Resolution ICC-ASP/3/Res.6

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

ICC-ASP/3/Res.6
Procedure for the nomination and election of judges of the International Criminal Court

The Assembly of States Parties,

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

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

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

Noting that in its resolution ICC-ASP/1/Res.3 the Assembly of States Parties agreed that it would review the procedure for the election of judges on the occasion of future elections with a view to making any improvements as may be necessary,

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

A.   Nomination of candidates for judges

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

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

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

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

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

6.   Every nomination should be accompanied by a statement:

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

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

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

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

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

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

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

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

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

11.   The President of the Assembly of States Parties shall extend the nomination period for two weeks, but no more than three times, if at the end of the nomination period any regional or gender minimum voting requirement[13] is not matched with at least twice the number of candidates fulfilling that requirement.

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

B.   Election of judges

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

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

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

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

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

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

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

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

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

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

(b)   Each Party shall vote for a minimum number of candidates from each regional group. This number shall be 2 minus the number of judges from that regional group remaining in office or elected in previous ballots.

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

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

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

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

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

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

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

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

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

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

C.   Judicial vacancies

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

(a)   Within one month of the occurrence of the judicial vacancy, the Bureau of the Assembly of States Parties shall fix the venue and date of the election, which should not be later than 20 weeks after the occurrence of the vacancy.

(b)   The nomination period shall open 12 weeks before the elections and shall last 6 weeks.

(c)   If the judicial vacancy reduces the number of judges from list A to below 9 or the number of judges from list B to below 5, only candidates from the underrepresented list can be nominated.

(d)   If at the time of the election a regional or gender minimum voting requirement is not fulfilled, only candidates that can satisfy any of the underrepresented regional minimum voting requirements as well as the underrepresented gender minimum voting requirement can be nominated.

(e)   A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36 of the Statute.

Annex I

Illustrative tables of minimum voting requirements

The following tables are included for illustration purposes only.

Table 1: Minimum voting requirements for list A

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

Table 2: Minimum voting requirements for list B

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

Table 3: Regional minimum voting requirements

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

 (Further adjustments might be necessary in accordance with para. 21 (b) of the resolution.)

Table 4: Gender minimum voting requirements

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

(Further adjustments may be necessary in accordance with para. 21(c) of the resolution.)

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

This sample ballot paper is included for illustration purposes only.

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