



Questions and Answers on the Report of the Independent Panel on International Criminal Court Judicial Elections

On 24 October 2011 the Independent Panel on International Criminal Court Elections (Panel) issued a report on the 19 candidates to be judges of the International Criminal Court (ICC) – the world's first and only permanent international court to prosecute war crimes, crimes against humanity and genocide. In December 2011, the Assembly of States Parties (ASP) – the ICC's governing body – will elect six new judges to serve non-renewable terms of nine years. The Coalition believes that these elections, which will occur along with the election of a new chief Prosecutor, are the most important in the ICC's history since the 2003 inaugural elections.

1. What is the Independent Panel on International Criminal Court Judicial Elections?

The Panel is an independent committee established by the Coalition for the International Criminal Court (Coalition). Its purpose is to raise awareness about the requirements for ICC judicial candidates and to encourage the nomination of the most highly qualified candidates by making public its assessments and process. The Panel adopted its Terms of Reference in May 2011. They are available on the Panel's website, www.iccindependentpanel.org. The views of the Panel are its own. It is up to governments to take into consideration the Panel's independent assessments.

2. Why did the Coalition for the ICC establish the Panel?

The Coalition for the ICC identified a gap in the nomination procedure for ICC judicial candidates whereby governments were nominating and electing individuals who did not necessarily meet the qualifications required for election as a judge of the ICC. The Coalition was especially concerned about criticism about a number of unqualified candidates nominated for international judicial elections since 1993. The Panel's Terms of Reference reflect an assessment process similar to those conducted in various domestic jurisdictions for vetting judicial candidates.

3. Who are the members of the Panel? How were they selected?

The members of the Panel are:

- **The Honourable Justice Richard Goldstone**, former Chief Prosecutor of the UN International Criminal Tribunals for Rwanda and the former Yugoslavia, Chair
- **The Honourable Patricia Wald**, former Chief Judge of the United States Court of Appeals for the District of Columbia and former Judge of the UN International Criminal Tribunal for the former Yugoslavia, Vice-Chair
- **The Honourable Hans Corell**, former Judge of Appeal and former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations
- **Judge O-Gon Kwon**, Judge and Vice President of the UN International Criminal Tribunal for the former Yugoslavia and former Presiding Judge at the Daegu High Court

The Coalition for the International Criminal Court is a global network of over 2,000 civil society organizations supporting a fair, effective and independent International Criminal Court.

International Co-Secretariats

The Hague, Netherlands, Tel: +31-70-363-4484
New York City, U.S.A., Tel: +1-212-687-2863

Regional Representatives

Buenos Aires, Argentina • Brussels, Belgium • Cotonou, Benin
Mexico City, Mexico • Abuja, Nigeria • Quezon City, Philippines • Sana'a, Yemen



- **Dr. Cecilia Medina Quiroga**, Director of the Human Rights Centre at the University of Chile and former Judge and President of the Inter-American Court of Human Rights

They were selected by the Coalition for the ICC based on their expertise in international law and tribunals. They represent five regions of the world and major legal systems.

4. What is the purpose of the report that the Panel just issued?

The Panel's report is intended to draw attention to the qualification for ICC judicial candidates required by the Rome Statute of the ICC, the treaty that established and now governs the Court. The report also indicates, based on the separate and distinct requirements of the Rome Statute, whether each of the 19 candidates nominated for the upcoming election is "Qualified" or "Not Qualified" for the list on which the candidate appears, either List A or List B. The Panel's assessment process has no formal connection to the Rome Statute; it is up to governments to take into consideration the Panel's independent assessments.

5. Who are the judicial candidates assessed by the Panel?

Between 13 June and 16 September 2011, ICC States Parties nominated 19 candidates to fill six judicial vacancies. Eight candidates were nominated from African States, two from Asian States, two from Eastern European States, five from Latin American and Caribbean States and two from Western European and Other States. Sixteen of the candidates were nominated to List A (competence in criminal law and procedure) and three to List B (competence in relevant areas of international law). Two of the candidates are female and 17 are male.

6. What is the difference between List A and List B? Why did the Panel only make its assessment for the "list" on which the candidate appeared?

The Rome Statute differentiates between List A and List B candidates in order to ensure a balance between judges with expertise and experience in criminal law and procedure, and those with experience and expertise in areas of international law relevant to the judicial work of the Court, such as international humanitarian law and the law of human rights. At the first election, the ASP was required to elect at least nine List A judges and at least five List B judges; subsequent elections must maintain the same proportion. According to the Rome Statute and relevant ASP resolutions, the nominating government is directed to indicate on which list a candidate is to appear. If he or she is qualified for both, the government may choose.

In the upcoming election as well as previous ones, certain categories of candidates have enjoyed electoral advantages depending on their gender, region and on which "list" they appeared. In an election, appearing on one list often carries advantages over appearing on the other. In the past, candidates have been nominated to one list while appearing to be better suited to the other list. In addition, candidates have requested to change lists during the nomination period to gain an electoral advantage. The Panel thus determined that it would assess the candidate according to the list to which the candidate was finally nominated. The assessment therefore does not reflect whether the candidate would be qualified for the list to which he or she was not nominated.

7. What are the qualifications required for ICC judicial candidates?

The Rome Statute of the ICC requires 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. (Article 36(3)(a))

Every candidate for election to the Court shall:

[List A:] (i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

[List B:] (ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court; (Article 36(3)(b))

Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. (Article 36(3)(c))

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 for appointment 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. (Article 36(3)(a))

For the purposes of the election, there shall be two lists of candidates:

List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and

List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists. (Article 36(5))

8. How did the Panel assess the candidates?

The Panel considered the documents submitted to the ASP, the ICC's governing body, by the ICC States Parties that nominated the judicial candidates. The documents for all candidates are available on the ASP website at <http://www.icc-cpi.int/Menus/ASP/Elections/Judges/2011/2011.htm>. The Panel refers to links to specific documents for each candidate. The Panel also referred to judicial questionnaires completed by the candidates and published by the Coalition as well as other relevant information in the public domain. According to the Panel's report, regarding two candidates, it informed the ASP Secretariat of its view that the nomination documents did not provide a sufficient basis on which to make an assessment. In both cases, the nominating government was informed of the Panel's view and one submitted an addendum to the original documentation.



9. What does an assessment of “Qualified” or “Not Qualified” mean?

The Panel’s assessments are strictly limited to determining whether a candidate fulfils the requirements established for ICC judicial candidates by the Rome Statute. Thus, a “Qualified” assessment indicates the Panel’s independent finding that the candidate fulfils these requirements. An assessment of “Not Qualified” reflects the Panel’s view to the contrary. The assessments, along with other relevant information, are intended to assist governments in the elections process.

10. Why did the Panel make observations in addition to the assessments?

According to the report, several issues arose in the context of the Panel’s assessments which were not directly relevant to determining whether the candidate was “Qualified” or “Not Qualified” but have important bearing on ICC judicial elections. The Panel decided to bring several of these issues to the attention of the ASP. The Panel hopes that the ASP will address them itself or in its Advisory Committee on nominations if and when it is established.

11. What is the relationship of the Panel with the Coalition for the ICC?

While the Coalition for the ICC established the Panel, the Panel is independent.

The Coalition for the ICC represents over 2,500 non-governmental organizations working in 150 countries. Given its diverse membership, it does not take a position on judicial candidates, though individual member organizations may choose to do so. The establishment of the Panel and the resulting report of the Panel reflect the desire of the Coalition for the ICC to encourage the nomination and election of the most highly qualified candidates through a transparent and merit-based nomination and election process. The Coalition believes that an independent vetting process for international judicial candidates, the first of its kind in international elections, helps to meet these goals.

12. Where is the report available?

The report was published on the Panel’s website at: www.iccindependentpanel.org.

The Coalition for the International Criminal Court established and provided administrative support for the Independent Panel. The Coalition works in partnership with institutions and individuals around the globe in advancing its mission. Major support for the Coalition’s ICC elections activities has been provided by Humanity United and the Open Society Institute, among other funders. The Coalition is deeply appreciative of all of the partners and donors that provide support to this and other ongoing efforts. More information on the Coalition’s partners and activities can be found at: <http://www.coalitionfortheicc.org>

The contents of documents issued by the Independent Panel and the views contained therein are the sole responsibility of the Panel. The views expressed should not be taken to represent those of the Coalition, nor of any partner/donor organization. Please note that the Coalition does not endorse or oppose individual candidates but advocates for the integrity of the nomination and election procedures. Civil society member organizations of the Coalition may choose to take specific positions on candidates; such positions may only be taken in the name of the respective organization but never in the Coalition’s name.