible for presenting a nomination for decision-making by the Government plenary, where relevant). Members of the Permanent Court of Arbitration appointed by Finland are automatically members of the Panel of Experts. Decisions concerning the nomination of a candidate for election to the International Court of Justice or to the International Criminal Court are made by the procedure provided for the nomination of candidates for the International Court of Justice.

In practice, the Panel of Experts examines, in the light of the criteria set for the judges and members of the various courts falling under the scope of application of the Act, the applications submitted for the office concerned. The Panel may interview eligible applicants and it may invite external experts, as well, to give their opinions on the applicants. The Panel may also, for example, test the applicants' language skills and take into account other relevant matters.

Further provisions concerning the appointment of the Panel of Experts and the fulfilment of its duties are laid down in a government decree (179/2017)

## 13. Francia

[Original: French]

### **National procedure for the selection of candidates for the position of judge at the ICC**

In accordance with the provisions of article 36 of the Rome Statute, nominations for the position of judge at the ICC may be submitted by any State Party “(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.”

France has chosen the second option whereby French candidates are nominated by the French national group of the Permanent Court of Arbitration.<sup>6</sup>

As part of the process to nominate the French candidate in 2013, in view of the elections taking place at the 13th ASP in December 2014, the French authorities issued a public call for nominations on the websites of the Ministry of Foreign Affairs and the Ministry of Justice. The French group of the Permanent Court of Arbitration scrutinised twenty-four applications to assess whether the profile of the candidates met the criteria stipulated in article 36(3) of the Rome Statute. It immediately rejected seven nominations and then held individual interviews with each of the seventeen short-listed candidates.

The nomination selected by the French group was then forwarded to the Secretariat of the Assembly of States Parties.

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<sup>6</sup> The names and functions of the members of the PCA are listed in its annual report. (<https://pca-cpa.org/en/news/2019-annual-report/>).

## 14. Georgia

[Original: English]

### **On Approval of the Procedure for Selecting a Candidate for Judge to be Nominated from Georgia for Election to the International Criminal Court in 2020**

#### **Article 1**

In accordance with Article 36 of the Statute of the International Criminal Court ('the Rome Statute'), the attached Procedure for Selecting a Candidate for Judge to be Nominated from Georgia for the Election at the International Criminal Court in 2020 ('the Selection Procedure') shall be approved.

#### **Article 2**

The list of candidates for judge drawn up in compliance with the Selection Procedure shall be submitted to the Government of Georgia not later than 6 March 2020. *Ordinance No 126 of the Government of Georgia of 21 February 2020 – website,*

*21.2.2020*

#### **Article 3**

This Ordinance shall enter into force upon its promulgation.

### **Procedure for Selecting a Candidate for Judge to be Nominated from Georgia for Election to the International Criminal Court in 2020**

#### **Article 1**

1. A candidate for judge to be nominated from Georgia for the election at the International Criminal Court ('The Hague Court') in 2020 ('the candidate for judge') shall be selected in accordance with the requirements of Article 36 of the Rome Statute.

2. In order to identify a candidate for judge to be nominated to the Assembly of States Parties of The Hague Court from Georgia for election to the International Criminal Court in 2020, the procedure for selecting a candidate for judge shall be coordinated by the Legal Entity under Public Law called the Training Center of Justice of Georgia ('the Training Center of Justice'), which shall nominate to the Government of Georgia not more than five of the best candidates selected on the basis of this Procedure.

3. The Government of Georgia shall nominate two out of the five nominated

candidates to the Parliament of Georgia for evaluation. The Parliament of Georgia shall be requested to evaluate the candidates for judge in accordance with the requirements of Article 36 of the Rome Statute and to approve one candidate under the hearing and voting procedure established by law for the election of a candidate for a member of the Constitutional Court of Georgia.

*Ordinance No 126 of the Government of Georgia of 21 February 2020 – website 21.2.2020*

**Article 2.** A candidate for judge to be nominated from Georgia for election to The Hague Court shall be a legally capable citizen of Georgia of high moral principles and professional reputation, who has attained the age of 35, is fluent in one of the working languages of The Hague Court (the English or French languages) and meets the requirements determined by paragraphs (a) (Category A) or (b) (Category B) of this Article:

a) Category A:

a.a) holds an academic degree of Master of Laws, where the degree programme covered criminal law or international criminal law;

a.b) has not less than 10 years experience working as a judge, prosecutor and/or lawyer in the area of criminal law or in a similar position in the area of criminal procedure;

a.c) has a thorough knowledge of the Rome Statute and the relevant case law;

b) Category B:

b.a) holds an academic degree of Master of Laws, where the degree programme covered public international law, especially international human rights law and international humanitarian law;

b.b) has not less than 10 years experience working with international courts, or international organisations and international courts, on issues of international criminal law, international humanitarian law and international human rights law;

b.c) has a thorough knowledge of the Rome Statute and the relevant case law, as well as public international law in the areas of international humanitarian law and international human rights law.

**Article 3.**

1. For the purpose of selecting candidates for judges, the Training Center of Justice shall publish a vacancy and shall ensure its maximum accessibility. To this end, the Training Center of Justice shall officially submit the vacancy information to the Constitutional Court of Georgia, the High Council of Justice of Georgia, the Prosecutor's Office of Georgia, the Georgian Bar Association, higher educational institutions in Georgia, and non-governmental organisations operating in the relevant field.

2. Persons interested in the vacancy shall submit documents within 10 calendar days after the vacancy has been published. By a decision of the Training Center of Justice, this period may be extended by 7 calendar days.

3. A candidate shall submit his/her *Curriculum Vitae*, and shall explain in detail and clearly how he/she meets the criteria established by Article 2 of this Procedure, and shall accompany his/her application with documents supporting the information provided therein.

4. A *Curriculum Vitae* shall be drawn up both in the Georgian language and in the English or French language, in accordance with a template established by the Assembly of States Parties of The Hague Court, which is provided in the Annex to this Procedure. An explanation of how the candidate meets the criteria established by Article 2 of this Procedure shall be drawn up on a separate sheet of paper both in the Georgian language and in one of the working languages of The Hague Court (the English or French language).

5. A candidate shall indicate in which working language of The Hague Court he/she wishes to complete the competition procedure provided for by Article 4 of this Procedure.

6. If incomplete documents have been submitted, the candidate shall be given 3 days to remedy the shortcoming. Where the candidate fails to remedy the shortcoming within the said period, his/her application shall not be admitted.

*Ordinance No 126 of the Government of Georgia of 21 February 2020 – website,*

21.2.2020

**Article 4.**

1. The Training Center of Justice shall carry out the initial screening of competition applications on the basis of the assessment of the documents and the information provided for by Article 3 of this Procedure.

2. For the purposes of establishing the compliance of the candidates, selected for the



next stage following the initial screening of the competition applications, with the requirements provided for by Article 2(a.c) and (b.c), the Training Center of Justice shall conduct a test in the English or French language, and the assignments of the test shall be drawn up, and fulfilled assignments shall be assessed based on a 10-point system, by a consultant(s) invited by the Training Center of Justice.

3. A consultant, as provided for by paragraph 2 of this article, shall have significant experience of working in the system of The Hague Court or in criminal tribunals.

4. The Training Center of Justice shall present to the Government of Georgia as many candidates as receive at least 6 points in the test. If the number of such candidates exceeds five, the five candidates who have received the best scores in the test, shall be selected and nominated to the Government of Georgia. If none of the candidates complies with the requirements provided for by Article 2(a.c) and (b.c) of this Procedure, or if none of the candidates receives at least 6 points in the test, the Training Center of Justice shall start over the process of selecting candidates in accordance with this Procedure.

5. The Government of Georgia shall nominate to the Parliament of Georgia one candidate, or not more than two candidates, out of the candidates nominated to the Government of Georgia. If the Government of Georgia does not approve any of the candidates, the Training Center for Justice shall start over the process of selecting candidates in accordance with this Procedure.

6. The Parliament of Georgia shall be requested to select and approve one candidate through a hearing and voting procedure established for electing members to the Constitutional Court of Georgia. If the Parliament of Georgia does not approve a candidate for judge, the Government of Georgia shall be authorised to nominate to the Parliament of Georgia the other candidates nominated to it in accordance with this Procedure. In the absence of such candidates, the Training Center of Justice shall start over the process of selecting candidates in accordance with this Procedure.

7. The Ministry of Foreign Affairs of Georgia shall, through the diplomatic mission, nominate to the Secretariat of the Assembly of States Parties of The Hague Court a candidate for judge who has been approved by the Parliament of Georgia and who is to be nominated from Georgia for election to The Hague Court.

## 15. Ireland

[Original: English]

Pursuant to resolution ICCASP/18/Res.4, entitled “Resolution on the review of the procedure for the nomination and election of judges”, Ireland presents the following information concerning its national appointment procedures for the selection of candidates to judicial election at the International Criminal Court.

Ireland uses the nominations procedure provided for in article 36(4)(a)(i) of the Rome Statute, which provides for the selection of candidates by the same procedure as the nominations of candidates to the appointment to the highest judicial office in the State. The nomination of judges to the superior courts of Ireland is governed by article 35 of Bunreacht na hÉireann (the Constitution of Ireland) which provides that judges are appointed by the President on the nomination of the Government.

The nomination of Ireland’s only previous candidate for judicial election at the ICC was authorised by a decision of the Government. In making its decision, the Government was guided by the eligibility criteria contained in article 36 of the Rome Statute.

Ireland is considering reviewing its procedures for nominating candidates for judicial elections at the ICC by establishing a formal process to advise the Government on the selection of candidates, with a view to ensuring these procedures are in line with best practice.

## 16. Latvia

[Original: English]

### **National nomination and selection procedure of candidates to the international organizations (including to a position of judge of the International Criminal Court)**

In the Republic of Latvia the Law “*Par 1998.gada 17.jūlija Romas Starptautiskās krimināltiesas Statūtiem*”<sup>7</sup> Article 4 states that the Ministry of Justice of the Republic of Latvia coordinates the fulfilment of the obligations under the Statute.

The internal regulation of the Ministry of Justice of the Republic of Latvia “*Latvijas Republikas pārstāvju izvirzīšanas kārtība starptautiskajās institūcijās*”<sup>8</sup> sets out the following procedure for the nominations of the Representatives of the Republic of Latvia to the International Institutions.

The nomination procedure is coordinated by an Ad hoc working group (further in text – working group) that is established by an order of the Minister of Justice. The working group is chaired by the Secretary of State and consists of a representative of the Minister's Office, the Deputy Secretary of State for Foreign Cooperation and Strategy, the Director of the European Affairs Department, the Director of the Human Resources Department, a representative of the Legal Department as well as other persons appointed by the Minister of Justice.

Once set up, the working group decides on the applicable selection procedure – either addressing a specific person or running a selection procedure. As well as the working group decides on the composition of the selection commission.

Afterwards, the Human Resources Department convene working group meetings as necessary, functions as a secretariat for the working group and the selection commission, as well as ensures the preparations of the documents necessary for the approval of the selected candidate.

#### **The selection procedure**

##### *a) Addressing a specific candidate*

If the working group decides to address a specific candidate, the letter is prepared to either the candidate with a proposal to candidate for the re-election (if possible) or to the competent authority or person to put forward a proposal for candidacy to the international organisation position.

If the candidate agrees the Human resources department prepares the documentation and the proposal with candidacy is moved to the Cabinet of Ministers for the approval.

Afterwards the decision about the candidate is notified to the international organization.

##### *b) Running a selection procedure*

If the working group decides to run a selection procedure, it decides on the composition of the selection committee.

Further the selection committee decides on the regulation and the rules of procedure for the selection committee.

The regulation states the necessary qualities that the candidate should have – those are dependent on the specific position and the requirements of the international organization as well. Afterwards the selection procedure is carried out.

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<sup>7</sup> Par 1998.gada 17.jūlija Romas Starptautiskās krimināltiesas Statūtiem (unofficial translation “About the Rome Statute of the International Criminal Court of 17<sup>th</sup> July, 1998”), adopted 20.06.2002, entered into force 28.06.2002. Available <https://likumi.lv/ta/id/63899-par-1998-gada-17-julija-romas-starptautiskas-kriminaltiesas-statutiem>.

<sup>8</sup> Latvijas Republikas pārstāvju izvirzīšanas kārtība starptautiskajās institūcijās (unofficial translation “Procedure for the Nomination of the Representatives of the Republic of Latvia to the International Institutions”), adopted 22.08.2020., entered into force 22.08.2020. Not publicly available.

If the outcome is positive and the candidate proposal is put forward the Human resources department prepares the documentation and the proposal with candidacy is moved to the Cabinet of Ministers for the approval. Afterwards the decision about the candidate is notified to the international organization.

If the outcome is negative the working group decides whether to address a specific candidate or to run a selection procedure once again. Depending on the decision the further procedure is already discussed above.

## 17. Mongolia

[Original: English]

Mongolia presents the following information on the nomination process of Judges to the International Criminal Court pursuant to resolution ICC-ASP/18/Res.4(6), which encourages States Parties to submit information and commentary on their own existing or prospective nomination and selection procedures.

Under the provisions of Article 36(4)(i) of Rome Statute, the nomination of candidates for the election to the ICC judges may be made (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. Mongolia does not have an established legal framework governing the nomination of judges to the International Criminal Court, neither for the International Court of Justice, yet.

Mongolia has been running the nomination procedure in accordance with the procedure for the nomination of candidates for appointment to the highest judicial offices in Mongolia as the following undertakings:

The key actors in the nomination process of Judges to the ICC are the Ministry of Foreign Affairs, the Council of Justices of the Supreme Court (the Council), the latter is composed of all Justices of the Supreme Court of Mongolia. Information about vacancies is disseminated through the Administration Office of the Supreme Court.

The process is initiated by the Chief Justice of the Supreme Court, which then requires the Council to coordinate the nomination under the scrutiny of the Department of International Law and Treaty of the Ministry of Foreign Affairs. Applications are open, and interested and qualified candidates must express readiness to contest the available positions and make a direct approach to the Administration Office of the Supreme Court of Mongolia. Candidates may undergo interviews or exams to assess their qualifications.

The eligibility criteria are the same as the highest judicial office in Mongolia. The information below exhibits the procedure and the criteria for the appointment of candidates to the highest judicial office in Mongolia, i.e. The Justices of the Supreme Court of Mongolia. As stated in Article 51 (2) and (3) of the Constitution of Mongolia, the procedure of nominations of candidates for election to the Supreme Court is as follows:

- The President appoints the judges of the Supreme Court upon their presentation to the State Great Khural by the General Council of Courts.
- The candidates are required to have passed the national judicial service exam and completed practical judicial training, as well as, inter alia, be a Mongolian national, be aged 35 years or older, hold a law degree, and have at least ten years of professional experience as a lawyer, prosecutor as well as a judge, candidates who already have judicial experience at the Supreme Court enjoy some preference.

However, those who already have been appointed as Justice of the Supreme Court do not engage in assessments as they have already met the requirements.

When applications are collected, the Administration Office of the Supreme Court screens them to ensure that applicants meet the qualifications for the position, then forwards the names of qualified individuals to the Council. Significantly, the review and decision are at the Council's sole discretion.

The Council discusses and assesses the applications under the coordination of the Chief Justice of Supreme Court by the method of voting at a plenary session. The selection process at the session is highly competitive. The Council's sessions are internal and not public, but voting results shall be informed by the media.

The Council then recommends a candidate to the Ministry of Foreign Affairs, which in turn recommends the candidate to the cabinet. Once received the recommendation of the successful candidate, the cabinet decides whether to endorse the nominee and assist in the campaign process.

## 18. Netherlands

[Original: English]

With reference to the Note Verbale [ICC-ASP/19/SP/27] from the Secretariat of 17 April 2020, the Government of the Kingdom of the Netherlands wishes to inform the Secretariat about the Dutch nomination procedure for candidates for election as a judge to the International Criminal Court.

Pursuant to the Decree of 23 January 2020, No 2020000099, appointing a national group in the Permanent Court of Arbitration (see attachment), which entered into force on 1 February 2020, candidates for election as a judge to the International Criminal Court are to be nominated by the National Group of the Permanent Court of Arbitration of the Netherlands. This is the procedure provided for in Article 36 (4)(a)(ii) of the Rome Statute of the International Criminal Court. The candidates will be selected on the basis of an open call for candidates.

## 19. New Zealand

[Original: English]

New Zealand presents the below information pursuant to the Secretariat's note verbale ICC-ASP/19/SP/27, dated 17 April 2020, pursuant to resolution ICC-ASP/18/Res.4, which encourages States Parties to submit information and commentary on their own existing or prospective nomination and selection procedures.

New Zealand does not presently have a formal nomination and selection procedure for judicial candidates of the International Criminal Court. We note that there has not been a judge of New Zealand nationality on the Court's bench, nor has New Zealand yet nominated a candidate for election to the Court's judiciary.

Article 36(4) of the Rome Statute provides that nominations for election to the Court shall be made by any State Party, 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.

New Zealand does not have established nomination and selection procedures for judicial candidates to the International Court of Justice. However, the information below outlines the procedure for the nomination and appointment of candidates to the highest judicial office in New Zealand, i.e. the Supreme Court of New Zealand.

### *Nomination and appointment process for judges of the Supreme Court*

Judicial appointments are made by the Governor-General on the recommendation of the Attorney-General. The appointment process followed by the Attorney-General is not prescribed by any statute or regulation. The Attorney-General, by convention, receives advice from the Chief Justice and the Solicitor-General.

Although judicial appointments are made by the Executive, it is a strong constitutional convention in New Zealand that, in deciding who is to be appointed, the Attorney-General acts independently of party political considerations. Judges are appointed according to their qualifications, personal qualities, and relevant experience.

Successive Attorneys-General have announced new systems designed to widen the search for potential candidates and increase the opportunity for input. Within the past 10 years the systems adopted by Attorneys-General have resulted in a more diversified judiciary.

The convention is that the Attorney-General informs Cabinet of appointments after they have been determined. The appointments are not discussed or approved by Cabinet.

Section 94 of New Zealand's Senior Courts Act 2016 provides that no person shall be appointed a judge unless he or she has had a practising certificate as a barrister or solicitor for at least seven years. However, Judges also require much more than this experience in practice. They must be of good character, have a sound knowledge of the law and of its practice, and have a real sense of what justice means and requires in present-day New Zealand. They must have the discipline, capacity and insight to act impartially, independently and fairly.

Further information on nomination and appointments can be found online at the links below:

- <https://www.courtsofnz.govt.nz/about-the-judiciary/role-judges/appointments/>
- <https://www.crownlaw.govt.nz/assets/uploads/judicial-protocol.pdf>

## 20. Norway

[Original: English]

### **Procedure for nomination of candidates for the office of judge at the International Criminal Court**

#### **1. Introduction**

The International Criminal Court (ICC) was established under the Rome Statute of the International Criminal Court in 1998. The Court is located in The Hague in the Netherlands, and has jurisdiction over the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

The Court has 18 judges, all of whom serve on a full-time basis. The judges are elected at a meeting of the Assembly of States Parties for a term of nine years, and the required qualifications and procedures for their nomination and election are set out in article 36 of the Rome Statute.

The procedures for the nomination and election of judges have been subject to criticism from several quarters. At the 18th Session of the Assembly of States Parties in December 2019, a Resolution amending the procedure was adopted.<sup>9</sup> With regard to national nomination procedures, the Resolution stresses the need for States Parties to follow one of the procedures set out in article 36 paragraph 4 of the Rome Statute, and encourages States Parties to submit information on their nomination and selection procedures to the Advisory Committee on Nominations of Judges, to enable the committee to draw up a compendium of practices.

Norway has a national procedure for the nomination of judges to the European Court of Human Rights (ECHR). There is no corresponding procedure for the nomination of judges to international criminal courts. Whereas each of the member states of the Council of Europe has one judge in the ECHR and is responsible for nominating candidates for this position, there is no obligation on the part of the Norwegian authorities to nominate a candidate to the ICC and the other international criminal courts.

To ensure transparency and equal treatment in case of nominations of Norwegian candidates to the ICC, the Ministry of Foreign Affairs has drawn up a national procedure for nominations which is described in section 3 below. The procedure is based on the similar procedure for the nomination of Norwegian candidates for the office of judge at the ECHR. However, as Norway is not required to nominate candidates to the ICC, and there is no permanent seat for a Norwegian judge in the ICC, certain elements of the procedure have been modified in relation to that used for nominations to the ECHR.

#### **2. Rome Statute rules relating to qualifications, nomination and election of judges**

Part 4 of the Rome Statute specifies the rules for the composition and administration of the Court. The qualifications, nomination and election of judges are stipulated under article 36 of the Rome Statute.

##### **2.1 Qualifications and election of judges**

The Court has 18 judges, all of whom serve on a full-time basis, as set out in article 35. The judges are elected at a meeting of the Assembly of States Parties for a term of nine years and are not eligible for re-election, see article 36 paragraph 9. To ensure continuity over time, six new judges are elected every three years.

According to article 36 paragraph 3 (a), judges are to 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.’ Article 36 paragraph 3 (b) specifies two alternative requirements for qualifications and experience. Every candidate shall:

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<sup>9</sup> Resolution ICC-ASP/18/Res.4 on the review of the procedure for the nomination and election of judges.



(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.

In addition, judges are required to have ‘excellent knowledge of and be fluent in at least one of the working languages of the Court’, which are English and French.

Under article 36 paragraph 5, for the purposes of the election, there shall be two lists of candidates: List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).

Article 36 paragraph 8 states that the States Parties shall, in the selection of judges, take into account the need for representation of the principal legal systems of the world, equitable geographical representation and a fair representation of female and male judges. Beyond the reference to representation of the world’s principal legal systems, the Statute does not contain any specific requirements for the geographical distribution of the judges. However, the Assembly of States Parties has adopted minimum voting requirements which seek to ensure geographical representation up to a certain point in the election of judges.<sup>10</sup> The minimum voting requirements vary from election to election, depending on the background of the outgoing judges. The minimum voting requirements stipulate that the States Parties must vote in a way that ensures that the ICC bench meets the following requirements at all times: nine judges from list A and five judges from list B, at least six people of the under-represented gender, and two judges from each regional group (or three if the group contains more than 16 states, which is the case for all the regional groups today). Elections are carried out by secret ballot and, in order to be elected, candidates must receive a two-thirds majority of States Parties present and voting. It is often necessary to hold several rounds of balloting before a candidate receives the sufficient majority to enable them to fill a seat on the bench.

## **2.2 Nomination of candidates for the office of judge**

Candidates for the office of judge at the ICC may be nominated by all states that have ratified the Rome Statute. Under article 36 paragraph 4, States Parties should use one of the following procedures when nominating candidates:

(i) the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominated candidates must be a national of one of the State Parties that has ratified the Rome Statute, but not necessarily of the State Party that has nominated them.

Under Article 36 paragraph 4 of the Rome Statute, States Parties may decide to establish an advisory committee on nominations. An *Advisory Committee on Nominations of Judges* was established in 2011. The Committee is mandated to facilitate that the highest-qualified individuals are appointed judges of the Court. The Committee evaluates the candidates based on interviews and the written material submitted by the nominating State Party, which usually consists of the candidate’s statement of qualifications and curriculum vitae. The Committee has never found a candidate to be insufficiently qualified according to the criteria set out in article 36 paragraph 3 of the Statute. Starting in 2018, the Committee has begun classifying candidates as either ‘formally qualified’ or ‘highly qualified’.

In December 2019, the Advisory Committee was given a stronger mandate on several points. This included expanding the advisory capacity of the Committee to provide, upon request by a State Party, a confidential, provisional assessment of the suitability of a potential candidate of that State Party. However, unlike the procedure for nominating candidates for the office

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<sup>10</sup> Resolution ICC-ASP/3/Res.6, adopted at the 6th plenary meeting on 10 September 2004.

of judge at the ECHR, State Parties are not required to obtain such an assessment of potential candidates to the ICC.

### **3. National procedure**

#### **3.1. Introduction**

The procedure for nomination of Norwegian candidates to the ICC is based on the procedure for appointing judges to national courts, see article 36 paragraph 4 of the Rome Statute, and on the procedure for nomination of Norwegian candidates for the office of judge at the ECHR. However, as the requirements relating to the nomination of candidates to the ICC differ somewhat from nominations to the ECHR, some aspects of the procedure have been modified.

The main elements in the procedure are as follows: the Ministry of Foreign Affairs issues a call for applications for vacant positions at the ICC, and appoints a selection committee to assess the applications and provide a recommendation on the candidates found to be best suited for the position. The Ministry then determines whether to submit a request for a provisional assessment of the suitability of the candidates to the Advisory Committee. The final decision on whether to nominate a Norwegian candidate is taken by the Ministry, which will submit any nominations to the Assembly of States Parties within the deadline and in accordance with the applicable procedures.

#### **3.2. Call for applications**

Ordinary judicial elections at the ICC are held every three years. The nomination period opens at the beginning of the year in which the election is to take place and lasts for 12 weeks.<sup>11</sup> The Ministry of Foreign Affairs will determine whether it is relevant to nominate a Norwegian candidate for the forthcoming election well in advance of the nomination deadline. As a general rule, a call for applications for the vacant positions is issued with an invitation to prospective candidates to indicate their interest by a specified deadline. It is not necessary to issue a call for applications when it is clear from the outset that it will not be relevant to nominate a Norwegian candidate in a specific election. This may be the case, for example, in elections where there is no outgoing judge from the regional group to which Norway belongs, or when a Norwegian judge is already serving on the ICC bench. A call for applications may also be omitted if other particular reasons suggest that Norway should not nominate a candidate, such as when another Nordic country has already decided to submit a nomination. There is close Nordic cooperation on matters concerning the ICC, and as a general rule steps will be taken to avoid nominating competing candidates from the Nordic region. Calls for applications may also be omitted if political priorities or capacity considerations dictate that the relevant resources must be used on other processes within or outside the UN system. For example, in spring 2020 it was not considered feasible to nominate and campaign for a Norwegian candidate alongside the ongoing campaign and election for a seat on the UN Security Council.

The Ministry of Foreign Affairs will announce the vacant positions on the Norwegian government website and through other appropriate channels as needed. In addition, the Ministry will inform the following institutions about the call for applications and ask them to inform their contacts/members, for example, by publishing information on their own websites:

- Office of the Director of Public Prosecutions
- Norwegian Courts Administration
- Norwegian National Human Rights Institution
- faculties of law at Norwegian universities
- Norwegian Association of Judges
- Norwegian Bar Association

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<sup>11</sup> Resolution ICC-ASP/3/Res.6, amended in Resolution ICC-ASP/18/Res.4 19. December 2019.

- Norwegian Association of Lawyers

The call for applications is to include a description of the position and specification of the qualifications required as stated in article 36 of the Rome Statute (see also section 2.1 above).

To be considered, applicants must have a law degree (cand.jur or Master's degree in law) and relevant legal professional experience. In line with the requirements in article 36 paragraph 3 (b) of the Rome Statute, candidates must 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' (list A candidates), or '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' (list B candidates). In addition, judges are required to have 'excellent knowledge of and be fluent in at least one of the working languages of the Court', which are English and French, see article 36 paragraph 3 (c) of the Rome Statute.

Special weight will be given to applicants' professional competence, personal suitability and language qualifications, and to the requirements for high moral character and independence that follow from article 36 paragraph 3 (a) of the Rome Statute (and from section 55 of the Courts of Justice Act in the case of Norwegian judges). It is an advantage to have relevant experience in criminal proceedings, whether as judge, prosecutor, advocate or in other similar capacity, see article 36 paragraph 3 (b) (i) of the Rome Statute. Knowledge and experience in international criminal law and procedure will also be viewed in a positive light. Judges are elected for a term of nine years. Candidates should be able and willing to take up the position for the whole term of office.

The call for applications shall encourage applicants from the under-represented gender at the Court to apply, and shall include the deadline for applications, which is to be at least two weeks after the call is posted on the internet. It shall also contain information to the effect that the list of applicants will be made public, and should make it clear that a final decision has not necessarily been taken on whether or not a Norwegian candidate will ultimately be nominated.

### **3.3. Selection committee**

The Ministry of Foreign Affairs will appoint a selection committee consisting of seven members. The committee is headed by the chair of the Judicial Appointments Board (subject to this person's agreement). Five members will be appointed on the basis of proposals from the Supreme Court of Norway, the Office of the Director of Public Prosecutions, the Norwegian National Human Rights Institution, the Norwegian Bar Association and the Norwegian Association of Judges. Each of these bodies will be encouraged to put forward the names of one woman and one man. In addition to the chair and the five members appointed on the basis of proposals from external institutions, the Ministry of Foreign Affairs will appoint one member.

The selection committee's task will be to evaluate the candidates for Norwegian nomination and to recommend up to three applicants ranked in relation to the qualifications for the office of judge at the ICC ("short list"). If possible, at least one of the candidates should be of the gender that at the time is under-represented at the Court. The committee is not required to draw up a short list if it finds that none of the applicants meet the qualifications stipulated for the position. The applicants are to be assessed on the basis of the qualifications specified in the call for applications, the applications received, interviews with potential candidates and the references obtained. The proficiency in English and French of those applicants who may be selected as candidates shall be documented or tested.

The selection committee may seek advice from relevant external actors, and may use external expertise to evaluate the language proficiency of relevant applicants.

The committee is to submit its short list, with the reasons for its recommendation, to the Ministry of Foreign Affairs. The short list will be public, but the committee's reasons will normally be exempted from public disclosure.

### **3.4. Submission of candidates to the ICC Advisory Committee on Nominations of Judges and the decision to nominate a candidate**

After receiving the selection committee's short list, the Ministry of Foreign Affairs may submit one or more of the candidates to the ICC Advisory Committee on the Nominations of Judges for a provisional assessment of their suitability. The Ministry will determine whether this is necessary and expedient in the light of its experience with this type of assessment and any recommendations received from the Assembly of States Parties.

The Ministry of Foreign Affairs is not bound by the selection committee's assessment or ranking of the candidates. If the Ministry is considering nominating a candidate that has not been placed on the short list by the selection committee, it is to ask the committee for an opinion on the person(s) in question.

In determining whether to nominate a candidate, the Ministry of Foreign Affairs may, in addition to assessing the qualifications of the applicants, attach importance to the considerations mentioned in section 3.2 above, including coordination with the other Nordic countries on a possible nomination. If the Ministry wishes to nominate a Norwegian candidate, the proposal is to be submitted for comment to the various ministries involved and the Office of the Prime Minister.

The Ministry of Foreign Affairs will submit any Norwegian candidates to the ICC within the stipulated deadline and in accordance with ICC procedures.

## 21. Republic of Korea

[Original: English]

### **Republic of Korea's Procedures for the Nomination and Selection of Candidates for Election to the International Criminal Court**

#### **Introduction**

This paper outlines the general practices the Government of the Republic of Korea follows in order to nominate candidates for election to the International Criminal Court (ICC) in a manner that meets the requirements as provided for in Article 36(4)(a) of the Rome Statute

#### **Committee for the Nomination of Candidates for Election to the ICC**

The Government of the Republic of Korea selects its candidates for election as judge of the ICC through the Committee for the Nomination of Candidates for Election to the ICC (the "Committee"). The Committee consists of the members of the Korean national group at the Permanent Court of Arbitration (PCA) and the Chief Justice (or his/her representative) of the Supreme Court of Korea. This procedure allows for the elements of both Article 36(4)(a)(i) and Article 36(4)(a)(ii) of the Rome Statute.<sup>12</sup>

#### **Recommendations for the Selection of Candidates**

The Committee invites the Supreme Court, the Ministry of Justice and the Korea Society of International Law to recommend possible candidates, and informs them that the recommended persons are required to have high moral character, impartiality and integrity, possess the qualifications required for appointment as a Supreme Court Justice,<sup>13</sup> and fall under List A and/or List B, according to Article 36(3) of the Rome Statute.

Each entity recommending such a candidate submits a recommendation statement including a full description of how the candidate fulfils the Rome Statute's requirements, details of the candidate's excellent knowledge of and fluency in at least one of the ICC's working languages, his/her international experience and expertise, a comprehensive curriculum vitae, and other relevant documents.

#### **Review and Final Selection**

After the recommendations have been submitted, the Ministry of Foreign Affairs holds a meeting of the Committee, and the Committee selects the final candidate by consensus after thorough discussions. In selecting a candidate, the Committee takes into account the qualities of the candidate as the top priority and comprehensively considers the candidate's experience in relation to List A and/or List B of the Rome Statute, professional or academic expertise, international experience, reputation, and his/her availability for the term of appointment as an ICC judge.

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<sup>12</sup> In accordance with Article 36(4)(a)(ii) of the Rome Statute, the members of the national group of Korea at the PCA nominating candidates for the ICJ under the ICJ Statute become members of the Committee. In addition, in accordance with Article 36(4)(a)(i), the Chief Justice of the Supreme Court, who makes recommendations to the President of Korea for the appointment of Supreme Court Justices, the highest judicial officers in Korea, becomes a member of the Committee.

<sup>13</sup> In order to be eligible to be appointed as a Justice of the Supreme Court of Korea, a person shall have been in one or more of the following positions for at least 20 years and be at least 45 years of age. (Article 42 of the Court Organization Act (Qualification for Appointment))

- Judge, prosecutor, or attorney-at-law;
- Person who is admitted to the bar and has been engaged in legal affairs at a government agency, local government, a public organization as set out in Article 4 of the Act on the Management of Public Institutions, and/or a corporation;
- Person who is admitted to the bar and has been in a position higher than assistant professor in jurisprudence at an authorized college or university.

## 22. Sierra Leone

[Original: English]

### **Information and commentary from the Republic of Sierra Leone on the existing procedure for Nomination of Candidates for Appointment to the highest Judicial Office, as required by article 36(4)(a)(i) of the Rome Statute of the International Criminal Court**

#### **I. Introduction**

1. The Republic of Sierra Leone welcomes the opportunity to submit information and commentary on the existing nomination and selection procedure for appointment to the highest judicial office in Sierra Leone, adopted for the process of nominating a candidate for the position of judge of the International Criminal Court (ICC or Court) pursuant to article 36(4)(a)(i) of the Rome Statute of the ICC (Rome Statute),<sup>14</sup> and relevant resolutions of the ICC Assembly of States Parties (ICC-ASP).<sup>15</sup> This submission is made under paragraph 6 of the resolution on the review of the procedure for the nomination and election of judges of the ICC adopted in the 18<sup>th</sup> session of the ICC-ASP dated 6 December 2019.<sup>16</sup>

2. In adopting the procedure for appointment to the highest judicial office in Sierra Leone, due consideration was given to the encouragement of 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*’.<sup>17</sup>

3. Sierra Leone notes with appreciation the efforts being made by the ICC-ASP to improve the effectiveness and efficiency of the Court through, inter alia, ensuring a merit-based election of highly qualified candidates as judges, with a strengthened process for judicial nomination and election. Accordingly, Sierra Leone is committed to a transparent and merit-based process, and therefore consents to the publication of this submission by the Secretariat of the ICC-ASP, in addition to the compendium to be prepared by the Advisory Committee on Nominations of Judges (ACN) as a reference document for the use of States Parties to the Rome Statute.<sup>18</sup>

#### **II. Information on the National Procedure for Appointment to the Highest Judicial Office in Sierra Leone**

##### *The Judiciary and Highest Judicial Office in Sierra Leone*

4. As a preliminary issue, judicial power in Sierra Leone is vested in the judiciary headed by the Chief Justice.<sup>19</sup> The judiciary comprises the Supreme Court, the Court of Appeal and the High Court, constituting the Superior Court of Jurisdiction on the one hand, and other inferior courts on the other hand.<sup>20</sup> The judiciary is responsible for the administration of justice in Sierra Leone and in the exercise of its functions, the judiciary is subject only to the Constitution or any other law, and not subject to the control or direction of any other person or authority.<sup>21</sup>

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<sup>14</sup> See art. 36(4)(a)(i) of the Rome Statute of the International Criminal Court, July 17, 1998, UN Doc. A/CONF.183/9 *reprinted in* 37 ILM 999 (1998).

<sup>15</sup> See paragraph 6 (f) of resolution ICC-ASP/3/Res.6 (Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court) as amended by resolutions ICC-ASP/5/Res.5, ICC-ASP/12/Res.8, ICC-ASP/14/Res.4, and ICC-ASP/18/Res.4 respectively.

<sup>16</sup> ICC-ASP/18/Res.4, para 6.

<sup>17</sup> *Ibid*, para 5.

<sup>18</sup> *Ibid*, para 7.

<sup>19</sup> Section 120(1) of the Constitution of the Republic of Sierra Leone, Act No. 6 of 1991.

<sup>20</sup> *Ibid*, sec. 120(2). The inferior courts comprise the Magistrates courts and the Local courts. The Magistrates Courts exist in each district. Local courts administer customary law in provincial communities outside the Western Area.

<sup>21</sup> The Constitution of Sierra Leone (n 6), sec 120(3).

5. The Supreme Court is the highest court in Sierra Leone and consists of the Chief Justice and not less than four Justices of Supreme Court and such other Justices of the Superior Court of Judicature. The Chief Justice may for the determination of any particular cause or matter request to sit in the Supreme Court such other Justices of the Superior Court of Judicature for such period as the Chief Justice may specify or until the request is withdrawn.<sup>22</sup>

#### *Appointment of Judges of the Superior Court of Judicature*

6. The Constitution provides that the President of Sierra Leone shall, acting on the advice of the Judicial and Legal Service Commission (JLSC),<sup>23</sup> appoint the Chief Justice (from among persons qualified to hold office as Justice of the Supreme Court) and the other Judges of the Superior Court of Judicature.<sup>24</sup>

#### *Qualification for appointment as a Judge of the Superior Court of Judicature*

7. A person shall not be qualified for appointment as a Judge of the Superior Court of Judicature unless she is entitled to practice as counsel in a court having unlimited jurisdiction in civil and criminal matters in Sierra Leone or any other country with a system of law analogous to that of Sierra Leone or approved by the JLSC and has been entitled as such, in the case of appointment to the Supreme Court for not less than 20 years; the Court of Appeal for not less than 15 years; and the High Court for not less than ten years.<sup>25</sup>

8. A person is entitled to practice as counsel in a court having unlimited jurisdiction in civil and criminal matters (Court of Superior Judicature) in Sierra Leone when admitted and enrolled as a legal practitioner,<sup>26</sup> and has not subsequently been disbarred or removed from the roll of counsel or legal practitioners.<sup>27</sup> An application for admission to practice law in Sierra Leone must be accompanied by two testimonials of good character.<sup>28</sup> The Sierra Leone Judicial Code of Conduct, which is binding on all serving judicial officials, imposes on the judicial officials well recognized judicial principles of conduct, inter alia, judicial ethics, integrity, impartiality, competence and diligence.<sup>29</sup>

#### *The Judicial and Legal Service Commission (JLSC) – its Role and Composition*

9. The JLSC is established by the Constitution of Sierra Leone, to “advise the Chief Justice in the performance of his administrative functions and perform such other functions as provided in the Constitution or by any other law”,<sup>30</sup> including advising the President on

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<sup>22</sup> Ibid, sec 121(1).

<sup>23</sup> See note 17 hereunder on the Judicial and Legal Service Commission.

<sup>24</sup> Ibid, sec 135 states:

[...] (2) *The other Judges of the Superior Court of Judicature shall be appointed by the President by warrant under his hand acting on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament.*

(3) *A person shall not be qualified for appointment as a Judge of the Superior Court of Judicature, unless he is entitled to practise as Counsel in a Court having unlimited jurisdiction in civil and criminal matters in Sierra Leone or any other country having a system of law analogous to that of Sierra Leone and approved by the Judicial and Legal Service Commission, and has been entitled as such Counsel in the case of appointment to— a. the Supreme Court, for not less than twenty years;*

[...]

(4) *For the purposes of subsection (3), a person shall be regarded as entitled to practice as Counsel if he has been called, enrolled or otherwise admitted as such and has not subsequently been disbarred or removed from the Roll of Counsel or Legal Practitioners.*

(5) *For the purposes of this section, a person shall not be regarded as not being entitled to practise in a court by reason only that he is precluded from doing so by virtue of his holding or acting in any office.*

Under Section 135 of the Constitution, domestic appointments are subject to the approval of Parliament. On international matters, the practice is rested on the powers bestowed on the President to conduct international relations (including nominations and appointments in the international system as provided for in section 40(4)).

<sup>25</sup> Ibid, sec 135(3).

<sup>26</sup> See the Legal Practitioners Act 2000 (as amended), sec 9. Section 1 of the Act defines a “legal practitioner” to mean “any person admitted and enrolled to practice law [in Sierra Leone] as a barrister and solicitor”.

<sup>27</sup> The Constitution of Sierra Leone (n 6), sec 135(4).

<sup>28</sup> Ibid, sec 12(2)(a).

<sup>29</sup> Code of Conduct for Judicial Officers of the Republic of Sierra Leone (September 2005).

<sup>30</sup> The Constitution of Sierra Leone (n 6), sec 140(1) and (2).

the appointment of judges of Superior Judicature in Sierra Leone.<sup>31</sup> The JLSC also has powers to appoint and promote other judicial officials.<sup>32</sup>

10. The JLSC is made up of seven members, and include the Chief Justice (who is chairperson), the most senior justice on the Court of Appeal; the Solicitor-General; the Chairman of the Public Service Commission; one practicing counsel of not less than ten years standing nominated by the Sierra Leone Bar Association and appointed by the President; and two other persons, who cannot be legal practitioners and who are appointed by the President subject to the approval of Parliament.<sup>33</sup> To safeguard judicial independence, the majority of the members of the JLSC are members of the judiciary and the legal profession in Sierra Leone.

11. Following the provisions of the law in Sierra Leone, the national procedure for appointment to the Supreme Court (the highest judicial office), requires a recommendation by the autonomous JLSC and subsequent appointment by the President. To qualify for such recommendation and appointment, the appointee must have been enrolled and entitled to practice law as counsel (legal practitioner) for not less than 20 years in Sierra Leone, and has not been removed or disbarred from the roll as counsel. In other words, conformity with the well-recognized principles of judicial conduct must be evident for character testimonials.

### **III. Commentary on the National Procedure for Appointment to the Highest Judicial Office in Sierra Leone**

12. The Government of Sierra Leone considers that, as a State Party to the Rome Statute, Sierra Leone is entitled to nominate candidates for elective posts in the ICC in line with the relevant provisions of the Rome Statute. As regards nominations of judges, Sierra Leone recalls that the terms of article 36(4)(a) provide two alternative procedures. The first provides for a procedure for the nomination of candidates for appointment to the highest judicial offices in Sierra Leone, whereas the second entails a procedure providing for the nomination of candidates for the International Court of Justice. Both options are equally available to States Parties and there is no hierarchy as between the two. The use of one procedure in the case of a given candidacy in a given year does not prejudice the Government's election to use the other in a future election, consistent with the terms of the Rome Statute.

13. The Government of Sierra Leone in utilizing the existing procedure for appointment to the highest judicial office in Sierra Leone for the purpose of nominating a candidate for the position of judge at the ICC pursuant to article 36(4)(a)(i) of the Rome Statute of the ICC has been guided by the relevant provisions of the Rome Statute,<sup>34</sup> the desire to accomplish a measure of uniformity in appointment of judges whether for the ICC or the domestic Superior Court of Judicature in view of the complementarity principle, previous experience and due regard to good practices at the national and international levels, in particular, the nomination of judges by the Government of Sierra Leone to the Special Court for Sierra Leone,<sup>35</sup> and its successor Residual Special Court for Sierra Leone.

14. The practice on the appointment of judges to the Superior Court of Judicature in Sierra Leone is well settled, developed mainly to effectively implement the constitutional provisions effectively. The settled practice is based on two recruitment tracks. The first track being recruitment that proceeds from an open and general call for applications by the judiciary based on the qualification requirements as set out in the Constitution. This track is

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<sup>31</sup> Ibid, sec 135 (1) and (2).

<sup>32</sup> Ibid, sec 141 (1) and (2) which respectively provide that: “*The power to appoint persons to hold or act in an office to which this section applies (including the power to make appointments on promotion and transfer from one office to another and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such office shall vest in the Judicial and Legal Service Commission*”. The judicial offices include, inter alia, Registrar and Deputy Registrar of the Supreme Court, Registrar and Deputy Registrar of the Court of Appeal, Master and Registrar of the High Court, Deputy Master and Registrar of the High Court, any Registrar of the High Court, any Principal Magistrate, Senior Magistrate and Magistrate.

<sup>33</sup> Ibid, sec 140(1).

<sup>34</sup> *Supra*, (n 1 and 2).

<sup>35</sup> *The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone* (UN-Sierra Leone Agreement), to which was annexed the *Statute of the SCSL* (SCSL Statute), was signed on 16 January 2002. See the *UN-Sierra Leone Agreement* and the annexed *Statute of the SCSL*, reprinted in 2178 U.N.T.S. at p. 138 and 145. The legislative history of the SCSL is available in *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, UN Doc. S/2000/915, 4 October 2000.



most suitable for judicial appointments to the inferior courts and the High Court (being the first instance Superior Court of Judicature). The second track used mainly for the Court of Appeal and Supreme Court is based on internal evaluations and promotions on the basis of meritorious service as determined and recommended by the JLSC.

15. For the purposes of the selection and nomination of a candidate for election as a judge in the 19<sup>th</sup> session of the ICC-ASP,<sup>36</sup> the second track was employed, having been deemed as the most suitable and efficient track to select a highly qualified candidate, given the existing expertise and representative composition of the JLSC. The second track which is based on internal evaluations and promotions on the basis of meritorious service requires only administrative modifications to enable the Ministry of Foreign Affairs and International Cooperation (Foreign Ministry) to perform its facilitating/liaison role.

*Public Information on the Call for Nomination (the Judiciary and the Sierra Leone Bar Association)*

16. The Foreign Ministry upon receipt of the note verbale<sup>37</sup> from the Secretariat of the ICC-ASP conveying the decision of the Bureau of the Assembly, taken on 18 December 2019, to open the nomination period for the election of six judges of the Court, in accordance with the Rome Statute and relevant resolution, immediately made the information public. The Foreign Ministry, by memorandum, further forwarded the note verbale to the Judiciary, through the Chief Justice, and to the Sierra Leone Bar Association. This was to ensure effectiveness and efficiency in notifying the institutions with the most qualified candidates in Sierra Leone.

*The Role of the JLSC and the Selection Process*

17. Following the transmission of the information on the opening of the nomination period, authority and control over the process of selection was immediately ceded to the JLSC. The JLSC, chaired by the Chief Justice, being responsible to assess the skills and qualifications of all judicial candidates in Sierra Leone opted from the track based on evaluations and promotions on the basis of merit and meeting the qualifications set out by article 36(3) Rome Statute.

18. The Chief Justice on receipt of the note verbale which detailed the procedure for the nomination and election of Judges to the ICC from the Foreign Ministry, summoned a meeting of the JLSC to consider the selection and recommendation for nomination(s) of suitably qualified candidate(s) by the Government of Sierra Leone. Akin to the constitutional provisions in Sierra Leone<sup>38</sup> on the appointment of justices to the Superior Court of Judicature, the JLSC in a meeting<sup>39</sup> resolved that the President of Sierra Leone be advised of its recommendation to nominate Justice Miatta Maria Samba for election to the position of Judge of the ICC.

19. In the meeting of the JLSC, according to its established practice, the candidate was interviewed, and the Commission adjudged the candidate to be eminently qualified, with the necessary experience, including her existing judicial functions as Justice of the Court of Appeal and Chair of the Legal Aid Board in Sierra Leone, as well as her outstanding moral character and integrity.

*Final decision to nominate Justice Miatta Maria Samba*

20. The final decision to nominate Justice Miatta Maria Samba was made by the President of the Republic of Sierra Leone, which essentially is an approval of the advisory decision of the JLSC pursuant to section 135 (2) of the Constitution of Sierra Leone.

*Civil Society Engagement in the Nomination Process*

21. There are two layers for a participatory approach to the selection and nomination process. Firstly, the membership of the JLSC,<sup>40</sup> includes a representative of the Sierra Leone

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<sup>36</sup> Note verbale of 26 September 2020 (UN/ICC/6<sup>TH</sup>/307) on the nomination of Justice Miatta Maria Samba for election as Judge of the ICC by the Government of Sierra Leone.

<sup>37</sup> ICC-ASP note verbale of 20 December 2019 (ICC-ASP/19/SP/01).

<sup>38</sup> The Constitution of Sierra Leone (n 6), sec 135(2).

<sup>39</sup> The JLSC in its first meeting on Tuesday the 7<sup>th</sup> January 2020 consider the agenda item on the selection and nomination of Justice Miatta Maria Samba for election for the position of judge of the ICC.

<sup>40</sup> The Constitution of Sierra Leone (n 6), sec 140(1).

Bar Association, and two persons not legal practitioners. This means in the workings and decision of the JLSC, the only association of legal practitioners in Sierra Leone is given an official voice and vote, together with two representatives of citizens who are not lawyers and whose appointments are approved by parliament.

22. The second layer in the case of the nomination of Justice Miatta Maria Samba is the informal consultations and broad endorsement of the decision by the Sierra Leone Bar Association, and 21 non-governmental organizations in Sierra Leone,<sup>41</sup> including Sierra Leone Coalition for the International Criminal Court, and the leading gender equality advocacy organization in Sierra Leone, that is, Legal Access through Women Yearning for Equality Rights and Social Justice (L.A.W.Y.E.R.S) and the 50/50 Women's Group.

#### **IV. Conclusion**

23. Sierra Leone attaches great importance to the work of the ICC and the effective functioning of the Rome Statute system, and is firmly associated with the fight against impunity for atrocity crimes, as part of the global efforts to end impunity. The adoption of the Rome Statute has significantly transformed the landscape of international criminal justice, especially with respect to transitional justice in conflict and post-conflict societies of which the recent history of Sierra Leone exemplifies the role of accountability as a fundamental building block for the consolidation of peace and pursuit of economic and social development.

24. Sierra Leone's experience with the Special Court for Sierra Leone (SCSL), a hybrid-criminal tribunal, has deepened and consolidated our abiding commitment in the effectiveness of international criminal justice through ownership and partnership at the domestic and international levels. Delivering on the mandate of the ICC, therefore, requires the collective will of the States Parties to the Rome Statute. The SCSL is credited with completing its mandate<sup>42</sup> with judicial efficacy, with significant contribution to the development of the jurisprudence on international criminal justice. As part of the legacy and significant contribution of the Special Court, Sierra Leoneans, including Justice Samba, have gained considerable experience in international criminal justice, and we therefore see the nomination of a competent and highly qualified candidate as one way of contributing to the global efforts to end impunity for atrocity crimes.

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<sup>41</sup> The non-governmental organizations are: Centre for Accountability and Rule of Law, Sierra Leone Coalition for International Criminal Court, Institute of Governance Reform, Campaign for Good Governance, Society for Democratic Initiatives (SDI), Campaign for Human Rights and Development International, Caritas Justice and Peace Commission, Movement for the Restoration of Democracy, One Heart Sierra Leone, Movement for Resettlement and Rural Development, Women's Empowerment for Development, Community Organization for Mobilization and Empowerment – Sierra Leone, Foundation for Human Rights and Development, Community Mobilization for Human Rights and Development, RYDO-SL, PRIDE-SL, Women Against Violence and Exploitation in Society, Women's Forum for Human Rights and Democracy, Sierra Leone Citizens Rights Association, Legal Access Centre, and National Centre For Human Rights and Development (NaCFoHRD). See "Sierra Leone Civil Society Endorses Nomination of Judge Miatta Maria Samba as Candidate for Judge of the International Criminal Court" (March 24, 2020) <<http://www.carl-sl.org/pres/sierra-leone-civil-society-endorses-nomination-of-judge-miatta-maria-samba-as-candidate-for-judge-of-the-international-criminal-court/>> .

<sup>42</sup> The mandate of the SCSL was to prosecute those who bore the greatest responsibility for war crimes, crimes against humanity and other serious violations of international humanitarian law committed between November 1996 and January 2002.

## 23. Slovenia

[Original: English]

### **Legal basis: Act on nomination of candidates from the Republic of Slovenia for judges at the Internatinal Criminal Court**

The selection and appointment process in the Republic of Slovenia is extensively regulated and transparent. It involves various stages and institutions.

The procedure for nominating the candidates is extensively regulated in the Act on Nomination of Candidates from the Republic of Slovenia for Judges at International Courts<sup>43</sup> (hereinafter: Act on Nomination).

Article 2 stipulates that person who fulfills the conditions provided by this Act can be nominated and elected for a candidate for international court judge. If rules of an international court or an international treaty which obliges the Republic of Slovenia provide special conditions for election of international court judge, person which fulfills such conditions, as well, can be nominated and elected for a candidate for international court judge. Rules of an international court or an international treaty which binds the Republic of Slovenia regarding invitation for applications, way of nominations, number of candidates and election procedure shall be appropriately applied.

Article 3 of the Act on Nomination stipulates that a person can be considered as candidate for a judge at an international court provided that he or she fulfils the **statutory requirements for the post of a Supreme Court Judge or the position of a Constitutional Court Judge**.

Additionally, Article 3 provides that the candidate must satisfy the requirements of having active knowledge of at least one of the official languages used at the respective international court.

As regards the eligibility requirements for the position of a Supreme Court Judge, Article 8 of the Judicial Service Act,<sup>44</sup> provides that a candidate may be elected to the position of a Supreme Court Judge if he/she fulfils the following general requirements:

- “1. he/she is a citizen of the Republic of Slovenia and has an active command of Slovenian language;
2. he/she has the capacity to contract and is generally in good health;
3. he/she is at least 30 years of age;
4. he/she has obtained the professional title of a graduate lawyer in the Republic of Slovenia or has acquired equivalent education abroad, recognised pursuant to the foreign document on education and the attached opinion on education or by a decision on the recognition of education for the purpose of employment or by a decision on nostrification;
5. he/she has passed the lawyer's state examination;
6. he/she had not been convicted of a deliberate crime;
7. an indictment has not been filed against him/her nor a main hearing is to be proceeded due to a premeditated criminal offense prosecuted ex officio.”

In addition, Article 12 of the Judicial Service Act prescribes the requirement of working experience / academic title for Supreme Court Judges, as follows:

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<sup>43</sup> Act on nomination of candidates from the Republic of Slovenia for judges at international courts, Official Gazette of the Republic of Slovenia, No. 64/2001, 59/2002, 82/2004 - Constitutional Court Decision [http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/PDF/zakonodaja/160118\\_Act\\_on\\_nomination\\_of\\_Judges\\_from\\_Slovenia\\_eng\\_31.12.15.pdf](http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/PDF/zakonodaja/160118_Act_on_nomination_of_Judges_from_Slovenia_eng_31.12.15.pdf)

<sup>44</sup> Judicial Service Act, Official Gazette of the Republic of Slovenia, No. 94/07 – official consolidated text, 91/09, 33/11, 46/13, 63/13 in 69/13 – corrigendum, 95/14 – ZUPPJS15, 17/15 and 23/17 – ZSSve) <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO334> (Slovenian version)

“Persons who fulfil the conditions specified in the first paragraph of Article 8 of this Act may be elected to a judicial post at the Supreme Court (Supreme Court Judge) if they have successfully held judicial office for at least 15 years or have at least 20 years of working experience in legal work after passing the lawyer’s state examination.

University lecturers of law who fulfil the conditions specified in the first paragraph of Article 8 of this Act may be elected Supreme Court judges provided they have been elected to at least a title of associate professor.”

A person who fulfils the conditions referred to in paragraph one of Article 8 of this Act may be elected to a judicial post at the Supreme Court (Supreme Court judge) if they have successfully held judicial office for at least 15 years or have at least 20 years of experience in legal work after passing the state judicial examination.

University lecturers in law who fulfil the conditions referred to in paragraph one of Article 8 of this Act may be elected Supreme Court judge provided they have been elected to at least the title of associate professor.

As regards the eligibility requirements for the post of the Constitutional Court Judge, Article 9 of the Constitutional Court Act,<sup>45</sup> any citizen of the Republic of Slovenia who is a legal expert and has reached at least 40 years of age may be elected to the post of a Constitutional Court Judge.

The requirement of 40 years of age for the post of a judge at an international court has been challenged before the Constitutional Court as discriminatory. The Constitutional Court has dismissed the challenge and confirmed the requirement as compliant with the Constitution.<sup>46</sup> It considered the age requirement of 40 years of age non-discriminatory as the requirement is connected with the position of a judge and implies the expectation of certain life experiences.

The Slovenian Act on Nomination has been exposed as an example of good practice in items 23 and 38 of the 4.4 Guidelines of the Committee of Ministers of Council of Europe on the selection of candidates for the post of judge at the European Court of Human Rights.<sup>47</sup>

#### The procedure

In accordance with the Act on Nomination the **Ministry for Justice of the Republic of Slovenia** (hereinafter: the Ministry) issues a call for applications for a vacant judicial position at an international court within the period set by a public invitation of an international court.

The call for applications is published in the **Official Gazette of the Republic of Slovenia** and prescribes the deadline for applications not shorter than 15 days. Along with their applications, the candidates must provide evidence of compliance with the application conditions and description of their professional activity subsequent to their latest professional or academic title.

Applications that are not refused or dismissed by the Ministry are transferred to the **President of the Republic of Slovenia**. After obtaining the opinions on the applicants from the **Government of the Republic of Slovenia** and the **Judicial Council of the Republic of Slovenia**, the President of the Republic must transmit his proposal with the required number of candidates to the **National Assembly of the Republic of Slovenia**. The President must provide the reasoning underlying his proposals. The candidate for an international court judge is elected by the National Assembly of the Republic of Slovenia through a secret ballot by the majority of all members of the Assembly.

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<sup>45</sup> The Constitutional Court Act, Official Gazette of the Republic of Slovenia, Nos. 64/07 – official consolidated text and 109/12.

<http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO325> (Slovenian version).

<http://www.us-rs.si/media/the.constitutional.court.act-zusts.pdf> (English version).

<sup>46</sup> Constitutional Court Decision no. U-I-120/04 from the 1st of July 2004, Official Gazette of the Republic of Slovenia, No. 82/2004

<http://odlocitve.us-rs.si/sl/odlocitev/US23592?q=U-I-120%2F04> (Slovenian version).

<sup>47</sup> [https://www.coe.int/t/dgi/brighton-conference/documents/Guidelines-explan-selection-candidates-judges\\_en.pdf](https://www.coe.int/t/dgi/brighton-conference/documents/Guidelines-explan-selection-candidates-judges_en.pdf).

## 24. South Africa

[Original: English]

### **Procedure for the appointment of judges to the highest judicial offices as provided for in section 178 of the Constitution of the Republic of South Africa, 1996**

The appointment of judges to the highest judicial offices, namely the High Courts, the Supreme Court of Appeal and the Constitutional Court, is regulated by the Constitution of the Republic of South Africa, 1996, which provides for an open and transparent system.

Section 178 of the Constitution establishes the Judicial Service Commission consisting of the Chief Justice, the President of the Supreme court of Appeal, a Judge President of one of the nine High Courts, the Cabinet member responsible for the administration of justice, four practising members of the legal profession, one teacher of law, six persons designated by the House of Assembly from among its members (at least three of which must be members of the opposition parties represented in the Assembly), four members of the National Council of Provinces, four persons designated by the President as head of the national executive, after consultation with the leaders of all parties represented in the National Assembly and, when considering matters relating to a specific High Court, the judge President of that Court and the Premier of the province concerned.

Vacant judicial positions are advertised by the JSC and solicitors, barristers, academics, judges and other suitably qualified persons can apply to be considered for these positions. The JSC screens the candidates by reviewing their Curricula Vitae and written statements, and then conducting interviews with applicants. The internal JSC meetings are not public, but interviews are televised. The JCS then compiles a shortlist of candidates from which the President can then appoint persons to vacancies.

## 25. Switzerland

[Original: French]

### **Information and comments from Switzerland on its prospective procedure for the nomination of judicial candidates to the International Criminal Court pursuant to resolution ICC-ASP/18/Res. 4**

The Federal Department of Foreign Affairs of the Swiss Confederation presents its compliments to the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court and has the honor to refer to the Secretariat's note, dated 21 June 2021, regarding the submission of information and comments from the States Parties on their existing or prospective nomination and selection procedures pursuant to resolution ICC-ASP/18/Res. 4.

Switzerland presents the below information pursuant to resolution ICC-ASP/18/Res. 4 paragraph 6, which encourages States Parties to submit information and commentary on their own existing or prospective nomination and selection procedures. Moreover, the Independent Expert Review addressed the improvement of the system of nomination of judges in its Final Report, dated 30 September 2020. In their Recommendation 376, the Experts also encouraged States to submit information as requested in resolution ICC-ASP/18/Res. 4 paragraph 6. With this submission, Switzerland wishes to contribute to this endeavor.

Switzerland welcomes the efforts by the Assembly of States Parties to improve the effectiveness and efficiency of the Court system, including through ensuring a merit-based election of highly qualified candidates as judges. Strengthening the process for judicial nomination is one important element.

In its foreign policy strategy for 2020-23, the Swiss government made supporting an effective International Criminal Court a priority. Within this context, Switzerland is focusing on ensuring that only the most qualified individuals are nominated and elected to high offices of the Court. For example, in February 2020, together with Uruguay and Open Society Justice Initiative, Switzerland organized a workshop on national nomination procedures for judicial candidates. One outcome was a practical Tool-Kit, which serves States Parties in establishing or improving their respective nomination procedures. Switzerland has already supported and participated in exchanges between States Parties that aimed at sharing experiences and good practices, for example by organizing a side event during the 19th Assembly of States Parties.

By submitting its draft procedure, Switzerland hopes to actively contribute to the exchange on national procedures including to the compendium to be prepared by the Advisory Committee on Nominations of Judges (ACN) as a reference document. Switzerland has full confidence in the ACN mandate and the respective facilitation.

Today, information is provided with regards to the draft prospective Swiss procedure for the nomination of judicial candidates to the Court. In the drafting process, due consideration was given to the encouragement of States Parties in paragraph 5 of ICC-ASP/18/Res.4 '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'. The Swiss draft procedure will be finalized once the ACN's compendium is available, further exchange among States has taken place and learnings have been identified. Switzerland is indeed convinced that learning from each other will help States improve their national procedures.

# **Directive on the nomination of judicial candidates by Switzerland to the International Criminal Court**

## **1 Principles**

11 The Federal Department of Foreign Affairs (FDFA) shall decide on the nomination of a judicial candidate to the International Criminal Court (ICC), taking into account in particular:

- a. whether there is a foreign policy interest in the nomination and;
- b. whether there is a prospect of a judicial candidate nominated by Switzerland being elected.

12 The Federal personnel legislation (Bundespersonalrecht) is not applicable.

13 The principles applying to the nomination are those laid down in relevant international law and Swiss constitutional and administrative law. These include:

- a. principles of equality before the law and non-discrimination (Art. 8(1) and (2) Federal Constitution of the Swiss Confederation);
- b. protection against arbitrary conduct (Art. 9 Federal Constitution of the Swiss Confederation);
- c. principle of good faith (Art. 5(3) and Art. 9 Federal Constitution of the Swiss Confederation);
- d. transparency.

Commentary:

(1) Under this directive, Switzerland has established a formal procedure for the nomination of judicial candidates to the ICC. The purpose of formalising the procedure was to ensure transparency and accountability.

(2) In accordance with article 36(4)(a) of the Rome Statute, two procedures are available to States Parties for the nomination of judicial candidates: i) the procedure used by the State for the appointment to its highest domestic judicial offices; or ii) the procedure used by the State for the nomination of candidates to the International Court of Justice (ICJ), i.e. through the Permanent Court of Arbitration (PCA) national group. Under this directive Switzerland has opted for the second procedure, with enhancements aimed at meeting the requirements for an impartial body.

(3) Switzerland nominates judicial candidates in a competitive procedure and based strictly on merit.

(4) In accordance with the Rome Statute, Switzerland may nominate judicial candidates who are nationals of other States Parties

(5) It is in Switzerland's foreign policy interest to advance the efficiency and effectiveness of the ICC. Switzerland is, in particular, committed to preserving the integrity and independence of the Court. Switzerland will nominate judicial candidates who will contribute to this commitment.

(6) While the decision to nominate a judicial candidate is a prerogative of individual States Parties to the Rome Statute, the actual election of judges is for the Assembly of States Parties (ASP). The assessment of the prospect of a judicial candidate actually being elected will include inter alia the expected minimal voting requirements (MVRs) for the election at hand. The Rome Statute and the ASP have established MVRs as a way to ensure adequate gender, geographical and expertise-based representation.

(7) The list of principles applying to the administrative procedure in paragraph 13 is not intended to be exhaustive.

## **2 Public call for applications**

21 The Directorate of International Law (DIL) of the FDFA shall publicly announce the launch of the nomination procedure. The notice shall include in particular:

- a. information about the procedure and time frame for nomination and election;
- b. the nomination criteria (section 3 below);
- c. applicable rules concerning the incompatibility with the exercise of any other occupation of a professional nature (Art. 40 Rome Statute);
- d. the information that there is no entitlement to a position and that the nominated person must undergo a competitive election process;
- e. the time schedule for assuming office (Art. 35 Rome Statute, including all available information relating to Art. 35(3) Rome Statute) and the existing terms of office (Art. 36 and 37 Rome Statute).

22 The DIL shall ensure that the call for applications reaches a wide and relevant audience. The target audience includes concerned national and international professional associations, universities, non-governmental organisations and judicial institutions.

23 The DIL shall set a reasonable period for the submission of applications and provide details of a point of contact for questions.

Commentary:

(1) The DIL is responsible for dealing with legal questions pertaining to international law and Switzerland's foreign relations in general (Art. 8(1) of the Organisation Ordinance for the FDFA, OrgO-FDFA). It has primary responsibility within the Swiss government for the field of international criminal justice (Art. 8(3)(g)(1) OrgO-FDFA). Among other things, the DIL provides legal advice to the Federal Council in the conduct of its foreign policy and is involved in the development of public international law, in particular in the negotiation, conclusion and implementation of international treaties (Art. 8(3)(a) and (b) OrgO-FDFA).

(2) Switzerland uses an open and transparent selection process by inviting applications through a public call for applications. The call for applications outlines the process, as well as the nomination criteria.

(3) The call for applications is widely disseminated in Switzerland and abroad. This enlarges the pool for the nomination of the most qualified Swiss or foreign candidates.

(4) Switzerland encourages gender parity and representation of diverse geographic regions.

(5) The time schedule for assuming office and all relevant information must be communicated clearly and transparently. This must also refer to the fact that a judicial candidate is not necessarily immediately appointed to the ICC after a successful election, as ICC judges cannot be replaced during ongoing proceedings. Applicants must be made aware of article 35(3) of the Rome Statute and should not therefore resign from their current employment before being called to full-time service by the Presidency.

### 3 Nomination criteria

31 The statutory election criteria shall be made clear. These are:

- a. independence (Art. 40 Rome Statute);
- b. high moral character (Art. 36(3)(a) Rome Statute);
- c. impartiality (Art. 36(3)(a) Rome Statute);
- d. integrity (Art. 36(3)(a) Rome Statute);
- e. possession of the qualifications required in applicants' respective States for appointment to the highest judicial offices (Art. 36(3)(a) Rome Statute);
- f. established competence in criminal law and procedure, and relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or 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 (Art. 36(3)(b) Rome Statute);

g. excellent knowledge of and fluency in at least one of the working languages of the Court (Art. 36(3)(c) Rome Statute).

32 Any further specification of criteria or additional criteria shall also be made clear, in particular:

h. no criminal record and no substantiated evidence of misconduct relevant to the exercise of the function;

i. competitiveness (e.g. profile with a prospect of gaining a sufficient number of votes, availability and competency to run a successful campaign);

j. law degree or equivalent legal qualification(s);

k. at least ten years of relevant experience;

l. knowledge of the ICC and its working methods;

m. experience with the ICC and experience in international relations are an asset

n. Swiss national or foreign national of a State Party to the Rome Statute whose State is not yet represented by a judge at the ICC (Art. 36(4) in conjunction with 36(7) Rome Statute);

o. availability for effective completion of the 9-year mandate (Art. 35 Rome Statute), including travel, and availability for a pre-election campaign of approximately 1 year;

p. interpersonal skills including ability to work in a team.

Commentary:

(1) This provision sets out clear and detailed nomination criteria based on the general election criteria of the Rome Statute (Art. 36(3)).

(2) Applicants must present evidence of their compliance with these criteria to allow the panel to assess their qualifications.

(3) Applicants shall demonstrate their legal knowledge by presenting evidence of relevant judicial opinions, scholarship and/or legal practice in the field of criminal law and/or international criminal law, and by taking a written test.

(4) The following criteria are explained in more detail below:

a. Impartiality and independence. Judicial candidates must have a proven track record of independence and impartiality. Lack of previous independent positions, a history of long-standing service for the government, or a recent posting to an influential government position should raise questions regarding the candidate's ability to serve independently as a judge.

b. High moral character. Judicial candidates must possess high moral character and demonstrate the highest level of integrity, respect for diversity, and a commitment to gender equality. Judicial candidates must have a clean record in terms of committing, tolerating, or overlooking sexual harassment or other misconduct and unethical behaviour.

c. Possession of the qualifications required in applicants' respective States for appointment to the highest judicial offices. In Switzerland, the only constitutional requirement for the highest judicial office is to possess Swiss nationality. In practice, however, legal qualifications are also required. In the event that Switzerland nominated nationals of other ICC States Parties, the requirements of the relevant States would apply.

d. Knowledge of and experience in criminal law and procedure. The nature of cases at the ICC requires judicial candidates to possess extensive experience in criminal law and procedure. In particular, judicial candidates must hold a law degree or other advanced legal qualification. They should have at least 10 years of

experience in the relevant field of law. While not specifically required by the Rome Statute, knowledge and experience in criminal law and procedure are essential for ICC judges. Judicial candidates at the ICC should be experienced in managing trials and ensuring the integrity of proceedings, including efficiently managing the parties and participants in a politically charged working environment. Mass atrocity cases also require experience in dealing with witnesses and assessing large quantities of evidence in a fair and efficient way. While not specifically required by the Rome Statute, experience in managing or conducting complex criminal trials is essential for judicial service.

e. No criminal record and no substantiated evidence of misconduct relevant to the exercise of the function. A criminal records excerpt (Strafregisterauszug) must be submitted as part of the application.

f. Competitiveness. MVRs vary from election to election as they are established to maintain diversity, giving due consideration to the backgrounds of the remaining and departing judges. The MVRs compel States Parties to cast their votes in such a way as to ensure that, at any given moment, the ICC bench is composed of at least: 1) nine judges from List A and five from List B; 2) six women and six men; and 3) two judges from each regional group (or three if the regional group has more than 16 States). States Parties must vote in accordance with the MVRs for their ballots to be valid. Candidates are more competitive if their profile corresponds to the best extent possible to the MVRs.

g. Interpersonal skills including ability to work in a team. Judicial candidates should demonstrate their ability and interest to work in a collegial body with peers of different nationalities and from diverse legal systems, their capacity to learn new law and jurisprudence quickly, and an openness to working within a legal framework that is different from their own national system.

h. Nationality. Although the Rome Statute does not require judicial candidates to be nationals of their nominating State, they must be nationals of a State Party.

i. Availability for effective completion of the 9-year mandate and for a pre-election campaign. In order to ensure that judges continue to perform their role effectively, it would be advisable that they leave office at the end of the year in which they reach the age of 68. In such case, judicial candidates may not be older than 59 at the time of nomination. This requirement corresponds to the domestic rule relating to judges of the Federal Supreme Court, the highest court in Switzerland (cf. Art. 9(2) Federal Supreme Court Act, FSCA)).

#### **4 Information on employment conditions at the International Criminal Court**

41 The DIL shall refer all applicants to the available information on employment conditions.

Commentary:

(1) This information includes, for example, the salary paid, the assistance available to judges, pensions, other social security benefits, including health insurance coverage and entitlement to home leave. The information is conveyed to applicants in cooperation with the entity of the ASP, which is responsible for laying down the conditions of service applying to judges. The purpose of this provision is to ensure that judicial candidates accept the employment conditions by agreeing to be nominated by Switzerland. While in office, judges' attention should be free from such considerations to enable them to focus fully on their judicial work.

#### **5 General rules for the assessment of applicants**

51 The applications received shall be assessed according to the nomination criteria.

Commentary:

(1) This provision aims to ensure that all applicants are considered fairly and impartially. Switzerland ensures a merit-based and competitive selection process through a fair, equitable and transparent evaluation of applicants' skills.

## 6 Pre-evaluation

61 The DIL shall examine whether the applicants meet the nomination criteria and conduct a clear and comprehensible initial evaluation.

62 The DIL shall submit the applications received and its assessment (para. 61) for pre-evaluation purposes in the form of a consultation to the following:

- a. the panel members (para. 73);
- b. United Nations and International Organisations Division (UNIOD), FDFA;
- c. Federal Office of Personnel (FOPER), Federal Department of Finance (FDF);
- d. Office of the Attorney General of Switzerland (OAG);
- e. Office of the Armed Forces Attorney General, Federal Department of Defence, Civil Protection and Sport (DDPS);
- f. in the case of foreign applicants, the relevant geographical division of the FDFA.

Commentary:

(1) An initial specialist evaluation is carried out to take account of the broad-based expertise of the various federal entities involved in the nomination of judicial candidates to the ICC

## 7 Panel

71 A formal panel with the requisite expertise shall be set up to ensure accountability and objectivity with regard to the internal selection of judicial candidates.

72 The DIL shall chair the panel.

73 The panel shall be composed of, whenever possible, an uneven number of members of the main Federal Administration offices concerned with the ICC (function-specific appointment) and independent actors, in particular:

- a. a Directorate member of the DIL;
- b. a Directorate member of the Federal Office of Justice (FOJ), Federal Department of Justice and Police (FDJP);
- c. the members of the national group of the Permanent Court of Arbitration (PCA), unless the member is an acting Directorate member of the DIL (cf. Art. 4 ICJ Statute in conjunction with Art. 36(4)(a) Rome Statute);
- d. at least two representatives from outside the Federal Administration with relevant expertise and experience in international law or criminal and international law, for example from the judiciary, academia or non-governmental organisations.

74 Persons who may be biased shall be disqualified or shall withdraw from the panel.

75 The panel aims to reach decisions by consensus. If all efforts to reach a consensus fail, decisions must be taken by majority vote.

Commentary:

(1) This provision establishes a formal body for assessing applicants and selecting candidates objectively and impartially. Through its composition, Switzerland ensures that the panel is diverse and balanced and has the requisite specialist knowledge. Switzerland ensures that the panel is independent and non-political as it is composed of at least seven panellists, at least five of whom are not part of the Federal Administration and only one of whom is a representative of the FDFA.

(2) One member of the DIL is represented on the panel (para. 73 (a)). A DIL member who is also a member of the PCA national group, is not entitled to serve on the panel.

(3) The external panellists may be Swiss or foreign nationals. For example, they may be former judges to the ICC.

(4) All members participate equally in the panel's decision. The role of the chair in terms of decision-making is thus equal to the other panel members. Decisions are to be reached by consensus. In the exceptional case of a majority vote, the chair is treated equally to the other panel members. Shall however a majority vote not be possible (8 members, 4 vs 4 votes), the Chair shall take the final decision.

## **8 Function of the chair**

81 The chair of the panel shall lead the selection process.

82 The chair of the panel shall propose external panellists to serve on the panel (para. 73(d)). The panel shall seek to achieve gender parity in the selection of panellists.

83 On the basis of the pre-evaluation, the chair shall make a recommendation to the panel as to which applicants should be invited for interviews.

## **9 Function of the panel**

91 The panel members listed in paragraph 73(a), (b) and (c) shall decide which representatives from outside the Federal Administration (para. 73(d)) will sit on the panel.

92 The panel shall decide which applicants will be invited for interviews and written tests.

93 The panel shall conduct interviews and written tests to assess the expertise and language skills of the most promising applicants.

94 The panel may use additional evaluation methods to ensure that the applicants have 'high moral character' and the required skills.

95 The panel shall evaluate the applicants on the basis of the nomination criteria using all available assessment elements, in particular:

- a. the application file;
- b. the interviews;
- c. the written tests;
- d. any additional evaluation measures.

96 The panel shall submit a shortlist of the most qualified applicants to the head of the FDFA.

97 The panel shall submit a substantiated nomination proposal to the head of the FDFA.

### **Commentary:**

(1) All serious applicants are interviewed unless this is impracticable on account of their number, in which case the panel draws up, based on the applications, a shortlist of the best applicants.

(2) There is an assessment of applicants' language proficiency during the interview.

(3) In assessing the applicants' 'high moral character', the panel checks the applicants' references and any other publicly available information, with due regard to the credibility of sources. The panel creates a standard declaration for all applicants to sign that clarifies whether they are aware of any allegations of misconduct, including sexual harassment. Where such allegations have been made, the panel should weigh the applicants' declaration against other available information and reports.

(4) The additional evaluation measures referred to in paragraph 94 may include where appropriate, subject to the applicants' consent:

- a. obtaining comments from outside bodies, including civil society;

- b. using an existing procedure or mechanism within the Swiss system;
- c. consulting a specialised company.

#### **10 Final decision**

101 The head of the FDFA shall make the final decision on the nomination of a judicial candidate.

102 If the decision of the head of the FDFA deviates from the panel's nomination proposal, grounds for the decision must be provided.

#### **Commentary:**

(1) Decisions must be substantiated in order to ensure transparency and avoid any deviation from the panel's recommendations without good reason.

## 26. Trinidad and Tobago

[Original: English]

### **Procedure for Nomination and Selection of Candidate for Judge of the International Criminal Court for the period 2021-2030**

Reference is made to Note Verbale Reference: ICC-ASP/19/SP/27 dated April 17, 2020 which refers to resolution ICC-ASP/3/Res.6 (Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court), as amended by resolution ICC-ASP/18/Res.4 (Resolution on the review of the procedure for the nomination and election of judges).

Reference is also made to paragraph 6 (f) of resolution ICC-ASP/3/Res.6, which requires that every nomination of a candidate for election as a judge of the Court should be accompanied by a statement indicating whether the nomination is made under article 36, paragraph 4 (a) (i) or paragraph 4 (a) (ii) of the Rome Statute of the ICC, and specifying in the necessary detail the elements of that procedure.

The Honourable Mme. Justice Althea Alexis-Windsor, the candidate of the Republic of Trinidad and Tobago for the position of judge of the ICC for the period 2021-2030, is nominated for election in accordance with article 36, paragraph 4 (a) (i), of the Rome Statute of the ICC.

The Trinidad and Tobago candidate is a High Court judge of the Supreme Court of Trinidad and Tobago. A judge of the High Court of Trinidad and Tobago exercises original jurisdiction over indictable criminal matters, family matters and civil matters.

The required qualifications for the office of judge of the High Court of Trinidad and Tobago are provided for in Section 7 (1) of the Supreme Court of Judicature Act Chapter 4:01. The criteria for becoming a High Court judge are that a person must have been an Attorney-at-Law for not less than ten (10) years and have practised as such during that time. An applicant must be a person of high integrity and the applicant's conduct must be in such a manner that will maintain public confidence in the standards of the Judiciary of the Republic of Trinidad and Tobago.

In addition, candidates are required to provide the names of three (3) referees who must assess and rate the applicant on areas including the applicant's character. Candidates are also required to provide three (3) samples of legal opinions/writings/judgments. Short-listed candidates are invited to an interview with the Judicial and Legal Service Commission and then undergo a psychometric assessment. The Judicial and Legal Service Commission may conduct follow-up interviews after the results of the psychometric assessments. Judges, other than the Chief Justice, are appointed by the President of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Judicial and Legal Service Commission. The Honourable Mme. Justice Althea Alexis-Windsor was appointed a Judge of the High Court by the President of the Republic of Trinidad and Tobago on September 17, 2013.

The selection process used by Trinidad and Tobago for the nomination of the candidate for the position of judge of the ICC was open and transparent and involved the circulation of information on the judicial vacancies to suitably qualified nationals by the Judiciary of the Republic of Trinidad and Tobago. The Judiciary of the Republic of Trinidad and Tobago is the third arm of the State, established by the Constitution of the Republic of Trinidad and Tobago, to operate independently from the Executive as a forum for the resolution of legal disputes.

Applications were received by the Judiciary of the Republic of Trinidad and Tobago and transmitted to the Ministry of Foreign and CARICOM Affairs as the entity responsible for advancing the nomination of Trinidad and Tobago. The applications were then submitted to the Cabinet, and the final determination with respect to the Trinidad and Tobago candidate for the position of Judge of the ICC for the period 2021 to 2030 was made based on the extent to which each candidate fulfilled the criteria for election as a judge of the ICC, as set out in

article 36 of the Rome Statute of the ICC and paragraph 6 of the resolution of the Assembly of States Parties on the procedure for the nomination and election of judges of the Court (ICC-ASP/3/Res.6, as amended).

The Republic of Trinidad and Tobago therefore submits the foregoing information to the Secretariat of the Assembly of States Parties in keeping with resolution ICC-ASP/3/Res.6 (Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court), as amended by resolution ICC-ASP/18/Res.4 (Resolution on the review of the procedure for the nomination and election of judges).

## 27. Tunisia

[Original: French]

The Ministry of Foreign Affairs of the Tunisian Republic (Directorate General of Multilateral Cooperation and Global Issues) presents its compliments to the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court and, with reference to its note verbale ICC-ASP/19/sp/27 of 17 April 2020, has the honour to inform it that Dr. Haykel Ben Mahfoudh has been nominated in accordance with the procedure indicated in paragraph 4(a)(ii) concerning the procedure for the nomination of candidates to the International Court of Justice in the Statute of that Court.

The application of Dr. Ben Mahfoudh has been reviewed and processed by the Ministry of Foreign Affairs at the level of the Office of the Minister and the Directorate General of Multilateral Cooperation and Global Issues. After approval from the Office of the President of the Republic, the application was endorsed by the Tunisian Republic and submitted to the Secretariat of the Assembly of States Parties to the Rome Statute.

Dr. Ben Mahfoudh is a Tunisian citizen. He is Professor of Public International Law at the Faculty

of Legal, Political and Social Sciences of Tunis (University of Carthage) and Director of the Research Centre for International and European Law and Maghreb-Europe Relations at the same faculty.

Dr. Ben Mahfoudh holds a Doctorate in International Humanitarian Law (IHL) from the University of Carthage.

The Tunisian candidate fully meets the criteria set out in article 36(3)(a) of the Statute, in particular by his high moral character, his probity, his intellectual and academic integrity, his sense of duty, his humanist spirit and his ability to work with colleagues and partners from diverse cultures.

Dr. Ben Mahfoudh has carried out and directed a number of research projects in areas related to international humanitarian law and to the prevention and punishment of war crimes, crimes against humanity, the crime of genocide and the crime of aggression. He is fully acquainted with the conditions under which the criminal responsibility of the perpetrators of serious violations of humanitarian rules can be called into question and with developments in respect of the issue of the punishment of international crimes.

He has worked on non-State actors and non-international armed conflicts. He has published and directed research on the protection of minorities, the justiciability of terrorist acts before international criminal courts or the obligation to protect, prosecute and provide compensation for damage resulting from crimes committed by foreign fighters. He is a regular speaker at national and international symposia and seminars organized on topics linked to the jurisdiction of the ICC around the world.

Moreover, he has recognized expertise in the Middle East and North Africa region in the areas of the protection of civilians, armed conflicts and the establishment of peace processes. His thorough knowledge of the legal systems of the countries in the region sets him among the few experts who combine theoretical knowledge of international law with real life experience in situations involving the restoration of peace and establishment of the rule of law. In this capacity, he works with international organizations (United Nations, ICRC, IDEA) and specialized centres on issues relating to the implementation of international humanitarian law and mechanisms for the protection of human rights in post-conflict contexts, or on justice and security sector reform.

He assists governments and international organizations with the maintenance or promotion of peace agreements, the fight against impunity and the judicial treatment of serious human rights violations and mass crimes (Yemen, Libya), the strengthening of respect for human rights by national authorities (Iraq, Tunisia) or the drafting of legal texts for the protection of vulnerable persons who are victims of human trafficking, such as migrants (Libya).

Furthermore, Dr. Ben Mahfoudh is a lawyer at the Court of Cassation. A member of the Tunis Bar since 1996, he has practised criminal law at all stages of proceedings and has provided



advice and assistance to women and children victims of domestic violence and/or abuse. He continues to advise victims' rights organizations and groups and makes their voice heard before national, regional and international judicial bodies.

The Ministry of Foreign Affairs of the Tunisian Republic (Directorate General of Multilateral Cooperation and Global Issues) avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties to the Rome Statute of the Criminal Court the assurances of its highest consideration.

## 28. United Kingdom

[Original: English]

### **United Kingdom judicial nomination process**

The United Kingdom set out the detail of its process to nominate judges to the International Criminal Court in the document ‘Statement of Qualifications’ submitted to the Court on 12 March 2020 which can be found: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Elections/EJ2020/ICC-ASP-EJ2020-GBR-ST-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Elections/EJ2020/ICC-ASP-EJ2020-GBR-ST-ENG.pdf).

#### **ICC Judicial Election 2020 – UK Nomination**

Judge Joanna Korner CMG QC is nominated for election under the terms of article 36, paragraph 4(a)(i), of the Rome Statute of the International Criminal Court, i.e. by the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question.

#### **Procedure for appointment**

The United Kingdom used an open and transparent process for selection by inviting applications through a public advertisement issued by the Judicial Appointments Commission. The applications were reviewed by a panel of senior members and representatives of the judiciary of England and Wales, the Northern Ireland Department of Justice, the Scottish Government, the Ministry of Justice and the Foreign and Commonwealth Office. The best applicants were then invited to an interview by the same panel. The panel made recommendations to the Foreign Secretary, who made the final decision on the United Kingdom’s candidate.

#### **Possession of the qualifications required for appointment to the highest judicial offices at the national level**

In its selection process for nomination as a judge of the ICC, the United Kingdom required candidates to satisfy the criteria for becoming a High Court judge in England and Wales (the legal jurisdiction of the United Kingdom in which Judge Korner practises) or the criteria for equivalent positions in Scotland and Northern Ireland. The criteria for becoming a High Court judge are that a person must have been a lawyer or barrister for seven years and have practised as such during that time. Only candidates of exceptional ability are recommended for appointment as a High Court judge. In addition, candidates must be able to demonstrate that they are able to work or develop expertise in all aspects of the work of the relevant division (i.e. the Queen’s Bench Division, the Chancery Division, and the Family Division). This ability must extend beyond legal skills, and candidates should be able to demonstrate actual or potential management and leadership qualities. Judge Korner satisfies these criteria.

## 29. Uruguay

[Original: English]

The Embassy of the Oriental Republic of Uruguay to the Kingdom of the Netherlands presents its compliments to the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court and has the honor of referring to the Secretariat's Note Verbale ICC-ASP/19/SP/27, dated 17 April 2020, on national nomination processes for the election of judges or prosecutors of the ICC, in accordance with Resolution ICC-ASP/18/Res.4, paragraphs 5 and 6, dated December 2019.

As requested in paragraph 6 of Resolution ICC-ASP/18/Res.4, dated December, 2019, the following information is provided with regards to the procedures for the nomination of candidates which are currently in place in Uruguay.

A specific procedure was established in Uruguay in accordance with law 18.026 on cooperation with the International Criminal Court with respect to combating genocide, war crimes and crimes against humanity (published on 4 October 2006). Article 74 of the aforementioned law (on the requirements to be eligible for nomination) refers not only to the requirements set out in article 36, paragraph 3 of the Rome Statute, but also to the fact that the candidate **“must meet the requirements set out in article 235 of the constitution of the republic”**; in other words, the same requirements as to be appointed judge of the **Supreme Court of Justice**, which are as follows: to be a national of Uruguay; to be 40 years of age or older; to either have 10 years of experience as a lawyer or to have served the Judiciary or the Public Prosecutor's Office for at least 8 years. This is hence compliant with the mechanism under article 36, paragraph 4 (a) (i) of the Rome Statute (“procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question”).

Furthermore, article 75 of the aforementioned law establishes that it is the General Assembly who decides on the nominee, with a simple majority vote, in a session called for that purpose.

The above-mentioned law also establishes that **“candidates may be proposed to the General Assembly by: the Executive Power of Uruguay, the Legislative Power, the House of Representatives, Universities, the Uruguayan Bar Association, as well as any other non-governmental organization which is a legal entity and has as its objective the promotion, defence and study of Human Rights”**.

Hence, in the specific case of Uruguay, it is not only article 36 of the Rome Statute that rules the process, but also the procedure required by the Law of Cooperation with the ICC, **Law 18.026**. The latter has the particularity of being considerably more open and transparent, as decisions are not exclusively made at a political level by the Ministry of Foreign Affairs - the Executive Power.

As requested in paragraph 5 of Resolution ICC-ASP/18/Res.4, dated December 2019, a description is provided of the actual procedure followed to appoint the candidate of Uruguay for the nomination of judge of the International Criminal Court in 2020.

The following is an excerpt of the Statement of Qualifications submitted for Dr. Ariela Peralta Distéfano:

“Mrs. Ariela Peralta not only has the support of the Executive Power of Uruguay, but also the Legislative Power and civil society human rights organizations. This, by virtue of the national nomination system, established by the Cooperation Law with the International Criminal Court (No. 18.026), where different actors can nominate candidates, having to be endorsed by the legislative General Assembly, for the formalization of the candidacy through diplomatic channels. It is noteworthy that the current Administration, which took office on March 1 2020, and the new legislature, which took office on February 15 2020, endorsed the nomination of Dr. Peralta, backed by civil society, based on the endorsement given in 2017. At that time, Mrs. Peralta was nominated by the then Government of Uruguay, receiving unanimity of support from the entire political spectrum, at a session of the General Assembly on March 14, 2017 (1). It is important to highlight that prior to this, in 2012, Dr. Peralta had received the support, by the required special majorities, in the General Assembly of the Uruguayan Parliament when she was elected member of the first Directing Council of the

National Human Rights Institution and Ombudsperson Office (collective “ombudsperson” of Uruguay, NHRI); which she later chaired until 2017.

Based on the importance of this position, the Uruguayan Law of Cooperation with the International Criminal Court (Law Nr. 18.026 - articles 73 to 75-) establishes that to be nominated as a candidate for judge or Prosecutor of the ICC, the candidate must comply with the same requirements as to be appointed judge of the Supreme Court of Justice, as well as being endorsed by the General Assembly (Senate and House of Representatives). On March 14, 2017, she was unanimously voted by the legislators present at the General Assembly session of the Uruguayan Congress (one hundred and four members of the Senate and House of Representatives; parliamentarians from different political parties).”

The following is to elaborate on what has already been informed:

The current nomination of Mrs. Peralta to serve as judge of the International Criminal Court for the period 2021-2030 was submitted to the General Assembly by non-governmental organizations which are legal entities and have as their purpose the promotion, defence and study of Human Rights. Said organizations included: Association of Former Political Prisoners (Asociación de ex presos y presas políticos del Uruguay (CRYSOL), a key actor both in the fight against impunity for atrocious crimes and for reparations policies for victims; National Association of Non-Governmental Organizations (Asociación Nacional de Organizaciones No Gubernamentales Orientadas al Desarrollo, ANONG), which gathers together over 100 Uruguayan non-governmental organizations devoted to the promotion and defence of Human Rights as well as to national development, including learning and academic institutions, and which maintains a close relationship with international organizations, multilateral agencies and similar associations in the region; Centro de Comunicación Virginia Woolf (Cotidiano Mujer), a feminist group created in 1985 whose work has been to accompany the development of the public and cultural agenda of Uruguayan and Latin American women; and El Paso Civil Organization (Asociación Civil El Paso), an organization committed to the defence of the Human Rights of children and teenagers, as well as women particularly affected by violence, sexual abuse and discrimination.

In their accompanying notes (please find them enclosed, 2), they mention that Dr. Peralta had already been nominated by the Executive Power in 2017 and endorsed by the General Assembly, and that they requested that said endorsement was now renewed and her nomination as candidate was once again submitted.

As a reminder, Dr. Ariela Peralta was nominated in 2017 by the Uruguayan government, under the Presidency of Dr. Tabaré Vázquez, as the Uruguayan candidate for Judge of the International Criminal Court for the period 2018-2027, and that said nomination was unanimously endorsed by the members of the General Assembly. Hence, the candidate was nominated by more than the simple majority vote required by Law 18.026, as she was unanimously voted by one hundred and four members of the Senate and House of Representatives; parliamentarians from different political parties at a session of the General Assembly on 14 March 2017, in accordance with the Law of Cooperation with the ICC, Law 18.026.

Additionally, it is to be remembered that, in the early months of 2020, during the official nomination period (which was originally from 1 January 2020 to 30 March 2020), Uruguay was transitioning both to a new government, which took office on 1 March 2020 (after the presidential elections that were held at the end of October 2019) and to a new legislature, which took office on 15 February (having held Parliamentary elections at the end of October 2019). In that sense, it was necessary to wait for the new authorities to take office before initiating nomination processes for high-level international positions such as this one.

It is noteworthy that just as the new government (a coalition of five political parties) took office, the outbreak of the pandemic caused by Covid-19 occurred and, for public health reasons, in-person meetings were temporarily restricted. Only a few days before, organized civil society had already taken the initiative by requesting that the General Assembly nominate Dr. Ariela Peralta as a candidate once again in light of her career and the fact that she had previously obtained unanimous endorsement from the Parliament in 2017 (please refer to the link to an article that appeared in the press on 3 March 2020, about said proposal) (3). No other candidates were nominated on this occasion.

Given the current extraordinary health situation that has imposed new ways of working at a global level (namely working remotely), the Presidency of the General Assembly, currently held by Ms Beatriz Argimón, Senator and Vicepresident of the Oriental Republic of Uruguay, initiated appropriate consultations with all political parties with a seat in Parliament, and obtained endorsement to once again nominate Dra. Ariela Peralta as a candidate for judge of the ICC. This reaffirmed the unanimous endorsement obtained by the candidate on 14 March 2017, at a specific session of the General Assembly, where she exceeded the majority vote required by law, and which was then publicly announced (please refer to the official picture at a session of the Commission on Constitutions, Codes, General Legislation and Administration of the House of Representatives, chaired by Member of Parliament Macarena Gelman) (4).

Therefore, on Friday 27 March 2020, the Presidency of the General Assembly informed the Executive Power, via the Foreign Minister, Mr Ernesto Talvi, Ec., of the decision of the legislative bodies to endorse the nomination of Dr Ariela Peralta once more. Said nomination was formalized through diplomatic channels on 30 March 2020, (within the original nomination period).

As proof of the respect for the professional career of the candidate, it is noteworthy that, in 2012, the General Assembly of the Parliament of Uruguay already recognized and endorsed Dr Peralta when, by means of the appropriate special majority vote, she was appointed as member of the first Board of Directors of the National Human Rights Institution and Ombudsperson Office (INDDHH), which she then went on to chair until 2017.

The Parliament, under the current health constraints as a result of the pandemic that was officially declared in March 2020, assessed that, given Dr Peralta's background, she met the requirements set out by national legislation as well as by the Rome Statute. It is important to recall that Mrs Peralta was nominated by Uruguay as a candidate for the position of judge of the International Criminal Court in 2017 under a different Administration, and she was unanimously voted for by the General Assembly. Furthermore, on this occasion she was nominated by civil society organizations, and her nomination was eventually endorsed by the new legislature and formalized by the Executive Power through diplomatic channels. It is also worth reiterating that the new Government, under the Presidency of Dr. Luis Lacalle Pou took office on 1 March 2020.

The fact that the candidate has obtained unanimous political endorsement in a process open to various actors evidences that Dr Peralta has well established competence, is a respected professional with a proven record of independence in her actions, and is of high moral character.

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