

Questions & Answers

Procedures for the election of judges to the International Criminal Court

What key provisions of the Rome Statute govern the nomination of judicial candidates?

The Rome Statute, the founding treaty of the International Criminal Court, provides that each state party may put forward one candidate for any given election. The Statute further maintains that the nominations shall be governed either by the procedure for the nomination of candidates for appointment to the highest judicial offices in the nominating state, or by the nomination procedure outlined in the Rome Statute.

At the 2004 Assembly of States Parties, states adopted a resolution (ICC-ASP/3/Res.6) that reviewed the procedure for the election of judges. It stipulates that the Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel the invitations for nominations of judges of the ICC. The nomination period shall be open 26 weeks before the elections and shall last 12 weeks. States that have started the process of ratification, acceptance or approval of, or accession to the Rome Statute may nominate candidates for the election of ICC judges. 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 the state is a party to the Statute on the date of the election. 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 is not matched with at least twice the number of candidates fulfilling that requirement.

What qualifications must candidates meet?

In accordance with the minimum voting requirements adopted by the ASP, candidates must be identified as having experience in either criminal law (list A) or international law (list B). During the first election, there were 22 candidates on list A and 21 candidates on list B.

Article 36(3)(a) of the Rome Statute provides that “the judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.”

What parameters does the Rome Statute establish for the outcome of an election?

The Rome Statute states that the bench must comprise of at least nine judges from list A (competence in criminal law) and five judges from list B (competence in international law). The ICC treaty further states that when selecting judges, states parties account for equitable representation of the world’s principal legal systems, full geographic representation of the Court’s member states, and gender balance on the bench. States parties are also charged with considering judges with specialized experience with specific issues such as violence against women or children.

The call for gender equity on the ICC bench is the first by an international judicial institution. The Assembly of States Parties, building on the work of the Preparatory Commission, minimized voting requirements for judges due to the sophisticated criteria for ICC judges.

What are the minimum voting requirements?

According to the procedure adopted by the ASP, states must vote for a minimum number of candidates from each regional group, legal expertise and gender. These minimum voting requirements facilitate the fulfillment of the Rome Statute requirements as votes cannot be concentrated on one region, list or gender. However, the procedure is not a quota system and does not guarantee that each regional group or gender will get the

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same number of seats stipulated by the minimum voting requirement.

How are the judges elected?

Each State Party to the Rome Statute has one vote. Voting takes place by secret ballot. To be elected, candidates must receive a two-thirds majority of the states parties present and voting

What happens in case of judicial vacancies?

In the event of a judicial vacancy, the procedure for the nomination and election of judges shall apply *mutatis mutandis*, subject to several provisions detailed in Resolution ICC-ASP/3/Res.6. Thus, the Bureau of the Assembly of States Parties shall fix the venue and date of the election within one month of the occurrence of the judicial vacancy, but no later than 20 weeks after the occurrence of the vacancy. States parties decided during the fifth resumed session of the Assembly of States Parties to amend Resolution ICC-ASP/3/Res.6 with respect to this time frame; as a result, elections should still be fixed no later than 20 weeks after the occurrence of the vacancy, unless the Bureau decides otherwise after consulting with the Court. The nomination shall be open twelve weeks before the elections and shall last six weeks. If either list A or list B are underrepresented as a result of the vacancy, only candidates from the underrepresented list can be nominated. If a regional or gender minimum voting requirement is not fulfilled at the time of the election, only candidates who satisfy these requirements can be nominated. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term; if that period is three years or less, the judge will be eligible for re-election for a full term.

What roles do NGOs play in the election of judges?

During the first election, for the first time, NGOs actively monitored the nomination and election of judges of an international judicial institution.

NGOs campaigned on several levels, including:

- on the procedure for the nomination and election of ICC judges;
- at the national level to promote a transparent selection process leading to the nomination of highly qualified candidates; and
- in raising awareness about and evaluating the qualifications of candidates.

Other Information, visit: <http://www.coalitionfortheicc.org/?mod=electionjudges>