

## THE INTERNATIONAL CRIMINAL COURT COLLOQUIUM

### Is it time to “Reset” the Africa-ICC Relationship?

Tuesday, 19 October 2021, 10:00 - 12:15 EDT (Via Zoom)

#### INVITATION

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The Center for International Law and Policy in Africa (CILPA), with the co-sponsorship of the American Society of International Law (ASIL) and the International Nuremberg Principles Academy (INPA), invites you to a roundtable discussion exploring the possibility of “resetting” the Africa-ICC relationship. This event is the third in a four-part 2021 International Criminal Court Colloquium Series. **Please RSVP to [info@cilpa.org](mailto:info@cilpa.org). Space is limited. Registration is on a first come first served basis. Zoom meeting details will then follow.**

#### CONCEPT

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The Rome Statute of the International Criminal Court (ICC), which entered into force in July 2002, established the world’s only permanent international penal tribunal. The ICC is mandated to step in to assist States Parties when they are unwilling and or unable to investigate and prosecute genocide, crimes against humanity, war crimes, and the crime of aggression.

African States were instrumental during negotiations for the establishment of the ICC. On 2 February 1999, Senegal became the first country to ratify the ICC Statute. The ratification instruments of Congo and Niger were among the ten simultaneously deposited to reach the 60<sup>th</sup> ratification and to thereby bring the ICC treaty into force. In 2003, Uganda became the first country to refer a situation to the ICC for possible investigations and prosecutions. Today, partly because of additional African State self-referrals or the initiative of the UN Security Council and the ICC Prosecutor, most of the ICC’s investigations and situations have been from Africa. Virtually all 30 cases with some having more than one suspect charged by the ICC to date have come from Africa.

The ICC’s focus on Africa has generated backlash from African States. This included a formal decision by African States not to cooperate with the ICC and requests for deferrals of the Kenya and Sudan situations under Article 16 of the ICC Statute. An ICC request to have a liaison office in Addis Ababa, the home of the African Union, failed to secure support while African States moved to establish their own regional criminal court with jurisdiction over core and additional crimes. The grievance against the ICC even led some African leaders to mount a campaign against the ICC. President Yayi of Benin claimed that the ICC “is chasing Africa”, while President Museveni of Uganda condemned the ICC as “a bunch of useless people.” Meanwhile, President Kagame of Rwanda asserted that the ICC’s work was “politics disguised as international justice,” and for his part, President Kenyatta of Kenya, who at one point had been indicted by the ICC, called the ICC “a tool of global power politics and not the justice it was built to dispense.” Against this backdrop, several African States Parties of the ICC, namely Burundi, South Africa and The Gambia, initiated processes to withdraw from the ICC Statute while even more African States called for a “mass” withdrawal. While the Gambia and South Africa did not subsequently withdraw, for a variety of reasons, Burundi which is an ICC situation country ultimately followed through with a national legislature sanctioned withdrawal from the ICC.

In response to the strong African government criticisms, the ICC and its Assembly of States Parties (ASP) as well as key organs such as the ICC Prosecutor took various steps. The election of an African chief prosecutor from The Gambia, in December 2011, gave some States Parties optimism that this could help thaw the cold Africa-ICC relationship. Prosecutor Bensouda (The Gambia) publicly rejected claims that the ICC is unfairly “targeting” African leaders. She worked behind the scenes to improve the relationship, while pointedly observing that African victims of atrocity crimes were generally supportive of the ICC’s work. The president of the ASP sought to mollify African State concerns, noting that without African States, there would

have been no ICC. ICC President Judge Song, faced with official demarches from African leaders insisting on dismissal of certain high-profile cases from the ICC docket, invited African countries to make formal *amicus curiae* submissions under Rule 103 of the Rules of Procedure and Evidence before the chambers to register any case specific concerns. In 2013, for the first time, the ASP convened a historic special segment to discuss the African concerns without formal decisions being taken. African States, with South Africa and Kenya in the lead, made proposals for amendments to the ICC Statute which did not gain steam.

Over the years, critical steps have been taken towards improving the Africa-ICC relationship, by parties on both sides, including through rule changes to accommodate African concerns and subsequent AU appearances before the ICC Appeals Chamber. Recent ASP decisions have also led to the convening of a review process for the ICC, which is ongoing, formally now acknowledging that there is space for constructive improvements to the ICC system. But the fact is that key issues in the Africa-ICC relationship, for example the sequencing of justice with peace and the longstanding concerns about the immunity of African State officials from ICC jurisdiction, today remain unresolved.

Against the above backdrop, CILPA together with ASIL and INPA, are pleased to convene this timely interactive debate to assess whether the June 2021 assumption of office by Mr. Khan (UK) as the third ICC prosecutor may constitute an opportunity, or a challenge, to “reset” the relationship between African States and the ICC and the ICC and African States. Leading experts on the work of the ICC in Africa will be asked to dig deep and to develop fresh insights as part of an interactive dialogue with each other and the audience on two specific questions: 1) is it time for a reset of the Africa-ICC or ICC-Africa relationship, and if so, 2) what would that relationship look like for a “win-win” for both African States and the ICC? The debate will also consider whether recent developments in the ICC concerning the Afghanistan Situation and in Africa, for example the removal of President Al Bashir of Sudan from power and the signals by Khartoum that it is open to joining the Rome Statute system and fully cooperating with the ICC, as well as leadership changes in countries such as South Africa could have positive or negative implications for the ICC-Africa relationship.

## **PROGRAM – Tuesday, 19 October 2021 via Zoom**

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### **10:00 I 10:15 Welcome/Opening Remarks**

**Mark D. Agrast, Executive Director, American Society of International Law**

**Klaus Rackwitz, Director, International Nuremberg Principles Academy**

**Charles C. Jalloh, Founder, CILPA and Florida International University**

### **10:15 I 11:30 Resetting the Africa-ICC relationship**

**Moderator: Charles C. Jalloh, Founder, CILPA and Florida International University**

**Dapo Akande, Professor, University of Oxford**

**Kamari Clarke, Professor, UCLA**

**Margaret deGuzman, Professor, Temple University**

**James Nyawo, Lecturer, Kenyatta University**

### **11:30 I 12:00 Open Discussion/Q and A**

### **12:00 I 12:15 Closing Reflections**