

THE INTERNATIONAL CRIMINAL COURT COLLOQUIUM

Challenges and Opportunities for African State and Civil Society Engagement in the ICC Review Process

Wednesday, 12 January 2022, 10:00 - 12:15 EDT (Via Zoom)

INVITATION

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 International Criminal Court's ongoing review and reform process. **Register here to receive the Zoom link for the event. Questions? Email: info@cilpa.org. <https://us06web.zoom.us/meeting/register/tZ0kcOurrDopGNN2cATCLfmtVkZ-UN8VUA5>**

CONCEPT

The International Criminal Court (ICC) has faced mounting criticism over the past few years as it struggles to fulfil its ambitious mandate in the Rome Statute. Poor quality investigations and prosecutions, controversial judicial decisions, institutional infighting, and a seeming lack of accountability for poor performance appear to have compounded mounting internal and external problems, including low budgets, limited state cooperation and political backlash from powerful States.

In response and based on a proposal of the ICC principals in a May 2019 letter, the Bureau of the ICC Assembly of State Parties (ASP) adopted a resolution on 6 December 2019 in which the States Parties recognized the multifaceted challenges currently facing the ICC and established an Independent Expert Review (IER) process. The IER was billed as an “inclusive State-Party driven process for identifying and implementing measures to strengthen the Court and improve its performance.” Under the terms of reference, the IER which was comprised of a representative group of nine independent experts was mandated to carry out a thorough review of the ICC under the three thematic clusters of 1) governance; 2) the judiciary and 3) investigations and prosecutions so as to find “ways to strengthen the ICC and the Rome Statute System in order to promote universal recognition of their central role in the global fight against impunity and enhance their overall functioning”. The ASP also identified four priority issues for the States Parties to directly address through their working groups, i.e. 1) strengthening cooperation; 2) addressing non-cooperation; 3) complementarity and the relationship between national jurisdictions and 4) equitable geographical representation and gender balance. The experts were asked to present “concrete, achievable and actionable recommendations” that would enhance “performance, efficiency and effectiveness.” The IER presented its report in September 2020, containing 384 recommendations, some of which were intended for short term implementation while others were proposed for the long-term.

On 18 December 2020, the ASP adopted a resolution on the review of the ICC and the Rome Statute system, inter alia, establishing a “Review Mechanism.” The Mechanism was tasked with following up on the IER report in terms of planning, coordinating, tracking, and assessing the recommendations with the overarching goal of suggesting ways forward for their implementation. Organs of the ICC were asked to submit a formal response to the IER report. In February 2021, States Parties selected two state co-facilitators from the Netherlands and Sierra Leone to lead the mechanism process, supported by ad hoc regional focal points from Bangladesh, Chile, and Poland, to develop categorization of the IER recommendations and an action plan for implementation. NGO input was sought alongside the input of States Parties and relevant ICC organs.

In June 2021, following consultations with the various stakeholders, the Mechanism submitted a proposal for a comprehensive action plan which was followed by updates and eventually a final report for the

ASP in December 2021. The Mechanism co-facilitators reported on the status of the ICC review process, and after further discussions, the ASP adopted a resolution on 9 December 2021. In that resolution, the ASP *inter alia* took note of the progress achieved so far, underlined the need to safeguard the independence of the ICC throughout the review process and decided to extend the mandate of the Mechanism to continue the work already begun. It also envisaged for the Mechanism to continue serving as a platform to monitor further action and implementation of the various recommendations while stressing the need to retain an inclusive and transparent consultations process with all States Parties, the three organs of the ICC, civil society, and other relevant stakeholders.

In light of the various criticisms of the ICC, the review process seems like a welcome opportunity to strengthen the efficiency, credibility, and legitimacy of the ICC system. As we approach the 20th anniversary of the historic entry into force of the Rome Statute, on 1 July 2022, ICC States Parties and global civil society are making efforts in a difficult COVID-19 pandemic context to participate in the ICC institutional improvement process. But for the review process to succeed, it will need to take into account the views of all States from all regions of the world as well legal academia and victims in ICC situation countries. The concerns of key stakeholders, such as the 33 State Parties from the African region which have been among the strongest supporters and also strongest critics of the ICC, are crucial. In fact, African States submitted numerous proposals for reform of the ICC system years before the reform process was put in place. Yet, once the ASP created a formal review process, the extent to which the previous African State proposals were addressed by the IER remains unclear as is the level of African State and African civil society participation in the ongoing ICC reform discussions.

Given this context, CILPA together with ASIL and the INPA, are pleased to convene an interactive dialogue on the IER report and the ASP's follow-up Mechanism. This virtual roundtable, the final event in the four-part 2021 ICC Colloquium Series, invites leading African experts on international criminal law to engage with the substance and process of the ICC review. We discuss the formal ICC response to the IER report and the progress, or lack thereof, on the State-led reform priorities. We also invite panelists to ponder the next steps for a more inclusive and a more transparent reform process against the backdrop of key recent leadership changes at the ICC, an increasing ICC caseload, and the ASP's zero growth budget policy.

PROGRAM – Wednesday, 12 January 2022 via Zoom starting at 10:00 EDT

10:00 I 10:10 Welcome / Opening Remarks

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

Klaus Rackwitz, Director, International Nuremberg Principles Academy

10:10 I 11:30 Perspectives on the ICC Review Process

Moderator: Charles C. Jalloh, Founder, CILPA and Professor, Florida Int'l University

Dapo Akande, Professor, University of Oxford

Yassin M. Brunger, Lecturer, Queens University Belfast

Michael I. Kanu, DPR for Legal Affairs, SL Permanent Mission to the UN and State Co-Facilitator of ICC Review Process

Sharon Nakandha, Program Officer, Africa Regional Office, Open Society Foundations

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

12:00 I 12:15 Closing Reflections