

2023 ICC Judicial Elections

Questionnaire to nominating States

Nominating state: Republic of Korea

Date: 2023.7.28

1. Which Rome Statute procedure was followed to nominate your judicial candidate:
 - The procedure for the nomination of candidates for appointment to the highest judicial offices (Art. 36.4 (a)(i) Rome Statute); or
 - The procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court (Art. 36.4 (a)(ii) Rome Statute)?

The Government of the Republic of Korea selects its candidate for election as judge of the ICC through a Nomination Committee (the "Committee"). The Committee consists of the members of the Korean national group at the Permanent Court of Arbitration (PCA) and the Chief Justice (or his/her representative) of the Supreme Court of Korea. This procedure is reflective of allows for elements of both Article 36(4)(a)(i) and Article 36(4)(a)(ii) of the Rome Statute.

2. What are the rules or the national legal framework for nominating judges to the ICC? Please indicate the date of adoption and references, and share a link(s) or the text(s).

In accordance with Article 36.4(a)(i) of the Rome Statute, the Government of the Republic of Korea nominates candidates who are qualified for appointment to the highest judicial office, which is the Supreme Court of the Republic of Korea.

[Court Organization Act]

Article 42 (Qualification for Appointment) In order to be eligible for appointment as a Supreme Court Justice, a person shall have been in one or more of the following positions for at least 20 years and be at least 45 years of age:

- judge, prosecutor, or attorney-at-law;
- person who is admitted to the bar and has been engaged in legal affairs at a government agency, local government, a public organization as set out in Article 4 of the Act on the Management of Public Institutions, and/or a corporation;
- person who is admitted to the bar and has been in a position higher than assistant professor in jurisprudence at an authorized college or university.

The Committee referred to above assesses the applicants on the basis of these criteria and nominates the best-qualified candidate.

3. What are the criteria and requirements to select candidate judges to the ICC? What are the key steps in the nomination procedure?

The Ministry of Foreign Affairs invites the Supreme Court, the Ministry of Justice, the Korea Society of International Law, the Korea Criminal Law Association, the Korea Law Professors Association, and the Korean Bar Association to recommend possible candidates, and informs them that the candidates are required to have high moral character, impartiality and integrity, possess the qualifications required for appointment as a Supreme Court Justice, and fall under List A and/or List B, according to Article 36 of the Rome Statute.

Each entity submits a recommendation statement, including a full description of how the candidate fulfils the requirements of the Rome Statute, details of the candidate's knowledge of and fluency in at least one of the ICC's working languages, his/her international experience and expertise, a comprehensive curriculum vitae, and other relevant documents.

After the recommendations are submitted, the Ministry of Foreign Affairs formally reviews the applicants' qualifications and makes a list of candidates to be assessed by the Committee. The Ministry of Foreign Affairs holds a Committee meeting, and the Committee selects the final candidate, ideally by consensus, after a thorough discussion. In selecting a candidate, the Committee takes into account the qualities of the candidate as the top priority and comprehensively considers the candidate's experience in relation to List A and/or List B of the Rome Statute, as well as his/her professional and academic expertise, international experience, reputation, and his/her availability for the term of appointment as an ICC judge.

4. Does the selection procedure include a public call for applications or a vacancy announcement for the position of ICC candidate judge? If so, please indicate when and where it was advertised, and whether any other steps of the selection process were made public (including the total number of applicants).

On 22 October 2022, the Ministry of Foreign Affairs requested six other entities - the Supreme Court, the Ministry of Justice, the Korea Society of International Law, the Korea Criminal Law Association, the Korea Law Professors Association and the Korean Bar Association - to select and recommend a candidate. Each of these entities conduct their own recommendation and selection process. Candidates nominated by those entities were submitted to the Ministry of Foreign Affairs, which prepared the list of candidates for the Committee to make the final selection. The Committee review was conducted on the list of candidates.

5. Does the selection procedure include an assessment by an independent body to scrutinize the candidates' qualifications? If so, please provide more information on the members of the body and their mandate.

The Government of the Republic of Korea selects its candidate for election as judge of the ICC through a Nomination Committee. The Committee consists of the members of the Korean national group at the Permanent Court of Arbitration (PCA) and the Chief Justice (or his/her

representative) of the Supreme Court of Korea. This Committee makes its selection based on recommendations from the entities referred to above.

6. Does the selection procedure include an assessment of the Rome Statute requirement of “high moral character” (article 36), by means of a due diligence or vetting procedure, with the review of background information and a confidential mechanism to receive complaints and allegations about candidates?

The selection procedure does not include a confidential mechanism or assessment by means of a due diligence or vetting procedure. However, the Ministry of Foreign Affairs requests the entities making recommendations to select candidates who fulfill the Rome Statute requirement of “high moral character”, and then the Committee deliberates on whether the candidates fulfill the “high moral character” requirement.

7. Did you consult with the judiciary, professional associations, NGOs and other civil society bodies at any stage of the procedure, including to submit views on the candidates? If so, which actors and at what stage(s)?

During the first stage of the procedure, recommendations were requested from the above-mentioned six entities (the Supreme Court, the Ministry of Justice, the Korea Society of International Law, the Korea Criminal Law Association, the Korea Law Professors Association and the Korean Bar Association). The Committee then reviewed the candidates and nominates the best-qualified candidate.

8. What other steps or measures were put in place to ensure that the nomination process was fair, merit-based, and transparent?

The Committee selects the final candidate by consensus after a thorough discussion. If the Committee cannot reach a consensus, a secret ballot is held to select the final candidate. The Ministry of Foreign Affairs does not participate in or influence this selection process in any way.