



## ICC Alert-Defence Perspectives

### ICC Alert- Defence Perspectives

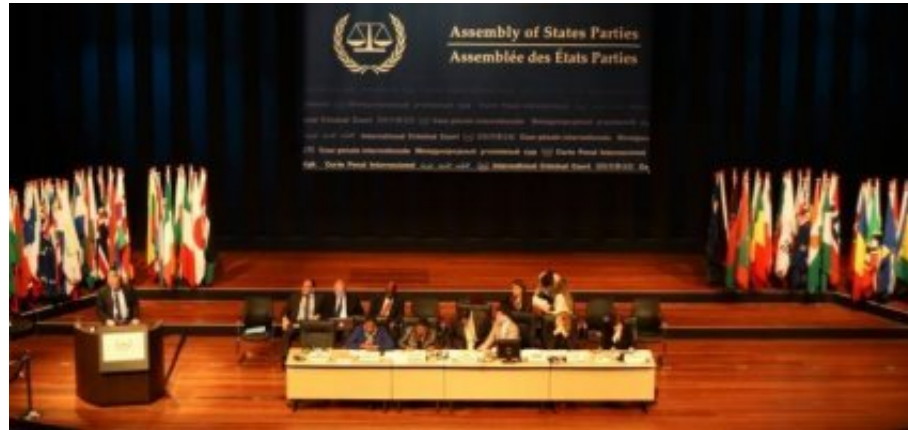
---

18-12-2014

### **ICC Alert- Defence Perspectives**

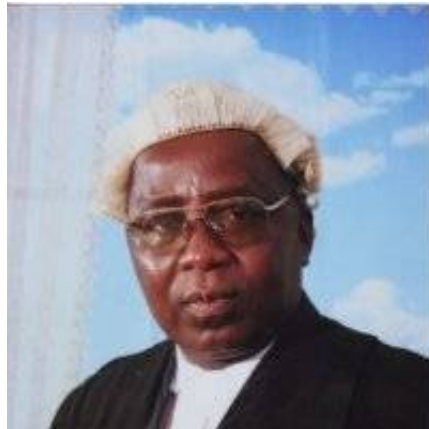
**A fearless and independent defence is a *sine qua non* for a fair and legitimate trial.**

There is increased concern about the right to due process and fair trial of defendants before the ICC, including the rights of defence counsels. Therefore Africa Legal Aid (AFLA) dedicated a topic on this undertreated and emerging issue at a Side Event it convened on 12th December 2014 in cooperation with ICJ Kenya and sponsored by Ghana and The Netherlands, at the 13th Session of the Assembly of State Parties (ASP) to the ICC, at the United Nations Headquarters in New York.



11th Session of the Assembly of State Parties (ASP), The World Forum Theatre, The Hague  
© 2012

Renowned defence counsel, Charles Taku spoke on *The Marginalized Intruder: Defence Perspectives on Progressive Development of International Criminal Justice*  
[click here.](#)



Mr Charles A. Taku, Lead Defense Counsel at UNICTR, SCSC and ICC

© 2013C

SC

While the Rome Statute of the ICC guarantees the right to fair trial and due process, in practice, there is hardly equality of arms. At AFLA's ICC Lessons Learned conference held in Johannesburg, South Africa, last September, a Parliamentarian from an African State Party to the ICC was surprised to learn that there exists an

Office for Public Counsel for Defence (OPCD) within the Court's structure, led by Xavier-Jean Keita from Mali. The Parliamentarian wished to know why the OPCD did not enjoy even a fraction of the visibility that the Office of the Prosecutor (OTP) enjoys. Indeed the OPCD does not enjoy a fraction of the financial resources that the OTP enjoys. Is equality of arms a misnomer one may ask?

To add insults to injury, the current ICC Registrar Herman von Hebel, purportedly to cut down on the Court's expenses, has proposed a controversial ReVision project that seeks to undercut the independence of the defence guaranteed by the ICC Statute [click here](#).

The Registrar's proposal has been criticized in various quarters. Notably, Sir Adrian Fulford, a former Judge of the ICC, credited for bringing the Court's first case to a verdict in spite of obstacles encountered, expressed concerns that under the ReVision project, defendants and victims will not be sufficiently represented while considerable power would remain with the Prosecutor. "I doubt if this represents the intentions of those who carved out this inspirational part of the Rome Statute," said Sir Fulford [click here](#).



Sir Adrian Bruce Fulford,  
former Judge of the ICC and currently a British judge who is a member of the Court of Appeal of England and Wales.

© 2014

The International Bar Association (IBA) has similarly criticized the Registrar's initiative [click here](#).

The International Federation for Human Rights (FIDH) has taken issue with aspects of the ReVision Project in this Open Letter to the ICC Registrar [click here](#).

And indeed the Office of the Public Counsel for Defence has issued its critical comments on the ReVision Project [click here](#).

The Registrar's representative who attended the AFLA Side Event did not take kindly to criticisms about the ReVision Project and remarked that the ICC Registrar's initiative should not be made part of the African debate.

Who are the defendants before the ICC and inmates in the ICC detention facilities, are they not Africans? So why should an initiative that exclusively affects Africans not be part of the African debate? Indeed it should be part of the international justice debate.



Former Congolese warlord Thomas Lubanga Dyilo in the court room at the International Criminal Court  
@2012

The proposed ReVision project puts the defence office under the direct supervision of the Registrar thereby overriding the independence of the defence office in violation of the neutrality of the Registry.

In 2013 four individuals were arrested in connection with the Bemba case before the ICC, including lawyers working for Jean Pierre Bemba, former Vice President of the Democratic Republic of Congo (DRC). There are also non-Africans in Bemba's defence team but those who were accused of offenses against the administration of justice under Article 70 of the ICC Statute were incidentally Africans. On their part, the accused allege that privileged communication between Bemba and his counsel were illegally obtained. The accused persons were kept in detention for almost a year and were granted interim release in October this year. Meanwhile their trial has not even begun.

A defence lawyer has posed this question: "Do you think the lawyers would have been arrested if they were white?" Granted the Prosecutor of the ICC is African. But this is not about individuals. It is about an institution operating in the complex realities of global power- relations.

We cannot disregard the pertinent question posed by the defence lawyer given that there are no non-African cases before the ICC. What we can say for sure is that the rights of the accused are crucial for any credible justice system. The ICC's legitimacy depends on it!

Your comments are most welcome. Please [click here](#) to comment.

Please visit our [webshop](#).

Additionally, become a fan of Africa Legal Aid on [Facebook](#), connect with us on [LinkedIn](#), follow us on [Twitter](#) and invite your friends to join AFLA and its worldwide community of supporters.

---

[back to top](#)



ACCRA - P.O. BOX: P.M.B., TUCACCRA, GHANA  
THE HAGUE - LAAN VAN MEERDERVOORT 70, 2517 AN, THE HAGUE, THE NETHERLANDS  
PRETORIA - 287 SKINNER ST. PRETORIA, TSHWANE. METRO CITY. P.O. BOX 392. UNISA 0003  
[Unsubscribe the Newsletter](#)