

Call for independent review of the ICC

By Desmond Davies, GNA London Bureau Chief

The Hague, Sept., 18, GNA – There should be an independent review of the International Criminal Court (ICC) to bring “credibility and legitimacy to the process”, a senior legal officer at the Open Society Justice Initiative, Mariana Pena, has suggested.

She said the call for an ICC review was “based on a broader assessment”.

“From our perspective at the Open Society Justice Initiative, in the context of a recent assessment of the process for ICC judicial elections, we have observed that the ICC judiciary is in turmoil,” Ms Pena said at a symposium, Lessons from the Gbagbo and Blé Goudé & ICC Review, at the Dutch Foreign Ministry in The Hague at the weekend.

Some examples of this “turmoil” included “infighting among judges”; judges litigating for higher salaries; and “a string of recent disqualifications”.

Ms Pena said: “While diverse and dissenting opinions are healthy for a judicial institution, we have seen disagreements go as far as questions on who’s appointed as a presiding judge.” She argued that judges’ “litigation for higher salaries at a time the ICC’s budget is under threat...suggests misplaced priorities”.

Ms Pena, who works on international justice issues, noted that “a string of recent requests for disqualifications...also [suggested] misplaced priorities”.

She gave as an example the case of the Japanese judge at the ICC, Kuniko Ozaki, who was appointed as an ambassador “while sitting on a bench and risking a re-trial in the [Bosco] Ntaganda case”.

“In addition, we have observed problems with the length of proceedings and the time it takes to issue certain decisions.

“For example, it took 17 months for a decision on Afghanistan; and an inexplicable delay of six months to issue the written decision for the Gbagbo and Blé Goudé acquittal.

“While we sympathise with the reasons for moving forward the oral ruling, we note that the ICC statute, unlike national law, requires that the final judgement be made in writing,” Ms Pena added.

Organised by Africa Legal Aid (AFLA), the symposium brought together legal experts, academics and human rights activities to look at the case brought against the former President of Cote d’Ivoire, Laurent Gbagbo, and his then Minister for Sports and Youth, Charles Blé Goudé, by the ICC in 2011.

Both were charged with committing crimes against humanity during post-election violence in Cote d’Ivoire between 2010 and 2011 but were freed in January this year.

Ms Pena said that although the symposium was discussing the acquittal of the two men, there was a need to talk about a review because “the reflection on change at the ICC has been prompted by a string of adverse decisions to the prosecution, including acquittals”.

She said any review should involve “multiple actors”.

“It is important to recall that we’re dealing here with a judicial institution.

“This is why the review must be done independently.

“Ensuring independence goes to the heart of the credibility and legitimacy of the process,” Ms Pena added.

She said impartiality could be guaranteed if experts were chosen based on merit, with the relevant backgrounds for the issues being reviewed.

“Importantly, no serving government officials should sit on the panel.

“...the panel as a whole must be independent and free from any sort of interference from the Court, states parties, or civil society.

“While it must have access to information and be able to conduct relevant consultations, it must identify the relevant issues, make assessments and reach conclusions based on its own understanding,” Ms Pena added.

However, participants pointed out that an independent review without the backing of states parties to the Rome Statute of the ICC would be problematic.

At the heart of the Rome Statute were states, which would object to a review without them, participants argued.

But Ms Pena pointed out that there was “a proposal on the table for an independent expert panel to look into a number of issues, including governance, investigations and prosecutions, and the judiciary”.

She added: “There are precedents for similar exercises at the ad hoc tribunals, where one or more experts reviewed operations of the relevant tribunals with a view to identifying problems and making recommendations for improvement.”

“It seems undeniable that there is momentum for review and the opportunity should be seized.

“States parties have identified a very large number of issues for review through a recent matrix exercise led by the Bureau of the Assembly of States Parties.

“While the matrix is comprehensive, it is clear that prioritisation is needed – some issues must be considered as a matter of urgency, such as those touching upon elections, in order to introduce reforms at the upcoming session of the ASP [Assembly of States Parties] so that they are in force in advance of the next election cycle...,” Ms Pena said.

Next year, a new prosecutor and six new judges will be elected.

Meanwhile, on Tuesday, the ICC’s Appeals Chamber granted the Office of the Prosecutor's request to appeal against the decision by Pre-Trial Chamber (PTC) II not to open an investigation into alleged US war crimes and crimes against humanity committed in Afghanistan since May 2003.

On April 12, the PTC had ruled that “an investigation into the situation in Afghanistan at this stage would not serve the interests of justice”.