

## KEY CRITERIA FOR ELECTION AS A JUDGE TO THE INTERNATIONAL CRIMINAL COURT

In December 2020, elections to fill six judicial vacancies at the International Criminal Court ('ICC') will take place at the nineteenth session of the Assembly of States Parties.

States parties should elect the **most-qualified candidates** in a **merit-based** and **transparent** election process, **free from vote-trading and political considerations**. Amnesty International urges states parties to give due consideration to equitable geographical distribution, the representation of principal legal systems, and balanced gender representation.

Amnesty International does not take a position on individual candidates who are nominated by States. However, states parties are invited to take into account the below criteria in electing candidates.

- **HAVE PROVEN COMPETENCE IN CRIMINAL LAW AND PROCEDURE AS A JUDGE, PROSECUTOR, ADVOCATE OR IN A SIMILAR CAPACITY, INCLUDING RELEVANT PRACTICAL EXPERIENCE OF CONDUCTING COMPLEX CRIMINAL TRIAL PROCEEDINGS, FAIRLY AND EXPEDITIOUSLY**

ICC proceedings involve complex issues of criminal procedure, including for example, highly dynamic issues of witness management or handling of evidence. As such, judicial candidates should have: knowledge of and practical experience in criminal law and practice, including trial procedure; experience managing complex criminal trials<sup>1</sup> and; experience in international criminal law and procedure, as relevant to the judicial work of the Court.

When assessing the competencies of all candidates in accordance with article 36(3)(b) of the Rome Statute, Amnesty International urges states parties to have particular regard to the minimum requirements for admission to the ICC list of counsel which are provided in Rule 22 of the ICC Rules of Procedure and Evidence, read in conjunction with regulation 67 of the Regulations of the Court. The *Guide for applicants to the ICC List of Counsel and Assistants to Counsel*,<sup>2</sup> provides that in order to be admitted to the ICC List of Counsel, prospective defence or victims' counsel are only qualified if they meet the following three criteria: i. A minimum of ten years of relevant experience (five years for assistant counsel); ii. In criminal proceedings; iii. As a judge, prosecutor, advocate or in other similar capacity.

In our view, 'Extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court' in article 36(3)(b)(ii) should be interpreted to require proven competence in criminal law and procedure and relevant experience in conducting complex criminal law proceedings. Accordingly, 'competence in relevant areas of international law' is a highly preferred quality for all ICC judges and supplementary to practical experience in complex criminal law and procedure.

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<sup>1</sup> Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report (30<sup>th</sup> September 2020), see, for example para. 966 '[ICC judges must be of the] highest calibre with the experience, ability and skills necessary to conduct a mass atrocities trial of a complex nature over a number of years, both fairly and expeditiously'.

<sup>2</sup> See, *Guide for applicants to the ICC List of Counsel and Assistants to Counsel* provides [emphasis added]:

'To be admitted to the List of Counsel, candidates must meet the following requirements: Competence: Candidates shall have proven competence and expertise in international or criminal law and procedure.

Experience: Candidates must have a **minimum of ten years of relevant experience in criminal proceedings** as a **judge, prosecutor, advocate or in other similar capacity**. Professors of law meet this requirement only where they have **intervened in criminal proceedings for a minimum of ten years in one of the capacities listed above**; otherwise, they can be admitted to the List of Assistants. [...] To be admitted to the List of Assistants, candidates must meet one of the following two requirements: **Five years of relevant experience in criminal proceedings** [or] specific competence in international or criminal law and procedure'.



- **HAVE PROVEN UNDERSTANDING AND EXPERIENCE OF THE FUNDAMENTAL RIGHTS OF ACCUSED PERSONS TO FAIR TRIALS**

Article 67 of the Rome Statute provides for the fundamental rights of the accused to a fair trial at the ICC, including the right to be tried without undue delay through public, impartial, and fair hearings.

Judicial candidates should have excellent knowledge of the international and regional legal frameworks and case law relevant to the fundamental rights of the accused and proven experience in ensuring that the rights of the accused are fully realised, including through an effective defence. While not conclusive, Amnesty International notes that candidates with relevant experience in criminal proceedings as a judge, prosecutor, advocate or other similar capacity, may have first-hand understanding of the rights of the accused to effective legal representation and competence to manage complex criminal proceedings in a fair and expeditious manner.

- **HAVE PROVEN UNDERSTANDING AND EXPERIENCE OF THE RIGHTS OF VICTIMS TO REMEDIES AND REPARATIONS, AND TO PARTICIPATE IN CRIMINAL PROCEEDINGS**

The Rome Statute provides that victims have a right to participate in proceedings: Article 68(3) states that 'where the personal interests of victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court'. Article 75 of the Rome Statute provides that victims have a right to reparations.

Judicial candidates should have excellent knowledge of the international and regional legal frameworks and case law relevant to the right to remedies and reparations, including compensation and rehabilitation of victims. Judicial candidates should also have excellent knowledge of the rights and needs of victims, including victims of sexual and gender-based crimes; and crimes against children. Candidates should have proven experience in ensuring that victims' perspectives and their rights have been realised through, *inter alia*, investigations; prosecutions and; effective and meaningful participation in trial proceedings.

- **SERVE INDEPENDENTLY AND IMPARTIALLY**

ICC judges must be fully independent from States. Accordingly, Article 40 of the Rome Statute and articles 3 and 4 of the ICC's Code of Judicial Ethics ('CJE') provide that ICC judges shall be independent and 'ensure the appearance of impartiality in the discharge of their judicial functions' and 'shall avoid any conflict of interest, or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest.' Article 10 CJE provides that judges shall not exercise any political function.

- **BE PERSONS OF HIGH MORAL STANDING**

States parties must elect people of high integrity in their personal and public life. ICC judges must not have been involved, by act or omission, in any violation of international human rights law or international humanitarian law.

Article 8 CJE provides that in conducting judicial proceedings, 'judges shall avoid conduct or comments which are racist, sexist, or otherwise degrading.'

ICC judicial candidates must not have, by words or conduct, manifested or appear to have condoned bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status. Similarly, judicial candidates must not have discriminated against or harassed an individual on any of these grounds.

