



New York, 24 October 2011

Members of the Bureau of the Assembly
of States Parties to the Rome Statute of the
International Criminal Court

Excellency,

I have the honour to submit to you the report of the Search Committee for the position of the Prosecutor of the International Criminal Court, conveyed to me by the Search Committee on 22 October. The report is prepared in accordance with the terms of reference agreed to by the Bureau and is meant to facilitate the process leading to the nomination and election by consensus of the next Prosecutor, who will take office in July 2012, at the next meeting of the Assembly of States Parties, which is scheduled to commence on 12 December 2011.

As you are aware, Assembly resolution ASP/1/Res.2 provides that “Every effort shall be made to elect the Prosecutor by consensus.” I will therefore, over the coming weeks, establish an informal consultation process within the Assembly in order to enable States Parties to reach a consensus on the question of the nomination and election of the next Prosecutor, as mandated by the Assembly. I am confident that this report will be helpful to your authorities in their considerations in this process. I look forward to working with you on this matter, which is of the highest importance for the future of the International Criminal Court.

I wish to thank the members of the Search Committee for the high level of professionalism and integrity with which they have carried out their task on behalf of the States Parties. I was heartened by the fact that all candidates interviewed by the Committee expressed their satisfaction both with the process as such as well as with the format and modalities of the interview. I hope that this procedure can be followed on future occasions and perhaps also serve as a model for the nomination of candidates for the highest offices in other areas.

Please accept, Excellency, the assurances of my highest consideration.

Christian Wenaweser
President
Assembly of States Parties to the Rome Statute

*The Permanent Representative of the Slovak Republic
to the United Nations*

*New York, October 22nd, 2011
Ref.: 2501/2011-USSM-ES*

Excellency,

I write in my capacity as Deputy Coordinator of the Search Committee for the Position of Prosecutor of the International Criminal Court to enclose a copy of our Report to the Bureau, as required by our Terms of Reference. This Report reflects a consensus of the members of the Search Committee.

Please accept, Excellency, the assurances of my highest consideration.



*Miloš Koterec
Ambassador
Deputy Coordinator*

*H.E. Mr. Christian Wenaweser
Permanent Representative of
the Principality of Liechtenstein
to the United Nations
New York*

**REPORT OF THE SEARCH COMMITTEE
FOR THE POSITION OF THE PROSECUTOR OF THE
INTERNATIONAL CRIMINAL COURT**

A. Introduction and Summary

1. This is the consensus report to the Bureau of the Assembly of States Parties (Bureau and ASP, respectively) of the International Criminal Court (ICC) by the Search Committee for the position of the Prosecutor of the ICC (Search Committee). The Terms of Reference of the Search Committee (TOR) adopted by the Bureau are set out in document ICC-ASP/9/INF.2 of 6 December 2010 (**Annex 1**). These provide *inter alia* that the Search Committee shall “produce a shortlist of at least three suitable candidates, where possible for consideration by the Bureau” (TOR, para.6).

2. The approach adopted by, working methods of, and eligibility criteria guiding, the Search Committee are addressed in the following parts of this Report. In fulfilment of its mandate, the Search Committee hereby commends the following 4 persons for consideration as suitable shortlist candidates for the position of the next Prosecutor of the ICC:

- * **Fatou B. Bensouda**, currently Deputy Prosecutor (Prosecutions), International Criminal Court;
- * **Andrew T. Cayley**, currently International Co-Prosecutor, Extraordinary Chambers in the Courts of Cambodia;
- * **Mohamed Chande Othman**, currently Chief Justice of Tanzania;
- * **Robert Petit**, currently Counsel, Crimes Against Humanity and War Crimes Section, Department of Justice, Canada.

3. A summary of the expertise and qualities of these candidates is provided in paragraph 34 below and in **Annexes 6 to 9**. More detailed biographical information will be made available to the Bureau by the candidates as appropriate.

4. In commending this shortlist, the Search Committee does not differentiate between the candidates in terms of suitability or make any preferential recommendation concerning any candidate. Consistent with its TOR, the Search Committee considers its function to be that of a technical committee of the Bureau, to assist the Bureau and the ASP in their endeavours to secure the election of the Prosecutor by consensus (see Resolution ICC-ASP/1/Res.2). In the light of the Search Committee’s Report, it will properly be a matter for the Bureau and the ASP to consider how best to proceed to secure the formal nomination and election by consensus of the next Prosecutor.

5. Consistent with the Search Committee’s function, this Report is submitted to the Bureau. The Search Committee recommends that the Bureau place this Report in the public domain. This would facilitate a transparent discussion of the Search Committee’s work and Report as well as appropriate wider public discussion of the shortlisted candidates’ suitability for the position of Prosecutor. In making this recommendation, the Search Committee hopes that further consideration of these matters will take place within the framework of an emerging consensus of the required expertise, role and profile of the next Prosecutor appropriate to the next phase of the work of the ICC.

B. The Search Committee and its Mandate

6. ASP resolution ICC-ASP/3/Res.6 on *Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court* (resolution 6) addresses *inter alia* the procedure applicable to the

nomination and election of the Prosecutor. The relevant provisions of this resolution concerning the nomination and election of the Prosecutor replicate the text of resolution ICC-ASP/1/Res.2.

7. The nomination of candidates for the Prosecutor and the election of the Prosecutor are addressed, respectively, in sections D (paragraphs 28-30) and E (paragraphs 31-35) of resolution 6. These paragraphs are set out in full in **Annex 2**. Of particular importance are paragraphs 29 and 33, which provide, respectively:

Paragraph 29: “Nominations for the post of the Prosecutor should preferably be made with the support of multiple States Parties.”

Paragraph 33: “Every effort shall be made to elect the Prosecutor by consensus.”

8. Recalling these provisions, the Bureau noted that the nomination and election of the next Prosecutor “should be undertaken in a structured and transparent manner as outlined below” (TOR, para.3) and proceeded to establish the Search Committee and set its Terms of Reference.

9. Pursuant to its TOR, the composition of the Search Committee was by designation by the Bureau of one member per regional group. In accordance with this procedure, and after consultation with the regional groups, the Bureau designated the following as members of the Search Committee:

African Group – H.E. Ambassador Baso Sangqu, Permanent Representative of the Republic of South Africa to the United Nations;

Asian Group – H.R.H. Prince Zeid Ra'ad Zeid Al Hussein, Permanent Representative and Plenipotentiary of the Hashemite Kingdom of Jordan to the United Nations;

East European Group – H.E. Ambassador Milos Koterec, Permanent Representative of the Republic of Slovakia to the United Nations;

Latin American and Caribbean Group – H.E. Ambassador Joel Hernandez, Legal Advisor of the Ministry of Foreign Affairs of Mexico;¹

Western European and Other Group – Sir Daniel Bethlehem QC, Legal Adviser of the Foreign & Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland.²

10. The members of the Search Committee served in their personal capacities, not as representatives of their States. Administrative support was provided by the ASP Secretariat. All decisions of the Search Committee, including as regards its working methods and this Report, were taken by a consensus of its members.

11. At its first meeting, pursuant to paragraph 4 of its TOR, the members of the Search Committee designated Prince Zeid Ra'ad Zeid Al Hussein as Coordinator of the Search Committee and Ambassador Koterec as Deputy Coordinator.

12. The Mandate of the Search Committee, set out in paragraph 5 of its TOR, is “to facilitate the nomination and election, by consensus, of the next Prosecutor”. Along with the applicable provisions of the Rome Statute, in particular article 42, as well as the procedure for the nomination and election of the Prosecutor

¹ Ambassador Hernandez was subsequently appointed Mexican Ambassador to the Organisation of American States.

² Sir Daniel's tenure as Legal Adviser of the Foreign & Commonwealth Office ended on 13 May 2011. This having been considered at the time of his designation to the Search Committee, Sir Daniel continued as a member of the Search Committee in his personal capacity.

set out in the resolutions of the ASP noted above, the Search Committee has been guided in its work by the importance of facilitating the consensual nomination and election by the ASP of the next Prosecutor.

C. Working Methods

13. The Search Committee's TOR address four issues relevant to its working methods:

- the manner in which the Search Committee is to go about receiving and identifying expressions of interest from and in respect of individuals who may satisfy the applicable criteria, in particular those contained in article 42 of the Rome Statute (TOR, para.6);
- the requirement that the Search Committee keep the Bureau informed of its activities, as well as other consultation and progress reporting requirements (TOR, para.7);
- the requirement of confidentiality as regards the public disclosure of information concerning individuals whose names were submitted to the Search Committee for further consideration. Of importance, however, it is also provided that “[t]hese confidentiality requirements do not apply to individuals who are shortlisted for consideration by the Bureau” (TOR, para.8); and
- that the election of the next Prosecutor should “ideally take place at the tenth session of the [ASP]” (TOR, para.9).

14. The work of the Search Committee has been guided throughout by these requirements, as described further in section E below.

15. In addition to these requirements in its TOR, the Search Committee has also had close regard to the terms of article 42 of the Rome Statute of the ICC which *inter alia* affirms and requires the independence of the Office of the Prosecutor (OTP; para.1), provides that the Prosecutor shall head the OTP and have full authority over the management and administration of the OTP (para.2), and provides that the Prosecutor may not engage in any other professional occupation (para.5). Of particular importance to the qualities required of the Prosecutor, article 42(3) of the Rome Statute provides:

“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.”

16. The Search Committee's appreciation of the requirements of article 42(3) is addressed in the following sections.

D. Eligibility Criteria

17. As is described more fully in section E below, the Search Committee has had the advantage of extensive engagement throughout its process with a wide range of interested parties, including States Parties, non-States Parties, international and non-governmental organisations, both professional associations and NGOs, and individuals. It is grateful to all concerned for the time and effort they have devoted to assisting the Search Committee in its work.

18. Of relevance to the interpretation of article 42(3) of the Rome Statute, the Search Committee notes in particular two memoranda that were submitted to it at the outset of its work in March 2011.³ The first memorandum was submitted by a coalition of NGOs, including the Fédération Internationale des Ligues Droits de l'Homme, Human Rights Watch, the International Centre for Transitional Justice, the International Crisis Group, the Institute for Security Studies, and the Open Society Initiative, with the active participation of the Coalition for the International Criminal Court (**Annex 3**). The second memorandum was submitted by the General Counsel of the International Association of Prosecutors (IAP) following extensive consultation with current and former members of the IAP Executive Committee, and with the endorsement of the IAP Secretary General and the IAP President (**Annex 4**). The IAP memorandum also attached for the Search Committee's consideration ECOSOC document E/CN.15/2008/L.10/Rev.2 of 17 April 2008, a resolution of the Commission on Crime Prevention and Criminal Justice on "strengthening the rule of law through improved integrity and capacity of prosecution services" which in turn annexed the IAP *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (**Annex 5**). The Search Committee had careful regard to these memoranda and documents, as well as to other publicly available material relevant to the role and position of the Prosecutor.

19. The controlling provisions regarding the criteria relevant to the professional and personal qualities required of the Prosecutor are those set out in the Rome Statute, notably those in article 42(3) of the Statute requiring (a) high moral character, (b) high competence and extensive practical experience in the prosecution or trial of criminal cases, and (c) excellent knowledge of and fluency in at least one of the working languages of the Court. The Search Committee has had careful regard to each of these criteria, as well as those going to other elements addressed in article 42 of the Rome Statute, notably, evidence demonstrating a candidate's track record of independence, managerial and administrative experience, and commitment to full-time professional engagement as Prosecutor. In the course of its work, both for purposes of compiling an initial list of candidates for purposes of interview and thereafter during the interview process, the Search Committee looked for evidence of, and expressly enquired into, each of these elements. The Search Committee considers that each of the shortlisted candidates meets these Rome Statute eligibility criteria.

20. In highlighting these statutory requirements, it is appropriate to note that article 42(3) requires high competence and extensive practical experience in the trial or prosecution of criminal cases. The Search Committee considers that this mandates consideration of candidates with either prosecutorial experience or judicial experience of criminal cases, or indeed experience in both roles.

21. Having regard to the statutory requirements, the Search Committee notes that these do not impose a requirement that candidates must have the nationality of a State Party, that candidates should come from any particular regional group, or any other requirements, such as, for example, previous working experience in the field of international criminal law.

E. The Search Committee Process

22. Following its constitution, the Search Committee met in New York on 4 occasions for purposes of considering steps to be taken to identify candidates for consideration and to solicit and review expressions of interest. Following these initial meetings, the Search Committee met in New York from 10–13 October 2011 for purposes of conducting interviews with candidates under consideration for inclusion on the shortlist to be transmitted to the Bureau. In addition to these meetings, the Search Committee also conducted its work through inter-sessional discussions by telephone and by email. For the purposes of its administrative meetings, the Search Committee was joined by 5 alternates, assisting each member of the Search Committee, by H.E.

³ In addition to these memoranda, the Search Committee also received other correspondence addressing its work. The two memoranda in question are highlighted as they address the interpretation of article 42(3) of the Rome Statute.

Ambassador Christian Wenaweser, the President of the ASP (and Permanent Representative of the Principality of Liechtenstein to the United Nations), and by a member of the ASP Secretariat. The Search Committee is grateful to all concerned for their assistance in this matter.

23. Only members of the Search Committee, accompanied by a member of the ASP Secretariat for purposes of administrative support, participated in the interview meetings and the discussions that followed in respect of the candidates. In respect of interviews in which a candidate had the same nationality as a member of the Search Committee, the member of the Search Committee recused himself from the interview process and discussion regarding the merits of the particular candidate.

24. In keeping with the requirements of paragraph 7 of its TOR, the Search Committee provided regular briefings to the Bureau on its activities. It also issued a number of press statements to inform the wider ASP membership and other interested parties of its work. Briefings were also given to the New York and Hague Working Groups on the ICC. In addition to these briefings, members of the Search Committee individually provided briefings to their regional groups, to representatives of interested delegations, to representatives of interested sections of civil society, including both professional associations and non-governmental associations, and to others who expressed an interest in the Search Committee's work.

F. Expressions of Interest, Recommendations for Consideration and the Shortlisting Process

25. Paragraph 6 of its TOR provides that the Search Committee "will informally receive expressions of interest from individuals, States, regional and international organisations, civil society, professional associations and other sources". The Search Committee was also mandated to "actively identify and informally approach individuals who may satisfy the applicable criteria ... and who may subsequently express their interest to be considered".

26. In keeping with these requirements, the Search Committee, through its public outreach, both invited expressions of interest and actively engaged in a search process of its own to identify suitably qualified individuals. Amongst these engagements, Prince Zeid travelled to Seoul, South Korea at the end of June at the invitation of the IAP to participate in the IAP Annual Conference and World Summit to explain the Committee's mandate and invite expressions of interest. Other members of the Search Committee met with representatives of States, civil society and individuals with an interest in the work of the ICC for the same purpose. The Search Committee is grateful to all concerned for their assistance in this matter.

27. Through this process, the Search Committee was in receipt of, or otherwise identified, expressions of interest from or recommendations for consideration in respect of 52 individuals. Of these, the overwhelming majority satisfied the Rome Statute eligibility criteria and included very many of the highest calibre, experience and expertise. All geographic regions and legal and linguistic traditions were represented amongst this group, even if the broader representation came from candidates from the African and the Western European and Other Groups. Although the gender diversity was not as great as the Search Committee would have hoped, there were amongst the 52 a number of highly qualified female candidates. The candidates' list also included a number of highly qualified individuals having the nationality of a non-State Party.

28. The candidates' list also exhibited a wide range of expertise, including many with considerable experience of international criminal law, the ICC and the *ad hoc* international and hybrid criminal tribunals. Others came with experience of national prosecution services, as Directors of Public Prosecution, Investigating Judges or Magistrates, and other prosecutorial roles. Others still came with extensive judicial experience. In many cases, candidates combined experience of all three roles.

29. Faced with a candidates' list of this quality, the task of drawing up an interview list was not easy, with many who might otherwise have been worthy of further consideration not being included. In drawing up the interview list, the Search Committee had close regard to all the information available to it at that point on the candidates, including curriculum vitae, academic articles and other commentaries on their work, press and other reports, such references as were then available, and other material. Where appropriate, the Search Committee also undertook its own further extensive review of publicly available information on the candidates. The Search Committee was heartened and gratified by the response to its work and by the quality of the names that were brought to its attention.

30. Amongst those who might have merited inclusion on an interview list, there were a number of highly qualified candidates who, upon further enquiry by the Search Committee, indicated that they did not wish their names to go forward for further consideration, whether for personal or professional reasons.

31. From the 52 names on the candidates list, the Search Committee interviewed 8 candidates. For purposes of the interview process, the Search Committee requested, and was provided with, a personal statement from each candidate, a detailed curriculum vita, a list of referees and such other relevant documentation as the candidate considered appropriate. References were in each case sought and obtained. The Search Committee also undertook its own open sources research into each candidate, in the end amassing well over 1,000 pages of documentation on the interview candidates. Each interview was conducted by the members of the Search Committee on the basis of a standard format that had the objective of assessing the candidates' suitability for the post of Prosecutor against the eligibility criteria in the Rome Statute. Amongst the issues explored with each candidate were his or her familiarity with the work of the ICC; managerial experience; the appropriate balance between OTP management, hands-on prosecutorial work and public engagement; perceptions of the strengths and weaknesses of the OTP; appreciation of the interaction between the OTP, other ICC organs and the ASP; language proficiency; and previous prosecutorial experience and/or judicial experience in the handling of criminal cases.

32. It merits emphasis that the Search Committee is grateful to each of the candidates it saw for purposes of interview, as it is also to all the other candidates whose names were submitted to it for consideration. Amongst those not included on the shortlist for consideration by the Bureau are many of outstanding professional ability and personal qualities who would be worthy of consideration for other positions in the field of international criminal law. With a view to ensuring that this expertise is not lost from sight, the Search Committee will explore whether, subject to appropriate confidentiality arrangements, it would be appropriate to forward the names of a number of non-shortlisted candidates to the Legal Counsel of the United Nations, and perhaps others, for possible consideration in due course as and when other international criminal law positions arise.

G. Shortlist Recommendations

33. The Search Committee's mandate is not to pick the next Prosecutor of the ICC. It is to facilitate the consensual nomination and election of the next Prosecutor by the ASP. To this end, the Search Committee is required to produce a "shortlist of at least three suitable candidates, where possible for consideration by the Bureau". To this end, a list of 4 candidates follows below. In presenting this shortlist, the Search Committee is confident that each of the candidates identified below not only meets the formal eligibility criteria of the Rome Statute but also has the professional experience and expertise, and the necessary personal qualities, to perform the role of the next ICC Prosecutor to the highest standard.

34. The shortlisted candidates proposed to the Bureau and the ASP for further consideration are:

Fatou B. Bensouda (The Gambia)

Fatou Bensouda is currently the Deputy Prosecutor (Prosecutions) of the ICC, having been in this position since 1 November 2004. Amongst the posts she occupied before assuming her current position are Senior Legal Adviser at the International Criminal Tribunal for Rwanda (ICTR); Legal Adviser and Trial Attorney at the ICTR; Attorney General and Minister of Justice of the Republic of The Gambia; Solicitor General and Legal Secretary of the Republic of The Gambia; and Deputy Director of Public Prosecutions of the Republic of the Gambia.

Andrew T. Cayley (United Kingdom)

Andrew Cayley is currently the International Co-Prosecutor of the Extraordinary Chambers in the Courts of Cambodia (ECCC). Amongst the posts he occupied before assuming his current position are Senior Prosecuting Counsel, ICC; defence counsel in proceedings before the Special Court for Sierra Leone (SCSL) and the International Criminal Tribunal for the former Yugoslavia (ICTY); Senior Prosecuting Counsel, ICTY; Prosecuting Counsel, ICTY; Commissioned Officer, Adjutant General's Corps, Army Legal Services, British Army.

Mohamed Chande Othman (Tanzania)

Mohamed Othman is currently Chief Justice of Tanzania. Amongst the posts he occupied before assuming his current position are Justice of Appeal, Court of Appeal, Tanzania; Senior Legal and Justice Sector Reform Adviser, United Nations Development Program, Cambodia; Prosecutor General, United Nations Transitional Administration in East Timor (UNTAET); Chief of Prosecutions, ICTR; Independent Expert on the Human Rights Situation in the Sudan; Commissioner, High-Level Commission of Inquiry on Lebanon; Member of the Advisory Committee on the Archives of the ICTR and ICTY.

Robert Petit (Canada)

Robert Petit is currently Counsel to the Crimes Against Humanity and War Crimes Sections of the Department of Justice, Canada. Amongst the posts he occupied before assuming his current position are International Co-Prosecutor of the ECCC; Senior Prosecuting Trial Attorney, SCSL; Prosecutor, Serious Crimes Unit, UNTAET; Crown Attorney, Federal Prosecution Service, Department of Justice, Canada; Regional Legal Adviser, United Nations Mission in Kosovo; Legal Officer, ICTR; Prosecutor, Integrated Proceeds of Crimes Task Force, Department of Justice, Canada.

H. Concluding observations

35. In commending the preceding shortlist for consideration by the Bureau, the ASP and the wider community interested in the work of the ICC, the Search Committee does not differentiate between the shortlisted candidates in terms of suitability or make any preferential recommendation concerning any candidate. Each of the candidates is meritorious. It will now properly be a matter for the Bureau and the ASP to consider how best to proceed to secure the formal nomination and election by consensus of the next Prosecutor. The Search Committee hopes that further consideration of this matter will take place within the framework of an emerging consensus of the required expertise, role and profile of the next Prosecutor appropriate to the next phase of the work of the ICC.

H.R.H Prince Zeid Ra'ad Zeid Al Hussein

Sir Daniel Bethlehem QC

H.E. Ambassador Joel Hernandez

H.E. Ambassador Milos Koterec

H.E. Ambassador Baso Sangqu

22 October 2011

ANNEX 1

ICC-ASP/9/INF.2, 6 December 2010

Search Committee Terms of Reference



Assembly of States Parties

Distr.: General
6 December 2010

Original: English

Ninth session

New York, 6-10 December 2010

Bureau of the Assembly of States Parties Search Committee for the position of the Prosecutor of the International Criminal Court Terms of Reference

I. Background

1. Resolution ICC-ASP/1/Res.2 (see annex I) contains the rules governing the nomination and election of the Prosecutor of the ICC. 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*. In addition to those rules, “*nominations for the post of the Prosecutor should preferably be made with the support of multiple States Parties*”(para. 33).
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. 29, “*Every effort shall be made to elect the Prosecutor by consensus.*” In the absence of such a consensus, the Prosecutor is 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. It is understood that this process does not prevent any State Party from submitting a formal nomination. Nevertheless, States Parties are encouraged to make use of this process with a view to arriving at a consensus candidate, ideally both for nomination and election.

II. Composition

4. The Bureau of the Assembly designates one representative per regional group as member of the Search Committee. The Search Committee designates one member as coordinator.

III. Mandate

5. The Search Committee is mandated to facilitate the nomination and election, by consensus, of the next Prosecutor (see also paras. 29 and 33 of resolution ICC-ASP/1/Res.2). The work of the Search Committee is 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.

IV. Working Methods

6. The Search Committee will informally receive expressions of interest from individuals, States, regional and international organizations, civil society, professional associations and other sources. The Search Committee will also actively identify and informally approach individuals who may satisfy the applicable criteria, in particular those contained in article 42 of the Rome Statute, and who may subsequently express their interest to be considered. The Search Committee shall review the expressions of interest in light of the relevant criteria and produce a shortlist of at least three suitable candidates, where possible for consideration by the Bureau.

V. Transparency

7. The Search Committee shall regularly and in detail brief the Bureau on its activities. In particular, the Search Committee shall inform the Bureau of the expressions of interest received, including information on the overall number, nationality, gender and current affiliation of the individuals. The States Parties of the Assembly are kept informed of the relevant discussions through the reporting procedures of the Bureau. Members of the Search Committee shall also informally consult with representatives of interested delegations.

VI. Confidentiality

8. The Search Committee shall inform individuals who have expressed interest to be considered that any information received in this connection will be treated confidentially by the Search Committee. The Search Committee shall inform these individuals that their names, nationality, gender, current affiliation and other relevant information, will be shared with the Bureau, unless otherwise requested by the individual concerned at any stage of the proceedings. These confidentiality requirements do not apply to individuals who are shortlisted for consideration by the Bureau.

VII. Timeline

9. It is understood that 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 2012. The election would therefore ideally take place at the tenth session of the Assembly, but in any event no later than February 2012.

Annex I

Resolution ICC-ASP/1/Res.2

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

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

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

26. 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

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

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

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

30. 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.

31. 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.

Annex II

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 2

ICC-ASP/3/Res.6, 10 September 2004

on

**Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors
of the International Criminal Court**

Extracts

Paragraphs 28 – 35

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.

ANNEX 3

**Memorandum submitted by
Fédération Internationale des Ligues Droits de l'Homme
Human Rights Watch
International Centre for Transitional Justice
International Crisis Group
Institute for Security Studies
Open Society Initiative**



International



March 16, 2011

Dear Search Committee Members,

At the outset, we wish to welcome your appointment by the Bureau of the Assembly of States Parties to evaluate candidates and make recommendations for the next Prosecutor of the International Criminal Court (ICC). We write this public letter to you as a group of nongovernmental organizations with a deep commitment to the ICC's mission of ending impunity for the worst crimes known to humankind. Central to the court's ability to fulfill its mission are the vision and capacity of its Prosecutor. Indeed, the public's first encounter with the institution often will come through the investigations of the Prosecutor.

The role of the ICC Prosecutor is vastly different from that of a national prosecutor. The ICC's broad geographic jurisdiction means that the Office of the Prosecutor (OTP) must pursue its mandate in a number of different countries, often simultaneously and in situations of ongoing conflict. In addition, unlike most national prosecutors, the ICC Prosecutor's focus on mass atrocity crimes means that he or she must exercise far greater discretion in selecting cases. Further, while national prosecutors often work closely with the police to carry out investigations, the OTP lacks a police force and thus depends heavily on the cooperation of states to carry out many investigative actions.

The search for a new Prosecutor comes at a critical juncture of the ICC's institutional development. Although there has undoubtedly been progress in investigations and ongoing trials before the ICC, the proceedings in The Hague have revealed the difficulties of adjudicating alleged crimes under an innovative legal regime. The ICC's emergence as an important entity on the international stage—most recently demonstrated by the UN Security Council's referral to the court of the situation in Libya—means that the acts of its principals, especially the Prosecutor, will likely be even more closely scrutinized and subject to criticism, both legitimate and unjustified.

We have closely observed the practice of the court (including through service in relevant international institutions and as former criminal law practitioners) as it has emerged so far in The Hague, in many of the communities affected by the crimes in its jurisdiction, and on the international landscape. We therefore have an awareness of some of the challenges that have arisen and will likely arise in the future. Recognizing these challenges and the qualities needed to meet them is essential to determining what demonstrable experience and skill sets a search committee should use to evaluate candidates to be ICC Prosecutor.

Some of the challenges include:

Working in a highly politicized environment. An effective ICC Prosecutor should have a legally grounded understanding of the political context in which criminal accountability is pursued. The Prosecutor should execute his or her mandate of investigation and prosecution independently, and without engaging in or appearing to engage in political considerations.

Prioritizing investigations and prosecutions that are representative of the crimes committed against affected communities. The ICC's most important constituency is the victims it was created to serve. The Prosecutor should be sensitive to these communities' expectations for justice, as well as to victims' rights to justice within a reasonable time. Maintaining a field-based perspective in devising investigative and prosecutorial strategies is therefore critical, as is supporting the court's broader engagement with affected communities.

Directing a diverse group of highly qualified people in a wide variety of complex and specialized tasks. Effective staff management is essential to meet the varying demands of conducting investigations in numerous country situations and building complex cases for prosecution. The Prosecutor must provide leadership and vision for the staff of his or her office.

Making trials relevant and meaningful for affected communities. The Prosecutor should appreciate the importance of ensuring not only that justice is done but also that it is seen to be done. Supporting the court's outreach activities to make complex trials understandable to affected communities in situation countries is essential. In addition to making the court's work understandable, such outreach is crucial to help to manage expectations of what the ICC can realistically achieve.

Ensuring the ICC's legacy in situation countries, including through promoting complementarity. The ICC is not a development agency, and the court's primary task is to try its cases fairly and effectively. At the same time, closing the impunity gap through national prosecutions for ICC crimes is a critical part of the court's legacy in its situation countries. The Prosecutor should have an understanding of the OTP's role in promoting complementarity, which includes encouraging the development of capacity building at the national level and designing means for effective information sharing if and when appropriate.

Contributing to the ICC's institution-building and its overall mandate. The Prosecutor should understand the importance of coordinating effectively with the court's other organs in areas of mutual interest (such as witness protection, outreach and communications, and field operations). Close coordination and careful navigation of the organs' respective mandates is essential to strengthen the institution and achieve the ICC's overall mission.

Finding candidates who embody the qualities needed to meet these challenges is a monumental task. Article 42(3) of the Rome Statute dictates that merit should drive the election of the Prosecutor, stating that he or she must be a person of "high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases." But beyond demanding practical criminal justice experience, the statute is silent on what other merit based characteristics should take priority. We thus set out below the criteria that we believe

should be used in evaluating potential candidates to ensure that only the most qualified are shortlisted for consideration, and, eventually, that the highest qualified candidate is elected.

1. Demonstrated experience of professional excellence in complex criminal cases

The primary role of the Prosecutor is to ensure that the OTP produces factually provable and legally sound cases against those most responsible for the most serious conduct. The aim should be to secure convictions while respecting due process. Prospective candidates should be able to demonstrate a track record of the highest degree of professionalism in the prosecution or trial of complex criminal cases. Candidates should also be able to draw from past experience to show a deeply rooted respect for the fair trial rights of defendants and due process overall.

In assessing these qualities, the search committee need not restrict itself only to those candidates with previous experience as a prosecutor. Indeed, article 42(3) of the Rome Statute requires “extensive practical experience in the prosecution or trial of criminal cases” (emphasis added). For instance, candidates with significant experience as judges, in addition to those with considerable prosecutorial experience in such cases, should be considered.

2. A demonstrated ability to act with independence and impartiality in the exercise of professional duties

Each candidate should be able to demonstrate independence and impartiality in the execution of his or her professional duties as a leading actor in a judicial institution. He or she should also have demonstrated experience with or an understanding of international relations and institutions relevant to the work of the OTP.

3. A proven track-record of professional excellence in institutional management

Each candidate should have a demonstrated commitment and ability to develop a positive work environment based on professional respect and excellence, especially in a multi-cultural environment. He or she should be able to provide examples that show an ability to strike an appropriate balance between delegation and supervision. Given that article 42(3) of the Rome Statute provides that the Prosecutor “shall” be assisted by at least one deputy, each candidate should also be required to articulate a vision for the role of one or more deputy Prosecutors in the OTP.

4. Demonstrated experience in working with other bodies or agencies to effectively achieve a common goal

Each candidate should have prior experience working effectively with other agencies or bodies (with either shared or diverse mandates) in pursuit of a common purpose. Each candidate should be able to identify some of the challenges associated such inter-agency/body cooperation and put forward strategies or examples of how disputes or tensions were ultimately resolved.

5. Demonstrated experience in communicating effectively to a wide variety of constituencies

Given the importance of effective outreach and communications as outlined above, previous experience prioritizing and successfully conveying key yet complex information in a manageable format to different core audiences is crucial.

We can appreciate the difficulties of finding candidates that satisfy all of these criteria. Overall, in addition to the statutory requirement that the prosecutor have extensive practical criminal experience, the committee should strive to find an individual of demonstrated integrity, professional competence, and leadership in his or her (related) field to be the next ICC Prosecutor. We believe these factors are essential to meet the challenges identified above.

We welcome the Bureau's emphasis that the search for the next ICC Prosecutor should be undertaken in "a structured and transparent manner." In that vein, we look forward to further engaging with you as the search process evolves. We very much wish to provide input as appropriate to help ensure that only the most highly qualified candidates are considered.

Signed*,

Souhayr Belhassen
President
Fédération Internationale des Ligues
des Droits de l'Homme

Louise Arbour
President & CEO
International Crisis Group

Kenneth Roth
Executive Director
Human Rights Watch

Anton du Plessis
Head: International Crime in Africa
Programme
Institute for Security Studies

David Tolbert
President
International Center for Transitional Justice

James A. Goldston
Executive Director
Open Society Justice Initiative

* The Coalition for the International Criminal Court (CICC) participated actively in preparing this letter, but with 2500 members, it was not feasible to seek global endorsement.

CC: Amb. Christian Wenaweser, President of the Assembly of States Parties to the ICC

ANNEX 4

**Memorandum submitted by the
General Counsel of the International Association of Prosecutors**



Submission by the International Association of Prosecutors to the Search Committee for the position of ICC Prosecutor.¹

1. It is noted that the Treaty of Rome requires the Prosecutor to be *'highly competent in and have extensive practical experience in the prosecution or trial of criminal cases'*. This, it is assumed, is thus a mandatory requirement. Clearly operational experience as a trial lawyer in criminal practice would be essential, and whilst it would be desirable for the candidate to have prosecuted at a high level both at a domestic and international level, this may be considered as non-essential and experience as a defence practitioner should also be considered as relevant. Absence of an investigative background, more likely to be applicable to those with common law experience, should not be seen as a bar since most prosecutor candidates should have, as a minimum, overseen or evaluated the outcomes of investigations, but this will need to be tested.
2. How then to assess whether a candidate is 'highly competent'? Those who contributed to this response were unanimous that a conviction rate should not be a measure of success for assessing a candidate's ability to perform an operational prosecuting role successfully. In England and Wales there is a 'Brought to Justice' quantitative performance indicator but a range of prosecutorial and non-prosecutorial outcomes are included, furthermore the indicator is applied to all criminal justice agencies who can affect the outcome and not to individuals. None of the contributors/consultees were aware of any jurisdictions where an individual's conviction rate is used as a measure of his or her competence and skill as a prosecutor and it is widely accepted that to do so would be inappropriate and might create a perverse and dangerous incentive. Further, it was the considered view of those who contributed to this response that other competencies, apart from trial lawyer skills, were at least of equal if not of more importance.
3. Well-developed communication skills should assume a high priority, not only fluency in one of the languages of the ICC, as required by the Treaty of Rome, but also the ability to engage effectively with persons or organisations outside the court, including in particular the media. The Prosecutor's constituency is the global community to whom he/she is ultimately accountable and his/her principal window on the world will be through the media. Whilst media handling skills, print and broadcast can to an extent be learnt, the candidate will need at the very least to show potential in this respect and ideally have had relevant experience thorough which he or she can demonstrate media awareness. The Prosecutor will also need to recognise the importance of effective communication within his/her own office and with

¹ The General Counsel of the IAP has prepared this document following extensive consultation with current and former members of the IAP Executive Committee. It is endorsed by the IAP Secretary General Derk Kuipers and the IAP President James Hamilton, DPP Republic of Ireland.

external bodies, organisations, country representatives and lawyers world-wide; the ability to communicate being one of the most important tools of effective leadership.

4. Top flight leadership skills are of crucial importance both within the organisation and outside. The ICC Prosecutor must have the wherewithal to set a strategic direction but will also need to be able to respond to the immediacy of a situation-eg that which is happening currently in Libya. However the contributors wanted to emphasise the need for proven management skills in order to deliver operational effectiveness and outcomes to satisfy the State Parties. Whilst the Prosecutor will be able to delegate the substance of running an organisation to others with the necessary expertise eg Human Resources, finance, training etc, the candidate will need to have a sufficient grasp of administrative matters and the mechanics of how an office operates to be able to run the organisation in an efficient manner. The Prosecutor will be required to make top level management decisions, in the knowledge and understanding of the full implications thereof. Many of the contributors were at pains to emphasise that brilliant lawyers do not necessarily make good managers, an excellent court room advocate can sometimes be a 'lone wolf' and not suited to an organisational structure. The appointee will need to make a standing start in this respect-the ICC being too vulnerable to withstand any weakness whilst he/she seeks to 'get up to speed'.
5. Contributors to this response were also very clear that the candidate must possess a keen political instinct, that is an ability to navigate through the complex and sensitive political issues with which he/she will be presented, allied with well-honed inter personal skills to interact with internal and external personnel and bodies. If this is what is meant by 'diplomatic skills' then the ICC Prosecutor needs them in abundance. Experience at an international level eg in an international organisation will highly desirable, together with a broad knowledge of the diversity and range of the criminal justice systems that exist world-wide. The ability to make sound decisions and reasoned judgements will be crucial, any prosecutor must be robust and be able to withstand the inevitable pressure that will be improperly brought to bear upon him/her in respect of his decisions, but the ICC Prosecutor must have very broad shoulders indeed, such will be the highly charged political environment within which he/she operates. The Prosecutor will need to resist improper influence and pressure as well as possess the drive and determination to deliver the ICC objectives. A verifiable track record demonstrating such resilience would be significant.
6. Of paramount importance will be absolute and verifiable integrity. To that end an unblemished record in a position in high public office subject to intense public scrutiny and an exemplary personal reputation would be good evidence for the selection panel.
7. The '*IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*' as set out in the annex attached hereto are commended to the Search Committee and are as applicable to the Prosecutor for the ICC and his office as to any other prosecutor. These were adopted within a UN Crime Commission Resolution in 2008.
8. The means of assessing these competencies and qualities does present a challenge. Self-assessments, testimonials, verifiable examples, interviews, tests, role plays etc can all play a part.

Elizabeth Howe OBE
General Counsel
International Association of Prosecutors

March 2011

ANNEX 5

E/CN.15/2008/L.10/Rev.2, 17 April 2008
Strengthening the Rule of Law Through Improved Integrity
and Capacity of Prosecution Services



Economic and Social Council

Distr.: Limited
17 April 2008

Original: English

[Start]

Commission on Crime Prevention and Criminal Justice

Seventeenth session

Vienna, 14-18 April 2008

Agenda item 4

World crime trends and responses: integration and coordination of efforts by the United Nations Office on Drugs and Crime and by Member States in the field of crime prevention and criminal justice

South Africa: revised draft resolution

Strengthening the rule of law through improved integrity and capacity of prosecution services

The Commission on Crime Prevention and Criminal Justice,

Recalling the Charter of the United Nations, the Universal Declaration of Human Rights¹ and the International Covenant on Civil and Political Rights,² which enshrine, in particular, the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Recalling also the International Covenant on Economic, Social and Cultural Rights,³

Recalling further the United Nations Convention against Corruption,⁴ in particular its article 11, on measures relating to the judiciary and prosecution services,

Convinced that corruption of members of prosecution services undermines the rule of law and adversely affects public confidence in the justice system and that the integrity, independence and impartiality of prosecutors are essential prerequisites for the effective protection of human rights and economic development,

¹ General Assembly resolution 217 A (III).

² General Assembly resolution 2200 A (XXI), annex.

³ General Assembly resolution 2200 A (XXI), annex.

⁴ General Assembly resolution 58/4, annex.



Recalling the Guidelines on the Role of Prosecutors,⁵ adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990,

Recalling also Economic and Social Council resolution 2007/22 of 26 July 2007, on strengthening basic principles of judicial conduct, in which the Council requested the United Nations Office on Drugs and Crime, inter alia, to explore the development of technical cooperation projects and activities aimed at strengthening the integrity and capacity of other criminal justice institutions, in particular prosecution services and the police, in cooperation with the initiatives of States and relevant international organizations,

Welcoming the report of the Secretary-General on strengthening justice, integrity and the rule of law through technical assistance in developing, transitional and post-conflict societies, with a focus on Africa,⁶ and the progress made by the United Nations Office on Drugs and Crime in implementing General Assembly resolution 2007/22, as described in that report,

Acknowledging the important work carried out by international and regional forums, including the International Association of Prosecutors, in the development and dissemination of standards and measures to strengthen the conduct of prosecution services,

Convinced that the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, developed by the International Association of Prosecutors, are complementary to the Guidelines on the Role of Prosecutors,

1. *Requests* the United Nations Office on Drugs and Crime to circulate the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, annexed to the present resolution, to Member States for their consideration and comments;

2. *Also requests* the United Nations Office on Drugs and Crime to prepare by the third quarter of 2008, a structured, verbatim compilation of the comments received from Member States, as an addendum to the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors;

3. *Invites* Member States, consistent with their domestic legal systems, to encourage their prosecution services to take into consideration the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, and the above-mentioned addendum when reviewing or developing rules with respect to the professional and ethical conduct of members of prosecution services;

4. *Requests* the United Nations Office on Drugs and Crime to continue to provide, upon request by Member States, technical assistance, including, as appropriate, material and tools, such as the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors and the

⁵ *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.26, annex.

⁶ E/CN.15/2008/12.

above-mentioned addendum, to allow such Member States to strengthen the integrity and capacity of their prosecution services;

5. *Invites* Member States and other donors to provide extrabudgetary contributions for the above-mentioned purposes in accordance with the rules and procedures of the United Nations;

6. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twentieth session on the implementation of the present resolution.

Annex*

Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors

WHEREAS the objects of the International Association of Prosecutors are set out in Article 2.3 of its Constitution and include the promotion of fair, effective, impartial and efficient prosecution of criminal offences, and the promotion of high standards and principles in the administration of criminal justice;

WHEREAS the United Nations, at its Eighth Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba in 1990, adopted Guidelines on the Role of Prosecutors;

WHEREAS the community of nations has declared the rights and freedoms of all persons in the United Nations Universal Declaration of Human Rights and subsequent international covenants, conventions and other instruments;

WHEREAS the public need to have confidence in the integrity of the criminal justice system;

WHEREAS all prosecutors play a crucial role in the administration of criminal justice;

WHEREAS the degree of involvement, if any, of prosecutors at the investigative stage varies from one jurisdiction to another;

WHEREAS the exercise of prosecutorial discretion is a grave and serious responsibility;

AND WHEREAS such exercise should be as open as possible, consistent with personal rights, sensitive to the need not to re-victimise victims and should be conducted in an objective and impartial manner;

THEREFORE the International Association of Prosecutors adopts the following as a statement of standards of professional conduct for all prosecutors and of their essential duties and rights:

* The present annex is reproduced in the form in which it was received.

1. PROFESSIONAL CONDUCT

Prosecutors shall:

- a) at all times maintain the honour and dignity of their profession;
- b) always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- c) at all times exercise the highest standards of integrity and care;
- d) keep themselves well-informed and abreast of relevant legal developments;
- e) strive to be, and to be seen to be, consistent, independent and impartial;
- f) always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;
- g) always serve and protect the public interest;
- h) respect, protect and uphold the universal concept of human dignity and human rights.

2. INDEPENDENCE

- 2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.
- 2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:
 - transparent;
 - consistent with lawful authority;
 - subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.
- 2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. IMPARTIALITY

Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

- a) carry out their functions impartially;
- b) remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;
- c) act with objectivity;

- d) have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- e) in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect;
- f) always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

4. ROLE IN CRIMINAL PROCEEDINGS

4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

4.2 Prosecutors shall perform an active role in criminal proceedings as follows:

- a) where authorised by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;
- b) when supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights;
- c) when giving advice, they will take care to remain impartial and objective;
- d) in the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;
- e) throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence;
- f) when, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore:

- a) preserve professional confidentiality;
- b) in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible;
- c) safeguard the rights of the accused in co-operation with the court and other relevant agencies;

- d) disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial;
- e) examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;
- f) refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment;
- g) seek to ensure that appropriate action is taken against those responsible for using such methods;
- h) in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young defendants, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

5. CO-OPERATION

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall:

- a) co-operate with the police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally; and
- b) render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

6. EMPOWERMENT

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

- a) to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;
- b) together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;
- c) to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished;

- d) to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;
 - e) to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;
 - f) to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;
 - g) to objective evaluation and decisions in disciplinary hearings;
 - h) to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status; and
 - i) to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.
-

ANNEX 6

Fatou B. Bensouda

Biographical Details

CURRICULUM VITAE
FATOU B. BENSOU DA (LLB (HONS), BL, LLM.
DEPUTY PROSECUTOR (PROSECUTIONS)
INTERNATIONAL CRIMINAL COURT

EDUCATION:

- **MASTER OF LAWS**, UN/IMO International Maritime Law Institute.
- **BARRISTER-AT-LAW (B.L)**, Nigeria Law School, Lagos, Nigeria.
- **BACHELOR OF LAWS-LLB (HONS)** University of IFE (Now OAU University) Nigeria.

OTHER RELEVANT PROFESSIONAL TRAINING:

- Diplômé d'études en Langues Français (DELF) 1er Degré - Le Ministère de la Jeunesse, De L'éducation Nationale et De La Recherche de La République Française;
- Diploma in Volunteerism - International Olympic Committee;
- Certificates in Computer and Information, Mutual Legal Assistance, Judicial Independence and Judicial, Accountability, Human Rights Training for Commonwealth Public Official, International Law Programme - International Court of Justice-The Hague, Netherlands.

SUMMARY OF RELEVANT ATTRIBUTES AND COMPETENCIES:

1. **Sound knowledge of International Criminal, Humanitarian and Human Rights law** from training and professional experience.
2. **Extensive experience** in:
 - a) The **conduct of criminal prosecutions** at both the **national** and international level (ICTR and ICC).
 - b) The **control** and **supervision** of criminal investigations and prosecutions.
 - c) The **management** of both public and private law offices and government departments.
 - d) The **management** and administration of **private sector enterprises** as General Manager of a private commercial bank.
3. As former Government Cabinet Minister (Attorney General and Minister of Justice) as well as a **government civil servant acquired extensive diplomatic and international experience** generally and in relation to legal matters.

4. **Strong interpersonal skills** and ability to work effectively and harmoniously in a multicultural setting which is one of the major attributes for her management style.
5. Excellent oral and written communications and drafting skills.
6. Excellent supervisory skills.
7. Efficient execution of duties under pressure.
8. Strong analytical skills.
9. Familiarity with International Judicial and Multicultural environment as a result of frequent dealings with Commonwealth, the UN and other International Legal Bodies.
10. Strong advocate of Human Rights Law and International Justice.
11. Excellent Word-Processing Skills and other computer applications.

WORK EXPERIENCE:

1. Deputy Prosecutor of the International Criminal Court, elected by the ASP of the ICC in August 2004 and serving to date.
 - Serve as a member of the Executive Committee of the Office of The Prosecutor responsible for the overall supervision and administration of the work of the office;
 - Manage, supervise and direct the Prosecution Division of the Office of the Prosecutor, which consists of the Prosecutions and the Appeals Section and provide strategic advice to the Prosecutor, coordinate prosecutions, including the execution of all elements of pretrial, trial and appeals measures, establish procedures and guidelines regarding prosecutions and appeals as well as interact with other organs of the court for effective investigations and prosecutions, as well as interact with other partners and stakeholders;
 - Acting as Officer in Charge and perform the functions and duties of the Prosecutor of the International Criminal Court in his absence and/or upon delegation by The Prosecutor.
2. 2001 to 2004 worked as a Legal Adviser and Trial Attorney at the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, rising to the position of Senior Legal Advisor and Head of The Legal Advisory Unit.
3. 2002 worked as General Manager of a leading commercial bank in The Gambia.
4. 2000 to 2002 Private Legal Practitioner.
5. 1987 to 2000 worked successively as State Counsel, Senior State Counsel, Principal State Counsel, Deputy Director of Public Prosecutions, Solicitor General and Legal Secretary of the Republic of The

Gambia, then Attorney General and Minister of Justice, in which capacity she served as Chief Legal Advisor to the President and Cabinet of the Republic of The Gambia.

SPECIAL ASSIGNMENTS UNDERTAKEN:

- Special envoy of His Excellency The President of The Republic of The Gambia to His Excellency The President of the Federal Republic of Nigeria, May 1999;
- Special envoy of His Excellency The President of The Republic of The Gambia to His Excellency The President of Zambia, October 1999;
- Assigned by His Excellency The President of The Republic of The Gambia to oversee the Department of State for Local Government, Lands and Religious Affairs, June 1999;
- Led OTP High Level Visit to Guinea following the events of September 2009;
- Led OTP High Level Meeting to Cote D' Ivoire following the 2010 post electoral violence;
- Published articles on international criminal law.

LANGUAGES:

- English – Fluent;
- French -Excellent Working Knowledge.

AWARDS:

- 2009 ICJ International Jurists Award - For contributions to criminal law both at the national and international level presented by Her Excellency, The President of India, President P. D Patil;
- 2011 World Peace through Law Award presented by The Whitney Harris World Law Institute, Washington University.

NOMINATIONS:

- Named the 4th most influential personality in Africa in the Civil Society Category (Jeune Afrique Magazine No. 2450-2451, dated 26 Dec 2010 - 8 Jan 2011);
- Named one of the 100 most influential African personalities (Jeune Afrique Magazine No. 2607 - 2608, dated 23 Dec 2007 - 5 Jan 2008).

ANNEX 7

Andrew T. Cayley

Biographical Details

Andrew T Cayley

Professional History:

International Co-Prosecutor ECCC

November 2009 onwards

Appointed Chief International Co-Prosecutor of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”), the Khmer Rouge Tribunal, on 27 November 2009. International Co-Prosecutor responsible, together with the National Co-Prosecutor, for the overall supervision of the four cases before the courts and overall management of the Office of the Co-Prosecutors. In Case 001 (“Duch”) led on the drafting of the prosecution appeal and response to appellant and during all the oral submissions before the Supreme Court Chamber in March 2011. In Case 002 – the trial of the four most senior living members of the Khmer Rouge regime – led and managed all pre-trial work including all preliminary motions and responses for both written and oral submissions which were heard in June 2011. Trial begins in November 2011. Other responsibilities include representing the court on public occasions, dealing with donors and the diplomatic community, engaging in Outreach activities including meeting victim communities across Cambodia.

Barrister in the Chambers of Anthony Berry QC, 9 Bedford Row, London WC1R 4 AZ

July 2007 to November 2009

Co-counsel on defence teams for *The Prosecutor v. Charles Ghankay Taylor* before the Special Court for Sierra Leone and also for Ivan Cermak in his case: *The Prosecutor v. Gotovina, Cermak and Markac* before the International Criminal Tribunal for the former Yugoslavia. Developing defence case, examining prosecution witnesses, drafting motions and responses and interlocutory appeals in both cases. Presenting defence case for Ivan Cermak. Ivan Cermak was acquitted of all charges against him in April 2011.

Senior Prosecuting Counsel, Office of the Prosecutor, International Criminal Court (“ICC”), The Hague, The Netherlands

February 2005 to July 2007

Supervised and provided legal direction on the Security Council referred ICC investigation into serious human rights violations in the Darfur region of Sudan. Oversaw a legal team of six lawyers and an investigative team of twenty investigators and analysts. Successfully completed the investigation and then filed applications for summonses to appear before the Pre-Trial Chamber in

respect of a Sudanese Interior Minister and an Arab Militia leader in February 2007. The charges submitted to the court were 51 counts of crimes against humanity and war crimes including persecution, murder, rape, looting and deportation. Warrants of arrest issued against both individuals by the Pre-Trial Chamber in April 2007.

Senior Prosecuting Counsel, Office of the Prosecutor, International Criminal Tribunal for the former Yugoslavia, The Hague, The Netherlands
June 2001 to February 2005

Supervising and providing legal direction in the investigation against General Ratko Mladic commander of the Bosnian Serb army. Redrafted the first indictment against Mladic and laid new charges in the court including genocide, crimes against humanity and war crimes. At the same time supervised the investigation of the Bosnian Serb Minister of Justice and the Minister of Interior for crimes against humanity and war crimes. Eventually recommended prosecution of only the latter and subsequently drafted the indictment against him which was confirmed in 2004. Also supervised the investigations into members of the Kosovo Liberation Army for serious human rights violations committed in Kosovo between 1998 and 1999 and into members of the Macedonian government, army and police for serious human rights violations committed in Macedonia in 2001. Managed the legal team and twenty investigators and analysts. Laid charges against the Macedonian Minister of the Interior and a senior police officer for war crimes committed in the village of Ljuboten in Macedonia in 2001. In 2004, led the first prosecution of members of the Kosovo Liberation Army for crimes against humanity and war crimes committed against members of the Yugoslav army and the civilian population of Kosovo.

Prosecuting Counsel, Office of the Prosecutor, International Criminal Tribunal for the former Yugoslavia("ICTY"), The Hague, The Netherlands
October 1994 to June 2001

Supervised and provided legal direction to the "Stupni Do" inquiry investigating the murder of sixty civilians and the destruction of the village of Stupni Do in northwest Bosnia-Herzegovina in December 1993. In August 1995, drafted the indictment in respect of crimes against humanity and war crimes committed by the commander of the attack on Stupni Do, Colonel Ivica Rajic (who after evading arrest for ten years eventually pleaded guilty to a number of the original charges from the 1995 indictment). From June 1997 to June 1999 served as prosecuting counsel on the prosecution of Major General Tihomir Blaskic, charged with crimes against humanity and war crimes in connection with the "Ahmici massacre" of April 1993. Examined and cross-examined witnesses to fact and expert witnesses and wrote written submissions and co-wrote the closing brief. From January 1999 to June 2001 served as prosecuting counsel in the trial of Colonel General Radislav Krstic charged with genocide, crimes against humanity and war crimes in connection with

events at Srebrenica in July 1995. Examined and cross-examined witnesses to fact and expert witnesses and co-wrote the closing trial brief. From June 2000 to October 2001 served as prosecuting counsel on the investigation and then for part of the trial of Radislav Brdanin and General Momir Talic charged with genocide, crimes against humanity and war crimes in connection with serious human rights violations committed in the Republika Srpska from 1992 to 1994.

**Commissioned Officer, Adjutant General's Corps (Army Legal Services) British Army
*March 1991 to February 1998***

After the commissioning course at the Royal Academy Sandhurst and spending three months as an infantry platoon commander with the 1st Battalion, the Kings Own Royal Border Regiment then military prosecutor and command legal adviser with the British army in Germany and the United Kingdom. Seconded by British government to ICTY from 1995 to 1998.

Other Professional Activities

From 1996 onwards I have presented papers at conferences and courses on international law, international criminal law and international humanitarian law. Most recently in May 2011 presented a paper to the Arab States Conference on the ICC: "The referral of situations by the Security Council to the ICC." In June 2011 wrote a paper presented to a specialist group of the IBA in The Hague on "Prosecutorial Disclosure." Participated with advocacy training at the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda since 1998.

Education

Barrister, Member of the Honourable Society of the Inner Temple;
Royal Military Academy Sandhurst (Professionally Qualified Officers Course), 1991;
Law Society's Solicitors Final Examination, College of Law Guildford, 1988;
LL.M (University College London), 1986; LL.B, 1985.

ANNEX 8

Mohamed Chande Othman

Biographical Details

CURRICULUM VITAE

CHIEF JUSTICE MOHAMED CHANDE OTHMAN

ACADEMIC QUALIFICATION

LL B (Hon), University of Dar Es salaam, 1974.

M. A (International Relations) Webster University, Geneva, 1982.

Certificate, The Hague Academy of international law, the Netherlands (Summer Sessions, 1983).

LANGUAGES : English, French, Kiswahili

PROFESSIONAL COMPETENCES

International Criminal Prosecutions, International Humanitarian Law, Human Rights and Judicial

PROFESSIONAL EXPERIENCE

28.12.2010 **Chief Justice of Tanzania**

Head of the Judiciary

07.02.2008 - 26.12.2010 **Justice of Appeal
Court of Appeal of Tanzania**

Justice of Appeal at Tanzania's Apex Court

16.08.2004 - 6.02.2008. **Judge, High Court of Tanzania**

Presided over criminal trials (murder, human trafficking), Constitutional petitions, and appeals (sexual and gender based crimes, armed gang robbery, corruption.

Dec. 2003 – Oct. 2004 **Senior Legal and Justice Sector Reform
Adviser, UNDP, Cambodia**

Principal legal adviser on legal and judicial reform in Cambodia.

1.08.2000 – 16 .10. 2001 **Prosecutor General, (UNTAET) Timor Leste**

Principal prosecution authority; overall direction of prosecutions, including of serious International Humanitarian violations; secured State Cooperation in investigations on the killing of UN Peacekeepers; advised on establishment of Independent, post-Independent P.G.'s Office.

1 June 1999-31 July 2000 **Chief of Prosecutions
International Criminal Tribunal for Rwanda**

Directed investigations and prosecutions; lead Trial Attorneys and Legal Advisers; enhanced State cooperation in arrest and surrender of accused.

20 Oct.98 –31 May 99 **Acting Chief of Prosecutions
International Criminal Tribunal for Rwanda**

Directed investigations and prosecutions; prosecuting counsel in *R. v. G. Ruggiu P.v. Omar Serushago; P. v. B. Ntuyahaga.*

11.07. 1996 –20.10.1998 **Senior Legal Adviser to the Prosecutor
International Criminal Tribunal for Rwanda**

Head of Prosecutor's legal Advisory team, advised on Prosecution strategy, supervised Indictment drafting; drafted legal briefs on International Humanitarian law, Human Rights Law, and Comparative Criminal law and procedure.

- 1994 **Head of Delegation
International Federation of Red Cross & Red
Crescent (IFRC), Hanoi, Vietnam**

- 6.1.92 – 15 .03.93 **Head of Delegation
International Federation of Red Cross & Red
Crescent, (IFRC), Conakry, Guinea.**
- 1989 –90 **Deputy Chief of Mission,
the Coordinator for Afghanistan (UNOCA),
Teheran, Iran**
- 1977-1989** **Desk/Regional Officer,
International Federation of Red Cross & Red
Crescent, (IFRC), Geneva.**
- Dissemination of International Humanitarian Law.
- 4.1975- 1977 **Public Prosecutor, Bank of Tanzania**
- 3.1974 – 3.1975 **Assistant State Attorney
Attorney General’s Office, Tanzania**

HIGH LEVEL HUMAN RIGHTS ASSIGNMENTS

U.N. Human Rights Council

Independent Expert on the Human Rights situation in the Sudan,
UNHRC Res. 11/10 & 15/27, Sept 2009 – To date.

Commissioner, High-Level Commission of Inquiry on Lebanon, UN
Human Rights Council resolution S-2/1, 2006.

ICTR/ICTY

**Member, Advisory Committee on the Archives of the International
Criminal Tribunal for Rwanda and the Former Yugoslavia, 2008-2009.**

Govt of Tanzania

**Chairman, Presidential Commission on Inquiry on the Relocation of
Pastoralists, Ihefu, 2007,**
Appointed by H.E. President of the United Republic of Tanzania.

SELECTED LEGAL PUBLICATIONS

BOOKS

Accountability for International Humanitarian law Violations: The Case of
Rwanda and East Timor, Springer Publishers, Heidelberg, Germany, 2005.

New Approaches in International Criminal Justice: Kosovo, East Timor, Sierra
Leone, Cambodia, (Eds. Ambos, K, and Othman, M), Max Planck Institute of
Foreign and International Criminal Law, Freiburg, Germany, 2003.PUBLICATIONS

**Published numerous scholarly articles on International Law, International
Humanitarian Law, Refugee Law and Justice, e.g.**

“Defense Practices and the Khmer Rouge Tribunal”, in Bohlander, M, Boed, R,
Wilsn, R.J, (Eds.) Defense in International Criminal Proceedings, Transitional
Publishers Inc., N.Y, 2006.

The Protection of Refugee Witnesses by the International Criminal Tribunal for
Rwanda, International Journal of Refugee Law, Volume 14, No.4, May 2003.

The Gulf Wars and Termination of Captivity for Prisoners of War, Revue de Droit
International des Sciences Diplomatiques et Politiques (The International Law
Review) Jan-Mars 1993, 11-36, Geneva, 1993.

ANNEX 9

Robert Petit

Biographical Details

Robert Petit

Counsel

Justice Canada, Crimes against Humanity and War Crimes Section, Ottawa, Canada
2001/ Current

Provide legal advice to Law Enforcement teams investigating persons currently in Canada, suspected of having committed violations of International Humanitarian Law and International Criminal Law in various countries.

Professional Experience

International Co Prosecutor

Extraordinary Chambers of the courts of Cambodia, Phnom Penh, Cambodia
2006 / 2009

In an Internationalized National Court, leading a team of National and International staff, supervise the investigation and prosecution of those most responsible for the crimes committed during the Khmer Rouge era of Cambodia.

Senior Trial Attorney

Special Court for Sierra Leone, Office of the Prosecutor, Freetown, Sierra Leone
2003 / 2004

In a Hybrid Tribunal, leading one of two teams of National and International staff, prosecute those bearing the greatest responsibilities for mass crimes committed during the period of the Civil War.

Prosecutor

United Nations Mission in East Timor, Serious Crimes Unit, Dili, East Timor
2002

In a Hybrid Tribunal, exercise criminal investigative functions and lead the prosecutions of persons suspected of mass crimes committed during a period of national political transition.

Crown Attorney
Justice Canada, Federal Prosecution Service, Montreal, Canada
2000 / 2001

Provide legal advice to Law Enforcement investigating international narcotics trafficking networks to ensure successful prosecution under domestic criminal legislation.

Regional Legal Advisor
United Nations Mission in Kosovo, Mitrovica Region, UNMIK, Pristina, Kosovo
1999 / 2000

Provide legal advice to the International Administrator of one of five Regions of Kosovo on various issues including the implementation of International Judiciary and issues arising out of the deployment of International Police and Armed Forces.

Legal Officer
International Criminal Tribunal for Rwanda, Office of the Prosecutor, Kigali, Rwanda
1996 / 1999

Supervise the investigations, indictments and prosecutions of numerous perpetrators of crimes committed during the Rwandan Genocide as well as provide legal advice to the Intelligence and Tracking Team of the Office of the Prosecutor.

Crown Attorney
Ministry of Justice, Government of Québec, Montreal, Canada
1989 / 1996

In a heavy caseload jurisdiction, appear for the Crown on an almost daily basis to conduct criminal prosecutions, specializing in violent crimes, gender crimes and organized criminality.

Education

Quebec Bar Association, Montreal, Canada September 1987
Advanced University Law Degree, Licence en droit

University of Montreal, Montreal, Canada September 1984
Bachelor of Arts L.L.B. Baccalaureat en droit

University of Montreal, Montreal, Canada September 1981
Bachelor of Arts Baccalaureat en Histoire

Publications

“Exploring critical issues in religious Genocide: case studies”; Case Western Reserve Journal of International Law, 2008

“Preserving the Rule of Law in the age of the “War on Terror”; American International Law Society, 2008

“A Review of the Jurisprudence of the Khmer Rouge Tribunal”; Northwestern Journal of International Human Rights, 2010

“ Lawfare and International Tribunals: A question of definition?”, Case Western Reserve Journal of International Law, 2011

“Best Practice Manual of the Office of the Prosecutor of the ICTR, ICTY, SCSL, ECCC and STL”, to be published 2011, (editor)

Activities and Awards

Contributor to numerous International Conferences on International Criminal Law and the Prosecution of International Criminal Offences.

2009 Recipient of the Frederick K. Cox International Humanitarian Award for Global Reform