



OPEN LETTER TO THE BUREAU OF THE ICC ASSEMBLY OF STATES PARTIES

President, Judge O-Gon Kwon
Vice-President, His Excellency Jens-Otto Horslund
Vice-President, His Excellency Michal Mlynàr
Members of the Bureau of the Assembly of States Parties

September 10, 2020

Dear Members of the Bureau of the Assembly of States Parties,

With this letter, we urge the Bureau to robustly vet all candidates under consideration to become the next prosecutor of the International Criminal Court (“ICC”). Over the course of this year, our organizations have communicated with the Committee for the Election of the Prosecutor (“Committee”), the Bureau of the Assembly of States Parties (“Bureau”), and the President of the Assembly to advocate for a full vetting of candidates. While we welcome the important steps undertaken by the Committee in the course of its review, we believe it is essential that the Bureau go further to ensure that all candidates are equally and comprehensively vetted to confirm their fitness for this critical office.

As described in its final report, the Committee took significant step to include a background check and security clearance of all longlisted candidates (paras. 26-31). The Committee acknowledged, however, that limits on its legal framework, mandate, and capacity to carry out further inquiries or investigations meant that the process it undertook could not “lay claim to comprehensiveness, nor [could] it offer all desirable guarantees.” These limitations included the likelihood that the reference persons listed by a candidate would likely share favorable assessments, and the fact that not all the national criminal record offices contacted responded to the Committee’s inquiries. Noting the importance of comprehensive vetting, the Committee recommended that future processes “include a provision for the vetting of candidates *ab initio*, with clearly outlined parameters and modalities.”

Notwithstanding the Committee's achievements, then, we urge that the Bureau undertake a comprehensive vetting process for all candidates that could offer the necessary guarantees. This process should apply to all candidates considered for election. The following actions would ensure a more thorough review of candidates:

- a) conducting reputational interviews, including collecting views from current and former colleagues, supervisors, subordinates and others who have interacted with the candidates in different capacities;
- b) carrying out an independence check and a government exposure check;
- c) investigating any identifying "red flags," including any allegations of workplace misconduct; and
- d) pursuing responses from all national criminal record offices, and any other information available from international organizations.

Vetting should be fair, transparent, and professionally handled. The Bureau could mandate a specialized body of independent experts with experience in vetting executives and officials, or hire a company with such expertise. While these steps may have a financial cost, the Committee noted in its report that it made significant savings as a consequence of the COVID-19 pandemic and related travel restrictions (para. 57). The Bureau could therefore make use of the Committee's underspend to support this effort.

Vetting is common practice for many national and other governmental appointments as well as, frequently, for mid- and high-level private sector positions. That it is not a common practice for top positions at the ICC is an anomaly, but an easily correctible one. The current prosecutor election presents an opportunity to build on the Committee's good work, and to strengthen the pipeline for ICC leadership. It is our sincere hope that the Bureau will undertake this vetting prior to the December election. Civil society organizations continue to explore and research vetting options and we would be ready to assist with suggestions. We may also consider further activities to ensure that all candidates meet the high moral character requirement.

Yours sincerely,

Open Society Justice Initiative

Women's Initiatives for Gender Justice