

WOMEN'S CAUCUS FOR GENDER JUSTICE

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Recommendations and Commentary Re: Election of Judges

Submitted to the ICC Assembly of States Parties

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The Women's Caucus is gravely concerned that the rules for election of judges were the only set of rules on which the Preparatory Commission was unable to reach consensus in the four years of work since the adoption of the Rome Statute. Mandates in the Rome Statute relating to representation of women and men or geographical distribution in the election of judges are not in conflict with the need to have highly qualified judges seated on the Court.

As the first highly visible public act of the ASP, it is critical that the election of judges be transparent and fulfill the mandates of article 36(8) of the Rome Statute concerning a fair representation of women and men, equitable geographical distribution and representation of the principle legal systems of the world in addition to the requirements of article 36(5) concerning criminal law and international law experience. Arguments that only free elections can produce highly qualified judges not only ignore Art. 36(8) of the Rome Statute, but also presuppose that qualified judges can come from only one region or gender. This presumption, and the potential outcome of elections without any voting requirement to ensure gender and geographical representation, could essentially produce results that would seriously jeopardize the universality and international character of the Court.

The election of judges to the ICC must not follow the practice of past elections as they have taken place in the UN system. The ICC is a new and independent institution and must be universal in its composition and at the same time help set a new standard for these processes at the international level.

Draft Resolution of the Assembly of States Parties on the Procedure for the Election of Judges to the ICC - proposed by Mexico, Costa Rica, et al

The Women's Caucus supports the effort of the sponsoring countries of the Draft Resolution to bring about a compromise that is closely based on DP.8 which is where the discussion ended at the 10th Session of the Preparatory Commission. Though the proposal is not perfect, it is in our view a workable procedure.

(more on reverse side)

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While we generally support the spirit of the proposal and the creative and constructive way in which some of the difficult issues that arose during the 10th session were approached, the following are our priority concerns in the draft resolution:

- *Discontinuation of Minimum Voting Requirements should not be allowed.*

The provision in paragraph 7 allowing for discontinuation of the minimum voting requirements after four rounds should be deleted. The minimum voting requirements should be maintained until all 18 judges are elected.

It has often been the case that it takes multiple rounds to seat judges in elections. For example, in the March 2001 elections for judges at the ICTY, it took seven rounds of voting before all 14 judges were seated. Further, these elections have not been subject to geographical or gender voting requirements. It is reasonable to expect that the election of the first 18 judges to the ICC will similarly require multiple rounds of voting. Because this election and the statute's mandates are so critical, the minimum voting requirements should be maintained throughout.

- *Reduction of Gender Minimum Voting Requirement should be one less than the number of candidates.*

Paragraph 3(c) of the current proposal sets the number of adjustment for the gender voting requirement at two less than the number of candidates in the event that there are fewer than eight. This should be changed to be in accord with the adjustment relating to the geographical voting requirement which is one less than the number of candidates from a given region. In the event that the number of either male or female candidates is less than eight, the minimum voting requirement should be adjusted by subtracting one from the number of candidates.

Proposal by France Regarding the Election of Judges

The procedure for the election of judges adopted by the ASP should not favor one set of criteria over another. All criteria are equally critical and necessary to the Court's composition. By breaking the voting into separate stages according to gender or geographic voting requirements, the proposal by France would advantage one at the expense of the other. It would be extremely difficult to ensure gender AND geographical distribution following France's proposal.

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