



International Criminal Court Prosecutor Election

Questions and Answers

August 2011

1. Why is there a search for a new prosecutor for the International Criminal Court?

The nine-year, non-renewable term of the first prosecutor of the International Criminal Court (ICC), Luis Moreno Ocampo, ends in June 2012. States parties to the Rome Statute that created the ICC must therefore elect a new prosecutor to replace him. This will be done at the next session of the Assembly of States Parties (ASP) to be held in New York between December 12 and 21, 2011. The next prosecutor, who will also serve a nine-year term, is expected to take office for a transitional period of several months before the current prosecutor leaves office.¹

2. What are the requirements to be the next ICC prosecutor?

The Rome Statute states that the prosecutor 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.”² The ICC prosecutor does not have to be a national of a state party.

Human Rights Watch supports a process that prioritizes merit over other considerations in deciding who should be the next ICC prosecutor. Indeed, this is essential given increasing demands on the ICC posed by the proliferation of crimes committed in its jurisdiction and the need to maintain the court’s independence and impartiality in the face of competing pressures on the world stage. To that end, other criteria that we believe are relevant in assessing a candidate’s suitability for the job include:

¹ ASP, Bureau of the Assembly of States Parties, “Search Committee for the position of the Prosecutor of the International Criminal Court, Terms of Reference,” ICC-ASP/9/INF.2, December 6, 2010, http://www.icc-cpi.int/iccdocs/asp_docs/Elections/EP2011/ICC-ASP-9-INF.2-ENG.pdf (accessed August 11, 2011), para. 9 (“Terms of Reference”).

² Rome Statute, art. 42(3).

- Demonstrated experience of professional excellence in complex criminal cases;
- A demonstrated ability to act with independence and impartiality in the exercise of professional duties;
- A proven track record of professional excellence in institutional management;
- Demonstrated experience in working with other bodies or agencies to effectively achieve a common goal; and
- Demonstrated experience in communicating effectively to a wide variety of constituencies.³

The stakes are simply too high to let considerations other than merit dictate who should be the next ICC prosecutor.

3. How will the next ICC prosecutor be chosen?

The Rome Statute provides for the nomination and election of a new prosecutor by the ASP.

Under the Rome Statute, any state party can formally nominate a candidate to be the next ICC prosecutor. The ASP has indicated that nominations of potential candidates to fill the position should “preferably” enjoy the support of multiple states parties.⁴

The prosecutor is elected by secret ballot by an absolute majority of the ICC members, which currently number 116 states.⁵ However, the ASP has stated that when the time comes to choose a candidate, “every effort should be made to elect the prosecutor by consensus.”⁶ To arrive at a consensus candidate in a “structured and transparent

³ Letter from Human Rights Watch, International Federation for Human Rights, International Crisis Group, Open Society Justice Initiative and International Center for International Justice, to the Search Committee Members, March 18, 2011,

http://www.hrw.org/sites/default/files/related_material/ICC%20prosecutor%20criteria%2003.16.11.pdf.

⁴ See also ASP, "Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court," ICC-ASP/3/Res.6, November 9, 2004, in Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third Session, The Hague, September 6-10, 2004, ICC-ASP/3/25, http://www.iccpsi.int/NR/rdonlyres/EEF8F8E2-6AF9-47F7-859E-1C1AE1359ED3/140543/ICCASP325III_English.pdf (accessed August 11, 2011), Part III, p. 328, para. 29 (“ICC-ASP/3/Res.6, November 9, 2004”).

⁵ Rome Statute, art. 42(4).

⁶ Terms of Reference, para. 3. See also ICC-ASP/3/Res.6, November 9, 2004, at para. 33.

manner,” the ASP’s Bureau in December 2010 established a Search Committee for the prosecutor’s position.⁷

If consensus is not possible, then the ASP reverts to a vote.⁸

4. How will the Search Committee find qualified candidates?

The Search Committee has been tasked with informally receiving “expressions of interest”—meaning informal communications conveying the names of highly qualified individuals directly to the committee—from a number of sources, including individuals, civil society, and states. It can also identify candidates and informally approach those who meet the criteria under the Rome Statute to be the next prosecutor.⁹

5. Can’t states simply ignore the Search Committee process and formally nominate their own candidates?

Nothing prevents a state from formally nominating a candidate as outlined under the Rome Statute. Indeed, the bureau-adopted Terms of Reference for the Search Committee acknowledge that states parties can submit formal nominations, clarifying that its authority does not contradict or undermine the role of states as outlined in the Rome Statute. However, in keeping with the ASP’s preference to elect the next ICC prosecutor by consensus, states parties are “encouraged” to use the Search Committee process, “ideally for nomination and election.”¹⁰ The ASP president has also discouraged states from submitting formal nominations, and from engaging in campaign activities.¹¹

⁷ The Search Committee is comprised of the following individuals from each of the five UN regional groups:

- H.R.H. Prince Zeid Ra’ad Zeid Al-Hussein, permanent representative of the Hashemite Kingdom of Jordan to the United Nations (Asian Group and Coordinator);
- H.E. Mr. Baso Sangqu, permanent representative of the Republic of South Africa to the United Nations (African Group);
- H.E. Mr. Miloš Koterec, permanent representative of the Slovak Republic to the United Nations (Eastern European Group)
- Mr. Joel Hernández García, legal adviser of the Ministry of Foreign Affairs of Mexico (Group of Latin American and Caribbean States); and
- Sir Daniel Bethlehem, Q.C., former legal adviser to the Foreign and Commonwealth Office of the United Kingdom (Western European and Others Group).

⁸ Terms of Reference, para. 2.

⁹ Terms of Reference, para. 6.

¹⁰ Terms of Reference, para. 3.

¹¹ “Search Committee for the position of ICC Prosecutor: Statement by the President of the Assembly, Ambassador Christian Wenaweser,” International Criminal Court press release, ICC-ASP-20110722-PR203, July

6. Why should states submit names informally to the Search Committee?

From a practical perspective, maintaining a level of informality at this stage in the search process helps to preserve an important distinction between the merit of individual candidates and the states that may (or may not) support them. This distinction creates space for a search process that prioritizes merit above other factors. This could also help to limit the all too familiar practice of campaigning and “vote trading” when it comes to high-level positions, where a state party seeks support for its candidate from other states parties in exchange for concessions. Such practices can create the perception that the breadth of support by states parties trumps merit, which can discourage otherwise highly qualified candidates from making their interest in the position known. This could undermine efforts by the Search Committee to deepen the pool of meritorious candidates.

Further, proceeding through informal “expressions of interest” means the Search Committee is better positioned to respect the confidentiality of applicants who wish to be considered.¹² This is particularly important, for instance, for those interested in the position but who do not wish to jeopardize their current jobs.

To date, states parties have respected the process and have refrained from submitting formal nominations.¹³

7. What is the proposed timeline for the Search Committee’s work?

The deadline for the submission of “expressions of interest” to the Search Committee is September 9, 2011. The Search Committee will then work to create a “long” shortlist, from which it will conduct interviews in mid-October. The aim is to submit a shortlist of at least three candidates to the ASP Bureau for consideration sufficiently ahead of December’s ASP.¹⁴

¹² 22, 2011, <http://www.icc-cpi.int/menus/asp/press%2oreleases/press%2oreleases%202011/asp-20110722-pr703> (accessed August 11, 2011) (“July 2011 statement by the ASP President”).

¹³ Terms of Reference, para. 8.

¹⁴ July 2011 statement by the ASP President.

¹⁴ Terms of Reference, para. 6; “Briefing by Prince Zeid Raad Al Hussein, the coordinator of the Search Committee for the next prosecutor of the ICC, to the States Parties to the Rome Statute, New York, 20 July 2011” (copy on file with Human Rights Watch).