

## **Bureau of the Assembly of States Parties**

### **Election of the Prosecutor - Way Forward**

**This document, which was adopted by the Bureau on 13 November 2020, supplements the process contained in the Terms of Reference<sup>1</sup> for the Election of the Prosecutor.**

1. The list of candidates considered in the consultation process to identify a consensus candidate for Prosecutor shall be expanded. In addition to the four candidates selected by the Committee on the Election of the Prosecutor (CEP), the remaining individuals who were originally interviewed by the CEP that are still willing to be considered shall be included on the expanded list. The process such individuals would be subject to, including the information that will be made available about them, shall be clearly communicated to them, and their consent to it will be a condition of their participation.
2. The four candidates shortlisted by the CEP will remain under consideration by the Assembly in this process and will take part in the new round of hearings. As a matter of general principle and to ensure fairness, all candidates shall be subjected to the same level and type of scrutiny by the Assembly.
3. The curriculum vitae and letter of motivation of the candidates added on the expanded list will be circulated to all States Parties. In addition, the President will request the CEP to prepare an appraisal of each of the additional candidates, as was done for those on the shortlist. These appraisals will be circulated to all States Parties in conjunction with the candidates' curriculum vitae and letter of motivation. The original appraisal of the four shortlisted candidates will also be circulated at the same time. The CEP will share its appraisal with each additional candidate before he/she is asked to give his/her final consent to be added to the expanded list.
4. The following modalities shall apply with respect to the consultation process:
  - a) The President shall appoint, in consultation with the Bureau, five focal points based in New York, one from each regional group, to support the process. The focal points shall not have the same nationality as a candidate or a member of the CEP.
  - b) **Public hearings** will be held at which all candidates, including those on the shortlist that continue to wish to be considered, will be invited to participate. The modalities of these hearings will be the same as those held previously for individuals on the shortlist, with the following modification: the group of focal points will also be responsible for collating and preparing questions for the candidates. The hearings will be co-moderated by the President, Vice-Presidents or members of the group of focal points, as well as representatives of the civil society.
  - c) Following the public hearings involving all candidates, the **consultation process** will continue. Consultations will be:
    - i. **Bilateral in nature.** The group of focal points will reach out to all States Parties to solicit

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<sup>1</sup> ICC-ASP/18/INF.2, adopted by the Bureau on 3 April 2019

views on and support for the candidates under consideration. The group of focal points will not address issues beyond the aforementioned scope of consultations.

- ii. **Comprehensive, proactive and designed to build consensus.** Each State Party will be approached, more than once, during the process by the group of focal points and consultations shall be designed to identify where consensus might be possible and work to build that consensus through repeated consultations, including and as necessary involving the President and Vice-Presidents. Focal points from a particular region shall not be limited only to consultations with States Parties from that region.
  - iii. **Transparent.** The group of focal points will report directly to the Vice-President and Coordinator of the NYWG and the President and will provide regular updates to the Bureau and States Parties.
- d) The consultation process will continue to be in New York. The Permanent Missions of States Parties to the UN in New York shall be the point of access for the focal points. It will be for each State Party, however, to decide who will be their main interlocutor(s) for engagement on their side for ongoing consultations.
  - e) The Bureau strongly urges States Parties to refrain from nominating or endorsing, individually or collectively, any candidate(s), until efforts to identify a consensus candidate are completed. States Parties are urged strongly by the Bureau to refrain from campaigning or otherwise rallying support for the candidates.
  - f) The New York formation of the Bureau shall meet in-person, with the possibility of remote participation, with five focal points attending, as soon as the CEP has provided States Parties with the requested information (names of candidates to be included on the expanded list and appraisals for each candidate), subject to the availability of premises at the UN Headquarters. This meeting shall address further aspects of the way forward and timelines, including specific modalities of bilateral consultations to be conducted by the group of focal points with the guidance of the Vice-President and Coordinator of the NYWG and under the overall leadership of the President, and practical ways and means of ensuring that the overall process stay on course and yield the desired results in the spirit of mutual trust, openness, transparency and inclusiveness. Follow-up meetings may be convened, if needed, to assess the state-of-play.
  - g) The President, with the assistance of the group of focal points, will hold informal consultations with States Parties, officials of the ICC and civil society on additional steps to assess if the candidates under consideration fulfil the criteria stipulated in Article 42(3) of the Rome Statute, with a special focus on the high moral character of the candidates. The President will inform the Bureau about the results of the consultations and propose a way forward in due course.
  - h) In order to afford the required time for the consultations, the President will further extend the nomination period set to expire on 22 November 2020.
5. This way forward shall not be seen as a precedent for future Prosecutor elections or other Assembly processes.

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