

19 January 2021

## **Guidelines on the Procedure for the Election of the Presidency**

Pursuant to article 38(1) of the Rome Statute, the President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. The present Guidelines, which have been adopted by a majority of judges present in plenary session, provide clarity in respect of the procedural aspects governing the conduct of the election of the Presidency. These Guidelines may be amended, suspended or abolished by a majority of judges in plenary session.

Consistently with the shared ethical values of the judges of the Court, the election of the Presidency shall occur in a spirit of collegiality, transparency and openness. Where possible, judges are encouraged to seek consensus, as long as the substance or spirit of these Guidelines are not violated in any way by any effort made to achieve such consensus.

### **Section 1**

#### **Expression of Interest**

1. After the election of the new judges by the Assembly of States Parties, all judges who are eligible to vote in the next election of the Presidency, including the judges-elect, will receive an invitation from the sitting Presidency calling for expressions of interest for the positions of President, First Vice-President or Second Vice-President, respectively. A judge or judge-elect may express interest in more than one position. The current Presidency shall impose a deadline for receipt of such expressions of interest, which should be no earlier than 15 February of an election year.
2. Together with the expression of interest, candidates will be invited to submit an optional statement of their suitability for the position in which they are interested, communicating their intentions and priorities if elected. Such suitability statement will focus on the candidate's relevant

professional experience and personal attributes which qualify her or him for the office sought and plans or visions for her or his term of office. Any such suitability statement received will be promptly transmitted, together with the list of candidates, by the Presiding Officer as determined in accordance with section 2(1) below, to those judges-elect and judges who will be eligible to vote. The suitability statements will be distributed only in the language(s) in which they have been submitted. The Presiding Officer shall centrally distribute all suitability statements simultaneously. Candidates must not distribute their statements independently.

3. A suitability statement may not exceed three (3) pages in length. It may not include any annexes or appendices and should limit the use of footnotes. All statements shall be submitted on A4 format. Margins shall be at least 2.5 centimetres on all four sides. The font shall be any of the following: Palatino Linotype, Times New Roman, Century Schoolbook, Bookman Old Style, Cambria, Georgia or Courier. The typeface of all documents shall be 12 point with 1.5 spacing for the text and 10 point with single spacing for footnotes. An average page shall not exceed 300 words.
4. Presidency members may be re-elected once, pursuant to article 38(1) of the Rome Statute. Once a member of the Presidency has decided that she or he will be a candidate for the next Presidency election, she or he will no longer participate in the procedural decisions of the Presidency under paragraph 1 of this section. Such decisions may be taken by the remaining members of the Presidency or an *ad hoc* Presidency.

## **Section 2**

### **Presiding Officer**

1. Once the candidates for the three positions are known, the most senior judge in accordance with regulation 10 of the Regulations of the Court, who is eligible to vote in the next Presidency election and who is not a candidate for any position in the Presidency election and is not a member of the sitting Presidency, will become the Presiding Officer who will oversee the Presidency election. If such judge will be unavailable to perform such function, it may be performed by the next most senior judge.
2. Following the identification of the Presiding Officer, the organisation, planning and communication with respect to the elections will be transferred to her or him. In the event that unforeseen circumstances, arising in good faith, prevents the election from being conducted in

accordance with the present Guidelines, the Presiding Officer will propose any necessary alternative procedures to all judges for consideration. The Presiding Officer will act as the judge acting in the place of the President for the purposes of rule 4(4) of the Rules of Procedure and Evidence until the completion of the election of the Presidency.

3. The Presiding Officer will receive administrative support from staff members of the Presidency.

### **Section 3**

#### **Preparatory Meeting**

1. The Presiding Officer will convene a preparatory meeting of judges and judges-elect eligible to vote in the next election prior to that election, in which each candidate for each position will have an equal amount of time to present her or his candidacy to the other judges and answer any questions. This does not preclude that the candidates for President may be allocated more time than the candidates for Vice-President.
2. The Presiding Officer will communicate in advance the order in which the candidates will present their candidacies, which should be based on objective criteria (e.g. alphabetical order of candidates' English written surnames, reverse alphabetical order) and the amount of time to be allocated. The presentations will commence with the position of President, followed by First Vice-President and Second Vice-President.
3. The Presiding Officer may convene multiple preparatory meetings, if necessary. Such preparatory meetings may also address any procedural issues which arise.
4. In the event that there is more than four candidates for any given position in the Presidency, at the preparatory meeting, following the presentations by the candidates and any question and answers, the judges and judges-elect will consider if there is a need to conduct at least one preliminary elimination round of voting prior to the Presidency election. Judges who are candidates for the election can participate in all discussion and any voting in this regard.
5. If it is decided to hold a preliminary elimination round of voting for one or more position, such voting round cannot occur until after the judges-elect have made their solemn undertaking. At the preliminary elimination

round, each eligible judge will vote for a preferred candidate for each Presidency position undergoing a preliminary elimination vote. If multiple such votes are to be conducted, they will occur commencing with the most senior position. After the elimination votes are tallied for any given position, the Presiding Officer will announce the four candidates who have received the highest number of votes who will proceed to the election. If it is not possible to identify four candidates with the highest number of votes due to a tie, the Presiding Officer will announce an elimination by-election between only those judges who are tied for inclusion amongst the four candidates. Once the number of candidates has been pared down to no more than four, the elimination round of voting will be declared finished by the Presiding Officer. The four candidates identified by the preliminary elimination round of voting will be the candidates for the election. The results of the preliminary elimination round are final and binding.

#### **Section 4**

##### **Eligibility to Vote**

1. In accordance with rule 4(1) of the Rules of Procedure and Evidence, only those judges who have made their solemn undertaking pursuant to article 45 of the Rome Statute will be eligible to participate and vote in the Presidency election. This does not preclude judges-elect from taking part in preparations for the Presidency election, as set out in the present Guidelines, prior to undertaking their solemn undertaking.
2. Judges whose mandates will expire prior to the date of the Presidency election will not be eligible to participate and vote. Judges who continue in office pursuant to article 36(10) of the Rome Statute will not be eligible to participate and vote.

#### **Section 5**

##### **Timing of the Election**

1. The election of the Presidency will take place on 11 March during an election year.
2. The elected Presidency will commence its mandate on the day of its election.

3. In the event of an exceptional vacancy in the Presidency arising outside of the ordinary electoral cycle, all decisions concerning the need and procedures for any exceptional election will be determined by a majority of judges.

## **Section 6**

### **Ethical Obligations**

1. Judges will exercise their responsibilities in respect of the election of the Presidency with probity and integrity and in full compliance with the principles and standards of the Code of Judicial Ethics, including in respect of electoral campaigning. Judges shall vote independent of any external influence and shall not be motivated by personal interests while participating in such elections. Candidates shall refrain from any action that might, in the context of the election, be reasonably perceived as an inappropriate promise, gift, advantage, privilege or reward of a personal nature.
2. The only forms of electoral campaigning permitted, regardless of whether direct or indirect, shall be those expressly permitted in sections 1(2) and 3 of the present Guidelines.
3. No discussion or communication amongst judges concerning the potential outcome of a Presidency election may occur unless all judges who will vote in the Presidency election are given the opportunity in good faith to participate in any such discussion or communication. This does not preclude a newly elected judge, at her or his own initiative only, from speaking privately with outgoing judges only, in order to seek information about one or more candidate. Guided by the ethics of collegiality, any such discussion should be constructive and neutral in nature

## **Section 7**

### **Procedure for the Presidency Election**

1. Voting will occur by way of secret ballot.
2. The elections will take place separately for each position and in the following order:
  - (1) President;

(2) First Vice-President; and

(3) Second Vice-President.

3. The elections for the posts of First Vice-President and Second Vice-President will take place after the winner of the posts of the President and the First Vice-President, respectively, are declared.
4. The poll for each position will be declared open by the Presiding Officer, who will announce the names of the candidates.
5. If a judge running for the position as President or First Vice-President is not elected for the respective position, the judge can, after each election, consider whether to run for the remaining position(s), for which elections have not taken place yet. The judge will inform the Presiding Officer of her or his decision and hence will be included as a candidate for the position which she or he has indicated.
6. No statement by any judge in support of the election of a candidate is permitted on the day of election.
7. If there will be only one candidate for a particular position within the Presidency, no ballot will take place and the Presiding Officer will declare the candidate to be elected uncontested, by acclamation.

## **Section 8**

### **Voting Requirement**

1. To be elected for a position, a candidate must obtain an absolute majority of the votes of the judges.
2. Should no candidate obtain such on a first ballot, a second ballot with all candidates for this position will be conducted. Should there be no winner on the second ballot, a third ballot will be held with the candidates who received the highest and the second highest votes during the second ballot.

## **Section 9**

### **Counting of votes**

1. The Presiding Officer will announce the names of the Chief Teller and any Assistant Tellers, who will be responsible for providing ballot papers, the ballot box and for tallying votes cast.
2. Ballots will be counted by the Chief Teller and the Assistant Tellers and the result will be recorded by the Chief Teller on a tally sheet. The tally sheet will be certified by the Chief Teller and confirmed by the Presiding Officer.
3. The result certified by the Chief Teller and confirmed by the Presiding Officer will be announced by the Presiding Officer and will be conclusive for all purposes of the particular election.
4. The Presiding Officer will be the sole authority to decide on any questions of disputed ballots.
5. The voting results will be announced by the Presiding Officer after each of the voting rounds.