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### **Report to the Bureau on the Review of the procedure for the nomination and election of judges**

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## I. Background

1. This report is submitted pursuant to the mandate given to the facilitation of the New York Working Group of the Bureau (“Working Group”) on the review of the procedure for the nomination and election of judges based on resolution ICC-ASP/22/Res.3, in which the Assembly of States Parties (“Assembly”) decided “to continue to review the procedure for the nomination and election of judges as set forth in resolution ICC-ASP/3/Res.6, as amended, with a view to making any improvements as may be necessary, taking into account the work conducted so far as reflected in the facilitator’s report” and requested the Bureau “to report to the Assembly at its twenty-third session on possible amendments to other mandates and procedures which may be necessary in order to implement the due diligence procedure for elected officials”, and “to update the Assembly, at its twenty-third session, on the progress of the review of the procedure for the nomination and election of judges”.
2. The Working Group takes note of resolution ICC-ASP/19/Res.7 that “welcome[d] the report and recommendations of the Independent Expert Review contained in the document entitled ‘Independent Expert Review of the International Criminal Court and the Rome Statute System - Final Report’, dated 30 September 2021”, and “decide[d] to establish a Review Mechanism, under the auspices of the Assembly” The Working Group also takes note that R371-R380, the relevant recommendations of the Independent Expert Review (IER) were allocated to the facilitation per the ‘Comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action’ (“Comprehensive Action Plan”), which had been proposed by the Review Mechanism on 30 June 2021 and adopted by the Bureau on 28 July.
3. In its second meeting held on 6 March 2024, the Bureau appointed Ms. Melinda Vittay (Hungary) as the facilitator for the review of the procedure for the nomination and election of judges.
4. The Working Group held three intersessional meetings, on 16 April, 8 May and 10 September 2024, to exchange general views on the programme of work for 2024.
5. The Working Group adopted the current report on 27 November 2024 via a silence procedure.

## II. Discussions in the New York Working Group

6. At the first meeting of the facilitation held on 16 April 2024, the facilitator provided an overview of the work done in 2023 and presented a proposed programme of work for 2024. Accordingly, the facilitator proposed that the programme be focused on the consideration of any outstanding recommendations of the Advisory Committee on Nominations (ACN), including by engaging with them and monitoring the implementation of IER recommendations 376 and 377 on the elaboration of guidelines for national-level nomination procedures, including by considering ways how to best ensure supplementing the report of the ACN containing the consideration of the nominations submitted for the election of judges. In addition, the programme of work included the evaluation of the implementation of the amendment to paragraph 12<sup>ter</sup> of resolution ICC-ASP/3/Res.6 adopted at the twenty-first session of the Assembly which called for the facilitation of public roundtables with the candidates for judges of the elections held in 2023. The facilitator further proposed that the frequency of the facilitation, including the possibility of holding its meetings only every three years on the year following judicial elections, was considered.
7. Concerning the mandate of the ACN to develop guidelines for national nomination procedures, the facilitator briefed the meeting about her meeting with the Chair and Vice-Chair of the ACN, as well as the ACN’s Rapporteur on the elaboration of national guidelines. The facilitator noted that the ACN had stressed that, notwithstanding the multiple calls to States Parties to provide their national nomination procedures for the nomination of judges, there had been a very limited response from State Parties.<sup>1</sup> The ACN recalled that the Assembly had mandated them to hold two sessions during 2024, one in late spring to develop the zero-draft of the guidelines and a second meeting in late autumn to assess comments made by States

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<sup>1</sup> <https://asp.icc-cpi.int/ACN/2020-National-Procedures>

Parties on the draft guidelines. However, funds had not been allocated and no available resources were available for the ACN to meet in person to hold these discussions. The ACN conveyed to the facilitator the difficulties of holding the discussions virtually, underscoring that it was essential for the proper elaboration of these guidelines that the ACN's deliberations be held in person, to allow for appropriate discussions. For the most part, delegations indicated that there had been a clear understanding during budget negotiations in 2023 that the lack of funding for two in-person meetings of the ACN to elaborate guidelines on national nomination procedures would not interfere in the work of the ACN, and that holding these meetings in a virtual format would not undermine the Committee's work. The facilitator encouraged delegations who had yet to do so to submit information and commentary on their own existing or prospective nomination and selection procedures to the Secretariat of the Assembly.

8. Concerning the frequency of the facilitation, several delegations expressed their concern that holding the facilitation only during the year following elections would create a knowledge gap, as there was a high turnover of delegates in the three-year gap between judicial elections. Several delegations also raised concerns on not holding the facilitation in the year leading to judicial elections, noting the amount of preparation that goes into these elections, and it might be an idea to hold the facilitation in the year leading to elections to prepare, and the year following elections to assess the work undertaken in the previous year. A delegation proposed that the preparations for the elections could be subsumed by the New York Working Group, supported by the Secretariat of the Assembly, as the mandate for the preparation of elections was already with the Working Group.

9. At the second meeting of the facilitation, held on 8 May 2024, the facilitation discussed the implementation of the amendment to paragraph 12<sup>ter</sup> of resolution ICC-ASP/3/Res.6. In this regard, the facilitator recalled that per the mandate of the Assembly, the New York Working Group, through this facilitation, had discussed, elaborated and proposed to the Bureau modalities for the 2023 Public Roundtables for Judicial Candidates, which had been endorsed by the New York Working Group via a silence procedure on 10 August 2023, and further approved by the Bureau on 7 September 2023.

10. A number of delegations expressed their satisfaction with the report of the ACN, as well as the roundtables as organized. Several delegations expressed concerns in connection with the timing of the issuance and the substance of the evaluation of candidates reflected in the ACN report. In this connection, several delegations noted that the amount of time between the issuance of the report and the roundtables did not allow for sufficient time for States to digest its contents. Several delegations also noted that the issuance of the report and the holding of roundtables at the same time the UNGA Sixth Committee was in session was very challenging for both delegations in New York and at capital, and while the live broadcasting of the roundtables was a positive aspect of their organization, holding roundtables in the afternoon hours in New York did not allow colleagues in The Hague to follow these sessions. A delegation noted that finding an appropriate time for the roundtables was tricky due to the timeline for the issuance of the ACN report, and that going forward there would need to be an additional consideration on the impact which the due diligence procedure would have on the logistics and substance of the roundtables.

11. A delegation recalled that the roundtables relied on a novel segment of individualized questions intended to supplement the ACN report, on which there was room for improvement. Concerning the ACN report, the question was raised whether gaps in the criteria for the assessment of candidates should be identified by the working group or should this assessment come from the ACN, taking into consideration the independence of the ACN. A delegation noted that States were not aware of the criteria used by the ACN to evaluate the candidates, which created challenges when interacting with them.

12. Concerning the content of the ACN report<sup>2</sup> and without prejudice to the independence of the ACN, a delegation expressed concerns on the content of its report. Recalling the importance of the ACN's report as a tool to support States Parties during elections, a delegation indicated that it was unsure if the report was aligned with the terms of reference of the ACN. The delegation indicated that the report should be more objective, and it could be an idea to have a list of criteria

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<sup>2</sup> Report of the Advisory Committee on Nominations of Judges on the work of its ninth session (ICC-ASP/22/4).

for the assessment of candidates. The reflections of a delegation on the report of the ACN were summarized in a non-paper that was circulated on 4 September 2024.

13. At the third meeting of the facilitation, held on 10 September 2024, the facilitator drew attention to the decisions taken by the Bureau of the Assembly at its eighth meeting, held on 18 July 2024, in particular agenda item 2 (e) by which the Bureau took note that the ACN was not in a position to carry out the mandate to prepare guidelines for the national-level nomination procedures<sup>3</sup> remotely. A number of delegations recalled the relevance of the mandate of the ACN that was built on the IER recommendations, and expressed their disappointment that the mandate was not delivered. It was suggested exploring alternatives on the delivery of the mandate.

### **III. Conclusions and recommendations**

14. Further to and based on the discussions held during the meetings of the Working Group, agreement was reached in the course of subsequent negotiations to submit language for inclusion in the omnibus resolution (annex).

15. Taking into account the progress made in the review of the procedure for the nomination and election of judges in previous years, the Working Group recommends that the Assembly consider the frequency of this facilitation, including the possibility of holding meetings of the facilitation in the year following a judicial election, and in the year of the judicial election, respectively.

16. The Working Group further recommends to consider reviewing the qualifications for the membership of the ACN in line with the IER recommendation R380 after the ACN election in 2024.

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<sup>3</sup> Resolution ICC-ASP/18/Res.4, as amended by ICC-ASP/21/Res.2, annex III.B.

## Annex I

### Draft text for the omnibus resolution

1. The following paragraphs of the 2023 omnibus resolution (ICC-ASP/22/Res.3), located in the section on elections, are to be amended as follows:

“79. *Stresses* the importance of nominating and electing as judges qualified, competent and experienced persons of the highest quality and of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices, in accordance with article 36 of the Rome Statute, as well as the importance of elected judges who have made their solemn undertaking being available to take up their full-time service when the Court’s workload so requires, and for this purpose, encourages States Parties to conduct thorough and transparent processes to identify the best candidates;

*79bis Recalls* that the Advisory Committee on Nomination of Judges is mandated to facilitate that the highest-qualified individuals are elected as judges of the International Criminal Court in the manner foreseen in its Terms of Reference.

80. *Recalls* paragraph 6 of resolution ICC-ASP/18/Res.4 encouraging States Parties to submit information and commentary on their own existing or prospective nomination and selection procedures to the Secretariat of the Assembly, and requests those States Parties that have not yet done so to submit the information no later than 14 March 2025, to facilitate the work of the Advisory Committee;

81. *Recalls* the adoption of the due diligence procedure for elected officials of the International Criminal Court (“due diligence procedure”),<sup>1</sup> requests the Bureau to consider any amendments to other mandates and procedures which may be necessary to implement the due diligence procedure in the future, and *emphasizes* that the due diligence procedure will need to be taken into account in any future decisions on the process for the election of the Judges, Prosecutor, Deputy Prosecutor(s), Registrar and Deputy Registrar.

82. *Decides* to adopt the amendment to paragraph *7bis* of resolution ICC-ASP/18/Res.4 as amended by ICC-ASP/21/Res.2, contained in annex I to the present resolution.”

2. Paragraph 6 of annex I (Mandates) of the 2023 omnibus resolution (ICC-ASP/22/Res.3) shall read as follows:

6. With regard to elections,

(a) *decides* to continue to review the procedure for the nomination and election of judges as set forth in resolution ICC-ASP/3/Res.6, as amended, with a view to making any improvements as may be necessary, taking into account the work conducted so far as reflected in the facilitator’s report;

(b) *requests* the Bureau to report to the Assembly at its twenty-fourth session on possible amendments to other mandates and procedures which may be necessary in order to implement the due diligence procedure for elected officials; and

(c) *also requests* the Bureau to update the Assembly, at its twenty-fourth session, on the progress of the review of the procedure for the nomination and election of judges;

### I. Amendment to the resolution ICC-ASP/18/Res.4

Amend paragraph *7bis* of resolution ICC-ASP/18/Res.4 as amended by ICC-ASP/21/Res.2 as follows:

*Reiterates* its request to the Advisory Committee on Nomination of Judges, in consultation with States Parties and other relevant stakeholders, to prepare, in light of

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<sup>1</sup> ICC-ASP/22/Res.3, Annex II.

the compendium presented under paragraph 7 as well as additional submissions of States Parties under paragraph 6, guidelines for the national-level nomination procedures and bring them to the attention of States Parties at the earliest possible date, but no later than twenty-fourth session of the Assembly.

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