

**Nineteenth session, second resumption**

New York, 12 February 2021

Election of the Prosecutor of the International Criminal Court**Note by the Secretariat**

1. The election of the Prosecutor of the International Criminal Court will take place during the second resumption of the nineteenth session of the Assembly of States Parties, to be held in New York on 12 February 2021.

2. On 30 June 2020, the Bureau decided to open the nomination period for the election of the Prosecutor of the International Criminal Court, in accordance with resolution ICC-ASP/1/Res.2, as amended by resolution ICC-ASP/3/Res.6. The nomination period was open between 1 July and 22 September 2020, and was extended until 22 October 2020, 22 November 2020, 13 December 2020, 18 December 2020, 18 January 2021, 5 February 2021, 8 February 2021 at 12 midday (Eastern Standard Time), 8 February 2021 at 14.00 (Eastern Standard Time), and 10 February 2021 at 12 midday (Eastern Standard Time).

3. The elections of the Prosecutor are guided by article 42, paragraphs 3 and 4, of the Rome Statute, and resolution ICC-ASP/1/Res.2, as amended by resolution ICC-ASP/3/Res.6.

4. Article 42, paragraphs 3 and 4, of the Rome Statute provide:

“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.”

5. Paragraphs 28 to 35 of resolution ICC-ASP/1/Res.2, as amended by resolution ICC-ASP/3/Res.6 (“the resolution”), provide:

“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 number of votes.”

6. On 3 April 2019, the Bureau adopted the Terms of Reference for the Election of the Prosecutor.¹ The Terms of Reference provided that the nomination process would be supplemented by the work of a Committee on the Election of the Prosecutor, assisted by a panel of experts. According to the Terms of Reference, the Committee was mandated to “facilitate the nomination and election of the next Prosecutor in accordance with the working methods set out in section IV [of the Terms of Reference]”.²

7. The Committee and the panel of experts prepared a draft vacancy announcement for the position of Prosecutor which was approved by the Bureau on 31 July 2019. The deadline for applications was initially set as 31 October 2019 but was extended, upon the approval of the Bureau, until 25 November 2019. The Committee received complete applications from a total of 89 individuals.

8. The Committee interviewed 14 candidates and submitted its report³ to the Bureau on 30 June 2020, containing a shortlist of four candidates.

9. Informal consultations commenced thereafter, as set out in the Terms of Reference.⁴ On 13 November 2020 the Bureau adopted the “Election of the Prosecutor: Way forward”,⁵ which supplemented the process set out in the Terms of Reference. On 25 November 2020, pursuant to the “Way forward”, the Committee on the Election of the Prosecutor submitted an addendum to its report,⁶ containing appraisals of five additional candidates.

10. The informal consultations continued with the support of the five focal points appointed pursuant to the “Way forward”.⁷ The focal points held four rounds of consultations. The summary of the fourth round of consultations was submitted to the Bureau on 4 February 2021 and considered at a Bureau meeting on 5 February 2021. The Presidency and the focal points were tasked by the Bureau to spare no effort to reach consensus before the morning of Monday, 8 February 2021, in order to enable the Assembly to proceed to the election of the Prosecutor at the plenary meeting scheduled to commence at 15.00 (New York time) that day. States Parties were invited to work closely with the Presidency and the focal points to reach the desired outcome. It was noted that, should it not prove possible to reach consensus, the Assembly would need to proceed to voting as soon as possible. The nomination period was extended on 5 February 2021 until 12 midday on 8 February 2021 (Eastern Standard Time). On 8 February 2021 the nomination period was further extended until 14.00 on 8 February 2021 (Eastern Standard Time).

¹ ICC-ASP/18/INF.2.

² Ibid, para. 9.

³ ICC-ASP/19/INF.2, Add.1 and Add.2.

⁴ ICC-ASP/18/INF.2, para 28.

⁵ https://asp.icc-cpi.int/en_menus/asp/elections/prosecutor/Pages/Prosecutor2020.aspx.

⁶ ICC-ASP/19/INF.2/Add.3 and Add.4.

⁷ The New York-based representatives of the following States Parties were appointed as focal points on 3 December 2020: Brazil; Estonia; Jordan; Portugal; and Sierra Leone.

11. On 8 February 2021 the President of the Assembly, Mr. O-Gon Kwon, informed States Parties that, despite the best efforts of the President, the Vice-Presidents and the focal points, it had not been possible to achieve consensus. The nomination period was further extended until 12 midday (Eastern Standard Time) on 10 February 2021. At the end of the extended nomination period, four nominations had been received.

12. The Secretariat of the Assembly of States Parties placed the nominations of candidates for Prosecutor, together with the accompanying statements referred to in paragraph 30 of the resolution, as well as other supporting documentation, on the Internet web site of the International Criminal Court⁸ as soon as possible after they were received.

13. In accordance with paragraph 32 of the resolution, a list in the English alphabetical order of all persons nominated is contained in annex I to the present note. The supporting documentation for the nominations is contained in annex II to the present note (see ICC-ASP/19/19/Add.1).

14. The procedure to be followed for the election of the Prosecutor is laid down in paragraphs 34 and 35 of the resolution (see paragraph 5 above).

⁸ https://asp.icc-cpi.int/en_menus/asp/elections/prosecutor/2021Nominations/Pages/default.aspx.

Annex I

Alphabetical list of candidates

1. CASTRESANA FERNÁNDEZ, Carlos (Spain)
2. GAYNOR, Fergal (Ireland)
3. KHAN, Karim (United Kingdom of Great Britain and Northern Ireland)
4. LO VOI, Francesco (Italy)

Annex II

Alphabetical list of candidates (with supporting documentation)

[See ICC-ASP/19/19/Add.1]
