

CICC DOCUMENT ON THE ROME STATUTE CRITERIA FOR THE NEXT ICC PROSECUTOR

13 June 2011

I. Background:

1. In December 2011, at its tenth session, the Assembly of States Parties (ASP) will elect a new Prosecutor for the International Criminal Court (ICC), only the second time it has done so. The election will be a crucial decision by the ASP that will impact almost every aspect of the ICC for years to come. The new Prosecutor will take responsibility for receiving referrals and conducting investigations and prosecutions before the Court. This includes investigations and cases currently before the ICC in relation to situations in the Central African Republic, Darfur, the Democratic Republic of the Congo, Kenya, Uganda, and Libya as well as the numerous preliminary examinations undertaken in Asia, Africa, Europe, Latin America, and the Middle East.

2. In 2002, the ASP during the second resumption of its first session elected Mr. Luis Moreno-Ocampo as the first Prosecutor of the ICC. In accordance with a pre-arranged agreement among the States Parties, no other candidates were formally nominated prior to that election.

3. Prosecutor Moreno-Ocampo took office on 16 June 2003 for a nine-year term which he will complete in mid-2012. He is ineligible for reelection under Article 42(4) of the Rome Statute.

4. The new Prosecutor will take office in mid-2012 and serve a nine-year term expiring in 2021, unless a shorter term is decided upon at the time of election as provided for by Article 42(4) of the Rome Statute. The formal nomination period for the election of the Prosecutor will run for 12 weeks between 13 June to 2 September 2011, as set out in Resolution ICC-ASP/1/Res.2, paragraph 24, and Resolution ICC-ASP/3/Res.6, paragraph 3. The President of the ASP would extend that period if necessary.

5. The ASP has established a Search Committee for the Prosecutor of the International Criminal Court (ICC), which is “mandated to facilitate the nomination and election by consensus of the next Prosecutor”.¹ The Search Committee is composed of five States Parties’ representatives, one from each regional group. Elections are scheduled to be held in December 2011 in advance of the current Prosecutor’s term ending in June 2012.

6. The work of the Search Committee is now underway. It is accepting expressions of interest from States, international and regional organisations, NGOs, individuals, professional associations and other sources, as well as seeking out qualified individuals on its own initiative. By early September it plans to develop a list of approximately ten individuals.

¹ See ICC-ASP/9/INF.2 [5].

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From early September to mid-October the Search Committee will conduct further research into these individuals and invite them to be interviewed.

7. Following these interviews and research in accordance with its Terms of Reference, the Search Committee will produce a shortlist of at least three suitable candidates for consideration by the Bureau. The intention is then that States Parties, at an informal session of the ASP, will choose a candidate and suggest that the State of nationality of the selected candidate formally nominate him or her, for election by consensus at the December ASP.

8. In the meantime, the President of the ASP will continue to extend the nomination period on a rolling two-week basis until the work of the Search Committee is complete and a consensus candidate has been informally agreed upon by the ASP. As such, the Search Committee process is designed to run parallel to the formal nomination procedure described in paragraph 4 above and States Parties have been asked not to make formal nominations until the work of the Search Committee has been completed.

9. Individuals interested in the position, or those wishing to recommend the names of qualified individuals, may submit expressions of interest to the Committee through the ASP Secretariat. There is no requirement that the Prosecutor be a national of a State Party to the Rome Statute.

10. The CICC believes that in order to ensure the effectiveness and success of the Court, the next Prosecutor must have the character and experience stipulated in the Rome Statute as necessary to fulfill the mandate of the position. In particular, he or she shall be a person “of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases.”

11. To assist all interested parties in considering individuals to identify candidates for ICC Prosecutor, the CICC has prepared the following criteria based on the requirements of the Rome Statute, ASP resolutions and other relevant sources governing the nomination and election of the Prosecutor. The criteria are relevant throughout the entire election process.

12. As in previous and all future ICC elections, the CICC will not take a position on any individual candidates. It is committed to upholding the principles of the Rome Statute to ensure a fair, effective and independent ICC.

II. Qualifications Required for ICC Prosecutor and Relevant Criteria under Article 42 of the Rome Statute

13. **Character.** The Rome Statute requires the ICC Prosecutor to be a person of high moral character. An individual’s integrity, reputation and any disciplinary action may be relevant to his or her character.

14. **Competence.** The Office of the Prosecutor (OTP) is “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.” The Rome Statute thus requires the ICC Prosecutor to “be highly competent in ... the prosecution or trial of criminal cases.” Competence in the prosecution or trial of criminal cases may

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include knowledge of and expertise in criminal law and procedure relevant to the ICC, including in areas such as the crimes over which the Court has jurisdiction, disclosure of evidence, reparations, and victims' representation. Advanced legal degrees, legal writing and analytical abilities and trial management skills may also be relevant.

15. **Experience.** The Rome Statute requires the ICC Prosecutor to “have extensive practical experience in the prosecution or trial of criminal cases.” It is notable that the ICC requires lawyers seeking to act as duty counsel, ad hoc counsel, defence counsel or as legal representative of victims to have at least 10 years of relevant experience in order to qualify for admission to practice before the Court.

16. **Language.** The Rome Statute requires that the ICC Prosecutor “have an excellent knowledge of and be fluent in at least one of the working languages of the Court [English and French].”

17. **Independence.** The Rome Statute requires the OTP to act independently as a separate organ of the Court and bars any member of the OTP “from seek[ing] or act[ing] on instructions from any external source.” The ICC Prosecutor cannot “engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence.” It is incumbent upon States Parties ensure that all candidates for ICC Prosecutor would be able to maintain the independence of the OTP and to act independently of any government or other outside actor.

18. **Management.** The Rome Statute confers on the Prosecutor “full authority over the management and administration of the Office, including the staff, facilities and other resources thereof.” The Prosecutor should thus possess demonstrated management abilities and experience that would assist him or her in overseeing a diverse staff of several hundred professionals.

II. Nominations Procedure and Criteria

19. For the nomination of candidates for Prosecutor, the ASP follows the procedure for the nomination of candidates for Prosecutor set out in part D of Resolution ICC-ASP/1/Res.2 and the procedure for judicial nominations set out in part A of Resolution ICC-ASP/3/Res.6, applied *mutatis mutandis* to the nomination of the Prosecutor.

20. **Statement.** Resolution ICC-ASP/1/Res.2, paragraph 26, requires that “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.” The CICC urges States Parties to thoroughly examine the relevant expertise, background, experience and qualifications of potential candidates, and to provide extensive details on the qualifications of the candidate they nominate.

21. **Support.** Resolution ICC-ASP/1/Res.2, paragraph 25 states that all “nominations for the post of the Prosecutor should preferably be made with the support of multiple States Parties.” The Coalition does not believe that this consideration should come at the expense of a thorough, transparent and merit-based nomination process.

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22. **Transparency.** The Coalition believes that States Parties should nominate candidates in a way that is transparent and involves broad consultation with legislatures, the legal profession and civil society, in order to ensure that all qualified candidates have been considered and that the process takes into account a wide array of perspectives.

III. Election Procedure and Criteria

23. Subject to the Search Committee procedures outlined above, the procedure for the election of the Prosecutor is contained in part E of Resolution ICC-ASP/1/res.2.

24. **Merit-based search.** The Search Committee's Terms of Reference include provisions on the composition, mandate, working methods, transparency, confidentiality and timeline of the search process.² The Coalition believes that the Search Committee's work should be driven by merit, meaning finding the strongest candidates who fulfill the criteria outlined in the Rome Statute as outlined above.

25. As part of its broader ICC elections campaign, in the lead up to the elections in December the CICC has also published a questionnaire indicating questions candidates should address during the selection process. Noting that the names of candidates under consideration may not be disclosed by the Search Committee until it produces a shortlist of at least three suitable candidates for consideration of the Bureau, the Coalition will send the questionnaire, which elaborates the experience required for the position, to the Search Committee requesting that the questions contained therein guide the Committee in its selection process. The submission of a questionnaire - should it be taken up by the Search Committee - will encourage a merit-based assessment of candidates.³

26. **Merit-based voting.** The Coalition believes that States Parties should vote for the candidate they believe is most qualified for the position of ICC Prosecutor. Among the most objectionable elements of ICC elections is the practice of making reciprocal agreements between governments in exchange for votes. The CICC appeals to ICC States Parties to refrain from this practice in ICC elections, especially in trading votes for other elections occurring during the same ASP session or other unrelated elections.

27. **Consensus.** Resolution ICC-ASP/1/Res.2, paragraph 29, states that "every effort shall be made to elect the Prosecutor by consensus." In the absence of consensus, paragraph 30 of the resolution provides that the Prosecutor will be elected by secret ballot by an absolute majority of States Parties per article 42, paragraph 4 of the Rome Statute.

28. The Coalition will engage with stakeholders in a discussion on the possibility for further reform of the Prosecutor selection process and other election processes, including the option of advocating for the involvement of independent eminent appointees, including non-

² The Search Committee's Terms of Reference are available at http://www.icc-cpi.int/iccdocs/asp_docs/ASP9/ICC-ASP-9-INF.2-ENG.pdf

³ Additional information about the CICC elections campaign is available at <http://www.coalitionfortheicc.org/?mod=elections>.

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governmental experts, in future nomination processes. This may also include efforts to formalise the Prosecutor selection process within the Rome Statute framework.