



QUESTIONS & ANSWERS ON THE ELECTION AND ASSIGNMENT OF INTERNATIONAL CRIMINAL COURT JUDGES

How are judges elected to the ICC?

Judges are elected to the ICC by a secret ballot vote of the Court's governing body, the Assembly of States Parties (ASP). Candidates who receive the highest number of votes and at least two-thirds majority of the States Parties present and voting are elected. The ASP is the governing body of the ICC. Once elected, judges serve nine-year terms and are not eligible for re-election unless elected to complete a term of three years or less. The Rome Statute calls for 18 full-time judges at the ICC. The ASP, in the selection of ICC judges, must take into account the need for the representation of all of the principal legal systems of the world. There must also be an equitable representation of female and male judges. The ASP must take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women and children.

Judicial candidates are selected from two lists, List A and List B, as set out in Article 36 of the Statute. List A includes candidates who 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 B includes candidates who 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." The first election was organized in such a way so that there would be at least nine judges serving from List A and at least five from List B; subsequent elections are organized to maintain similar proportions.

What are the requirements to be a judge of the ICC?

An ICC judge must be a national of a State Party to the Rome Statute. There cannot be two judges that are nationals of the same state. ICC judges must be persons of high moral character, impartiality and integrity. In addition to the List A or List B qualifications, a judge must possess the qualifications required in his or her respective country for appointment to the highest judicial offices, and must have an excellent knowledge of and be fluent in at least one of the working languages of the Court, that is, either English or French.

How are the judges organized within the ICC?

The eighteen ICC judges are organized into three divisions: the Pre-Trial Division, Trial Division and Appeals Division. The Pre-Trial Division comprises the First Vice-President and six other judges. The functions of the Pre-Trial Division include the issuance of arrest warrants and confirmation of charges before trial. The Trial Division consists of the Second Vice-President and five other judges. It presides over trials. Decisions of the Pre-Trial and Trial Divisions may be appealed to the Appeals Division which consists of the President and four other judges. Judges meet in plenary in to decide how they are assigned among the three divisions according to their qualifications and experience.

How it is that judges who have served in Pre-Trial Division can be elevated to the Appeals Chamber?

Following the swearing in of the five new judges in March 2009, the plenary of judges agreed upon a new composition of the Appeals Chamber. Two judges of Pre-Trial Chamber I, Judge Akua Kuenyehia of Ghana and Judge Anita Ušacka of Latvia, were elevated from the Pre-Trial to the Appeals Chamber. These two Judges had been sitting on the Pre-Trial Chamber for several years, and were therefore "contaminated" with regard to





cases that were already in proceedings. For example, both judges ruled on the arrest warrant for Omar Al-Bashir, president of Sudan, which is the subject of an appeal by the Prosecutor.

Does the Rome Statute prohibit a judge assigned to the Pre-Trial or Trial Division from serving in the Appeals Division?

Not necessarily. Although Article 39(3)(b) states that “Judges assigned to the Appeals Division shall serve only in that division for their entire term of office,” this provision is subject to interpretation as to whether a judge previously assigned to the Pre-Trial or Trial Divisions may be elevated to serve in it, provided that the elevated judge did not rule on the case which is on appeal. The ASP’s Committee on Budget and Finance sent letters to the Court in order to ask them to reconsider their decision to elevate the two judges on grounds of equity, however, the plenary of Judges voted nine to seven not to change their original decision regarding the elevation of the two judges to the Appeals Chamber. The two judges that were elevated to the Appeals Chamber voted on this matter and were part of the majority.

Can a judge be disqualified from a case?

Yes. A judge may be disqualified from “any case in which his or her impartiality might reasonably be doubted on any ground” (Article 41). This includes disqualification for any previous involvement in the case before the ICC or a national Court. The Prosecutor or any person being investigated or prosecuted may request the disqualification of a judge. Any question as to the disqualification of a judge from a particular case is decided by an absolute majority of the other judges. Under Article 41(1) and Rule 33 of the Court’s Rules of Procedure and Evidence, a judge may ask to be excused from sitting on a case based on previous involvement with the case.

Since March 13, 2009, the Appeals Chamber has included Judge Akua Kuenyehia of Ghana and Judge Anita Ušacka of Latvia who were part of the Pre-Trial Chamber I that decided on the application for the arrest warrant for the Omar Al-Bashir. However, on July 3, 2009 both judges asked ICC President Judge Sang-Hyun Song to excuse them from sitting on this appeal, citing their previous involvement with the case. In this case, the ICC Presidency granted their request and replaced them, for this appeal only, with Judge Ekaterina Trendafilova of Bulgaria and Judge Joyce Aluoch of Kenya.

A judge may also be removed from office if he or she “is found to have committed serious misconduct or a serious breach of his or her duties” or is unable to exercise his or her functions (Article 46). The removal of a judge requires both a two-thirds majority of the other judges and a two-thirds majority of the States Parties.

Why will there be a new election of judges?

As of August 2009, there are only 16 full-time judges because of the passing of Judge Fumiko Saiga of Japan on April 24, 2009 and the resignation of Mohamed Shahabuddeen, who was elected in January 2009 but did not take office. An election is scheduled to take place in November 2009 in order to fill the two vacancies.

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