

## **Amnesty International's statement at the close of the nomination period for the judges and the prosecutor to the International Criminal Court**

At the close of the nomination periods for judicial candidates and for the Prosecutor of the International Criminal Court, Amnesty International has a number of concerns.

As indicated below, the organization is concerned that as a result of the failure of almost all states parties to establish and implement transparent nomination procedures for judges involving consultation with civil society, less than a quarter of the candidates nominated for judges were women. It will work to ensure that all states parties establish and implement transparent procedures for future elections. Amnesty International is also disappointed that the Assembly of States Parties did not establish an Advisory Committee to assist states in reviewing and evaluating candidates for judges and it will work to ensure that such a body is established in time to assist states in subsequent elections for judges. The failure to establish such a body makes it all the more important for states to consult the responses to questionnaires given to each judicial candidate by the Coalition for the International Criminal Court, as well as each candidate's curriculum vitae and statement. States must also avoid any temptation to enter into reciprocal voting deals which have undermined the election processes for other international courts and bodies.

The organization is disappointed that states were unable to agree on a candidate to be Prosecutor before the deadline. Although this failure was largely because of the serious efforts to select a Prosecutor with the highest possible qualifications and with demonstrated independence, it is essential that states do not succumb to political pressures to select a Prosecutor based on other, improper considerations, such as an allocation of senior posts based solely on nationality, as some states reportedly are seeking to do. Amnesty International is calling upon all states to redouble their efforts to locate the finest possible Prosecutor and to resist efforts of some states to fill this post based on political, rather than professional, criteria.

### **Judges**

The nomination period for the nomination of International Criminal Court judges closed on 30 November 2002. 44 candidates have been nominated representing all regions of the world. The election of the 18 judges will take place at the United Nations Headquarters in New York on 3-7 February 2003.

Amnesty International notes of the 44 candidates, only 10 nominees are women, raising concern that the requirement in the Rome Statute of a "fair representation of female and male judges" may not be achieved when the election takes place.

The organization is also concerned that many states failed to implement its long-standing recommendation that they conduct transparent nomination processes, including consultation with civil society.(1) For example, in a number of states, no measures were taken to advertise the process or to encourage highly qualified women candidates to apply. In December 2002, Amnesty International sent a questionnaire(2) to all 44 states that have nominated candidates requesting information about their national nomination processes, this information will be included in the organization's forthcoming analysis of all national processes.

Amnesty International is calling on all states parties to the Rome Statute to heed the call of the President of the Assembly of States Parties not to enter into reciprocal voting agreements to elect judges, as has been common practice in previous elections to international courts and bodies. Instead, the organization is urging states to focus on the information provided about each individual candidate, in order to elect the most highly qualified judges to the Court. In particular, states should focus on the nominee's curriculum vitae, the statement supporting their nomination and their reply to a questionnaire, which has been sent to all candidates by the Coalition for an International Criminal Court.

Amnesty International reminds all states parties of the need to meet the requirements set out in the Rome Statute:

- o The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices (**Article 36(3)(a)**).
- o Every candidate for election to the Court shall:
  - (i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

- (ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court; **(Article 36 (3) (b))**
- o Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court **(Article 36(3)(c))**.
- o The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:
  - (i) The representation of the principal legal systems of the world;
  - (ii) Equitable geographical representation; and
- (iii) A fair representation of female and male judges. **(Article 36(8)(a))**
- o States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children **(Article 36(8)(b))**.

### **Prosecutor**

The process for nominating the Prosecutor was also scheduled to close on 30 November 2002 with the election also to take place on 3-7 February 2003. At the opening of the nomination period at the Assembly of States Parties in September, states indicated that they were seeking to nominate one candidate that all states could support for the election. Reportedly a number of states had considered nominating a candidate for this post. However by 30 November 2002, a candidate had not been agreed. It was therefore decided to extend the nomination period until 8 December 2002.

On 9 December 2002, the President of the Assembly of the States Parties wrote to all states parties reporting that by 8 December, no nomination had been received, and stating that he intended to refer the situation to the Assembly of States Parties at its next meeting on 3-7 February 2003 to "consider -reopening the nomination period". The President encouraged states to continue "to consult informally first on suitable candidate(s) in order to ensure that any nominations for this post command the support of as many interested states as possible."

Although the failure to reach an agreement on a candidate is a disappointment, Amnesty International believes it should not be seen as a setback for the Court. It is clear that states parties have been taking the search for a candidate very seriously and the primary reason for failing to meet the deadline has been the efforts to ensure that the candidate chosen meets the highest standards for independence and competence.

The nomination of the Prosecutor of the International Criminal Court will be one of the most important decisions that the Assembly of States Parties will take. Election of a highly qualified and independent prosecutor will be crucial to the credibility of the Court at a time when it is under attack from a small number of states. The Assembly of States Parties is taking extensive measures to ensure that a very highly qualified candidate who meets the substantive criteria of the position and who is acceptable to all states parties is nominated.

Amnesty International welcomes the serious efforts that are continuing to ensure the nomination and election of a candidate in February and the efforts by the Bureau and key countries to ensure that the choice is based on qualifications, not politics. The organization urges that the search for a candidate continue to be based on locating an outstanding choice with demonstrated independence and the highest possible qualifications and to exclude political considerations.

Article 42 (3) provides that "[t]he Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court." Amnesty International believes that this means that the Prosecutor should satisfy the following criteria:

- first and foremost, recognition in his or her jurisdiction as an outstanding lawyer;
- secondly, recognized excellent management experience at the highest levels of his or her national criminal justice system;
- thirdly, experience in preparing and prosecuting large, highly complex cases in a professional way consistent with the internationally recognized right to fair trial, preferably cases involving crimes under international law; and

- fourthly, demonstrated impartiality, independence, integrity and good judgment.

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(1) International Criminal Court: Making the right choices - Part II: Organizing the court and ensuring a fair trial (AI Index: IOR 40/011/1997); International Criminal Court: Checklist to ensure the nomination of the highest qualified candidates for judges (AI Index: IOR 40/023/2002) and; Amnesty International's urgent appeal to countries that have ratified the Rome Statute creating the International Criminal Court to address the disturbing lack of nominations of female candidates for judges (AI Index: IOR 40/034/2002). All documents are available on Amnesty International's ICC website: [www.amnesty.org/icc](http://www.amnesty.org/icc)

(2) Questionnaire for states parties to the Rome Statute of the International Criminal Court which have nominated a candidate for a judge to the International Criminal Court (AI Index: IOR 40/035/2002)