

**SPECIAL COURT FOR SIERRA LEONE  
OUTREACH AND PUBLIC AFFAIRS OFFICE**



**PRESS CLIPPINGS**

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## Wrestling over ICC's role in Africa

# ANALYSIS

By *Robbie Corey-Boulet*

**NAIROBI, Apr 14 (IPS)** - On its face, Kenya's failed bid to defer International Criminal Court cases against alleged organisers of post-election violence in 2007-2008 was a story of changing positions.

But to argue that either the U.S. or Africa has switched sides in the debate over the appropriate role of the ICC is too simplistic.

Last December, after six prominent Kenyans were named as suspects by the International Criminal Court, the government of President Mwai Kibaki - who had previously supported the ICC process - began arguing that the cases could jeopardise "international peace and security," while simultaneously lobbying for them to be transferred to domestic courts.

All six suspects face crimes against humanity charges of murder, forcible transfer and persecution. Three also face torture charges, and the other three also face charges of rape and other inhumane acts.

In advance of a Mar. 18 U.N. Security Council meeting addressing the issue, the African Union, which includes many countries that have long provided a crucial bloc of support for the ICC, took Kenya's side.

Meanwhile, the United States, once accused by Human Rights Watch of "going to war" with the ICC, came out against the deferral bid, effectively killing its chances: after a closed-door meeting on Apr. 8, Security Council President Nestor Osorio of Colombia said members "did not agree on the matter," and that it would be shelved "for the time being." This endorsement of the court's work followed the Feb. 26 Security Council resolution referring the situation in Libya to the

ICC - the first time the U.S. had voted in favour of such a move.

Rights groups largely hailed U.S. support for the ICC, while lambasting Kenya's - and by extension the AU's - attempt to delay the post-election violence cases.

"We're certainly glad to see statements like this that the US has been making," Elizabeth Evenson, senior counsel for HRW's International Justice Program, said in reference to criticism of the deferral bid by American diplomats. "Indeed, it will perhaps convince the Kenyan government that this is the wrong avenue, that this isn't going to go anywhere and that there's no point in pushing it further."

But analysts say it is simplistic to argue that either the U.S. or Africa has completely switched sides in the debate on the ICC. In fact, the U.S. embrace of the ICC has been partial at best, and it remains to be seen whether frustrations aired by some African governments are fully shared by their counterparts throughout the continent.

## The Darfur question

American support for action by the ICC dates as far back as the March 2005 Security Council resolution referring the situation in Darfur, Sudan, to the court, says David Scheffer, who served as the first U.S. Ambassador-at-Large for War Crimes Issues during the administration of former President Bill Clinton. In that vote, the U.S. abstained instead of wielding its veto power, thereby allowing the referral to go forward.

Scheffer says, "The Obama administration has been increasingly supportive of the utility of the ICC in addressing critical accountability challenges in the world, and views the court's work as often aiding US national interests."

That does not mean, however, that the US is likely to grant the ICC jurisdiction over its own nationals by becoming a member any time soon. "We always knew the road to ratification would be a long one," Scheffer said.

While the U.S. backed action on Darfur, resistance came from Africa. After ICC chief prosecutor Luis Moreno-Ocampo requested an arrest warrant for Sudanese president Omar al-Bashir in July 2008, the AU asked the Security Council to approve the same type of deferral Kenya sought more recently. In March 2009, however, the court issued an arrest warrant for Bashir on charges of crimes against humanity and war crimes, prompting calls for AU countries to withdraw from the Rome Statute which established the ICC.

## Calls to withdraw from the ICC

Godfrey Musila, senior law lecturer at Kenyatta University in Nairobi and an expert in international law, says the rejection of the Darfur deferral bid made the AU "very unhappy." He says calls for withdrawal are likely to be renewed if Kenya's deferral bid meets the same fate as Sudan's.

"The suggestion is that if the Kenyans fail to get a deferral - as I think they will fail - then you're likely to see movement

# Wrestling Over ICC's Role in Africa

at the AU reawakening the call for African states to withdraw from the court," he told IPS in March, adding that this would likely happen around the time of the body's upcoming summit in July.

Speaking to reporters in Nairobi last month, Mahboub Maalim, executive secretary of the Intergovernmental Authority on Development, a seven-nation East African regional development organisation, hinted that Musila's prediction of calls to withdraw from the ICC could have merit.

After accusing the Security Council of delaying a hearing on Kenya's deferral bid, Maalim said: "From the tone of the AU Commission, I have heard members saying that they have ideological differences with the ICC. This tells clearly that the cases that are developing are being watched by the AU."

Musila said a main reason Africa - which has more ICC member states than any other region - supported the court from the beginning was because leaders believed it would be immune from political influence.

Therefore, he said, it makes sense that Security Council votes and discussions - and the politics that inform them - are at the root of recent AU complaints.

He said the unanimous Security Council vote on the Libya situation could reinforce impressions that the court is politically compromised. "It provides evidence, if you will, to African leaders who are saying that the Security Council only acts where it is in the interests of the permanent members of the Security Council," he said, adding that many leaders believed the 2006 Israel-Gaza conflict also should have been referred to the court.

"You hear many African leaders saying, 'This is not the court we wanted. We wanted a court that is apolitical,'" Musila said.

## Court enjoys strong African support

Evenson said there was no evidence of a "monolithic" move away from the ICC in Africa. "We've seen before a couple of times in which it's been threatened that African members of the ICC will withdraw in response to what has been perceived as not listening to AU positions," she said.

She added that she doubted recent threats would translate into actual withdrawals by individual countries, saying they were likely more "useful as a matter of rhetoric." Referring to instances in which the ICC has drawn the AU's ire, she said, "I think what they have in common is when you have an action that makes it more likely that someone in a position of power might be subject to these criminal processes, we see this kind of backlash."

This argument rings true for Ken Wafula, chairman of Kenya's National Council of NGOs, who dismissed IGAD - the membership of which includes Kenya and Sudan - as a collection of "perpetrators of crimes against humanity, war crimes, potential suspects in their own countries and future victims of the court."

And it's not just African NGOs who have defended the ICC.

At an Apr. 5 press event in Nairobi marking the 17th anniversary of the 1994 Rwandan genocide, George William Kayonga, Rwanda's high commissioner in Kenya, suggested that support for the court on the continent remained strong.

Recalling the Kenyan government's initial support for the post-election violence cases, he said: "Kenyans invited the ICC. Since they invited the ICC they have to respect that the ICC did not come to Kenya because they wanted to come. They were invited."

Though he cautioned that the ICC might not effectively promote reconciliation on the ground, he credited the court with deterring atrocity crimes, saying it has created awareness. "It is a wake-up call to other leaders that if you get involved in this you will not get away with it," he said.

As for concerns that the ICC is in the hands of major powers such as the US, Wafula says they are baseless. "The ICC's an African court," he says. "It has everything to do with Africa. Its creation was necessitated by atrocities committed by African governments against African citizens. It's not a Western tool."

(END/2011)

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<http://www.ips.org/africa/2011/04/libya-group-agrees-trust-fund-for-rebels/>

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## BBC Online

Friday, 15 April 2011

### Croatians convicted of war crimes



*Commanders including Ante Gotovina are still regarded as heroes in Croatia*

Two Croatian military leaders have been convicted of atrocities against Serbs during a 1995 campaign of ethnic cleansing, after a trial at The Hague.

Judges sentenced Ante Gotovina to 24 years and Mladen Markac to 18 years in jail for crimes including murder, persecution and plunder.

The men helped to plan an operation to retake Croatia's Krajina region and force out its Serbian population.

The war crimes tribunal cleared another defendant, Ivan Cermak, of all charges.

The BBC's Mark Lowen in Zagreb says crowds who had gathered to watch the tribunal's hearing on big screens in the Croatian capital booed and hissed when the judge announced the guilty verdicts.

The men are regarded as heroes by many in Croatia.

Gotovina and Markac were convicted of a range of war crimes and crimes against humanity committed as their forces retook the Krajina region, which had been under Serb control since the start of the war in 1991.

About 200,000 ethnic Serbs were driven from Croatia in 1995 and at least 150 were killed.

Those defending Gotovina said he did all he could to prevent his troops carrying out crimes during the operation.

But judges at The Hague rejected their claims.

Reuters

Thursday, 14 April 2011

### **Bosnia court indicts Croat ex-soldier for war crimes**

The Bosnian war crimes court indicted a Croat former soldier on Thursday over the killings of dozens of Bosnian Muslim civilians in central Bosnia during fighting in 1993-94 between Muslim and Croat Bosnians.

Miroslav Anic is accused of taking part in a series of attacks by a Croat militia on Bosnian Muslim villages from June to October 1993, the court said in a statement.

Bosnia's Muslims and Croats were allies at the start of the 1992-95 Bosnia war when both opposed Bosnian Serb forces, but fought each other briefly when Croat forces tried to create a separate Croat statelet in Bosnia.

The Bosnia war, Europe's worst conflict since World War Two, led to 100,000 deaths and the country remains divided between two autonomous regions, the Muslim-Croat federation and the Serb Republic, bound together by a weak central government.

The court statement said Anic was accused of being part of a Croat unit that attacked the village of Grahovci in June 1993 and killed eight male villagers.

He also took part in an attack on the village of Han Ploca, in which his unit killed about 20 civilians, the statement said.

In October 1993, he is accused of taking part in an attack on the village Stupni Do near the central town of Vares during which his and other units killed 38 Bosnian Muslim villagers, it added.

The Bosnian war crimes court was opened in 2005 to prosecute war crimes cases related to the Bosnian war, and to ease the burden on the Hague-based International Criminal Tribunal for the Former Yugoslavia (ICTY).

Bosnia's Serbs and Croats see the court as a political institution biased against them. The Serb Republic parliament approved on Wednesday a referendum challenging the legitimacy of the state court and prosecution. (Reporting by Daria Sito-Sucic; editing by Tim Pearce)

## Hirondelle News Agency

Thursday, 14 April 2011

### **Evidence admitted at the eve of judgement**

The International Criminal Tribunal for Rwanda (ICTR) has admitted into evidence twelve exculpatory statements, suggesting innocence or mitigating guilt of ex-Rwandan Chief of Staff of the Gendarmerie, General Augustin Ndindiliyimana, almost a month before delivery of judgement in his case.

According to a scheduling order issued by Tribunal, on May 17, 2011 it will deliver judgment in a joint trial called Military II involving Ndindiliyimana and three other former senior Rwandan military officers.

In a decision dated April 12, 2011, the Tribunal said, "Since Rule 89© and 92 bis do not militate against the Chamber's discretion to admit into evidence the exculpatory materials contained in the strictly confidential annex to this decision, the Chamber will admit them into evidence in order to ameliorate the prejudice suffered to the accused Ndindiliyimana.

A Trial Chamber ruled on September 22, 2008 that the Prosecutor had violated his disclosure obligations under Rule 68 with respect to a large number of documents he was in possession and found them "material, which in his actual knowledge may suggest the innocence or mitigate the guilt of the accused or affect the credibility of the prosecution evidence.

It, accordingly, ordered the prosecution to immediately disclose the documents to the defence and reprimanded the prosecutor for having kept to himself, without communicating to the defendants, evidence which could be useful to them.

The Chamber also allowed the defence to call some authors of the exculpatory statements as well as recalling some of prosecution witnesses for further cross-examinations on the documents.

However, in its decision dated April 12, 2011, the Chamber noted that majority of the authors of those statements were for reasons unavailable to testify, leading to a failure by defence to benefit from the remedial measures to negate the considerable prejudice caused to the accused.

"At this stage, the Chamber notes that the only remedy available to it to rectify the prejudice suffered by the accused is the admission into evidence of the twelve exculpatory statements contained in the strictly confidential annex to this decision," it ruled.

Other accused are former Chief of Staff of the Army, General Augustin Bizimungu, ex-Commander of the Reconnaissance Battalion, Major Francois-Xavier Nzuwonemeye and Captain Innocent Sagahutu, a member of the unity. They are charged with genocide, crimes against humanity and war crimes.

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# The Nation

Thursday, 14 April 2011

## Ocampo goes to war over Hague witnesses

By OLIVER MATHENGE

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*Kenyan Finance minister Uhuru Kenyatta (2nd left), and Cabinet secretary Francis Muthaura (2nd right) attend a hearing at the International Criminal Court in The Hague, on April 8, 2011.*

Prosecutor Luis Moreno-Ocampo has reopened the fight over witnesses and the evidence he is relying on to try post election violence suspects.

Mr Moreno-Ocampo has sought permission to appeal an order by the International Criminal Court requiring him to share with defence lawyers the number of witnesses, type of evidence and witness statements he intends to use in the case against six Kenyans.

The suspects are Deputy Prime Minister Uhuru Kenyatta, Public Service boss Francis Muthaura, Postmaster-General Hussein Ali, MPs William Ruto and Henry Kosgey and broadcaster Joshua Sang.

The intention to appeal was made on Wednesday, five days before the court starts reviewing the status of the information sharing.

Defence lawyers told the Nation that they would fight the appeal.

"We will oppose it vigorously. It is an indication that the prosecutor is developing cold feet. He is under obligation to disclose sufficient information to enable us prepare our defence," said Mr Gershom Otachi, who represents Maj-Gen Ali.

He pointed out that the prosecutor had been advised that Kenya's challenge on admissibility of the case could not stop the disclosure and other court processes.

Dr Kithure Kindiki, representing Mr Ruto, said the move was unlikely to derail the proceedings. "The prosecutor seeks to overturn a decision made in court last week. We will seek to strike down the application because it contravenes the suspects' rights to a fair

trial. It is the right of the suspects to access both incriminating and exonerating evidence sufficient enough to prepare their defence,” Dr Kindiki said.

The prosecutor is seeking leave to appeal the decision saying that it “creates extra-statutory duties for the prosecution that go beyond the proper scope of pre-confirmation disclosure” set out in law.

He argues that what Judge Ekaterina Trendafilova ordered him to do is different from the procedure followed in other cases. In those other cases, the prosecutor was not required to reveal everything before the charges were confirmed, he said.

He further tells the Pre-Trial Chamber II that the decision adversely affects the prosecution’s independence and authority by forcing it to divert its resources to extra-statutory duties instead of the investigation and prosecution of other cases.

He now wants the Chamber to allow him to seek the intervention of the Appeals Chamber as the Ocampo Six defence lawyers prepare for a meeting on Monday where the prosecutor will start revealing a summary of the evidence he has against their clients.

“Absent such intervention by the Appeals Chamber, the Prosecution will continue to face uncertainty in each case as to whether extra-statutory disclosure/inspection obligations will be imposed, which hampers its right to intelligently prepare for and marshal its resources in advance of the confirmation hearing,” Mr Moreno-Ocampo says in his application.

He wants the Appeal Chamber to rule whether the Statute and Rules impose a duty on the prosecution to explain to the defence the potential relevance of non-incriminatory evidence.

The prosecutor wants appeal judges to decide whether he is obliged to disclose to the defence all evidence in his possession or control. He also wants a decision on whether judges may require the prosecution to provide them with all the material made available to the defence that is not intended to be introduced into evidence at the confirmation hearing.

Mr Moreno-Ocampo has asked that his application be considered by all the judges arguing that “issues have broad consequences beyond the everyday case management decisions normally entrusted to the Single Judge”.

Last week, Judge Trendafilova, as Single Judge, ruled that the parties to the Kenyan cases at The Hague will be required to give any evidence and supporting material that they seek to use during the hearings.

“With respect to the different requests related to protective measures for witnesses including redactions, the Single Judge wishes to make clear that any such request must be submitted as soon as practicable, but no later than the date which shall be specified in a calendar to be issued in due course,” Judge Trendafilova said.

She also ordered the prosecutor to submit a report indicating the number of documents and materials he may have received showing the suspects are not guilty. They will also indicate the possibility, if any, for waiving the restrictions imposed by the source of the information.

ICTJ

Thursday, 14 April 2011

## **No True Democracy without Justice: Tunis Conference on Transitional Justice**

Tunis, April 14, 2011—The international conference on transitional justice, *Addressing the Past, Building the Future*, opened this morning in Tunis with more than 150 participants from Tunisia and other countries of the Middle East and North Africa.

In sessions dealing with transitional justice mechanisms including criminal justice and the reform of security sector, international experts and their regional counterparts agreed on the importance of justice as the foundation of democracy.

Abdelbasset Ben Hassen, president of the Arab Institute for Human Rights, opened the conference by saying that the political transition to democracy in Tunisia will be incomplete if justice is not one of its main elements.

“We are going through the period we dreamt of for years but should not forget the darkness of the past, and forget people who suffered,” said Ben Hassen.

David Tolbert, president of the International Center for Transitional Justice, made clear that transitional justice should not be seen as substituting for accountability.

“Transitional justice is not about turning our backs to the past, but on the contrary—it is about the reckoning with the past so that perpetrators of abuses can be held accountable, that truth can be exposed, victims recognized and mechanisms implemented to prevent violations from recurring,” stated Tolbert. His statement was echoed by Mokhtar Trifi, president of the Tunisian League for the Defense of Human Rights.

“It is necessary to achieve accountability and all who committed violations must be held before the law. At the same time, we need comprehensive justice that includes reparations for the victims and communities who were particularly oppressed,” asserted Trifi.

Dina El Khawaga, director of the Arab Regional Office of the Open Society Foundations stressed the importance of Tunisian revolution in the regional context.

“What happened on 14 January is not a revolution for Tunisia only but for the entire Arab world. This revolution is not only designed to substitute one regime for another, but to strengthen the rule of law, new democratic institutions, and new political notions based on justice and human rights. And we have to protect the objectives of the revolution,” said El Khawaga.

Joseph Schechla, representative of the Office of the High Commissioner for Human Rights added that OHCHR stands ready to assist and support Tunisian people in this quest.

“In this phase we are ready to provide what we can to exchange relevant experiences with Tunisian government. But, it is important to recognize that no comprehensive model that can be applied from outside and procedures must come from local initiatives and reflect Tunisian uniqueness,” stated Schechla.

Taieb Baccouche, Minister of Education in the Transitional Government of Tunisia asserted that political will to implement transitional justice mechanisms exists.

“There must be political desire, objective to achieve justice, to seek truth and retribute civil rights and peace to people so that they are ready to turn the page and face the past. Other countries can inspire us, but models cannot be copied.

“Tunisia needs transitional justice and the question now is the timing and the mechanisms. The political will in Tunisia exists, and we now need to find the right model and timeframe to apply mechanisms of transitional justice,” concluded Minister Baccouche.

The sessions on transitional justice mechanisms, criminal justice, and security sector reform drew great attention of participants, and ensuing discussions revealed the urgency of issues surrounding the need for a justice strategy, the functioning of the judiciary in Tunis, and the need for its reform.

The Arab Institute for Human Rights, the International Center for Transitional Justice, the Tunisian League for Human Rights, and the UN Office of the High Commission for Human Rights are jointly hosting the conference with support from the Open Society Foundations.

The proceedings continue tomorrow with sessions on truth-seeking initiatives, reparations for victims and gender-related justice measures. The proceedings can be followed in Arabic, French and English languages at <http://tjtunis.blogspot.com/>.

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