

10 February 2021

To the attention of the Bureau of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC) and to the States Parties of the Rome Statute of the ICC

Your Excellencies,

1. Recalling our letter to the Bureau of the Assembly of States Parties raising concerns on a candidate for the election of a new Prosecutor dated 7 January 2021 and forwarded to the Presidency on the same day, the Undersigned Organizations continue to closely follow the election process for the next ICC Prosecutor.
2. The ASP tasked itself with establishing a process to ensure that the selection of the ICC Prosecutor would be characterized by transparency, rigour, and emphasise the competence of the candidates in question, as opposed to vote-trading by States Parties. In this it has failed. The absence of an impartial process whereby complaints may be aired and responded to in a transparent manner has meant that complaints and lobbying for candidates has moved to other, unsuited, forums.
3. Even before the selection of a shortlist, there had been repeated calls from concerned members of civil society that all candidates vying to be the next ICC Prosecutor be equally and professionally vetted and that the process be merit-based and fair to all candidates.
4. Since October 2020, following the expansion of the list of short-listed candidates, numerous civil society organisations have re-emphasised the importance of thorough vetting in order to ensure that all candidates meet the Rome Statute's high moral character requirement.
5. Those calls have been continuously refused for a variety of reasons that prioritised politics, speed and consensus over ensuring that all candidates met the requirements of Article 42 of the Rome Statute of the ICC on high moral character.
6. The calls from civil society for stringent vetting of the candidates have been accompanied by the submission by various parties of substantial information about the prior conduct of certain candidates that call into question their fitness to be the next ICC Prosecutor, or require clarification. Among others, concerns were reportedly more formally raised in a communication by a former senior diplomat from the United States of America to the President of the ASP.
7. However, we are aware that all the information regarding candidates has not been disclosed to all States Parties. To the best of our knowledge, the Presidency apparently has not forwarded all this information to States Parties, perhaps out of a desire to achieve consensus as soon as possible around the top remaining candidates.
8. On 8 February, the originally scheduled date for the election of the Prosecutor, the Presidency of the ASP was unable to achieve consensus. The failure to do so triggered a secret ballot

election, which the ASP has moved quickly to arrange for 12 February 2021 – again without professional vetting taking place beforehand. Following the extension of the expanded short-list of candidates, only one of the four candidates nominated by member states has thus been vetted as part of the whole process for the election of the ICC Prosecutor.

9. Taking note of the Bureau’s document of 11 December 2020 entitled “Modalities for Consultations and the Focal Points” that stipulated “[i]n the spirit of transparency, all communications received by the Committee on the Election of the Prosecutor from external parties shall be shared with members of the Bureau and with the focal points”, and considering the rushed circumstances of this election, we therefore request that the Bureau of the ASP undertake mitigatory measures to secure an outcome that may possibly be justifiable; The Bureau should immediately disclose all communications it has received about the four remaining candidates to all States Parties, making sure to secure the required level of confidentiality for the protection of the candidates. Or, given the gravity of some of the complaints received, the process should be paused, and a proper vetting and investigation of all complaints and charges should be conducted and the results thereof communicated to SPs, before proceeding to a secret contested ballot. In the absence of an effective and complete vetting throughout the electoral process, this information would assist States Parties to make an informed decision in the upcoming contested, secret ballot election.
10. The Undersigned Organisations regret that the failure to respond to civil society’s calls to ensure that the selection of the ICC Prosecutor was conducted in a fair, objective and transparent manner will necessarily have repercussions on the legitimacy of both the ICC and the person who is eventually elected by States Parties as ICC Prosecutor in carrying out his mandate, which will have to be addressed.

With our highest regards,

Africa Centre for Open Governance (AfriCOG), Nairobi, Kenya  
African Defenders (Pan-African Human Rights Defenders Network), Kampala,  
Uganda  
Centre for Strategic Litigation, Dar es Salaam, Tanzania  
Community Advocacy and Awareness Trust (CRAWN), Nairobi, Kenya  
Constitution Reform Education Consortium (CRECO), Nairobi, Kenya  
Haki Africa, Mombasa, Kenya  
Haki Yetu, Mombasa, Kenya  
Independent Medico Legal Unit (IMLU), Nairobi, Kenya  
Inform Action, Nairobi, Kenya  
International Centre for Policy and Conflict (ICPC), Nairobi, Kenya  
Inuka ni Sisi, Nairobi, Kenya  
Kenyans for Peace with Truth and Justice (KPTJ), Nairobi, Kenya  
Kenya Human Rights Commission (KHRC), Nairobi, Kenya

Kenya Land Alliance (KLA), Nakuru, Kenya  
Kenyan Section of the International Commission of Jurists, (ICJ-Kenya), Nairobi,  
Kenya  
Kenya Transitional Justice Network, (KTJN), Nairobi, Kenya  
Muslims for Human Rights, (MUHURI), Mombasa, Kenya  
National Victims and Survivors' Network, Nairobi, Kenya  
Open Bar Initiative (OBI), Abuja, Nigeria  
Pan African Lawyers Union (PALU), Arusha, Tanzania  
Samwel Mohochi Advocate, Mohochi and Company Advocates, Nairobi, Kenya  
Social Justice Centre Working Group, Mathare-Nairobi, Kenya  
TrustAfrica, Dakar, Senegal