

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



**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:**

Friday, 5 November 2010

Press clips are produced Monday through Friday.  
Any omission, comment or suggestion, please contact  
Martin Royston-Wright  
Ext 7217

### Local News

Taylor's Last Witness Continues Testimony / <i>Premier News</i>	Pages 3-4
Defence for Children Int. Launches 'Beyond the Law' Report / <i>Awoko</i>	Page 5
Swiss Ends Sanctions Against Sierra Leone / <i>Awoko</i>	Page 6
Gaspard Kanyarukiga Sentenced to 30 Years Imprisonment / <i>The Nation</i>	Page 7

### International News

Radovan Karadzic Wants Help From EU And UN / <i>Times of the Internet</i>	Page 8
ICTR Prosecutor Requests Cases to be Tried in Rwanda / <i>Radio Netherlands Worldwide</i>	Page 9
Closing Arguments in Gatete's Case Next Monday / <i>Hirondelle News Agency</i>	Page 10
ICC to Interrogate Kenya Security Chiefs / <i>Kenya Broadcasting Corporation</i>	Page 11
Kenya Ex-minister Meets ICC over Election Clashes / <i>Reuters</i>	Pages 12-13
Who is Viktor Bout, And Why Should Africa Care? / <i>The Nation</i>	Pages 14-15
Shedding Light on Tensions Between the African Union and the ICC / <i>The International Jurist</i>	Pages 16-18



## Premier News

Friday, 5 November 2010

### Taylor's Last Witness Continues Testimony

*By Judith Armatta*

Yesterday, Sam Flomo Kolleh, aka Sam Mustapha Karome, a Liberian member of the RUF and last witness for accused Charles Taylor, completed his direct testimony and the prosecution began cross-examination.

The direct examination appeared designed to address potential credibility problems of the witness, who admits falsifying his identity and other matters in three interviews with prosecution investigators and before Sierra Leone's Truth and Reconciliation Commission. In those venues, he claimed his name was Sam Mustapha Karome, as well as lying about his date and place of birth. When questioned about it, Kolleh said he did it because he feared being arrested by the Special Court for Sierra Leone.

On cross-examination, however, the prosecutor pointed out that, at the time he lied to investigators, the Special Court had arrested only four men. Kolleh insisted he was neither afraid of nor trying to protect the accused, Charles Taylor. He was trying to protect himself, though he denies any wrongdoing. The prosecutor read from a press release by Global Witness about a Briefing Document, identified as "Liberia's Logs of War," which provides another reason for a name change: "Sam Kolleh, Liberian, close associate of Charles Taylor, now in Sierra Leone and has changed his name to Sam Karome to appear Sierra Leonean." Kolleh responded that he had no idea about this document, and his testimony before the TRC was not public.

Additionally, Kolleh lied to the TRC and prosecution investigators when he said he was captured in Sierra Leone and Sierra Leone's RUF trained him to fight, not Taylor's National Patriotic Front of Liberia (NPFL) in Liberia, where he was in fact captured, trained, and became a member of the RUF. The

witness has said that the commander called Arthur led him to the RUF for training. Moreover, Arthur, who initially captured Kolleh, was an officer in the NPFL, not the RUF, as he formerly claimed. This supports the close connection between the NPFL and the RUF, which the prosecution claims operated together under the control or influence of Taylor.

Kolleh also made accusations against the prosecution, claiming they attempted to bribe him if he would implicate Taylor in the exchange of Liberian arms for Sierra Leonean diamonds and, thereby, supporting the war and its atrocities in Sierra Leone.

Answering defense counsel, he asserted that Special Court investigator Chris Bomford sought him out privately with an offer to place 90,000 USD in an account in his name if he would tie Taylor to the arms for diamonds scheme.

That was the carrot, but the witness claimed the stick was wielded by former Special Court Chief Prosecutor David Crane, who allegedly threatened him with prison if he refused to cooperate. Kolleh testified that Mr. Crane began an interview by stating, "I want the truth: diamonds to Taylor; arms to the RUF. Are you ready to cooperate?" Mr. Crane allegedly followed this up by handing the witness a card showing a tall policeman holding open a cell door with a message for kids on the reverse side, "If you choose not to listen to your parents, you will have no choice but to listen to me." Kolleh took that to mean that if he failed to cooperate he would join his former comrades in jail.

To buttress his claim, Kolleh said the prosecution investigators questioned him about diamonds a number of times during his first interview.

On cross-examination, however, the prosecutor presented the 173 page transcript of the interview. An electronic search revealed that the witness raised the issue of diamonds himself near the end of the interview when the investigators asked if there was anything he would like to add. Also, Kolleh's earlier





assertion that the interview focused on diamonds and Charles Taylor was contradicted by a search of the transcript which failed to turn up any reference to Taylor.

Kolleh also told the court that a former radio operator for the RUF, who testified for the prosecution, stated on the radio that he had no choice but to testify against Charles Taylor. He was in jail, and he had to be free.

On direct examination, the witness testified that heavy weapons and equipment could not have been transported from Sierra Leone to Liberia because the ferry necessary to transport them over a river was not working. And, rather than being supplied by the NPFL, weapons came from the ULIMO, a group opposed to Taylor's NPFL, and by seizing arms from the enemy.

Kolleh seemed confused about his importance in the events at issue. While claiming to be a senior officer in the RUF with responsibility for transporting diamonds and overseeing part of the extraction operation, he said the diamond trade was top secret and only top commanders knew about it of which he was not one. Still, he shared their knowledge and was trusted to transport diamonds.

When questioned about the RUF's recruitment, training, and use of child soldiers, Kolleh admitted that they had a Small Boys Unit (SBU), but said he could not discern their ages from appearances and had never asked.

Today, the prosecution will continue and likely conclude its cross-examination of Kolleh, to be followed by defense counsel's redirect, if any.



Awoko

Friday, 5 November 2010

# Defence for children Int. launches 'Beyond the law' Report

By Sahr Ngegba

**D**efence for children International (DCI), an NGO, involved in the promotion and monitoring of Juvenile Justice in Sierra Leone on Thursday, 4th November, 2010 officially launched an ice breaking report on Juvenile Justice in Sierra Leone titled 'Beyond the Law', which focuses on basic issues on Juvenile Justice in Sierra Leone.

It also calls for the implementation of the Child Rights Act as it assesses the situation on Juvenile Justice. The auspicious ceremony which was held at the British Council Office in Freetown brought together representatives from various organizations and institutions including the Judiciary, Ministry of Social Welfare, Gender and Children's Affairs, UNICEF and the Sierra Leone Police.

Assistant Inspector General of Police Al Shek Kamara who deputized the Inspector General of Police formerly launched the document. "Issues of Juvenile Justice are issues close to my heart", Al Shek Kamara told the Press. He continued that he was there representing the IG and maintained that he was not there by accident. In his comments regarding his contribution in promoting Juvenile Justice in Sierra Leone, he said that his efforts in this direction are tremendous and cited Kenema as his showcase where he left initiatives in place for promoting Child Rights issues, which include a provision of a separate detention centre for child offenders.

The Chairman for the program, Momoh Fofanna, a legal practitioner and a notary for Child Rights Advocacy in Sierra Leone reminded participants of what the children of Sierra Leone have gone through during the war years and called on all stakeholders to adopt a serious approach when dealing with Juvenile Justice in Sierra Leone.

Momoh Fofanna reminded the participants of the inconsistencies of the Judiciary with regards the Child Rights act and called for a review of the said Act to meet standards. He commended DCI initiative that focuses on the need to address the problem of Juvenile Justice in Sierra Leone. He urged the implementing

authorities not to limit their interests to what is on paper but to show commitment to implementation of policies.

The representatives made statements in view of the inconsistencies and inadequacies that have been identified over a period and recommendations were made for a way forward. In his statement on behalf the Chief Justice and the Judiciary, Justice Hamilton, a legal luminary with a wealth of experience in the Judiciary told the Press that various provisions have been made by the Judiciary to help alleviate the problems of Juvenile Justice in a bid to meet the concerns raised by various advocacy groups on issues of the Child Rights Act. "I am sure that the Law Courts are ready to implement the Child Rights policies", Justice Hamilton maintained. He called on government to rehabilitate the abandoned the child rehabilitation Centre on Banana Island to help solve the issue of insufficient centres.

Other speakers including Mariatu Bangura representing Social Welfare, thanked DCI for their cooperation and told the Press that adults are to be blamed for the offences committed by the children and revealed that the policies on Juvenile Justice lack preventive measures but maintained that the Ministry is making strides to address these challenges. Meanwhile, the Child Protection Officer, UNICEF, called on the government to improve on Juvenile Justice to meet international standards. She also urged the authorities to provide education for the children so that they will not indulge in crime and that they must not even be introduced to the justice system.

The Media person representing 'Timap for Justice', lamented that 70% of the recommendations made at forums are never implemented and urged all stakeholders to be robust in their approach if they are to make any progress in Juvenile Justice in Sierra Leone. The occasion was climaxed by a skit performed by members of the Children's Advocacy Group, portraying the problems surround Juvenile Justice in Sierra Leone affecting the proper implementation of the Child Rights Act.



Awoko

Friday, 5 November 2010

## Swiss ends sanctions against Sierra Leone

Switzerland has decided to lift sanctions against Sierra Leone originally imposed in 1997 after a United Nations Security Council resolution against the state.

The decision was taken by the Swiss cabinet in its first meeting with newly elected members Johann Schneider-Ammann and Simonetta Sommaruga.

The partial sanctions were imposed after a coup d'état in 1997 ousting the democratically elected President. They involved an arms embargo and a ban on the six leaders of the ruling military

junta entering Switzerland.

With the economic and social situation improving and stability returning to the country, the UN Security Council adopted a resolution in September to lift the sanctions, a move that Switzerland has now followed.

But the Swiss cabinet noted that future orders for military equipment would be evaluated in line with the national rules on supplying war materials.

## Gaspard Kanyarukiga Sentenced 30 Years Imprisonment



*Gaspard Kanyarukiga*

Gaspard Kanyarukiga, a former businessman in Rwanda during the 1994 genocide, was on Monday 1st November, convicted and sentenced to 30 years in prison after he was found guilty of genocide and extermination as a crime against humanity. The accused however was acquitted on the alternative charge of complicity in genocide. Handing down the sentence, Trial Chamber II composed of Judges Taghrir Hikmet, Presiding, Seon Ki Park and Joseph Masanche said it was satisfied beyond reasonable doubt that Kanyarukiga was criminally responsible under Article

6 (1) of the Statute for planning the killing of members of the Tutsi ethnic group at the Nyange Church and was therefore guilty of genocide. Having found Kanyarukiga guilty of genocide, the Chamber therefore dismissed the count charging him, in the alternative with complicity in genocide. With regard to extermination as a crime against humanity, the Chamber was satisfied that the demolition of the Nyange Church was committed as part of a widespread or systematic attack against the Tutsi civilian population on ethnic grounds and that the accused knew that his acts formed part of this broader attack. The Chamber also found that the accused intentionally participated in a mass killing of Tutsi civilians amounting to extermination as a crime against humanity. On 22 July 2004 Kanyarukiga entered a not guilty plea to the charges against him when he made his initial appearance. South African authorities arrested Kanyarukiga on 16 July 2004 at the request of the Tribunal and transferred him to the UN Detention Facility in Arusha on 19 July. Counsel David Jacobs from Canada represented the accused while the Prosecution was led by Holo Makwaia (Tanzania).

## Times of the Internet

Thursday, 4 November 2010

<http://www.timesoftheinternet.com>

### Radovan Karadzic Wants Help From EU And UN



Former Bosnian Serb leader Radovan Karadzic turned to former enemies – the EU and the UN for help in his defense against charges of war crimes before the UN tribunal in The Hague, said Monday.

Both institutions were asked by the presiding judge to respond to the request of Karadzic and to provide documents, which the accused could help him in the case.

Karadzic is responsible before the International Criminal Tribunal for the former Yugoslavia on 11 counts of genocide, war crimes and crimes against humanity for his role in the wars in former Yugoslavia in the 90's.

The EU has until Nov. 10 to respond to the request for documents relating to the alleged involvement of the mission of EU observers in the supply of arms to the Bosnian Muslim army in 1994, said court spokeswoman Norma Jelacic told reporters.

Karadzic for the first time made a similar request to the EU Council of 30 November 2009, but has not yet received an answer from Brussels.

Former Bosnian Serb leader also sought documents concerning contacts between the UN and Diego Salicheti ARIA, former Ambassador of Venezuela to the UN, which serve as President of the Security Council of the United Nations between 1992 and 1993

Ambassador Aria was a sharp critic of the UN's role during the Bosnian conflict, accusing the organization of double standards and insufficient action to stop the mass killings of Bosnian Muslims.



Radio Netherlands Worldwide  
Friday, 5 November 2010

**ICTR prosecutor requests cases to be tried in Rwanda**

By Thijs Bouwknecht



*Arusha, Netherlands*

The prosecutor of the UN Rwanda genocide tribunal in Tanzania wants three pending cases to be tried in Rwanda.

As the International Criminal Tribunal for Rwanda (ICTR) is wrapping up its work, Hassan Jallow requested judges on Thursday to refer three cases to Rwanda for trial. But earlier prosecution requests in 2007 were turned down as the court's judges were of the view that Rwanda could not guarantee fair trials of genocide suspects.

The latest cases involve detainee Jean-Bosco Uwinkindi, a former pastor in charge of the Pentecostal Church in the Kanzanze commune and the fugitives Fulgence Kayishema, former police inspector in the Kivumo commune and Charles Sikubwabo, former bourgmestre of Gishyita.

Uwinkindi was arrested in Uganda at the end of June 2010. He is charged with genocide, conspiracy to commit genocide and extermination as crime against humanity for his alleged role in the massacre of thousands of Tutsis at the Kayenzi Church near Kigali.

Fulgence Kayishema is wanted by the ICTR in connection to the killing of more than 2,000 Tutsis who had sought refuge at the Nyange church. His charges are on the same factual bases as those previously levelled against Seromba, Ndahimana and others who were accused of atrocities in the Kibuye region of Rwanda in 1994.

Charles Sikubwabo faces two indictments issued by the ICTR. In one indictment, he was jointly charged with Elizaphan Ntakirutimana and Dr. Gérard Ntakirutimana, who are father and son. Because he remains at large, his trial was separated from that of the Ntakirutimanas, who were subsequently convicted and sentenced.

The first indictment relates to a massacre at the Mugonero Complex in Kibuye, where hundreds of Tutsi men, women and children were killed and a large number of others wounded. The second indictment relates to massacres at the Church in Mubuga and in the area of Bisesero. The massacres resulted in the deaths of thousands of mainly Tutsi victims, and numerous injuries to men, women and children.

## Hirondelle News Agency

Thursday, 4 November 2010

### **Closing arguments in Gatete's case next Monday**

The International Criminal Tribunal for Rwanda (ICTR) will next Monday hear closing arguments from the parties in the case of genocide-accused and former Rwandan Director in the Ministry of Women and Family Affairs, Jean-Baptiste Gatete.

"The closing arguments will be presented Monday as scheduled," ICTR Trial Attorney Drew White asserted Thursday. White also confirmed that between October 26 and 30, 2010 the parties and the Trial Chamber visited several areas in Rwanda where crimes were allegedly committed.

Gatete is charged with genocide, conspiracy to commit genocide, incitement to commit genocide and crimes against humanity. He pleads not guilty.

The defendant, who also served as mayor of his native commune of Murambi in Byumba prefecture (Northeast Rwanda) between 1987 and 1993, was relieved of his duty in 1993 amidst allegations that he persecuted the Tutsis of Murambi. But soon after, he was appointed Director in the Ministry of Women and Family Affairs then headed by Pauline Nyiramasuhuko, who is also on trial before the ICTR.

Gatete was a member of the National Congress of former ruling party MRND and was active in party politics both at national and provincial level. According to the prosecution, he continued to control local police, gendarmes and militiamen in the Byumba and Kibungo prefectures after his dismissal. The indictment alleges that he used his influence to organize massacres of Tutsis in both prefectures.

The defendant was arrested in Congo-Brazzaville on September 11, 2002, and subsequently transferred to the UN Detention Facility in Arusha. His trial started on October 20, 2009. The Defence closed its case on March 29 after fielding 27 witnesses while the prosecution closed its case on November 16 after calling 22 witnesses.

NI/FK/ER/GF

© Hirondelle News Agency



Kenya Broadcasting Corporation  
Wednesday, 3 November 2010

## ICC to interrogate Kenya security chiefs

Written By: Mary Daraja/Carol Gakii



A team of investigators from the International Criminal Court - ICC will interrogate 10 security chiefs over the 2007/2008 post election violence.

The officers will receive summons by Tuesday next week and statement taking will start on November 24th.

The announcement was made Wednesday in Nairobi when the ICC team met Lady Justice Kalpana Rawal and officials from the State Law Commission.

Lady Justice Rawal confirmed that she has received questions from ICC that will guide the process of statement taking.

She has pledged to protect all those who will give evidence to the ICC.

She says she will ensure that none of the security and provincial chiefs giving evidence implicated themselves.

Most of the statement taking sessions will be done in-camera apart from instances where they will be done in public.

The ICC had indicated it was interested in questioning at least five Provincial Police chiefs and PC's who were in office before and during the post election violence.

Mr Moreno-Ocampo plans to use the statements of the government officials to prepare his application for arrest warrants against six individuals he accuses of masterminding the violence

## Reuters

Thursday, 4 November 2010

### **Kenya ex-minister meets ICC over election clashes**

Kenya's suspended higher education minister, William Ruto, said he would issue a formal statement on Friday to the International Criminal Court in The Hague about the violence that followed the 2007 election.

Speaking in the Dutch city on Thursday, Ruto said he met the ICC's chief prosecutor Luis Moreno-Ocampo and the two would have another meeting on Friday.

"There are no issues. We cleared the preliminary issues. We will be back tomorrow to make a formal statement and we will proceed from there," Ruto told Reuters outside the court.

Ruto, who left Kenya late on Wednesday, was quoted by local media as saying he wanted to give his version of events to the ICC, which is investigating the deadly post-election violence, in which about 1,300 people were killed.

He was suspended last month over fraud allegations that he has denied, and will stand trial in Kenya starting late January.

Moreno-Ocampo's office did not respond to requests for a comment.

The ICC has not yet formally identified any key suspects. The state-funded Kenya National Commission on Human Rights said senior cabinet ministers were architects of the fighting, including Finance Minister Uhuru Kenyatta and Ruto.

Kenyan judges blocked an attempt by Kenyatta to remove his name from the report. A similar case lodged by Ruto is ongoing.

Moreno-Ocampo has previously said he aims to issue arrest warrants against the masterminds of the killings and complete confirmation hearings by the end of 2011, with trials to start in 2012, when Kenya's next elections are due.

Political analysts say any arrest warrants against cabinet ministers could widen rifts in the coalition government of President Mwai Kibaki in east Africa's biggest economy and lead to unrest in the suspects' communities.

"I asked for an appointment with Ocampo and his group so that we can set the record straight and get to the truth and I'm happy that they gave me the appointment," Ruto told reporters at Nairobi airport as he left for the Netherlands.

Kenya's government officials hailed the move and said it set an example for others who may be under investigation.



"The prime minister has taken it (Ruto's trip) as a personal decision. Ruto probably feels he has a personal statement to make and the PM has no problem with that," Dennis Onyango, spokesman for the prime minister's office, told Reuters.

"I welcome his interest to co-operate with The Hague because after all the government is committed under the Rome Statute and our International Crimes Act to co-operate with Mr. Ocampo," Justice Minister Mutula Kilonzo told Reuters.

Many Kenyans are hopeful any arrests and convictions will act as a deterrent against a repeat of violence at the next elections.

The bloodshed began after opposition candidate Raila Odinga, who is now Kenya's prime minister, accused the incumbent Kibaki of stealing the 2007 election. At the time, Ruto was a close ally of Odinga's, but the two have since fallen out.

A power-sharing deal brokered by former U.N. Secretary-General Kofi Annan in late February 2008 stopped the bloodshed and created Kenya's first coalition government, with Odinga in the post of prime minister. (Writing by James Macharia in Nairobi; additional reporting by Helen Nyambura and Richard Lough in Nairobi and Svebor Kranjc in The Hague; editing by Andrew Dobbie)

## The Nation (Nairobi)

Thursday, 4 November 2010

### **Kenya: Who is Viktor Bout, And Why Should Africa Care?**

Nairobi — The "Merchant of Death" is just one of the labels given to Viktor Bout, the man on the left who is believed to be the biggest illegal arms dealer in history.

A dissident who has been second on the US intelligence agencies' most-wanted list - after Osama Bin Laden -- Bout had a weapons smuggling empire which lasted at least a decade and spanned three continents, including in Africa's most murderous hot spots.

At only 43, he is believed to have provided weapons to every major armed conflict in the last decade, and even inspired the blockbuster movie Lord of War, starring Nicholas Cage (Bout was not too impressed).

Viktor has been in a Thai prison since 2008 and may be extradited to the United States for trial, something he has been doggedly appealing, and which some African politicians and generals have been equally hoping it doesn't happen, given the information he has stockpiled on his dealings with them.

In the 1990s, regional and local conflict was rampant throughout many parts of western and central Africa. America's National Security Council eventually decided to set-up electronic surveillance in war zones such as northeast Congo, Liberia and Sierra Leone in 1999. A common factor kept cropping up: Viktor Bout.

He was allegedly capable of arranging deliveries of weapons to the guerrillas that enabled them to greatly enhance their military capabilities. In Angola's case, he even supplied weapons to both sides. Many of Africa's wars may not have been possible, let alone sustainable, without his help.

He was associated with three areas in particular; weapon shipments, airplanes and diamond transport. It was the last of these that contributed to his undoing. In 2002, Sanjivan Ruprah, a Kenyan diamond mine owner, offered details about business dealings between Al Qaeda and the arms trade run by Bout.

There has been a great deal of hesitancy by legitimate dealers to 'do' business with Africa. Most of this was born out of fear of loss of investment due to insecurity or bad infrastructure, not for Bout. He even earned himself the tag of 'Sanctions Buster' for violating UN arms embargoes in Angola, Liberia, Sierra Leone and the DRC.

In the mid-'90s, the CIA circulated photographs showing Russian cargo aircraft, Antonovs and Ilyushins -- which are built to land on almost any surface -- and said these were part of Bout's operation in Africa. He was criss-crossing the continent, transporting everything from frozen chicken to diamonds and helicopters.



Bout was doing deals whose existence was reliant on an unstable environment. And he was fortunate, in many ways, in his attempts to stay a step ahead of the authorities. International law does not target those who broker arms deals, and governments have had a hard time locating him, let alone building strong cases against him.

He was also fortunate to call many African leaders his 'friends'. These included; Angolan rebel leader Jonas Malheiro Savimbi, Mobutu Sese Seko and Jean-Pierre Bemba who were respectively former president and vice-president to the Democratic Republic of Congo, and Liberia's notorious former president, Charles Taylor.

His explanations bordered on the ridiculous -- he, for example, said of the photographs taken of him in Africa next to cargo planes being off-loaded by militia that they were simple shots of him taken after he accompanied one of his flower cargoes to the continent, and that he was simply admiring the landscape. Bout was born in 1967 to Russian parents in Tajikistan.

He has a strong military connection, having attended the Soviet Military Institute for Foreign Languages in Moscow and then going on to earn an economics degree from a Russian military college. He was also part of a military aviation regiment until 1991, spending two years in Mozambique during this time.

The most intriguing thing about this man was his ability to publicly live his life as one of the world's most wanted. He claims to be someone who has found his success in the international transport business, as well as a father and husband. Bout began his career in air transport following the fall of the USSR, using abandoned military planes from the Soviet era.

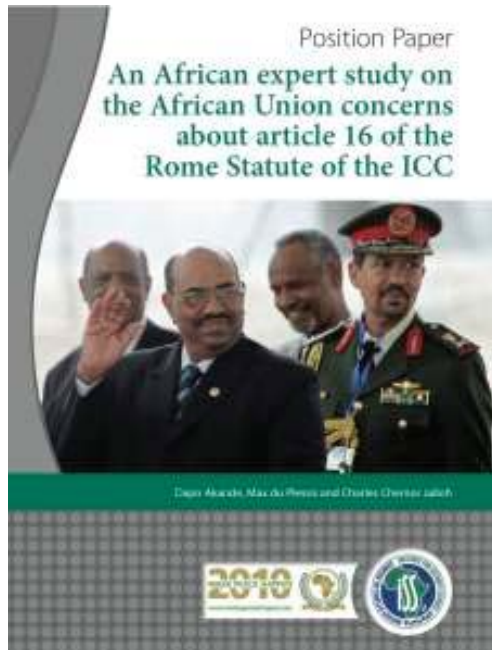
His career, however, became difficult to maintain when, in 2002, Belgian authorities issued a warrant for his arrest. He subsequently went underground and hopped from capital to capital using aliases. In 2006, the US froze his assets but, interestingly, found that there was no law based on which he could be persecuted.

He was eventually caught in a 'sting' operation in Bangkok, Thailand, when he and US agents posing as Colombian rebels discussed shipments of arms to Colombia. Thai authorities took him in him shortly afterward. Even if Bout does fail the appeal, it will be a tricky process putting him on trial.

It may also bring more bad than good, considering the dossiers he has on not only many African governments, but also on western governments as well. If that doesn't make it a diplomatically difficult paradigm, then fears that this case has the ability to unlock the secrets to many African wars -- and, potentially, the ability to cause many more -- certainly will.

What is certain is that Africa will be watching the unfolding developments raptly.

## Shedding Light on Tensions between the African Union and the ICC



The current tensions between the African Union and the International Criminal Court are often the object of international criminal lawyers' discussions, and are particularly seized upon by skeptics and critics of the Court. For the Court and its supporters however, it has also been the subject of much reflection and concern, and this up to the highest levels (see ICC President Song's opening remarks at the ICC-NGO biannual meetings a few weeks ago). Tensions and frustrations are flaring, and there seems to be no end to the standoff between the UN Security Council and the ICC on one side, and the African Union and Sudan on the other.

In the midst of these frictions that clearly threaten the ICC's credibility in Africa, the Institute for Security Studies published last week an excellent Position Paper titled "*An African expert study on the African Union concerns about article 16 of the Rome Statute of the ICC*", written by three African international law experts, namely Dapo Akande, Max du Plessis and Charles Chernor Jalloh.

As the title very clearly suggests, the authors give a very detailed analysis of the African Union's position towards article 16 of the Rome Statute, in particular as it relates to the current tensions arising from the ICC's involvement in Darfur.

Before giving some of my personal thoughts on the study's findings, I first have to say that this report is brilliant and enlightening. It takes a very clear and rigorous approach to the raised questions on the role article 16 has to play, and makes the case for the African Union's position without falling into the usual anti-West postcolonial political rhetoric that I find too often pollutes the debate and makes the real legal case inaudible. Although some would say there's nothing new in the study for anyone who has followed AU-ICC relations closely, I still find that it puts a fresh perspective and offers a coherent analysis that puts the difference pieces of the puzzle in order.

I would recommend the reading of this report to anyone interested in understanding the state of ICC-AU relations, and more specifically, the legal aspects of the AU's position towards the ICC.

I won't summarize and go over the entire report, but briefly mention three main ideas that I think structure the paper and that particularly shed light on the ongoing conflict:

### 1) African States are committed to fighting impunity

Although the Paper, unless I am mistaken, is not a direct emanation of African countries or the African Union, it does have some reassuring words regarding the commitment of African States to the project of international criminal justice. The authors go to great length, at different points in their demonstration, to show that African States are committed to the prosecution of individuals responsible for the commission of grave international crimes, and that they played in the past a key role in the establishment of the

International Criminal Court, both prior and after the Rome Conference in 1998. To support this, they cite a variety of examples and important facts, not least of which that 31 African States are parties to the Rome Statute, that 3 of them self-referred their situations (DRC, CAR, and Uganda), or that Côte d'Ivoire, a non-party lodged a declaration accepting the ICC's jurisdiction.

This is not denying that there is a problem between the way African States are starting to perceive the ICC – but it does seem to put into perspective what some of the most pessimistic tend to argue: that the ICC is very negatively and widely perceived as a Western imperialist tool.

## **2) It's the Security Council, Stupid!**

Another aspect of the crisis that is clearly pointed out in this Policy Paper is that the tensions between the AU and the ICC are not really about the ICC *per se*: it's really about tensions between the AU and the Security Council, and the latter's refusal to even discuss AU recommendations, made worse by its past usage of Article 16. In this standoff, the ICC is more a hostage than an active participant. As the Paper argues:

*“Today, from the perspective of many African leaders, the ICC's involvement in Sudan has come to reflect their central concern about the UN – the skewed nature of power distribution within the UNSC and global politics. (...) The result is that the uneven political landscape of the post-World War II collective security regime has become a central problem of the ICC.”* (p. 6)

It is important to remember that the ICC had nothing to do with becoming engaged in the Darfur situation: it had no jurisdiction to do so. It's the UN Security Council who referred the situation to the ICC, as made possible by Article 13(b) of the Rome Statute, with its 2005 Resolution 1593.

The Paper makes it clear that the escalation of the tension between the AU and the Court is due to the Security Council's obstinate refusal to discuss, let alone agree to, the AU's case for the deferral of the proceedings against Sudanese President al-Bashir, and this in the light of the past questionable usage of Article 16 to the benefit of the United States, with Resolution 1422 and even within Resolution 1593.

It also explains the motivation behind the AU's proposal to amend Article 16 to allow the UN General Assembly to defer proceedings – *if* the UNSC refuses to discuss the matter.

## **3) This is not just about Sudan**

Lastly, the authors make a compelling case that even if the debate on the use of Article 16 was spurred by the ICC's intervention in Sudan and the indictment of al-Bashir, it is not just about Sudan, and is the consequence of the difficult compromise between the need for peace and justice that underlies the existence of Article 16.

The Position Paper argues that

*“it is important to pay attention to the AU's concerns and its proposal because the matters underlying the tension – how ICC prosecutions may be reconciled with peacemaking initiatives and the role and power of the UNSC in matters relating to the ICC – are likely to arise in the future with respect to other situations”* (p. 6).

We are at the heart of the Peace versus Justice debate, and the sometimes necessary compromise between the two, and how we achieve such a compromise in a way that allows for peace and justice to support rather than annul each other. It is an eternal and far-reaching debate that is the source of much literature and discussion.



**A Few Concluding Remarks:**

- The current situation in Sudan, especially with regard to the future referendum on independence in the South, poses a challenge to international justice and how it is supposed to act. Although an international criminal lawyer by training, I am not a social scientist and not an expert of Sudan. I will leave the debate of whether arresting Bashir now would make things worse or better to far more knowledgeable people.
- Although the Position Paper presents the AU position in a neutral, legal manner, allowing me to see more clearly in this debate, I do not doubt that the AU's intentions are not all founded on good faith. I remain convinced that one thing that rattles the AU is that the Court went after a sitting Head of State, and that they did not expect that. Although that is omitted in the Position Paper, I do think it is still a strong underlying factor in the AU's rhetorical warfare against the Court.
- Lastly, this blog post does not reflect the richness or all the interesting points of the Position Paper – so do read it!