

CICC Elections Team Questions and Answers on the ICC Prosecutor Election

15 September 2011

1. Why is a new Prosecutor being elected for the ICC in 2011?

The ICC's first Prosecutor, Luis Moreno-Ocampo, was elected in April 2003 for a non-renewable nine-year term that expires in June 2012. As such the States Parties will elect a new Prosecutor to replace him at the next session of the Assembly of States Parties (ASP) to be held from 12-21 December 2011. The new Prosecutor is expected to take office in 2012.

2. How will the next Prosecutor for the ICC be elected in 2011?

The governing body of the Rome Statute and the ICC, the ASP, is responsible for electing the Prosecutor, 18 Judges, and other officials. The 117 (current) State Parties pay for all costs of the ICC, which is an independent international organization. Similar to the procedures for ICC Judges, the Rome Statute contains provisions on the qualifications and elections procedures for the Prosecutor. In his capacity as the first President of the ASP, Prince Zeid Ra'ad Zeid Al-Hussein informally facilitated the election by consensus of the first Prosecutor. He and other officials and experts involved in the election of the first Prosecutor expressed the need for a more structured and formalised search process to assist in the election of the second Prosecutor.

In response, and in order to facilitate the nomination and election of a consensus candidate, the ASP's governing Bureau established a five-member Search Committee, with each regional grouping selecting an expert who serves in his individual capacity. The Search Committee is mandated to 'facilitate the nomination and election by consensus, of the next Prosecutor'¹ In fulfilling this mandate the Search Committee will endeavor to identify the most highly qualified individuals to be ICC Prosecutor and then conduct interviews, assessments and finally recommend at least three suitable candidates for Prosecutor to the Bureau. After informal consultations amongst all States Parties, it is possible that only one of these candidates will then be formally nominated and then elected by consensus at the ASP in December 2011.

However, it remains the case that legally any State Party can formally nominate a candidate for the position of Prosecutor.² If multiple States Parties nominate candidates, the Prosecutor will need to be elected by an absolute majority of the ASP in December.³

¹ See Terms of Reference of the Search Committee ICC-ASP/9/INF.2 (6 December 2010) [5].

² See Article 42 of the Rome Statute.

³ See Articles 42 (4) of the Rome Statute.

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3. How does the Search Committee assess candidates?

Article 42 (3) of the Rome Statute provides that the Prosecutor shall:

- Be of high moral character;
- Be highly competent in the prosecution or trial of criminal cases;
- Have extensive practical experience in the prosecution or trial of criminal cases; and
- Be fluent in one of the working languages of the Court (English or French).

The Search Committee has indicated that it will also need to develop secondary criteria in assessing candidates and has indicated a willingness to consult with both States and civil society on the content of such secondary criteria that elaborate on that contained within the Rome Statute.

4. Who is on the Search Committee and who do they represent?

The Search Committee is comprised of the following individuals who have been chosen by regional groups. The representatives serve independently and in their individual capacities:

- H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein, Permanent Representative of the Hashemite Kingdom of Jordan to the United Nations (Asian Group and Coordinator)
- H.E. Mr. Baso Sangqu, Permanent Representative of the Republic of South Africa to the United Nations (African Group)
- H.E. Mr. Miloš Koterec, Permanent Representative of the Slovak Republic to the United Nations (Eastern European Group)
- Mr. Joel Hernández García, Legal Adviser of the Ministry of Foreign Affairs of Mexico (Group of Latin American and Caribbean States)
- Sir Daniel Bethlehem, Q.C., Legal Adviser to the Foreign and Commonwealth Office of the United Kingdom (Western European and Others Group)

5. How has the Search Committee identified candidates?

The Search Committee received informal 'expressions of interest' for the position of ICC Prosecutor until the cut-off date of 9 September 2011. These expressions of interest were sent by candidates themselves or on their behalf by any third party (NGOs, associations, States, individuals etc) to the ASP Secretariat.

In addition to this process, the Search Committee itself worked to identify highly-qualified candidates for the position. For example, as part of this effort in June-July 2011 the Coordinator traveled to the annual meeting of the International Association of Prosecutors and the World Summit of Prosecutors-General, Attorneys-General and Chief Prosecutors in Seoul, South Korea.

By the cut-off date, the Search Committee had received a total to 42 expressions of interest. Twelve potential candidates were female, while 30 were male; 21 were nationals of the African

Group, one of the Eastern European Group, three of the Group of Latin American and Caribbean States (GRULAC) and 16 of the Western European and Others Group (WEOG).⁴

6. Why is the Search Committee receiving informal expressions of interest instead of formal nominations?

In forming a Search Committee that is able to receive informal expressions of interest, the Bureau of the Assembly of States Parties has sought to create a mechanism free from traditional vote trading and regional rotation that focuses its attention on identifying the most highly-qualified candidates. The Bureau is essentially seeking to modify and postpone the normal nomination procedures to facilitate the selection of a highly-qualified candidate by consensus.

States are still free to use the formal nomination process under the Rome Statute. However, as a practical matter, if multiple candidates are formally nominated by States Parties, it would conflict with the timing, purposes and procedures of the Search Committee. This would inevitably lead to an election between the various candidates in December 2011. With no guarantee that the front runners in such a campaign would be highly qualified, there would be a danger that factors such as deference to regional rotation and vote-trading deals between States Parties would take precedence over the merit, qualification and suitability of the candidates.

Such a contested election between multiple candidates for Prosecutor may likely to lead to divisions within the ASP with different states or regional groups backing different candidates. There is also the possibility that such an election process would encourage candidates for the position of Prosecutor to campaign for votes, as well as to make private agreements on appointments, situations, and other matters that would undermine the legitimacy and independence of the office. Were the election of the next Prosecutor conducted in such a manner it could have the negative effect of deterring highly-qualified individuals from being considered for the position.

In order to facilitate the Search Committee's ongoing work, in July 2011 the ASP President issued a statement discouraging formal campaign activities in this election.⁵

7. How transparent is the Search Committee's work?

The Terms of Reference of the Search Committee guarantee the confidentiality of the names of those under consideration –a measure which, according to the Search Committee, is designed to encourage expressions of interest from highly-qualified candidates who for many reasons might be unwilling or unable to be a part of an open campaign for the position.

As a result, the confidentiality requirements of the Search Committee make it difficult for those outside of the committee, including civil society, to effectively monitor those candidates that the

⁴ At the time of writing the nationality of one candidate had yet to be determined, see <http://www.icc-cpi.int/NR/rdonlyres/ED973FD7-F236-4E38-8E0E-4C52449BDAA3/283776/Bureau12AgendaandDecisions14sep1030.pdf>

⁵ See Assembly of States Parties Press Release 22 July 2011 <http://www.icc-cpi.int/NR/rdonlyres/4F6AC795-D24A-4825-B33F-A787451085A4/0/ICCASP20110722PR703ENG.pdf>

Committee is considering most seriously. Some CICC members have stated that this process severely limits their ability to have meaningful input into the process of identifying the next Prosecutor. Within this framework the Coordinator of the Search Committee has indicated a willingness to cooperate with civil society and has given a briefing to civil society at the CICC offices in New York. The Search Committee has been giving regular briefings to the Bureau of the ASP and the New York Working Group where information such as the geographic and gender breakdowns of the individuals under consideration has been disclosed. Information on these activities is available on the ASP website at:

<http://www.icc-cpi.int/Menu/ASP/Elections/Prosecutor/Prosecutor.htm>.

8. How does the ASP avoid formal nominations being made before a consensus candidate has been identified?

The Search Committee (and the events in the timeline below) relies on States Parties refraining from formally nominating candidates for the position until a consensus candidate has been identified. If no formal nominations are made, the ASP President will continue to extend the deadline for the closing of the nominations period for this position (the current deadline is 16 September 2011) until such a time as the consensus candidate has been identified and formally nominated by a State Party. This is likely to be some time in November 2011. For this reason, the Coordinator and the ASP President have requested that States Parties do not formally nominate candidates until a consensus candidate has been identified. As of 15 September all States Parties have cooperated with this request.

9. How have civil society actors be involved in the Search Committee process?

The Search Committee requested and encouraged NGOs to identify qualified candidates from all regions and directly submit expressions of interest to the Search Committee. Such expressions of interest were invited from organisations or by individuals. The Coordinator of the Search Committee also briefed civil society in June 2011 at the CICC's New York offices on the work of the group and the opportunities for civil society engagement in the process of identifying and evaluating candidates. Updates and information on the engagement of civil society in this process can be found at the CICC webpage for the election of the Prosecutor:

<http://iccnw.org/?mod=electionprosecutor>.

10. Must the Prosecutor be a national of a State Party?

No. Unlike the judicial elections, where ICC judges are required to be nationals of a State Party, the Rome Statute does not require the Prosecutor to be a national of a State Party.

11. What is the timeline and expected process for the Search Committee?

Based upon the reporting of the Coordinator to States Parties in New York, the CICC has produced the following estimated timeline of events:

8 February to 9 September 2011: Submission of informal expressions of interest to the Search Committee.

12 September 2011: Search Committee meeting in New York to decide on a 'long' shortlist of about 10 candidates selected from the expressions of interest received.

10-15 October 2011: Search Committee to interview the candidates on this 'long' shortlist.

Late-October 2011: Search Committee to submit a shortlist of "at least three suitable candidates" to the Bureau of the Assembly of States Parties.⁶

November-December 2011: Based on the election of the first Prosecutor, at this stage it is possible that an informal session of the ASP could be convened to identify a single consensus candidate for the position. If this occurs, it is then possible that one State Party will then nominate the candidate who has been identified as the consensus candidate.

12 December 2011: The next Prosecutor will be officially elected at the ASP (12-21 December 2011).

12. Does the Search Committee have a position on campaigning activities by candidates?

Campaigning activities by candidates or conducted by State Parties on their behalf have been discouraged by the Coordinator and the ASP President.⁷

13. What is the CICC doing?

The CICC has been actively monitoring the Search Committee process and advocating for further transparency, information sharing and opportunities for civil society participation. The CICC, while not taking a position on candidates, has also been actively encouraging its individual members to identify potential candidates from all regions and submit their names to the Search Committee. In June 2011 the CICC facilitated an NGO briefing from the Coordinator of the Search Committee at the Secretariat offices in New York. The CICC Elections Team, which is open to member organizations, has also been reporting on the briefings given by the Coordinator to States Parties in New York.

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⁶ See Terms of Reference of the Search Committee ICC-ASP/9/INF.2 (6 December 2010) [6].

⁷ See Secretariat of the Assembly of States Parties Informal Summary 20 July 2011, page 3 at http://www.icc-cpi.int/iccdocs/asp_docs/Elections/EP2011/2011-07-20-NYWG_Summary-ENG.pdf
Assembly of States Parties Press Release 22 July 2011 <http://www.icc-cpi.int/NR/rdonlyres/4F6AC795-D24A-4825-B33F-A787451085A4/0/ICCASP20110722PR703ENG.pdf>