

To: Committee on the Election of the Prosecutor  
International Criminal Court

February 17, 2020

The Committee on the Election of the Prosecutor (“the Committee”), in its review of candidates for ICC Prosecutor, performs a critical function in ensuring that the next Prosecutor embodies the “high moral character” required by both the Rome Statute<sup>1</sup> and the dignity of the office itself. With this letter, we urge the Committee to establish a vetting and interview process that results in the exclusion of candidates who commit, condone, or ignore sexual harassment in and outside the workplace.

Three measures the Committee could take to achieve this objective include:

- 1) Adopting a clear, comprehensive, and public definition of “high moral character” that includes zero tolerance for any history of sexual harassment;
- 2) Soliciting, receiving, sharing with the entire Committee, and developing a process for considering credible, external information that sheds light on candidates’ histories in this respect; and
- 3) After affording candidates an opportunity to respond, potentially excluding candidates on the basis of such information or if concerns emerge from the candidates’ own responses to clear and pointed questions.

The Committee’s mandate, as set forth in the Terms of Reference,<sup>2</sup> requires it to “review the applications in light of” criteria set forth in article 42(3) of the Rome Statute. It is noteworthy that of the criteria listed, “high moral character” is enumerated first, followed by criteria relating to competence and experience. The vacancy announcement for the position further required “impeccable personal and professional integrity.” As the facilitator of the nomination and election process, with responsibility for reviewing applications, longlisting, and shortlisting candidates, the Committee must hold itself accountable for selecting a candidate pool that embodies the highest moral character. Without a clear definition of what that term means, the Committee and States Parties alike—who are the ultimate electors of the new Prosecutor—can evade their responsibilities through sheer vagueness.

Global and national movements to end the scourge of sexual harassment by the powerful are rising, and if the International Criminal Court is to function and be seen as a relevant and responsive institution, the Court and States Parties must address the demands of those movements with visible action. The election of a new Prosecutor presents a focused opportunity for ICC States Parties, through the Committee, to do so, by ensuring that candidates who have committed, condoned, or ignored sexual harassment will not advance.

The International Criminal Court is perceived as an icon for prosecution of sexual and gender-based crimes. Sexual harassment can have a concrete negative impact on the investigation and prosecution of such crimes, in particular. Those who are harassed and disempowered are less likely to identify, suggest, and act regarding lines of inquiry into such criminal patterns. Furthermore, a work environment in which particularly women, but also men, are harassed negatively affects their overall productivity and effectiveness.

Finally, a failure to properly vet candidates presents enormous reputational and financial risks for the Court. As an institution that has suffered reputational damage in the past due to critical deficits of high moral character, the ICC cannot afford laxity in its choice of a new Prosecutor.

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<sup>1</sup> Article 42(3): “The 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.”

<sup>2</sup> ICC-ASP/18/INF.2, para. 14.

As per publicly available information, the Committee is currently evaluating a longlist of candidates and will conduct interviews in late April. Although the longlist itself is not public, an educated scan of the international justice landscape yields a plausible list of potential prospects. Our apprehensions are grounded in the documented and lived experience of people working in the legal profession, about which a recent survey indicates that women, especially, but also men frequently experience sexual harassment in the workplace.<sup>3</sup>

We write this letter because we are fervent supporters of the Court, and because we see this election process as a moment to strengthen the ICC. The Prosecutor is the public face of the Court, and as such, holds both actual and symbolic power. We stand ready to offer resources, expertise, and support to the Committee to ensure that the new Prosecutor is free, both on paper and in reality, from any hint of sexual harassment.

Open Society Justice Initiative

Women's Initiatives for Gender Justice

International Federation for Human Rights (FIDH)

Justice International

L'Observatoire ivoirien des droits de l'homme

Parliamentarians for Global Action

Transitional Justice Coordination Group - Afghanistan

The Legal Defence and Assistance Project (LEDAP)

Nigerian National Coalition for the ICC

The Kenyan Section of the International Commission of Jurists

Africa Legal Aid

Justice Without Frontiers

Coalition Centrafricaine pour la CPI

Coalition Malienne pour la CPI

United Nations Association of Sweden

Institute for Security Studies (South Africa)

Global Rights Compliance

Women's Link Worldwide

International Center for Transitional Justice

International Refugee Rights Initiative

Center for Constitutional Rights

Global Justice Center

Journalists for Justice

Encadrement des Femmes Indigènes et des Ménages vulnérables (EFIM)

Centre d'Education et de Recherche Pour les Droits des Femmes (CERDF)

La Ligue pour la Solidarité Congolaise

CC: Panel of Experts assisting the Committee on the Election of the Prosecutor

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<sup>3</sup> International Bar Association, [Us Too? Bullying and Sexual Harassment in the Legal Profession](#) (2019).