

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

Recommendations to States Parties in relation to the development of a Permanent Vetting Process for all ICC and ASP elections

November 2022

The Coalition for the International Criminal Court (CICC) Elections Team¹ commends States Parties for their efforts to address the vetting gap in International Criminal Court (ICC) elections, including by introducing ad hoc vetting processes to assess the Rome Statute high moral character requirement, for the deputy prosecutor and the registrar elections, which were managed by the Court's Independent Oversight Mechanism (IOM). States agreed at the 20th session of the Assembly of States Parties (ASP20, held in 2021), in the '[Omnibus' resolution](#) to adopt a permanent vetting process for all elected ICC officials by the 22nd session of the Assembly in 2023. The [Report by the Facilitators](#) on the third election of the Prosecutor of the ICC – Lessons Learnt, issued in October 2022, further confirms that “a large majority of States Parties considered vetting to be central to the election process, and considered that there should be clear rules, covered in the Terms of Reference, from the start.”

Next steps for developing the permanent vetting process at ASP 21

Building on these significant advancements, **the CICC Elections Team calls on States Parties to agree at ASP 21 on next steps for developing the permanent vetting process**, and to maintain inclusive consultations with civil society and other relevant experts. The Bureau and the ASP Presidency will lead the development of the permanent process, which should include:

1. Terms of Reference with baseline permanent elements required for all elections to ensure that the process is **safe, transparent, and comprehensive** (detailed below) which include:
 - confidential reporting channel for allegations of misconduct;
 - in-depth background checks;
 - reputational interviews of supervisors and supervisees; and
 - other element listed below.
2. Annexes with election specific elements for ICC elections of the prosecutor, deputy prosecutor(s), judges, registrar, deputy registrar, and ASP elections for the Presidency, Advisory Committee of Nominations, Committee on Budget and Finance, and the Trust Fund for Victims Board of Directors.

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 organised 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 CICC teams.

In order to advance the progress made during the two ad hoc processes and introduce a robust permanent model, further improvements are needed to ensure that the process is designed with **baseline permanent elements** that are **safe, transparent, and comprehensive**:

1. SAFE

- ☑ A **confidential reporting channel** and **victim-centred procedures** that take into account the serious nature of potential complaints and the trauma faced by some victims of abuse such as sexual harassment, bullying, discrimination, and racism;
- ☑ **Reasonable and extended time periods for submissions of allegations** due to the many barriers to reporting; many months will be required in order to give individuals the necessary time to feel safe to come forward since complainants are often afraid to report due to their justified fear of retaliation and/or retraumatization;
- ☑ Best efforts must be made to **maintain the anonymity of information providers**, and their objection to the disclosure of their identity should not be a reason to set aside allegations which are corroborated by evidence;
- ☑ An express **warning for candidates not to retaliate** against persons submitting information to the confidential reporting channel;
- ☑ **Whistle-blower protection**; and
- ☑ **Compliance with data protection laws.**

2. TRANSPARENT

- ☑ The vetting process – including the reporting channel, and reputational interviews – needs to be **widely publicised** together with information on the shortlisted candidates and the election process;
- ☑ The vetting process must be **clearly set out** for candidates and for those who wish to submit information about the candidates, **including which criteria are applied to the evaluation of potential complaints**; how the credibility, materiality, and verifiability of allegations is assessed; which evidentiary standard is applicable for preliminary assessments of complaints; which evidentiary standard applies to potential full-fledged investigations of complaints when concerns about a candidate’s high moral character are raised; and how allegations that do not relate to high moral character will be treated in the assessment of candidates; and
- ☑ When a complaint is supported by sufficient information to raise concerns about a candidate’s high moral character, the next steps to be taken by the relevant bodies involved in the assessment of candidates need to be **developed and publicised.**

3. COMPREHENSIVE

- ☑ **Mandatory in-depth background checks** of civil suits, criminal, academic, employment records, and relevant online activities;
- ☑ **Mandatory and methodical reputational interviews** of supervisors and supervisees of individual candidates, which are indispensable to gaining insights about a candidate's character;
- ☑ **Publicised definitions** for Rome Statute terminology and key terms including: 'high moral character', 'misconduct', and 'due process', drawing from the ICC's [Administrative Instruction](#) on Addressing Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority, adopted in April 2022;
- ☑ **High moral character assessments should be proactive and thorough** to avoid the harms of unconscious bias and must bear in mind the existence of systemic discrimination which renders many forms of misconduct invisible due to fear of reporting and repressive and hierarchal workplaces. They should include assessing reports of: (1) direct misconduct; (2) candidates who are generally repressive or 'toxic' as evinced by the overall workplace culture and morale of their subordinates; and (3) candidates who condone workplace cultures of fear and silence, by negligently disregarding misconduct complaints; and
- ☑ The process must be **fair to candidates** who must be informed of, and consent in writing to, all aspects of the vetting process, and be given the opportunity to hear and fully respond to all allegations against them.

Vetting for candidates in the 2023 judicial elections

The CICC Elections Team welcomes the growing State Party consensus on adopting **an ad hoc vetting process for the 2023 judicial election**. Vetting judicial candidates is the natural next step towards the development of the permanent vetting process for all elections. The CICC Elections Team recommends States Parties to:

1. Support the ASP Presidency's leadership in developing an **ad hoc vetting process** for judicial candidates in 2023, in consultation with all relevant stakeholders, including civil society;
2. Provide the IOM with the **necessary resources** to carry out this task if they are to assist; and
3. Agree to **include, at a minimum, the essential elements** as described above to ensure a safe, transparent, and comprehensive process.

Background information on Vetting

The Coalition for the ICC through its Elections Team closely monitors the processes to elect leaders of the ICC and its governing body, the 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 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.

[Vetting candidates is needed to ensure that officials](#), including judges, possess a high moral character. Vetting is needed specifically to tackle the findings and recommendations of the [Independent Expert Reviews \(IER\) on workplace culture at the Court](#). The recent Independent Oversight Mechanism's (IOM) 2022 [Annual Report notes that](#) the Prosecutor forwarded to the IOM a 142-page report in March describing various forms of misconduct in the OTP, including allegations of "Serious Misconduct" against 12 current and former staff members of the OTP. In addition, the IOM Annual Report summarises a recent evaluation of the Judiciary's workplace culture, which "found that there existed a perceived atmosphere of impunity created over many years with regard to harassing and bullying behaviour from judges" and that "[a]lthough staff demonstrated awareness of the IOM investigation mandate, there was reluctance to formally report matters to the IOM for fear of retaliation."

Introducing vetting also supports the Court's renewed and active "commitment to achieving gender equality and a safe and inclusive workplace culture and environment", as pledged by the ICC Principals in their [High-Level Statement](#) on Gender Equality. A permanent vetting process for all ICC and ASP elections is ultimately necessary to protect the very wellbeing of ICC staff and also the Court itself as an institution.
