

**All you need to know for a fair, transparent, and merit-based election**

6 new Judges

9 year  
terms

16th ASP  
session

2017 - New York

Only the highest  
qualified  
candidates

No Vote  
Trading

**The Coalition for the ICC Elections' Campaign**

Since the first elections to the International Criminal Court (ICC) in 2003, the Coalition for the International Criminal Court has called for the nomination and election of **only the most highly-qualified candidates** to positions within the ICC and the Assembly of States Parties (ASP).

Ahead of the 2017 ICC judicial elections, the Coalition is once again urging states parties to nominate only the most highly-qualified candidates and to ensure a fair, transparent, and merit-based election process.

As part of the campaign, the Coalition helps to publicize and raise awareness about ICC and ASP elections and about the candidates. All nominees are requested to complete a dedicated questionnaire that seeks to provide additional information about the candidates' qualifications.

The Coalition also organizes interviews with all candidates; holds public seminars with available candidates and experts; and hosts public debates between the candidates.

These actions enable nominees to expand on their respective qualifications and expertise, and serve to promote **fully-informed decision-making** by State Parties delegates when voting.

The Coalition **strongly opposes reciprocal political agreements** ("vote-trading") in all ICC/ASP elections.

**The Coalition as a whole does not endorse or oppose individual candidates but advocates for the integrity of the nomination and election procedures.**

For more information, contact [cicc-hague@coalitionfortheicc.org](mailto:cicc-hague@coalitionfortheicc.org)

To make sure the Court's bench remains fully representative, in 2017 states should vote for:

1  
candidate  
from 'list A'

1  
candidate  
from 'list B'

1  
candidate  
from the Asia-  
Pacific Group

1  
candidate  
from the African  
Group of States

1  
candidate  
from the  
group of Latin  
American and  
Caribbean States

5  
Female  
candidates

## Introduction

At its sixteenth session in 2017, the Assembly of States Parties (ASP) will elect six new judges out of the 18 that compose the International Criminal Court (ICC). The election follows the regular three-year election cycle, and seeks to fill six vacancies to replace the judges whose terms will end in 2018. The terms of the six newly elected judges will be limited to nine years in accordance with article 36(9) of the Rome Statute. The procedures for the nomination and election of candidates and the filling of judicial vacancies are outlined in articles 36 and 37 of the Rome Statute and Resolution ICC- ASP/3/Res.6.

## Qualifications of nominees

1. Article 36(3)(a) of the Rome Statute states that, “*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.**”*
2. Every candidate for election must have an **excellent knowledge of, and be fluent in, at least one of the working languages of the Court** - these being **English and French**, as per article 36(3)(c) of the Rome Statute.
3. 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.**”*
4. **No two judges may be nationals of the same State** as per article 36(7) of the Rome Statute. The nationalities of the current ICC judges can be found in Annex I.

## A fully representative bench

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:*

1. **The representation of the principal legal systems of the world / legal competence and expertise;**

The Rome Statute requires that a certain number 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. Accordingly, two lists were established: List A for candidates with competence and experience in criminal law and criminal proceedings; and List B for candidates with expertise in the field of international law and extensive experience in a professional legal capacity.<sup>1</sup> A candidate with sufficient qualifications for both lists may choose on which list to appear. Paragraphs 20 and 21 of Resolution ICC-ASP/3/Res.6 seek to provide for **at least nine judges from List A and at least five judges from List B** to be on the bench at all times.

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<sup>1</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.*”

**2. Equitable geographical representation;**

An equitable geographical representation is required within the group of 18 ICC Judges. The ASP has the following regional groupings: African states; Asia-Pacific states; Eastern European states; Latin American and Caribbean (GRULAC) states; and Western European and Other (WEOG) states<sup>2</sup>.

Only nationals from states parties to the Rome Statute can be nominated.

**3. A fair representation of female and male judges.**

A fair representation of female and male judges on the ICC's bench must be maintained.

## The Election Procedure

1. In each round of voting, each State Party to the Rome Statute has a number of votes equal to the number of vacant positions (6) left to be filled at the beginning of any given round of voting.
2. Voting is by secret ballot.
3. **To be elected, candidates must receive a two-thirds majority of the States Parties present and voting.**<sup>3</sup>

## Minimum Voting Requirements

1. To make sure that the ICC bench remains fully representative each judicial election has Minimum Voting Requirements (MVRs).
2. Minimum Voting Requirements demands that States Parties vote a minimum number of times during the election, as determined by an established formula, for candidates from areas that are underrepresented.<sup>4</sup> The purpose is to ensure that the composition of the judicial bench is fully representative,<sup>5</sup> as explained above.
3. Minimum voting requirements can be put in place for one or more of the following categories:
  1. The principal legal systems of the world / legal competence and expertise;
  2. Equitable geographical representation; and
  3. A fair representation of female and male judges.
4. The MVR requirement 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.**

<sup>2</sup> See Annex III at pages 10 to 13 for a complete breakdown of regional groupings.

<sup>3</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>4</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>5</sup> MVR are discussed in greater detail below at pages 4 and 5.

5. During the election, MVRs are recalculated before every round of voting to take into account the judges who have been elected in previous rounds. If one of the three categories of MVRs is met, then the MVRs are discontinued for that category in subsequent rounds of voting.<sup>6</sup>
6. The MVR requirements are different at every election. They are set in accordance to the anticipated composition of the bench after the judges who have finished their terms, leave.
7. With the exception of the MVR for Lists A and B, which apply until they are fulfilled, MVRs are **discontinued after four rounds of voting.**<sup>7</sup>

## The 2017 Minimum Voting Requirements Explained

### 1. 2017 MVRs for List A / List B representation

The voting procedure related to legal competence and experience requires that, *“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>8</sup>

**The List A/List B MVR for the 2017 election is thus:**

- **1 candidate from List A**
- **1 candidate from List B**

### 2. 2017 MVRs for Regional representation

The voting procedure related to regional representation requires 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>9</sup>

The ASP follows the UN regional groupings: Western European and other states, Eastern European states, Latin American and Caribbean states, Asia-Pacific states and African states. As of December 2011, every geographic group has more than sixteen States Parties.

See Annex IV for a breakdown of ICC states parties per regional group.

The regional MVR for the 2017 election is thus:

- **1 candidate from African States**
- **1 candidate from Asia-Pacific States**
- **0 candidates from Eastern European States**
- **1 candidate from Latin American and Caribbean States**
- **0 candidates from Western European and Other States**

<sup>6</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>7</sup> Resolution ICC-ASP/3/Res.6, paragraph 21.

<sup>8</sup> Resolution ICC-ASP/3/Res.6, paragraph 21.

<sup>9</sup> Resolution ICC-ASP/3/Res.6, paragraph 20(a).

### 3. 2017 MVRs for Gender representation

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>10</sup>

The gender MVR for the 2017 election is thus:

- **5 for women**
- **0 for men**

If at the time of voting there are 10 or less candidates of one gender, then the MVR for that gender will adjust: if there are only 6 female nominees, the MVR drops to 4 maximum; with 5 nominees the MVR drops to 3 max; with 4 nominees the MVR becomes 2 max; and etc.<sup>11</sup> As such a scenario could result in a strong gender imbalance on the ICC bench, the gender MVR is very important in the 2017 election.

<b>12 remaining judges</b> <b>Breakdown of qualifications</b>	<b>6 new judges</b> <b>Qualifications needed</b>
<p>When the terms of the six outgoing ICC judges expire in 2018, the 12 remaining judges will represent the following categories:</p> <p><b>List A &amp; B:</b></p> <ul style="list-style-type: none"> <li>○ List A: 8 judges</li> <li>○ List B: 4 judges</li> </ul> <p><b>Regional Distribution:</b></p> <ul style="list-style-type: none"> <li>○ African States: 2 judges</li> <li>○ Asia-Pacific States: 2 judges</li> <li>○ Eastern European States: 3 judges</li> <li>○ Latin American and Caribbean States: 2 judges</li> <li>○ Western European and Other States : 3 judges</li> </ul> <p><b>Gender:</b></p> <ul style="list-style-type: none"> <li>○ Female: 1 judge</li> <li>○ Male: 11 judges</li> </ul>	<p>To make sure the bench is fully representative in 2018; states will have to vote for the following number of candidates:</p> <p><b>List A &amp; B:</b></p> <ul style="list-style-type: none"> <li>○ <b>List A: 1 candidate</b></li> <li>○ <b>List B: 1 candidate</b></li> </ul> <p><b>Regional Distribution:</b></p> <ul style="list-style-type: none"> <li>○ <b>African States: 1 candidate</b></li> <li>○ <b>Asia-Pacific States: 1 candidate</b></li> <li>○ Eastern European States: 0</li> <li>○ <b>Latin American and Caribbean States: 1 candidate</b></li> <li>○ Western European and Other States: 0</li> </ul> <p><b>Gender:</b></p> <ul style="list-style-type: none"> <li>○ <b>Female: 5 candidates</b></li> <li>○ Male: 0</li> </ul>

<sup>10</sup> Resolution ICC-ASP/3/Res.6, paragraph 20(b).

<sup>11</sup> Resolution ICC-ASP/3/Res.6 paragraph 20(c).

## Nomination Dates and Extensions

1. The nomination period opens thirty-two weeks before the election (which takes place on the first day of the ASP session) and lasts twelve weeks.<sup>12</sup>
2. As the election will be held during the sixteenth session of the ASP, opening on December 4<sup>th</sup> 2017<sup>13</sup>, the nomination period will open on April 24<sup>th</sup> 2017 and close on July 17<sup>th</sup> 2017.<sup>14</sup>
3. The ASP President may extend the nomination period **if**:
  - a. the regional or the gender Minimum Voting Requirement has not been met with **at least twice** the number of candidates fulfilling the requirement, or;
  - b. the number of candidates remains less than the number of vacant seats, or;
  - c. the number of candidates from List A or B remains less than the respective MVRs.<sup>15</sup>

This means that the nomination period will be extended until there are at least the following nominations:

- **2 candidates from African States**
  - **2 candidates from Asia-Pacific States**
  - **2 candidates from Latin American and Caribbean States**
  - **10 female candidates**
  - **1 candidate from List A**
  - **1 candidate from List B**
4. The ASP President can extend the nomination deadline for two weeks at a time, but no more than three consecutive times.
  5. The latest the nomination period could stay open, for these reasons, is therefore until August 28<sup>th</sup> 2017.<sup>16</sup>

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<sup>12</sup> Resolution ICC-ASP/3/Res.6, paragraph 3, as amended by resolution ICC-ASP/12/Res.8, annex II. subject to extensions (paragraphs 11 and 12).

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

<sup>14</sup> Calculated by the CICC Secretariat in accordance with Resolution ICC-ASP/3/Res.6, paragraph 3, as amended by resolution ICC-ASP/12/Res.8, annex II.

<sup>15</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 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 favors candidates for which minimum voting requirements are in place.

<sup>16</sup> Calculated by the CICC Secretariat in accordance with Resolution ICC-ASP/3/Res.6, paragraphs 3 and 11.

## National Nomination Process

1. **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:*
  - a. *By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or*
  - b. *By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.”*<sup>17</sup>
2. Each State Party may put forward one candidate for any given election.
3. 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>18</sup>

## Ratification and withdrawals

1. **Non-State Parties** 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.
2. Resolution ICC- ASP/3/Res.6 provides that a nomination will remain provisional and shall not be included in the list of candidates until a State has deposited its instrument of ratification 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<sup>19</sup>.
3. Non-States Parties that wish to ensure that they may nominate a candidate for the 2017 election must therefore deposit their instrument of ratification of the Rome Statute before the end of the nomination period and therefore before July 17<sup>th</sup> 2017 considering no extensions or before August 28<sup>th</sup> 2017 considering the last possible extension.
4. Article 126 paragraph 2 of the Rome Statute establishes that the ratification of the Rome Statute becomes effective on the first day of the month, 60 days after the deposition of the instrument of ratification with the Secretary General of the UN.
5. To be able to participate in the 2017 ASP session, the ratification of the Rome Statute will have to be effective on December 1<sup>st</sup> 2017. 60 days prior to December 1<sup>st</sup> 2017 is October 2<sup>nd</sup> 2017.
6. States who are no longer states parties to the Rome Statute by the start of the elections cannot nominate candidates nor take part in the election.
7. The withdrawal of a number of states will not affect the MVR’s in place for the 2017 judicial elections.

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<sup>17</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>18</sup> In accordance with Rome Statute article 36(4)(b).

<sup>19</sup> Resolution ICC- ASP/3/Res.6, Paragraph 7.

ANNEX I

**Departing ICC judges in 2018**

	Judge	Nationality	Regional Group	Gender	List	Division	Term end
1	FERNANDEZ DE GURMENDI, Silvia <i>ICC President</i>	Argentina	Latin American and Caribbean States	F	A	Appeals	2018
2	ALUOCH, Joyce <i>ICC First Vice-President</i>	Kenya	African States	F	A	Trial	2018
3	OZAKI, Kuniko <i>ICC Second Vice-President</i>	Japan	Asia-Pacific States	F	B	Trial	2018
4	MONAGENG, Sanji Mmasenono	Botswana	African States	F	B	Appeals	2018
5	TARFUSSER, Cuno	Italy	WEOG	M	A	Pre-Trial	2018
6	VAN DEN WYNGAERT, Christine	Belgium	WEOG	F	A	Appeals	2018



ANNEX II

Remaining ICC judges in 2018

	Judge	Nationality	Regional Group	Gender	List	Division	Term	Term end
1	MORRISON, Howard	United Kingdom	WEOG	M	A	Appeals	9 y	2021
2	HERRERA CARBUCCIA, Olga Venecia del C.	Dominican Republic	Latin American and Caribbean States	F	A	Trial	9 y	2021
3	FREMR, Robert	Czech Republic	Eastern Europe	M	A	Trial	9 y	2021
4	EBOE-OSUJI, Chile	Nigeria	African States	M	A	Trial	9 y	2021
5	HENDERSON, Geoffrey A.	Trinidad and Tobago	Latin American and Caribbean States	M	A	Trial	7 y	2021
6	De BRICHAMBAUT, Marc Perrin	France	WEOG	M	B	Pre-Trial	6 y	2021
7	PANGALANGAN, Raul Cano	Philippines	Asia-Pacific States	M	B	Pre-Trial	6 y	2021
8	HOFMANSKI, Piotr	Poland	Eastern Europe	M	A	Appeals	9 y	2024
9	KESIA-MBE MINDUA, Antoine	Democratic Republic of the Congo	African States	M	B	Pre-Trial	9 y	2024
10	SCHMITT, Bertram	Germany	WEOG	M	A	Trial	9 y	2024
11	KOVÁCS, Péter	Hungary	Eastern Europe	M	B	Pre-Trial	9 y	2024
12	CHUNG, Chang-ho	Republic of Korea	Asia-Pacific States	M	A	Pre-Trial	9 y	2024

## ANNEX III

# List of States Parties per region

The regional MVR for the 2017 election is:

- 1 candidate from African States
- 1 candidate from Asia-Pacific States
- 0 candidates from Eastern European States
- 1 candidate from Latin American and Caribbean States
- 0 candidates from Western European and Other States

The ASP follows the UN regional groupings: Western European and other states, Eastern European states, Latin American and Caribbean states, Asia-Pacific states and African states.

**No two judges may be nationals of the same State (as per article 36(7) of the Rome Statute).**

### African states (34)

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1. Senegal
2. Ghana
3. Mali
4. Lesotho
5. Botswana
6. Sierra Leone
7. Gabon
8. *South Africa (has indicated to withdraw from the Rome Statute)*
9. *Nigeria (Judge Eboe-Osuji's term will end in 2021)*
10. Central African Republic
11. Benin
12. Mauritius
13. *Democratic Republic of the Congo (Judge Kesia-Mbe Mindua's term will end in 2024)*
14. Niger
15. Uganda
16. Namibia
17. *Gambia (has indicated to withdraw from the Rome Statute)*
18. United Republic of Tanzania
19. Malawi
20. Djibouti
21. Zambia
22. Guinea
23. Burkina Faso
24. Congo
25. *Burundi (has indicated to withdraw from the Rome Statute)*

26. Liberia
27. Kenya
28. Comoros
29. Chad
30. Madagascar
31. Seychelles
32. Tunisia
33. Cabo Verde
34. Côte d'Ivoire

**Asia-Pacific states (19)**

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1. Fiji
2. Tajikistan
3. Marshall Islands
4. Nauru
5. Cyprus
6. Cambodia
7. Jordan
8. Mongolia
9. Timor-Leste
10. Samoa
11. *Republic of Korea (Judge Chung's term will end in 2024)*
12. Afghanistan
13. Japan
14. Cook Islands
15. Bangladesh
16. *Philippines (Judge Pangalangan's term will end in 2021)*
17. Maldives
18. Vanuatu
19. Palestine, State of

### **Latin American and Caribbean states (28)**

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1. Trinidad and Tobago (Judge Henderson's term will end in 2021)
2. Belize
3. Venezuela
4. Argentina
5. Dominica
6. Paraguay
7. Costa Rica
8. Antigua and Barbuda
9. Peru
10. Ecuador
11. Panama
12. Brazil
13. Bolivia
14. Uruguay
15. Honduras
16. Colombia
17. Saint Vincent and the Grenadines
18. Barbados
19. Guyana
20. *Dominican Republic (Judge Herrera Carbuccion's term will end in 2021)*
21. Mexico
22. Saint Kitts and Nevis
23. Suriname
24. Chile
25. Saint Lucia
26. Grenada
27. Guatemala
28. El Salvador

### **Eastern European states (18)**

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1. Croatia
2. Serbia
3. *Poland (Judge Hofmanski's term will end in 2024)*
4. *Hungary (Judge Kovács' term will end in 2024)*
5. Slovenia
6. Estonia
7. The Former Yugoslav Republic of Macedonia
8. Bosnia and Herzegovina
9. Bulgaria
10. Romania

11. Slovakia
12. Latvia
13. Albania
14. Lithuania
15. Georgia
16. Montenegro
17. *Czech Republic (Judge Fremr's term will end in 2021)*
18. Republic of Moldova

**Western European and other states (25)**

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1. San Marino
2. Italy
3. Norway
4. Iceland
5. *France (Judge De Brichambaut's term will end in 2021)*
6. Belgium
7. Canada
8. New Zealand
9. Luxembourg
10. Spain
11. *Germany (Judge Schmitt's term will end in 2024)*
12. Austria
13. Finland
14. Andorra
15. Denmark
16. Sweden
17. Netherlands
18. Liechtenstein
19. *United Kingdom (Judge Morrison's mandate will end in 2021)*
20. Switzerland
21. Portugal
22. Ireland
23. Greece
24. Australia
25. Malta