

**SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES**

**Consultations to identify the next Prosecutor of the International Criminal Court**

**23 November 2011**

**Statement by the President of the Assembly**

Excellencies,  
Colleagues,

Thank you for coming to this informal meeting of the New York Working Group, where we will discuss the process of electing the next Prosecutor of the International Criminal Court. The purpose of this meeting is to give a detailed account of the activities that have taken place since the release of the report of the Search Committee and to discuss with you the way forward, as we are getting closer to the tenth session of the ASP which, as you know, will begin on 12 December. The election of the next Prosecutor is a decision made by all 118 States Parties to the Rome Statute. It is therefore important to ensure the maximum level of transparency and the involvement of all States Parties in this open format.

In the election of the Prosecutor we are at all times bound by the relevant provisions of the Rome Statute and resolutions of the Assembly. In particular, I refer to article 42 of the Rome Statute, concerning the Office of the Prosecutor, and Assembly resolution ICC-ASP/3/Res.6 concerning the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the Court. Specifically, we have sought to abide by paragraph 33 of that resolution's annex, which states that "every effort shall be made to elect the Prosecutor by consensus."

You will recall that, in an open meeting of the Bureau of the Assembly on 25 October, the report of the Search Committee for the position of Prosecutor of the International Criminal Court was presented to States Parties. Having reviewed over 50 suggestions and expressions of interest and having interviewed the eight most promising individuals, the Search Committee had presented a shortlist of four names to the Bureau. The four individuals were Ms. Fatou Bensouda, Mr. Andrew Cayley, Mr. Mohamed Chande Othman and Mr. Robert Petit. I must underscore at this point the Search Committee's finding that these individuals not only fulfilled the requirements under article 42 of the Rome Statute, but were also those most qualified for the position.

At that meeting, I had announced that it was my intention to conduct intensive consultations with a view to ascertaining, by Thanksgiving Day, whether we could achieve a consensus among the States Parties who will be the next Prosecutor. In a letter dated 28 October, I informed you of the appointment of five regional focal points to assist me in that effort. Those regional points are:

- HE Mr. Charles Thembani Ntwaagae (Botswana),
- HE Mrs. Sofia Mesquita Borges (Timor Leste),
- HE Mr. Margus Kolga (Estonia),
- HE Mr. Eduardo Ulibarri (Costa Rica), and
- HE Mr. Herman Schaper (Netherlands).

After the presentation of the report of the Search Committee, I met with the Permanent Representatives (and in one case the Deputy Permanent Representative) of the four States whose

nationals had been put on the shortlist. In those conversations, I discussed the process ahead of us, and their role in the process vis-à-vis other States Parties and asked for their support in the effort to forge a consensus.

Throughout this process, I have consulted with Ambassador Intelmann, the incoming President of the Assembly who will be presiding over the election of the next Prosecutor. Since her arrival in New York at the end of October, she has been closely involved in all the consultations and we have been leading this process together over the past two weeks.

In parallel to the consultations conducted by the focal points, myself and Ambassador Intelmann, I also organized a series of meetings of the New York Working Group, where the four candidates shortlisted by the Search Committee were given the opportunity to present themselves to States Parties, and States Parties in turn had an opportunity to ask questions and engage in a dialogue with the candidates. The meetings were held

- On 2 November, with Ms. Bensouda,
- On 9 November, with Mr. Petit,
- On 11 November with Mr. Cayley, and
- On 14 November with Mr. Othman.

I would like to take this opportunity to once again thank all the candidates, some of whom literally travelled halfway around the world, for coming and all of you for attending the meetings and asking a series of questions. I am thankful for the positive feedback I have been given by many of you in this respect, and I do hope that this can serve as a positive example for the future.

Since the last candidate meeting on 14 November, the focal points and I have conducted broad consultations with all States Parties to the Rome Statute. They reported the outcome of their consultations to me at two meetings on 18 November and earlier today.

The preliminary findings are as follows:

First, there is a strong desire to see the next Prosecutor elected by consensus, if at all possible. There is also a very strong sentiment that the most qualified person should be elected.

Second, there is a pervasive sentiment that the next Prosecutor should come from Africa. While this view has been put forward in very different ways and some of you have expressed explicit support for candidates from other parts of the world, we feel nevertheless safe to conclude that a consensus will only be possible if indeed we focus on the two names from the African region. Since last Friday, the consultations held have therefore focused on the two potential African candidates. Our consultations since have indicated that this is indeed the right direction and that there is general acceptance of this approach.

At the same time, a number of States have not expressed a clear preference in consultations, either because they felt that either candidate would be suitable for the position or due to the lack of instructions. The view also seems to exist that all four – and now both – names under consideration offer very good options for the decision as to who will be the next Prosecutor.

After narrowing the scope of the consultations to the two names from Africa, I informed the two States whose nationals were shortlisted by the Search Committee that they are no longer part of the consultations underway. Also, I spoke by phone with Messrs. Cayley and Petit to inform them of the

direction of the consultations. They both expressed their appreciation for the process and emphasized in particular the usefulness of trying to get a consensus on this matter.

Since last Friday, Ambassador Intelmann and myself have met first individually and then in a combined meeting with the Ambassadors from the Gambia and the United Republic of Tanzania. In those meetings, we have discussed the status of the consultations including preliminary levels of support, with the proviso that a significant number of States had not expressed a clear preference yet. We also discussed the way forward, in preparation of this meeting this afternoon and in order to present a clear picture to States Parties on the way forward.

After the meeting with the focal points this morning and with the Permanent Representatives of the two countries in question, I can conclude the following:

While some States Parties have given a clear indication of their preference some other States have yet to express themselves clearly. At the same time, we are approaching the Assembly of States Parties meeting and I share the sense of urgency expressed to me over the past few days. After consultations with Ambassador Intelmann and my focal points this morning, I wish to inform you there is an agreement with the two countries in question that we are available to continue this process until the close of business on 30 November, with the purpose of exhausting all efforts to reach a consensus. We see no point in continuing the exercise beyond that point. I therefore appeal to everybody who has not given clear indications so far to do so as quickly as possible, to the focal points in their respective regions.

As you know, no candidate has so far formally been nominated. Indeed, I am grateful that no such formal nominations have been made, as this shows that States Parties are fully cooperating with this informal consultation process. As a technical requirement under resolution ICC-ASP/3/Res.6, we have now several times extended the nomination period to give us more time in the search for consensus. Given that the extended nomination period expires again on 25 November, we would formally extend the nomination period one more time to allow our consultations to come to a successful conclusion. Again, our target date for the conclusion of this consultation process would be 30 November, close of business in New York.

Let me conclude my briefing by thanking those of you who have supported this process and in particular the five focal points that have made a tremendous contribution to our effort to find consensus.

I shall also schedule another meeting like this for 1 December, in order to give you a final update on my consultation process.

Thank you.

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