

**AGREEMENT BY THE PRESIDENCY OF THE ASSEMBLY AND THE  
PROSECUTOR ON DUE DILIGENCE PROCESS FOR CANDIDATES FOR  
DEPUTY PROSECUTOR<sup>1</sup>**

1. The Prosecutor and the Presidency of the Assembly of States Parties have discussed the election process for the position of Deputy Prosecutor and have agreed that the process shall include due diligence measures intended to assist in the determination of “high moral character” as required by article 42, paragraph 3, of the Rome Statute. The contours of this process will be detailed in the vacancy announcement that the Prosecutor will draft and shall include:

(a) a requirement for candidates that apply to the position to complete a detailed questionnaire, providing consent to contact former employers, state authorities, or academic institutions;

(b) an in-depth background check of criminal, academic and employment records of candidates to be included in the list provided by the Prosecutor to the Assembly of States Parties, in accordance with article 42, paragraph 4, of the Statute; and

(c) an enquiry into any allegations of misconduct against any such candidates. “Misconduct” for the purpose of this due diligence process refers to human rights violations, incidents of sexual harassment, bullying in the work place and other ethical or legal breaches of a serious nature such as fraud or corruption.

2. The Prosecutor shall determine the modalities of the in-depth background check referred to in paragraph 1(b) which shall be carried out under his supervision, with the expert assistance of the Independent Oversight Mechanism (IOM) and also from relevant sections of the Registry of the International Criminal Court, as appropriate.

3. Any allegations of misconduct against any of the candidates included in the public list provided by the Prosecutor to the Assembly of States Parties shall be submitted in writing to the IOM which shall handle them in accordance with the procedure contained in the annex.

4. Within 45 days of the receipt of any allegations, the IOM shall submit to the Prosecutor and the Presidency of the Assembly a report with respect to the allegations received, as outlined in the appendix.

5. If the IOM report on allegations contains any matters of concern regarding the high moral character of any of the candidates, the Presidency shall transmit to the Bureau the written observations of the Prosecutor on such matters and shall recommend a course of action to be adopted by the Bureau.

**Appendix**

**Handling of Allegations of Misconduct of Candidates for Deputy Prosecutor  
Proposal by the Independent Oversight Mechanism**

This proposal is presented by the Independent Oversight Mechanism (IOM) at the request of the Presidency of the Assembly of States Parties and the Prosecutor, to suggest a process for receiving and reviewing allegations in order to ensure that candidates for the position of Deputy Prosecutor meet the “high moral character” requirement detailed in article 42, paragraph 3, of the Rome Statute.

**1) Confidential Channel**

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<sup>1</sup> Adopted by the Bureau of the Assembly of States Parties on 6 July 2021.

Anyone may submit written allegations of misconduct confidentially to the IOM within 14 days of the public announcement of the list of candidates provided by the Prosecutor to the Assembly. The allegation should be accompanied by all relevant information and documentation available to the complainant.

The Secretariat of the Assembly shall provide all necessary information to that effect concurrently with the public announcement of the list of candidates provided by the Prosecutor.

## **2) Receipt of Allegations**

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.

The allegation and the review of it conducted by the IOM shall be and remain confidential. The IOM shall seek the consent of the complainant prior to any disclosure of his or her identity, including to the candidate concerned for due process purposes. Objections to such disclosure when it is required for the legitimate needs of the review and assessment of the allegation may be grounds for the IOM to set aside the allegation and discontinue its review.

## **3) Initial Review**

The IOM shall first review the allegation and consider whether it relates to misconduct. If it does not, and relates rather to concerns about their qualifications, abilities, or past performance, it shall forward the allegation to the Prosecutor, but only after obtaining the consent from the complainant to do so. It will be for the Prosecutor to decide whether or not to consider the issue further.

## **4) IOM Assessment**

The IOM shall assess 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. The IOM will initially review the credibility of the allegation.

The IOM shall also assess the materiality of the allegation, determining the type of misconduct at issue and its seriousness.

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.

## **5) Reporting**

The IOM shall submit, within 45 days of the receipt of any allegations, a report to the Prosecutor and the President of the Assembly, including details in terms of the overall number of allegations received that lacked sufficient credibility to put to the candidates, or that otherwise were not reviewed by the IOM (e.g., anonymous, performance-related, etc.). In order to preserve the confidentiality of the process, no substantive details of these allegations will be provided.

If an allegation was presented to the candidate, a short summary of that allegation (taking efforts to not provide details that would identify the complainant) will be included in the report, as well as the response provided by the candidate.

The IOM report shall also include an assessment as to whether the allegation is supported by sufficient evidence to raise concerns about the candidate's high moral character, taking into account the credibility, materiality and verifiability of the allegation. Should the IOM be unable to reach a definite conclusion on the allegation, it shall identify whether it would be possible to take further investigative steps to confirm or refute the allegation, and what these steps would entail in terms of time and resources.

The IOM shall provide the candidate with the summary of any allegation concerning them, as well as the IOM's assessment of the allegation, at the same time as the report is submitted to the Prosecutor and the Presidency of the Assembly.

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