

The New York Times Magazine | <https://nyti.ms/28LHBBz>

The Prosecutor and the President

The International Criminal Court embodied the hope of bringing warlords and demagogues to justice. Then Luis Moreno-Ocampo took on the heir to Kenya's most powerful political dynasty.

By JAMES VERINI JUNE 22, 2016

Nakuru is a lakeside city in Kenya's Rift Valley, a destination for safari tourists and part of the Great Rift, the tectonic seam that gave birth to humanity and will one day rend Africa in two. Kenyans often refer to the valley simply as the Rift, a nod not just to the millions of years of volcanic tumult that produced its magnificent landscape but also to the centuries of tribal warfare it has seen.

In December 2007, Eric, a day laborer now in his late 20s, who asked to be identified only by his first name, was living on the outskirts of Nakuru with his wife and young daughters, in one of the shanty neighborhoods tourists don't see. That month,

4

ARTICLES REMAINING

SUBSCRIBE NOW

Subscriber login

Kikuyu, Kenya's predominant tribe. His challenger, Raila Odinga, Kenya's foremost liberal provocateur, was a Luo, who historically were the Kikuyu's main rival for power. Odinga had assembled a broad ethnic coalition, capitalizing on resentment of the Kikuyu.

Nakuru was majority Kikuyu but had a sizable population of other tribes. As the election approached, Eric, a Luo, became anxious listening to his Kikuyu friends, who insisted Kibaki be returned to office at any cost. The Kikuyu had liberated Kenya from colonialism, they insisted, and the country was rightfully theirs. Other tribespeople were demanding the president be forced from power. "We were just agreeing with what they were saying," Eric told me, when I spoke with him recently. "We were afraid that if we did not, it would come to fighting."

After Kibaki was declared the winner, death squads led by members of the Kalenjin tribe loyal to Odinga's coalition set to massacring Kikuyu throughout the Rift Valley. Then men with a Kikuyu criminal gang, called Mungiki, began retaliating. Soon word came that the gang had arrived in Nakuru. "They came to revenge," Eric heard. By day they set up roadblocks, where they stopped civilians and murdered and raped them in plain view; by night they assailed homes.

Eric took his family to a displaced-persons camp next to the police station, but there was no food, so they left. He was asleep one night in early January when he heard voices outside his home. He got under his bed. A group of men entered and told him to come out.

"I'm Kikuyu," Eric said instinctively.

They demanded to see his identification. He said he'd left it at work. They spoke in the Kikuyu language to him, to see if Eric could answer. He knew only a few words. "*Asha*," he kept saying: No.

One of the men found Eric's ID. His family name is clearly Luo. The intruders began beating him. One asked if he was circumcised. (Circumcision is a Kikuyu tradition and point of pride.) Eric cried that he was. They tore his pants off.

“You lie!” they yelled.

“I pleaded with them,” Eric told me. “‘Leave my life, please. In God’s name.’ They could not hear that. They went ahead with their plan.”

A man forcibly circumcised him with a machete. Then they hacked at Eric’s arm and head until he lost consciousness.

The violence spread across the country. Though Kenya is among the most developed places in Africa, for two months, death and torture were meted out with machete, club and knife. People were dismembered, gang-raped, burned alive in homes and churches. Many men were, like Eric, forcibly circumcised. Kenya was brought to the brink of civil war. The official number of dead was between 1,100 and 1,200 by the end of February 2008, when international envoys brokered a truce, though Kenyan investigators say the real figure is probably much higher. Roughly half a million people were displaced; many never returned home. It was the worst crisis Kenya had faced since its fight for independence a half-century earlier.

In 2010, the International Criminal Court, the Hague-based tribunal created in 1998 to try the worst atrocities on earth — war crimes, crimes against humanity and genocide — announced plans to charge six Kenyans for orchestrating the postelection violence. The most important suspect was Uhuru Kenyatta; the son of Kenya’s first president, Jomo Kenyatta, he was considered by many Kikuyu to be their natural leader. The court’s chief prosecutor, Luis Moreno-Ocampo, sought to charge Kenyatta with five counts of crimes against humanity, for inciting murder, rape, forcible transfer of people, persecution and “other inhumane acts.”

During his tenure at the I.C.C., which ended in 2012, Moreno-Ocampo examined atrocities in a dozen countries and brought cases in seven. But the Kenyatta case has come to define the court and, many would say, has permanently discredited it. Moreno-Ocampo accused Kenyatta of suborning the Mungiki to kill innocent Kenyans, but he also believed Kenyatta’s crimes emerged from a tradition of impunity in Africa, one that would continue unless he stepped in. He saw prosecuting

Kenyatta as a way to change not just a country but an entire continent and, in some small measure, the world. “These were not just crimes against innocent Kenyans,” Moreno-Ocampo said at the time. “They were crimes against humanity as a whole.”

Kenyatta, now Kenya’s president, not only denied the charges against him but also called the I.C.C. “the toy of declining imperial powers.” It’s a view other African leaders increasingly claim to share. Today Kenya is leading a push at the African Union to abandon the court. In April, an African Union committee considered a plan to demand that heads of state be immune from I.C.C. prosecution, among other potentially crippling measures. At a summit conference next month in Rwanda, it will continue a discussion about collectively withdrawing from the court. With all but one of its open cases related to crimes in Africa, this would almost certainly relegate the I.C.C. to permanent irrelevance.

In October, I met Moreno-Ocampo at the InterContinental Hotel in Vienna to discuss the Kenya case. I found him in the lobby bar, slouched low in an ornate settee, in jeans and a black long-sleeve collarless shirt. Except for the MacBook Air propped in his lap, he looked like a detective in a 1960s French movie: mussed gray hair, bristling eyebrows, rakish trimmed beard. When I phoned to arrange the meeting, we (mostly he) talked for more than an hour. He was ingratiating, telling me, “You’re doing a very important story.” But in Vienna he was at first circumspect — he’d received word from colleagues that I was asking questions. He didn’t stand but extended a reluctant hand from the settee, nodded and smiled knowingly, as though we’d already met.

He soon relaxed, and we talked for most of the rest of the day. As our conversation grew more candid, he sank further into the settee, eventually almost lying down, his feet on a cushion. At one point Moreno-Ocampo, who is 64, took hold of his laptop and summoned YouTube. He pulled up a clip from a Kenyan comedy program called “The XYZ Show,” which lampoons figures in the news with puppets.

“Have you ever seen this?” he asked me. Moreno-Ocampo was a running character, and the real man adored the show. He turned up the volume, unconcerned about the other patrons looking over in annoyance, and laughed loudly. “Brilliant!” he

said. “Great.”

Moreno-Ocampo explained that argument was his birthright. His youth in Argentina was punctuated by coups that divided his family. He went to law school “because my country was a mess,” he said. In 1976, a military junta, claiming Argentina was in the grip of a Communist insurgency, took control. The junta, which killed, kidnapped or tortured more than 20,000 Argentines, counted among its members one of his uncles. After it was ousted, its leaders were put on trial. In 1984, Moreno-Ocampo, then in his early 30s, was made deputy prosecutor. (He indicted his uncle.) His performance in court established his reputation, though some Argentines were put off. Miriam Lewin, a journalist who was tortured and later testified, told me that while Moreno-Ocampo appreciated the momentousness of the trials, his idealism was undone by his arrogance. “Many survivors didn’t want to come forward and talk because they were afraid for their lives,” she said. “He didn’t seem to understand that.”

The junta leaders received stiff sentences, but in 1990 they were pardoned by a new president. “I was furious,” Moreno-Ocampo told me. “The trials were not just about the crimes. It was a way to change the country.”

Notions of human rights that transcend borders originate in antiquity, but the first international war-crimes tribunal, historians believe, did not take place until the 15th century. The first large and truly successful one was not until almost 500 years later, at Nuremberg. After the Cold War, human rights became a centerpiece of Western foreign policy, at least nominally, and in the 1990s, the United Nations Security Council set up criminal tribunals for the former Yugoslavia and Rwanda. Sierra Leone, Cambodia and Lebanon followed. In June 1998, diplomats from 160 countries gathered in Rome to discuss a permanent international criminal court.

African diplomats were particularly intent. On top of the genocide in Rwanda, the 1990s had brought civil wars or campaigns of systematized violence to the Democratic Republic of Congo, Uganda, Sudan, Sierra Leone, Liberia, Somalia, Algeria, Burundi, Niger, Ivory Coast and Chad. Atrocities were committed by officials who also controlled their countries’

justice systems. For its Western proponents, an international criminal court was largely a matter of conscience. For Africans, it was a way to fight impunity. “We wanted ways of enforcing good government in Africa,” Betty Murungi, a lawyer in the Kenyan delegation in Rome, told me.

When the court was formed, it was, one observer wrote, “an international epiphany.” It was also, it seemed, a great moment for Africa. Senegal was the first country to ratify the court’s founding treaty, the Rome Statute. Archbishop Desmond Tutu called the I.C.C. “Africa’s court.” Today, 34 of the court’s 124 member states are African, the largest contingent after Europe’s.

In 2003, after the I.C.C. received the 60 ratifications it needed to begin work, Moreno-Ocampo was appointed chief prosecutor and moved into the court’s offices in a white metallic tower in The Hague. Member states had the ability to refer atrocities within their borders if they felt they could not handle investigations, as well as to refer them in other member states. The Security Council could refer investigations anywhere. And Moreno-Ocampo had the power to open investigations without any referral if he could show an atrocity had been committed and wasn’t being redressed.

In one of his first speeches in The Hague, Moreno-Ocampo announced he was monitoring the violence in Congo and invited its government to make a referral. The Congolese president did so several months later. Then the president of Uganda, Yoweri Museveni, approached Moreno-Ocampo. Joseph Kony, whose Lord’s Resistance Army had torn apart northern Uganda, had proved uncatchable. Perhaps the I.C.C. might force him out of the bush? Moreno-Ocampo began investigations in both countries. He was pleased: His first two inquiries addressed major atrocities in Africa, the continent that most concerned him and human rights advocates, and each had begun by invitation.

For Uhuru Kenyatta, rule was a birthright. His father, Jomo Kenyatta, was imprisoned by the British colonial government during the fight for independence. After Jomo was freed and elected president of an independent Kenya in 1964, however, his revolutionary impulses didn’t persist. He stocked the government and businesses with family members and

fellow Kikuyu and “operated with little concern for the niceties of law,” the historian Charles Hornsby writes, “traveling with his inner circle from residence to residence like a medieval monarch.” Jomo’s portrait still adorns every denomination of paper money in Kenya, and his family is believed to be the country’s largest landholder.

After graduating from Amherst College in Massachusetts, Uhuru showed little interest in politics before 1997, when, in his mid-30s, he stood for Parliament and lost. In 2002, he ran for the presidency, on the strength of his name, and lost again. The man who beat him, Mwai Kibaki, had been a close friend of Jomo Kenyatta’s. Kibaki took Uhuru under his wing, later putting him in the cabinet and, it was clear, grooming him as his successor.

To many Kenyans, Uhuru — whose personal fortune, most of it presumably inherited, has been estimated at a half-billion dollars — embodies their country’s inequity. More than a quarter of Kenyans live on less than two dollars a day, according to World Bank estimates. So taken for granted are corruption and impunity that the country’s official and criminal classes are often indistinguishable.

Kenyatta’s rise coincided with the rise of Mungiki, the group Moreno-Ocampo would later accuse him of conspiring with in the postelection violence. Started as a tribal revivalist movement, Mungiki grew into a militaristic political fraternity and then into a criminal gang. Around the time Mungiki fought to take over the lucrative private bus lines that are the main form of transport in Kenya, in the early 2000s, the gang staged a massacre in northern Nairobi that left severed heads scattered in the streets.

By then, Mungiki was being described as a “state within a state,” with up to two million members, according to reports. They swore an oath of loyalty to the Kikuyu tribe and the Mungiki leader, a charismatic, ruthless man known as Maina Njenga. According to the I.C.C., new recruits “were told they would be killed if they violated the oath or left the organization.” When clashes broke out between Kikuyu and other tribes, Njenga dispatched his men to fight.

He also persuaded politicians to take the Mungiki oath. Paul Muite, a member of Parliament at the time and now a lawyer who represents Njenga and other members of Mungiki, which is still active, told me that almost every Kikuyu politician of consequence he knew during that era took the oath. For Njenga, it was “a way of collecting” power, Muite says. According to Muite and a former lieutenant of Njenga’s with whom I spoke, one of the politicians who took the oath, before becoming president, was Kibaki.

Some Mungiki members, including Njenga, supported Kenyatta’s 2002 presidential campaign. Kenyatta denounced the group and would later tell Moreno-Ocampo in court that “I have always publicly condemned and stated that I have no association whatsoever with Mungiki.” Njenga’s former lieutenant, however, described to me a series of meetings he attended with Kenyatta and Njenga in 2002, saying that Kenyatta was friendly with Mungiki. But, he added, Kenyatta didn’t like or trust Njenga.

In the 2007 election, Kenyatta did not run, instead supporting Kibaki in his race against Raila Odinga. By the close of Election Day, two days after Christmas, the vote was too close to call. The count was delayed. The tally center in Nairobi was mysteriously broken into. Then on Dec. 30, the government suddenly announced Kibaki had won. He was hurriedly sworn in, and a media blackout was imposed. Odinga instructed his followers to protest. By New Year’s Day, Kikuyu were being slaughtered. Mungiki began striking back in January.

The government did little to stop the postelection violence, but afterward, it set up a commission of inquiry. Known as the Waki Commission, it issued a 529-page report in October 2008. The Kenya National Commission on Human Rights, an autonomous government agency, published a comparably exhaustive report. Each was damning. Officials in Odinga’s party had planned violence months in advance, while envoys of President Kibaki met with Mungiki to plan retaliatory attacks. Security agents and the police had conspired with the gang. “There were no good guys,” a Waki commissioner, Pascal Kambale, told me. “There were only bad guys.”

Moreno-Ocampo, who monitored the violence as it was happening, traveled to Nairobi to speak with Kibaki. He encouraged Kibaki to refer Kenya to the I.C.C., as Congo and Uganda had made referrals. Government capacity wasn't the problem, Moreno-Ocampo knew. Kenya was capable of trying the suspects. The problem was as it had been in Argentina: The government was the criminal. And not only the government. The National Commission on Human Rights report listed more than 200 suspected inciters and funders of the violence, including presidential cabinet members, legislators, businessmen, shopkeepers, farmers. In a moment of collective insanity, Kenyan society had turned on itself.

Still, Moreno-Ocampo continued to press Kenyan officials to begin prosecutions. In 2009, the Kenyan Parliament voted against a tribunal — unsurprisingly, as the Parliament itself was full of suspects — and Moreno-Ocampo requested that the I.C.C. judges allow him to open an investigation. They did. It was the first time he invoked his power to seek charges on his own authority, without a referral.

The challenges were considerable, he knew. It was one thing to investigate militias at the invitation of a government, but quite another to investigate a government. Yet Moreno-Ocampo felt this was what the I.C.C. had been created for — to fight impunity. “This is a different kind of case,” he told *The Times* in 2010. “This isn't about militias. It's about politicians and political parties. It's about investigating leadership.”

Polls showed a majority of Kenyans approved of the I.C.C.'s intervention. An editorial in *The Nation*, Kenya's main daily newspaper, said, “No one has ever come as close as [Moreno-Ocampo] to slaying the dragon of impunity in Kenya.” On the buses of Nairobi, where operators compete for fares by adorning their vehicles with icons — Jesus Christ, Tupac Shakur, Arsenal forwards — Moreno-Ocampo's face appeared.

The I.C.C.'s preliminary examination in Kenya was based largely on the work of the Kenyan commissions. Each had heard testimony that Kenyatta was at meetings with Mungiki. The Waki report didn't name Kenyatta, but the National Commission on Human Rights report did, saying that he reportedly “attended meetings to plan for retaliatory violence by the Kikuyus” and

“contributed funds.” Kenyatta was considered by many Kikuyu, including many Mungiki, to be their leader, and was understood to be the richest man in the country. If anyone had the motivation and funds to back an ethnic war, Moreno-Ocampo’s investigators reasoned, it was Kenyatta.

Moreno-Ocampo had by now built important cases in Uganda, Congo, Central African Republic and Sudan. “The world’s prosecutor,” as he was dubbed, seemed to be everywhere: magazine spreads, cable news, Davos. His critics complained that he thrust himself into the limelight, and they had a point — he allowed four different feature documentary crews access to The Hague — but even they couldn’t deny that he put the court on the map.

By the time the preliminary examination in Kenya began, however, the other cases had stalled. Only one trial, that of the Congolese warlord Thomas Lubanga, was underway. The court’s lack of political and prosecutorial powers were partly to blame. The United States, China and Russia had refused to join it. George W. Bush openly tried to cripple it by, among other things, demanding immunity for Americans. And Moreno-Ocampo had none of the prosecutorial resources — subpoenas, surveillance, policing — available to his domestic counterparts. Alex Whiting, a onetime federal prosecutor in Boston who became Moreno-Ocampo’s prosecutions coordinator, told me the Kenyatta case “was like trying to prosecute an organized-crime case without the tools the Department of Justice uses to prosecute organized crime” — though, for this reason, Moreno-Ocampo’s temperament was an asset. “You have to have a big ego, because you don’t have much else.”

But Moreno-Ocampo himself may have been the greatest obstacle to the court’s success, members of his staff told me. They didn’t question his devotion — he often worked seven days a week, closely managing every case — but increasingly they questioned his judgment, which seemed always caught between that ego and his idealism. He inspired fierce admiration and dislike, sometimes in the same people. One attorney, who resigned because he couldn’t stand Moreno-Ocampo, nevertheless lauded the prosecutor’s commitment. Another, whom Moreno-Ocampo reduced to tears in meetings, defended him to me adamantly. When the journal *World Affairs* published a critical profile of Moreno-Ocampo, one former staff member attacked another in the online comments section.

In Vienna, I heard Moreno-Ocampo express remorse only twice. Once was when I asked about the atmosphere in The Hague. “It was a mess,” he acknowledged. “I fought with all of my guys, because I was involved in everything. That’s the problem: All of us were totally emotionally involved. If not, you’re not there.”

A larger problem was his vision of the court’s mission. He believed in the pre-emptive power of prosecution — “the shadow of the court,” as he liked to call it. In his inaugural address in The Hague, Moreno-Ocampo said the court’s success would be measured not by how many cases it tried but by how few. One investigator I spoke with said Moreno-Ocampo seemed to see the I.C.C. not as a forensic body so much as a “naming and shaming” organization, like Human Rights Watch or Amnesty International. And while it was true that the court’s small budget limited the size of his investigations, he was, some say, already more interested in prominence than evidence. A former court attorney told me: “He would see the leader of a state and say: ‘There must be evidence out there. Go get it for me.’ ”

The investigation in Congo began calamitously. Bernard Lavigne, formerly a French domestic prosecutor, became Moreno-Ocampo’s first lead investigator in Congo. “We accumulated a lot of information about one militia,” Lavigne told me. “Then suddenly, because of a political decision by Luis or his political committee, we were obliged to change our planning and our investigative work and concentrate on a new target. It was completely crazy. ... We put in danger a lot of people.” The case Moreno-Ocampo brought against Lubanga, for recruiting child soldiers, “barely scratched the surface of the conflict,” Paul Seils, the first director of Moreno-Ocampo’s preliminary-examination unit, says. Moreno-Ocampo removed the lead attorney weeks before the trial commenced and clashed with the presiding justice, who accused him of trying to undermine the judiciary and pervert the Rome Statute.

In conversation, Moreno-Ocampo has a habit of ignoring criticism. It’s unclear if this is confidence or evasion. When I asked him about the censure, he described that judge as “brilliant” and “great.”

After the United Nations Security Council referred the atrocities in Darfur to the I.C.C. in 2005, the court charged President Omar al-Bashir of Sudan with crimes against humanity, war crimes and, later, genocide. The judges issued an arrest warrant. There is little question Bashir is guilty of the first two charges. He could be guilty of genocide too, but the court's investigation was not the best proof of it. An attorney involved told me the prosecutor's office did little independent work: Investigators never went to Darfur. When I brought this up, Moreno-Ocampo said: "Sometimes some of the lawyers are not going to understand the case. I'm sorry for them."

Bashir was not popular in Africa, but he was the first head of state the court charged. This made other leaders, especially those accused of atrocities, nervous. It also vexed African Union diplomats who were trying to broker a peace in Darfur. (Muammar el-Qaddafi, whom the court would later charge with war crimes in Libya, was at the time the African Union's chairman.) In 2008, the African Union passed a resolution that said charging African heads of state was an affront to the "sovereignty and integrity of the continent." Bashir called the I.C.C. a "colonial court." Self-serving though his position was, it caught on. Complaints about the I.C.C.'s "Africa bias" piled up.

Unbowed, Moreno-Ocampo pushed on in Kenya. In December 2010, he announced the suspects he wanted to charge. For the first wave of postelection violence, he named the chairman of Odinga's party and Joshua Arap Sang, a radio host who had broadcast anti-Kikuyu hate speech. A member of Parliament, William Ruto, was accused of being the ringleader. For the second wave, committed by Mungiki and the police, he named Kibaki's cabinet secretary, Francis Muthaura; the commissioner of police, Gen. Mohammed Hussein Ali; and Kenyatta.

Before announcing the suspects, Moreno-Ocampo met with Kenyans including investigators and lawyers at the Serena Hotel in Nairobi. The lawyers approved of his desire to combat impunity and prevent political violence during the next election in Kenya. But they warned him that Kenya wasn't Sudan or Congo. Its politicians were just as ruthless but more sophisticated. The suspects would try to kill the cases and discredit the I.C.C. So would President Kibaki's government. Kenyatta, elevated to deputy prime minister after the postelection violence, was his protégé. "They're going to fight back very,

very hard,” James Gondi, a Kenyan lawyer who had interned at the I.C.C., told Moreno-Ocampo. But the prosecutor seemed unconcerned. He pointed out that he’d put away generals in Argentina.

Later, some questioned whether Kenyatta was as culpable as the case against him claimed. George Kegoro, the Waki Commission secretary, told me that when Kenyatta was questioned by the commission, he “saw himself as a peacemaker.” Pascal Kambale, the Waki commissioner, said that “irrespective of Kenyatta’s involvement, Mungiki was going to do what they did.”

In the I.C.C. system at the time, the prosecutor’s office collected enough evidence for the court to hold pretrial hearings, in which the judges would decide whether there were sufficient grounds to confirm the charges. If they did, the cases proceeded. This gave defendants ample time to destroy evidence and interfere with witnesses, a recurring problem.

By the time Moreno-Ocampo’s team got moving in Kenya, more than two years had elapsed since the postelection violence. Their investigation, which would go on for over four years, was far more rigorous than those in Congo or Sudan. They interviewed hundreds of victims and suspected perpetrators. But many witnesses who had opened up to the Kenyan commissions were no longer willing to speak.

Faced with a dwindling pool of evidence, Moreno-Ocampo’s team approached General Ali’s attorney with a possible offer: If Ali testified against Kenyatta and Muthaura, the charges against him might be dismissed. The Kenyan commissions had gathered strong evidence against Ali, but circumstances had changed. The attorney general had forbidden the police to speak to the I.C.C. According to Kenyan investigators with whom I spoke, other police officers who were involved in the violence had been killed. Ali turned down the offer. The judges didn’t confirm the charges against him. The prosecutor’s office later withdrew the cases against Muthaura and Odinga’s party chairman.

There was one group willing to help the court: Mungiki. Many gang members were gone — “killed or forcibly disappeared in an apparent cleanup operation,” the prosecution claimed — but some were still alive and willing to testify. Especially crucial

were three confidential Mungiki “linkage” witnesses. One claimed he saw Kenyatta at meetings where attacks were planned; another, that he was told of these meetings, though he wasn’t present; and a third, that he met with Kenyatta beforehand to discuss violence.

The case hinged on these men. But some people in the prosecutor’s office worried about their reliability. Kenyatta’s attorney claimed in court that the first two witnesses tried to extort him in exchange for information that could aid the defense, and when he refused, threatened him. He showed little evidence of the claim, but neither did the prosecution dispute it. (“It strikes me as entirely plausible,” Benjamin Gumpert, an I.C.C. lawyer who worked on the Kenyatta case, told me.) Kenyans who knew the third witness, meanwhile, not only doubted his account but also questioned whether he was in Mungiki. Maina Njenga’s former lieutenant says the witness was never in the gang. There were arguments in The Hague over whether to use him. The former court attorney told me it appeared the man would say anything to get into the court’s protection program. But the case against Kenyatta was too thin to sacrifice him.

Moreno-Ocampo admitted to me that the evidence against Kenyatta was not as strong as he would have liked. But all he had to do for the moment was get through the pretrial hearings. After that, more evidence could be found. And he had a card up his sleeve: Maina Njenga.

Moreno-Ocampo’s team had considered charging the Mungiki leader. Instead, they had turned him. When Njenga was questioned by Kenyan investigators, he pleaded ignorance. But to the I.C.C. investigators, he came clean. He detailed the structure of his organization and its role in the violence. Njenga claimed to his lawyer, Paul Muite, that he had personally administered the Mungiki oath of loyalty to Kenyatta, though whether Njenga told this to I.C.C. investigators is unclear. Njenga was “very forthright,” Muite told me, and he later agreed to testify in The Hague.

Moreno-Ocampo cross-examined Kenyatta on Sept. 29, 2011. Kenyatta had traveled to The Hague with supporters, who filled the public gallery of the windowless blond-wood courtroom. Kenyatta was not required to attend the hearings, nor

to testify, and some Kenyans had encouraged him to skip them in order to spite Moreno-Ocampo. But he had a good reason to go: He intended to run for president, and he would use the trial as a campaign set piece, styling himself as a patriotic victim who had taken the fall for his sinister political opponents and been attacked by arrogant foreigners.

At first Moreno-Ocampo had been popular in Kenya. Once the charges were announced, however, tribal ranks closed. The defendants stoked fears of ethnic persecution. Privately, proxies did worse. “People would come in knocking on the door at night and say, ‘We know that your son is with the I.C.C.,’” Phakiso Mochochoko, who ran witness protection for the I.C.C., told me. “‘We’re going to burn down your house tomorrow.’” Witnesses and court personnel were exposed. The court’s Kenyan outreach coordinator received death threats. One victim’s attorney in the Kenyatta case left the country for his safety. Mochochoko says, “We have never had a case with this level of threats, directed not only at witnesses but anyone perceived to be witnesses, or perceived to be cooperating.”

But some of the indignation was genuine. There was a gulf of understanding between the court and Kenya, one Moreno-Ocampo, whose political guile was undercut by his political tone-deafness, never quite grasped. The court’s very mission involves trying atrocities that stem from cultural conflicts whose nuances its lawyers and judges, from their remove in The Hague, can’t hope to fully appreciate. “I’m not at all sure that international courts really are set up to understand the realities of the conditions they’re investigating,” Paul Seils, of Moreno-Ocampo’s preliminary-examination unit, told me.

Many Kenyans didn’t see why so few should stand trial for a social upheaval caused by so many. They thought the defendants were guilty and were proud of them for it. Kikuyu believed Kenyatta had protected them in a tribal war. Non-Kikuyu felt the same of William Ruto. And the Kenyatta case in particular had unsettling reverberations. Kenyatta’s father had been tried by the British for leading Mau Mau freedom fighters, most of them Kikuyu, whose rebellion in the 1950s precipitated Kenya’s independence. (Mungiki traces its origin to these guerrillas.) The court had no sound evidence against the elder Kenyatta, who denied any connection to Mau Mau. He was convicted anyway. Now his son was facing eerily similar accusations. For many Kenyans, the trial felt like a return to colonialism. Indeed, after the I.C.C. defendants were named, they

came to be known in Kenya as the Ocampo Six, a reference to the Kapenguria Six, the group of suspects that included Jomo Kenyatta.

Uhuru Kenyatta knew he could portray his trial as a heroic struggle — but only if he upstaged Moreno-Ocampo in the cross-examination, which was being broadcast live on Kenyan television.

For his own part, Moreno-Ocampo had debated whether to question Kenyatta himself. He had never interrogated a witness in the Hague courtroom. He decided to go ahead only days before the hearing. “I could not delegate,” he told me: The case was too important. His preparations were bafflingly scant. When I asked how long he took to learn about Mungiki, the crux of the case, Moreno-Ocampo replied breezily: “Me? Two hours.” His staff was worried but knew protest was pointless.

As Moreno-Ocampo rose to begin the questioning, Kenyatta’s face stiffened. The prosecutor hadn’t been speaking long, however, when his team, next to him in the prosecution box, sensed something was wrong. Their boss was uncharacteristically awkward and hesitant. His queries were aimless. Kenyatta fended him off at every turn. He blamed Raila Odinga for the postelection violence and wedged in righteous speeches. “Ultimately, violence does not help any particular situation, whether you are aggrieved or not,” he said.

Some members of Moreno-Ocampo’s team grew nervous. One member put his hands to his face; another shifted in her chair. This is just embarrassing, one thought. At one point Moreno-Ocampo, seeming desperate for the defendant’s help, asked: “So you have no information about the violence in detail?”

Fifteen minutes in, Kenyatta, cottoning to Moreno-Ocampo’s lack of preparation, relaxed in the stand. After Moreno-Ocampo asked a particularly ill phrased question, a wry smirk overtook the defendant’s face. Looking at the judges, he said, coolly, “I think the prosecutor does not understand our system.”

Moreno-Ocampo gained his footing halfway through the 45-minute session, when he asked about the cash payments Kenyatta had reportedly made to Mungiki. Kenyatta scoffed, but then overstepped, saying: “I wish I did have that amount of money.”

Moreno-Ocampo knew this was preposterous: Kenyatta is among the wealthiest men in Africa. He had an opening. “Can you describe to the court the amount of your patrimony?” Moreno-Ocampo asked.

Kenyatta chuckled and looked at the judges. “I did not understand what he has just asked,” he said.

Moreno-Ocampo, flustered, repeated the question: “Can you describe to the court the entirety of your patrimony? How much money you have?” The presiding judge frowned and told Moreno-Ocampo to move on.

When I asked Moreno-Ocampo about the cross-examination in Vienna, he responded tersely. “I took my decision, and I know why I did it,” he said. “I don’t think it was a big difference.” He commended Kenyatta’s performance, calling him “courageous” and “great.”

He never confronted Kenyatta with Maina Njenga’s statements. When I asked why, Moreno-Ocampo told me it would have been irresponsible. “I didn’t think I should expose Maina Njenga,” he said. “I cannot protect him.” There had already been multiple attempts on Njenga’s life. Many followers had been killed, as had his wife. It was clear that powerful people wanted him dead.

Though the charges against Kenyatta were confirmed, he had shown himself to be the defender of Kenya, its rightful president. Older Kenyans were reminded of the commanding performance his father gave in a courtroom a half-century earlier. He officially declared his candidacy after returning from The Hague. A campaign spokesman said Kenyatta was “anointed by God to lead the people.” A Nation editorial said he deserved the Nobel Peace Prize for ending the postelection violence.

The I.C.C. chief prosecutor's term is nine years, and in 2012 Moreno-Ocampo left the court. "For me, it was an honor and a pleasure to serve the Kenyan people," he said in his final news conference. The Kenya cases were important to him personally, "to do justice for the past" and "to be sure that the next elections are peaceful."

The presidential election in March 2013 pitted Kenyatta against Raila Odinga. It was peaceful. Kenyatta won, with William Ruto as his running mate. It was assumed that they detested each other — Ruto, a member of the Kalenjin tribe, was formerly a close ally of Odinga's and faced almost identical charges at The Hague as Kenyatta, only for ordering the deaths of Kenyatta's tribesmen. But in running together, they had an unbeatable, if hugely cynical, message: hatred for the I.C.C. and, by extension, the West. "Kenyatta didn't have some grand electoral strategy," a campaign adviser to Kenyatta's party, Peter Kagwanja, told me. "Today, if you want to win an election in Africa, you just have to have the West bash you."

Kenyatta invited President Yoweri Museveni of Uganda to speak at his inauguration. Nine years earlier, Museveni asked the I.C.C. to prosecute the Lord's Resistance Army, and the prosecutor's office had built its best cases against Joseph Kony and his deputies. (One of them, Dominic Ongwen, is currently awaiting trial in The Hague.) But in his speech, Museveni, who was marking his 28th year in power, congratulated Kenyan voters for rejecting "the blackmail" of the I.C.C., which the West used "to install leaders of their choice in Africa and eliminate the ones they do not like."

Kenyatta and Ruto's alliance surprised Moreno-Ocampo. He knew they were smart, but "I never suspected they were so smart to create the ticket." Once they won, the Kenya cases disintegrated. It had emerged that in 2009, the third key witness against Kenyatta, who claimed to have discussed violence with him personally, had been tracked down by two Kenyan men in California. They recorded a video in which he went back on his testimony. After the election, the prosecutor's office dropped him. Several months later, the first two witnesses withdrew from the case. According to the prosecution, all three men were bribed. Paul Muite, who represents the first two witnesses, told me he believes this is true. There are now witness-interference cases pending at The Hague against three Kenyans. Muite added that even if they were paid off, the witnesses can never return to Kenya. Once the government "knows you're a witness, you have literally signed your death warrant," he said.

When countries join the I.C.C., they agree to submit their highest officials, even their presidents, to prosecution if the occasion arises. The Kenyan government showed early on it had no intention of meeting this obligation. At the United Nations, its diplomats lobbied, unsuccessfully, to have the cases suspended. The Kenyan Parliament voted to abdicate the court. Requests for information went unanswered. The attorney general refused to turn over phone, land and asset records of Kenyatta's. One man who was investigated (though not charged) by the I.C.C. for trying to expose witnesses, Dennis Itumbi, now works in Kenyatta's office. (Kenyatta's office did not respond to requests for comment for this article.)

In December 2014, the I.C.C. withdrew the charges against Kenyatta. A news release blamed unreliable witnesses and the Kenyan government's obstruction. In response, Kenyatta tweeted: "As they say, one case down, two more to go." In April of this year, the cases against Ruto and Sang were vacated.

The Kenyatta case could technically be reinitiated, but it's difficult to see that happening. The prosecution tried to recruit new Mungiki witnesses but couldn't. People who had tried to help the court, like George Kegoro, the Waki Commission secretary, no longer trust it. Kegoro told me Moreno-Ocampo never seemed to appreciate the chances he and other Kenyans took. "They put a lot of people at risk," he said. "Living as I do here, the best thing is to keep off someone like Ocampo."

Moreno-Ocampo now divides his time between Buenos Aires and New York, where he practices at the firm Getnick & Getnick. After a decade in the spotlight, he has disappeared from view. Today it is hard to find anyone working in international justice to speak well of him. "He rushed into something in the belief it would give him publicity and credibility," Cherif Bassiouni, an international lawyer and one of the drafters of the Rome Statute, told me of the Kenyatta case. "Instead he created a now almost impossible situation which has discredited the court."

Even at The Hague, I found few people willing to defend Moreno-Ocampo. "There's perhaps a risk," the trial attorney Benjamin Gumpert said, "when you are concentrating first and foremost on the message a case is going to send, that more technical considerations, like are we actually going to convict this person, may feel more subsidiary."

Moreno-Ocampo says he did everything he could to convict Kenyatta, but he didn't dispute Gumpert's characterization. The message a case sends, the shadow of the court — that was the goal. The problem with courts, Moreno-Ocampo told me, is they "believe the trials are the most important things. No. The most important thing is the prevention of crime." He had set out to prevent future political violence in Kenya, and in this sense at least, the Kenyatta case was a success. "The suspect became president. But there was no violence in the elections."

Kenyatta doesn't look at it that way. In a speech to the African Union after his inauguration, he said, "The West sees no irony in preaching justice to a people they have disenfranchised, exploited, taxed and brutalized." His efforts to banish the I.C.C. from Africa are backed by a growing list of African leaders. Among the most vocal, aside from Museveni, are the presidents of Zimbabwe and Rwanda, and, of course, Omar al-Bashir. That all of these men have been accused of atrocities of their own is not coincidental. But even President Jacob Zuma of South Africa, which was once the court's main advocate in Africa, has joined the chorus.

What Kenyatta did not mention in his speech is that four of the court's 18 judges are African, as is almost a fifth of its staff. Moreno-Ocampo's successor as chief prosecutor, Fatou Bensouda, is Gambian and has been trying to mend the court's relationship with the African Union. In The Hague, I asked her if she was troubled that almost all her cases concern Africa.

"No," Bensouda replied. "I am an African, and a proud African for that matter. I love my continent dearly. But I cannot sit here and tell you that I'm not concerned about the trouble that my continent is in for the past I don't know how many years. I'm very troubled by that."

In Vienna, I told Moreno-Ocampo about Eric, the man attacked by Mungiki in his home. The day after the attack, Eric woke up in a Nakuru hospital to find that half of his left arm had been amputated. His head was slashed. His wife explained that, while he was being tortured, she and their daughters hid in a cupboard in the bedroom. Police officers rushed to their home and took the family to the hospital, where they lived for weeks, because it was too dangerous to leave.

They traveled across the country to the home of Eric's mother, who still supports them. Eric can't find work. Hoping for some compensation, he joined the case against Kenyatta. I asked him what he thought when he learned the case had been withdrawn. "I have not seen any justice," he said.

The second time I saw Moreno-Ocampo express remorse was when I told him this.

"It's awful," he said, his face dropping. "I remember a lady in [Kenya] who, the only hope for her was us. And now I imagine how bad she felt. That I feel badly about."

The former lieutenant of Njenga's, like many Kenyans I've spoken with, says he regrets the violence but believes it was necessary. The Kikuyu, his tribe, faced a massacre, he is convinced.

The last time we met, I asked if he thought Kenyatta was guilty of the I.C.C. charges. He recounted a meeting he attended in January 2008, in the midst of the postelection violence, where Kenyatta was the chief guest and Mungiki were present. In the meeting, Kenyatta was careful never to mention violence explicitly nor the gang by name. But he collected cash donations. I asked the former lieutenant if it was possible Kenyatta did not understand violence was being planned.

"No," he said, "it is not possible."

I asked again.

"No," he repeated. "With capital letters."

James Verini is a writer based in Africa.

Sign up for our newsletter to get the best of The New York Times Magazine delivered to your inbox every week.

A version of this article appears in print on June 26, 2016, on Page MM44 of the Sunday Magazine with the headline: The Prosecutor and the President.