



International



March 16, 2011

Dear Search Committee Members,

At the outset, we wish to welcome your appointment by the Bureau of the Assembly of States Parties to evaluate candidates and make recommendations for the next Prosecutor of the International Criminal Court (ICC). We write this public letter to you as a group of nongovernmental organizations with a deep commitment to the ICC's mission of ending impunity for the worst crimes known to humankind. Central to the court's ability to fulfill its mission are the vision and capacity of its Prosecutor. Indeed, the public's first encounter with the institution often will come through the investigations of the Prosecutor.

The role of the ICC Prosecutor is vastly different from that of a national prosecutor. The ICC's broad geographic jurisdiction means that the Office of the Prosecutor (OTP) must pursue its mandate in a number of different countries, often simultaneously and in situations of ongoing conflict. In addition, unlike most national prosecutors, the ICC Prosecutor's focus on mass atrocity crimes means that he or she must exercise far greater discretion in selecting cases. Further, while national prosecutors often work closely with the police to carry out investigations, the OTP lacks a police force and thus depends heavily on the cooperation of states to carry out many investigative actions.

The search for a new Prosecutor comes at a critical juncture of the ICC's institutional development. Although there has undoubtedly been progress in investigations and ongoing trials before the ICC, the proceedings in The Hague have revealed the difficulties of adjudicating alleged crimes under an innovative legal regime. The ICC's emergence as an important entity on the international stage—most recently demonstrated by the UN Security Council's referral to the court of the situation in Libya—means that the acts of its principals, especially the Prosecutor, will likely be even more closely scrutinized and subject to criticism, both legitimate and unjustified.

We have closely observed the practice of the court (including through service in relevant international institutions and as former criminal law practitioners) as it has emerged so far in The Hague, in many of the communities affected by the crimes in its jurisdiction, and on the international landscape. We therefore have an awareness of some of the challenges that have arisen and will likely arise in the future. Recognizing these challenges and the qualities needed to meet them is essential to determining what demonstrable experience and skill sets a search committee should use to evaluate candidates to be ICC Prosecutor.

Some of the challenges include:

*Working in a highly politicized environment.* An effective ICC Prosecutor should have a legally grounded understanding of the political context in which criminal accountability is pursued. The Prosecutor should execute his or her mandate of investigation and prosecution independently, and without engaging in or appearing to engage in political considerations.

*Prioritizing investigations and prosecutions that are representative of the crimes committed against affected communities.* The ICC's most important constituency is the victims it was created to serve. The Prosecutor should be sensitive to these communities' expectations for justice, as well as to victims' rights to justice within a reasonable time. Maintaining a field-based perspective in devising investigative and prosecutorial strategies is therefore critical, as is supporting the court's broader engagement with affected communities.

*Directing a diverse group of highly qualified people in a wide variety of complex and specialized tasks.* Effective staff management is essential to meet the varying demands of conducting investigations in numerous country situations and building complex cases for prosecution. The Prosecutor must provide leadership and vision for the staff of his or her office.

*Making trials relevant and meaningful for affected communities.* The Prosecutor should appreciate the importance of ensuring not only that justice is done but also that it is seen to be done. Supporting the court's outreach activities to make complex trials understandable to affected communities in situation countries is essential. In addition to making the court's work understandable, such outreach is crucial to help to manage expectations of what the ICC can realistically achieve.

*Ensuring the ICC's legacy in situation countries, including through promoting complementarity.* The ICC is not a development agency, and the court's primary task is to try its cases fairly and effectively. At the same time, closing the impunity gap through national prosecutions for ICC crimes is a critical part of the court's legacy in its situation countries. The Prosecutor should have an understanding of the OTP's role in promoting complementarity, which includes encouraging the development of capacity building at the national level and designing means for effective information sharing if and when appropriate.

*Contributing to the ICC's institution-building and its overall mandate.* The Prosecutor should understand the importance of coordinating effectively with the court's other organs in areas of mutual interest (such as witness protection, outreach and communications, and field operations). Close coordination and careful navigation of the organs' respective mandates is essential to strengthen the institution and achieve the ICC's overall mission.

Finding candidates who embody the qualities needed to meet these challenges is a monumental task. Article 42(3) of the Rome Statute dictates that merit should drive the election of the Prosecutor, stating that he or she must be a person of "high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases." But beyond demanding practical criminal justice experience, the statute is silent on what other merit based characteristics should take priority. We thus set out below the criteria that we believe

should be used in evaluating potential candidates to ensure that only the most qualified are shortlisted for consideration, and, eventually, that the highest qualified candidate is elected.

### **1. Demonstrated experience of professional excellence in complex criminal cases**

The primary role of the Prosecutor is to ensure that the OTP produces factually provable and legally sound cases against those most responsible for the most serious conduct. The aim should be to secure convictions while respecting due process. Prospective candidates should be able to demonstrate a track record of the highest degree of professionalism in the prosecution or trial of complex criminal cases. Candidates should also be able to draw from past experience to show a deeply rooted respect for the fair trial rights of defendants and due process overall.

In assessing these qualities, the search committee need not restrict itself only to those candidates with previous experience as a prosecutor. Indeed, article 42(3) of the Rome Statute requires “extensive practical experience in the prosecution or trial of criminal cases” (emphasis added). For instance, candidates with significant experience as judges, in addition to those with considerable prosecutorial experience in such cases, should be considered.

### **2. A demonstrated ability to act with independence and impartiality in the exercise of professional duties**

Each candidate should be able to demonstrate independence and impartiality in the execution of his or her professional duties as a leading actor in a judicial institution. He or she should also have demonstrated experience with or an understanding of international relations and institutions relevant to the work of the OTP.

### **3. A proven track-record of professional excellence in institutional management**

Each candidate should have a demonstrated commitment and ability to develop a positive work environment based on professional respect and excellence, especially in a multi-cultural environment. He or she should be able to provide examples that show an ability to strike an appropriate balance between delegation and supervision. Given that article 42(3) of the Rome Statute provides that the Prosecutor “shall” be assisted by at least one deputy, each candidate should also be required to articulate a vision for the role of one or more deputy Prosecutors in the OTP.

### **4. Demonstrated experience in working with other bodies or agencies to effectively achieve a common goal**

Each candidate should have prior experience working effectively with other agencies or bodies (with either shared or diverse mandates) in pursuit of a common purpose. Each candidate should be able to identify some of the challenges associated such inter-agency/body cooperation and put forward strategies or examples of how disputes or tensions were ultimately resolved.

### **5. Demonstrated experience in communicating effectively to a wide variety of constituencies**

Given the importance of effective outreach and communications as outlined above, previous experience prioritizing and successfully conveying key yet complex information in a manageable format to different core audiences is crucial.

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We can appreciate the difficulties of finding candidates that satisfy all of these criteria. Overall, in addition to the statutory requirement that the prosecutor have extensive practical criminal experience, the committee should strive to find an individual of demonstrated integrity, professional competence, and leadership in his or her (related) field to be the next ICC Prosecutor. We believe these factors are essential to meet the challenges identified above.

We welcome the Bureau's emphasis that the search for the next ICC Prosecutor should be undertaken in "a structured and transparent manner." In that vein, we look forward to further engaging with you as the search process evolves. We very much wish to provide input as appropriate to help ensure that only the most highly qualified candidates are considered.

Signed\*,



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des Droits de l'Homme



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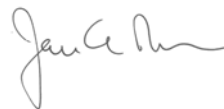
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\* The Coalition for the International Criminal Court (CICC) participated actively in preparing this letter, but with 2500 members, it was not feasible to seek global endorsement.

CC: Amb. Christian Wenaweser, President of the Assembly of States Parties to the ICC