

The Election of the Next International Criminal Court Prosecutor

November 19, 2018

Executive Summary

The election of the next Prosecutor marks a critical turning point for the Office of the Prosecutor and the International Criminal Court as a whole. It is therefore essential to ensure that each step of this process, from identification and assessment of candidates to the election itself, is maximally transparent, accessible to a broad cross-section of stakeholders, and grounded in the objective criteria of merit, experience, and integrity. It is also crucial to learn from, and strengthen, the process that contributed (in 2010-11) to the election of the current Prosecutor. Toward that end, the Open Society Justice Initiative makes the following recommendations to States Parties:

Roles and Responsibilities

- The Bureau of the Assembly should take forward the selection process in a transparent and consultative manner with ICC States Parties. Ideally, language should be included in the forthcoming omnibus resolution that mandates the Bureau to do so and establishes a timeline for the process.
- The Bureau should establish an expert committee by early 2019 that is charged with soliciting applications from qualified candidates and conducting assessments, in order to then make recommendations to the Bureau and Assembly. As aspects of this process will take substantial time (e.g., negotiating terms of reference, finalizing committee composition, agreeing on a program of work), the committee should be established no later than March 2019.
- The Bureau should report back to the Assembly on its progress through the New York and Hague Working Groups, and at the next Assembly in 2019.
- There should be effective coordination between delegations in The Hague and New York while mindful that the election itself takes place in New York, where States Parties have the largest representation.

Search and Assessment Process

- An expert committee, appointed by the Bureau, should oversee the search and assessment process.
- In order to attract candidates of the highest quality, suggestions of candidates to serve on the committee, and later for the position of Prosecutor, should be solicited from a wide range of actors, including States Parties, civil society organizations, and academic institutions.
- The process should aim for the broadest level of transparency that is appropriate.



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Candidate Criteria

- The overriding criteria for the election of a Prosecutor should be merit-based; the selection process should not be based on an expectation of regional rotation.
- In addition to criteria laid out in Article 42(3), the candidate should have expertise in managing complex criminal investigations as a prosecutor and demonstrated experience in the exercise of discretion in sensitive cases.
- Outstanding managerial experience and demonstrated independence and impartiality will be crucial. The candidate should have no history of workplace misconduct or harassment.

Expert committee

- The expert committee should be comprised of 7-9 individuals, principally independent experts who can provide substantive expertise in refining the criteria for candidates and assessing their qualifications.
- The committee's membership should not be confined to state representatives from the five geographic regions, nor of experts who are all nationals of States Parties currently serving on the Bureau. Ideally, the committee should also include members with experience in one or more of the countries where the ICC has been engaged.
- Independent experts should have one or more of the following qualifications:
 - First-hand experience in international and/or transnational criminal investigations or prosecutions;
 - Direct experience of the environment in which the Office and the Court operate;
 - Demonstrated expertise in working with individuals and/or communities affected by atrocity crimes;
 - Understanding of sexual or gender-based violence, international human rights law, and/or international humanitarian law.
- Considerations of gender parity, together with geographic representation, are also critical.
- At the appropriate time, the committee should convene a public forum to introduce itself and to explain the election process in greater detail. The committee should also keep the Bureau, the Hague and New York Working Groups, and the Assembly informed of its endeavors.
- The committee should prepare a short-list of the most qualified candidates and interview all short-listed candidates, including through holding "town hall" style meetings where the candidates could also respond to questions from the public.

Budget and Financing

- The Assembly should fully fund the expert search committee, including with additional voluntary contributions, if needed, to cover the travel costs of all its members.
- Bureau members might consider seconding an individual or individuals to provide administrative support to the committee. Alternatively, it could consider negotiating a partnership with an independent academic institution to “house” the search committee.¹

Proposed Timeline

- **December 2018:** A basic framework for the election process should be included in the Assembly’s omnibus resolution; it should mandate the Bureau to lead the selection process in a transparent, consultative manner.
- **By March 2019:** Expert committee should be established.
- **By July 2019:** Terms of reference are adopted and expert committee members are selected.
- **September – December 2019:** Briefings to NY and Hague Working Groups, while a long list of candidates is solicited.
- **By December 2019:** Search committee issues a public progress report.
- **January – July 2020:** Ongoing research/analysis of candidates; by July 2020, a short list of candidates is made public.
- **July – November 2020:** Committee assessment of shortlisted candidates, including public forums introducing candidates to civil society and States Parties.
- **December 2020:** ICC Prosecutor elected.

¹ The 2019 experience for elections to the Inter-American Court of Human Rights may be instructive in this regard. See “Using Transparency to Strengthen the Inter-American Human Rights System,” at <https://www.wcl.american.edu/impact/initiatives-programs/center/programs/human-rights-education/independent-panel-for-election-of-judges/>.