

Women on the Court Now !

Campaign Information Sheet

In February 2003, elections will be held for the first 18 judges and Prosecutor of the International Criminal Court. The Rome Statute sets out a series of criteria that are to be applied to potential candidates for elected posts for the ICC. Resolutions of the Assembly of States Parties sets out the rules governing the nomination and election process.

▪ CRITERIA FOR JUDGES OF THE ICC:

- Candidates must be nationals of a State Party - Article 36(4)(b)
- Candidates should have excellent knowledge and be fluent in at least one of the working languages of the Court (English and French) – Article 36(3)(c)
- Must be persons of 'high moral character, impartiality and integrity' – Article 36(3)(a)

Article 36(3)(b) requires that judicial nominees have 'established competence' in:

(a) *criminal law and procedure* and 'necessary relevant experience' whether as a judge, prosecutor, or advocate in criminal proceedings **or**

(b) relevant areas of *international law, such as humanitarian law and the law of human rights*.

There must be at least nine candidates with experience from List A and at least five from List B

In addition, article 36(8)(a) of the statute requires that States Parties take into account the need for:

- a fair representation of female and male judges;
- equitable geographical representation;
- a representation of the principle legal systems of the world

Article 36 (8)(b) provides that States Parties must 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."

▪ NOMINATION PROCEDURES

Rome Statute Requirements:

According to Article 36(4)(a), states may choose one of two procedures they will use to nominate candidates:

- (1) Through the procedure for nomination of candidates for appointment to highest judicial office;
- (2) Through the procedure for nomination of candidates for the International Court of Justice

Note: The procedure for nomination to the ICJ is often much more difficult to discern in the national system. Candidates are chosen by the national groups of the Permanent Court of Arbitrators. Normally four persons comprise the national group who ideally select candidates and submit them through the relevant ministry. However, this process is often very informal and non-transparent. To find out who the national groups are comprised of visit: www.pca-cpa.org/PDF/Members.pdf.

States must also submit a statement detailing how the candidate fulfills the statute's criteria.

Assembly of States Parties Rules:

The ICC Assembly of States parties adopted a set of resolutions containing rules that will govern the nomination and election of judges, prosecutor and deputy prosecutor. They provide the following:

Nomination Period. The ICC Assembly of States Parties opened the nomination period on **9 September 2002**. The nomination period will close on **30 November 2002**.

The President of the ASP must inform all States Parties of the status of nominations as of **1 November 2002** and must specifically identify:

- whether there are fewer candidates with criminal law experience or international law experience than what is required by the Statute;
- whether there are fewer candidates from each region than is required by the resolution of the ASP;
- whether there are fewer than 10 male or female candidates as required by the resolution of the ASP

If at the end of the nomination period, there are fewer candidates in each of these categories than what is required by the Statute or the resolution of the Assembly, then the President of the ASP must extend the nomination period to **8 December 2002** in order to allow more time for additional nominations.

▪ ELECTION OF JUDGES

The first elections of the judges will be held from **3-7 February 2003** at UN Headquarters in New York. At this election, all 18 judges will be elected. According to article 36(9), six of these judges will serve a 3-year term, another six will serve a 6-year term and the remaining six will serve a 9-year term. This will be determined by drawing lots. Afterward, elections will be held every 3 years for six judges at a time.

A resolution adopted by the Assembly of States Parties sets in place a series of minimum voting requirements intended to ensure the statute's mandates of 'fair representation' of women and men and equitable geographical distribution are carried out. Accordingly, each state party must vote for at least 3 candidates for each region unless the number of States Parties from a region is less than 1/6 the total number of States Parties to the Rome Statute at the time of the election.

Minimum Voting Requirement (MVR) for Gender: During the balloting, each State Party must vote for at least six women and at least six men provided that the number of candidates from each sex is greater than 10. If the number of candidates from one gender is 10 or less, the Assembly adopted the following formula that will be applied to determine what the minimum voting requirement should be:

If the number of candidates is: 9 or 10, the MVR is six.
 7 or 8, the MVR is five.
 6, the MVR is four.
 5, the MVR is three.
 4, the MVR is two.
 2 or 3, the MVR is one.

All of the minimum voting requirements – regional, gender and area of expertise – will be applied during the first four rounds of voting and will be adjusted after each round according to the candidates elected and the fulfillment of the requirements. *However*, the minimum voting requirements will be suspended altogether after four rounds of voting and the elections will be open.

▪ CRITERIA FOR ELECTION OF THE PROSECUTOR

Article 42(3) of the Rome Statute requires that the Prosecutor must be of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases and have excellent knowledge of and be fluent in at least one of the working language of the Court.

A resolution of the Assembly of States Parties provides that nominations should be made with the support of multiple States Parties. The resolution also provides that the election of the Prosecutor should be by consensus. If consensus is not possible, then the candidate obtaining the highest number of votes and an absolute majority will be considered elected.