



Assembly of States Parties

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Bureau of the Assembly of States Parties: Election of the Prosecutor - Terms of Reference

I. Background

1. Article 42(3) of the Rome Statute sets out the main criteria to be fulfilled by the Prosecutor (see annex I). Resolution ICC-ASP/1/Res.2, as amended by resolution ICC-ASP/3/Res.6, contains the rules governing the nomination and election of the Prosecutor of the International Criminal Court (see annex II). With respect to the **nomination** process for the Prosecutor, the resolution refers to the rules governing the nomination of candidates for judges, which apply *mutatis mutandis* (para. 28). In addition to those rules, “nominations for the post of the Prosecutor should preferably be made with the support of multiple States Parties” (para. 29).
2. With respect to the **election** of the Prosecutor, no such reference to the rules governing the election of judges is made. Instead, in accordance with para. 33, “every effort shall be made to elect the Prosecutor by consensus.” In the absence of such a consensus, under article 42(4) of the Rome Statute (see annex I), the Prosecutor is to be elected by secret ballot by an absolute majority of States Parties.
3. The Bureau is of the view that such efforts should be undertaken in a structured and transparent manner, as outlined below.

II. Composition of the Committee and panel of experts

4. The Bureau shall designate one representative per regional group, based on consultations with the regional groups, as members of a Committee on the Election of the Prosecutor. The members of the Committee shall serve in an individual and independent capacity and shall not seek, or act on, instructions from any external source.
5. The Committee shall designate one of its members as Chair and one of its members as Vice-Chair.
6. Where a vacancy arises, the Bureau, in consultation with the relevant regional group, shall designate another member from that regional group to serve in the Committee in his or her place.
7. The Bureau shall appoint a panel of five independent experts, one per regional group, to assist the Committee in carrying out its mandate. States Parties and civil society may put forward nominations. The experts shall not have the same nationality as a Committee member. These experts shall have extensive national or international criminal investigation, prosecution or judicial experience.

8. The Bureau shall designate the members of the Committee and appoint the experts with due regard to gender and geographical balance, and adequate representation of the principal legal systems of the world.

III. Mandate of the Committee and panel of experts

9. The Committee shall facilitate the nomination and election of the next Prosecutor in accordance with the working methods set out in section IV below. The Committee is to be guided by the applicable provisions of the Rome Statute, in particular article 42, as well as the procedure for the nomination and election of the Prosecutor set out in resolution ICC-ASP/1/Res.2, as amended.

10. The panel of experts shall assist the Committee in an advisory capacity, in accordance with section IV below.

IV. Working methods of the Committee and panel of experts

11. The Committee shall work independently and shall meet as often as necessary or as required by the Chair. The Committee shall convene in person, by correspondence, or via remote link. The Committee shall endeavour to meet in person when carrying out the function of the assessment of candidates. When necessary, the President of the Assembly of States Parties may, in consultation with the Bureau and the Chair of the Committee, convene a meeting with the Committee. The Committee shall decide on the venue for its meetings, taking into account cost-effectiveness.

12. The panel of experts shall recommend a draft vacancy announcement with the requirements for the position, as set out in article 42 of the Rome Statute. The panel of experts may consider including the following requirements for the position: experience in the prosecution of complex criminal cases; demonstrated management experience; in-depth knowledge of national or international criminal law and public international law. This vacancy announcement shall be approved by the Committee and then the Bureau, and be widely disseminated by States Parties, the Secretariat and the Human Resources Section of the Court.

13. The Committee shall receive applications from individuals. Nominations or endorsements by States Parties or other entities are strongly discouraged at this stage.

14. The Committee shall review the applications received in light of the relevant criteria as set out in article 42(3) of the Rome Statute and in the vacancy announcement, decide on a longlist of candidates and subsequently undertake competency-based interviews.

15. The panel of experts shall assist the Committee, including by paper-sifting the applications, recommending a longlist of candidates, and preparing and participating in the competency-based interviews of the candidates. The panel of experts shall share their assessment of the candidates with the Committee prior to the elaboration of the shortlist.

16. The Committee shall establish by consensus an unranked shortlist of three to six of the most highly qualified candidates, arranged in English alphabetical order.

17. The Chair of the Committee shall inform the President of the Assembly of States Parties as soon as possible of any issue that might arise and prevent consensus, so that the latter can seek the guidance of the Bureau.

18. Where a candidate has the same nationality as a member of the Committee or an expert, or where there are any other grounds, real or perceived, for a conflict of interest on the part of a member of the Committee or an expert, that member or expert shall recuse him or herself from participation in the evaluation of the candidate. A Committee member or expert shall bring any such conflict of interest to the attention of the Chair.

19. Throughout the process, and subject to the provisions of paragraph 16 regarding highly qualified candidates, the Committee shall have due regard to gender and geographical balance, and adequate representation of the principal legal systems of the world, as well as the best interests of the Court and the Assembly of States Parties as a whole.

20. The Committee shall prepare a final report which shall specify in detail how the shortlisted candidates meet the requirements for the position, as set out in article 42 of the Rome Statute and in the vacancy announcement.

21. The Secretariat of the Assembly of States Parties shall provide the Committee with administrative and technical assistance.

V. Transparency

22. The procedures of the Committee shall be transparent. The Committee shall regularly brief the Bureau on its activities, including information on the applications received (overall number, regional group, gender, legal system). The Committee shall submit to the Bureau a report containing this information for all applications received as soon as possible after the deadline in the vacancy announcement has passed. States Parties shall be kept informed of the relevant discussions through regular briefings by the President to the working groups of the Bureau both in The Hague and in New York. The Committee shall provide an interim report one month in advance of the eighteenth session of the Assembly of States Parties.

VI. Confidentiality

23. The vacancy announcement shall stipulate that any and all information received from individuals that have applied for the position, including their identities, will be treated confidentially by the Committee and the panel of experts. These confidentiality requirements will not apply to individuals who are shortlisted for consideration by States Parties.

24. The members of the Committee, the panel of experts and the Secretariat shall ensure the strict confidentiality of all communications and discussions during the process.

VII. Timeline

25. The Bureau shall decide on the final composition of the Committee and the panel of experts by the end of June 2019. The Committee and the panel of experts shall commence their work as soon as possible thereafter.

26. The vacancy announcement shall be published by 1 August 2019, with a deadline for applications of 90 days. Based on the information contained in the report referred to in paragraph 22, the Committee may recommend an extension of the deadline to the Bureau.

27. The Committee shall submit its final report to the Bureau and to States Parties by the end of June 2020 at the latest.

28. A consultation process will be undertaken thereafter, led by the President in consultation with the Bureau, to identify a consensus candidate, including hearings for shortlisted candidates with States Parties and civil society.

29. The election of the Prosecutor should take place in time to allow for a transitional period of several months before the term of the current Prosecutor expires in June 2021. The election shall therefore take place at the nineteenth session of the Assembly.

Annex I

Rome Statute **Article 42** **The Office of the Prosecutor**

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.

2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

3. *The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.*

4. *The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties.* The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.

[...]

Annex II

Resolution ICC-ASP/1/Res.2¹ **Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court**

[...]

D. Nomination of candidates for the Prosecutor

28. *The procedures for the nomination of candidates for judges shall apply mutatis mutandis to the nomination of the Prosecutor.*

29. *Nominations for the post of the Prosecutor should preferably be made with the support of multiple States Parties.*

30. Each nomination should be accompanied by a statement specifying in the necessary detail how the candidate fulfils the requirements of paragraph 3 of article 42 of the Statute.

E. Election of the Prosecutor

31. The Bureau of the Assembly of States Parties shall fix the date of the election.

32. The Secretariat of the Assembly of States Parties shall prepare a list of candidates in English alphabetical order.

33. *Every effort shall be made to elect the Prosecutor by consensus.*

34. In the absence of consensus, the Prosecutor shall be elected, in accordance with paragraph 4 of article 42 of the Statute, by secret ballot by an absolute majority of the members of the Assembly of States Parties.

35. In the interest of a timely conclusion of the election, if after three ballots no candidate has obtained the required majority, the balloting shall be suspended to give an opportunity for any withdrawal of candidatures. Before such suspension, the President of the Assembly of States Parties will announce when balloting shall resume. Upon resumption of balloting if no candidate obtains in the first ballot the majority required, further ballots shall be taken, which shall be restricted to the candidates obtaining the two largest numbers of votes.

¹ As amended by resolution ICC-ASP/3/Res.6.