

CICC RECOMMENDED CRITERIA FOR STATES PARTIES TO NOMINATE AND ELECT JUDGES TO THE ICC

1. In February 2003, during the first resumed session of the Assembly of States Parties (ASP), the first 18 judges of the International Criminal Court (ICC) were elected. In accordance with the Rome Statute, the President of the ASP drew lots and selected six judges for terms of three years, six judges for terms of six years, and six judges for terms of nine years to allow varying termination dates.¹
2. The term of office of six judges selected for nine-year terms will end in March 2012. The nomination period for electing six judges to the ICC will be open from **13 June to 2 September 2011**.
3. The election will take place at the tenth session of the ASP to be held at the United Nations Headquarters on **12 to 21 December 2011**. The elected judges will serve nine-year non-renewable terms expiring in 2019.
4. The CICC believes that in order to be a fair, independent and effective institution, the ICC judicial chambers must be composed of impartial, highly qualified and representative judges. The elected judges will arrive at the Court at a crucial time in history, where its pre-trial chambers continue to set important procedural landmarks, its trial chambers are concluding the Court's first two trials and appeals chamber is establishing jurisprudence for the future. The elections also come at a time where the UN *ad hoc* and special hybrid tribunals move closer to completion of their mandates leaving the ICC the only permanent international institution responsible for investigating and adjudicating grave crimes and where the international community is placing greater and increasing reliance on the ICC.
5. To guide States Parties in nominating² candidates for the forthcoming and future elections of ICC judges, the CICC has prepared the following criteria based on Rome Statute requirements and resolutions governing the nomination and election of judges. **The criteria highlight what is relevant both for the nomination period and the election process.**
6. In preparing the recommended criteria, the CICC recognized that there should not be a single rigid set of criteria that States Parties should apply. We encourage all States Parties to nominate or support the nomination of candidates through a transparent and vigorous process, and involve broad consultation

¹ Article 36(9)(b) of the Rome Statute: "At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years."

² The procedures for nominations of candidates, elections and filling judicial vacancies are outlined in Articles 36 and 37 of the Rome Statute and Resolution ICC-ASP/3/Res.6. Under Article 36(4)(a), "[n]ominations 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." Under Article 36(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."

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with parliaments, the legal profession and civil society to ensure that all qualified candidates have been considered and that the process takes into account an array of perspectives.

7. In order to enhance the nomination and election process, the Coalition has established a panel of independent experts to assess the candidates put forward by States Parties: **The Independent Panel on International Criminal Court Judicial Elections.**

The purpose of the Independent Panel is to help fill a significant gap in the procedures – the lack of a competent, fair and independent assessment of whether the nominees actually fulfil the qualifications prescribed by the Rome Statute.

The Independent Panel will assess and raise awareness of the qualifications of candidates. The initiative will establish a procedure akin to those undertaken by many national bar associations in assessing domestic judicial candidatures. The Independent Panel will base its assessments on the qualifications in Article 36 of the Rome Statute, and primarily on the nomination documents submitted by governments to the Assembly and other public and relevant information provided by the candidates.

8. As in previous and all future ICC elections, the CICC will not take a position on any individual candidates but is committed to upholding the Rome Statute principles of competence and experience as well as fair regional and gender representation. Similarly the Independent Panel will also not endorse any individual candidates.

I. Recommendation to create an ASP Advisory Committee

The Assembly of States Parties should establish an Advisory Committee on nominations.

9. Article 36, paragraph 4(c) provides this possibility to the ASP, which must decide on its composition and mandate. One of the most questionable characteristics in recent ICC elections has been the use of reciprocal agreements, or vote trading. To ensure the best qualified judicial candidates are chosen by the ASP for the ICC's future work, a committee along the lines suggested by the Statute should be implemented to provide objective assessments on the nominated candidates. The CICC welcomes the recent appointment by the ASP Bureau of Ms. Francisca Pedrós-Carretero (Spain) as facilitator to create an Advisory Committee on Nominations with a view to establishing the Committee at the next ASP.

II. Nominations Criteria

States Parties must ensure transparency and sufficient consultations in the nomination process.

10. We believe that whichever nomination procedure your government chooses, it should be transparent and merit-based, and involve broad consultation with parliaments, the legal profession and civil society, to ensure that all qualified candidates have been considered and that the process takes into account an array of perspectives. Such a nomination can be used for awareness raising opportunities at the national level. The CICC also urges all nominating States Parties and candidates to provide any relevant information such as the national law governing the procedure for the nomination of candidates to the

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highest judicial office in the nominating state (an Article 36(4)(a)(i) nomination) or the nominating letter from the Permanent Court of Arbitration national group (an Article 36(4)(a)(ii) nomination).

States Parties must ensure that candidates have established competence and experience in criminal law and procedure or competence in international law and experience in a professional legal capacity relevant to the Court.

11. Article 36, paragraph 3(b) requires that candidates “(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 [‘list A’]; or (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” [‘list B’].
12. Article 36, paragraph 5 clarifies the two lists and states that 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.”
13. Many CICC members feel it is particularly important that candidates have established competence in criminal law and procedure and extensive and relevant trial and court management experience, whether as senior judge, prosecutor, advocate, or in another similar capacity, in criminal proceedings. This is extremely pertinent as the Court moves into the trial phase in many of its cases. Such experience should be relevant to the subject matter and crimes under the Court’s jurisdiction, be recent and extensive in scope.
14. In this election cycle, six list A judges will leave the Court. Accordingly, there will be fewer judges with criminal law and procedure experience, thus triggering the list A minimum voting requirement for the election. CICC members believe that States Parties should ensure that an adequate number of list A candidates are nominated in order to ensure that there is adequate criminal law expertise in the ICC judiciary.

In the selection of judges, States Parties shall 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.

15. Under Article 36, paragraph 8(a) these three requirements must be taken into account by States Parties when selecting judges. Diversity on the ICC bench with regards to legal systems, geographic representation and gender is important to ensure objectivity and balance in the Court’s decisions.

In the selection of judges, States Parties shall take “into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.”

16. Article 36, paragraph 8(b) provides that judges should be selected with such legal expertise. The Coalition urges States Parties to nominate candidates after following a thorough examination of nominees’ expertise, backgrounds and qualifications.

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States Parties must ensure that all candidates “have an excellent knowledge of and be fluent in at least one of the working languages of the Court.”

17. Article 36, paragraph 3(c) requires that nominated candidates should be fluent in either English or French, the two working languages of the Court, with knowledge of both languages ideal.

States Parties should ensure that “[n]o two judges may be nationals of the same State.”

18. Article 36, paragraph 7 clarifies that “[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.”

III. Election Criteria

19. The CICC campaigned during the first election of ICC judges for significantly improved international election procedures that would promote the election of highly qualified and widely representative candidates. One aspect of that campaign was to ask each candidate to reply to a questionnaire, in order to promote transparency in the process by making candidates’ qualifications more accessible and by giving each candidate an opportunity to expand on his or her curriculum vitae and statement. The Coalition will continue this practice in preparation for the upcoming elections, distributing questionnaires to candidates when the nomination process commences in June. Such questionnaires provide States Parties with useful additional information when deciding whom to elect among the highly qualified candidates.

States Parties must ensure that judges chosen be “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.”

20. Article 36, paragraph 3(a) provides this requirement for ICC judges. States Parties must ensure that the nomination pool includes individuals who have these important character traits and qualifications, including independence.

States Parties should refrain from using reciprocal agreements in ICC elections.

21. Among the most objectionable is the practice of making reciprocal agreements between governments in exchange for votes. The CICC strenuously appeals to State Parties of the Rome Statute of the ICC to renounce this practice in ICC elections.

States Parties should elect judges with extensive and relevant trial experience.

22. The departure of six judges include one appeals, one pre-trial and four trial judges, all of whom were elected as list A judges. As mentioned previously, as the Court progresses further into the trial and appeals phases of many of its cases, relevant trial and court management experience will be crucial. Judges chosen should have relevant, recent and extensive trial experience in the subject matter and crimes under the Court’s jurisdiction.

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IV. Relevant Minimum Voting Requirements in the 2011 Elections

23. States Parties must follow the ASP's 'Procedure for the nomination and election of judges of the International Criminal Court' laid out in Resolution ICC-ASP/3/Res.6. In each round of voting, each State Party to the Rome Statute has one vote for each remaining vacancy. Voting will take place by secret ballot. To be elected, candidates must receive a two-thirds majority of the States Parties present and voting.³
24. This procedure, used at the first election in 2003 and revised for future elections, **requires States Parties to vote for a minimum number of candidates from each regional group, legal competence/experience and gender.** Minimum voting requirements do not affect the possibility to nominate a candidate – it only impacts the actual voting.
25. These minimum voting requirements help to fulfill the Rome Statute requirements for representation in these areas by preventing votes from being 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 same number of seats stipulated by the minimum voting requirements.
26. During the current elections, several minimum voting requirements will be in place:
- **Lists A & B:** The current judges on the bench by category are: List A: 12 and List B: 6⁴. List A includes candidates with criminal law and criminal trial experience. List B are candidates with expertise in the field of international law. When the terms of the six judges expire in March 2012, the remaining judges will be: List A: 6 and List B: 6.
 - **Regional Distribution:** The current judges on the bench by region are: African States: 5; Asian States: 2; Eastern European States: 2; Latin America and the Caribbean States (GRULAC): 3; and Western European and Other States (WEOG): 6. The 12 judges remaining following the elections will be: Africa: 3; Asia: 2; Eastern Europe: 2; GRULAC: 1; and WEOG: 4.
 - **Gender:** The current judges on the bench by category are: female: 11 and male: 7. After the outgoing judges' terms expire, the twelve judges remaining will be: female: 8 and male: 4.
27. Given the composition of the bench after the departures, **the minimum voting requirements at the upcoming elections are:**
- **List A: 3 & List B: 0**⁵

³ Article 36(6)(a) of the Rome Statute: 'The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting'.

⁴ This does not include Judge Rene Blattmann (List B), trial judge on the Lubanga case, whose term was to end before the conclusion of the trial and was thus extended pursuant to Article 39(3)(a) of the Rome Statute. This brings the total number of judges to 19.

⁵ ICC-ASP/3/Res.6, paragraph 20(a) provides that "[e]ach 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."

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- **Regional Groups:** 2 for GRULAC; 1 for Eastern Europe States; 0 for others⁶
- **Gender:** 2 male, 0 female⁷

⁶ ICC-ASP/3/Res.6, paragraph 20(b) provides that “[e]ach 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.”

⁷ ICC-ASP/3/Res.6, paragraph 20(c) provides that “[e]ach 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.”