

The Hon. Justice Richard J. Goldstone, Chair

The Hon. Patricia Wald, Vice-Chair

The Hon. Hans Corell

Judge O-Gon Kwon

Dr. Cecilia Medina Quiroga

Independent Panel on International Criminal Court Judicial Elections

Terms of Reference

12 May 2011

The Independent Panel on International Criminal Court Judicial Elections (Panel), established by the Coalition for the International Criminal Court (CICC) in December 2010 as agreed by its Steering Committee in meetings held between 24 March and 16 December 2010, hereby adopts these Terms of Reference which shall govern its work.

1. Independence

- 1.1. The Panel is independent.
- 1.2. The CICC Secretariat may facilitate and provide servicing to the Panel.

2. Mission

- 2.1. The purpose of the Panel is to raise awareness of the qualifications for judicial candidates required by the Rome Statute and to encourage States Parties to nominate the most qualified candidates to be judges of the International Criminal Court (ICC).
- 2.2. The Panel shall contribute to these goals through making public its assessment process as well as its assessments of individual candidates.

3. Mandate

- 3.1. The Panel shall independently assess whether each judicial candidate fulfils the qualifications prescribed by Article 36 of the Rome Statute.

3.2. The Panel shall make its assessments based on the materials referred to in Section 9.

3.3. The Panel shall determine whether each candidate is “Qualified” or “Not Qualified”.

3.4. The Panel shall not rank the candidates. It shall not endorse or oppose any individual candidates.

4. Decision-Making

4.1. Every effort shall be made by the Panel to reach decisions by consensus.

4.2. If consensus cannot be reached, the Panel shall reach decisions by a majority of its members.

5. Excuse or Recusal

5.1. A Panel member shall not participate in the assessment of any candidate of the same nationality.

5.2. A Panel member shall not participate in an assessment in which his or her impartiality might reasonably be doubted on any ground. Any question as to the participation of a Panel member in an assessment shall be decided by a majority of the Panel. The Panel member in question shall not take part in the decision on his or her participation.

6. Leadership

6.1. The Panel shall designate one of its members as Chair to lead its meetings, to coordinate the assessments by the Panel and to serve as the Panel’s primary spokesperson.

6.2. The Panel shall designate one of its members as Vice-Chair to fulfil the Chair’s responsibilities in place of the Chair.

7. Initial Review

7.1. The Panel may carry out an initial review to determine if it has sufficient information to complete its assessment of a judicial candidate.

7.2. The Chair may assign the initial review of a candidate to two Panel members, based on criteria such as geographic region, legal system and language.

7.3. The assigned Panel members shall inform the Chair of their findings. If the Panel finds that the nomination documents do not provide a sufficient basis on which to make an assessment, the Panel may request its Secretariat to inform the ASP Secretariat and the State Party that nominated him or her of the Panel's view.

8. Timing of Assessments

8.1. The Panel shall assess candidates on a rolling basis once all of the nomination documents for a candidate have been received.

8.2. The Panel may revisit earlier assessments if new information becomes available about any candidate.

9. Materials to Be Reviewed

9.1. The Panel shall consider the following categories of materials in assessing the judicial candidates:

(a) The candidate's *note verbale* submitted to the ASP Secretariat;

(b) The statement prescribed in Article 36, paragraph 4 (a) relating to the candidate and submitted to the ASP Secretariat;

(c) The candidate's *curriculum vitae* submitted to the ASP Secretariat;

(d) Campaign materials distributed by the candidate and the State Party that nominated him or her; and

(e) The CICC questionnaire completed by the candidate.

9.2. The Panel may consider other relevant documents available in the public domain, including the candidate's legal writings, articles and speeches.

9.3. In exceptional circumstances, the Panel may consider information from other relevant sources with respect to specific candidates provided that this information is brought to

the attention of the respective candidates and, when appropriate, the States Parties that nominated them and the ASP Secretariat, through its Secretariat.

- 9.4. In order to promote the impartiality of the Panel and the fairness of the assessment process, Panel members shall not communicate directly with candidates or the States Parties that nominated them about individual candidates or assessments. Panel members shall not consider information received directly from candidates or the States Parties that nominated them unless the same information has been submitted to the ASP Secretariat.

10. Relevant Rome Statute Requirements and Provisions

- 10.1. The Panel shall assess:

(a) Whether the candidate possesses the high moral character, impartiality and integrity as required by Article 36, paragraph 3 (a) of the Rome Statute;

(b) Whether the candidate possesses the qualifications required in their respective States for appointment to the highest judicial offices as required by Article 36, paragraph 3 (a) of the Rome Statute;

(c) Whether the candidate has established competence in criminal law and procedure as required by Article 36, paragraph 3 (b) (i) of the Rome Statute (“List A”); or whether the candidate has established competence in relevant areas of international law such as international humanitarian law and the law of human rights as required by Article 36, paragraph 3 (b) (ii) of the Rome Statute (“List B”);

(d) Whether the candidate has necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings as required by Article 36, paragraph 3 (b) (i) of the Rome Statute (“List A”); or whether the candidate has extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court as required by Article 36, paragraph 3 (b) (ii) of the Rome Statute (“List B”);

(e) Whether the candidate has excellent knowledge of and is fluent in at least one of the working languages of the Court, English and French, as required by Article 36, paragraph 3 (c) of the Rome Statute; and

(f) Whether a State Party nominated the candidate (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, as required by Article 36, paragraph 4 (a) of the Rome Statute.

10.2. The Panel takes note of the following relevant Rome Statute provisions:

(a) Article 35, paragraph 1: “All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office”;

(b) Article 36, paragraph 4 (a): “Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3”;

(c) Article 36, paragraph 4 (b): “Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party”;

(d) Article 36, paragraph 7: “No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights”;

(e) Article 36, paragraph 8 (a): “The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for: (i) The representation of the principal legal systems of the world; (ii) Equitable geographical representation; and (iii) A fair representation of female and male judges”;

(f) Article 36, paragraph 8 (b): “States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children”;

(g) Article 36, paragraph 9 (a): “Subject to subparagraph (b), judges shall hold office for a term of nine years...”;

(h) Article 36, paragraph 10: “Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber”; and

(i) Article 39, paragraph 1, last sentence: “The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.”

11. Reporting

11.1. The Panel shall issue its report as far in advance of the scheduled ICC elections as practicable after the closing of the original nomination period of the elections on which it is making assessments.

11.2. The Panel’s report shall contain the following elements:

(a) The Panel’s composition and leadership;

(b) A summary of the ASP nomination process for the election;

(c) A list of all of the candidates assessed by the Panel;

(d) The materials and resources used to assess the candidates;

(e) An assessment of each candidate as “Qualified” or “Not Qualified”; in the latter case, there shall be an explanation of this assessment;

(f) In the absence of sufficient information on which to make an assessment, the Panel shall note that it is unable to determine whether the candidate is qualified;

(g) If a decision was not reached by consensus but by a majority of the Panel members, a statement to this effect, and any minority views, if the minority Panel member(s) so request; and

(h) Any decisions in which certain Panel members did not participate, and the names of those Panel members.

11.3. These Terms of Reference shall be annexed to the Panel’s report.

11.4. The Panel may issue supplements to its report after it has been issued if the nomination period is extended because any of the minimum nomination requirements (such as gender, “List A”/“List B”, or geographic representation criteria) have not been met, or because the number of candidates remains less than the number of seats, and an extension results in additional nominations or changes to nominations.

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12. Amendments

- 12.1. Any amendments to the Terms of Reference shall be agreed by at least two-thirds of Panel members.

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