

## **AU ‘concerned’ about ‘politicisation’ of war crimes court**

**By Desmond Davies, GNA London Bureau Chief**

The Hague, Sept. 17, GNA – Although members of the African Union consist of the largest bloc of countries that are signatories to the Rome Statute of the International Criminal Court, the pan-African body is becoming concerned about the politicisation of the war crimes court, the Legal Counsel of the AU, Dr Namira Negm, has warned.

She said that the 33 African countries that had signed the Rome Statute were against impunity, just as the ICC, but asked why the AU now “has major concerns with the ICC”.

“We can just simplify our answer and say politicisation,” Dr Negm told a symposium, Lessons from the Gbagbo and Blé Goudé & ICC Review, at the Dutch Foreign Ministry in The Hague at the weekend.

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

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

Dr Negm said: “...we are witnessing a deeper sense of divergence between the AU and the Court.

“Legal and political differences are increasing and we believe that this can only be mended if the Court will revisit some of its legal arguments that disregard other branches of international law.”

She added: “Coming to this particular case of the trial of Gbagbo and Blé Goudé, as much as the AU strongly believes that perpetrators should be held accountable for their crimes, it also firmly believes that due process of the law and the right of the accused should be respected and protected.”

Dr Negm admitted that Mr Gbagbo had wanted to remain in power after he lost the presidential election to Mr Alassane Ouattara, but the AU “assisted in seeing Gbagbo out of office”.

She said that Cote d’Ivoire, a state party to the Rome Statute, did not object to trying Mr Gbagbo in The Hague.

“That shows the will of the African States to work with international justice.

“Yet, the outcome of the case shows that there is a problem in the Court,” Dr Negm said.

“Why would the Court proceed in a case without strong evidence?”

“Cases before the Court are mostly politically sensitive, because they involve the trials of current leaders, previous leaders.”

She continued: “Shouldn’t the Court be more prudent in indicting political leaders without strong evidence?”

“Why did the Court look into the political implications in proceeding with the case of Afghanistan and not to cases in Africa?”

The ICC said in April this year that it dropped investigations into alleged US war crimes committed in Afghanistan because of difficulties in obtaining evidence and witness testimony.

Dr Negm said cases like the Gbagbo case, “with his acquittal for lack of evidence do tarnish the credibility of the Court”.

She added: “Once there is not a strong case before the Court, it should be dismissed...otherwise it falls into the first trap of politicisation.

“[The] ICC’s ruling that Laurent Gbagbo had no case to answer and that there is insufficient evidence to convict him of crimes against humanity underpins a deeply rooted problem [with] the Court and prosecution with regards to Africans.”

She said that one reason why cases against high profile leaders were difficult to establish was because “they don’t commit the crimes by themselves”.

“This means that prosecutors often have to rely on circumstantial evidence and the doctrine of command responsibility that requires knowledge on the part of the leaders that they knew or should

have known the crimes would be committed and failed to have taken steps to prevent them from being perpetrated or punish the perpetrators after the event,” Dr Negm said.

“Moreover, in such cases, the prosecutor must also take into account the often involvement of politics and political manoeuvring that will accompany them.

“As a matter of principle in international criminal law, where guilt is based on circumstantial evidence, such evidence must exclude any reasonable conclusion other than the guilt of the defendant.

“In the Gbagbo case, this conclusion is particularly embarrassing for the prosecution as the presenter of the case,” she said.

“Therefore, it is an important lesson that before issuing arrest warrants against leaders that may result in their incarceration for many years, lengthy trials, huge costs and high expectations on the part of victims, prosecutors must be satisfied that their cases against the defendants, in the absence of rebutting evidence, establish guilt beyond a reasonable doubt,” Dr Negm added.

The tone of the symposium had been set by the Executive Director of ALFA, Evelyn A. Ankumah, when she touched on the thorny issue of politicisation of the ICC in her opening address.

Ms Ankumah said that “in principle” the Gbagbo and Blé Goudé case was “just any other criminal case”.

“Yet, clearly, ICC cases, and this one in particular, are no ordinary cases.

“The pressure, the political pressure on the Prosecutor to initiate a case is higher than in ordinary criminal cases.”

She noted that extra pressure could be brought to bear on the ICC due to the heinous nature and scale of atrocities and the number of victims.

“Extra pressure, however, may also be caused by more subjective elements, like countries, governments, or organisations that wish to see a given person prosecuted by the ICC.

“We all know that such influencing happens, and this is problematic.

“The risk of politicising the work of the Prosecutor exists, especially where it concerns politically important or influential persons,” Ms Ankumah added.

“In ICC cases, not only the Prosecutor, but also the judges have to operate in a setting of extra pressure.

“Because of the seriousness of the crimes, and the high number of victims, the public, and indeed the victims, often expect and demand a conviction.

“There is a risk that the success of the ICC may be determined by the number of convictions.

“Acquittals are all too often seen as a weakness of the Court, a sign of it not functioning properly,” she said.

“Yet, when judges conclude that there is not enough evidence, the person concerned is not guilty.

“Justice is done.

“One may very well look at the acquittal as a victory for international justice,” Ms Ankumah noted.