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Report of the Advisory Committee on Nominations of Judges on the work of its fourth meeting

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I. Introduction

A. Opening of the session

1. The fourth meeting of the Advisory Committee on Nominations of Judges (“the Committee”) was opened by the Chairperson of the Committee, Mr. Philippe Kirsch (Canada) and was held in The Hague on 16 and 17 April 2015

B. Adoption of the agenda

2. The Committee adopted the following agenda:
 1. Opening of the session
 2. Adoption of the agenda
 3. Scope of the mandate
 4. Organization of work
 5. Consideration of the nominations submitted to fill a judicial vacancy at the resumed thirteenth session of the Assembly
 6. Other matters
3. The following members participated in the meeting:
 - (a) Mr. Hiroshi Fukuda (Japan);
 - (b) Mr. Philippe Kirsch (Canada) (Chairperson);
 - (c) Mr. Daniel David Ntanda Nsereko (Uganda);
 - (d) Mr. Ernest Petri (Slovenia);
 - (e) Ms. Mónica Pinto (Argentina) (Vice-Chairperson);
 - (f) Mr. Bruno Simma (Germany); and
 - (g) Mr. Raymond Claudius Sock (Gambia)

C. Scope of the mandate

4. The Committee recalled its mandate, set out in document ICC-ASP/10/36:¹

“5. The Committee is mandated to facilitate that the highest-qualified individuals are appointed as judges of the International Criminal Court.

[...]

7. The work of the Committee is based on the applicable provisions of the Rome Statute and its assessment of the candidates will be based strictly on the requirements of article 36, paragraphs (3) (a), (b) and (c).”

[...]

11. Once the Committee has completed its work, it will prepare information and analysis, of a technical character, strictly on the suitability of the candidates, which would be made available to States Parties and observers by submission to the Bureau, in sufficient time to allow for thorough subsequent consideration by the Assembly of States Parties.”

¹ Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court (ICC –ASP/10/36), annex, paras. 5, 7 and 11.

5. The Committee agreed that its mandate was self-explanatory and did not require any elaboration.

D. Organization of work

6. Following its practice from prior sessions, the Committee decided to continue to hold face-to-face interviews with each candidate of 60 minutes duration, to be followed by a discussion period after each interview.

7. The Committee's consistent experience has been that the interviews with candidates have revealed important elements relating to how they fulfill the requirements of article 36 of the Rome Statute and to the relevance of their professional experience to the work of the Court, elements which were not otherwise detected in the written submissions.²

8. The Secretariat of the Assembly of States Parties ("the Secretariat") provided the substantive servicing for the Committee, and the Director, Mr. Renan Villacis, acted as Secretary.

II. Consideration of the nominations submitted to fill a judicial vacancy at the resumed thirteenth session of the Assembly

9. The Committee recalled that, at its 18 April 2013 meeting, it had expressed the view that candidates should be present at the venue where the Committee would meet for interviews.³ The Committee conducted interviews with the two candidates presented to fill a judicial vacancy via the election to be held during the resumed thirteenth session.

10. The Committee conducted face-to-face interviews of 60 minutes duration each, with the following two candidates:

- (a) Aljazy, Ibrahim Mashhoor (Jordan); and
- (b) Pangalangan, Raul C. (Philippines).

11. The recommendations of the Committee following its assessment of the candidates pursuant to its mandate are set out in the annex.

12. The Committee welcomed the decision of the Assembly that in the case of a judicial vacancy the nomination period for judicial candidates shall open 18 weeks before the elections and shall last six weeks.⁴ The amended time limit had greatly facilitated its work by enabling it to address potential difficulties of inadequate time to thoroughly assess the candidates presented for election to fill a judicial vacancy and enabling it to report to the Assembly well in advance of its resumed thirteenth session.

III. Other matters

13. The Committee also welcomed the decision of the Assembly to amend its terms of reference a) in order to provide for the filling of a casual vacancy on the Committee, and b) to reflect that an interval of three years should be observed with respect to the nomination of former members as candidates for election to the Court.⁵

14. Furthermore, the Committee welcomed the consideration by the Assembly at its resumed thirteenth session of the recommendation of the Committee that, with the aim of

² The written submissions regarding the nominations are contained in document ICC-ASP/13/44.

³ Report of the Advisory Committee on Nominations of Judges on the work of its first meeting (ICC-ASP/12/23), para. 12.

⁴ Resolution ICC-ASP/13/Res.5, operative paragraph 22 and annex II. The amended paragraph 27 b) reads: "27 (b). The nomination period shall open 18 weeks before the elections and shall last 6 weeks."

⁵ Resolution ICC-ASP/13/Res.5, operative paragraph 45 and annex III

having continuity in its work, the Assembly waive the impediment of the four members of the Committee to be nominated at the fourteenth session.⁶

Mandate of the Advisory Committee on Nominations

15. The Committee understands that some States would wish it to develop further its observations concerning candidates for election as judges, essentially by giving additional guidance to States, such as a form of ranking among candidates, or an evaluation going beyond the candidates' strict qualifications under the relevant provisions of the Rome Statute.

16. The Committee has discussed this matter. Further to a review of the elections of judges in 2013 and 2014, the Committee has reached the conclusion that under its current working methods, it has been able so far to meet the main objective included in its mandate, that is, "to facilitate that the highest-qualified individuals are appointed as judges of the International Criminal Court" under paragraph 5 of annex I to resolution ICC-ASP/10/Res.5. Nevertheless, the Committee is prepared to accommodate any wishes the Assembly of States Parties might have in the execution of its mandate.

17. The Committee recalls, however, that its mandate has been defined in a restrictive manner, specifically:

"7. The work of the Committee is based on the applicable provisions of the Rome Statute and its assessment of the candidates will be based strictly on the requirements of article 36, paragraphs (3) (a), (b) and (c).

[...]

11. Once the Committee has completed its work, it will prepare information and analysis, of a technical character, strictly on the suitability of the candidates, which would be made available to States Parties and observers by submission to the Bureau..."⁷

18. The Committee notes that the reference to the suitability of candidates under paragraph 11 is restricted to the requirements of article 36, paragraphs (3) (a), (b) and (c) under paragraph 7, and that its analysis must be "strictly of a technical character". The Committee is therefore required to advise States on whether or not, in its opinion, the candidates meet the requirements of article 36, taking into account the specific qualifications required under Lists A and B as provided in that article. The Committee is concerned that to establish any form of ranking or other evaluation of the candidates not strictly based on the above provisions could go beyond its mandate and depart from the intention of the Assembly of States Parties in establishing the Committee.

19. The Committee is of the view that, in order to develop further its observations concerning candidates, it would require corresponding guidance from the Assembly.

⁶ Report of the Advisory Committee on the work of its third meeting, paras. 19 and 20 and Provisional agenda of the resumed thirteenth session of the Assembly (ICC-ASP/13/43/Add.1).

⁷ Resolution ICC-ASP/10/36, annex.

Annex

Evaluation of the candidates

1. The Advisory Committee on Nominations of Judges of the International Criminal Court hereby submits to the Bureau of the Assembly of States Parties to the Rome Statute its assessment of the two candidates for the elections to be conducted during the resumed thirteenth session of the Assembly.
2. The Committee's assessment is based on the requirements of article 36, paragraphs 3 (a), (b) and (c), of the Rome Statute. The Committee presents the following information and analysis of the suitability of the candidates in accordance with the terms of reference defined by the Assembly.
3. In reaching its conclusions, the Committee considered written material submitted by the candidates in the form of statements of qualifications and curricula vitae, and conducted face-to-face interviews with the two candidates. The Committee thanked the candidates for making themselves available for the interviews.
4. All the conclusions and decisions of the Committee have been reached by consensus.

General observations

5. The Committee noted that the candidates submitted their candidacies under List B as described in article 36, paragraph 3, of the Rome Statute, requiring "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".
6. The Committee also recalls that article 36, paragraph 3(c), requires that "Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court." In that regard, the Committee noted the fluency of both candidates in English.
7. The Committee took note of article 35, paragraph 1, of the Rome Statute, which provides that "All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office".
8. The Committee stressed the importance that judges elected to the Court be in good health and prepared to serve the whole term, and that there be no extraneous duties that could delay their assumption of office or interfere with the discharge of their duties of a judge as provided in article 40, paragraph 3, of the Rome Statute. The Committee noted that both candidates had stated that they were in good health. The Committee further noted that both candidates had indicated that they were prepared to serve for their term starting in July 2015.
9. The Committee noted that the written material submitted and the statements made asserted that the candidates are persons of high moral character, impartiality and integrity, and that they possess the qualifications required in their respective States for appointment to the highest judicial offices.
10. For the reasons indicated in paragraph 7 of the report, the Committee, as a result of its experience after three sessions, emphasizes once more the importance of face-to-face interviews with the candidates to the effective discharge of its mandate. Therefore, the Committee urges States Parties to ensure that their candidates are available for face-to-face interviews with the Committee.

List A candidates

n/a

List B candidates

ALJAZY, Ibrahim Mashhoor (Jordan)

1. On the basis of the material submitted and of the interview, the Committee noted that the candidate had knowledge of international law, human rights and international humanitarian law, as well as of the Rome Statute.
2. The Committee noted that the candidate is currently a full-time Associate Professor of international law at the University of Jordan, where he started his teaching career in 2002. He is the Dean of the Faculty of Law at that same university and a lawyer practicing before national courts. He has also lectured in various countries and has authored several publications. The Committee further noted that the candidate had served as a Minister of State for Legal Affairs and Minister of Justice of the government of Jordan.
3. In the course of the interview, it appeared that the candidate's professional experience relevant to the judicial work of the Court as referred to in the written material was mostly reflected in the form of his academic activities.
4. Considering the above, the Committee noted that his qualifications met the requirements under article 36, paragraph 3(b)(ii), of the Rome Statute.

PANGALANGAN, Raul C. (Philippines)

1. The Committee noted that the candidate had considerable knowledge of and established competence in international humanitarian law and the law of human rights, areas on which he had been focusing throughout his career. He has taught as Professor of Law at the University of the Philippines' College of Law since 1984 until now and served as its Law Dean from 1999 to 2005.
 2. The Committee also noted that the candidate was a member of the Philippine Bar since 1984 and that he is also in the faculty of the Philippine Judicial Academy, the national training institute for Filipino judges. He has also taught at the Harvard Law School and lectured at the Hague Academy of International Law, the Irish Centre for Human Rights and the Thessaloniki Institute of International Public Law and International Relations. The candidate also contributed to various publications on international law, including on the Rome Statute.
 3. The Committee noted that the candidate had considerable knowledge of the Rome Statute system as he had been a member of the Philippine delegation to the Rome Conference in 1998. He made use of the knowledge of the Rome Statute while co-chairing the Philippine Coalition for the International Criminal Court that successfully campaigned for the Philippine ratification of the Statute and promoted ratification of the Statute in the Asia-Pacific region.
 4. The Committee noted in addition that the candidate had appeared as counsel before various courts and tribunals.
 5. Considering the above, the Committee noted that his qualifications met the requirements under article 36, paragraph 3(b) (ii), of the Rome Statute.
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