

**INFORMATION ABOUT THE NOMINATION AND ELECTION  
OF SIX NEW JUDGES AND THE PROSECUTOR,  
NEW YORK, DECEMBER 2011**

1. The Assembly of States Parties (ASP) at its tenth session will elect six judges and a new Prosecutor to the International Criminal Court (ICC). This memo presents a comprehensive overview of the procedures to be followed for the two elections.
2. The memo is divided into two sections. The first section covers the 2011 judicial election, while the second section covers the 2011 election of the new Prosecutor. There are also three annexes. The first contains pertinent information on the current ICC judges, and the other two are comprised of relevant ASP resolutions on procedure for electing judges and prosecutors.

**I. 2011 Election of Six Judges**

**Background**

3. In February 2003, the ASP at its first session elected the initial 18 judges of the ICC. In accordance with the Rome Statute,<sup>1</sup> the President of the ASP drew lots to select six judges for terms of three years, six judges for terms of six years, and six judges for terms of nine years to allow for varying termination dates.
4. The upcoming election fits within this three-year election cycle, and will fill six vacancies.<sup>2</sup> During the tenth ASP, the Court's governing body will elect six judges.
5. ICC judicial elections are subject to minimum voting requirements (MVRs) in the areas of **legal competence and expertise** (which is divided between established competence in criminal law and procedure and relevant experience ("List A"); and established competence in international law such as international humanitarian law and the law of human rights and relevant experience ("List B")), **regional representation** and **gender**.
6. The MVRs require States Parties to vote a minimum number of times, as determined by an established formula, for candidates from areas that are underrepresented based on the anticipated composition of the Court.<sup>3</sup> The purpose is to ensure that the composition of the judicial bench is adequately representative in the three MVR areas.<sup>4</sup> Once the terms of the six outgoing judges expire:

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<sup>1</sup> 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."

<sup>2</sup> See Annex I. The total number of judges at the ICC is 19 as of March 2011. The term of Judge Rene Blattmann will continue in order to complete the Lubanga trial, in accordance with Article 36(10) of the Rome Statute. The vacancy left by Judge Blattmann was filled during the first resumption of the seventh session of the ASP.

<sup>3</sup> In accordance with paragraph 21 of ICC-ASP/3/Res.6, the MVR for regional distribution and gender are discontinued after the fourth round of voting.

<sup>4</sup> MVR are discussed in greater detail below in paragraphs 25-40.

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- **List A & B:** the remaining judges on the bench by legal competence and experience will be – List A: 6 and List B: 6.
- **Regional Distribution:** the remaining judges on the bench by regional distribution will be – African States: 3; Asian States: 2; Eastern European States: 3; Latin America and Caribbean States (GRULAC): 1; and Western European and Other States (WEOG): 4.
- **Gender:** the remaining judges on the bench by gender will be – female: 8 and male: 4.

7. **Applying MVR calculations,<sup>5</sup> the following MVRs will apply during the upcoming election:**

- **List A:** 3
- **List B:** None
- **Regional Distribution:** 2 for GRULAC; 1 for Eastern European States; none for others
- **Gender:** 2 male, 0 female

8. **The terms** of the six newly elected judges will be nine years in accordance with article 36(9) of the Statute.

9. **The procedures** for the nomination of candidates, election and the filling of judicial vacancies are outlined in articles 36 and 37 of the Rome Statute and Resolution ICC-ASP/3/Res.6 (*attached in Annex II*).

### **Nominations**

10. The nomination period opens twenty-six weeks before the election and lasts twelve weeks.<sup>6</sup> The election will be held during the tenth session of the ASP, which is scheduled to begin on 12 December 2011.<sup>7</sup> The nomination period would, therefore, open on 13 June 2011 and close on 2 September 2011.<sup>8</sup>

11. The ASP President may extend the nomination period beyond 2 September 2011 for two weeks, but no more than three times, if at the end of the nomination period any regional or gender MVRs are not matched with at least twice the number of candidates fulfilling the requirement.<sup>9</sup> The latest the nomination period will stay open for these reasons, therefore, is 14 October 2011.<sup>10</sup> In addition, the ASP President may extend the nomination period beyond 2 September 2011 if at the end of the nomination period the number of candidates remains less than the number of seats, or the number of candidates from List A or B remains less than the respective minimum voting requirement.<sup>11</sup>

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<sup>5</sup> For a full explanation of MVR calculations see paragraphs 25-40. The MVR formula is contained in Resolution ICC-ASP/3/Res.6, paragraph 20.

<sup>6</sup> Resolution ICC-ASP/3/Res.6, paragraph 3, subject to extensions (paragraphs 11 and 12).

<sup>7</sup> Resolution ICC-ASP/3/Res.6, paragraph 13.

<sup>8</sup> Calculated by the CICC Secretariat in accordance with Resolution ICC-ASP/3/Res.6, paragraph 3.

<sup>9</sup> Resolution ICC-ASP/3/Res.6, paragraph 11.

<sup>10</sup> Calculated by the CICC Secretariat in accordance with Resolution ICC-ASP/3/Res.6, paragraphs 3 and 11.

<sup>11</sup> Resolution ICC-ASP/3/Res.6, paragraph 12. This provision does not explicitly place a limit on the number of extension. It is unlikely, however, that such an extension for one of these reasons would be necessary. States have

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12. **National nomination procedure:** Article 36(4)(a) of the Rome Statute provides that “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.”<sup>12</sup>
13. **Each State Party may put forward one candidate for any given election.** A candidate must be a national of a State Party, although he or she does not need to be a national of the nominating State Party.<sup>13</sup>
14. **States in the process of ratifying the Rome Statute must do so by 2 September in order to nominate a candidate for judicial election at the December 2011 ASP session:** The procedure on this matter is outlined in paragraph 7 of Resolution ICC-ASP/3/Res.6. In addition, article 126(2) of the Rome Statute<sup>14</sup> provides that a nomination will remain provisional until a State has deposited its instrument of ratification before the end of the nomination period and has become a party to the Statute in accordance with article 126(2). Therefore, **non-States Parties that wish to ensure that they may nominate a candidate for this election must deposit their instrument on or before 2 September 2011.**<sup>15</sup>

### Qualifications

15. 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.”
16. The Rome Statute also requires that a certain portion of the judges be competent either in international law or in criminal law and possess the necessary relevant experience in a professional legal capacity or in criminal proceedings.<sup>16</sup> Accordingly, two lists were established: List A for candidates with competence and experience in criminal law and

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historically nominated a sufficient number of candidates to fill the vacancies. Furthermore, States have an incentive to nominate candidates for List A or List B if those categories are underrepresented since the ASP voting procedure favours candidates for which minimum voting requirements are in place.

<sup>12</sup> See Statute of the International Court of Justice, articles 4 and 6. Under these provisions, a nomination is made by the Permanent Court of Arbitration national group of the relevant State.

<sup>13</sup> In accordance with Rome Statute article 36(4)(b).

<sup>14</sup> Article 126(2) of the Rome Statute: “For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.”

<sup>15</sup> This would be the first day of the month after the 60th day from the deposit as described in article 126(2).

<sup>16</sup> Article 36(3)(b) of the Rome Statute: “Every candidate for election to the Court shall: (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 (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.”

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criminal proceedings; and List B for candidates with expertise in the field of international law and extensive experience in a professional legal capacity.<sup>17</sup> A candidate with sufficient qualifications for both lists may choose on which list to appear.

17. Every candidate for election must have an **excellent knowledge of and be fluent in at least one of the working languages of the Court** per article 36(3)(c) of the Rome Statute.

18. **No two judges may be nationals of the same State** per article 36(7) of the Rome Statute. The nationalities of the current judges can be found in Annex I.

### **Election**

19. The next election will be held during the tenth session of the ASP in December 2011. There is no requirement that the elections for judges and for the Prosecutor to be held during the same ASP or same resumed session.

20. In each round of voting, each State Party to the Rome Statute has a number of votes equal to the number of vacant positions left to be filled at the beginning of any given round of voting. Voting is by secret ballot. **To be elected, candidates must receive a two-thirds majority of the States Parties present and voting.**<sup>18</sup>

21. According to article 36(8)(a), 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.”

22. Under article 36(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.”

23. As stated above, among the 12 judges who will remain in office, eight are female and four are male; four are from Western Europe and Other States, three are from African States, two are from Asian States, one is from Latin America and Caribbean States, and two are from Eastern Europe States (*see attached in Annex I*).

24. The Rome Statute establishes different criteria for States Parties to observe when voting. As explained above, candidates can be nominated on List A or B depending on their qualifications. **Paragraphs 20 and 21 of Resolution ICC-ASP/3/Res.6 seek through an MVR**

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<sup>17</sup> Article 36(5) of the Rome Statute: “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).”

<sup>18</sup> 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.”

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**mechanism to arrange for at least nine judges from List A and at least five judges from List B to be on the bench.**<sup>19</sup>

### **Election procedure and Minimum Voting Requirements**

25. The ASP follows the “Procedure for the nomination and election of judges of the International Criminal Court” set out in Resolution ICC-ASP/3/Res.6 (*see attached in Annex II*).
26. This procedure, which was used at the first election in 2003 and revised for subsequent elections, requires States Parties to vote for a minimum number of candidates from each regional group, and according to their legal competence and expertise as well as gender. These MVRs facilitate help to fulfil of the Rome Statute requirements 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 obtain the same number of seats as stipulated by the MVRs.**
27. The election ballots are organized such that States Parties must cast votes for a minimum number of candidates for each list of legal competence and expertise, regional representation group and gender according to the MVRs in place for that election.
28. MVRs are only in place for the voting in an election; they do not affect the possibility to nominate a candidate.
29. **MVRs are recalculated before every round of voting to take into account the judges who have been elected.** If one of the categories of MVRs (list, regional, gender) is met, then the MVRs are discontinued for that category in subsequent rounds of voting.<sup>20</sup>
30. With the exception of the MVR for Lists A and B, which apply until they are fulfilled, MVRs are **discontinued after four rounds.**<sup>21</sup>

### **List A and B**

31. The applicable voting procedure for legal competence and experience is: “Each State Party shall vote for a minimum number of candidates from lists A and B. For list A, this number shall be nine minus the number of judges from list A remaining in office or elected in previous ballots. For list B, this number shall be five minus the number of judges from list B remaining in office or elected in previous ballots.”<sup>22</sup>
32. Taking the vacancies into account, the number of remaining List A judges is six and the number of remaining List B judges is six.

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<sup>19</sup> The procedure fulfils the purpose of Rome Statute, article 36(5): “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.”

<sup>20</sup> Resolution ICC-ASP/3/Res.6, paragraph 21.

<sup>21</sup> Resolution ICC-ASP/3/Res.6, paragraph 21.

<sup>22</sup> Resolution ICC-ASP/3/Res.6, paragraph 20(a).

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33. Thus, the adjusted list MVR for the upcoming election:

- **3 for List A (9 as an MVR minus 6 judges remaining in office = 3).**
- **0 for List B (5 - 6 = -1).**

**Regional group**

34. The voting procedure for regional representation provides that “Each Party shall vote for a minimum number of candidates from each regional group. This number shall be two 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 sixteen at that moment, the minimum voting requirement for that group shall be adjusted by adding one.”<sup>23</sup>

35. The ASP follows the UN regional groupings. **The groups of African States, Latin American and Caribbean States, Eastern European States, and Western European and Others States all currently have more than sixteen States Parties. Therefore, the MVR for these regions is three. The group of Asian States currently has less than seventeen States Parties. Thus, the MVR for this region is two.**

36. Taking the expected vacancies into account, the twelve judges who will remain in office by regional category are – African States: three; Asian States: two; Latin America and Caribbean States: one; Eastern Europe: two; Western Europe and Other States: four.

37. The adjusted regional MVR for the upcoming election:

- **0 for African States (3 as an MVR minus 3 judges remaining in office = 0).**
- **0 for Asian States (2 - 2 = 0).**
- **1 for Eastern European States (3 - 2 = 1).**
- **2 for Latin American and Caribbean States (3 - 1 = 2).**
- **0 for Western European and Other States (3 - 4 = -1).**

**Gender**

38. The voting procedure for gender requires that “Each State Party shall vote for a minimum number of candidates of each gender. This number shall be six minus the number of judges of that gender remaining in office or elected in previous ballots”.<sup>24</sup>

39. Taking the expected vacancies into account, the twelve judges who will remain in office include eight female judges and four male judges.

40. The adjusted gender MVR for the upcoming election:

- **0 for women (6 as an MVR minus 8 female judges remaining in office = -2).**
- **2 for male candidates (6 - 4 = 2).**

<sup>23</sup> Resolution ICC-ASP/3/Res.6, paragraph 20(b).

<sup>24</sup> Resolution ICC-ASP/3/Res.6, paragraph 20(c).

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## II. 2011 Election of the Prosecutor

### Background

41. The first and current Prosecutor of the ICC, Mr. Luis Moreno-Ocampo, was unanimously elected by the ASP on 21 April 2003 as the only formally nominated candidate. The election took place during the second resumed session of the first ASP. Prosecutor Moreno-Ocampo took office on 16 June 2003 for a term of nine years. Consequently, the position will become vacant in mid-2012. **The election for a new Prosecutor will take place during the tenth session of the ASP in December 2011.**
42. The Prosecutor serves for a term of nine years, unless a shorter period is decided at the time of the election, in accordance with article 42(4) of the Statute.

### Nominations

43. The ASP decided in Resolution ICC-ASP/1/Res.2 (*attached in Annex III*) that the procedures for the nomination of candidates for judges shall apply *mutatis mutandis* to the nomination of candidates for Prosecutor. The current procedure for the nomination of candidates for judges is found within part A of Resolution ICC-ASP/3/Res.6 (*attached in Annex II*) with further provisions in ICC-ASP/1/Res.2.
44. As outlined in paragraph 3 of Resolution ICC-ASP/3/Res.6, the nomination period shall open 26 weeks before the election and shall last 12 weeks.<sup>25</sup> The election will be held during the tenth session of the ASP session from 12-21 December 2011.<sup>26</sup> The nomination period will therefore be open from 13 June 2011 to 2 September 2011.<sup>27</sup> There is no explicit provision for an extension of the nomination period.
45. All nominations **must be accompanied by a statement specifying in detail how the nominee fulfils the requirements of paragraph 3 of article 42 of the Statute.**<sup>28</sup>
46. Paragraph 3 of article 42 of the Statute provides that **“the Prosecutor shall be a person of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases, as well as having an excellent knowledge of and be fluent in at least one of the working languages of the Court.”**
47. Unlike with judicial nominations, **there is no requirement for a nominee to be a national of a State Party.**
48. The ASP has agreed that it would be **preferable for the Prosecutor to be chosen from among those nominations made with the support of multiple State Parties.**<sup>29</sup>

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<sup>25</sup> Resolution ICC-ASP/3/Res.6, paragraphs 11 and 12.

<sup>26</sup> Resolution ICC-ASP/3/Res.6, paragraph 13.

<sup>27</sup> Calculated by the CICC Secretariat in accordance with Resolution ICC-ASP/3/Res.6, paragraph 3.

<sup>28</sup> Resolution ICC-ASP/1/Res.2, Paragraph 26.

<sup>29</sup> Resolution ICC-ASP/1/Res.2, paragraph 25.

49. The ASP Bureau has established a **Search Committee for the Position of the Prosecutor of the International Criminal Court**.<sup>30</sup> The Search Committee will both passively receive and actively identify individuals who may satisfy the applicable criteria, particularly those contained in article 42 of the Rome Statute. It will then produce a shortlist of at least three suitable candidates, where possible, for consideration by the Bureau. The Search Committee will seek to identify a consensus candidate for election. The Search Committee will not formally nominate any candidates nor must a formally nominated candidate be submitted to the Search Committee.

### **Election**

50. The procedure for the election of the Prosecutor is found within part E of Resolution ICC-ASP/1/Res.2. **Once nominations are submitted, the Secretariat of the ASP shall prepare a list of candidates in alphabetical order** as provided for in paragraph 28 of Resolution ICC-ASP/1/Res.2.

51. Resolution ICC-ASP/1/Res.2, paragraph 29, states that **every effort shall be made to elect the Prosecutor by consensus**.

52. However, **if consensus cannot be reached, the Prosecutor shall be elected by secret ballot by an absolute majority of the members of the ASP** as in accordance with article 42, paragraph 4 of the Statute.

53. The procedure for a contested election is outlined in paragraphs 30 and 31 of Resolution ICC-ASP/1/Res.2; if after three ballots no candidate has obtained the required majority, the balloting shall be suspended to give an opportunity for any withdrawal of candidatures. If upon resumption, no candidate obtains the majority required, the following ballot will be restricted to the two candidates obtaining the largest number of votes and then conducted again.

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<sup>30</sup> Bureau of the Assembly of States Parties, Search Committee for the position of the, Prosecutor of the International Criminal Court, Terms of Reference of the Search Committee, document ICC-ASP/9/INF.2, available at [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP9/ICC-ASP-9-INF.2-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP9/ICC-ASP-9-INF.2-ENG.pdf).



**ANNEX I: Judges Breakdown**

**Vacancies**

<b><u>Judges</u></b>	<b><u>Nationality</u></b>	<b><u>Regional Group</u></b>	<b><u>Gender</u></b>	<b><u>List A/B</u></b>	<b><u>Chamber</u></b>	<b><u>Term end Date</u></b>
COTTE, Bruno	France	WEOG	M	A	Trial	2012
DIARRA, Fatoumata Dembele	Mali	African States	F	A	Trial	2012
FULFORD, Adrian	UK	WEOG	M	A	Trial	2012
NSEREKO, Daniel David Ntanda	Uganda	African States	M	A	Appeals	2012
ODIO BENITO, Elizabeth	Costa Rica	GRULAC	F	A	Trial	2012
STEINER, Sylvia	Brazil	GRULAC	F	A	Pre-Trial	2012

**Remaining ICC Judges**

<b><u>Judges</u></b>	<b><u>Nationality</u></b>	<b><u>Regional Group</u></b>	<b><u>Gender</u></b>	<b><u>List A/B</u></b>	<b><u>Chamber</u></b>	<b><u>Term</u></b>	<b><u>Term end date</u></b>
ALUOCH, Joyce	Kenya	African States	Female	A	Trial	9	2018
KAUL, Hans-Peter	Germany	WEOG	Male	B	Pre-Trial	3 + 9	2015
KOURULA, Erkki	Finland	WEOG	Male	B	Appeals	3 + 9	2015
KUENYEHIA, Akua	Ghana	African States	Female	B	Appeals	3 + 9	2015
MONAGENG, Sanji Mmasenono	Botswana	African States	Female	B	Pre-Trial	9	2018
SONG, Sang-hyun	Republic of Korea	Asian States	Male	A	Appeals	3 + 9	2015
TARFUSSER, Cuno	Italy	WEOG	Male	A	Pre-Trial	9	2018
TRENDAFILOVA, Ekaterina	Bulgaria	Eastern Europe	Female	A	Pre-Trial	9	2015
UŠACKA, Anita	Latvia	Eastern Europe	Female	B	Appeals	3 + 9	2015
VAN DEN WYNGAERT, Christine	Belgium	WEOG	Female	A	Trial	9	2018
OZAKI, Kuniko	Japan	Asian States	Female	B	Trial	9*	2018
FERNANDEZ DE GURMENDI, Silvia	Argentina	GRULAC	Female	A	Pre-Trial	9*	2018

*\*Elected during the eighth session of the ASP to serve out the remainder of the nine year terms of Mohamed Shahabuddeen (Guyana) and Fumiko Saiga (Japan). N.B. This list does not include Judge Rene Blattmann who remains in office as of March 2011 to complete the Lubanga trial, in accordance with Article 36(10) of the Rome Statute. The vacancy left by Judge Blattmann was filled during the first resumption of the seventh session of the ASP.*

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**ANNEX II: Election procedure for judicial elections**

**Resolution ICC-ASP/3/Res.6**

*Adopted at the 6th plenary meeting, on 10 September 2004, by consensus*

**Procedure for the nomination and election of judges of the International Criminal Court**

*The Assembly of States Parties,*

*Bearing in mind the provisions of the Rome Statute of the International Criminal Court,*

*Mindful of the Rules of Procedure of the Assembly of States Parties,*

*Convinced of the need to fully implement the provisions of article 36 of the Rome Statute,*

*Noting that in its resolution ICC-ASP/1/Res.3 the Assembly of States Parties agreed that it would review the procedure for the election of judges on the occasion of future elections with a view to making any improvements as may be necessary,*

*Approves the following procedure for the nomination and election of judges of the International Criminal Court, replacing resolution ICC-ASP/1/Res.3 and parts A, B and C of resolution ICC-ASP/1/Res.2:*

**A. Nomination of candidates for judges**

1. The Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel the invitations for nominations of judges of the International Criminal Court.
2. The invitations for nominations of judges will include the text of article 36, paragraphs 3, 4 and 8, of the Statute, the present resolution as well as specific information regarding the application of all minimum voting requirements in the elections.
3. The nomination period shall open 26 weeks before the elections and shall last 12 weeks.
4. Nominations submitted before or after the nomination period shall not be considered.
5. States Parties to the Statute shall communicate nominations for the election of judges of the International Criminal Court through the diplomatic channel to the Secretariat of the Assembly of States Parties.
6. Every nomination should be accompanied by a statement:
  - (a) Specifying in the necessary detail how the candidate fulfils each of the requirements in article 36, paragraph 3(a), (b) and (c), of the Statute, in accordance with article 36, paragraph 4(a), of the Statute;
  - (b) Indicating whether the candidate is being nominated for inclusion in list A or list B for the purposes of article 36, paragraph 5, of the Statute;
  - (c) Containing information relating to article 36, paragraph 8(a)(i) to (iii), of the Statute;
  - (d) Indicating whether the candidate has any expertise under article 36, paragraph 8(b), of the Statute;
  - (e) Indicating under which nationality the candidate is being nominated for the purposes of article 36, paragraph 7, of the Statute, where a candidate is a national of two or more States.
7. States that have started the process of ratification, acceptance or approval of or accession to the Statute may nominate candidates for the elections of judges of the International Criminal Court. 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 that State is a party to the Statute in accordance with article 126, paragraph 2, of the Statute on the date of the election.
8. The Secretariat of the Assembly of States Parties shall place the nominations of candidates for judges, the accompanying statements referred to in article 36 of the Statute and other supporting documentation on the Internet web site of the International Criminal Court, in any of the official languages of the Court, as soon as possible after receiving them.

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9. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it through the diplomatic channel.
10. Six weeks after the opening of the nomination period, the President of the Assembly of States Parties shall inform all States Parties through diplomatic channels and through specific information on the web site of the International Criminal Court on the number of candidates nominated with respect to each minimum voting requirement.
11. 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<sup>2</sup> (footnote 2: To be calculated in accordance with paragraph 20(b), second sentence, and paragraph 20(c), second sentence, only) is not matched with at least twice the number of candidates fulfilling that requirement.
12. The President of the Assembly of States Parties shall extend the nomination period for two weeks at a time, if at the end of the nomination period the number of candidates remains less than the number of seats, or the number of candidates from list A or B remains less than the respective minimum voting requirement.

## **B. Election of judges**

13. The Bureau of the Assembly of States Parties shall fix the date of the election.
14. The Secretariat of the Assembly of States Parties shall prepare, in accordance with article 36, paragraph 5, of the Statute, two lists of candidates in English alphabetical order.
15. The election of judges shall be a matter of substance, and subject to the requirements of article 112, paragraph 7(a), of the Statute.
16. The persons elected to the Court shall be the 6 candidates who obtain the highest number of votes and a two-thirds majority of States Parties present and voting, provided that an absolute majority of the States Parties constitutes the quorum for voting.
17. When two or more candidates of the same nationality obtain the required majority, the candidate who receives the higher number of votes shall be considered elected.
18. No more than 13 candidates from list A and no more than 9 candidates from list B shall be considered elected, taking into account the number of judges remaining in office.
19. States Parties shall, in the election of judges, 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. They shall take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women and children.
20. During any given ballot, each State Party shall vote for no more candidates than seats to be filled, whereby it shall observe the minimum voting requirements regarding lists A and B, regional groups and gender. At the outset of each ballot, each minimum voting requirement shall be determined or discontinued in accordance with paragraphs 21 and 22.
  - (a) Each 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.
  - (b) Each 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.

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If the number of candidates from a regional group is not at least double the respective minimum voting requirement, the minimum voting requirement shall be half the number of candidates from that regional group (rounded up to the nearest whole number where applicable). If there is only one candidate from a regional group, there shall be no minimum voting requirement for that group.

- (c) Each 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. However, if the number of candidates of one gender is 10 or less, the minimum voting requirement for that gender shall be adjusted in accordance with the following formula:

*Number of candidates*    *Minimum voting requirement shall not exceed:*

10	6
9	6
8	5
7	5
6	4
5	3
4	2
3	1
2	1
1	0

21. Each minimum voting requirement shall be adjusted until that requirement can no longer be met, whereupon the use of that requirement shall be discontinued. If an adjusted voting requirement can be met individually, but not jointly, the use of all regional and gender voting requirements shall be discontinued. If, following four ballots, there still remain seats to be filled, these minimum voting requirements shall be discontinued. The minimum voting requirements regarding lists A and B shall be applied until they are fulfilled.
22. Only ballot papers observing the minimum voting requirements shall be valid. If a State Party fulfils the minimum requirements using less than the maximum number of votes allowed for that ballot, it may abstain from voting for the remaining candidates.
23. Once regional and gender voting requirements are discontinued and the minimum voting requirements regarding lists A and B are fulfilled, each further ballot shall be restricted to the most successful candidates of the previous ballot. Before each ballot, the candidate (or, in the event of a tie, the candidates) having obtained the lowest number of votes in the previous ballot shall thus be excluded, provided that the number of candidates remains at least twice the number of seats to be filled.
24. The President of the Assembly of States Parties shall be responsible for the election procedure, including the determination, adjustment or discontinuation of the minimum voting requirements.
25. Ballot papers shall be organized in a manner facilitating such an election process. The minimum voting requirements, the adjusted requirements and the discontinuation of any requirements shall be clearly indicated on the ballot papers. Before the day of the election, the President shall distribute to all States Parties copies of the instructions and samples of the ballot papers. On the day of the election, clear instructions and sufficient time shall be given for each ballot. In each ballot, before the voting process is concluded, the President shall repeat the instructions and the minimum requirements to allow each delegation to verify that its vote meets those requirements.
26. The Assembly of States Parties shall review the procedure for the election of judges on the occasion of future elections with a view to making such improvements as may be necessary

**C. Judicial vacancies**

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27. In the event of a judicial vacancy in accordance with article 37 of the Rome Statute, the procedures for the nomination and election of judges shall apply mutatis mutandis, subject to the following provisions:
- (a) Within one month of the occurrence of the judicial vacancy, the Bureau of the Assembly of States Parties shall fix the venue and date of the election, which should not be later than 20 weeks after the occurrence of the vacancy unless the Bureau decides otherwise after consulting the Court.\*
  - (b) The nomination period shall open 12 weeks before the elections and shall last 6 weeks.
  - (c) If the judicial vacancy reduces the number of judges from list A to below 9 or the number of judges from list B to below 5, only candidates from the underrepresented list can be nominated.
  - (d) If at the time of the election a regional or gender minimum voting requirement is not fulfilled, only candidates that can satisfy any of the underrepresented regional minimum voting requirements as well as the underrepresented gender minimum voting requirement can be nominated.
  - (e) A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36 of the Statute.

*\* The text of paragraph 27(a) reflects the amendment introduced by resolution ICC-ASP/5/Res.5.*

**ANNEX III: Election procedure for elections of the Prosecutor**

**Resolution ICC-ASP/1/Res.2**

*Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus*

**Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court**

[...]

**D. Nomination of candidates for the Prosecutor**

- 24 The procedures for the nomination of candidates for judges shall apply mutatis mutandis to the nomination of the Prosecutor.\*
- 25 Nominations for the post of the Prosecutor should preferably be made with the support of multiple States Parties.
- 26 Each nomination should be accompanied by a statement specifying in the necessary detail how the candidate fulfils the requirements of paragraph 3 of article 42 of the Statute.

**E. Election of the Prosecutor**

- 27 The Bureau of the Assembly of States Parties shall fix the date of the election.
- 28 The Secretariat of the Assembly of States Parties shall prepare a list of candidates in English alphabetical order.
- 29 Every effort shall be made to elect the Prosecutor by consensus.
- 30 In the absence of consensus, the Prosecutor shall be elected, in accordance with paragraph 4 of article 42 of the Statute, by secret ballot by an absolute majority of the members of the Assembly of States Parties.
- 31 In the interest of a timely conclusion of the election, if after three ballots no candidate has obtained the required majority, the balloting shall be suspended to give an opportunity for any withdrawal of candidatures. Before such suspension, the President of the Assembly of States Parties will announce when balloting shall resume. Upon resumption of balloting, if no candidate obtains in the first ballot the majority required, further ballots shall be taken, which shall be restricted to the candidates obtaining the two largest number of votes.

[...]

*\* The procedures for the nomination of candidates for judges are contained within Annex II.*

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