

ELECTION OF THE REGISTRAR: DUE DILIGENCE PROCESS

Confidential channel regarding due diligence

1. In accordance with the respective legal framework (see Assembly document ICC-ASP/21/2), the Registrar of the International Criminal Court will be elected by the judges of the Court from the short list below following a process to establish his or her competences and high moral character:

- Mr. Juan Pablo Albán Alencastro (Ecuador);
- Mr. Amady Ba (Senegal);
- Ms. Fidelma Teresa Donlon (Ireland);
- Mr. Luis Mariano Hermsillo Sosa (Mexico);
- Mr. Pouraogo Julien Kouda (Burkina Faso);
- Ms. Kate Mackintosh (United Kingdom of Great Britain and Northern Ireland);
- Mr. Christian Mahr (Japan);
- Ms. Gabrielle McIntyre (Australia);
- Ms. Rosette Muzigo-Morrison (Uganda);
- Mr. Ibrahim James Pam (Nigeria);
- Ms. Marie Inger Tuma (Sweden); and
- Mr. Oswaldo Zavala Giler (Ecuador).

2. Article 43, paragraph 3, of the Rome Statute requires the Registrar of the Court to be of “high moral character”. For that purpose, the Bureau of the Assembly has established a due diligence process, whereby any allegation of human rights violations, incidents of harassment, including sexual harassment, abuse of authority, discrimination and bullying in the workplace, as well as other ethical or legal breaches of a serious nature such as fraud or corruption, may be reported confidentially no later than 1 September 2022, to the Independent Oversight Mechanism (IOM), a subsidiary body of the Assembly, at the following email address:

IOM.Vetting@icc-cpi.int

3. The allegation and its review by the IOM shall be kept confidential at all times and it will be treated in accordance with the text set out below. The IOM can also be contacted directly at the above email address with any questions regarding the process.

Annex

PROPOSAL BY THE PRESIDENCY ON DUE DILIGENCE PROCESS FOR CANDIDATES FOR REGISTRAR AGREED BY THE BUREAU OF THE ASSEMBLY ON 8 JUNE 2022

1. The Assembly requested the Bureau to “establish a due diligence process before September 2022 for candidates for Registrar in consultation with the Presidency of the Court and the Independent Oversight Mechanism (IOM), to assist in the determination of the criterion of “high moral character as required by article 43, paragraph 3, of the Rome Statute.”¹
2. Following the required consultations with the Presidency of the Court and the IOM, the Bureau establishes the following process to be conducted by the IOM, with the assistance of the Registry as required.
3. The ICC Presidency shall provide to the IOM, no later than 15 August 2022, the list of candidates (the “shortlisted candidates”) that it is submitting to the Assembly for their recommendations. The Presidency shall also provide the IOM the complete applications of these candidates.
4. The assessment shall comprise two parts. One reviewing existing background information concerning the shortlisted candidates and a second receiving and reviewing allegations of misconduct made against them, if any.

Review of Background Information

5. The IOM shall contact the shortlisted candidates and require them to complete a detailed questionnaire, and provide consent to contact former employers and employees, State authorities, or academic institutions. Failure to submit a completed questionnaire or provide the required consent will automatically disqualify any candidate from being further considered.
6. The IOM shall conduct an in-depth background check of criminal, academic and employment records of the shortlisted candidates with the assistance of relevant sections of the Registry of the International Criminal Court as appropriate. The check may include a review and analysis of open-source information and contacts with former employers and employees.

Receipt and Review of Allegations of Misconduct

7. Upon receipt of the list of shortlisted candidates, the IOM shall establish and assist in widely disseminating a confidential channel for the receipt of allegations of misconduct against any of the shortlisted candidates. The opening of the confidential channel shall be communicated to all States Parties by the Secretariat of the Assembly of States Parties and its dissemination shall be conducted through the Court’s website and social media accounts, as well as through efforts by States Parties and Civil Society to provide information thereon to relevant agencies and professional associations. Such dissemination shall include details as to the process

¹ Resolution ICC-ASP/20/Res.4 on the Review of the International Criminal Court and the Rome Statute system, Part II – Election of the Registrar, operative paragraph 4.

outlined below regarding how allegations received will be treated by the IOM. The confidential channel shall remain open for a minimum of forty-five calendar (45) days.

8. For the purposes of this process, “misconduct” refers to human rights violations, incidents of harassment, including sexual harassment, abuse of authority, discrimination and bullying in the workplace, as well as other ethical or legal breaches of a serious nature such as fraud or corruption.

Process for Review

9. Any allegation made shall be accompanied by relevant information and documentation to the extent that it is available to the complainant.
10. The IOM shall acknowledge receipt of any allegation received, and explain the process of review, and how the information received will be treated. The complainant shall also be informed that they may be contacted by the IOM to provide additional details of their allegations, and that failure to provide such additional information may lead to the allegation not being reviewed any further. Anonymous complaints shall not be accepted.
11. The allegation and its review by the IOM shall be confidential and remain so at all times. Under no circumstances, the identity of the complainant shall be disclosed without his or her prior consent. Only when the allegation cannot be reviewed and assessed on the basis of available corroborative evidence, and disclosure is necessary to ensure due process may the IOM seek the consent of the complainant to any such disclosure. When such conditions are met and the IOM does not obtain the required consent from the complainant, the IOM shall set aside the allegation and discontinue its review.
12. The IOM shall first review the allegation and consider whether it relates to misconduct. If it does not, and relates rather to concerns about the candidate’s qualifications, abilities, or past performance, it shall forward the allegation to the Presidency of the Court, but only after obtaining the consent from the complainant to do so. It will be for the Presidency to decide whether or not to consider the issue further.
13. The IOM shall initially review the credibility of the allegation, including by obtaining further information and details from the complainant, either in writing or through an interview, and corroborating to the extent possible the information obtained.
14. The IOM shall also assess the materiality of the allegation, determining the type of misconduct at issue and its seriousness.
15. Any allegation found to be credible and material by the IOM shall be put to the candidate, to allow them a full and fair opportunity to respond to the allegation, either in writing or through an interview.

Reporting

16. No later than 30 November 2022, the IOM shall submit to the Presidency of the Court and the Presidency of the Assembly a report regarding any

concerns it may have identified with respect to the high moral character of any of the shortlisted candidates. In particular, it shall include an assessment as to whether any allegation made is supported by sufficient evidence to raise concerns about the candidate's high moral character, taking into account the credibility and materiality of the allegation.

17. The IOM report shall also include information on the overall number of allegations received that lacked sufficient credibility or materiality to be put to the candidates, or that otherwise were not reviewed by the IOM such as anonymous complaints, lack of consent to disclose identity when necessary or performance-related allegations. In order to preserve the confidentiality of the process, only general information on the reasons to set aside the complaint shall be provided.
18. If an allegation was presented to a candidate, a short summary of that allegation and the response provided by the candidate (taking efforts to not provide details that would identify the complainant) will be included in the report.
19. Should the IOM be unable to reach a definite conclusion on the allegation by the time of its 30 November report, it shall assess, in consultation with the Presidency of the Court, whether it would be possible to take further investigative steps to confirm or refute the allegation. Should the IOM undertake such further steps, it shall submit a second report on such additional investigative steps to the Presidency of the Court and the Presidency of the Assembly at least ten (10) working days before the scheduled time of the election of the Registrar by the Judges of the Court.
20. The IOM shall provide any candidate who was notified of an allegation against them the IOM's assessment of the allegation, at the same time as the report is submitted to the Presidency of the Court and the Presidency of the Assembly. The IOM shall also inform the complainant in such cases.
