

## Criteria for Taking Over The Position of The ICC Prosecutor

Dr. Sayeh Boussahia

University of Larbi Tébessi, Tébessa

### Abstract:

The structural and institutional aspects of any international tribunal are often raised and become a subject of controversy and debate, or even criticism and opposition, but the most usually discussed side is the status and tasks that the Prosecutor of the Court enjoys, thus the process of nomination and election of the prosecutors is very important because it reflects the weight of the court, especially in the international criminal justice system.

The subject of election of the General Prosecutor became of important historical decisions, the process is often called "the best candidate for the toughest job," so this important international position is governed by terms and implications and has effects.

**Keywords:** position, ICC, prosecutor, criteria, election, candidature, effects, ...

### ضوابط تولي منصب المدعي العام للمحكمة الجنائية الدولية

ملخص:

أثارت الجوانب الهيكلية والمؤسسية للمحكمة الجنائية الدولية كهيئة قضائية دولية العديد من المناقشات وحتى الانتقاد والمعارضة. وكان الجانب الأكثر مناقشة قد تمثل في المكانة والمهام التي يتمتع بها المدعي العام للمحكمة. لأن عملية ترشح وانتخاب المدعين ونوابهم أمر في غاية الأهمية لأنه يعكس وزن المحكمة. خاصة في نظام العدالة الجنائية الدولية. أصبح موضوع انتخاب المدعي العام للمحكمة الجنائية الدولية من القرارات الهامة على الصعيد التاريخي والقضائي الدولي. فالعملية هذه عادة ما يطلق عليها "أفضل مرشح لأصعب وظيفة". لأن هذا المنصب الدولي الهام تحكمه شروط وتترتب عنه آثار.

5000/82

**الكلمات المفتاحية:** المنصب، المحكمة الجنائية الدولية، المدعي العام، المعايير، الانتخابات، الترشيح، الآثار، ...

### Introduction:

The final statute of the International Criminal Court (ICC) was the most important international legal instrument since the proclamation of the Charter of the United Nations. In Part II and in 16 articles, it mostly covered the final aspects of the Court: the crimes within its jurisdiction and their essential elements, the status and duties of the Security Council Prosecutor's duties and powers, rules and procedures for determining admissibility, because the negotiations have focused in particular on these sensitive points and address them individually due to the complex interdependence with each other, thus the statute represents an unstable combination of conflicting positions and a final step of a long and arduous negotiation process.



The provisions of the Statute of the International Criminal Court have been formulated in their respective aspects of the Prosecutor and related issues together at Rome Conference, and many proposals have generated intensive discussions, in which the parties have sought to protect their perceived interests. As a result, the main components of the statute derive from negotiated settlements. These provisions, as some see, do not cover all aspects of the Prosecutor and his Office, which have opened up criticism on the shortcomings of the Statute, which have been subject to comment, review, revision and review to redress what could be remedied by codes of conduct, office internal rules, regulations, public policies, etc., so accordingly, we raise the following problematic:

**Has the Statute of the International Criminal Court covered all the aspects concerning the Prosecutor?**

**Chapter One: Conditions and procedures for candidacy for the prosecutor position**

The Statute of the International Criminal Court requires that the candidate for the post of the Prosecutor or his Deputy must be of high moral character, high competence, impartiality and integrity. He must also have extensive practical experience in the field of prosecution or trial in criminal cases<sup>(1)</sup> and shall have excellent knowledge and fluency at least in one working languages of the court<sup>(2)</sup> but finding candidates who embody those required qualities to meet those great challenges is a huge task because Article 42, paragraph 03 of the Rome Statute dictates a set of requirements and remains silent on the other criteria in the evaluation of the candidates,<sup>(3)</sup> therefore, the process must be transparent and lead to an independent, efficient and representative seat.<sup>(4)</sup>

**I- Qualifications required for the candidate for the post of prosecutor**

The Statute of the International Criminal Court tried to avoid many problematic by imposing conditions on the prosecutor such as being a person of "high morals character"<sup>(5)</sup> and of high competence, has extensive practical experience in the prosecution or trial of criminal cases and should not be a national of a State Party which gives priority to merit considerations in order to maintain independence and integrity of the Court.

**1. Moral character and competence**

As many delegates expected at the Rome Conference, the Statute of the International Criminal Court requires that the Prosecutor and his deputies should be of high moral character. Ethics is largely a matter of the Prosecutor and the Chambers, and as part of the public authority in supervision, These ethics be an area of concern if the Statute and Rules

---

1- Prosecutions by ICC prosecutors are important because they concern procedural issues such as witness protection, individual punishment or innocence, punishment and compensation for victims. These decisions affect individual liberty, affect victims, and in many cases attract the attention of States and human rights organizations. For the first time, prosecutors were given the responsibility of administering a unique international tribunal.

2- Ali Abdel Qader Al-Kahwaji, International Criminal Law, Halabi Publications, Beirut, 2001, p.320.

3- Such as working in different legal systems and working with organizations, see: NGO Statement, annex No. 03, Memorandum of 16 March 2011, p.01 to 03.

4- The failure of the first attempt to establish an international tribunal in 1907, the International Court of Arbitration, is due to the incompatibility of States with regard to the process of electing judges, see: Suzanne Katzenstein, The Creation of International Courts in the Twentieth Century, Harvard International Law Journal, Volume 55, Number 1, Winter 2014, p.153.

Arthur Eyffinger, the International Court of Justice, 1946-1996, 1996, pp.64-65.

5- Reference is made to public records and case law to ensure that there is no indication of any penalties, unethical warnings or behavior or other professional irregularities, see: Marion Bethel and others, final report of the independent panel for the election of inter-American commissioners and judges, Washington, June 2nd, 2015.



were respected rather than adhering to the determinations of the codes of conduct,<sup>(1)</sup> although it is likely that the latter will be used as a reference to determine behavior.<sup>(2)</sup>

For efficiency and competency, the proof of experience in working with other bodies and agencies effectively to achieve a common goal should be one of the pillars for each candidate to achieve a common goal allowing him to be able to overcome some of the associated challenges, then developing strategies or examples of how to resolve disputes or tensions; demonstrating an efficiency and experience in communicating<sup>(3)</sup> effectively with the widest range of chambers is a critical and important matter, and through the Statute of the international Criminal Court, and in the framework of efficiency and competency, it must be for each candidate a firm commitment and the ability to develop affirmative environment action on the basis of professional respect and excellence, especially in a multi-cultural community, and given that the statute provides that the Prosecutor "should" be assisted at least by one deputy, For each candidate, there should be a required need to develop a vision for the role played by.

## **2. Judicial and linguistic experience**

The proof of excellent professional experience in complex criminal cases is one of the fundamentals on which a candidate is chosen, and because the primary role of the Prosecutor is to ensure that cases can be substantively proven and legally valid against those responsible for the most serious conduct, this aim should also be to secure convictions with due regard to legal grounds. This can be achieved only through extensive criminal experience<sup>(4)</sup> and proof of a more professional record of prosecution or trial for the sake of a fair trial.

In order to strengthen those functions, the Prosecutor should appoint advisers with legal expertise in specific areas, including, but not limited to, sexual and gender-based violence and violence against children, for the public interest, and for areas where consultants have been appointed in the first term of the work of the former prosecutor's office "Mr.Ocampo" were: Gender (currently Brigid Inder), Prosecution strategies (Sellers Patricia); Crimes against humanity (Leila Sadat).<sup>(5)</sup>

For language, in addition to "fluency", article 42, paragraph 30 of the Statute requires also "excellent knowledge" of that language, but some consider this to be somewhat unnecessary, given that linguistic fluency and broad knowledge are certainly much the same, Specifically, the statute requires from each candidate to have full proficiency in one of the working languages of the International Criminal Court (English and French) because fluency in both languages is better to facilitate communication; so knowledge of at least one of the six

---

1- Before the International Criminal Tribunal for Yugoslavia, for example, the Trial Chamber stated that it had no jurisdiction to respond to "motorism for a code of conduct for the prosecution".

2- In both public law and civil law systems, official rules and codes of conduct are the decisive pre-requisite for parliamentary acts and procedures; they are even more necessary in a pluralistic legal culture such as the International Criminal Court, Where wide disagreement over the applicable rules are still in place, and the drafting of a code of conduct can help deter misconduct before it happens and to ensure a just penalty after occurring, for details see: Frédéric Mégret, international prosecutors: accountability and ethics, Working Paper No.18, Leuven Centre for Global Governance Studies, Leuven University, Belgium, December 2008.

3- International Bar Association, ICC external communications: delivering information and fairness, United Kingdom, June 2011, pp.09-10.

4- Bettina Spilker and Kiat Weing, Expert Initiative on promoting effectiveness at the international criminal court, university of Amsterdam, December 2014, p.45, supranote 10.

5- Article 42, paragraph 09 of Rome Statute states that the Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.



official languages of the Court and full knowledge of at least one of the working languages is an advantage and facilitate the work of the prosecution.<sup>(1)</sup>

### **3. Independence and ability in effective management**

The Office of the Prosecutor is a separate and independent organ of the court, thus article 42, paragraph 10 of the Statute sets out an important rule whose content does not permit any "member of the office" (which is supposed to extend to all categories of staff provided for in article 44, paragraph 01<sup>(2)</sup>) to seek or act on instructions from any external source, and to this end, they shall be prohibited from engaging in any activity likely to affect confidence in their independence, nor shall they engage in any other career or activity which would interfere with their prosecution or any other work of a professional nature.<sup>(3)</sup>

Independence also extends to statements and views either personal or in the name of the Office. In practice, paragraph 04 of Procedural Rule 34,<sup>(4)</sup> expressing opinions that may adversely affect the impartiality expected by the Prosecutor or his deputies is adjudicated as a matter of urgency.<sup>(5)</sup> Independence also extends to effective organization, management and supervision on management.

In order to avoid doubts about politicization and prejudice, the States parties to the Statute of the Court introduced something new represented in the form of a research committee called the "The Search Committee For The Position Of The Prosecutor",<sup>(6)</sup> which sought to find successors for the Prosecutor after his or her term of office. It submits a list of candidates to be interviewed and then a final list of final decisions to be submitted to Member States. This extraordinary process in the international sphere deserves support because it holds the real hope of positioning the consensus candidate chosen as the best equipped to do the job.

## **II- Procedures and criteria for candidacy for the position of prosecutor**

The Prosecutor of the International Criminal Court, elected by the Assembly of States Parties for a non-renewable nine-year term,<sup>(7)</sup> so the process of electing the judges, the Prosecutor and his Deputy affects the Court's merit and effectiveness. The nomination stage is thus more sensitive than the election phase.<sup>(8)</sup> The General Assembly of the Assembly of States Parties circulates the process through diplomatic channels by means of formal invitations<sup>(9)</sup> as well as by specific information regarding the application of all voting

---

1- See the report of the Lawyers Committee for Human Rights, the criteria for evaluating the qualifications of candidates for judges of the International Criminal Court, p. 04.

2 - The article states that the Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.

3- See article 42, paragraph 05, of Rome Statute of the International Criminal Court.

4- Rule 34 states that Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned, is a ground for disqualification of a judge, the Prosecutor or a Deputy Prosecutor.

5 - See: the case of the Prosecutor v. Sudanese President Omar Hassan al-Bashir, Decision on the Application for an Arrest warrant No: ICC-02/05-01/09, 24 August 2009, International Criminal Court documents, see also Dahmani Abdel Salam, Current Challenges of the International Criminal Court Under the dominance of the UN Security Council, PhD thesis, Mouloud Mammeri University, Tizi Ouzou, 2012, p. 214.

6- The « Search Committee for the position of the Prosecutor » was established by the Bureau of the Assembly of States Parties in December 2010. Among its work was the submission of candidates for the second mandate received by Fatu Bensouda by prosecutor Luis Moreno Ocampo.

7 - To ensure his independence, as is the case with the European Prosecutor, see article 42, paragraph 40 of Rome Statute.

8- Khoja Abdul Razzaq, Fair Trial Guarantees before the International Criminal Court, M.A thesis University of Haj Lakhdar, Batna, 2013, p. 88.

9- See article 36, paragraphs 03, 04 and 08 of Rome Statute of International Criminal Court.



requirements. The nomination period shall be open for weeks prior to the elections and shall continue for a specified period.<sup>(1)</sup> Each nomination shall be accompanied by a statement detailing the information proving the fulfillment of the Nominate to the requirements<sup>(2)</sup> as the Bureau of the Assembly of States Parties determines the date of election.

### **1. Submission of the candidate's personal data**

In order to nominate candidates for the position of the Prosecutor, the Assembly of States Parties shall determine the procedure for nomination of candidates in section (D) of its resolution no. ICC-ASP/1/RES.2 as well as the judicial proceedings set forth in section (A) of resolution no. ICC-ASP/3/ RES 6, after making the necessary amendments.

In its paragraph 26, the resolution requires that each nomination be accompanied by a statement specifying in sufficient details what information proves that the candidate fulfills the requirements of article 42, paragraph 03. For that, States Parties shall therefore conduct extensive research and comprehensive study on the background, experience and qualifications to be met by potential candidates and providing extensive details about them, without regard to their being from States parties or not,<sup>(3)</sup> but they must be of different nationalities.

The general information of the selected candidate is subject to a process of clearance by security personnel in accordance with the ICC policy. The process includes but is not limited to verifying the information contained in the curriculum vitae, personal history and criminal record. All candidates must be in a position to be able to provide an electronic copy;<sup>(4)</sup> The applicants should check the vacancy jobs on the Court's website.<sup>(5)</sup> Personal data of the candidates are subject to evaluation assessment and scrutiny by the report of the Research Committee.<sup>(6)</sup>

### **2. Multiple supports for the candidate**

For the Consensus, the "Research Committee For The Position Of The Prosecutor" was mandated to receive "expression of interest" informally, that is, informal contacts by transferring the names of highly qualified individuals directly to it by a number of sources such as individuals, civil society and States; It can also identify candidates, approach them informally and of course those who meet the criteria under Rome Statute.<sup>(7)</sup> States also can officially submit their candidates.<sup>(8)</sup>

---

1- The procedures for the nomination of judges, mutatis mutandis, apply to the nomination of the Prosecutor.

2 - See article 42, paragraph 03 of Rome Statute of the International Criminal Court.

3- According to the decision, the States Parties have to conduct a comprehensive study on the experience, background and qualifications of potential candidates to provide relevant and extensive details about them.

4- Article 50 of Rome Statute of the International Criminal Court provides that the working languages of the Court shall be English and French, and accordingly all correspondence to the Court shall be in writing in these two languages.

5 - The ICC follows a recruitment policy that meets the qualifications of the position and then correctly submits applications in an electronic system. See opportunities and legal vacancies and how to apply for eRecruitment. Therefore, the court has a strict pre-employment policy by following the security check, so candidates should carefully review all qualifications, practical experience and linguistic requirements to make be sure of the credentials that exist on the following link:

[https://www.icccpi.int/en\\_menus/icc/recruitment/job%20opportunities/Pages/how%20to%20apply.aspx](https://www.icccpi.int/en_menus/icc/recruitment/job%20opportunities/Pages/how%20to%20apply.aspx)

6- Report of the search committee for the position of the prosecutor of the international criminal court ICC ASP, New York, October 24th, 2011, p.03.

7 - Bureau of Assembly of States Parties, the Research Committee For The Position Of The Prosecutor Terms of Reference, Document ICC-ASP / 9 / INF.2, 06 December 2010, paragraph 06.

8- Paragraph 39 of the decision the Research Committee For The Position Of The Prosecutor, October 22nd, 2011, No. ICC-ASP-20111025-PR736.





Decision no. ICC-ASP/1/RES.2, in paragraph 25, states that all nominations for the position of the Prosecutor shall preferably be supported by multiple States Parties, bearing in mind that such consideration should not come at the expense of transparency, but on the basis of merit and on full nomination and candidacy, and since there are a number of issues to be considered by the States Parties and because they take a long time to decide on the candidate, the process may be influencing the elections.

Multi-support is an effective means of overcoming the elements (considerations) and political tendencies of the state on the objective basis of the merits of the candidates.<sup>(1)</sup> The principle of multiple support is reflected in the preamble of Rome Statute such as the necessity to cooperate on this most sensitive point (multi-candidate support) to the most qualified. Although the statute didn't set out detailed requirements on the qualifications of candidates for the position of the Prosecutor, but the necessary procedures are applied to judges despite the difference in the level of duties,<sup>(2)</sup> but it's always preferable that those nominations be supported by multiple States Parties. This support was not determined by procedural rules because perhaps negotiations have focused particularly on critical points.<sup>(3)</sup>

### **3. The procedural transparency in nomination**

The Statute does not contain any requirement for States parties to declare the procedures to be committed to in the process of nominating candidates for the position of the Prosecutor. However, to increase transparency, attract potential candidates and make them possible for the concerned parties to follow up and participate in the process, States parties should work on an internal declaration followed in electoral entitlements.<sup>(4)</sup>

Nevertheless, procedural transparency is firstly embodied in the publication of reports on the candidates, their conduct, their CVs, their work to the Bureau of the Assembly of States Parties, which will be circulated universally; this will facilitate the discussion of the work, in particular the process of election or selection. Open broader discussions lead to a consensus and further consideration of those issues may lead to a consensus and shape the role and features of the next prosecutor and thus shorten the time and avoid the election's implications.

Transparency extends to the obligation of States parties to submit candidates in a clear manner involving wide consultation with legislative and judicial Councils, with civil society and with legal professionals to ensure that all qualified candidates have been considered locally first, and that this process takes into account a wide range of views,<sup>(5)</sup> thus through a transparent and rigorous process and a consultation procedure, the disadvantages that characterized most of the post international elections could be prevented from recurrence.<sup>(6)</sup>

---

1- Roy S. Lee, the International Criminal Court, The Making of the Rome Statute, Issues Negotiations Results Kluwer Law International, The Netherlands, 1999, pp.163-163.

2- Thordis Ingadottir, the international criminal court: nomination and election of judges: A Discussion Paper ICC Discussion Paper 4, June 2002, pp.01-02.

3- John Washburn, The Negotiation of the Rome Statute for the International Criminal Court and International Lawmaking in the 21st Century, 11 Pace Int'l L. Rev.361, 1999, p.09.

4- Thordis Ingadottir, the international criminal court: nomination and election of judges, a Discussion Paper ICC Discussion Paper, paragraph 04, June 2002, p.27.

5 - CICC document on the Rome Statute, criteria for the next prosecutor, June 13th, 2011, pp.01 to 04.

6- As stated by Mr. William R. Pace, Convenor of the Coalition for the International Criminal Court see : The Coalition for the International Criminal Court, ICC Nominations and Elections Must Be Fair Transparent and Merit-Based, New York/The Hague, July 28th, 2011, p.01.



What is noted in the nomination process is that the current statute does not provide the flexible mechanisms that allow for individual nominations by the prosecutors themselves. The right to nominate a candidate is a right of groups, which can nominate up to two candidates. For this reason, the process of forming the committee must be according to transparent and democratic procedures including appointment after consultation with regional groups,<sup>(1)</sup> while ensuring complete political neutrality, so it is important and necessary to introduce legislative amendments to meet the criteria set forth in the Statute.<sup>(2)</sup>

## **Chapter Two: Procedures and effects of the election of the Prosecutor**

When conditions are met in the candidate as required by the Statute, the Bureau of the Assembly of States Parties shall set the date for the election. The Secretariat of the Assembly shall prepare a list of candidates in alphabetical order with every effort to elect the Prosecutor by consensus. In the absence of conciliation, the Prosecutor shall be elected according to Article 40, paragraph 04 of Rome Statute By secret ballot and by an absolute majority of the Assembly States parties, thus the election of the Prosecutor shall take place under criteria control of the Assembly of States Parties, as the case may be.<sup>(3)</sup> By the end of the selection of the Prosecutor duties, rights and responsibilities would result.

### **I- Election of the Prosecutor**

The Prosecutor and his deputies (bureau) shall be elected by secret ballot and by a majority of the Assembly of States Parties for a non-renewable term of nine years<sup>(4)</sup> unless they are given a shorter term of office at the time of their election; the deputy Prosecutor may later become a Prosecutor.<sup>(5)</sup>

#### **1. Election on the basis of merit**

The procedures for electing the Prosecutor were set in part E of resolution ICC-ASP/1/RES.2 of 2009, this method of election and the term of office of the Prosecutor are considered difficult and arduous, so moral, intellectual and professional requirements must be met by anyone aspiring to perform a particular function in the ICC particularly prosecution according to merit, knowing that the actions taken by the research committee must be respected and observed as well as the procedures applicable to the judges.

The requirements for voting in the judges' elections apply to the election of the Prosecutor, where each State Party has the right to one vote<sup>(6)</sup> and thus the Statute has taken the rule of equality in voting, which is the same as that used in the voting system of the United Nations General Assembly.<sup>(7)</sup> If there were a delay in the payment of dues, financial contributions and costs to the Court, the State party will lose its right to vote but on condition; this was of no importance at the time of the first elections of the Court.<sup>(8)</sup>

---

1 - Paragraph 25 of the Commission's decision No. ICC-ASP/1/ Res.2, *ibid*.

2 - Amnesty International's, International Criminal Court: Checklist to ensure the nomination of the highest qualified candidates for judges, Amnesty International publications, August 2002, p.05.

3- See, for example, Resolution No. 06, paras. 28-35, which provided for the opening of the nomination period for the post of new prosecutor between 13 July and 02 September 2011, which was extended by a decision from the President of the Assembly until 09 December of the same year.

4- Article 42, paragraph 03 of Rome Statute of the International Criminal Court.

5- As was the case with the current Prosecutor of the International Criminal Court, Fatu Bensouda.

6- See Article 112, paragraph 07 of Rome Statute of the International Criminal Court.

7- Omar Mahmoud Makhzoumi, International Humanitarian Law in Light of the International Criminal Court, First Edition, Dar Al-Thaqafa, Oman 2009, p. 209.

8- Cesare Romano and Thordis Ingadottir, Financing of the International Criminal Court Discussion Paper Project on International Courts and Tribunals, 2000, p.34.



The selection of the Prosecutor by a majority of votes directly on the basis of merit is a fundamental guarantee of the independence and impartiality of the person holding the position, although there is no criterion for measuring that merit. Therefore, some see that the election on the former basis stands against the political objectives of some States, so that the conditions set by the Search Committee include Reference and provisions on its composition, mandate, working methods, transparency, confidentiality and schedule of the process in order to submit the best candidate without reservations.<sup>(1)</sup> This procedure is not a final election process, but it largely clarifies and shapes up the person who will take over the position.<sup>(2)</sup>

## **2. Election on the basis of merit and voting**

Some observers see that in addition to "merit" which leads directly to a consensus on a qualified candidate, it must be accompanied by a vote to ensure a more precise selection process, with excluding unacceptable and undesirable elements in the electoral process, And refrain from trading votes during the working session, such as the practice of mutual agreements against votes and abstention from the circulation of votes during the working session.

Unlike the selection on the basis of merit, in the view of some States parties, the process must be observed in accordance with the provisions of Rome Statute, which requires the election by secret ballot and by an absolute majority of the Assembly of States Parties.<sup>(3)</sup> It was emphasized on the full compliance and strict adherence to the work of the Search Committee, the Statute and the relevant resolutions on the nomination and election of the Prosecutor, also no criteria should be added because they might undermine and override the Statute's provisions and might prevent States parties from nominating candidates.<sup>(4)</sup> In general, the election on the basis of merit means a majority vote for a more qualified candidate.<sup>(5)</sup>

## **3. Election on the basis of consensus**

Resolution ICC-ASP/1/RES.2 of the Assembly of States Parties states in paragraph 29 that "all efforts shall be made to elect the Prosecutor by consensus", and in the absence of consensus, paragraph 30 of the resolution provides that the Prosecutor shall be elected by secret ballot and by an absolute majority as provided for in article 42, paragraph 40 of Rome Statute.

In this sense, some experts suggest that stakeholders should be engaged in a discussion on the possibility of further reform in the process of selecting the Prosecutor and in the other electoral processes,<sup>(6)</sup> including the option of advocating the future involvement of non-governmental experts and making efforts to formalize the selection process of the prosecutor.

Although it is important to recognize that the final candidate must have broad support from States parties, based on an informal consensus, this may threaten to further politicize the process and undermine transparency, this could threaten to further politicization of the process

---

1- Terms of reference of the Search Committee, available on :

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP9/ICC-ASP-9-INF.2-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP9/ICC-ASP-9-INF.2-ENG.pdf)

2 - See Coalition for the International Criminal Court documents, Criteria for the next Prosecutor, 13 June 2011, p.04.

3- This (going directly to the election process) requires the Assembly of States Parties to adopt a new resolution to replace resolution ICC-ASP/1/Res.2, para.33.

4 - See paragraph 28 of resolution ICC-ASP/3 /Res.6 of the Assembly of States Parties.

5- See Coalition for the International Criminal Court documents, *ibid.*, p.04.

6 - Jurists such as Like the jurist William Schabas, a former judge of the International Criminal Court and the jurist Arthur I. Finker.





and undermine transparency, by engaging in the trade of votes and alliances on other international entitlements.<sup>(1)</sup>

The process of selecting the Prosecutor on the basis of consensus as a very unusual process in the international sphere, deserves full support from all those interested in the success of the ICC since it carries a real hope of installing the consensus candidate chosen for the best equipped to carry out these international tasks,<sup>(2)</sup> Although, as in any process, in practice, elections are subject to criteria, balances, interests and special challenges in reaching a consensus candidate.<sup>(3)</sup>

## **II- Implications for the position of Prosecutor**

The Prosecutor of the International Criminal Court (ICC) is an international public (civil) servant<sup>(4)</sup> and his responsibilities like the members' of the court are exclusively international, so that when he takes over the office, he commences by performing the undertake in the manner indicated. Therefore, the implications of such international staff member's position cannot be limited, because they were listed in multiple various legal frameworks such as the Statute, international conventions...<sup>(5)</sup> as well as the guidelines principles as an official international commitment.<sup>(6)</sup>

### **1. Duties of the Prosecutor**

In most legal systems, it's common that judges should swear announcing their future commitment to the exercise impartially of the tasks assigned to them, which is the case in the International Criminal Court where the solemn (oath) or "solemn undertaking" clause extends not only to the judges but also to the Prosecutor and his deputies, the Registrar and the Deputy Registrar; this requirement is clearly related to the right of the accused to be tried before an independent court as well as to the impartiality imposed on judges, the Prosecutor and his deputies.<sup>(7)</sup>

In addition to the solemn undertaking, the Prosecutor has a duty to act on a full-time basis, and the content of the Statute in this regard means that the Prosecutor and his deputies exercise their functions and may not engage in any activity that is likely to interfere with their prosecution or undermine their confidence,<sup>(8)</sup> Therefore, full-time service makes prosecutors away from looking for work or material outside the court. This has been supported by good salaries during their term of office to avoid financial pressures; thus the Statute laid down all

---

1- International Justice, International Criminal Court: Ensure best candidate is elected as new Prosecutor 25 October 2011, p.01.

2- Kofi Annan, the election of the new ICC prosecutor must not be politicized, the world post magazine December 13th, 2011, p.06.

3- See paragraph 06 of resolution ICC-ASP/9/INF.2.

4- Definition of "Hammar skjöld" for International Public Service, see : Cora True-Frost, The International Civil Servant: How the Prosecutor of the ICC Engages the UN Security Council, in the first global prosecutor: promise and constraints, University of Michigan Press, April 2015.

5- For example, the Code of Professional Conduct of the Prosecutor of the International Criminal Court ; the Standards of Professional Responsibility and the Statement of Essential Duties and Rights of Prosecutors which were adopted by the International Association of Prosecutors in 1999.

6- Tamfuh Y.N Wilson, the international criminal court: creation, competence, and impact in Africa African journal of criminology & justice studies: AJCJS; Volume 3, No.2, July 2008, p.89.

7 - See articles 41, 42, 43 and 67 of Rome Statute of the International Criminal Court.

8 - See articles 40 of Rome Statute of the International Criminal Court.



the institutional guarantees necessary for the independence of prosecutors and in full conformity with the meaning of the Charter of the United Nations.<sup>(1)</sup>

The Prosecutor is entrusted with independent and impartial duty of practice because the Office of the Prosecutor acts independently as a separate organ of the Court and is responsible for receiving referrals and any documented information about crimes within the jurisdiction of the Court, for the purpose of carrying out the investigations and prosecution functions. So no member of the Bureau may seek any instructions from any external source and has not to work under any of these instructions.<sup>(2)</sup>

## **2. Rights of the Prosecutor**

Article 40 of Rome Statute provides that the International Criminal Court has an international legal personality which is an essential character for the exercise of its functions and purposes, also article 48 provides that the Court shall enjoy in the territory of each State Party the privileges and immunities necessary for the fulfillment of its purposes, therefore its prosecutors and their deputies enjoy privileges and immunities accorded to heads of diplomatic missions by their commencement or in connection with the work of the Court. These rights are also embodied in the freedom of expression and belief in accordance with the ethics of the profession.

As for financial security, the ICC tries to strike a delicate balance on salaries, allowances and expenses by paying adequate, reasonable and just wages to attract talented individuals. Article 49 of the Rome Statute therefore tries to balance this by not exaggerating the benefits to avoid criticism, decided on conditions without affecting the financing of the court.

The Prosecutor also enjoys other rights in the second sub-section of rule 33 of the Rules of Procedures and evidence: exemption, removal and resignation from office where the Prosecutor or one of his deputies seeks an exemption from a position and identifies the reasons for doing so.

## **3. The disciplinary measures (accountability)**

The Prosecutor and his deputies shall hold the office for a mandate of nine years, unless a shorter one is determined;<sup>(3)</sup> the mandate of nine years shall be calculated from the day of the performance of the solemn undertaking. By the end of this, the term will be finished and shall not be re-elected. This shall enhance the independence and dynamism of the Court. However, the Prosecutor may lose his post for any reason, such as death,<sup>(4)</sup> resignation or dismissal before the expiration of the mandate prescribed for his/her mandate.

Since the conditions for the exercise of the position of prosecutor or the deputy are closely related to the principle of neutrality, impartiality and a fundamental guarantee of non-infringement of the rights of persons, breaches of any of these duties and obligations by any member of the public prosecution expose him to imposed sanctions such as dismissal and isolation, so maintaining the office requires adherence to a set of procedures.

---

1- Sang-hyun Song, the independence of the ICC and the safeguards against political influence Speech Outline the Symposium on the International Criminal Court, February 3 – 4, 2007, Beijing, China p.11.

2- See articles 42, paragraph 01 of Rome Statute of the International Criminal Court.

3- Paragraph 04 of Article 42 of Rome Statute of the International Criminal Court provides for the possibility to decide reducing the duration of the nine-year prescribed for the position of the Prosecutor for a shorter mandate, but without limitation to this period nor for the reasons that call the Assembly of States Parties to take such a decision.

4- See Procedural Rule 36, articles 36 and 37 of Rome Statute of the International Criminal Court.



For prosecutorial accountability as an exceptional rule in international criminal law, there was no provision on disciplinary procedures in the Statutes of the ad hoc tribunals, but Rome Statute included a reference to a set of obligations to judges and thus prosecutors, and imposed a range of sanctions ranging from ordinary disciplinary proceedings and to the adoption of decisions such as removal in cases of serious breach of duty or inability to perform tasks.<sup>(1)</sup>

**Conclusion:**

The Statute of the International Criminal Court (ICC) provides that unique international position (prosecution) is exercised for up to nine non-renewable years for the purpose of enhancing the independence of the office. The candidature for this unique position must be based solely on merit, proven experience, High morals and adequate legal knowledge, as well as dedication to the service of criminal justice in general and the ability to lead an effective international team.

The selection of the Prosecutor and his deputies on the basis of competencies and skills are all guarantees in the way of their election and appointment under privileges such as financial security and immunities, duties of neutrality independence and full-time work. These are duties and rights enjoyed by the Prosecutor are face to face with the judges of the Court, with the possibility of being subject to accountability and disciplinary measures and even dismissal as well as to other accountability actions.

In order to avoid the failures and practices of the previous international criminal courts in all aspects, especially the prosecution, the drafters of Rome Statute attempted to find the right legal person for the appropriate legal position after arduous and difficult negotiations, from three sides, **first**, establishing criteria and conditions to be met by the candidate for this important international position; this task was assigned to an independent committee; **second**, establishing strict procedural rules restricting the functions and the judicial powers vested to the elected Prosecutor; this task was entrusted to the Assembly of States Parties and the Pre-Trial Chamber as a control body; **Third**, taking future precautions for the sake of this important organ (office of the prosecutor) of the Court, in practice; this was assigned to the organ itself (office) in order to enhance the independence and perhaps through the possibility of amending the provisions of Rome Statute.

---

1- William A. Schabas, William A. Schabas, the International Criminal Court: a Commentary on the Rome Statute, Oxford University Press, Oxford, 2010, pp.615-618.

