

OPEN SOCIETY JUSTICE INITIATIVE
ASSEMBLY OF STATES PARTIES GENERAL DEBATE STATEMENT
DECEMBER 2020

Excellencies, ladies and gentlemen,

It is my pleasure to address you today on behalf of the Open Society Justice Initiative.

The Open Society Justice Initiative has a long history as a supporter and advocate for international justice and regards the ICC as a key component of the international criminal justice landscape.

There are two matters we would like to highlight today: judicial and prosecutorial elections and the Independent Expert Review.

The election of the prosecutor and judges are the most consequential decisions that this Assembly will make for the future of the Court. We have been actively monitoring both processes and in concert with other civil society organizations we continue to call for transparent merit-based elections. States Parties must elect leaders who are determined to carry out their mandate in full independence, and who have demonstrated unwavering professional and personal integrity. Significantly, leadership will be crucial to carry forward the ICC review.

With regard to the prosecutorial election we note the decision of the Bureau of the Assembly of States Parties (ASP), dated November 13, 2020 to expand the list of candidates under consideration.

Prior to the expansion of the short-list of candidates, we advocated for states to respect the processes they themselves created (specifically the Committee on the Election of the Prosecutor and the Panel of Experts) to identify an outstanding pool of candidates for the job. We remain concerned about the failure to stick to these processes and the implications this could have for future elections. Looking ahead, we urge the Assembly not to take steps that undermine a transparent and merit-based process such as unilateral nominations, vote trading, endorsement, campaigning, or other forms of support for individual candidates.

Throughout 2020, we have vigorously advocated for comprehensive vetting of candidates to assert that they meet the “high moral character” requirement. While we note that the Committee on the Election of the Prosecutor ensured that certain background checks were conducted, more needs to be done to ascertain that the next Prosecutor beyond reproach. We cannot emphasize enough the importance of moral character. A leader sets the tone of the institution. The IER report has raised the alarm bell with respect to the ICC’s, including the OTP’s internal environment and the extent of bullying and harassment, recalling the fundamental role that leadership can play to address those problems. We believe vetting is still feasible in the time available, and without going beyond existing processes and mechanisms. The ASP Presidency, in consultation with the Bureau, should take all necessary steps to ensure a credible election even if this requires a brief postponement of the election itself.

Judicial elections are no different – a merit based transparent process is essential. All too familiar yet deeply harmful practices such as vote trading and campaigning should stop as they discount the candidates' qualifications in favor of considerations irrelevant to the best interests of the ICC.

Judicial candidates should also be thoroughly vetted in the same manner as prosecutorial candidates. While we note the improvements made by the Advisory Committee on Nominations, and the expansion of their mandate, we remain of the view that this is just the beginning. Full and thorough vetting of each and every candidate is crucial in future judicial elections.

This year's election experiences provide a wealth of lessons about how future election processes could be conducted. We urge you to request the Committee for the Election of the Prosecutor to produce the lessons learnt report they offered, and to commission a study into vetting mechanism options for elected officials. We also encourage states parties to continue to improve your national nomination procedures for judicial elections, in accordance with ICC-ASP/18/Res.4 and to submit information accordingly to the Advisory Committee of Nominations.

Lastly, we commend the Independent Experts who produced a comprehensive, timely and useful set of recommendations that could greatly improve the Rome Statute system. The Experts noted that they received full cooperation from the Court and it is in the spirit of cooperation and a mutually shared desire to improve the Rome Statute system that we urge both the Assembly and the Court to fully engage with and assess the recommendations, and move urgently to establish an effective implementation process.