

Coalition for the International Criminal Court (CICC) Elections Team Paper

Recommendations to the States Parties to the International Criminal Court in relation to the creation of a permanent vetting mechanism for ICC and ASP elections.

November 2021

The CICC Elections Team¹ has taken note of the recent developments related to the election of the ICC Deputy Prosecutor(s) and the ICC Registrar, especially as it concerns vetting candidates according to the Rome Statute's "high moral character" requirement.

The Team urges the ASP to develop a permanent vetting mechanism for future ICC and ASP elections and expertise.

Civil society organizations previously urged States Parties to undertake comprehensive vetting of candidates in the 2020-2021 election of the ICC prosecutor to assess "high moral character."² The inclusion of specific due diligence measures intended to assist in the determination of "high moral character" in the election process for the positions of Deputy Prosecutor is therefore a welcome step.³

We have noted the Decision on the election of the Registrar adopted by the Study Group on Governance for the consideration of the Assembly which requests the ASP Bureau to establish a due diligence process to assist in the determination of the criterion of "high moral character" in the election of Registrar, to be developed in coordination with the ASP Presidency and the IOM.⁴

The CICC Elections Team strongly believes that rather than developing ad hoc procedures to determine the "high moral character" of candidates for elected positions, the ASP should put in place a permanent mechanism to vet candidates. Establishing a permanent vetting mechanism will ensure that all ICC and ASP elected officials, including Judges, undergo the same scrutiny in the process of election. What is more, a permanent mechanism will allow for a transfer of institutional knowledge on best practices of vetting procedures.

In that regard, the CICC Elections Team welcomes the proposal to include in the upcoming ASP omnibus resolution language that mandates the Bureau to develop a permanent vetting mechanism for ICC elections. We urge states parties to support this proposal.

The team notes states parties have recognized that there is a gap with respect to vetting as demonstrated by the due diligence proposal for the Deputy Prosecutors and the draft resolution on the election of the Registrar. This confirms that it is not premature to mandate the Bureau to develop a permanent vetting mechanism. In addition, the Team would like to emphasize the importance of consulting with civil society and other experts in the development of such a mechanism. Those consultations were omitted during the development of the due diligence proposal for the Deputy Prosecutors given the short timeframe for its adoption. However, bearing in

¹ This paper has been prepared by Coalition members following most closely ICC and ASP election processes. It does not represent the views of all Coalition members. Since the Rome Diplomatic Conference, Coalition members have organized themselves into thematic teams to follow issues addressed by the ASP or its subsidiary mechanisms and by the ICC. Teams are a forum to discuss and follow issues and with a view to developing advocacy. All Coalition members can join any team.

For further information contact the CICC Elections Team focal point in the CICC's International Secretariat, Matteo Tonella at tonella@coalitionfortheicc.org.

² [Open letter to the Bureau of the ICC Assembly of States Parties](#), 10 September 2020; see also [Open letter to the ICC Assembly of States Parties](#), 2 December 2020; [Civil society statement on ongoing Prosecutor election](#), 23 October 2020.

³ Proposal by the Presidency of the Assembly and the Prosecutor on Due Diligence Process for Candidates for Deputy Prosecutor, 7 July 2021.

⁴ Study Group on Governance, Draft decision on election of Registrar, 20 October 2021.

mind that this is relatively new territory for the ICC, we believe that consultations can ensure that the proposal meets the highest standards and considers practices in place elsewhere. Finally, the team recommends that states ensure that vetting applies not only to ICC officials (Judges, Registrar, Prosecutor and deputies) but also to ASP elected officials (e.g., CBF members, TFV board). In the development of the mechanism, consideration could be given to adapting the vetting process to each of these different kinds of elections.

As previously submitted, vetting is common practice for many national and other governmental appointments, for mid- and high-level positions alike. We call on the ASP leadership and States Parties to prioritise the development of a fair and transparent permanent vetting mechanism at the ICC and recommend the inclusion of language in the upcoming ASP omnibus resolution mandating the Bureau to develop a permanent vetting mechanism for all ICC and ASP officials for adoption by the Assembly at its twenty-first session.

As the Bureau moves forward with developing this mechanism, it should take into account lessons learned from the process used in the Deputy Prosecutor election. The team offers the following initial observations:

First, the process should explicitly include a requirement to conduct reputational interviews. Such interviews could help reveal relevant information about a person's character or conduct that would not otherwise be uncovered.

Second, the process of handling allegations of misconduct of candidates by the Independent Oversight Mechanism (IOM) poses a considerable burden on potential complainants. Providing a brief 14-day period to submit all relevant information and documentation related to the allegation, not accepting anonymous complaints, and threatening to discontinue the review of the allegation in case the complainant disagrees to disclose identity might discourage individuals to come forward with information on misconduct.

Key CICC principles on ICC and ASP elections

The Coalition for the ICC through its Elections Team closely monitors the processes to elect leaders of the International Criminal Court (ICC) and its governing body, the Assembly of States Parties (ASP), and has consistently called for the election of only the highest qualified candidates through fair, transparent and merit-based nomination and election processes.

The Coalition is of the firm belief that having in place the most qualified and experienced leadership of the Court and the Assembly is key to strengthening the institution's credibility, transparency and impartiality.

The Coalition stresses the importance of developing fair, transparent, and merit-based national-level nomination processes in accordance with international standards and urges States Parties to adopt and review national legislation on ICC elections

The Coalition strongly opposes reciprocal political agreements ("vote-trading") in ICC elections, and calls all States Parties to pledge to avoid political considerations in the choice of candidates.

The Coalition as a whole and the CICC Elections Team do not endorse or oppose individual candidates, but rather advocate for the integrity of the nomination and election procedures.

Individual member organizations of the Coalition may take positions on particular candidates. These positions represent the views of those respective organizations and should not be taken as representative of the Coalition's views.