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E-Reporter: If it may please the Court: Africa and the Presidency of the International Criminal Court

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If it may please the Court,

Africa is not a Country or better **Africa the Unequal Partner** could have been an alternative title to this report.

In March, 17 judges of the International Criminal Court (ICC) will elect from amongst them the next Presidency of the Court as prescribed by Article 38 of the ICC Statute. The Presidency composed of the President and the First and Second Vice Presidents is responsible for administering the Court with the exception of the Office of the Prosecutor (OTP). Diversity, including geographical and gender balance is a necessary requirement. To date each Presidency of the Court has reflected a balance of the various regional groups within the international community. The African Group, the Asian-Pacific, the Eastern European Group, the Latin American and Caribbean (GRULAC), and the Western European and Others Group (WEOG)- Others Group including North America.

Not surprisingly, the Presidents of the Court have been male with each serving two consecutive terms. They have originated from The Western European and Other Groups- Philippe Kirsch from Canada, and the Asian-Pacific Group- Sang-Hyun Song from the Republic of Korea. Women have served in each Presidency, but never as President. Cynics are quick to point out that African women have served as First Vice President in each successive Presidency, playing second fiddle to

their male Presidents.



Judge Philippe

Kirsch, first President of the International Criminal Court served two terms from March 2003-2009. © 2014 Getty Images



Judge Sang-Hyun Song, current President of the International Criminal Court serving two terms from March 2009-2015. © 2014 Getty Images

There is a perception that superbly qualified African candidates vying for the position of President may be disqualified by their well-meaning peers from the other regional groups.

Two factors may account for a potential disqualification of qualified African judges to preside over the Court. Firstly, the newly elected President of the Assembly of States Parties (ASP) to the ICC is an African, from Senegal. The ASP Presidency is by rotation, and it is noteworthy that the four other regional groups have already presided over this political body. At last Africa was the last region to preside over this body. It was simply Africa's turn. This cannot and should not be used against the African judges all but one of who were on the bench before the ASP Presidency went to Africa.

Furthermore, it would not be the first time that the serving ASP President and the sitting

President of the Court came from the same regional group. When Ambassador Christian Wenaweser of Liechtenstein was elected ASP President in 2008, Judge Kirsch was the President of the Court. Wenaweser and Kirsch were both from the WEOG group.

The second argument that might be used against election of an African Judge President is that the Prosecutor of the Court is an African, from The Gambia. This too is refutable, not least because Africa was side lined in the first decade of the Court's history during which period the various organs of the Court were headed by non-Africans. Rather, a notable feature of the Court is that all the cases before it originate from Africa.



Former Ivorian President

Laurent Gbagbo is a defendant at the International Criminal Court.

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Moreover, when Philippe Kirsch, first President of the Court was elected in 2003, the judges also elected a candidate from the same WEOG group to head the Court's Registry, Bruno Cathala from France. No one complained that the President and Registrar were both from the WEOG Group. In 2008, when Silvana Arbia from Italy was elected to succeed Cathala no one complained that the new Registrar too was from the same group of States as the sitting President. It was simply accepted as a reality of international order. And when Herman von Hebel from The Netherlands was elected Registrar in 2013, no one complained that all three Registrars to date are from the Western European and Others Group (WEOG).

In 2010, the Assembly of State Parties to the ICC elected Silvia Fernandez de Gurmendi from Argentina as Judge. Judge Fernandez joined the bench during the tenure of her compatriot and former boss for whom she served as Chef du Cabinet in the Office of the Prosecutor, Luis Moreno Ocampo the Prosecutor. What is the likelihood of election of a Gambian judge during the tenure of the current Gambian Prosecutor?

These examples are highlighted not to diminish the important role the officials in question have played and continue to play in the progressive development of the Court.

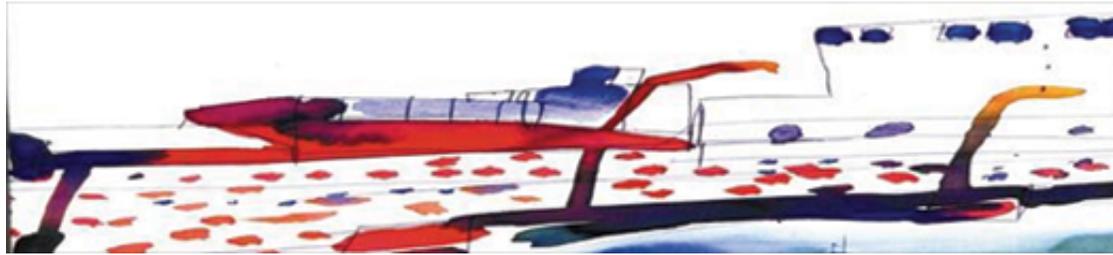
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