



Assembly of States Parties

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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.

(...)
