

International Criminal Court: Concerns at the resumed first session of the Assembly of States Parties (3 to 7 February 2003)

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International Criminal Court: Concerns at the resumed first session of the Assembly of States Parties (3 to 7 February 2003)

The resumed first session of the Assembly of States Parties (Assembly) will take place at the United Nations (UN) Headquarters in New York from 3 to 7 February 2003 (the first part of the session took place from 3 to 10 September 2002). The main focus of this session will be to elect the 18 judges to the Court and to address the issue of electing the Prosecutor. The Assembly will also need to consider other issues relating to the effective establishment of the Court.

Taking place only four years after the adoption of the Rome Statute of the International Criminal Court (Rome Statute), the election of the judges is a major step towards the Court becoming fully operational, which is expected in 2003. Those elected as judges will be among the most visible and high profile members of the Court, it is, therefore, essential that states parties take all measures to ensure that the highest qualified candidates are elected, who individually and collectively meet the criteria set out in the Rome Statute. In this document, Amnesty International calls on states parties to ensure that the Assembly implements the election procedure in a fair manner without political deals.

The organization is also concerned to ensure that the Assembly decide on how to secure the nomination and election of the most highly qualified candidate to be the Prosecutor. Even though, reportedly, efforts to identify a candidate that could be elected by consensus have so far been unsuccessful, Amnesty International welcomes the serious efforts that are continuing to ensure the nomination of a candidate or candidates at the earliest possible date 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.

The paper also includes a recommendation for the Assembly to schedule the election of the Board of Directors of the Trust Fund for Victims to take place at the next resumed first session in April 2003, in order that the Board of Directors can start work as soon as possible drafting criteria for management of the Trust Fund so that it can become fully operational.

Amnesty International takes no position on individual candidates that have been considered or nominated for judges, the Prosecutor, the Board of Directors of the Trust Fund or any other appointment to the Court and limits its recommendations to process and information states parties should take into account in determining their votes in order to nominate and elect the highest qualified candidates.

The pending operation of the Court furthermore raises challenges that states parties, collectively and individually must address to ensure that the Court functions effectively in its first years, including, the need to work for universal ratification of the Rome Statute; the urgent need for effective implementation of the Rome Statute by all states parties and new states parties; the urgent need for all states parties and new states parties to sign, ratify and implement the Agreement on Privileges and Immunities; the need to ensure that states parties (or any states) do not enter into

impunity agreements with the United States of America (USA) or any other state, thereby violating the Rome Statute and obstructing the work of the Court; and the need for states parties to consider how to represent their concerns to the United Nations (UN) Security Council regarding efforts by the USA to have the Security Council renew Resolution 1422. This paper looks at these issues and makes recommendations for the Assembly.

Amnesty International will have a delegation present throughout the resumed first session of the Assembly and its representatives are available to discuss any of these issues with government delegations.

I. Review of nomination procedures for judges

At the first meeting of the Assembly in September 2002, Amnesty International issued *International Criminal Court: Checklist to ensure the nomination of the highest qualified judges* (AI Index: IOR 40/025 /2002). The document included recommendations for states to conduct transparent national processes, including consultation with civil society.

Amnesty International is concerned that most states that have nominated candidates for the election of judges have conducted non-transparent processes. In particular, many states:

- Made no public announcement or advertisement of the process, denying highly qualified candidates the opportunity to apply or be considered;
- Failed to take adequate measures to inform highly qualified women about the process and to inform potential candidates of the criteria in the Rome Statute for a “fair representation of female and male candidates.” As a result less than a quarter of the nominees are women.
- Failed to take adequate measures to inform highly qualified candidates with “legal expertise on specific issues, including, but not limited to, violence against women or children” of the process and the criteria in the Rome Statute requiring such expertise.
- Excluded civil society from the nomination process, failing to take advantage of the important role that such groups can play in identifying qualified candidates, contributing to the drafting of an advertisement and criteria for selection and commenting on applicants.
- Failed to make known the names of persons being considered during the period before the nomination was made, thus preventing comment on the scope of persons being considered, such as the absence of persons from certain ethnic groups or of women, at a time when this imbalance could be rectified, and preventing comment on the qualifications of particular persons under consideration at a time when it could affect the nomination.

The organization is further deeply concerned by reports that some members states, contrary to calls from the President of the Assembly “not to enter into reciprocal agreements” decided to nominate a regional candidate. In doing so, states that decided not to nominate candidates, or even to conduct a process, in favour of supporting a candidate from another state in their region, denied the Assembly the opportunity to consider highly qualified candidates from their country. This particular approach often makes it impossible for highly qualified women to be considered who are from other countries in the region.

Amnesty International is conducting an analysis of all nomination processes and has issued a questionnaire to all governments that have nominated candidates for judges (English, French and Spanish versions are included in Appendix 1). The organization intends to issue this analysis to the Assembly at the next resumed first session in April, with recommendations to the Assembly and states parties for future elections.

Amnesty International calls on the Assembly to ensure that a review is conducted of national nomination processes for consideration at its second session in September 2003.

II. Election of judges based on candidates merits and criteria set out in the Rome Statute

Amnesty International does not take a position on individual candidates who are nominated for election to judges. The organization believes that information provided by candidates, including their responses to the questionnaire given to all candidates by the Coalition for the International Criminal Court, and other sources, is sufficient for states parties to determine who are the highest qualified candidates. The organization is therefore concerned to ensure that states take the following steps to ensure that the highest qualified candidates are elected which satisfies the criteria set out in the Rome Statute:

1. No reciprocal agreements

Amnesty International is concerned that, in accordance with the practices of other elections to international bodies, some states may seek reciprocal agreements to vote for other candidates in this election, other elections to be conducted by the Assembly or elections to other international bodies. Any such reciprocal agreement would be in bad faith and would go against the call of the President of the Assembly at the close of the first part of the first session of the Assembly in September 2002:

“Governments should not attach to this election the same procedure that we have in place for the election of candidates to other bodies. We do not want to tie this election into the regime of reciprocal agreements or swaps. This election has to be unique in character.”

Amnesty International calls upon all states parties to declare publicly that they have not entered into any such reciprocal agreement and will not do so.

2. Candidates should be evaluated upon their merits, applying the criteria set out in the Rome Statute

Instead of entering into reciprocal agreements, states should focus on voting for the most highly qualified candidates who meet the criteria set out in Article 36 (3).¹ This is supported by a number of states parties, including, Australia, Liechtenstein, Namibia, New Zealand and Ukraine in their statements to the UN General Assembly Sixth Committee in October 2002.² In determining the highest qualified candidates, states should focus on:

- the nominee's curriculum vitae;
- the statement supporting their nomination provided pursuant to Article 36(4)(a);
- the reply to a questionnaire which has been sent to all candidates by the Coalition for an International Criminal Court³ and;
- Information from other sources, including civil society groups from the country of the nominee.

At the same time in determining which candidates to vote for, states should take into account the criteria set out in Article 36(8) (a), which states 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.

The requirements set out in Article 36(8)(ii) and (iii) have been taken into account in the election procedure which includes minimum voting requirements to

¹ Article 36 (3) provides:

(a) 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.

(b) 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;

(c) 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.

² The text of these statements is available on the Coalition for an International Criminal Court's website:

www.iccnw.org/buildingthecourt/iccjjudges/statusofnominations/officialdocsandannounc.html

³ Replies to the questionnaire are posted on the Coalition for the International Criminal Court's website:

<http://www.iccnw.org/buildingthecourt/iccjjudges/statusofnominations/evaluationprocess.html>

achieve both criteria. However, the minimum voting requirements only applies to the first four ballots. In the event that the election will require more than four ballots, states parties should continue to take these requirements into account in determining their votes. Of course, states should be vigilant to prevent deliberate attempts to force the election into a fifth ballot simply to free states from the minimum voting requirements.

Furthermore, 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. Information about any such experience will be included in the candidate's curriculum vitae, supporting statements or in replies to the Coalition for the International Criminal Court's questionnaire to candidates.⁴

III. Nomination of highly qualified candidate(s) for Prosecutor

The election of the Prosecutor of the International Criminal Court will be one of the most important decisions that the Assembly will take in its first year. 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 minority of states.

The period for nominating the Prosecutor was, like the nomination period of judges, scheduled to close on 30 November 2002, with the election also to take place on 3 to 7 February 2003. At the opening of the nomination period at the Assembly in September, states indicated that they were seeking to nominate one candidate that all states could elect by consensus.⁵ 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 wrote to all states parties reporting that by 8 December, no nomination had been received stating that he intended to refer the situation to the Assembly at its next meeting on 3 to 7 February 2003 to "consider ... reopening the nomination period."⁶ 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."

At the time of writing, it is likely that there will be no agreed candidate before the resumed first session in February and reports indicate that the election of the Prosecutor may be rescheduled to the next resumed first session in April.

⁴ Question 4 of the Coalition for the International Criminal Court's questionnaire to candidates states: "Do you have any specific legal expertise, including, but not limited to, violence against women or children?"

⁵ Paragraph 29 of the Procedure for nomination and election of judges, the Prosecutor and Deputy Prosecutor of the International Criminal Court (ICC-ASP/1/Res.2) states "every effort shall be made to elect the Prosecutor by consensus."

⁶ A note by the Secretariat on the Election of the Prosecutor of the International Criminal Court (ICC-ASP/1/6) was also issued on 18 December confirming this intention.

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 International Criminal Court. Amnesty International welcomes the serious efforts that are continuing to ensure the nomination of a candidate or candidates at the earliest possible date and the efforts by the Bureau and key countries to ensure that the choice is based on qualifications, not politics.

Amnesty International believes that it would still be desirable if a candidate could be identified before the next resumed first session who could be elected by consensus. The Assembly should take extensive measures, including the widest possible consultation with prosecutors, particularly prosecutors who have prosecuted crimes under international law, and other criminal justice experts around the world in all legal systems, 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. In particular, the Assembly should ensure that the President and the Bureau of the Assembly be provided with sufficient resources, if necessary, Secretariat staff, to ensure that they can provide effective assistance to states parties in this process and in its other work.

In particular, Amnesty International calls on all states parties to identify highly qualified candidates from their countries. It is reported that a number of states have chosen not to put candidates from their country forward for Prosecutor fearing that it may affect their nomination for the election of judges.

Amnesty International urges states parties to focus its efforts on identifying a candidate who meets the criteria set out in the Rome Statute:

"[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;
- second, recognized excellent management experience at the highest levels of his or her national criminal justice system;
- third, 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
- fourth, demonstrated impartiality, independence, integrity and good judgement.

Amnesty International calls on states parties not to enter into any reciprocal voting agreements in relation to other elections for the International Criminal Court or other organizations. In particular, states must not enter into any agreements that would compromise the independence of the Prosecutor to nominate candidates for Deputy Prosecutor. Indeed, if the Prosecutor were to implement any such agreement between states, he or she would violate his or her solemn undertaking under Article 45 of the Rome Statute “to exercises his or her respective functions impartially and conscientiously” and be subject to removal from office under Article 46.

If the election of the Prosecutor is postponed until April 2003, the Assembly should reschedule the election of the Deputy Prosecutors, in order to allow the Prosecutor adequate time to conduct a thorough process of seeking nominations.

IV. Scheduling the election of the Board of Directors of the Article 79 Trust Fund for Victims

At the September session of the Assembly, it was decided to postpone “taking a decision concerning opening the nomination period for the members of the Board of Directors of the Trust Fund for the benefit of victims until the second resumption of its first session in April 2003.”⁷

Amnesty International however recommends that the Assembly place this issue on the agenda of the resumed first session in February, in order to consider holding the elections at the next resumed session in April.

Amnesty International strongly supports electing the Board of Directors as soon as possible to ensure the prompt establishment and operation of the fund and to enable the Board to start work on developing “suggestions for further criteria for the management of the Trust Fund for consideration and adoption by the Assembly as soon as possible.”⁸ Amnesty International believes the Trust Fund should become operational as soon as possible to ensure that it is connected to the work of the Court from the very beginning and to start fundraising at the earliest opportunity for the benefit of victims.

The Board of Directors should also be elected promptly so that the Board can work with the various organs of the Court and consult civil society as the Court develops criteria for reparations in accordance with Article 75 (1). Under Rule 98 of the Rules of Procedure and Evidence, the Court may refer an award for reparations under Article 75 to the Board of Directors to determine the “forms and modalities of reparations,” it is therefore essential that the Board of Directors is involved in the process of determining the Article 75 (1) criteria.

The organization urges the Assembly to schedule the election of the Board of Directors to take place at the next resumed session in April and to open the nomination period as soon as possible providing sufficient time for states to consult civil society before putting forward candidates and a sufficient period to permit evaluation by states and civil society of the candidates once they have been

⁷Paragraph 28, Page 7, Part 1 of the Report of the Assembly of States Parties (ICC –ASP/1/3)

⁸ Paragraph 3 of Resolution ICC-ASP/1/Res.6: Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of families of such victims.

nominated. If the Board of Directors is elected in April, the Board could meet⁹ soon after to provide input into the appointment of the Trust Fund Administrator in the Victims Participation and Reparations Unit,¹⁰ to determine its work plan in order to make the Trust Fund fully operational and to deal with any existing oversight of the Trust Fund.¹¹

Amnesty International urges all states parties to consider nominating candidates, after consulting civil society, to the Board of Directors who meet the following criteria:

“The members of the Board shall be of high moral character, impartiality and integrity and shall have competence in the assistance to victims of serious crimes.”¹²

V. Prompt payment of assessed contributions

Amnesty International has welcomed the Assembly’s adoption of the Budget for the First Financial Period. The organization particularly recognizes the flexibility contained the Budget that is necessary to ensure the prompt and effective establishment of the Court.

Amnesty International welcomes reports that most states paid their assessed contributions for 2002 on time. The organization urges those states that have not yet done so to pay their 2002 contribution as soon as possible.

The deadline for the payment of assessed contributions for 2003 is 31 January 2003. Amnesty International urges all states parties to pay their contribution by this date. The organization urges the President of the Assembly to give a report on the status of payments of assessed contributions for each state party during the resumed first session.

VI. Universal ratification of the Rome Statute

Amnesty International recommends that the Assembly take steps to ensure universal ratification of the Rome Statute of the International Criminal Court. It hopes that the Assembly will call upon all states that have signed the Rome Statute to ratify it promptly. Of the 139 states that signed the Rome Statute, 84 have ratified and three states that did not sign the Rome Statute by 31 December 2000 have acceded to it. The 55 signatories that have not yet ratified (including the USA, which repudiated its signature on 6 May 2002, and Israel which repudiated its signature on 28 August 2002) should be urged to ratify the Rome Statute promptly. The Assembly should

⁹ Paragraph 182 of the Budget for the First Financial Period of the Court states: “It is proposed that provision be made for a three day meeting of the Board of Directors of the Victims Trust Fund to be held at the Hague in 2003. The meeting would entail business-class travel and daily subsistence allowance for the five members of the Board. The overall estimated costs are Euro 26,100.”

¹⁰ The Budget for the First Financial Period of the Court provides for the appointment of a Trust Fund Administrator for 6 months.

¹¹ It is reported that some organizations have already started fundraising initiatives for voluntary contributions to the Trust Fund.

¹² Paragraph 3, Annex to Resolution ICC-ASP/1/Res.6

also urge all other states that have neither signed nor ratified the Rome Statute to ratify it as soon as possible to increase the effectiveness of the fight against impunity.

VII. Implementation of the Rome Statute

It is a matter of concern that of the 87 states that have ratified the Rome Statute, only ten¹³ are known to have enacted implementing legislation that provides both for national prosecutions and for cooperation with the International Criminal Court and four¹⁴ have only partially implemented their obligations under the Statute. The Assembly should urge all states parties that have not fully implemented their obligations under the Rome Statute in national law to do so as soon as possible.

Although Amnesty International welcomes reports that some states have issued draft legislation¹⁵ and many others have begun their national process to develop national implementing legislation,¹⁶ the organization remains concerned that when the Prosecutor takes office and commences a full review of all information submitted to the Office of the Prosecutor (OTP) since 1 July 2002, that the lack of implementing legislation could prove a barrier to carrying out the OTP's duties effectively.

All states parties that have not yet fully implemented the Rome Statute in national law should promptly address this urgent situation. States that have not started their implementing process should commence it immediately, and states that are currently working on implementation should aim to complete the process before the Prosecutor takes office (subject to the election of the Prosecutor taking place in April, this could occur as soon as June). New states that ratify the Rome Statute should complete their implementation process before the Statute enters into force for them. All implementation processes should provide for consultation with civil society.

The Assembly should also adopt a resolution as soon as possible calling on:

- States parties to make it a priority to enact effective implementing legislation, in consultation with civil society;
- States parties that have enacted implementing legislation to consider providing technical assistance to other states.

The Assembly should also ensure the allocation of sufficient resources to the Assembly's permanent secretariat, so that once it is established, it can be asked to work with the International Criminal Court, intergovernmental organizations, including the UN, the International Criminal Tribunals for the former Yugoslavia and for Rwanda, non-governmental organizations and independent experts to assist states parties in drafting implementing legislation for the Rome Statute. The Assembly

¹³ According to information supplied to the Coalition for the International Criminal Court, Australia, Canada, Estonia, Finland, Germany, the Netherlands, New Zealand, South Africa, Switzerland and UK have completed their implementing legislation.

¹⁴ According to information supplied to the Coalition for the International Criminal Court, France, Norway, Slovenia and Sweden have enacted part of their implementing legislation.

¹⁵ Argentina, Belgium, Brazil, Democratic Republic of Congo, Ecuador, Italy, Liechtenstein, Sweden and Uruguay are among the states parties that have issued draft implementing legislation.

¹⁶ Bolivia, Cambodia, Iceland, Ireland, Senegal, Republic of Korea, Mongolia, Panama, Paraguay, Peru, Portugal and Spain are among the states parties that have begun the process of drafting legislation.

should also consider providing assistance to states parties and new states parties to review their current law to determine how it needs to be amended to ensure effective implementation, as well as states that make declarations under Article 12 (3) or otherwise cooperate with the International Criminal Court under Article 87 (5) of the Statute. The Secretariat should monitor the status of implementing legislation and compliance in all states parties and report to the Assembly every year on the status of implementation.

Amnesty International will continue to distribute its document *International Criminal Court: Checklist for effective implementation* (AI Index: IOR 40/011/2000) to the Assembly in Arabic, English, French, Portuguese, Russian and Spanish¹⁷. The organization aims to comment on draft implementing legislation during national consultation processes and plans to issue a commentary on enacted legislations in the second half of 2003.

VIII. Ratification and implementation of the Agreement on Privileges and Immunities for the International Criminal Court.

Amnesty International is concerned that as of 21 January 2003, only one state (Norway) has ratified the Agreement on Privileges and Immunities and only 24 states¹⁸ have signed it. As the Court moves towards becoming fully operational it will require the protections offered by the Agreement (which are not covered by any other international agreement) and it is, therefore, essential that all states parties and states in the process of ratifying the Rome Statute take immediate steps to sign and ratify the Agreement and enact effective implementing legislation.

Amnesty International believes that given the current status of signature and ratification, the Assembly should review the status of signature, ratification and implementation of the Agreement on Privileges and Immunities and should adopt a resolution calling on:

- All states parties to sign the Agreement immediately;
- All states parties to ratify the Agreement as soon as possible;
- All states parties to make it a priority to enact effective national legislation implementing the Agreement, in consultation with civil society;
- States parties that enact implementing legislation to consider providing technical assistance to other states.

The Assembly should also ensure the allocation of sufficient resources to the Assembly's permanent secretariat, so that once it is established, it can be asked to work with the International Criminal Court, intergovernmental organizations, including the UN, the International Criminal Tribunals for the former Yugoslavia and for Rwanda, non-governmental organizations and independent experts to assist states parties in drafting implementing legislation for the Agreement. The Assembly should also consider providing assistance to states to review their current law to determine how it needs to be amended when the state either ratifies the Agreement, makes

¹⁷ Also available on Amnesty International's, International Justice website: www.amnesty.org/icc

¹⁸ Argentina, Austria, Belgium, Benin, Costa Rica, Denmark, Ecuador, Finland, France, Hungary, Iceland, Italy, Luxemburg, Madagascar, Mali, Namibia, New Zealand, Norway, Peru, Portugal, Senegal, Switzerland, Trinidad and Tobago and United Kingdom.

declarations under Article 12 (3) or otherwise cooperates with the International Criminal Court under Article 87 (5) of the Statute. The Secretariat should monitor the status of implementing legislation and compliance in all states parties and report to the Assembly every year on the status of implementation.

IX. Responding to US campaign against the International Criminal Court.

The resumed first session of the Assembly takes place at a time when one state, the United States of America (USA), continues a worldwide campaign to undermine the International Criminal Court and to ensure impunity for its nationals should they commit genocide, crimes against humanity or war crimes on the territory of a state party to the Rome Statute.

It cannot be denied that the US campaign represents significant threats to the credibility and work of the Court. Amnesty International shares the view of many states parties that US fears of politically motivated prosecutions are unfounded and expects that an International Criminal Court that functions justly, fairly and effectively will be the greatest incentive for the USA to halt this campaign and to ensure that the USA cooperates with the Court and one day ratifies the Rome Statute.

As of 27 January 2003, it is reported that 18 states¹⁹ – seven of them²⁰ members of the Assembly and three others²¹ that are signatories to the Rome Statute – have signed impunity agreements although not a single parliament of any of these states has yet ratified such an agreement.²² It is furthermore expected, in light of the small number of states that have signed impunity agreements, that the USA will request a renewal of Resolution 1422 in July 2003 with amendments that broaden the scope of the resolution.

It is therefore important, the Assembly must stand united against US initiatives that threaten the Court. In particular:

- States parties must uphold their obligations under the Rome Statute and international law by refusing to enter into impunity agreements with any state;
- States parties that have signed impunity agreements with the USA must uphold their obligations under the Rome Statute and international law by not ratifying the Agreement;
- States that are members of the Security Council should not renew Resolution 1422 and all other states should take every available opportunity, including in statements in the Assembly, to urge them not to do so.

¹⁹ Afghanistan, Djibouti, Dominican Republic, East Timor, El Salvador, Gambia, Honduras, India, Israel, Marshall Islands, Mauritania, Micronesia, Nepal, Palau, Romania, Sri Lanka, Tajikistan and Uzbekistan.

²⁰ Djibouti, East Timor, Gambia, Honduras, Marshall Islands, Romania, and Tajikistan.

²¹ Dominican Republic, Israel (on 28 August 2002, Israel repudiated its signature of the Rome Statute), and Uzbekistan.

²² For further information on why the US impunity agreements are contrary to the Rome Statute, see: Amnesty International's *International Criminal Court: The US effort to obtain impunity for genocide, crimes against humanity and war crimes* (AI Index: IOR 40/025/2002) and; *International Criminal Court: The need for the EU to take more effective steps to prevent members from signing US impunity agreements* (AI Index: IOR 40/30/2002). Available on Amnesty International's International Justice website: www.amnesty.org/jcc

Amnesty International plans to publish a legal analysis of Security Council Resolution 1422 in the near future demonstrating that the resolution fails to satisfy the requirements of Article 16 of the Rome Statute and is also contrary to the UN Charter and other international law. Its one million members around the world will be campaigning to prevent the Security Council from renewing the resolution in July this year.

APPENDIX 1:

Questionnaire to all states that have nominated a judge to the International Criminal Court (in English, French and Spanish)

In August 2002, Amnesty International issued *International Criminal Court: Checklist to ensure the nomination of the highest qualified candidates for judges* (AI Index: IOR 40/023/2002).²³ The document called on all states nominating a candidate for judge to take measures to ensure that the criteria set out in the Rome Statute was met and that national nomination processes were transparent.

Amnesty International is asking all states that nominated a candidate for judge to complete the following questionnaire (in English, French or Spanish) about their national nomination process and to send it to the following address by 31 March:

International Justice Project
Amnesty International
Peter Benenson House
One Easton Street
London WC1X 0DW
United Kingdom
Fax: +(44) 207 956 1157
E-mail: ijp@amnesty.org

Please note that Amnesty International does not take a position on any individual candidates and is seeking only information about the process for nomination.

The information supplied by governments will be used in an Amnesty International analysis of all national nomination processes applying the recommendations set out in the organization's Checklist. All replies completed by governments will be annexed to Amnesty International's analysis.

1.(a) Which procedure did the government use to select their candidate?

- The procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question (*Article 36 (4) (a) (i) of the Rome Statute*);

Or

- The procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court (*Article 36 (4) (a) (ii) of the Rome Statute*)

Or

- By using both procedures

(b) Please provide a summary of the procedure used, including a copy of the relevant legislation or regulations governing the procedure used.

²³ Available at: <http://web.amnesty.org/ai.nsf/index/ior400232002?OpenDocument>

2. What steps did the government take to encourage applications from both:

- Applicants with 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 (*Article 36 (3) (a) (i) of the Rome Statute*),

And;

- Applicants with 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) (a) (ii) of the Rome Statute*).

Please provide copies of the letters (or the standard text with a list of the recipients and the dates sent) and announcements, press releases and advertisements, together with the dates and places of publication. Please also indicate which organizations of civil society were consulted in preparing the letters, announcements, press releases and advertisements and in determining whom to inform about the procedure.

3. What steps did the government take to encourage applications from women?

Including:

- was the need for a fair representation of female and male judges included in the letters, announcements, press releases and advertisements and were women encouraged to apply?
- was information about the nomination process sent to particular groups or individuals?
- was civil society asked to assist in identifying qualified women candidates? If so, which organizations were contacted?
- was the need for a fair representation of female and male ICC judges included in the criteria for selecting the candidate?

4. What steps did the government take to encourage applications from applicants with legal expertise on specific issues, including, but not limited to, violence against women or children?

Including:

- was the need for applicants with this experience included in the letters, announcements, press releases and advertisements and were such experts encouraged to apply?
- were steps taken to identify experts on specific issues, including violence against women and children and was information about the nomination process sent to them?
- was civil society asked to assist in identifying such experts? If so, which organizations were contacted?
- was the need for experts on issues, including violence against women or children included in the criteria for selecting the candidate?

- 5. (a) Were individuals allowed to apply for nomination?**
 - (b) Was the position advertised publicly? If so, where? Please provide us with a copy of the advertisement.**
 - (c) How much time was given to receive applications?**

- 6. What steps did the government take to engage civil society in the nominations process, including:**
 - (a) To comment and make suggestions on the text of the advertisement of the nomination process?**
 - (b) To identifying highly qualified applicants?**
 - (c) To comment on the skills and experience of the applicants and to provide information on how they meet the criteria?**
 - (d) To comment and make suggestions on the criteria for selecting a candidate used by the selection panel?**

- 7. What steps did the government take to ensure transparency of the process? Including did the government:**
 - (a) Publicly announce the nomination process and how it would work?**
 - (b) Encourage participation from civil society groups?**
 - (c) Make public who was a member of the selection panel before the candidate was selected?**
 - (d) Make public the names of the applicants and allow for comments from civil society groups?**
 - (e) Make public the applicant selected for nomination and the reasons for choosing that candidate?**

Questionnaire destiné aux États parties au Statut de Rome qui ont nommé un candidat au poste de juge à la Cour pénale internationale

1. (a) Quelle a été la procédure suivie par le gouvernement pour choisir son candidat ?

- la procédure de présentation de candidatures aux plus hautes fonctions judiciaires dans l'État en question (*Article 36 (4) (a) (i) du Statut de Rome*);
- ou
- la procédure de présentation de candidatures à la Cour internationale de justice prévue dans le Statut de celle-ci (*Article 36 (4) (a) (ii) du Statut de Rome*)
- ou
- les deux procédures à la fois

(b) Veuillez fournir un résumé de la procédure employée, en incluant une copie de la législation pertinente ou des réglementations qui régissent la procédure employée.

2. Quelles ont été les mesures prises par le gouvernement pour encourager ces deux types de candidatures :

- Celles des postulants ayant une compétence reconnue dans les domaines du droit pénal et de la procédure pénale, ainsi que l'expérience nécessaire des poursuites pénales, que ce soit en qualité de juge, de procureur ou d'avocat, ou toute autre qualité similaire (*Article 36 (3) (a) (i) du statut de Rome*),

et ;

- Celles des postulants ayant une compétence reconnue dans des domaines pertinents du droit international, tels que le droit international humanitaire et le droit international relatif aux droits humains, ainsi qu'une grande expérience dans une profession juridique qui présente un intérêt pour le travail judiciaire de la Cour (*Article 36 (3) (a) (ii) du Statut de Rome*).

Veuillez joindre les copies des lettres (ou le texte original avec une liste des destinataires et les dates d'envoi) et des annonces, des communiqués de presse et la publicité, en incluant les dates et lieux de publication. Veuillez indiquer aussi quelles organisations de la société civile ont été consultées pour préparer les lettres, annonces, communiqués de presse et la publicité pour déterminer la personne à informer de la procédure.

3. Quelles mesures le gouvernement a-t-il pris pour encourager les candidatures féminines ?

- le besoin d'une représentation équitable de juges féminins et masculins apparaissait-il dans les lettres, annonces, communiqués de presse et dans la publicité, et les femmes ont-elles été encouragées à se présenter ?

- les informations sur le processus de nomination ont-elles été envoyées à des groupes ou à des individus particuliers ?
 - la société civile a-t-elle été requise pour aider à choisir des candidates qualifiées ? Si oui, quelles ont été les organisations contactées ?
 - la nécessité d'une représentation équitable de juges hommes et femmes à la CPI était-elle incluse dans les critères de sélection du candidat ?
- 4. Quelles mesures le gouvernement a-t-il prises pour encourager des candidatures de juristes experts dans des domaines spécifiques, en incluant, mais sans s'y limiter, la violence contre les femmes ou les enfants ?**
- le besoin de postulants ayant cette expérience apparaissait-il dans les lettres, annonces, communiqués de presse et dans la publicité, et a-t-on encouragé leurs candidatures ?
 - quelles ont été les mesures prises pour sélectionner des experts dans des domaines spécifiques, y compris la violence contre les femmes et les enfants ? Les informations sur le processus de nomination leur ont-elles été envoyées ?
 - a-t-on demandé à la société civile d'aider à sélectionner de tels experts ? Si oui, quelles ont été les organisations contactées ?
 - le besoin d'experts, y compris dans le domaine de la violence contre les femmes ou les enfants, rentrait-il dans les critères de sélection du candidat ?
- 5. (a) Est-ce que des candidats individuels étaient autorisés à se présenter ?**
- (b) L'annonce était-elle publique ? Si oui, où a-t-elle été publiée ? Veuillez nous fournir une copie de l'annonce.**
- (c) Quel était le délai imparti pour la réception des candidatures ?**
- 6. Quelles mesures ont été prises par le gouvernement en vue d'engager la société civile dans le processus de nominations, y compris :**
- (a) Pour faire des remarques et des suggestions sur le texte de l'annonce du processus de nomination ?**
 - (b) Pour rechercher les candidats les plus qualifiés ?**
 - (c) Pour faire des remarques sur les compétences et l'expérience des candidats et fournir des renseignements sur la conformité de leurs candidatures par rapport aux critères ?**
 - (d) Pour faire des remarques et des suggestions sur les critères de sélection du candidat utilisés par le jury ?**

7. Quelles mesures le gouvernement a-t-il prises pour assurer la transparence du processus ? y compris :

- (a) A-t-il annoncé publiquement le processus de nomination et son mode de fonctionnement ?**
- (b) A-t-il encouragé la participation des groupes de la société civile ?**
- (c) A-t-il rendu public le nom d'un membre du jury avant que le candidat n'ait été choisi ?**
- (d) A-t-il rendu publics les noms des candidats et a-t-il tenu compte des commentaires des groupes de la société civile ?**
- (e) A-t-il rendu public le nom du candidat choisi pour la nomination et les raisons du choix de ce candidat ?**

**Cuestionario para los Estados Partes en el Estatuto de Roma
que han presentado candidatos a magistrados para la
Corte Penal Internacional**

1.(a) ¿Qué procedimiento ha seguido el gobierno para seleccionar al candidato?

- el procedimiento previsto para proponer candidatos a los más altos cargos judiciales del país (*Artículo 36.4.a.i del Estatuto de Roma*);

o

- el procedimiento previsto en el Estatuto de la Corte Internacional de Justicia para proponer candidatos a esa Corte (*Artículo 36.4.a.ii del Estatuto de Roma*);

o

- ambos procedimientos.

(b) Les rogamos que nos envíen un resumen del procedimiento utilizado, así como una copia de la legislación o las normas pertinentes que regulen dicho procedimiento.

2. ¿Qué medidas adoptó el gobierno para fomentar la presentación de candidaturas de personas con:

- reconocida competencia en derecho y procedimiento penales y la necesaria experiencia en causas penales en calidad de magistrado, fiscal, abogado u otra función similar (*Artículo 36.3.b.i del Estatuto de Roma*),

y;

- reconocida competencia en materias pertinentes de derecho internacional, tales como el derecho internacional humanitario y las normas de derechos humanos, así como gran experiencia en funciones jurídicas profesionales que tengan relación con la labor judicial de la Corte (*Artículo 36.3.b.ii del Estatuto de Roma*).

Envíen ejemplares de las cartas (o el texto estándar con una lista de los destinatarios y con las fechas de envío) y de los anuncios, los comunicados de prensa y la publicidad pertinentes, así como las fechas y los lugares en los que se publicaron. Indiquen también las organizaciones de la sociedad civil a las que se consultó para preparar dichos materiales y para decidir a quién se debía informar sobre el procedimiento.

3. ¿Qué medidas adoptó el gobierno para fomentar la presentación de candidaturas de mujeres?

Entre ellas:

- ¿se advirtió en las cartas, los anuncios, los comunicados de prensa y la publicidad de la necesidad de que hubiese una representación equilibrada de magistrados hombres y mujeres y se animó a las mujeres a presentarse?
- ¿se envió información sobre el proceso de presentación de candidaturas a grupos o individuos concretos?
- ¿se pidió a la sociedad civil que colaborara en la identificación de las mujeres más calificadas para presentarse a candidatas? Si es así, ¿con qué organizaciones se entró en contacto?
- ¿se incluyó la necesidad de una representación equilibrada de magistrados hombres y mujeres en la CPI entre los criterios para la selección del candidato?

4. ¿Qué medidas adoptó el gobierno para fomentar la presentación de candidaturas de personas con experiencia en temas concretos como, entre otros, la violencia contra las mujeres o los niños?

Entre ellas:

- ¿se advirtió de la necesidad de candidatos con este tipo de experiencia en las cartas, los anuncios, los comunicados de prensa y la publicidad, y se animó a dichos expertos a participar?
- ¿se adoptaron medidas para identificar a expertos en cuestiones específicas, entre ellas la violencia contra las mujeres y los niños, y se les envió información sobre el proceso de presentación de candidaturas?
- ¿se pidió a la sociedad civil que colaborase para identificar a dichos expertos? Si es así, ¿con qué organizaciones se entró en contacto?
- ¿se incluyó la necesidad de expertos en ciertas materias, entre ellas la violencia contra las mujeres y los niños, entre los criterios para elegir al candidato?

5. (a) ¿Se permitió presentarse a individuos?

(b) ¿Se anunció públicamente el puesto? Si es así, ¿dónde? Envíen un ejemplar de dicho anuncio.

(c) ¿Cuánto tiempo se concedió para presentar las solicitudes?

6. ¿Qué medidas adoptó el gobierno para que la sociedad civil participara en el proceso de presentación de candidaturas? A saber:

(a) comentar y hacer sugerencias sobre el texto del anuncio del proceso de presentación de candidaturas;

(b) identificar a los candidatos más cualificados;

(c) comentar las aptitudes y la experiencia de los candidatos y proporcionar información sobre en qué medida cumplían los requisitos;

(d) comentar y hacer sugerencias sobre los criterios para elegir al candidato que utilizó la junta de selección.

7. ¿Qué medidas adoptó el gobierno para garantizar la transparencia del proceso? Concretamente:

(a) ¿anunció públicamente el proceso de presentación de candidaturas y su funcionamiento?

(b) ¿animó a participar a grupos de la sociedad civil?

- (c) ¿hizo público quiénes eran los miembros de la junta de selección antes de que se eligiera al candidato?**
- (d) ¿hizo públicos los nombres de los candidatos y permitió que opinaran grupos de la sociedad civil?**
- (e) ¿hizo público el nombre del candidato elegido y las razones por las que se lo seleccionó?**