



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Fourth meeting

The Hague

9 March 2018

Agenda and decisions

1. Staff Pension Committee

The Bureau appointed the following two members of the Staff Pension Committee for a two-year term:

- Ms. Doris Brese (Ghana)
- Mr. SeongJun Mo (Republic of Korea).

2. Independent Oversight Mechanism: Update by the Chair of the recruitment panel

The Chair of the recruitment panel for the Head of the Independent Oversight Mechanism (IOM) Ambassador Sergio Ugalde (Costa Rica), recalled that the Bureau had, on 6 March 2018, appointed the other four members of the recruitment panel.¹ He indicated that the panel members had elected Ambassador Adia Sakiqi (Albania) as Vice-Chair of the panel.

Ambassador Ugalde briefed the Bureau on the status of the recruitment process and the proposed way forward, recalling that the panel would be guided by the Terms of reference for the recruitment panel for the Head of the Independent Oversight Mechanism.² The panel had met with the Head of the Court's Human Resources Section (HRS), Ms. Susanne Seegers, and considered issues related to the recruitment process.

As regards recruitment timelines, the panel intended to expedite the recruitment as much as possible, but was mindful that this should not be at the cost of substance or objectivity. The panel aimed to conclude the recruitment process and submit its recommendations to the Bureau by the end of May 2018, but noted that this would depend on a number of factors, including where the candidates would travel from, the availability of panel members and of experts, and the preparation of the short-list by HRS.

The Chair highlighted the issue of engaging experts to provide technical expertise to the recruitment panel as foreseen in the Terms of reference,³ and noted that while the panel had identified an expert from the United Nations Office of Internal Oversight Services (OIOS) based in Geneva, it was required by the Terms of reference to source the other expert from another international organization based in The Hague. Should this not be possible, the panel would require the Bureau's authorization to search outside The Hague.

¹ Ambassador Irene Florence Mkwawa Kasyanju (United Republic of Tanzania); Ambassador Sheikh Mohammed Belal (Bangladesh); Ambassador Adia Sakiqi (Albania) and Ambassador Martin Sørby (Norway). (See annex II).

² Adopted by the Bureau on 18 February 2018. (See annex I).

³ Paragraph (a) of the section entitled "Short-listing" provides in the relevant part as follows: "The panel shall request the assistance of subject matter experts from the United Nations Office of Internal Oversight Services (OIOS), Geneva, and the Organization for the Prohibition of Chemical Weapons (OPCW) or another Hague-based international organization ("experts")...".

Based on this request, and in the interest of expediency, the Bureau authorized the panel to proceed to find a suitable expert outside The Hague, in case the panel was unable to find another expert in The Hague.

The Chair described the procedures to be followed by HRS and the panel, respectively, in determining the long-list and the eventual short-list of 15 candidates, in administering the written test and conducting the interviews. The panel would consult with the experts in setting the written test which the experts would grade, given their technical knowledge of the substantive aspects of the functions of the post; nonetheless the panel would have oversight to ensure that the grades were consistent and that the grading process was as objective as possible. The panel would also pose questions at the interview stage on issues that they thought needed to be asked regarding the IOM, since the panel members were more familiar with the daily functioning of the Court and the requirements of the post. The panel would then grade the interviews.

The Chair also indicated that HRS would take the requisite measures so that candidates could respond, both in the written test and in the interviews, in either of the two working languages of the Court, noting as well the Vice-Chair, Ambassador Sakiqi, is fluent in French.

The panel proposed to rank the candidates into two tiers: a) those who were deemed to be most suitable for the post of head of the IOM, and b) those who maybe qualified but who had not made it to the top tier. The panel still needed to consider whether to recommend a particular candidate for the post, as they had noted that the terms of reference were silent on this.⁴ In any case, all candidates will be ranked according to the marks they had obtained throughout the recruitment process.

3. Independent Oversight Mechanism: consideration of the proposal to appoint an external interim Head

The Bureau began its consideration of the proposal by the President of the Assembly regarding the appointment of an external interim Head of the IOM.

The Acting Head of the IOM, Ms. Judit Jankovic, briefed the Bureau on the status of the workload of the IOM, in particular in relation to its investigation mandate. She noted, *inter alia*, that a vacuum had resulted from the departure of the former Head of the IOM, who was a senior investigator, and described the process for prioritizing cases, taking into account any operational risk to the organization. She also indicated the advantages and disadvantages of having the senior investigator, who could be recruited for a short term, also appointed as interim Head of the IOM.

For his part, the President recalled the background of the establishment of the IOM and the adoption of its operational mandate, and highlighted the operational discrepancy that had arisen between the procedure set out in rule 26 of the Rules of Procedure and Evidence for handling complaints of misconduct made against elected officials, and the procedure set out in the operational mandate of the IOM.⁵ He noted that the former Head of the IOM had identified this discrepancy, had highlighted the need to align the Rules of Procedure and Evidence with the later operational mandate of the IOM, and had made a recommendation that rule 26 be amended to reflect the new procedures put in place by the Assembly in the operational mandate.⁶ He recalled that the Study Group on Governance would consider the amendment proposal in 2018.

The President highlighted that his proposal for the recruitment of an interim Head of the IOM was aimed at strengthening the capacity of the IOM, in particular its investigative capacity, given the lack of adequate capacity in this aspect of its mandate.

A representative of the Court's HRS described the options for the recruitment of an individual on a short-term contract (STA) and stated that it was for the Bureau to decide on the option. He noted that if a regular recruitment process were to be held for the interim Head, this could have a detrimental impact upon the time and resources HRS could devote to the regular recruitment of the Head of the IOM.

⁴ As regards the selection decision, the Terms of reference provide that "the candidates who are deemed to pass the interviews and have been found suitable shall be presented to the Bureau, along with the ratings, assessment and recommendation as necessary." (See the section entitled "Selection decision").

⁵ Adopted in 2013 by resolution ICC-ASP/12/Res.6, annex.

⁶ ICC-ASP/6/8, appendix to annex I.

Some Bureau members expressed support for the President's proposal for the recruitment of an interim Head of the IOM and welcomed the caveat that the person would not be a candidate for the post of Head. It was stressed however that the appointment of an interim Head should not be a reason to delay the recruitment of the Head.

On the other hand, some doubt was expressed as to the urgency for the recruitment of an interim Head, since that process could take at least one month, and thus an explanation of the foundations for the urgency was requested.

Further, the President was asked to explain the procedure by which a suitable candidate would be identified; it was noted in this regard that it was important to establish rules or special procedures to deal with unexpected vacancies.

A query was posed regarding the legal basis for the Bureau to delegate the authority to recruit an interim Head to the President.

4. Other matters

a) Remarks by Vice-President of the Assembly

The Vice-President of the Assembly, Ambassador Momar Diop (Senegal), informed the Bureau that he would shortly be ending his posting in The Hague. He had been prepared to engage with the work of the Assembly for the three-year mandate of the Bureau but, due to this development, he would resign as Vice-President of the Assembly and Coordinator of The Hague Working Group.

The President expressed his gratitude for the support which Ambassador Diop had extended to him during his term as Vice-President and wished him the best in his new endeavour.

b) Interpretation for Bureau meetings

As regards a request for the Registry to provide interpretation into English and French for Bureau meetings held in The Hague, it was noted that the response of the Registry had in essence indicated that such services could not be provided due to budgetary reasons, a point some Bureau members did not find convincing. The Bureau would consider this matter at a future meeting.

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Annex I

BUREAU OF THE ASSEMBLY OF STATES PARTIES

The Terms of reference were adopted by the Bureau on 18 February 2018 via a silence procedure

Terms of reference¹ for the recruitment panel for the Head of the Independent Oversight Mechanism (IOM)

Mandate

1. The mandate of the recruitment panel (“panel”) shall be to assist the Bureau in its decision-making on the recruitment of the Head of the Independent Oversight Mechanism at the earliest possible date, in accordance with resolution ICC-ASP/12/Res.8.² The panel would endeavour to assist the Bureau by submitting recommendations. The Bureau would then make the decision on the person to be appointed as Head of the IOM.
2. The mandate would be of limited duration³ and would conclude upon the appointment of the Head of the IOM.

Composition

3. On the basis of past practice, the panel shall consist of five State representatives of States Parties which are not members of the Bureau and shall reflect equitable geographical distribution,⁴ and shall be comprised of representatives of ambassadorial rank who may, in exceptional circumstances, be represented by another member of his/her delegation when necessary.

Selection of members

4. The members of the panel shall be identified by the Chair of the panel on the basis of informal consultations with each regional group. The Bureau would then appoint the panel members.

¹ Insofar as the terms of reference do not provide for a specific circumstance, the Rules of Procedure of the Assembly of States Parties shall apply.

² Paragraph 5 provides as follows: “5. *Invites* the Bureau to commence the recruitment of the Head of the Independent Oversight Mechanism at the earliest possible date;”

³ At its 19 January 2018 meeting, the Bureau decided to request States Parties that are not members of the Bureau to conduct the recruitment of the Head of the Independent Oversight mechanism at the earliest possible date, with the understanding that the name of the Chair of the recruitment panel would be proposed to the Bureau for appointment.

⁴ As a precedent for equitable geographical representation, see the 19 October 2010 decision of the Bureau, by which it adopted the draft decision on the appointment of the Selection Panel to carry out the recruitment procedure for the Head of the Independent Oversight Mechanism, para. 3. (http://www.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2010-Bureau15-D-27Oct2010.pdf)

Working methods of the panel

Vice-Chairperson

5. The panel shall elect a Vice-Chairperson.

Meetings

6. The panel shall meet as often as necessary or as required by the Chairperson.

Communication

7. The Panel shall convene in person, in particular when carrying out the function of the technical assessment of candidates. Other technological means of communication via long distance may also be used when necessary, e.g. teleconference, Skype, but should not constitute an alternative to meeting in person.

Confidentiality

8. The members of the panel shall ensure the confidentiality of all communications and discussions during the recruitment process.

Functions of the panel

9. The Head of the IOM shall be appointed by the Bureau in his/her personal capacity on the basis of his/her relevant qualifications and experience.
10. The functions of the panel shall include the assessment of candidates at each stage of the recruitment process.
11. The panel shall take into account the recommendation of the Assembly contained in paragraph 6 of resolution ICC-ASP/12/Res.6, replicated below:

“6. *Recommends* that, in considering the candidates with a view to recruiting the staff of the Independent Oversight Mechanism, the following elements, which include, inter alia, criteria governing the employment of staff of the Court provided in the Rome Statute, be taken into account:

- a) The highest standards of efficiency, competency and integrity;⁵
- b) The following criteria set forth in article 36, paragraph 8, on the election of judges, which apply *mutatis mutandis* to the employment of staff:⁶
 - (i) equitable geographical representation; and
 - (ii) a fair representation of female and male persons;
- c) That the Head of the Independent Oversight Mechanism should have significant experience, whether national or international, in judicial institutions and bodies;
- d) That the selected candidates have the ability to communicate effectively, via written and oral means, in at least one, and preferably in both working languages of the Court, and to negotiate effectively

⁵ Rome Statute of the International Criminal Court, article 44, paragraph 2.

⁶ *Ibid.*

through the establishment of constructive interpersonal relationships in a multicultural setting. Knowledge of another official language of the Court would be an added advantage and asset; and

e) That the vacancies be filled preferably by nationals of a State Party to the Rome Statute, or of a State which has signed and is engaged in the ratification or accession process, but that nationals from non-States Parties may also be considered;”

Procedures to be applied by the panel

a) Consensus

12. Every effort shall be made to agree on the recommendations to the Bureau by consensus. If consensus cannot be reached, the recommendations shall be adopted by vote of a simple majority of the members present and voting. In the case of a tie, the Chairperson’s vote shall be decisive. The phrase “members present and voting” means members present and casting an affirmative or negative vote.

b) Quorum

13. The presence of an absolute majority of the members constitutes the quorum for adopting the recommendations.

c) Voting rights

14. Each panel member shall have one vote.

Reporting

15. The evaluation procedure of the panel shall be transparent. The panel shall regularly and in detail brief the Bureau on its activities. The States Parties to the Rome Statute shall be kept informed through the reporting procedures to the Bureau.

Replacement of the Chairperson or the Vice-Chairperson

16. If the Chairperson or the Vice-Chairperson ceases to be able to carry out his/her functions or ceases to be a member of the panel, he/she shall cease to hold such office and a new Chairperson or Vice-Chairperson shall be elected for the unexpired term.

Interview and evaluation of candidates with the same nationality as a panel member

17. Where it has been established that a candidate has the same nationality as a member of the panel, that member shall, as of the short-listing stage, recuse himself/herself and shall not participate in the evaluation of that candidate.⁷

Vacancy on the panel

18. Where a vacancy arises, the Bureau shall appoint another member of the Panel, bearing in mind the geographical balance of the panel.

⁷ ICC-ASP/1/Res.10, annex, para. 4, as amended by resolution ICC-ASP/4/Res.4, annex I: “For the purpose of recruitment, candidates who could be regarded as nationals of more than one State shall be considered nationals of the State in which they ordinarily exercise civil and political rights.”

Recommendations of the panel

19. Every effort shall also be made to arrive by consensus at the adoption of recommendations for consideration of the Bureau. Once the panel has completed its work, it shall submit to the Bureau a ranked short-list of qualified candidates, which would include information and analysis of a technical character, strictly on the suitability of the candidates.

Selection process

Stages for the selection process

- a) The stages for the selection process shall chronologically proceed in the following order:
 - (i) Long-listing; then,
 - (ii) Short-listing; then
 - (iii) Written exams; then,
 - (iv) Interviews (can be several rounds); and finally,
 - (v) Selection of candidate by the Bureau / Rostering of suitable candidates.
- b) All criteria for each stage, the pertinent questions for the written exam and interviews, the weights of each question vis-à-vis the total score, and the passing score for the written exam must be established prior to each stage of the selection process and shall be objective, comparable and quantifiable.
- c) A detailed outline of the process of each of the stages will be included in the final selection report. A summary (non-confidential) selection report will also be made available.

Long-listing

- a) The panel shall request the assistance by the HRS of the Court in its long-listing, which shall be done by criteria on the basis of eligibility requirements for education and experience set forth in the vacancy announcement.

Short-listing

- a) The panel shall request the assistance of subject matter experts from the United Nations Office of Internal Oversight Services (OIOS), Geneva, and the Organization for the Prohibition of Chemical Weapons (OPCW) or another Hague-based international organization (“experts”) and the HRS in its short-listing, which shall be done by criteria on the basis of suitability to the post of the Head of the IOM based on the candidate’s submitted application. The criteria should be objective and related to all requirements as indicated in the vacancy announcement.
- b) The purpose of short-listing is to limit the number of candidates to a maximum of 15 candidates. Where the number of long-listed candidates is 15 or less, all candidates shall be allowed to take the written exam.
- c) The experts shall be identified by the panel from persons with substantial expertise in the areas of responsibility of the post.

Written exam

- a) Experts shall be asked to provide a set of pre-established questions which pertain to the “duties and responsibilities” and “knowledge, skills, abilities” indicated in the vacancy announcement. HRS will facilitate the consolidation of these questions along with the weights attached to each question totalling 100%. The number of questions and their complexity shall determine the weight as agreed amongst each expert.
- b) The questions will remain confidential and unbeknownst to any party or individual except for the experts and representatives of HRS until they are given to the candidates during the written exam.
- c) The anonymous written exam results will be assessed independently by the experts and consolidated by HRS for final approval by the panel.

Interviews

- a) The panel shall be assisted by the experts and the representatives of the HRS in conducting the interviews.
- b) When assessing questions, in line with the principles of competency based interviewing, due regard shall be given to those who provide answers relating to actual experience.
- c) Similar to the questions for the written exams, the questions will remain confidential and unbeknownst to any party or individual except for panel, relevant experts and/or representatives of the HRS until the conclusion of all interviews.

Selection decision

- a) The candidates who are deemed to pass the interviews and have been found suitable shall be presented to the Bureau, along with the ratings, assessment and recommendation as necessary.
- b) The final selection for the post of Head, IOM shall be made by the Bureau. Inclusion of candidates, who passed the interviews, into a Roster shall also be decided by the Bureau as applicable.

Notification and implementation of the decision

- a) HRS shall inform the selected candidate of the selection decision within 7 days after the decision is made in writing by the Bureau.
- b) Candidates placed on a roster shall likewise be informed of such placement within 14 days after the decision is made by the Bureau and that they may be selected for this post, subject to the approval of the Bureau of the selection or if it decides to proceed with another selection procedure, if it becomes available within 2 years from the time the decision in writing is made by the Bureau. Other candidates not selected or not placed on the roster shall be so informed by HRS within 14 days after the selection decision is made in writing. Applicants eliminated prior to the assessment exercises shall likewise be informed.
- c) If the selected candidate fails to take up the functions within the specified time frames for personal reasons or vacates the position within one year, the Bureau may decide to select

another candidate from the Roster. It is recommended, due to these circumstances to simply select a candidate who is rostered without going through the cumbersome process of this selection procedure.

- d) The on-boarding of the candidate will follow the Court's regular on-boarding process, including security clearance and a medical clearance.

Annex II

BUREAU OF THE ASSEMBLY OF STATES PARTIES

The following decision was taken by the Bureau via respective silence procedures

Appointment of members of the recruitment panel for the Head of the Independent Oversight Mechanism¹

Ambassador Sergio Ugalde (Costa Rica) - Chair²

Ambassador Adia Sakiqi (Albania) – Vice-Chair³

Ambassador Sheikh Mohammed Belal (Bangladesh)

Ambassador Irene Florence Mkwawa Kasyanju (United Republic of Tanzania)

Ambassador Martin Sørby (Norway)

¹ The members other than the Chair were appointed by the Bureau on 6 March 2018.

² Appointed by the Bureau on 26 February 2018.

³ Elected by the panel as its Vice-Chair.