



Submission by the International Association of Prosecutors to the Search Committee for the position of ICC Prosecutor.¹

1. It is noted that the Treaty of Rome requires the Prosecutor to be *'highly competent in and have extensive practical experience in the prosecution or trial of criminal cases'*. This, it is assumed, is thus a mandatory requirement. Clearly operational experience as a trial lawyer in criminal practice would be essential, and whilst it would be desirable for the candidate to have prosecuted at a high level both at a domestic and international level, this may be considered as non-essential and experience as a defence practitioner should also be considered as relevant. Absence of an investigative background, more likely to be applicable to those with common law experience, should not be seen as a bar since most prosecutor candidates should have, as a minimum, overseen or evaluated the outcomes of investigations, but this will need to be tested.
2. How then to assess whether a candidate is 'highly competent'? Those who contributed to this response were unanimous that a conviction rate should not be a measure of success for assessing a candidate's ability to perform an operational prosecuting role successfully. In England and Wales there is a 'Brought to Justice' quantitative performance indicator but a range of prosecutorial and non-prosecutorial outcomes are included, furthermore the indicator is applied to all criminal justice agencies who can affect the outcome and not to individuals. None of the contributors/consultees were aware of any jurisdictions where an individual's conviction rate is used as a measure of his or her competence and skill as a prosecutor and it is widely accepted that to do so would be inappropriate and might create a perverse and dangerous incentive. Further, it was the considered view of those who contributed to this response that other competencies, apart from trial lawyer skills, were at least of equal if not of more importance.
3. Well-developed communication skills should assume a high priority, not only fluency in one of the languages of the ICC, as required by the Treaty of Rome, but also the ability to engage effectively with persons or organisations outside the court, including in particular the media. The Prosecutor's constituency is the global community to whom he/she is ultimately accountable and his/her principal window on the world will be through the media. Whilst media handling skills, print and broadcast can to an extent be learnt, the candidate will need at the very least to show potential in this respect and ideally have had relevant experience thorough which he or she can demonstrate media awareness. The Prosecutor will also need to recognise the importance of effective communication within his/her own office and with

¹ The General Counsel of the IAP has prepared this document following extensive consultation with current and former members of the IAP Executive Committee. It is endorsed by the IAP Secretary General Derk Kuipers and the IAP President James Hamilton, DPP Republic of Ireland.

external bodies, organisations, country representatives and lawyers world-wide; the ability to communicate being one of the most important tools of effective leadership.

4. Top flight leadership skills are of crucial importance both within the organisation and outside. The ICC Prosecutor must have the wherewithal to set a strategic direction but will also need to be able to respond to the immediacy of a situation-eg that which is happening currently in Libya. However the contributors wanted to emphasise the need for proven management skills in order to deliver operational effectiveness and outcomes to satisfy the State Parties. Whilst the Prosecutor will be able to delegate the substance of running an organisation to others with the necessary expertise eg Human Resources, finance, training etc, the candidate will need to have a sufficient grasp of administrative matters and the mechanics of how an office operates to be able to run the organisation in an efficient manner. The Prosecutor will be required to make top level management decisions, in the knowledge and understanding of the full implications thereof. Many of the contributors were at pains to emphasise that brilliant lawyers do not necessarily make good managers, an excellent court room advocate can sometimes be a 'lone wolf' and not suited to an organisational structure. The appointee will need to make a standing start in this respect-the ICC being too vulnerable to withstand any weakness whilst he/she seeks to 'get up to speed'.
5. Contributors to this response were also very clear that the candidate must possess a keen political instinct, that is an ability to navigate through the complex and sensitive political issues with which he/she will be presented, allied with well-honed inter personal skills to interact with internal and external personnel and bodies. If this is what is meant by 'diplomatic skills' then the ICC Prosecutor needs them in abundance. Experience at an international level eg in an international organisation will highly desirable, together with a broad knowledge of the diversity and range of the criminal justice systems that exist world-wide. The ability to make sound decisions and reasoned judgements will be crucial, any prosecutor must be robust and be able to withstand the inevitable pressure that will be improperly brought to bear upon him/her in respect of his decisions, but the ICC Prosecutor must have very broad shoulders indeed, such will be the highly charged political environment within which he/she operates. The Prosecutor will need to resist improper influence and pressure as well as possess the drive and determination to deliver the ICC objectives. A verifiable track record demonstrating such resilience would be significant.
6. Of paramount importance will be absolute and verifiable integrity. To that end an unblemished record in a position in high public office subject to intense public scrutiny and an exemplary personal reputation would be good evidence for the selection panel.
7. The '*IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*' as set out in the annex attached hereto are commended to the Search Committee and are as applicable to the Prosecutor for the ICC and his office as to any other prosecutor. These were adopted within a UN Crime Commission Resolution in 2008.
8. The means of assessing these competencies and qualities does present a challenge. Self-assessments, testimonials, verifiable examples, interviews, tests, role plays etc can all play a part.

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