



Assembly of States Parties

Distr.: General
25 November 2020

Original: English

Nineteenth session

New York, 7-17 December 2020

Report of the Committee on the Election of the Prosecutor

Addendum

Appraisals of additional candidates

I. Introduction

1. This addendum to the report of the Committee on the Election of the Prosecutor (“the Committee”) is submitted to the Bureau of the Assembly of States Parties pursuant to the tasking given to the Committee in the “Election of the Prosecutor: Way forward” (the “Way forward”) adopted by the Bureau on 13 November 2020.¹ The provisions of the 30 June 2020 report of the Committee are incorporated into this addendum by reference.

2. On 30 June 2020, as mandated by the Terms of Reference for the Election of the Prosecutor (“Terms of Reference”),² the Committee submitted its report containing a shortlist of the four most highly qualified candidates for the position of Prosecutor of the International Criminal Court (ICC). A consultation process then commenced, led by the President of the Assembly, to identify a consensus candidate. This process was inconclusive.

3. In adopting the “Way forward”, the Bureau therefore outlined a process to supplement the Terms of Reference, with a view to expanding the list of candidates considered in the consultation process to include those remaining individuals originally interviewed by the Committee who were still willing to be considered for the position. The Bureau’s decision requested the Committee to prepare an appraisal of each of the additional candidates, as was done for those on the shortlist.

4. Given that the Committee had originally found these additional candidates not to be among the most highly qualified and that its assessments may as a result be considered prejudicial in some respects, the Bureau decided that the Committee should share its appraisal with each additional candidate in order for them to give their final consent to be added to the expanded list. The consultation process would continue thereafter, led by the President of the Assembly, to identify a consensus candidate.

5. The Committee originally interviewed fourteen candidates, and four of those candidates were included on the shortlist of the most highly qualified candidates submitted by the Committee in its report: Mr. **Morris A. Anyah** (Nigeria); Mr. **Fergal Gaynor**

¹ Available at https://asp.icc-cpi.int/en_menus/elections/prosecutor/Pages/Prosecutor2020.aspx.

² ICC-ASP/18/INF.2.

(Ireland); Ms. **Susan Okalany** (Uganda) and Mr. **Richard Roy** (Canada). The Committee's appraisal of those candidates is contained in section V of document ICC-ASP/19/INF.2.

6. Of the ten remaining candidates, one indicated to the Secretariat of the Assembly via email on 26 October 2020 that they did not wish to continue to be considered for the position. Therefore, on 13 November 2020, after having been informed of the Bureau decision, the Committee Chair wrote to the nine remaining candidates to provide them with a copy of the "Way forward" and to ascertain their in-principle interest in continuing to be considered as a candidate. In response, two additional candidates indicated that they no longer wished to be considered for the position. On 23 November 2020, the Committee provided each of the seven remaining candidates with a copy of their respective appraisals. At that stage, two of the candidates indicated that they no longer wished to be considered as a candidate for the position of Prosecutor, leaving a total of five additional candidates.

7. The Committee hereby submits its appraisals of the following additional candidates (in alphabetical order) for the consideration of the Assembly:

(a) **Carlos Castresana Fernández** (Spain), currently Prosecutor of the Spanish Court of Auditors;

(b) **Karim A. A. Khan** (United Kingdom of Great Britain and Northern Ireland), currently Special Adviser and Head of the Investigative Team to Promote Accountability for Da'esh /ISIL crimes (UNITAD);

(c) **Francesco Lo Voi** (Italy), currently Chief District Prosecutor in Palermo, Italy;

(d) **Robert Petit** (Canada), currently Senior Official at the United Nations Follow-on Mechanism for the Democratic Republic of the Congo; and

(e) **Brigitte Raynaud** (France), currently Substitut général (Deputy Prosecutor) at the Paris Court of Appeals.

8. A summary of the qualifications and expertise of these candidates, including the extent to which they meet the requirements for the position, is provided below. The *curriculum vitae* and letter of motivation submitted by each of these candidates is contained in annex I to this report. In light of the time that has passed between the interview and the 13 November Bureau decision, four of the candidates provided the Committee with an updated *curriculum vitae* reflecting the most recent developments in their career.

9. As noted in paragraph 12 of its 30 June report, the Committee received several unsolicited letters in respect of certain candidates whose names are now being submitted to the States Parties for their consideration. These letters will now be provided to the President of the Assembly.

II. Appraisals

10. When establishing the shortlist,³ the Committee assessed all the longlisted candidates against the requirements of the Rome Statute, the additional competencies set out in the Committee's Terms of Reference, and the vacancy announcement, based on the following considerations:

- (a) qualifications and experiences set out in candidates' applications and supporting materials and documentation provided therewith;
- (b) their performance in the interview; and
- (c) the outcome of a vetting process and reference check.

11. The Terms of Reference required the Panel of Experts to share their confidential assessment of all the interviewed candidates with the Committee prior to the elaboration of the shortlist. The Committee took those assessments into account in making its initial determinations on which candidates in its consensus view were the most qualified and

³ ICC-ASP/19/INF.2, para. 33.

should be shortlisted, and which should not be included on the shortlist and why; accordingly, these Expert assessments continued to be taken into account in the Committee's appraisals in this addendum. The recusal provisions under the original Terms of Reference continued to apply.

12. All 14 candidates, including the five additional candidates presented herein, had been subject to the vetting process described in paragraphs 24-32 of the original report. While the Committee was made aware of certain allegations of misconduct, including in the public domain, the vetting process disclosed no conclusive adverse information in respect of any of the candidates.

13. Given the confidentiality provisions in the Terms of Reference, the Committee did not put the assessments of the non-shortlisted candidates in writing at that time; it has now done so, following a virtual meeting of Committee members on 22 November 2020. The appraisals provided in this addendum are consistent with the Experts' confidential assessments and the Committee's discussions that led to the inclusion and non-inclusion, respectively, of candidates in the 30 June report, and do not reflect any new or additional considerations.

14. The Committee's appraisals of the additional candidates, in alphabetical order, are as follows:

A. CARLOS CASTRESANA FERNÁNDEZ (Spain)

15. Carlos CASTRESANA⁴ (LL.B.) has been a career Public Prosecutor in Spain for 30 years. Between 2007 and November 2020, when he took on his current role as Prosecutor of the Court of Auditors, his work focused on international inquiries and consultancy. His training and background are in the civil law legal tradition. He has investigated and prosecuted high-level corruption cases and other transnational complex crimes, including as Public Prosecutor of the Spanish Supreme Court. He served as prosecutor on the *Pinochet* case; as Commissioner (UN Assistant Secretary-General equivalent) of the International Commission Against Impunity in Guatemala (CICIG); as international consultant; and as professor of international criminal law. Mr. Castresana's primary language is Spanish. He is fluent in English and has a moderate knowledge of French.

16. Mr. Castresana has knowledge of comparative criminal law and public international law including human rights law, humanitarian law, and international criminal law. He has both national and international experience prosecuting cases but did not convince the Committee of how this would translate to prosecutions before international tribunals. He presented the Committee with a vision as to how the Office of the Prosecutor (OTP) should change, although he did not appear to be familiar with the details of the ICC system. He was well aware of the political implications that the ICC's work may have in the context of transitional justice. His experience in the CICIG suggests that he would strive to be independent. He would bring relevant managerial and budgetary experience from the CICIG to the role of ICC Prosecutor.

B. KARIM A. A. KHAN (United Kingdom of Great Britain and Northern Ireland)

17. Karim KHAN⁵ Q.C. (LL.B., AKC, FSI Arb, FCI Arb, Dip. Int. Arb. (CI Arb)) is a Barrister-at-Law and Benchers at Lincoln's Inn, qualified to practice law in the United Kingdom. He is currently serving, with the rank of Assistant Secretary-General of the United Nations, as Special Adviser and Head of the Investigative Team to Promote Accountability for Da'esh /ISIL crimes (UNITAD). Although active as a prosecutor in domestic cases, his appearances before the major international criminal tribunals (ICC, International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), Extraordinary Chambers in the Courts of Cambodia (ECCC), Special Court for Sierra Leone (SCSL), Special Tribunal for Lebanon (STL), European

⁴ Mr. Castresana submitted an updated curriculum vitae to the Committee on 16 November 2020.

⁵ Mr. Khan submitted an updated curriculum vitae to the Committee on 23 November 2020.

Union Rule of Law Mission in Kosovo (EULEX) and Special Panels for Serious Crime (SPSC) in Timor-Leste) have been mostly in the capacity of victims or defence counsel. His current role with UNITAD is investigative in nature, with a view to preparing crimes committed by Da'esh for future prosecutions. His background is in the common law system and he is a native English speaker.

18. Mr. Khan is a charismatic and articulate communicator who is well aware of his achievements. He demonstrated a good command of international criminal law practice and of the global context in which the ICC operates, as well as a clear vision of necessary changes in the OTP. Since his appointment to UNITAD in 2018 he has gained experience in managing a large team, although he did not demonstrate familiarity with ICC budgetary processes. He demonstrated a clear commitment to a harassment-free workplace, drawing on concrete experience. Given his previous engagements as defense counsel in a number of on-going cases before the ICC, the probability of the need for multiple recusals is considerable. The Committee took note of an apparently coordinated write-in campaign by civil society organizations on Mr. Khan's behalf, promoting his candidacy despite the confidential nature of the process.

C. FRANCESCO LO VOI (Italy)

19. Francesco LO VOI⁶ (LL.B.) is currently Chief District Prosecutor in Palermo, Italy, having been in this position since 2014. His training and background are in the civil law legal tradition. He has worked as judge and as a prosecutor in positions of increasing responsibility since 1990. He has served as a member of the Italian Council for the Judiciary; as prosecutor before the Italian Supreme Court; and as national member for Italy at Eurojust. He has investigated and prosecuted *Cosa Nostra*, and other large-scale organized crime cases. Mr. Lo Voi's primary language is Italian. He is fluent in English and has a moderate knowledge of French.

20. Mr. Lo Voi has very strong domestic experience as a prosecutor investigating complex criminal cases concerning transnational (Mafia-related) crimes in Italy. He also had exposure to the international environment, notably in relation to matters of international judicial cooperation in the European context. However, he did not succeed in convincing the Committee of his knowledge and experience in international law as well as in the investigation and prosecution of Rome Statute crimes, or of his understanding of the complex geopolitical context in which the ICC is placed. Mr. Lo Voi has sufficient management experience. His interview suggested to the Committee that he is of high moral character and that he is committed to the principles of prosecutorial independence. The Committee took note of efforts to promote Mr. Lo Voi's candidacy to the Committee.

D. ROBERT PETIT (Canada)

21. Robert PETIT (LL.B.; admitted to the practice of law in Quebec) is Senior Official at the United Nations Follow-on Mechanism for the Democratic Republic of the Congo since 2017, and Senior Counsel and Team Leader at the Crimes Against Humanity and War Crimes Section of the Canadian Department of Justice since 2001 (currently on leave). He has served as prosecutor for crimes against humanity and war crimes for the United Nations Mission in East Timor, the SCSL, and the ECCC, and held prior positions with the Federal Prosecution Service (Justice Canada), the Office of the Attorney General of Quebec, the International Criminal Tribunal for Rwanda and the United Nations Mission in Kosovo. Mr. Petit is bilingual in French and English and has basic knowledge of Kinyarwanda.

22. Mr. Petit has vast experience in the prosecution and trial of cases at the domestic and international levels. He is committed to independence as a prosecutor, although his managerial experience and vision were not made sufficiently clear to the Committee. He is a capable national and international prosecutor of Rome Statute crimes and was in fact one of four finalists in the 2011 prosecutor search. During the interview, while he showed a solid understanding of the complexity of the work of the ICC, his answers to questions on

⁶ Mr. Lo Voi submitted an updated curriculum vitae to the Committee on 24 November 2020.

strategic awareness, about his vision as a potential chief prosecutor, and communication competencies did not succeed in convincing the Committee that he possesses the dynamic leadership qualities that are desirable for the position of ICC Prosecutor.

E. BRIGITTE RAYNAUD (France)

23. Brigitte RAYNAUD⁷ (LL.B., LL.M.) is Substitut général (Deputy Prosecutor) at the Paris Court of Appeals, a position she has held since 2019. Her training and background is in the civil law legal tradition. She has served as a Judge at the French judiciary courts since 1998, including as an Examining Judge at the Paris military tribunal overseeing offences committed in the context of foreign operations (Kosovo, Djibouti, Senegal, Chad, Rwanda, Togo, Gabon, Côte d'Ivoire); as an expert at the ICC; and as a senior civil administrator in different positions. Ms. Raynaud's primary language is French, and she is fluent in English. Ms. Raynaud is a dual French-Ivorian national and has declared her primary nationality to be that of France.

24. Ms. Raynaud's professional background suggests that she has expert level knowledge of French criminal law and procedure. She also has knowledge of comparative criminal law and public international law including human rights law and international criminal law. Having served as reservist colonel indicates familiarity with the law of armed conflict. During the interview, she stressed her practical experience and general familiarity with the ICC and Rome Statute system, thoughtfully framing the challenges currently facing the ICC, and situated the OTP in that wider geopolitical context. She set out a vision of the ICC that would re-center itself and cooperate more closely with States to achieve its original purpose. While Ms. Raynaud noted that prosecutors had to be independent, she appeared overly deferential to certain State actors carrying out counter-terrorism operations. She had strong managerial experience overseeing a large budget and staff.

III. Conclusion

25. The Committee wishes to express its ongoing strong commitment to protecting the confidentiality and privacy of all those candidates who have been eliminated, or who have withdrawn from the process at different stages, in accordance with the Terms of Reference of the Committee process.

26. The Committee wishes to thank its colleagues from the Panel of Experts for their detailed, professional assessments of candidates' qualifications that informed the Committee's work at all stages of the process. The Committee also wishes to thank the staff of the Secretariat of the Assembly of States Parties for their tireless, committed and professional assistance throughout.

27. The Committee stands ready to offer its views on "lessons learned" from the current process to States Parties.

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⁷ Ms. Raynaud submitted an updated curriculum vitae to the Committee on 24 November 2020.

Annex I: Additional candidates reference material

(See ICC-ASP/19/INF.2/Add.4)
