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Report of the Advisory Committee on Nominations of Judges on the work of its second meeting

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I. Introduction

A. Opening of the session

1. The second meeting of the Advisory Committee on Nominations of Judges (“the Committee”) was opened by the Chairperson of the Committee, Mr. Philippe Kirsch (Canada) and was held at the seat of the Court in The Hague, on 18 October 2013.

B. Adoption of the agenda

2. The Committee adopted the following agenda:
 1. Consideration of the mandate and work of the Advisory Committee
 - a) Scope of the mandate
 - b) Working methods
 2. Consideration of the nominations submitted to fill a judicial vacancy at the twelfth session of the Assembly
 3. Budget for the funding of the Advisory Committee activities in 2014
 4. Calendar of meetings
 5. Other matters
3. The following members participated in the meeting:
 1. Mr. Leonardo Nemer Caldeira Brant (Brazil);
 2. Mr. Hiroshi Fukuda (Japan);
 3. Mr. Philippe Kirsch (Canada);
 4. Mr. Daniel David Ntanda Nsereko (Uganda);
 5. Ms. Mónica Pinto (Argentina);
 6. Mr. Árpád Prandler (Hungary);
 7. Mr. Bruno Simma (Germany); and
 8. Mr. Raymond Claudius Sock (Gambia)
4. The Secretariat of the Assembly of States Parties (“the Secretariat”) provided the substantive servicing for the Committee, and the Director, Mr. Renan Villacis, acted as Secretary.

II. Consideration of the mandate and work of the Advisory Committee

A. Scope of the mandate

5. The Committee considered the scope of its mandate.¹

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

[...]

¹ Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court (ICC-ASP/10/36), annex, paras. 5, 7 and 11.

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

[...]

11. Once the Committee has completed its work, it will prepare information and analysis, of a technical character, strictly on the suitability of the candidates, which would be made available to States Parties and observers by submission to the Bureau, in sufficient time to allow for thorough subsequent consideration by the Assembly of States Parties.”

6. The Committee agreed that its mandate was self-explanatory and did not require any elaboration.

B. Working methods

Decision making

7. The Committee recalled that, at its first meeting on 19 April 2013, it had adopted provisionally the corresponding rules of the Rules of Procedure of the Assembly of States Parties relating to decision-making, i.e. rules 61, 63 and 64, as adapted to the structure and mandate of the Committee.

8. The Committee considered the procedure for the holding of a secret ballot in the absence of consensus, as foreseen in rule 61.

III. Consideration of the nominations submitted to fill a judicial vacancy at the twelfth session of the Assembly

9. The Committee recalled that, at its 18 April 2013 meeting, it had expressed its view that candidates should be present at the venue where the Committee would meet for interviews.² The Committee conducted interviews with the two candidates presented to fill a judicial vacancy at the election to be held during the twelfth session.³

10. The Committee conducted face-to-face interviews of 90 minutes duration each, with Mr. Geoffrey A. Henderson (Trinidad and Tobago) and Mr. Leslie Van Rompaey (Uruguay), respectively. The recommendations of the Committee following its assessment of the candidates pursuant to its mandate are set out in annex I.

11. The Committee welcomed the opportunity to have face to face interviews with the candidates.

12. Furthermore, the Committee recommends, on the basis of its experience in relation to the number of candidates presented to fill the present judicial vacancy in 2013, that the Assembly favourably consider the suggestion contained in the 4 October 2013 draft discussion paper⁴ on the topic “Review of the procedure for the nomination and election of judges”. Having the nomination period open four to six weeks earlier than envisaged under the applicable provisions would facilitate the Committee’s work in 2014 by addressing the potential difficulties of inadequate time to thoroughly assess the candidates presented for election to the six vacant seats that will arise in 2015, and enable it to report to the Assembly well in advance of its thirteenth session. The Committee therefore recommends

² Report of the Advisory Committee on Nominations of Judges on the work of its first meeting (ICC-ASP/12/23), para. 12.

³ ICC-ASP/12/45.

⁴ The final paragraph of the 4 October 2013 discussion paper states as follows: “The facilitator raised the question of the interplay of the current nomination period and the work of the Advisory Committee on Nominations (ACN). Under current rules, the regular nomination period ends fourteen weeks before the election takes place, and is in practice frequently extended up to three times, i.e. up to eight weeks before the election takes place. Eight weeks would be very little time for the ACN to consider the candidatures, write its report, and for States Parties to actually take the ACN findings into account. He suggested that the nomination period could, therefore, be moved up, e.g. by four or six weeks, so as to ensure that the ACN report will have greater effect.”

that the Assembly consider the appropriate amendment to paragraph 3 of resolution ICC-ASP/6/Res.3 during its twelfth session, so that the nomination period opens 30 or 32 weeks before the election.

IV. Budget for the funding of the Advisory Committee activities in 2014

13. The Committee recalled its 18 April 2013 consideration of the funding of its activities, as well as its view that, given its key role as a subsidiary body of the Assembly mandated to facilitate that the highest-qualified individuals are appointed as judges of the International Criminal Court, and the requirement that they serve in their personal capacity and not take instructions from States Parties, States or any other organizations or persons,⁵ it had recommended that all costs relating to the meetings of the Committee should be borne by the Assembly as of 2014. The Committee further recalled its request for budgetary resources to the Assembly at a later stage, once it had had time to organize its work, including the possibilities of face to face interviews with candidates.⁶

14. The Committee took note of the recommendation of the Committee on Budget and Finance that a “decision to bear the ACN’s inherent costs is one for the Assembly alone. The Committee recommended that the Assembly, in principle, accept the request for funds in an amount of €22,834.”⁷ Accordingly, the Advisory Committee recommends that the Assembly consider approving the necessary resources to enable it to maintain its independence and to adequately carry out the mandate assigned to it by the Assembly during 2014 in relation to the election of six judges at the thirteenth session. The programme budget implications are set out in annex II. The number of days during which the Committee would meet is contingent upon the number of nominations;⁸ a provision for interpretation into the two working languages of the Court is also foreseen in the proposed budget. Two options for the venue are considered: The Hague and New York. The latter option is included in order for the Committee, should this be the wish of the Assembly, to proceed in the same manner as for elections at the twelfth session of the Assembly, with face-to-face meetings with the candidates who normally have meetings in New York.

V. Calendar of meetings

15. In light of the elections to fill six judicial vacancies during the thirteenth session of the Assembly in 2014, the Committee would meet after the end of the nomination period, in the first half of July/September in order to conduct interviews with all the candidates, at the most appropriate venue, and to finalize its report with the recommendations to the Assembly. These meetings would, ideally, be held sufficiently in advance of the Assembly session to facilitate States Parties’ decisions on the support of candidates that adequately meet the criteria set out in the Rome Statute for election to the Court.

VI. Other matters

16. The Committee submits for consideration of interested States some suggested guidelines for the presentation of nominations in 2014 (annex III). The submission of nominations along the lines of the guidelines would assist the Committee in carrying out its mandate in 2014 when there would be an election for six judges.

⁵ ICC-ASP/10/36, annex, para. 3.

⁶ ICC-ASP/12/23, paras. 16-17.

⁷ Report of the Committee on Budget and Finance on the work of its twenty-first session (ICC-ASP/12/15), para. 72.

⁸ Based on past elections it is reasonable to expect about 20 nominations in 2014.

Annex I

Evaluation of the candidates

1. The Advisory Committee on Nominations of Judges of the International Criminal Court hereby submits to the Bureau of the Assembly of States Parties to the Rome Statute its assessment of the two candidates for the elections to be conducted during the twelfth session of the Assembly: Justice Geoffrey A. Henderson (Trinidad and Tobago) and Judge Dr. Leslie Van Rompaey (Uruguay).
2. The Committee's assessment is based on the requirements of article 36, paragraphs 3 (a), (b) and (c), of the Rome Statute. The Committee presents the following information and analysis of the suitability of the candidates in accordance with the terms of references defined by the Assembly.
3. In reaching its conclusions, the Committee considered written material submitted by the candidates in the form of statements of qualifications and personal data, and conducted face to face interviews with the two candidates. Both interviews were conducted on 18 October 2013 in the English language. The Committee thanked both candidates for making themselves available for the interview.
4. All the conclusions and decisions of the Committee have been reached by consensus.

General observations

5. The Committee recalls that both candidates submitted their candidacies under List A as described in article 36, paragraph 3, of the Rome Statute, requiring "established competence in criminal law and procedure, and the necessary relevant experience, whether as a judge, prosecutor, advocate or in other similar capacity, in criminal proceedings".
6. The Committee also recalls that article 36, paragraph 3(c), requires that "Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court."
7. The Committee took note of article 35, paragraph 1, of the Rome Statute which provides that "All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office". It also took note of article 37, paragraph 2, which provides that "A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term."
8. Both candidates stated they were in good health and prepared to serve the remainder of the term of office of the vacant seat immediately. The Committee welcomed those statements. It considered important that judges elected to the Court be in good health and prepared to serve the whole term immediately, and that there be no extraneous duties that could delay their assumption of office.
9. The Committee noted that both candidates expressed their deep commitment to the purposes of international criminal justice and particularly the International Criminal Court, while recognizing that the primary responsibility for criminal justice belongs to States.
10. On the basis of the written material submitted and the interviews conducted, the Committee was satisfied that both candidates are persons of high moral character, impartiality and integrity.

Henderson, Geoffrey (Trinidad and Tobago)

11. The Committee noted that the candidate had spent his entire professional life in criminal law and procedure, first as a prosecutor, from 1990 to 2008, culminating in the position of Director of Public Prosecutions, then as a High Court Judge, Supreme Court of Trinidad and Tobago, from 2009 to the present. During the interview, it was clarified that the High Court was a first-instance court whose powers did not involve a review of lower courts' decisions but the direct conduct of criminal proceedings.

12. While having not dealt with crimes under the jurisdiction of the International Criminal Court, the candidate demonstrated under questioning that he possessed considerable experience in complex criminal proceedings, established competence in criminal law and a practical understanding of matters relevant to the exercise of the jurisdiction of the Court.

13. The Committee noted the candidate's fluency in the English language, one of the working languages of the Court, which is also his native language.

Van Rompaey, Leslie (Uruguay)

14. The Committee noted the candidate's long-standing and steady commitment to human rights and the rule of law at the national level throughout his career, sometimes in adverse circumstances, as well as his knowledge of some areas of the law relevant to the judicial work of the International Criminal Court.

15. The Committee also noted the candidate's long judicial experience, from 1975 to the present, culminating with his appointment to and service for more than ten years on the Supreme Court of Justice of Uruguay, of which he was twice President.

16. During the interview, the candidate clarified that the competence of the Supreme Court applied to all areas of the law, criminal and others, in which significant substantive legal issues arose, giving rise to cassation and review of the constitutionality of laws. This included important cases concerning criminal law, in which the candidate played a significant role and which influenced the subsequent development of criminal law and jurisprudence in Uruguay, notably towards a bar to impunity for perpetrators of serious crimes.

17. However, the candidate confirmed during the interview that the Supreme Court did not itself conduct criminal proceedings. The candidate also confirmed that his own experience in criminal procedure was limited to the period from 1975 to 1980, successively as Justice of Peace, Judge of the District Court and Investigative Judge.

18. The Committee questioned whether the candidate's oral proficiency in English, one of the working languages of the Court, while sufficient for the purposes of the interview, met the high standard prescribed under article 36, paragraph 3(c), of the Rome Statute. The candidate told the Committee that his proficiency in French, the other working language of the Court, was limited.

Annex II

Proposed budget for the funding of the Advisory Committee activities in 2014

Programme budget implications for one to five days of meetings in The Hague

1. Travel costs

Number of days	subtotals (in euros)
1 day	24,644
2 days	27,684
3 days	30,724
4 days	33,764
5 days	36,804

2. Interpretation costs per day

English to French/French to English	5,800
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Programme budget implications for one to five days of meetings in New York

1. Travel costs

Number of days	subtotals (in euros)
1 day	39,524
2 days	43,043
3 days	46,562
4 days	50,081
5 days	53,600

2. Interpretation costs per day

English to French/French to English	1,800
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Annex III

Suggested guidelines for the presentation of candidates for election as judge of the International Criminal Court

A. Statement

1. The statement, referred to in article 36 (4) (a) of the Rome Statute,¹ could be arranged into sub-headings along the lines of the Statute and resolution indicating how the candidate fulfils the requirements as follows:

- a) Criteria of high moral character, impartiality and integrity.
- b) Possession of the qualifications required for appointment to the highest judicial offices at the national level.
- c) Demonstrate how the candidate has either:
 - (i) 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) 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) Knowledge of and fluency in either English or French, with an indication of the oral and written knowledge thereof.
- e) Indication of nomination for List A or List B.
- f) Legal expertise on specific issues, including, but not limited to, violence against women or children.
- g) Nationality under which the candidate is nominated.

B. Curriculum vitae

2. While neither the Rome Statute nor resolution ICC-ASP/3/Res.6 require that the curriculum vitae (CV) of the candidate be submitted, governments have routinely submitted the candidate's CV. It is suggested that the CVs be structured in a standard format with broad additional categories which have been gleaned from the CVs submitted for past elections, as far as applicable. This could be set out in a table to be prepared by the Secretariat. The suggested arrangement of the CV would be:

Personal data

Form of address:

Name: (first name, last name)

Date of birth:

Nationality:

Marital status:

Educational qualifications

Date, Institution, Qualification(s) obtained (in chronological order)

¹ "Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3."

Professional experience

Date, Employer, Post title, other relevant information, if applicable (in chronological order)

Other professional activities

Relevant publications

Relevant seminars

Membership of professional associations and societies

Awards and honours

Personal interests
