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THE REMOVAL PROCESS AGAINST ICC PROSECUTOR KARIM A. KHAN

EXECUTIVE SUMMARY

This ICJ Norway Position Paper examines the institutional removal process against Prosecutor Karim A. Khan at the International Criminal Court, based on allegations of serious misconduct. The paper argues that the proceedings raise significant concerns regarding the existence and application of proper safeguards in the removal process. It highlights the risk of future increased political influence over the Prosecutor. More specifically, the paper underlines the importance of respecting the findings of the appointed independent and impartial panel of legal experts, concluding that no misconduct had been proven. ICJ Norway calls on States Parties to apply the Rome Statute correctly, follow a two-step voting procedure at the Assembly of States Parties, and protect the integrity and independence of the ICC.

INTRODUCTION

When the [Assembly of States Parties \(ASP\) of the International Criminal Court \(ICC\) meet in New York on the 24th of July](#), to decide on the fate of the current elected chief Prosecutor Karim A. Khan, it will be important that the institutional process against the Prosecutor appears to be in accordance with current rules and principles for fair processes. The host State of the meeting, the USA, which is a non-Party State, has through secretary of state Marco Rubio launched a fresh salvo against the ICC with the aim of dismantling it “brick by brick, if necessary,” (see [Opinion in Wall Street Journal 13 July 2026](#)). It creates an increased atmosphere of intimidation and threats against the States Parties, obviously to have the Prosecutor removed at the meeting.

The ASP must withstand this inappropriate pressure and not let the misplaced US legal critique of the Court influence its work. States Parties must instead control that the process against the Prosecutor has been fair and make lawful and just decisions. These issues are different from the Prosecutor’s possible culpability. This paper argues that there are serious questions relating to proper safeguards as well as legal issues that could be decided only one way under the current legal framework.

THE PROSECUTOR LACKS SUFFICIENT SAFEGUARDS AGAINST UNJUSTIFIED REMOVAL

The position as the elected Prosecutor at the ICC is arguably the most important of all positions at the Court, more important than that of a single judge. Without an independent and impartial chief Prosecutor, justice will eventually become selective and denied to many victims for political reasons. It is also crucial that the Prosecutor is *seen* as politically independent and impartial. This feature may have been underestimated when the rules regarding removal from office was made in the Rome Statute (the Statute).

The safeguards for the Prosecutor in the Statute are significantly less compared to a judge, although the substantive offence, serious misconduct or serious breach of duty, is the same (in the following only serious misconduct will generally be used). If the misconduct occurs outside the course of official duties, which could be sexual misconduct as alleged in the Khan case, it will be considered serious if it is of grave nature that cause or is likely to cause serious harm to the standing of the Court, see Rules of Procedure and Evidence (RPE) Rule 24(1)(b).

Removal of a judge requires as an absolute condition that two-thirds of the other judges recommend removal, in addition to a two-thirds majority of the States Parties for a removal decision, see Article 46(2)(a) of the Statute. Despite the non-binding nature of a “recommendation”, the lack of a positive recommendation by the other judges prevents the ASP from taking a decision on removal. This rule effectively prevents political processes against judges under the guise of disciplinary matters or that a

removal process against a judge is based on insufficiently substantiated allegations determined unfairly by a political body. In comparison the removal decision requires only an absolute majority of the States Parties (63 votes) in the case of the Prosecutor, while the Statute is silent on how the assessment by the ASP of possible serious misconduct shall be made, see Article 46(2)(b) (removal decision) and Article 46(1)(a).

The latter provision, which concern both a judge, the Prosecutor, and others, only states that the person must be “found” to have committed serious misconduct. What is clear is that a positive determination of serious misconduct must necessarily be undertaken prior to the removal decision. This is supported by the wording “if a decision to this effect is made [removal] [...] in cases where that person [...] is found to have committed serious misconduct” in Article 46(1). Removal is on the other hand not necessarily the only possible result of a finding of serious misconduct, as we shall see.

Lex ferenda, the same or similar safeguards as for a judge ought to have applied to the elected Prosecutor. Instead, the current rules relating to removal of the Prosecutor – which can be found in the Statute, the RPE, and the Rules of Procedure of the Assembly of States Parties (ASP Rules) – open for wide political discretion on some points and could have been more clearly formulated on other points.

Unfortunately, incomplete safeguards and ambiguous language also creates conditions for abuse of power. If the current process against Khan is broadly perceived as a Western attempt to gain control over the elected Prosecutor now and for the future, the harm to the Court will be immense. Many States Parties will then also get an excuse to leave the ICC in the years ahead.

THE BROADER INSTITUTIONAL CONTEXT

Civil organizations that have so far been silent, and international lawyers, may eventually lose faith or interest in a politicized Court. After all, who will care much about an international criminal court with a prosecutorial office under political rule, led by a weak Prosecutor? In this perspective it is already disturbing that the ICC deputy prosecutors, in the absence of the Prosecutor, have [still not applied for any arrest warrant against RSF-leaders in Sudan](#). They have been widely alleged to be responsible for mass atrocity crimes against civilians, and genocide, while supported by certain Middle East States that are allies of the USA.

This perception of political favoritism and inequality of victims is not without merit. For the last years, Prosecutor Khan and other key legal personnel at the Court have been attacked in speeches by governmental representatives and [sanctioned heavily by the USA](#), the leading State of NATO. The main reason for this conduct has been related to the arrest warrant against Israeli prime minister Benjamin Netanyahu, initiated by the Prosecutor in 2024. While US governmental figures were publicly satisfied

with the arrest warrant against Russian president Vladimir Putin, US governments have condemned the warrant against Netanyahu and threatened the Court – while the Israeli mass crimes against humanity and genocide against the Palestinians have been ongoing, as concluded by among others [the UN Independent Commission of Inquiry for Palestine and Israel in several authoritative reports](#).

European governments have not protected the Court against this bullying of ICC prosecutors and judges. To the contrary, [the EU has declined to employ its blocking statute](#) which could have been effective against the unlawful US interference in the administration of justice at the Court. No effective counter-intelligence unit has furthermore been provided to the ICC by the States Parties, despite likely intense surveillance and inappropriate pressures by States unfriendly to the Court. The current ASP leadership has in these respects been a fiasco.

It is in this charged environment of threats, allegations and distrust that the ASP leadership and the Bureau has operated the process against the elected Prosecutor.

HAS THE PROCESS AGAINST THE PROSECUTOR BEEN FAIR?

There are at least two stages or issues of importance prior to the upcoming ASP meeting itself that deserve a comment regarding due process.

(1) *Shifting from IOM to OIOS*. When the ordinary process at the ICC, through the Independent Oversight Mechanism (IOM) for handling the allegations against Khan for misconduct, did not produce any positive outcome, in other words a finding of misconduct or similar, the Bureau proceeded instead to invent a new procedure at the Court involving the United Nations Office of Internal Oversight Services (OIOS). Generally, it is not a good idea from a rule of law perspective to create new procedures when the applicable procedures led to nothing. If available procedures turn out to be structurally unfortunate or inadequate, the solution would normally be to amend the procedures and apply the new rules when the *next* case arises.

(2) *Amending the RPE and ASP Rules to keep the door open for political determination*. The ASP proceeded on [5 December 2025 to amend the procedural rules](#) while the Bureau had already in June 2025 appointed an ad hoc panel of legal experts with gender and regional diversity, hoping, probably, that a third professional body would eventually secure the positive legal characterization of the findings of the OIOS. When that did not happen, since the ad hoc panel unanimously did not find misconduct of any kind under the relevant facts and rules [in its 85-page report, providing a lengthy analysis of the underlying evidence](#) as described and considered by the OIOS, the ASP Presidency upon receipt of the report 9 March 2026, and later the majority of the Bureau, decided to move forward with the process anyway, based on their own assessment of the culpability of the Prosecutor.

The first problematic issue here does not concern formalities or procedures, but a likely belief at the Bureau that politicians and diplomats somehow are better suited to ‘find the truth’, in a case apparently without a smoking gun that has already been considered by professional fact finders and legal experts. The legal experts on the ad hoc panel, on the other hand, are more likely to understand professionally the concept of evidence and what a factual finding beyond a reasonable doubt means in practice. It is therefore fascinating how the ASP Presidency and the majority within the Bureau seem to have disregarded the report and the conclusions of experienced, independent and impartial legal experts and substituted it with its own assessment – in disfavour of the Prosecutor.

Had the removal process concerned a judge, this would not have been possible since a prior recommendation of removal by two-thirds of the other professional and independent judges is required. The rationale for this rule is *lex ferenda* just as strong regarding the elected Prosecutor. Principled thinking and safeguards, however, may not have caught the attention of the Bureau-majority.

The result is that different kinds of disguised political interests might have been in the mix at the Bureau. This is no mystery since Bureau representatives are dependent on their governments. The Prosecutor might be seen by many Western politicians as being responsible for the US sanctions directed at ICC key personnel because of the Netanyahu arrest warrant and considered a political problem for Western governments. Extraneous considerations may, therefore, have tipped the narrow majority decision in disfavor of the Prosecutor at the Western-dominated Bureau.

WARNINGS OF A POLITIZED PROCESS

Warnings to States Parties of a politicized process against the Prosecutor have come from the Prosecutor and his lawyers, but also from academics and others, while some others seem to have supported removal because they believe the Prosecutor must be guilty of misconduct when there from the outset seems to have been reasonably credible allegations against him from a female employee at the Court. Here I will not discuss these different views that have been expressed publicly, with one exception.

A warning has also come from the Norwegian Deputy Foreign Minister, Andreas Kravik. Norway is a State Party while not being a member of the Bureau. [According to an interview by Sondos Asem in Middle East Eye, published 6 June 2026](#), Kravik had urged the Bureau to avoid “a perception of politicization of the process” and “respect the procedures” it had put in place to examine misconduct allegations against the prosecutor. He argued in the interview that the opinion of the panel of legal experts should as point of departure carry weight in the decision-making process of the Bureau and at the ASP meeting. After the majority of the Bureau had nonetheless [referred the proceedings to the ASP in a decision of 8 June](#), Kravik [reiterated his view in another interview by Asem published 13 June](#), underlining that the report of the legal expert panel “should be respected” by States Parties and that to disregard it “would hurt the integrity of the court”.

THE FRONT DOOR TO REMOVAL AND SUSPENSION WAS CLOSED

A second issue prior to the ASP meeting concerns the earlier formal process and the legal bases for decisions taken by the Bureau. ASP Rule 81(1) on “Removal and suspension from office”, states:

The President of the Bureau of the Assembly of States Parties shall convene a meeting of the Bureau and circulate among its members the final report of the *ad hoc* panel together with the investigation report, and its underlying evidence, if applicable, upon receipt of advice of the *ad hoc* panel that the factual findings by the Independent Oversight Mechanism or the external investigator, as applicable, legally characterize as serious misconduct or serious breach of duty in the case of the Prosecutor.

The important part with respect to legality is that the President “shall convene a meeting of the Bureau [...] *upon receipt of advice of the ad hoc panel that the factual findings* by the Independent Oversight Mechanism or the external investigator, as applicable, *legally characterize as serious misconduct or serious breach of duty in the case of the Prosecutor*”.

An absolute precondition for proceeding with the matter under Rule 81 was thus not met. This rule means that removal or suspension of the Prosecutor by the political bodies of the ICC requires a prior positive determination by the *professional bodies* involved in the process, as confirmed by the panel of legal experts. Such a rule appears to be in full accordance with rule of law and fair legal and administrative processes. It also to some degree compensates for the lacking institutional safeguards and division of powers in the Statute as compared to a removal process concerning a judge.

In conclusion regarding the legal framework, so far, the *front door* to further proceedings on removal and suspension through ASP Rule 81 was closed for the ASP President Päivi Kaukoranta and the Bureau.

THE BACK DOOR TO REMOVAL

The ASP has, however, also created a *back door* to removal and possibly suspension through the amended ASP Rule 82 on disciplinary measures. This provision, supposedly, would concern only *other disciplinary measures* than removal and suspension already expressly regulated in Rule 81. Not so. Article 82(1)(a) reads:

The President of the Bureau of the Assembly of States Parties shall convene a meeting of the Bureau and circulate among its members the final report of the *ad hoc* panel together with the investigation report and its underlying evidence, if applicable, upon receipt of: (a) in the case of the Prosecutor, advice of the *ad hoc* panel that the factual findings by the Independent Oversight Mechanism or the external investigator, as applicable, legally characterize as misconduct of less serious nature or establish no misconduct or breach of duty [...]

Under this cunningly crafted provision, even a finding of “no misconduct or breach of duty” by the professional bodies, like in the Khan case, opens the back door wide open for removal and other disciplinary measures regardless. Perhaps with one exception: Suspension from office is not mentioned in ASP Rule 82, only in Rule 81.

THE SUSPENSION OF THE PROSECUTOR SEEMS TO HAVE BEEN UNLAWFUL

The amended RPE Rule 28(4) provides the Bureau with the power to suspend the Prosecutor. However, the exercise of that power must be carried out in compliance with Rules 81-82, and only Rule 81(5) concerns suspension. This can only happen, according to Rule 81, if the requirements of Rule 81(1) have been met, which is not the case here. The suspension of the Prosecutor by the Bureau thus seems to have been unlawful in violation of ASP Rule 81.

Whether an unlawful suspension may have legal repercussions also for the fairness of the ensuing removal process at the ASP meeting, is another question. First, that may depend on how the suspension affects the Prosecutor’s opportunity to defend himself. Second, suspension may undermine the credibility of the Prosecutor in the eyes of States Parties that are not so much engaged in the finer details of the process against the Prosecutor.

Already by choosing New York as the venue for this special ASP meeting – in the very country that has threatened and sanctioned the Prosecutor to the worst effect by unlawfully interfering directly in the administration of justice at the ICC – the Bureau has implicitly expressed contempt for the rights of the elected Prosecutor and the proper administration of justice at the Court. There cannot be much doubt that the US government and US legislators have unlawfully been “intimidating [...] an official of the Court for the purpose of forcing or persuading the official not to perform his or her duties”, and/or “retaliated against [...] [the Prosecutor] on account of duties”, see Article 70(1)(d) and (e) of the Statute.

THE REMOVAL PROCESS UNDER ASP RULE 82

Be this as it may regarding suspension, the Bureau has formally, strictly spoken at least, been entitled to proceed with the removal process under ASP Rule 82. Rule 82(2)(c) provides that the Bureau may adopt a decision to recommend removal if it determine that serious misconduct (or serious breach of duty) has occurred “in disagreement with the advice of the ad hoc panel”. The Bureau made such a decision by qualified majority and referred the disciplinary proceedings to the ASP in its [meeting of 8 June 2026](#).

From a legislative point of view, this kind of drafting legal provisions is extraordinarily since removal and suspension from office is already regulated by Rule 81. Rule 82(2)(c) expresses in fact that the conclusions of the ad hoc panel is of little value if the Bureau holds other views.

ICJ Norway assumes that next time around independent legal expert may hesitate to participate in such a process.

Rule 82 is thus not only unjust because it lacks proper safeguards for the Prosecutor, but it also opens for abuse of political power. Yes, formally the President and the Bureau had a legal basis in Rule 82 to proceed despite a negative finding by the panel, but this was only possible because the rules and the procedures are inherently unjust, contradictory, and lack safeguards.

A NEW FACTUAL BASIS FOR MISCONDUCT

Furthermore, according to [Middle East Eye and Professor Kevin Jon Heller at Opinio Juris](#), the Bureau has now based its recommendation to the ASP for removal of the Prosecutor on a new factual basis for misconduct. This alternative was apparently never investigated and assessed by the independent professional bodies and not even asserted by the alleged victim. The proposal by the Bureau majority to the ASP, if the reporting is correct, now only concerns a *consensual*, but imbalanced, sexual relationship.

All allegations put forward by the alleged victim thus seem to have been dropped before the ASP meeting. Instead, they have been substituted with a different allegation generated by the Bureau while the Prosecutor has consistently denied any kind of sexual relationship. Whether an amended basis for a factual and legal finding of serious misconduct is lawful at this stage or not remains an open question. Clearly, however, this plot twist only reinforces the perception of a flawed process where the aim of removal justified the means.

WHAT STATES SHOULD DO AT THE ASP

With respect to the important issues at the ASP meeting on the 24th of July one may distinguish between lawfulness and prudence. The States Parties should act wisely, while it must act in accordance with the law and the institutional architecture of the ICC. Let us start with what they ought to do.

States friendly to the Court, which hopefully constitute a majority at the States Parties, should not let themselves be bullied by the ASP Presidency or majority of the Western States Parties and their allies connected through US-related security concerns. They should protect the integrity of Court, as advised earlier by the Norwegian Deputy Foreign Minister. Politization of disciplinary matters will undermine the Court's reputation as a Court of law. Furthermore, States Parties should forget about finding the substantive truth in the allegations against the Prosecutor at the ASP and reject the idea that the truth was found by the Bureau. Instead, States Parties should accept the findings and conclusions of the ad hoc panel, which provided an important safeguard in this unusual process.

States Parties ought to communicate clearly to other States Parties that they will take a *principled rule of law approach*. They should thus in all discussions at the ASP refer primarily to the legal assessments and advice provided by the ad hoc panel of independent and impartial legal experts, namely, that no misconduct or breach of duty had been reliably proven. States ought to defer to the panel's conclusion. If the political bodies apply their own assessment whenever they disagree with the independent and professional mechanisms, the only real safeguard for the elected Prosecutor becomes illusory.

Furthermore, a perception from the outside of a political approach to the case against the Prosecutor without safeguards will not serve the Court well. The institutional responsibility of States Parties on the 24th of July is thus great, while the sustainable solution is quite simple: Just apply the conclusions of the independent and impartial ad hoc panel when voting.

WHAT STATES MUST DO AT THE ASP: PURSUE A TWO-STEP PROCEDURE

From a traditional legal perspective, *lex lata*, States Parties at the ASP must decide to hold two different votes on a possible removal of the Prosecutor. [Ezequiel Jimenez Martinez and Sergey Vasiliev have referred to this as a two-step procedure](#). First, a vote regarding whether the Prosecutor has committed serious misconduct. Second, depending on the outcome of the first vote, a new vote to decide if the Prosecutor should be removed. The ASP is the only competent decision-maker in both respects.

Under the current institutional architecture of the legal framework of ICC, [the Bureau cannot bind the Assembly to a finding of misconduct](#). The Bureau also cannot supplant the power of the Assembly, see Article 112(3)(c) of the Statute on the *assisting* role of the Bureau in the discharge of the Assembly's responsibilities.

The competent decision-maker is neither the Bureau nor each State Party, but the Assembly as a collective body. Article 46(1)(a) of the Statute contemplates that the Prosecutor is "found" to have committed serious misconduct or a serious breach of his or her duties, meaning such a finding by the Assembly in accordance with the RPE.

Importantly, RPE Rule 29(6) clearly supposes that it is the competent decision-maker on a potential removal decision – in other words the same collective body, the Assembly – that must first decide on the question of serious misconduct. If a positive finding is made by the Assembly in that respect, the outcome of the removal decision may still not *necessarily* be removal. The Assembly may nevertheless decide against removal, as clarified in RPE Rule 29(6) through the phrase "but decides not to remove the elected official from office". Nobody can dispute that it is only the ASP as such that can remove the Prosecutor, see both Article 46(2)(b) of the Statute and RPE Rule 29(4). It is stated nowhere that it is the Bureau that is the final decision-maker instead of the collective Assembly with regard to serious misconduct. The Bureau can formally recommend removal upon determination of serious misconduct, see ASP Rule 82(2)(c), but not bind the Assembly on any point.

This means that the proposal by the Bureau of only one vote at the ASP must be rejected up front by the States Parties at the meeting. Having only one vote on a potential removal would be illegal. It is not something the Assembly lawfully can choose to do even if proposed by the Bureau.

QUALIFIED AND ABSOLUTE MAJORITY

While the first decision by the Assembly on possible serious misconduct requires a two-thirds majority of those present and voting for a positive finding, see ASP Rule 63, an absolute majority of the States Parties (at least 63 votes) is required in a second vote for removal of the Prosecutor in accordance with Article 46(2)(b) of the Statute.

If the Assembly on the first decision finds that the conduct does not amount to serious misconduct or serious breach of duty, the matter shall be referred to “the competent decision maker pursuant to rule 30”, see RPE Rule 29(7). That decision-maker is the Bureau, see RPE Rule 30(3). Removal is then ruled out, but other disciplinary measures are legally possible if decided by an absolute majority of the Bureau. Otherwise, the case shall be closed, see RPE Rule 29(8).

CONCLUSION

If the Bureau gets the case back from the Assembly, the Bureau should finally decide to close the whole matter, in accordance with and in deferral to the assessments and conclusions of the panel of independent and impartial experts. The Bureau representatives should listen carefully to – hopefully – the majority of States Parties and apply the finding of the panel that no misconduct or breach of duty had been proven. That would be prudent.

There is still a possibility to save the integrity and reputation of the Court.

ICJ Norway calls on States Parties to apply the Rome Statute correctly, follow the lawful, two-step voting procedure, and safeguard the integrity, independence, and credibility of the ICC. We also urge others to support this call.