



THE INTERNATIONAL CRIMINAL COURT COLLOQUIUM

The ICC Prosecutor Selection Process: A Post-Mortem

Monday, 29 March 2021, 10:00 - 11:30 AM EDT (Via Zoom)

INVITATION

The Center for International Law and Policy in Africa (CILPA), a new think tank based in Sierra Leone, invites you to a roundtable discussion regarding the selection process for the Prosecutor of the International Criminal Court. Please RSVP to info@cilpa.org. Space is limited. Registration is on a first come first served basis. Zoom meeting details will then follow.

CONCEPT

The nine-year term of the current International Criminal Court (ICC) Prosecutor, Ms. Fatou Bensouda, will end in June 2021. In February 2021, the ICC Assembly of States Parties (ASP) elected Mr. Karim Khan to replace her. The election of a new ICC chief prosecutor was the culmination of a process that began in April 2019, when the Bureau of the ASP adopted terms of reference for a Committee on the Election of the Prosecutor (CEP). The CEP was supported by an independent Panel of Experts (PoE). The CEP had the lead role and was tasked with carrying out a competency-based search process for the next ICC prosecutor. The creation of an advisory PoE represented a “significant innovation”, compared to prior ICC prosecutor searches, and was aimed at ensuring that only the most qualified candidates are presented to States Parties for further consideration. The confidential search process was subject to a strict timeline. Following receipt of applications, their review and interviews, the CEP was required to issue a public report with a shortlist of between 3 to 6 persons recommended for further consideration.

But, when the CEP issued its report on 30 June 2020, it faced some criticism. It was alleged that some on the shortlist of four persons had insufficient international prosecution experience, that the list omitted “big names”, and that the candidates had not been properly vetted for the high moral character requirement under Article 42(3) of the Rome Statute. Nonetheless, the ASP Bureau held widely watched public interviews with the four shortlisted candidates in July 2020. The subsequent consultation process, which was not structured and led to complaints from some African States about transparency and inclusivity, proved inconclusive. The ASP Bureau eventually adopted a way forward in November 2020. It included a request for the CEP to submit names of additional interviewed candidates and its appraisal of them. The CEP issued a supplementary report, with five additional names, in November 2020. A structured consultation process was implemented, led by the leadership of the ASP Bureau with the support of regional focal points, in the hope of forging consensus. In the end, however, despite the emergence of lead candidates, a number of States blocked the consensus. This forced the first ever ASP election of the ICC’s chief prosecutor, in line with Article 42(4) of the Rome Statute, which occurred on 12 February 2020.

Given the Prosecutor’s significant role in the ICC system, and the concerns of African and other States Parties and civil society about “the process”, CILPA, as part of the activities under its Africa and the ICC Research Project, will convene *four* separate roundtables with leading experts from academia, governments, and civil society. The *first* will assess the ICC prosecutor selection process. Panelists will discuss the recent search, as well as how the ASP might strengthen future competency-based searches for ICC principals. CILPA will then convene a *second* event to discuss the achievements of the African ICC prosecutor and the challenges that await the next prosecutor. A *third* roundtable will examine the ICC review and reform process. The *final* event in the 2021 series will discuss the prospects for resetting the Africa-ICC relationship including the need for greater State support for the ICC.



PROGRAM – Monday, 29th March 2021 via Zoom

10:00 I 10:10 Welcome/Opening Remarks

Charles C. Jalloh, CILPA and formerly Chair, ICC Panel of Experts on the Election of the Prosecutor

10:10 I 11:00 Perspectives on the ICC Prosecutor Search and Lessons Learned for Future Processes

Angela Mudukuti, Open Society Justice Initiative

Allan Ngari, Institute for Security Studies, Pretoria

Sabine Nölke, formerly Canadian Ambassador to the Netherlands and Chair, ICC Committee on the Election of the Prosecutor

Owiso Owiso, University of Luxembourg

11:00 I 11:20 Open Discussion/Q and A

11:20 I 11:30 Closing Remarks

Mark Kersten, Wayamo Foundation