

General remarks

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

COLOMBIA

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.