

ELECTING THE NEXT JUDGES OF THE INTERNATIONAL CRIMINAL COURT:

PRINCIPLES AND ESSENTIAL SKILLS

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Executive Summary

This year the Assembly of States Parties (ASP) will elect six new judges for the International Criminal Court (ICC) from a pool of 20 candidates. ICC judges play a critical role in securing the institution's long-term health: managing its proceedings well, authoring timely and authoritative jurisprudence, and providing an overall sense of mission and purpose. To that end, ensuring that the elected judges are of the highest caliber and integrity is crucial. This briefing paper urges states to: (1) engage genuinely with the Advisory Committee on the Nomination of Judges' (ACN) [final report](#) and be guided by its conclusions; (2) prioritize merit-based considerations in advance of the elections, bearing in mind essential skills and qualities required for ICC judges; and (3) avoid harmful practices like vote trading and campaigning.

The Process Thus Far

In its 2019 report [Raising the Bar: Improving the Nomination and Election of Judges to the International Criminal Court](#), the Justice Initiative highlighted several flaws in the practice of judicial appointments at the ICC. The adoption in December 2019 of an ASP [resolution](#) introducing constructive changes to the election process demonstrates substantial progress, as do changes in the nomination calendar, a strengthened and improved ACN [mandate](#), and organized state-led roundtables with all judicial candidates. The ACN's more robust mandate includes the ability to undertake more thorough assessments by producing questionnaires, checking references, and inquiring into the candidates' national nomination process as the [final report](#), released in September, did.

There are 20 candidates standing for election: nine female and eleven male. Twelve candidates were nominated under List A and eight under List B. The regional distribution is as follows:

- Seven are from the Africa regional group: Burkina Faso, Gambia, Nigeria, Republic of Congo, Senegal, Sierra Leone, Tunisia;
- Two are from the Eastern Europe regional group: Bosnia and Herzegovina, Georgia;
- Seven are from the Group of Latin American and Caribbean states (GRULAC): Brazil, Colombia, Costa Rica, Ecuador, Mexico, Trinidad and Tobago, Uruguay;
- One is from the Asia Pacific states: Mongolia;



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- Three are from Western European and Other states (WEOG): Belgium, Greece, United Kingdom.

The ACN has provided [questionnaires and declarations](#) for judicial candidates and their responses are [publically available](#). In addition, the candidates have also received civil-society-drafted [questionnaires](#) and their responses will be made [publically available](#) in due course.

The ASP Bureau will organize public roundtables with judicial candidates in mid-October.

Principles to Safeguard the Integrity of the Election

1.1. Merit

The selection process should be guided by merit. As highlighted in *Raising the Bar*, a toxic campaigning culture degrades the ICC's judicial election process, injecting political dynamics that often override merit-based considerations. Similarly, the practice of vote trading often discounts candidates' qualifications in favor of considerations unrelated to the best interests of the ICC.

1.2. Rigorous Scrutiny

All candidates under consideration should be fully scrutinized and given ample time and opportunity to engage with states and civil society. It is important that all candidates have equal opportunities to engage with delegates; meetings and receptions to "promote" certain candidates should be eliminated.

1.3. Vetting

The Rome Statute's "high moral character" requirement, which includes thorough and comprehensive vetting of all candidates, deserves greater attention. While the ACN's final report represents an advancement in this respect, states should carefully assess any information that raises concerns about a candidate's fitness for office, with due regard to the credibility of the source and the candidates' right to reply. Notwithstanding the limited time, full vetting (including independence checks, government exposure checks and investigations pertaining to any allegations of workplace misconduct) should still be considered for this election cycle and for future judicial elections.

Essential Skills and Qualities

As explained in *Raising the Bar*, the Article 36 (3) Rome Statute requirements alone are insufficient to ensure the election of qualified judges. All judicial candidates (regardless of whether they fall under List A or B) should possess:

High moral character. Judicial candidates must possess high moral character and demonstrate the highest level of integrity, respect for diversity, and a commitment to gender equality. Candidates must have a clean record with respect to committing, tolerating, or overlooking sexual harassment or other misconduct and unethical behavior.

Impartiality and independence. Independence is the cornerstone of the ICC. Judicial candidates must have a proven track record of independence and impartiality. Lack of previous independent positions, a history of longstanding service for the government, or a recent posting to an influential government position should raise questions, to ensure that the candidate will operate independently as a judge. The manner in which a candidate has been nominated at the national level can also help identify any independence concerns.

Knowledge and experience in criminal law and procedure. The nature of cases at the ICC requires candidates to possess significant experience in criminal law and procedure. In particular, candidates must hold a law degree or other advanced legal training, and they must have at least 10 years of experience in the relevant field of law.

Experience in managing complex criminal litigation. Judicial candidates at the ICC should be experienced in managing trials and ensuring the integrity of proceedings, including efficiently managing the parties and participants in a politically charged working environment. Mass atrocity cases also require experience dealing with witnesses and assessing large quantities of evidence in a fair and efficient way.

Proven fluency in at least one of the working languages of the Court. Candidates' ability to communicate orally and in writing in either English or French must be confirmed during the roundtables with candidates and bilateral interactions in advance of the elections.

Interpersonal skills and interests. Candidates should demonstrate the ability to work in a collegial body with peers of different nationalities and from diverse legal systems, a capacity to learn new law and jurisprudence quickly, and an openness to work under a legal framework that is different from a candidate's national system.

In addition, **candidates should have been nominated in accordance with a fair, transparent and merit-based [nomination process](#).** When assessing candidates, states should enquire about the following aspects of their national nomination process:

- Was there a pre-existing framework for nominations to ensure that the candidate was selected according to clear and merit-based standards?
- Was there an open call to enhance transparency and ensure that a qualified pool of candidates could be considered for nomination?
- Was there a decision-making body – independent of the government and composed of different professionals – with the necessary knowledge to assess applications of judicial candidates to the ICC?
- Was there an opportunity for civil society and professional bodies to send observations on the candidates, including with respect to any concerns about their impartiality, integrity, or independence?

Recommendations

In an effort to ensure more effective, transparent, and merit-based election—and ultimately, to ensure a more credible and legitimate ICC—the Justice Initiative urges that states parties:

- Assess candidates' qualifications based on their background and the process that led to their nomination and elect candidates based strictly on merit.
- Engage genuinely with the ACN's report and be guided by its conclusions.
- Participate actively in the judicial roundtables and use that opportunity to get to know the candidates.
- Avoid campaigning for their candidates and refrain from vote trading.
- Call for a full vetting of all candidates in this election cycle, with a view to its prioritization for future elections.