

BUREAU OF THE ASSEMBLY OF STATES PARTIES

DUE DILIGENCE PROCESS FOR CANDIDATES FOR 2023 JUDICIAL ELECTIONS

1. At its twenty-first session, the Assembly of States Parties (the “Assembly”) requested the Bureau to “*establish a due diligence process by March 2023 for candidates for judges to be elected in 2023, the terms of reference of which shall be established by the Bureau on the basis of a proposal developed by the Independent Oversight Mechanism in consultation with the Advisory Committee on Nomination of Judges, taking into account the experience of the recent due diligence processes applied to the candidates for Deputy Prosecutor and Registrar*”.¹
2. In accordance with the request by the Assembly, the Bureau establishes the following due diligence process on the basis of a proposal developed by the Independent Oversight Mechanism (IOM) in consultation with the Advisory Committee on Nomination of Judges (ACN).
3. The due diligence process shall be conducted by the IOM with the assistance of the Registry and the Secretariat of the Assembly of States Parties as appropriate. It shall comprise two parts: A first part to review existing background information concerning the nominated candidates, and a second one to receive and review any allegations of misconduct made against any of the nominated candidates.

Review of background information

4. The Secretariat of the Assembly shall provide to the IOM, as they are received, the nominations of the candidates with all accompanying supporting documentation.
5. The IOM shall contact the nominated candidates and require them to complete a detailed questionnaire, and provide consent to contact former employers and employees, state authorities, or academic institutions. Failure to submit a completed questionnaire or provide the required consent may lead to the nominating State Party being informed and the candidate not being further considered.
6. The IOM shall conduct an in-depth background check of criminal, academic and employment records of the nominated candidates with the assistance of relevant sections of the Registry of the International Criminal Court as appropriate. The check shall include a review and analysis of open-source information and contacts with former employers and, where feasible, staff who may have worked with the nominated candidates.
7. States Parties, including those nominating candidates, commit to assisting the IOM fully in any inquiries regarding this review, and to respond to any IOM request in a timely manner.

Receipt and review of allegations of misconduct

8. Upon the adoption of this due diligence process, the IOM shall establish a confidential channel for the receipt of allegations of misconduct against any of the nominated candidates.
9. For the purposes of this due diligence process, “misconduct” refers to human rights violations, incidents of harassment, including sexual harassment, abuse of authority, discrimination and

¹ Resolution ICC-ASP/21/Res.2, para. 82.

bullying in the workplace, as well as other ethical or legal breaches of a serious nature such as fraud or corruption.²

10. The opening of the confidential channel shall be communicated to all States Parties by the Secretariat of the Assembly of States Parties and shall be disseminated through the Court's website and social media accounts, as well as through efforts by States Parties and civil society to provide information thereon to relevant agencies and professional associations. In particular, States Parties who have nominated candidates shall ensure that the process for submitting information to the channel, including how allegations received will be treated, is provided to the organizations where the candidate has previously worked or is currently working, noting that they are being considered as judicial candidates at the International Criminal Court. The confidential channel shall remain open until 30 June 2023.

Process for review

11. Any allegation made shall be accompanied by relevant information and documentation to the extent that it is available to the complainant.
12. 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.
13. The allegation and its review by the IOM shall be confidential and remain so at all times. Under no circumstances shall the identity of the complainant be disclosed without his or her prior consent. Only when the allegation cannot be reviewed and assessed on the basis of available corroborative evidence, and disclosure is necessary to ensure due process, may the IOM seek the consent of the complainant to any such disclosure. When such conditions are met and the IOM does not obtain the required consent from the complainant, the IOM shall set aside the allegation and discontinue its review.
14. The IOM shall first review the allegation and consider whether it relates to misconduct. If it does not, and relates rather to concerns about the candidate's qualifications, abilities, or past performance, it will discuss the allegation, taking into consideration any confidentiality concerns expressed by the complainant, with the Chair of the ACN, who will then decide, after consultation with the IOM, whether the matter should be referred to the entire ACN, for it to decide whether or not to consider the issue further.
15. When the allegation relates to misconduct, the IOM shall review the credibility of the allegation, including by obtaining further information and details from the complainant, either in writing or through an interview, and corroborating, to the extent possible, the information obtained.
16. The IOM shall also assess the materiality of the allegation, determining the type of misconduct at issue and its seriousness.
17. 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. Any nominated candidate contacted by the IOM in this context shall be warned not to retaliate against any complainant.

² In this context, the definitions of harassment, sexual harassment, abuse of authority, and discrimination shall be those found in the International Criminal Court's Administrative Instruction *Addressing Harassment, Including Sexual Harassment, and Abuse of Authority* (Ref. ICC/AI/2022/003), 6 April 2022, available online.

Reporting

18. No later than 31 October 2023 and before the planned roundtables for judicial candidates, the IOM shall submit to the Presidency of the Assembly a report regarding any concerns it may have identified with respect to the high moral character of any of the nominated candidates. In particular, it shall include an assessment as to whether any allegation made is supported by sufficient evidence to raise concerns about the candidate's high moral character, taking into account the credibility and materiality of the allegation. A copy of this report shall be transmitted to the ACN.
19. The IOM report shall also include information on the overall number of allegations received that lacked sufficient credibility or materiality to be put to the candidates, or that otherwise were not reviewed by the IOM such as anonymous complaints, lack of consent to disclose identity when necessary or performance-related allegations. In order to preserve the confidentiality of the process, only general information on the reasons to set aside the complaint shall be provided.
20. If an allegation was presented to a candidate, a short summary of that allegation and the response provided by the candidate shall be included in the report in a manner that ensures that the complainant's identity is not disclosed and no identifying details are provided.
21. Should the IOM be unable to reach a definite conclusion on the allegation by the time of its report, 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, including any impact these steps may have on the overall process.
22. The IOM shall provide any candidate who was notified of an allegation against them the IOM's assessment of the allegation, at the same time as the report is submitted to the Presidency of the Assembly. The IOM shall also inform the complainant in such cases.
