

His Excellency Mr. Alexander Marschik
Permanent Representative of Austria to the United Nations in New York, USA

Her Excellency Ms. Ksenija Milenković
Ambassador of Serbia to the Kingdom of the Netherlands

Co-facilitators for the Lessons Learnt Exercise on the Election of the Prosecutor Process

Re: Recommendation to include comprehensive due diligence measures in future elections

The Hague, 14 April 2022

Your Excellencies,

Women's Initiatives for Gender Justice¹ is grateful to contribute to the lessons learnt exercise on the process of election of the Prosecutor of the International Criminal Court (ICC).

In 2020, Women's Initiatives and other civil society organisations called for the proper vetting of candidates for the position of ICC Prosecutor.² We welcomed the steps taken by the Committee for the Election of the Prosecutor (CEP) to include a background check and security clearance for all longlisted candidates. The CEP, however, itself acknowledged the limits on its legal framework, mandate, and capacity to carry out further inquiries or investigations and recommended in its final report that further processes "include a provision for the vetting of candidates *ab initio*, with clearly outlined parameters and modalities."³

Criminal record checks, open-source research, and declarations signed to confirm the absence of investigations, findings of (sexual) harassment, or other workplace misconduct against candidates only, are not sufficient to ensure that candidates meet the moral character expected of any ICC personnel, in particular its leadership.

A comprehensive due diligence process should *also* include:

- (1) conducting reputational interviews to collect views from current and former colleagues, supervisors, subordinates, and others who have interacted with the candidate in different capacities; and
- (2) following up on any identified "red flags" by pursuing responses from previous employers, national criminal record offices and/or national bar associations, as relevant.

¹ [Women's Initiatives for Gender Justice](#) is an international women's human rights organization that advocates for accountability and prosecution of sexual and gender-based crimes, and for gender justice through the ICC and other (domestic) justice mechanisms.

² [Open letter to the Bureau of the ICC Assembly of States Parties, 10 September 2020](#); see also [Open letter to the ICC Assembly of States Parties](#), 2 December 2020; [Civil society statement on ongoing Prosecutor election](#), 23 October 2020.

³ [Report of the Committee on the Election of the Prosecutor](#), ICC-ASP/19/INF.2, Assembly of States Parties of the ICC, 30 June 2020, para. 32.

It is essential that all future procedures recommended are transparent and fair. Reporting misconduct can be emotionally burdensome and retraumatizing for complainants. A lack of transparency and insufficient periods of time to submit relevant information and documentation related to allegations are factors that can discourage individuals from coming forward with information on misconduct. On the other hand, one of the concerns about the modalities of the CEP's work was that allegations of misconduct could not be properly investigated. In this regard, we consider that due process requires a mechanism that can rigorously investigate the veracity of allegations of misconduct. While Women's Initiatives advocates for a rigorous investigation, the feasibility of such an approach, given the relatively short time span of the election process, must be given close attention and solutions found.

Women's Initiatives considers that to ensure that due diligence measures are fit for purpose, it is important for the ASP to set standards of conduct that bind relevant stakeholders in the election process. The adoption of such standards may be one step towards preserving the integrity of the process and optimal fairness.

As previously submitted with other members of the Coalition for the ICC,⁴ due diligence measures should apply not only to ICC elected officials, including Judges, Prosecutor, the Registrar and Deputies, but also to elected officials of the Assembly of States Parties (ASP), such as members of the Committee on Budget and Finance or board members of the Trust Fund for Victims.

We further encourage the Assembly to establish a permanent due diligence mechanism rather than develop *ad hoc* procedures, as in the case of the election of the Deputy Prosecutors and Registrar. A permanent mechanism will ensure that all ICC and ASP elected officials undergo the same scrutiny in the election process and that a transfer of institutional knowledge on best practices will be possible.

We conclude our submission by noting that the exercise to learn lessons to ensure due diligence in the next ICC Prosecutor election, including setting high standards for the moral character of candidates, is commendable and necessary to ensure a safe working environment at the ICC. However, we wish to take this opportunity to stress that high moral character requirements and processes must go hand-in-hand with other measures to ensure a safe workplace environment at the Court. One will not be effective without the other.

We look forward to further engaging with you and stand ready to provide additional information at your request.

Thank you for your consideration.

Sincerely,



Melinda Reed
Executive Director
Women's Initiatives for Gender Justice

⁴ [Coalition for the International Criminal Court \(CICC\) Elections Team Paper](#), 22 November 2021.