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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/21/Res.2, 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”<sup>1</sup> and requested “the Bureau to update the Assembly, at its twenty-second 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. The Working Group further takes note of the resolution ICC-ASP/21/Res.4 that “request[ed] the relevant Assembly mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations to continue with the assessment and, where appropriate, implementation in 2023 and to submit to the Bureau the outcome of its consideration, including on action already taken and proposals for next steps, by 15 November 2023”.

4. In its second meeting held on 14 February 2023, the Bureau appointed Mr. Matúš Košuth (Slovakia) as the facilitator for the review of the procedure for the nomination and election of judges.<sup>2</sup>

5. The Working Group held three intersessional meetings, on 7 June, 4 August and 30 October 2023.

6. The Working Group adopted the current report on 22 November via a silence procedure. The Working Group also endorsed on 10 August 2023 via a silence procedure the modalities for the 2023 Public Roundtables for Judicial Candidates, which were later adopted by the Bureau at its meeting held on 7 September 2023.

## II. Discussions in the New York Working Group

1. At the first meeting of the facilitation held on 7 June 2023, the facilitator provided an overview of the work done in 2022 and presented a proposed programme of work for 2023. Accordingly, the facilitator proposed that programme be focused primarily on the approval of the modalities for the 2023 Public Roundtables for Judicial Candidates and, upon consultation with the Advisory Committee on Nominations of Judges (“ACN”), on the follow-up to the implementation of recommendations 376-377 of the Independent Expert Review, which refer to the mandate of the ACN to prepare guidelines for national-level nomination procedures. Support for the proposed programme of work and the facilitation of the 2023 Public Roundtables for Judicial Candidates was expressed.

2. With regard to the 2023 Public Roundtables for Judicial Candidates, the facilitator recalled paragraph 12 *ter* of the Assembly’s resolution on the Procedure for the nomination and election of judges as amended at the twenty-first session of the Assembly and the previous practice regarding the public roundtables. He further informed of his intention to

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<sup>1</sup> Report of the Bureau on the review of the procedure for the nomination and election of judges (ICC-ASP/21/29).

<sup>2</sup> Decisions of the Bureau of the Assembly of States Parties, 14 February 2023, available at [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/2023-Bureau2-Agenda-Decisions.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/2023-Bureau2-Agenda-Decisions.pdf)

prepare a zero-draft of the modalities for the 2023 Public Roundtables for Judicial Candidates on this basis, in close consultations with the Coordinator of the New York Working Group.

3. Concerning the mandate of the ACN to develop guidelines for national nomination procedures, 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. He also recalled the amendment to paragraph 10 of resolution ICC-ASP/18/Res. 4, encouraging States Parties to continue according utmost respect to the evaluation of candidates by the ACN, and to refrain from casting their votes in an inconsistent way with this evaluation to the extent possible as well as from the trading of votes

4. The zero draft of the modalities for the 2023 Public Roundtables for Judicial Candidates was circulated to the facilitation on 6 July 2023, with a request for comments by 21 July 2023. Taking into account the written inputs received by the facilitator and his further consultations, a revised draft of the modalities for the 2023 Public Roundtables for Judicial Candidates was circulated on 3 August 2023, to be discussed at the second meeting of the facilitation.

5. At the second meeting of the facilitation held on 4 August 2023, the facilitator presented the revised draft modalities for the 2023 Public Roundtables for Judicial Candidates, noting the updates in comparison to the zero draft. No comments were made on the revised draft. One delegation suggested sending a communication to the nominated candidates informing of the importance to fulfill entry requirements in order to attend roundtables in-person, once the modalities are approved.

6. On the basis of the facilitator's proposal, the facilitation agreed that the modalities for the 2023 Public Roundtable for Judicial Candidates be placed under a short silence procedure, after which they would be presented to the New York Working Group for its approval and submission to the Bureau. Further to the Bureau's approval of the modalities on 7 September 2023, the New York Working Group proceeded to hold a meeting on 27 September 2023, in which lots were drawn to determine the order of participation of the judicial candidates.

7. At the third meeting of the facilitation held on 30 October 2023, the facilitator briefed participants on his discussions with the ACN held virtually on 20 October 2023, and presented the draft report to the Bureau, specifically the proposed conclusions, recommendations and the language for the omnibus resolution.

8. The facilitator informed the discussions with the ACN centered around the preparation of guidelines for the national-level nomination procedures pursuant to the new paragraph 7*bis* of resolution ICC-ASP/18/Res.4. A two-step approach to the elaboration of the guidelines was proposed. Initially, the ACN would meet to prepare the draft guidelines, which would be then submitted to the States Parties and other stakeholders for comments and observations. The ACN would afterwards study and analyze the comments and observations in order to finalize the guidelines. To that end, a second meeting of the ACN during the second half of 2024 would be necessary. The facilitator added that further to the consultations with the Secretariat, an addendum to the ACN report would be issued with an updated recommendation to hold two meetings in 2024, which would be submitted to the Bureau and the budget facilitation for their consideration.

9. Concerning the proposed conclusions, recommendations and language for the omnibus resolution to be included in the draft report, support for considering the frequency of the facilitation was expressed.

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

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

11. The Working Group recommends that meetings be held throughout 2024, including, if necessary,
- a) to discuss the remaining issues that could not be dealt with during the intersessional period covered by the current report as well as previous reports,
  - b) to consider any outstanding recommendations of the ACN,
  - c) to monitor the implementation of the IER recommendations 376-377<sup>3</sup>, including, as appropriate, via facilitating the consultation of States Parties and other stakeholders with the ACN in the process of preparing guidelines for the national-level nomination procedures,
  - d) to evaluate the implementation of the amendment to paragraph 12ter of resolution ICC-ASP/3/Res.6 adopted at the twenty-first session of the Assembly<sup>4</sup>, including by considering ways how to best ensure supplementing the report of the ACN,
  - e) to consider the frequency of this facilitation, including the possibility of holding its meetings only every three years on the year following judicial elections, and to report thereon to the twenty-third session of the Assembly in 2024.
12. The Working Group further recommends considering reviewing the qualifications for the membership of the ACN in line with the IER Recommendation 380 after the election of the Committee's members in 2024.

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<sup>3</sup> ICC-ASP/21/Res.2, Annex III, part C.

<sup>4</sup> ICC-ASP/21/Res.2, Annex II, part D.

## Annex I

### Text for the omnibus resolution

1. The following paragraphs of the 2022 omnibus resolution (ICC-ASP/21/Res.2), located in the section on elections, are to be amended as follows:

76. *Welcomes* the report of the Advisory Committee on Nominations of Judges on the work of its ~~eight~~**ninth** session;<sup>1</sup>

77. *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;

78. *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;

~~79. *Decides to adopt the amendments to the procedure for the nomination and election of judges, the amendment to the resolution ICC-ASP/18/Res.4, and the amendment to the Terms of Reference of the Advisory Committee on Nominations of Judges, contained in annexes II, III and IV, respectively, to the present resolution;*~~

2. Paragraph 6 of annex I (Mandates) of the 2022 omnibus resolution (ICC-ASP/21/Res.2) is replaced by the following:

(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 update the Assembly, at its twenty-~~second~~**third** session, on the progress of the review of the procedure for the nomination and election of judges;

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<sup>1</sup> ICC-ASP/22/4.