SPECIAL COURT FOR SIERRA LEONE
OUTREACH AND PUBLIC AFFAIRS OFFICE

Eric Koi Senessie at his sentencing judgement this morning.

PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office
as at:
Thursday, 5 July 2012

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
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Special Court for Sierra Leone
Outreach and Public Affairs Office

PRESS RELEASE

Freetown, Sierra Leone, 5 July 2012

Eric Koi Senessie Sentenced to Two Years in Prison for Contempt of the Special Court

Former Revolutionary United Front member Eric Koi Senessie was sentenced today to a two year term of imprisonment for his conviction last month on eight counts of contempt of the Special Court. Senessie was convicted on four counts of offering a bribe to a witness, and on four counts of attempting to influence a witness, to recant testimony given in the Taylor trial.

Justice Teresa Doherty imposed eight two-year sentences for each of the eight counts on which Senessie was convicted. The sentences will run concurrently, meaning that he will serve a total of two years in prison. Under the Rules of the Special Court, Senessie faced a maximum sentence of seven years imprisonment, a two million leones fine, or both.

In their sentencing briefs, the Prosecution had recommended a sentence of 5-7 years and a two million leone fine, while the Defence had recommended a two million leones fine and no custodial sentence.

In delivering her judgement, Justice Doherty pointed to a number of aggravating factors, and noted especially the number of offences and the persistence of the defendant which, in her view, warranted sentences of imprisonment. She said, however, that she had also taken into account Senessie's expression of remorse when he addressed the Court on Wednesday.

"I accept that Senessie has now realized the errors of his ways, and it is commendable even at this late hour he has acknowledged his offences and shown sincere remorse," she said. "I have allowed for the remorse that the defendant has shown. In his own words, with which I agree, 'it is better late than never'."

Senessie will serve his sentence at a detention facility on the Special Court premises in Freetown.

#END

Awoko
Thursday, 5 July 2012

At the Special Court contempt case...

Convict dreams of telling the truth

By Sandi Halimuddin

At a Special Court for Sierra Leone hearing in the contempt case of the Independent Prosecutor Versus Eric Senessie, who is now a convict, has said that Prince Taylor fooled him into having prosecution witnesses recount their statements at The Hague.

This is a reversal from his previous statements. Senessie was convicted for contempt of court by the Special Court for Sierra Leone when he was accused that he interfered with some prosecution witnesses who had earlier testified in the case of the Prosecutor versus Charles Taylor.

Senesie expressed regret for not pleading guilty earlier in the case because it was not his intention to tell the witness to go and change their evidence in The Hague.

Adding that he believed in the Court and the previous decisions the Court has rendered since it was established in the country, Senesie said, "I have never thought of any specific intention to undermine the integrity of the court."

On Wednesday, July 4, 2012, the day prior to his sentencing hearing, Senesie appealed to the court, repeatedly saying that every "creature that drinks water makes mistakes, and an apology is better late than never."

The convicted subject stated that Prince Taylor used him in an attempt to have prosecution witnesses recount their statements that they have made at The Hague.

Senesie disclosed that he was fooled by Prince Taylor, who in contrast was familiar with the process due to his work with a defence team. Thus, Prince Taylor was wanted by the court, whereas Senesie's case will be acquitted by the court.

Senesie's lawyer, Ansu Lansana, emphasized the existence of entrapment in the case, in which the accused was leered into conducting further action.

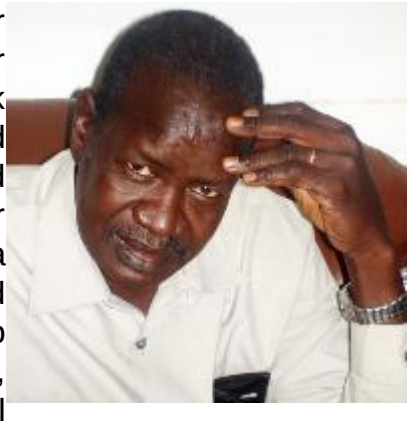
These remarks are following Senesie's dream, which his lawyer Ansu Lansana described as a "prick of conscience" from the Almighty God. Senesie, a priest in the Evangelist New Apostolic Church in Kailahun, explained that through prayers, he received a message from the Lord.

In the dream, Senesie explained that the Lord reminded him of an unclear conscience. In addition, the Lord told Senesie that although he has delayed telling the truth, the court would not delay in the sentencing, according to the convicted subject.

Senesie further lamented at his current position, saying he is a peaceful citizen. He also described himself as a family man with two wives and eight children.

Sudan Vision
Thursday, 5 July 2012

As I See It: President Charles Taylor Trial: What is the ICC Up to in Africa? (1)



"The ICC is not a court set up to bring book Prime minister of the UK and the Presidents of the United States", Former UK Foreign and Commonwealth Secretary Robin Cook Hear and know this year all folks of the world: first and foremost of all, based on the preceded quotation, we could not agree more with the statement of the then former British Foreign Secretary Robin Cook that "The ICC is not a court set up to bring to book prime ministers of the United Kingdom and presidents of the United States." We could also add through ontological, epistemological, sociological, political, philosophical, scientific, legal and logical analytical reasoning as well as inductive reasoning and reasonableness that no any other European Union leaders could be indicted compared to their African counterparts and brought to book by the ICC. What and who gives the ICC the rights of indicting the world leaders suspected and African leaders in particular of having committed genocide or the crime without a name, war crimes, crimes against humanity as well as other heinous human rights violations? What then are the legal basis and the merit and meritocracy of the ICC to become an extraordinaire extrajudicial powers international legal institution? How credible is the ICC in terms of its legal framework? What does this mean for Africa and Africans? Where are the political and legal processes of social justice and democracy, which have been referred to in many Western constitutionalism and in the revolutionary literatures of the American and the French Revolutions respectively and the Magna Carta in 1215 signed by King John to the British people as the epicenters of law, social justice, democracy and freedoms or in short- the nucleus of socially just society or the parameters any law abiding societies?

Based on our experience, the Western world given its rhetoric of the so-called "Euro-centric v. Afro-centric" agendas had often been bragging on the ideals of democracy and human right protection, which is not a product of Europe until it was exported to Greece by Greeks philosophers from Timbuktu, Mali, and in Alexandria, Egypt, and then introduced or incorporated into the Greek or the Hellenic civilization invention without giving credit to the African people and their great civilization on the Nile Valley that spearheaded throughout West, Central and East Africa until it met with the Zimbabwe and Azania (South Africa) civilizations in Central and Southern Africa, unfortunately. Although the Euro-centric historians, writers, academics and scholars would attribute the beginning of democracy a two- words combined- meaning demos (the people) and kratus (rule) or the people's rule to be one term, nonetheless, it is not a Hellenic product but rather African. It was a stolen or plagiarized property of Mother Africa because its roots and characteristics are still deeply rooted in modern contemporary African societies. By the very nature of Western societies based on extreme individualism v. compassion as in America and Africa, the concept of democracy could be possibly a European thing that Africa and the Old World do not understand. For instance, if we were to critically examine

some African societies such as the Tiv of Northern Nigeria, the Nuer of South Sudan, the Islamic societies in Africa and the Middle East and compared their lifestyles', they all would surely fit and augment well with the ideals democracy (liberty, freedom, equality, social justice and fraternity) could surely ascertain and prove that democracy itself, per se, is a truly Afro-Arab concept or thing contrary to the claims by Greece or the Hellenic civilization and the Euro-centric idealists and skeptics as Greek or the Hellenic civilization product that the entire world do not understand and they could without any question argue such a claim authentically, authoritatively and forthrightly in any well-informed audiences and intellectual discourses on this planet-Earth that the term is a Greek contribution to mankind. This is one tenets and specific raison d'être that many European and American institutions of higher learning have restricted and limited admissions of many aspiring Afro-Arab and Afro-Asian young scholars and doctoral students gaining adequate admissions to undertakes studies and research in archaeology, history and political science departments because of the Western fears that distortions that they have made or inserted in the world history and geography writings would be vigorously challenged, counteracted and rebuttal effectively and adequately by these rising would-be non-white scholars and academics. Therefore, tougher deliberate restrictions have been placed on African, Asian and Arab scholars not only to study and research to earn doctoral degrees in archaeology, history and political science in many US and European universities and colleges history and political science departments. Furthermore publications of Afro-Asian writers and researchers have been limited and scanty with more rejection of publishing of such scholars' works in Europe and North America publishing houses. In order to reverse the social permanent injuries and the denial of publications, the non-white institutions of higher in Afro-Asia should under creating publishing houses the non-white scholars. This would force the western world to open up the quest for knowledge for all in both short and long terms. One of the obviously reasons often given by the Euro-centric institutions have been that there is less or no money but aspiring whites scholar are adequately funded by the big multinational corporations, foundations and philanthropists to undertake research and writing in the above-mentioned fields. For instance, many white social and cultural anthropologists have spent years studying non-whites or indigenous cultures worldwide. How many non-white scholars could be sponsored by the whites Euro-centric institutions or establishments to study European and the Anglo-American anthropology, archaeology and sociology? Many of these bright or brilliant aspiring scholars to inspire others have been restricted only to African, the Middle Eastern and Asian Studies as a buffer-zone to prohibit them not only to earn doctoral degrees and to teach in archaeology, history and political science departments. The restrictions have been superimposed on Afro-Asian and Afro-Arab scholars to have excess to archaeology, history and political science departments tantamount to what I may term as a deliberate and willful academic discrimination, denial of access to the quest of knowledge for the sake of knowledge, racism and racialism and xenophobia of the third order on the part of the white scholars and department heads in most Western institutions of higher learning. Therefore, the quest for knowledge is colorless, non-racial, non-fallacy and knows no color at all. It is borderless like the doctors without borders operating worldwide. I do believe that God Almighty that for everything, absolutely everything, above and below, visible and invisible,... everything got started in him and finds it purpose in (Colossian 1:16) and gives it a different name like I do in my Nuer culture as "Kwoth Nhial" (God of Heaven or the

sky) that created all human beings or the human species as equal and in his own image, did not differentiate such a creation, but equalized it for his purpose of driven life. Therefore, the idea of racial superiority as propagated by the Nazis, slavery in America against the Black folks and the Red men or the Native Americans and apartheid in South Africa by the Bore or the French Huguenots that later on renamed itself as the Afrikana or the white tribe of South Africa against the African majority of the population was only the utilized as the tools and sources of socioeconomic exploitation, domination and oppression. Non-white folks are no stupid or dumped or superior compared to their white counterparts who had accessed to technology during the Industrial Revolution in Europe, which helped them to exploit and spread the Europeanization of the world under the aegis of colonialism the worst and the exploitative system of its kind ever invented on the planet. The white folks were neither superior to non-whites nor the non-white was inferior or lower human beings or species to the whites. It is self-evident that all men are created equal by God the Creator of all things, above and below. Nevertheless, the only difference was not racial or physical structures but modern acquired technology through the Industrial Revolution before the non-whites acquired it. It is my believe that all homo sapiens or human beings, including our cousins the monkeys of all types who are still roaming on the trees-tops in the wild, would through metamorphosis or as in biology change of physical form that occurs through development into adulthood of some creatures, for example butterflies…etc., transfiguration, transformation or regeneration to become the next human species on the planet generations or centuries ahead.

Probably, we were once like them generations ago roaming in the world because they do not look and behave any different from us. It would seem that our behavior is no different from them, the DNA is the same and because of these physical and genetic relationship, our cousins the monkeys are essential and parcel or the photocopy of the modern human beings [Homo sapiens]. They possessed intelligence, aspirations, determination to accomplish, but the social structures and societies created more obstacles to be overcome by so many and with only so few privileged and propertied few could make it or to overcome most of the social hurdles lied down in all societies. Therefore, there is no doubt that Europe robbed Africa of many great cultural artifacts that even some of the African antiquities still are hanging on walls of European and North American Museums. By law, African, Arab and Asian governments and peoples should claim such historical artifacts and antiquities, which were illegal stolen by the ex-colonial powers during the darkest hour of colonialism to be peacefully returned to where they belonged. Since we know now that the case the ICC has become an insult or a curse [cien] creating another permanent injury to the African intelligence, minds, bodies, souls and spirits, it would surely be better off to quit it. Actually, the establishment of the court has diminished European and the Anglo-American pride on ideals of social justice, travesty of democracy and human rights protection throughout the world. Europe is ready to punish African leaders to the brink but they would not succeed in this venture. The German philosopher Goethe says he, “Distrust all those in whom the urge to punish is strong”. This is the political ambition of the Europe against Africa and African leaders. Africans people could not wait until all their leaders have been humiliated by the ex-colonial or ex-imperial powers. It is now high time or the time has ripped for Africans and African leaders to wake up and to fight for their

legitimate rights and to stand up tall for the preservation of such rights that the ICC as a European neo-colonial invention seeks to evade to complete what they have left out undone during the colonial past in Africa. We must and ought to unite against the Europe and the ICC that have emerged as fests and a de facto European court, funded by and directed by Europe and specifically focused exclusively on the African continent and thereby serving Western political, strategic and economic national interests in Africa.

The ICC: A New Graveyard for Africa

There is no doubt that the ICC is a new graveyard for African leaders and unless African leaders unite, it could consume them one-by-one because Europe has vengeance for African leaders and peoples. In my capacity as a scholar and an academic researcher, I had been privileged following step by step the ICC infantile development until it became a monster searching to devour African, Arab and Asian leaders termed as the bad guys on the block on the one hand and whilst calling European leaders as being the good guys on the block on the other. Currently, I have completed research and writing my fact finds on the ICC, its intentions and its special focus on Africa in particular. I hope to present my work on the ICC for publications for publication as soon as possible. In fact, the case of Present Charles Taylor of Liberia of the first Africa Republic (1847) had indulged and intrigued me most not only as an African expert and a scholar in the international relations/law, but as an Africa scholar who has the esteem desire to project Africa image compared to what is being written by what Andrew termed as the “smart ass white boys” during Ambassador Andrew Young’s tenure at the United Nations. This piece of work focuses on the swift trial and conviction of President Charles Taylor of Liberia that I had great acquaintance during my Undergraduate studies in the College of Arts and Sciences, University of Liberia (1971-1975) and prior to my departure to the United States of America as a young Graduate student from the war-ravaged South Sudan. In addition, this piece would vividly present what Africans and African leaders could do to prevent another future mockery trial in kangaroo court in The Hague, The Netherlands, similar to the case of Charles Taylor, President Milosevic of Serbia and other Serbs nationalists. The ICC as fluently stated by the former British Foreign Secretary Robin Cook, that it not a court set up to indict trial and convict prime ministers of the UK and the US Presidents. We would then wonder, what kind of a court is it? Succinctly, we to explore this grave policy of exceptionalism and exclusionism of the UK, the US and European leaders brief through scientific, political, philosophical, sociological, legal and logical reasoning and reasonableness on the nature of the ICC biases and prejudices on politics of exclusionism and exceptionally particularly, on the European and the Anglo-American leaders to be indicted, trialed and convicted in the said court.

New Era (Namibia)
Wednesday, 4 July 2012

Namibia: Do International Courts Serve As Tools for Western Nations?

opinion

Stephen Gowan's article on the "Law of the Rulers" in the Southern Times of May 13, 2012, was a scholarly piece of work. It was well researched and advanced the premise that, "the function of international courts controlled by Western nations is not to deter atrocities, for atrocities committed in the service of Western imperialism are never prosecuted, but to deter military action against Western interests. Indeed, Western-controlled tribunals are tools of regime-change."

Let us look at two extreme cases: that of Charles Taylor, the former President of Liberia who was convicted by the Special Court for Sierra Leone on a long list of atrocities, including acts of terrorism; murder; rape; sexual slavery; recruiting child soldiers; enslavement, pillage, etc. on the one hand and Libyan rebels aided and abetted by NATO leaders who "abducted, arbitrarily detained, tortured and killed" their way through the rebellion, while reducing the city of Sirte to rubble through indiscriminate shelling, in itself a war crime on the other hand.

If we follow the paradigm shift of the Court that the Prosecution had not alleged that Mr Taylor had committed these crimes in person but that he had "aided and abetted the rebels (the crimes' perpetrators) by providing them with arms and ammunition, military personnel, operational support and moral support", can we confidently say the same that they will be a Special Court for Libya to prosecute the rebels' backers or will there be indictments against Obama, Cameron and Sarkozy by the International Criminal Court?

After all, Taylor was convicted of doing what the President of the United States, the Prime Minister of Britain and the former President of France recently did in Libya: arming and supporting an atrocity-committing rebel group for they aided and abetted the rebels, furnished them with arms and ammunition, gave them military personnel, provided operational support and supported them morally.

The same tools of regime change are being spearheaded by Washington to depose Syrian President Bashar Assad with watered down "sanctions; diplomatic pressure; increased engagement with the opposition ... and the looming threat of prosecution - all tools at the disposal short of military intervention for regime change" [Stephen Gowan's Emphasis]

Political pundits in Africa have equally advanced the myopic view that the UN International Court of Justice is "only targeting Africans and their leaders and not Westerners and their leaders like ex-President George Bush, Jr", for war crimes in Iraq and Afghanistan.

According to the renowned and astute Namibian Diplomat with impeccable credentials, Ambassador Tuliameni Kalomoh: Special Advisor to Namibia's Minister of Foreign Affairs and also former UN Special Representative to Liberia, as quoted by Marianne Nghidengwa in the weekly Confidente newspaper of 10-16 May 2012, critics due to sheer ignorance, are fundamentally wrong in asserting that the Court is only targeting Africans and their leaders.

Ambassador Kalomoh begins by qualifying the issue by making it explicitly clear that, "we Africans do not condone impunity. We should be held accountable for our actions but such convictions should be fair and applied internationally. We must fight impunity for justice. The Tailor trial has not met the criteria."

According to Ambassador Kalomoh, "every case before the Court was either brought by Africans or African Members of the Security Council. There is no record of African Members having voted against a referral of any case that has appeared before the Court."

For instance, Taylor's case was taken to the Court by the Liberian Government with the support ande Southern Times of May 13, 2012 was a scholarly piece of work. It was well researched and advanced the premise that, "the function of international courts controlled by Western nations is not to deter atrocities, for atrocities committed in the service of Western imperialism are never prosecuted, but to deter military action against Western interests. Indeed, Western-controlled tribunals are too connivance of key African Governments in West Africa.

Similarly, Jean-Pierre Bemba of DRC was taken to the Court by the Government of the Central African Republic for atrocities he had committed in the country. President Omar Al-Bashir of Sudan case was referred by the UN Security Council, whereas the Rebel-Without-A-Cause, Joseph Kony of Uganda was referred to the Court by the Government of Uganda and during 2011 Muammar Gadaffi's case was referred by the Security Council.

Indeed with such hypocrisy in African-led Governments today, who's fooling who when we say the Court is targeting African leaders only? The reality on the ground is that there are so many cases from Africa before the UN International Court of Justice but we Africans look the other way to ascertain who brought these cases to Court; hence, we should only be angry at ourselves!

Josephat Inambao Sinvula is currently employed at Oshana Regional Council in Oshakati, Oshana Region. The views expressed in this opinion piece are his own personal views.

Agence France Presse
Wednesday, 4 July 2012

Rwanda urges fresh momentum in hunt for top genocide suspect

The hunt for Kabuga, believed to have been the main financier of the 1994 genocide, is now the responsibility of the Mechanism for International Criminal Tribunals (MICT) which officially began work on Monday/AFP

KIGALI, Jul 4 – Rwanda's prosecutor general called for a change in strategy and tougher UN measures to track down fugitive genocide suspect Felicien Kabuga, one of Africa's most wanted men.

The hunt for Kabuga, believed to have been the main financier of the 1994 genocide, is now the responsibility of the Mechanism for International Criminal Tribunals (MICT) which officially began work on Monday.

The new UN-backed body takes over from the International Criminal Tribunal for Rwanda (ICTR), which is also based in the northern Tanzanian city of Arusha but is wrapping up activities at the end of 2014.

"If there is irrefutable evidence of his presence on the soil of a member state, more serious measures should be taken by the Security Council," Prosecutor General Martin Ngoga told AFP.

"There must be a new strategy, a new approach, a change of methods, language and tactics," he said.

Born in 1935, the Rwandan millionaire businessman is said to be a frequent traveller to various African nations where he buys protection.

He was thrown out of Switzerland in 1994, and spent some time in the Democratic Republic of Congo before seeking refuge in Kenya, where he has escaped several attempts to arrest him.

Ngoga argued that the UN Security Council's action had so far been limited to urging member states' cooperation.

He also called for stepped up international efforts to track down and arrest two other key suspects in the 1994 genocide against Rwanda's Tutsi minority, in which the UN says 800,000 people were killed in 100 days.

The pair have been named by MICT prosecutor Hassan Bubacar Jallow as former defence minister Augustin Bizimana and Protais Mpiranya, who was in charge of the presidential guard battalion.

According to MICT sources speaking on condition of anonymity, Kabuga still has business interests in Kenya, Mpiranya enjoys protection from senior Zimbabwean officials and Bizimana is hiding in the Democratic Republic of Congo.

The New Times (Kigali)
Thursday, 5 July 2012

Rwanda: ICTR Stuck With Acquitted Persons

By Edwin Musoni,

Even as the International Criminal Tribunal for Rwanda (ICTR) officially closed shop on June 30 handing over the remaining backlog to a residue mechanism, the court is still stuck with five former Rwandan officials who were acquitted of genocide crimes.

Although the five were cleared of criminal responsibility for the 1994 Genocide against the Tutsi, no country wants to take them in.

They have all indicated they do not wish to return to Rwanda, saying they wanted to join their families in various European countries.

The former suspects include former ministers Andre Ntagerura (Transport), Casmir Bizimungu (Health) and Jerome Bicamumpaka (Foreign affairs) - who were part of the transitional government that was installed after the death of President Juvenal Habyarimana, and which presided over the Genocide.

Others are Glatien Kabiligi, former head of operations in the former armed forces, and Protais Zigiranyirazo, a businessman and Habyarimana's brother-in-law.

Kabiligi is awaiting an appellant court's verdict on his request to rejoin his family in France, having secured the green light from a French lower court.

All the five stay in rented houses and live off ICTR allowances.

Also stuck in Arusha - the northern Tanzanian town which houses the UN tribunal - are two former convicts who completed their sentences.

"It's a problem we have had for a long time now. Ntagerura was acquitted in 2004 but has since failed to get a country to go to," ICTR Spokesperson, Roland Amoussouga, told The New Times.

With the term for the residue process set to expire in 2014, the United Nations Security Council has stepped up an appeal to member states to take in both the acquitted and former convicted officials.

Last week, the Security Council adopted a resolution to that effect after countries showed reluctance to respond to a similar resolution last year.

"The Security Council reiterates its call upon all states in position to do so, to cooperate with and render all necessary assistance to the international tribunal for its increased efforts towards the relocation of acquitted and convicted persons who have completed their sentences," reads the latest Council resolution.

Amoussouga said: "This is a renewed call since we have failed to get any positive response following last year's appeal. All the acquitted and released people don't have their families in Africa; they all have their wives and children in European countries, which is why we want Europe to take them".

There has never been such an experience before and their fate remains uncertain, at least according to the ICTR publicist.

"If it remains like this, then the tribunal will hand over the matter to the Security Council. The UN will determine the way forward. I really have no idea what will happen."

The ICTR President Vagn Joensen, whose service was last week extended by the Security Council, to December 31, 2014, told reporters that he and the Tribunal Registrar were stepping up diplomatic efforts to find host countries for the former officials.

Rwanda maintains that both the acquitted persons and former convicts were free to return home.

The Minister of Justice, Tharcisse Karugarama, says the former suspects would be treated as any other citizen.

"As the law provides, once a person is acquitted by a competent court, they can't be subjected to prosecution by another court. If they chose to come to Rwanda, they would be free citizens, they can only be prosecuted on crimes they have never been tried for," Karugarama told The New Times.

Asked if the government would facilitate their reintegration, the minister said: "All Rwandans are welcome home, and I think there is no better place to live than your homeland."

Those acquitted and have already secured host countries include former education minister Andre Rwamakuba (Switzerland) and the former prefect of the former Kibuye prefecture, Emmanuel Bagambiki, who is in Belgium.

France has received former mayors Jean Mpambara and Ignace Bagilishema, of Rukara and Mabanza communes, respectively.

In total, the 17-year old tribunal has acquitted 10 people.

Six have died in jail. They include Nzirorera (who was on trial), Jean Bosco Barayagwiza, George Rutaganda (both died in a Benin prison), Pastor Eliphaz Ntakirutinka, Joseph Serugendo (passed away from Tanzania) and former Anglican Bishop Samuel Musabyimana, who died after pleading not guilty.

The latter's body was transferred to Rwanda for burial according to his wish, Amoussouga said.

Meanwhile, the Security Council called for further cooperation in efforts to bring to justice top Genocide fugitives before the International Residue Mechanism winds up in two years time.

There are nine suspects who have been indicted by the Tribunal but remain at large. Notably among them is suspected Genocide chief financier Felicien Kabuga, former Minister of Defence, Augustine Bizimana, and former Commander of the Presidential Guard, Protais Mpiranyi.

The tribunal recently concluded evidence hearings for the three men, aimed at keeping testimonies about their alleged role in the Genocide, in which at least a million people were killed.

Open Society
Wednesday, 4 July 2012
http://www.opendemocracy.net/maryam-jamshidi/international-criminal-court-and-arab-world

The International Criminal Court and the Arab World

Maryam Jamshidi

The ICC's recent adventures in the Middle East and North Africa have furthered criticisms about its biased political tendencies.

The International Criminal Court (ICC) officially began its work ten years ago on July 1, 2002. While it has come to include over 120 member states from around the globe, the Court's expansive geographical ambit has been less than obvious from its caseload. Until now, the ICC has exercised its jurisdiction in only one particular part of the globe, Africa, raising concerns that its work is guided by political, rather than legal, considerations.

The ICC's recent adventures in the Middle East and North Africa have furthered criticisms about its biased political tendencies. With cases currently pending against Libyan and Sudanese officials, the ICC's involvement in the Arab World has occurred through the most political of all mechanisms – UN Security Council referral. At the same time, the Court's recent decision to withhold membership from the Palestinian Authority has further undermined its reputation as a neutral arbiter of justice.

The revolutions of the Arab Spring provide a prime opportunity for the ICC to carry through on its mission to end impunity for the worst international crimes. Perceptions about its political biases, however, undermine the Court's chance to have a positive impact on the ongoing transitional processes in the Middle East and North Africa. To ensure this opportunity is not squandered, the Court must address criticisms about its politicization.

The UN Security Council lies at the centre of this controversy. Under its governing statute, the ICC can assume jurisdiction only in cases involving member states, either upon referral by the UN Security Council, or where a country voluntarily accedes to its jurisdiction.

Other than Jordan and Tunisia, which respectively joined the ICC in April 2002 and June 2011, no Arab country has successfully taken up membership in the tribunal. At the same time, since the Court first opened its doors, it has received two Security Council referrals, Sudan in 2006 and Libya in 2011. As the only ICC cases from the Middle East and North Africa, the Security Council referral system has substantially shaped the region's relationship with the Court.

Transitional justice is an implicitly politicized discipline, arising during times of immense political turmoil. Involving the UN Security Council in its work creates additional political dimensions that cut against the pursuit of justice in several ways.

First, it impacts the Court's reputation. Most obviously, the Security Council is driven by the interests and agendas of its five permanent members. As such, referrals to the ICC carry the Council's politicized edge and potentially transform the Court into a political tool in inter-state power struggles. There is, however, also more at play. The Council's referral powers hinge on the existence of a threat to international peace and security, pursuant to Chapter VII of the UN Charter. As such, cases referred to the ICC will typically involve large-scale ongoing violence. The ICC's effectiveness in these situations will, as a result, be highly contingent on the development and outcomes of these conflicts. Given the unstable and unpredictable nature of these situations, the ICC may be unable ultimately to make substantial progress in

these cases, a circumstance that undermines the Court's authority and impacts on perceptions about its effectiveness.

Finally, by impacting on the Court's reputation as an institution, Security Council referral undermines the pursuit of individual accountability more generally. As long as realpolitik motivates international affairs, Security Council involvement will affect matters the Court can consider, further skewing its already unbalanced caseload. This undermines the pursuit of individual accountability by arbitrarily narrowing the range of cases the Court can undertake.

The ICC's involvement in Sudan and Libya underscores these realities. The Security Council's Sudan referral came in response to the crisis in the Darfur region. Ultimately, the Court decided to issue indictments against several Sudanese defendants, including the country's president, Omar Al Bashir. While the Bashir indictment came on July 14, 2008 (followed by a second indictment, for genocide, in July 2010), the Sudanese president has yet to be arrested or transferred to the Court.

There are two reasons for this failure. First, there has been general hostility toward the indictment from regional leaders and countries. The African Union (AU), and a number of Arab governments, have refused to arrest Bashir or otherwise cooperate with the ICC. Most recently, in early June 2012, the AU called upon the Court to drop its case against the Sudanese leader.

Second, western governments, including the United States, have been unwilling to push for enforcement of the outstanding ICC indictments, giving priority to the political and diplomatic processes involved in resolving the Darfur crisis. Most recently, the UN itself provided a helicopter ride to another indicted official, Ahmed Haroun, governor of the Sudanese state of South Kordofan, to facilitate his attendance at a meeting to resolve a local conflict within his governorate.

The Security Council's involvement in the Libya case created similar complications for the ICC. The Council's February 2011 referral came shortly before its decision to authorize a no-fly zone to protect civilians in Libya against government attack. The ICC referral eventually resulted in indictments against Muammar Qaddafi, his son Seif al-Islam, and former intelligence chief, Abdullah Senussi.

As the no-fly zone turned into more direct military intervention, international response to the Security Council's involvement, the ICC referral included, became increasingly critical. The Council's unwillingness to act in Syria further exacerbated these concerns, bringing increased accusations about the political nature of the Libya case.

Meanwhile, death and politics have prevented the ICC from taking custody over the indicted Libyans. Muammar Qaddafi was killed in fighting inside the country in late October 2011. Senussi continues to face an uncertain future awaiting extradition from Mauritania, and Libyan officials have rejected an ICC order to hand over Seif al Islam, who they are currently holding for trial in Libya.

In light of the Sudan and Libya cases, the ICC has been criticized by many in the region as irrelevant, impotent, and subject to the will of powerful western states. The ICC's recent decision to bar the Palestinians from joining the Court has added further fuel to this fire.

In January 2009, the Palestinian Authority lodged a declaration with the Court voluntarily acceding to the ICC's jurisdiction for events occurring in the Palestinian Territories after July 1, 2002.

Over three years later, on April 3, 2012, the Office of the Prosecutor issued a decision on Palestine's membership bid. Relying on its lack of member state status within the UN, the ICC Prosecutor barred Palestine from joining the Court. While noting that over 130 governments and international institutions had recognized Palestine as a state, the Prosecutor found its status as "observer," rather than "Non-Member State," in the UN to be sufficient to foreclose ICC membership for the time being.

A number of legal experts and NGOs condemned the decision as reflecting political bias and violating the ICC's Statute, which reserves questions of jurisdiction exclusively to the Court's judges.

These criticisms aside, the Palestine case may also present a potential strategy for addressing the political effects of Security Council referral to the ICC. Rather than merely rubber-stamping Palestinian membership, the Court took pains to consider whether jurisdiction over Palestine would be appropriate. In cases involving the Security Council, the Court could make a similar point of addressing the validity of its jurisdiction under Chapter VII. Courts regularly consider issues of jurisdiction on their own motion, that is, without having the issue raised by any party to the matter. In cases referred by the Security Council, the ICC could make the effort to genuinely consider whether the requirements of Chapter VII have been met.

A similar circumstance is currently unfolding in another legal institution mired in regional controversy, the Special Tribunal for Lebanon (STL). Established in 2007, the STL is a specialized international court investigating the assassination of Lebanese Prime Minister Rafik Hariri and several other Lebanese nationals between October 2004 and December 2005.

Most recently, defense attorneys brought a case challenging the STL's very existence. Among the arguments presented, defendants claimed that the Security Council abused its powers in invoking Chapter VII to pass Resolution 1757, which paved the way for the STL. According to defendants, the assassination of Rafik Hariri, and the other Lebanese nationals, did not constitute a threat to international peace and security. As a result, because its establishment was unlawful, the STL cannot, in defendants' view, provide a fair trial to the accused.

A decision in this case is expected to issue toward the end of July. Nevertheless, together with the ICC's approach to Palestinian membership, it presents a possible means of dealing with concerns about the Court's biased, political behavior. As long as the Court engages in a credible and authentic inquiry into the jurisdictional question, it may help counteract the harmful political effects of Security Council referral and go a long way to rehabilitating the ICC's reputation in the Middle East and North Africa, as well as the world at large.

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