

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



Prosecutor Brenda Hollis addressing her audience during yesterday's prosecution outreach at Magburaka. See more photos in today's *Special Court Supplement*.

## **PRESS CLIPPINGS**

**Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office  
as at:**

Thursday, 2 December 2010

Press clips are produced Monday through Friday.  
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# No Protection

## *Special Court Witness complains*

**A** Prosecution witness who gave evidence in the Special Court trial of Charles Taylor is complaining that he now has no protection and is under threat.

*By Jay Willie*

The Protected Witness TFI 375 says he has been abandoned by the Special Court and that they do not even know where he lives, talk less of giving him protection.

"I am a Sierra Leonean who was convinced to give evidence against Taylor because I was abducted and taken to him and knew all what was happening in Liberia between Taylor and the RUF. When the Special Court drafted me as a witness, they promised to protect me and my family and to relocate me somewhere else, so that I would not be under any threat, but now they have abandoned me. They are being partial because I am a Sierra Leonean while the Liberian witnesses who did not play such a key role as I did in the Prosecution's case have been granted asylum in Europe. Now I am in Freetown living somewhere and these people have been promising to do something since 2008

but they have done nothing about protecting my status. I feel betrayed by all this after giving them my full cooperation. They have not been fair to me," TFI 375 told Premier News from his hideout.

"I will not lie about what they have done and not done. They gave me money about Le21m cash and they also gave me money to go and seek out my family in Liberia, but since then they have not lifted a finger to help protect me. Now all I'm asking for, is for them to keep their promise to me, just as they did to the other witnesses especially the Liberians.

Some of them with whom we were conscripted together are now far away in safety from this place but I am left unprotected and in fear of my life. That is no way to treat somebody who sacrificed so much to help the cause of justice. They told me that it was for the good of Sierra Leone but now I am beginning to think otherwise," he said. "If they don't treat me fairly, I am going to tell the World

the whole truth about the witness programme," he said. Premier News tried speaking to officials of the Witness Victim Services in the Special Court but they said they will have to talk to their bosses before getting back to us.

However, Peter Anderson in the Public Affairs Section told Premier News that he can only speak generally on the witness programme because at the moment he was not in the office and was in the provinces.

He however stated that the Witness Victim Service does not just send all witnesses abroad because that would sound like corruption.

"They take them on a case by case merit and evaluate the extent of threat that the witness is under. If the witness can live among people without threat, they are left to carry on their lives," he stated.

"It would be a mockery of the whole justice system if we are to compensate witnesses," Peter Anderson went on.

"I do not know the specific witness you are talking about but I will find out when I get to the office and give the full story," he promised.

Voice of America

Wednesday, 1 December 2010

## ICC Official Arrives in Kenya for Reconciliation Talks

Michael Onyiego



**Photo: AP**

*Former UN Secretary General Kofi Annan, left, talks with ICC Chief Prosecutor Luis Moreno-Ocampo, right, during the opening of the Review Conference of the Rome Statute of the International Criminal Court in Kampala, Uganda, May 31, 2010 (file photo)*

International Criminal Court Prosecutor Luis Moreno-Ocampo is in Kenya as the country anxiously awaits his warrants for the masterminds of the country's post-election chaos.

As he winds down his investigation into the post-election chaos that rocked Kenya in 2008, Moreno-Ocampo arrived in Nairobi Tuesday evening to participate in a discussion on the country's reconciliation process.

The discussion, lead by former U.N. Secretary General Kofi Annan, who mediated Kenya's peace deal in 2008, will address the country's implementation of the provisions outlined in the deal, as well as the pace of reforms since 2008.

There has been building anticipation for Ocampo's presentation of his case to The Hague. He has previously stated he would issue arrest warrants at some point in December.

The prosecutor has promised to pursue justice for the victims of Kenya's violence.

"Crimes happened here," said Ocampo. "People were killed, there was rape, houses were burned; that happened. There are some allegations someone was involved. This is not about political parties, this is not about political responsibilities, this is about criminal responsibilities. That is my job."

Ocampo's interest in the post-election chaos began in late 2009 when Mr. Annan sent him the findings of the Waki Report, an investigation launched by a local commission into the violence. The findings were handed to the prosecutor after

Kenya failed for nearly two years to pursue those responsible. Ocampo has revealed he would pursue two cases against three individuals each when he presents his findings to The Hague.

Since the launch of his investigation in March, there has been wide speculation as to who might be targeted. Some politicians who were mentioned in the Waki Report worried they might be unfairly targeted.

Ocampo responded to such criticism by secretly inviting the targets of his investigation to give statements in the Netherlands. In a surprise move, former Higher Education Minister and 2012 presidential hopeful William Ruto flew to The Hague in November in order to "set the record straight."

While many Kenyan's hope for justice, there also is worry that the country's prominent political figures will be protected from arrest.

President Mwai Kibaki and Prime Minister Raila Odinga have both assured the international community of their intention to cooperate, but Kenya has sent mixed signals in recent months, twice inviting wanted Sudanese President Omar al-Bashir to the country.

Kenya failed to arrest Mr. Bashir when he attended the promulgation ceremony for the country's new constitution, provoking the ire of the Court and the international community alike.

More than 1,000 people were killed in the two months following the December 2007 presidential election. President Kibaki and then-rival Raila Odinga accused each other of fraud, sparking ethnic clashes across the country. More than 300,000 people were displaced by the violence, many of who remain without homes to this day.

The Associated Press  
Wednesday, 1 December 2010

## **ICC witnesses of Kenya's chaos in hiding found**

By TOM ODULA

NAIROBI, Kenya -- A lawyer for a former government minister being investigated by the International Criminal Court said Wednesday he has contacted witnesses who had been protectively moved to a neighboring country, the second time witnesses in hiding have been exposed.

Charles Koech, a lawyer for former minister William Ruto, said he spoke to witnesses who had been moved to Tanzania by the ICC's witness protection program and will soon travel there to get sworn statements.

Koech said the six witnesses told him they want to withdraw statements they made to the ICC implicating Ruto in the violence after Kenya's disputed 2007 election. The witnesses claim they were coached, Koech said.

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The ICC is expected to issue indictments against several top Kenyan leaders later this month.

Koech said the most serious allegations by one of the witnesses was that Ruto purchased 3,000 guns and distributed them to members of his Kalenjin ethnic group to kill members of the Kikuyu community. A second allegation is that Ruto purchased petrol that was used to burn a church where at least 100 Kikuyus sought refuge, Koech said. At least 35 people died in that fire.

"The six witnesses in Tanzania have been in constant touch and they are willing to come home," Koech said. "They are apprehensive about their communities' reaction for giving information."

More than 1,000 people died in Kenya's 2007-08 postelection violence after President Mwai Kibaki was declared the winner of the hotly contested poll. Initial violence pitted other ethnic groups against Kibaki's Kikuyu people. Later Kikuyus attacked other tribes and police shot dead scores of protesters.

The breach of the ICC witness protection program follows a statement made by ICC prosecutor Luis Moreno Ocampo two weeks ago that he is aware of attempts to intimidate or bribe potential witnesses and has informed Kenyan authorities.

Moreno Ocampo has said previously he will not use testimony from three witnesses in Kenya who have already recanted their statements. Those three witnesses are also represented by Koech.

The three men were being kept in a witness protection program in Kenya run by the government-funded Kenya National Commission on Human Rights. The three claimed that they recorded statements against Ruto after they were bribed and coached by an official of the commission.

The commission denied the allegations and said what three men were referring to as bribes are standard rent and stipend payments made to protected witnesses.

Moreno Ocampo flew to Nairobi Tuesday to review progress made by the government to implement key reforms that were part of peace deal signed to end the violence and prevent a repeat in the next presidential election in 2012.

Moreno Ocampo has said he believes what happened during Kenya's postelection violence constitutes crimes against humanity.

A civil rights activist in Kenya, Okioti Omtata, said the fact that a lawyer managed to find witnesses in a protection program and contact them revealed the weakness of the program.

"Basically this says this (program) is porous and if they were taking this thing seriously they would have taken these people beyond Tanzania, like somewhere in the United States," said Omtata.

Last week the U.K. government said it is concerned about reports of witness intimidation and official interference in the ICC probe of Kenya's postelection violence and gave about \$312,000 to the Special Fund of the Court on Relocations. The money is earmarked for relocations of people at risk in Kenya.

## Human Rights Watch

Thursday, 2 December 2010

### **ICC: Keep Pledges to Strengthen International Justice**

#### States Should Use Annual Session to Build on Kampala Conference

(New York, December 2, 2010) – Member states of the International Criminal Court (ICC) meeting for the first time since the ICC review conference in Kampala in May and June 2010, should make good on their promises to increase their commitment to international justice, Human Rights Watch said today.

Human Rights Watch called on governments to pay special attention to strengthening cooperation with the ICC and increasing assistance to national jurisdictions to prosecute genocide, crimes against humanity, and war crimes. The annual session of the Assembly of States Parties will begin on December 6 at the United Nations headquarters in New York. The 114 member countries, including three new members, will take part.

"ICC members should build on the important foundation laid in Kampala," said Elizabeth Evenson, senior international justice counsel at Human Rights Watch. "This meeting of states parties is the time for governments to take new concrete action to ensure that those responsible for the worst international crimes face justice."

The review conference in Kampala was mandated under the Rome Statute, the treaty that created the court. The conference was required seven years after the statute went into effect in 2002 to consider amendments to the treaty.

The ICC relies on governments to enforce its decisions and assist its investigations and prosecutions. A backlash over the court's arrest warrants for President Omar al-Bashir of Sudan has underscored the importance of strong public backing for the court's mandate, Human Rights Watch said. Human Rights Watch called on member states to bolster their joint efforts to secure cooperation by creating a permanent working group on cooperation within the Assembly of States Parties and by appointing a facilitator to increase expressions of commitment to the ICC's mandate in UN debates.

"ICC member states should redouble their efforts to support the ICC and one another in their cooperation with the court in the face of continued opposition by al-Bashir and his allies," Evenson said. "They should equip themselves to make the most of opportunities that arise at the UN General Assembly and Security Council year-round."

The ICC should also increase its engagement with the African Union, and member states should make sure that happens, Human Rights Watch said.

At the review conference, nearly 40 countries made specific pledges of concrete, increased assistance to the court. Human Rights Watch urged governments to report on progress in carrying out these pledges and to make new pledges of support during the December meeting.

Human Rights Watch also urged governments to strengthen the Assembly of States Parties' capacity to promote joint efforts to improve national-level trials of ICC crimes. The ICC only acts in cases in which national courts are unable or unwilling to hold credible trials at home, and its reach is limited to a handful of cases. The central role of national courts in holding all perpetrators of the worst international crimes to account received heightened attention in discussions at Kampala.

"ICC members recognize that impunity for the worst crimes must also be fought at the national level, including by increasing assistance to give national courts the resources they need for the task," Evenson said. "To make this happen, the Assembly of States Parties should forge new relationships between the ICC and development assistance programs."

Member states will also set the ICC's annual budget. Economic pressure on national budgets appears to be fuelling an interest by member governments in more robust oversight of the court. Another factor may be delays in judicial proceedings, including a recent stay in the first ICC trial, that of Thomas Lubanga, a Congolese rebel leader. The Lubanga trial resumed last month, and the ICC has recently started its third trial, that of Jean-Pierre Bemba Gombo, a Congolese former vice president, rebel leader, and opposition party leader, on charges of crimes committed in neighboring Central African Republic.

The upcoming assembly session is expected to establish a study group of member states to examine issues related to the court's functioning. Human Rights Watch recognizes a critical role for member states in engaging court officials in strategic dialogue, but called on the assembly to ensure scrupulous respect for the court's independence as a judicial institution.

In a memorandum issued to governments last month, Human Rights Watch called attention to other issues likely to be discussed. These include the need to prepare for the election of only the most highly qualified candidates for ICC judges and the next ICC prosecutor, in voting to be held in 2011 or early 2012. Another is the need for safeguards to prevent politically motivated interference with the work of an ICC independent oversight mechanism.

## **Background**

The ICC is the world's first permanent court mandated to bring to justice perpetrators of war crimes, crimes against humanity, and genocide when national courts are unable or unwilling to do so. The ICC treaty, the Rome Statute, entered into force in 2002, just four years after 120 states adopted the treaty during a conference in Rome.

The Assembly of States Parties was created by the Rome Statute to provide management oversight of the administration of the court. It consists of representatives of each member state and is required to meet at least once a year but can meet more often as required.

This year's annual session follows the first ICC review conference, held in Kampala, Uganda from May 31 to June 11. The Rome Statute mandates that seven years after the treaty enters into force, the UN secretary-general is to convene a review conference to consider any amendments to the treaty.

In addition to adopting two amendments – including one regarding the definition of the crime of aggression and the conditions for the court to exercise jurisdiction over the crime – member states attending the review conference engaged in two days of debate on cooperation, complementarity (or the strengthening of national jurisdictions to prosecute ICC crimes), the impact of the Rome Statute system on victims and affected communities, and peace and justice, as part of a "stock-taking" exercise.

The court's jurisdiction may be triggered in one of three ways. ICC member states or the UN Security Council may refer a situation, meaning a specific set of events, to the ICC prosecutor, or the ICC prosecutor may seek on his own motion authorization by a pre-trial chamber of ICC judges to open an investigation.

The ICC prosecutor has opened investigations in the Democratic Republic of Congo, northern Uganda, the Darfur region of Sudan, the Central African Republic, and Kenya. Based on those investigations, 13 arrest warrants and one summons to appear have been issued. The prosecutor has announced that he plans

to present cases against six individuals in the Kenya investigation to an ICC pretrial chamber later this month.

The prosecutor is also looking at a number of other situations in countries around the world. These include Colombia, Georgia, Cote d'Ivoire, Afghanistan, and Guinea. The Palestinian National Authority has also petitioned the ICC prosecutor to accept jurisdiction over crimes committed in Gaza.

Four individuals are in ICC custody in The Hague. Three others charged with war crimes in connection with an attack on African Union peacekeepers in Darfur appeared voluntarily during pretrial proceedings. The ICC's pretrial chamber declined to confirm charges against one of the three, Bahr Idriss Abu Garda. A pretrial chamber will begin a hearing on December 8 to confirm charges against the other two – Abdallah Banda Abakaer and Saleh Mohammed Jerbo Jamuson.

Bemba is the highest-profile defendant to date. Trial of the Congolese rebel leader Thomas Lubanga Dyilo is ongoing, as is the joint trial of Congolese rebel leaders Germain Katanga and Mathieu Ngudjolo Chui.

In addition to al-Bashir and two other individuals sought in relation to the Darfur situation, arrest warrants remain outstanding for leaders of the Lord's Resistance Army in northern Uganda and for Bosco Ntaganda, a former rebel commander now integrated into the Congolese national army.

To read the Human Rights Watch memorandum to the International Criminal Court Assembly of States Parties Ninth Session, please visit:

## Hirondelle News Agency

Wednesday, 1 December 2010

### **Former Rwandan pastor denies genocide charges in further appearance**

Rwandan Pentecostal Church Pastor Jean Uwinkindi Wednesday pleaded not guilty to charges of genocide and extermination, as a crime against humanity, in his further appearance before the International Criminal Tribunal for Rwanda (ICTR).

"I plead not guilty. I never committed genocide. I never committed extermination to anybody whatsoever," said Uwinkindi in Kinyarwanda in response to questions asked by Judge Gberdao Gustave Kam, who administered his second appearance before the Tribunal.

The 59 year old pastor, dressed in dark suit with white shirt and blue tie with white strips, denied one count after another while standing in the dock. He is alleged to have committed the offences between April 6 and May 1994 in Kanzenze commune, Kigali Rural prefecture (Central Rwanda).

Pastor Uwinkindi was born in Rutsiro commune, Kibuye prefecture (west Rwanda) in 1951. According to the indictment, he is individually responsible for genocide and extermination because he allegedly planned, instigated, ordered, committed or otherwise aided and abetted in the preparation or execution of such crimes.

In addition, the indictment alleges, the defendant willfully and knowingly participated in a joint criminal enterprise whose common purpose was the commission of genocide and extermination against Tutsis. To fulfill the purpose, Uwinkindi allegedly acted in concert with others, among them, the former mayor of the commune, Bernard Gatanazi.

The indictment further alleges, among others, that the accused led several attacks and subsequent killing of Tutsis who took refuge in his own parish of Kayenzi in April 1994.

The second appearance by Pastor Uwinkindi comes following amendments of the indictment made by the prosecution on November 23, 2020. He made his initial appearance on July 9, 2010. Uwinkindi was arrested on June 30, 2010 in Uganda as he was coming into the country from the neighbouring Democratic Republic of Congo (DRC).

He is the second genocide suspect to be arrested in Uganda in less than a year. In October 2009, Uganda apprehended former Rwandan military officer, Captain Idelphonse Nizeyimana, after he entered the country from DRC.

As trial date for Uwinkindi has not been set, hearing of the case against Nizeyimana has been scheduled for January 17, next year. There is a pending application by the prosecution to have Uwinkindi's case alongside two others transferred to Rwanda for trial.

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## Middle East Report Online

Wednesday, 1 December 2010

### The Long, Steep Fall of the Lebanon Tribunal

Heiko Wimmen

After five long years, the Special Tribunal for Lebanon is expected to hand down its indictments at long last. By the end of 2010, or perhaps the beginning of 2011, the Tribunal will accuse a number of individuals of direct involvement in the murders of former Prime Minister Rafiq al-Hariri and several other prominent Lebanese political figures between 2005 and 2008. Officially, the investigators keep mum about the identity of their targets. Unofficially, a steady stream of “insider information” has converged into a kind of received wisdom: High-ranking members of the party will be indicted for association with the engineering of the assassinations. The various actors in Lebanon now treat the “leaks” that formed this received wisdom as a set of established facts.

The fallout of such indictments would be dramatic: As has been manifest time and time again since 2005, Lebanon simply cannot be governed without the cooperation of Hizballah and its allies, the Shi‘i Amal movement and the predominantly Christian Free Patriotic Movement. These three parties, now commonly referred to by local media as “the former opposition,” are part of a “government of national unity” established after the mini-civil war of May 2008. Indictments and arrest warrants aimed at Hizballah are hence liable to destabilize the country, but unlikely to apply justice, let alone aid in healing the wounds of the past.

An indictment-deferring compromise of any kind, on the other hand, appears to be far off. Prime Minister Saad al-Hariri, the son of the murdered man, has tied his personal and political credibility to the Tribunal to such a degree that it is difficult to see how his leadership could survive a retreat. The younger Hariri rode to the top of Lebanese politics atop the wave of popular outcry for “the truth” about the 2005 killings, a phrase that became a mantra for Hariri-owned media and a stand-in for deeper yearnings. The assassination of Hariri the father has galvanized the Sunni community, which previously had been politically docile, and avenging the blood of the posthumously idolized leader has acquired meaning far beyond a mere legal procedure. Partly owing to factors external to Lebanon, such as the Iraq war and the concern of pro-Western Arab regimes to limit the appeal of pro-Palestinian postures struck by Iran and its regional allies, this newly assertive communal sentiment has acquired an increasingly anti-Shi‘i hue. Resentment has been running especially high since May 2008, when Saad al-Hariri’s lightly armed and poorly led supporters suffered ignominious defeat at the hands of Hizballah, Amal and some of their smaller but equally ferocious allies, and West Beirut -- a “Sunni city,” in the eyes of the Hariri camp -- was taken over by mostly Shi‘i militias. Angry reactions and further communal entrenchment are certain to follow if Hariri is seen as betraying the blood debt of his slain father. While there is, for now, no political organization or leader capable of converting this resentment into larger-scale radicalization, a growing number of youths may become susceptible to the viciously anti-Shi‘i rhetoric of militant Sunni fringe groups.

Hizballah, on the other hand, has challenged the legitimacy and integrity of the Tribunal since its inception, walking out of cabinet meetings to protest the inquiry in late 2005 and citing it as a major grievance in advance of the constitutional crisis in 2006. Now, with the party seeing itself in the dock, the reservations have turned into outright rejection. According to these views, the Tribunal and the preceding investigation never actually intended to finger the perpetrators. Rather, they were from the beginning geared exclusively toward US strategic interests in the region, which, in this worldview, equal Israeli interests. Thus, when isolating Syria and perhaps effecting regime change in Damascus were high on the US agenda back in 2005, the inquiry zeroed in on the top ranks of the Syrian power structure. Now, as attention has shifted to Iran and its nuclear program, the focus has shifted to its ally Hizballah. In late August, the Hizballah secretary-general, Hasan Nasrallah, moved one decisive step further and accused Israel not only of exploiting Hariri’s assassination, but also of instigating or even commissioning it, with the objective of framing the Syrians, and potentially everybody seen as detrimental to Israel’s interests.

## Sabotage as Strategy

In 2005, with the calls for “the truth” akin to a clamor and Syrian troops departed from Lebanon partly in response, the international inquiry into Rafiq al-Hariri’s death appeared momentous indeed. The presumed culprits, Syria or its Lebanese allies, seemed to be backed into a corner. The Bush administration, its grandiose Middle East ambitions not yet curtailed, eagerly supported the investigation as part of a campaign to cow the remaining regional actors hostile to US hegemony. Much of world opinion, particularly as the killings in Lebanon continued, was likewise sanguine.

Perhaps in anticipation of pressures on future Lebanese governments, UN Security Council Resolution 1757 and the agreements concluded between Lebanon and the UN provided the Tribunal with far-reaching autonomy. Thus, the Tribunal may issue indictments and even warrants of arrest, which the Lebanese authorities are obliged to execute without further inquiry. Lebanon is supposed to cover 49 percent of the Tribunal’s budget and nominate half of the bench, yet UNSC 1757 explicitly authorizes the UN secretary-general to obtain alternative funding if the Lebanese contributions are not forthcoming, while the nomination process for the Lebanese judges is already complete, leaving little for current or future cabinets to do -- or dither over. Since UNSC 1757 was passed under Chapter 7 of the UN Charter, which binds the international community to action, even Lebanon’s unilateral withdrawal from the subsequent agreements would not compromise the international legal basis of the Tribunal.

Such loss of Lebanese “ownership” will lend support, however, to the strategy adopted by Hizballah, which is to undermine the local legitimacy of the Tribunal to a point where the Lebanese authorities will no longer be capable -- in practical, but perhaps also in legal, terms -- of providing the assistance they are nominally obliged to, whether in serving indictments or arresting suspects.

The allegations of bias rendered above strike a chord among many non-affiliated Lebanese who are suspicious of the international community and, in particular, the United States. To these people, the accusations are corroborated by a number of blunders in the investigation, particularly during its early stages. Reports published and information leaked in 2005 by the German prosecutor Detlev Mehlis, then head of the UN International Independent Investigation Commission, showed an apparently exclusive focus on major figures in the Syrian regime and a reliance on hearsay and dubious witnesses who later recanted or were deemed not credible.

The question of whether these testimonies had been purposely planted, and if so by whom, has never been investigated -- a fact capitalized upon by opponents of the Tribunal to cast doubt on the whole process. In contrast, the Belgian Serge Brammertz, who took over from Mehlis in January 2006 and served until January 2008, and the Canadian chief investigator and future chief prosecutor Daniel Bellemare, have attempted to project an image of strict objectivity and professionalism, while avoiding any hint of who may and may not, or no longer, be in the crosshairs of the investigation. Yet the uninterrupted flow of supposed insider information from the Tribunal to journalists has largely undermined these efforts.<sup>[1]</sup> While opponents felt vindicated by the fact of the leaks, if not their content, the Tribunal has also drawn fire from the other side of the political aisle for an alleged lack of will or competence in sniffing out the Hizballah trail much earlier.

Meanwhile, the conflict over a possible investigation into the making of the “false witnesses” of the Mehlis days, with the implication that prominent members of the Hariri camp may be compromised, has pervaded the political debate in the fall of 2010, already forcing the cancellation of several cabinet meetings and emergency mediation to save others. The controversy has thus served as a trial run for the second element of Hizballah’s strategy: sabotage of political and institutional processes by procedural means. Since the party and its allies form one third of the government, such means are in ample supply. The “former opposition” has so far blocked the budgets for 2010 and 2011 over objections to the funding of the Tribunal, and may paralyze the executive by simply boycotting cabinet sessions altogether, which would deny that body the quorum it needs to convene. Furthermore, according to the Lebanese constitution, the government is considered dissolved if more than one third of its ministers resign, a threshold that the former opposition can likely clear if desired.<sup>[2]</sup> Or Nabih Berri, speaker of Parliament and head of Hizballah’s close ally Amal, could schedule a legislative session to discuss ratification of the UN-Lebanese agreements for the establishment of the Tribunal -- a procedure that is mandatory according to the constitution, but was never performed. A defeat of the Hariri camp in such a vote would bring into question the legal basis upon which Lebanese institutions cooperate with the Tribunal.<sup>[3]</sup>

In fact, there are signs that Hariri's majorities in Parliament (71 of 128 MPs) and the cabinet (16 of 30 ministers) have dwindled since his narrow win in the 2009 elections. (As in all majority electoral systems, in Lebanon a slim margin of victory or even a loss in the nationwide popular vote can translate into a comfortable majority in Parliament. In 2009, the opposition carried the popular vote, but lost several crucial swing districts.) The clearest indicator yet of the turning tide is the refusal of the government majority -- which soon may also acquire the descriptor "former" -- to put the dispute over the "false witnesses" of the Mehlis inquiry to a cabinet vote, as demanded by the opposition. A key role in these calculations falls, once again, to the mercurial Druze leader Walid Jumblatt, who controls a decisive swing vote of three ministers in the cabinet and some ten deputies in Parliament. Jumblatt adopted brazenly anti-Syrian and anti-Hizballah stances between 2005 and 2008. While still officially part of the Hariri camp during the 2009 elections and the subsequent cabinet formation, he has since sought some distance from his former allies and is now casting himself in a centrist position. Yet his increasingly frequent and friendly visits to Damascus and his ominous warnings about the Tribunal's dangers have led many observers to conclude that he has defected to the opposition. On November 24, the Druze chieftain explicitly called upon the cabinet to reject the Tribunal, which he described as "aimed at destabilizing Lebanon rather than rendering justice."

For one thing appears certain: Any attempt to arrest members of Hizballah will be met with firm, and most likely armed, resistance. To quote Nasrallah, "The hand that tries to touch our fighters will be cut off." There can be little doubt about how a confrontation between the well-equipped and rigorously drilled Hizballah militia and the poorly supplied Lebanese security forces would end, particularly because officers and troops with oppositional loyalties -- mostly, but not exclusively, Shi'a -- would be liable to refuse orders. While Hizballah aims to prevent Lebanon's cooperation with the Tribunal, through a mix of delegitimizing rhetoric, procedural stalling and political intrigue, these formal methods are ultimately backed up with the threat of military force.

### **Crisis in Installments**

Yet there is little reason to credit the much reported doomsday scenarios of an imminent "coup," let alone a deliberate attack by Hizballah upon Israel to distract attention from the investigation, as some speculative accounts would have it. For one thing, it is highly unlikely that the government majority would be inclined to risk a physical confrontation, as it would be entirely hopeless, but might still wreak excessive damage. Likewise, it does not seem plausible that Hizballah would want to incur the material and the political costs of a military option, not to mention the consequences of an even deeper Shi'i-Sunni division, as long as it possesses the means of delaying and obstructing the investigation on the political and institutional levels, and in a technically legal fashion.

According to available information, and barring the possibility that the 18-month flood of "leaks" was disinformation that the Tribunal somehow felt unable to dispel, the indictments to come will be largely based on analysis of communication patterns between several groups of cellular phones that were allegedly used in the preparation and execution of the Hariri assassination, and were traced back to senior Hizballah figures, among them members of Parliament. This body of evidence, impressive as it may look, must be deemed circumstantial -- for instance, there are apparently no recordings or transcripts of what was actually said during all these calls. The "telecoms," as police call this type of evidence, will presumably have to be corroborated with more substantial material, such as testimonies, and to what extent the cases can hold up in a court of law is one of the big open questions. Technically speaking, the Tribunal may choose to keep the questions open by declining to disclose the content of the indictments, or parts thereof, or disclosing them only to the Lebanese or other governments, citing "the interests of justice."<sup>[4]</sup> There is precedent for secrecy of this kind: For example, an arrest warrant issued by the International Criminal Court for Congolese rebel leader Jean-Pierre Bemba was kept secret until Bemba traveled to a country that would carry it out.

But to proceed in such a fashion with the Lebanon inquiry, and indeed to impose any substantial restrictions upon the transparency of the indictments,<sup>[5]</sup> would only serve to cast renewed doubt on the process, ignite another flash of controversy and perpetuate what Walid Jumblatt has aptly described as a "dangerous soap opera" of unverified rumors. While Hizballah has lately been the main subject of the whispers, Syria cannot be sure that it will be off the hook, given the close relations between Damascus and the Shi'i party and the presence of senior cadre like the late Hizballah strategist 'Imad Mughniyya (assassinated in 2008, presumably by Israeli agents) in the Syrian capital.

Lebanese media outlets, most of which are openly partisan, can be relied upon for intense and obsessively detailed dissection of whatever evidence becomes available. If, indeed, mobile phone records are the heart of the cases presented by Daniel Bellemare, significant debate can be expected around the alleged penetration of the Lebanese

cellular network by Israeli intelligence agents,<sup>[6]</sup> and their potential manipulation of the records in question. Hezbollah itself will most likely persist in its strategy of rejecting the investigation wholesale, and deploy one or a combination of the means of political and constitutional blockage outlined above. A prolonged stalemate may result, one that the government majority will be unable and perhaps also unwilling to break. Hezbollah and its allies may also resort to demonstrations and carefully staged acts of “civil disobedience” and “popular rage” (such as the attack on investigators heading for the clinic of a gynecologist in a Hezbollah-dominated part of Beirut in late October) as reminders of what could be at stake. Faced with such a situation, Saad al-Hariri may opt to control the damage to his political credibility by stepping down as prime minister, all the while maintaining his commitment to pursuit of “the truth.” A caretaker government would then perform essential tasks for the functioning of the state, while conveniently lacking the constitutional competence to make decisions of deep consequence.

### **On the Fault Line**

Apart from the domestic balance of power, a web of competing interests and influences also constrains the Lebanese actors. Syria is exerting its still -- or again -- considerable influence to prevent damage to Hezbollah, a strategic asset in its confrontation with Israel. Saudi Arabia, the most important regional ally of the Hariri camp, needs Syrian cooperation in its attempts to protect the interests of the Sunni Arab community in Iraq and to improve its strained relations with Tehran toward this end. In these Arab chanceries, the crisis in Beirut appears not only as a losing gamble, but also as detrimental to strategic interests of much larger magnitude. Saudi diplomats have been at the forefront of explorations for a solution, still elusive, in intense talks with Damascus, led by a son of King ‘Abdallah.

With regard to Lebanon, Saudi foreign policy is often reduced to the royal family’s rivalry with Iran and tight alliance with the US. The reality appears at times ambiguous, not only because these priorities may conflict, as when Riyadh needs to court Syria, but perhaps also because of differences of opinion among the ruling elite. While King ‘Abdallah and Foreign Minister Sa‘ud al-Faisal consistently promote Arab cooperation, and a partly autonomous agenda that seeks to avoid open conflict through a strategy of regional engagement, a faction centered around Crown Prince and Minister of Defense Sultan bin ‘Abd al-‘Aziz is said to advocate much closer ties to the US and a confrontational attitude vis-à-vis Iran and Syria. The two positions nearly converged in the aftermath of the 2006 Lebanon war, and Saudi-Syrian relations hit a low point, partly as a result of a sharp personal conflict between Syrian President Bashar al-Asad and King ‘Abdallah over the Saudi position in the war. The two men made up after the Gaza war of 2008-2009, and engaging Syria has again become a cornerstone of the regional strategy pursued by the Saudi king.<sup>[7]</sup>

The US, on the other hand, has been actively shoring up international support for the Tribunal, adopting a tougher tone with Syria, and dispatching leading State Department officials such as Jeffrey Feltman and Hillary Clinton herself to the region. On November 3, the US ambassador to the UN, Susan Rice, pledged additional funding for the Tribunal to compensate for the shortfall caused by Hezbollah’s sabotage of the budget in Beirut, despite reports of increasing American exasperation with the pace and efficiency of the investigation. From Washington’s perspective, Hezbollah is not only a threat to its ally Israel, but also acts as a bridgehead of Iranian influence in the Levant. The Lebanese Shi‘i party, the US worries, could serve as a deterrent to possible strikes on Iranian nuclear installations through its capacity to attack crucial elements of Israeli infrastructure with its ever growing arsenal of short- and mid-range missiles. Hence, any damage inflicted on the party must appear beneficial, even or perhaps especially if Hezbollah were to succeed in obstructing the Tribunal, once again exposing itself as a rogue actor.

At the same time, it appears doubtful whether the autumn’s chorus of diplomatic backing will do much to strengthen the resolve of Hariri and his allies, or enhance their willingness to take additional risks. Still fresh are the memories of how, during the 2008 crisis, the solemn declarations of support received from all major Western capitals did not translate into tangible action when Hezbollah unleashed the fury of its fighting squads.

### **Realpolitik and the Limits of International Justice**

As it will, in all likelihood, turn out to be impossible to apprehend the accused and take them to The Hague to be tried, the Tribunal will be obliged, after a certain grace period, to conduct trials in absentia.<sup>[8]</sup> Convictions obtained through such trials may find only limited international recognition, due to the controversial status of proceedings in absentia in different jurisdictions around the world, and in particular if such convictions are primarily based on circumstantial evidence. They will certainly fail to impress Hezbollah and its allies, or detract from the party’s

support base among a populace that is immersed in communal identity politics and perceives international institutions and procedures as perennially skewed in favor of the interests of the party's enemies, notably Israel and the US. Opponents of Hizballah may feel a certain satisfaction at official international recognition of what they believed all along, only to be frustrated by the lack of any real consequences. For none of the international actors who are today throwing their full rhetorical weight behind the Tribunal will be prepared to put boots on the ground to enforce its rulings, and sensibly so, since this act would require nothing less than a full-blown military campaign to disarm Hizballah and dissolve its military structures.

The crisis over the Tribunal thus appears to be a clear example of the limits of international justice in ongoing conflicts, in particular where complex and powerful international interests are involved. It is not surprising, of course, that the side with reason to fear indictment accuses the Tribunal of bias and subservience to the interests of its opponents and their foreign partners. Even those who profess vigorous support for the Tribunal, however, clearly have only qualified trust in its independence and appear seriously concerned that justice may be sacrificed in the cause of a political deal struck between regional actors.

Whatever the result of the inquiry, it is safe to expect that a significant portion of the Lebanese population will simply reject the findings, irrespective of the value of the evidence presented, if they clash with the particular version of "the truth" postulated by their leaders. Amidst a political and sectarian confrontation that is portrayed as existential and perceived in zero-sum terms, no room is left for deliberation over facts, and not an inch will be yielded to an opponent, whatever merit his case may have. Thus, rather than delivering justice and initiating a process of reconciliation, the Tribunal will deepen the internal rifts of Lebanon. Relations between Sunnis and Shi'a, in particular, will take yet another dangerous turn for the worse.

Likewise, the political gains for Western countries, including the US, will be modest at best. True, a few more countries may agree to classify Hizballah as a terrorist organization and sever whatever ties they may have with the party. Those from the upper echelons of the party who used to travel to Western countries may desist even if they are not indicted, bearing in mind that additional, secret indictments may exist. It is debatable that such point scoring would qualify as a political gain for the West. At the very minimum, as long as several thousand troops from key European countries are staffing the UN buffer force in southern Lebanon, one of Hizballah's strongholds, cutting off all links to the party hardly appears advisable or even feasible. All the while, the popular support that the party and its allies enjoy will make it impossible to ignore or work around them in the domestic political sphere. If anything, the conflict over the Tribunal will serve to reinforce Hizballah's determination to remain firmly entrenched at the core of the Lebanese state in order to ward off any domestic challenge to its independent military capabilities, or what it refers to as "the path of resistance."

*(Heiko Wimmen is a doctoral candidate at Freie Universität Berlin and a fellow at the German Institute for International and Security Studies in Berlin.)*

## Radio Netherlands Worldwide

Wednesday, 1 December 2010

### **"Bemba's soldiers raped and killed in the Central African Republic"**

By International Justice Desk

“When they arrived, they got into the house, they grabbed the mother but because the young girl was still fresh, they preferred the daughter to the mother. They raped her in front of the mother.” Going by the pseudonym ‘Witness 38’, the first prosecution witness told the International Criminal Court last week that Jean-Pierre Bemba Gombo’s Congolese militias committed rapes and killings in the Central African Republic.

“Their behaviour was that of animals,” Witness 38 testified in The Hague with face and voice distortion. He gave the bulk of his evidence against the Congolese senator, charged with war crimes and crimes against humanity, in a closed session. During the open session he said that Bemba was treated as an honoured guest in Bangui, while his troops “had whips, pieces of wood, and at the end of them they had attached bits of rubber or leather, and they would use these instruments to hit the CAR civilians.” He also saw the soldiers committing murders.

Witness 38 said that CAR soldiers never carried out atrocities while Bemba’s troops were in the country, as then President Ange-Félix Patassé had given Bemba’s rebels “all the leeway to act,” and that they “were sort of the leaders” of the CAR’s army.

Bemba’s defence has argued that once his militias crossed from the DRC into the CAR, they were under the control of Patassé. The lawyers questioned why Patassé and his rival François Bozizé were not on trial instead of their client. Prosecutor Luis Moreno Ocampo, speaking prior to the start of Bemba’s trial last week, stated that initially he had thought Patassé and Bemba were equally responsible for the crimes, but that “the evidence shows that the troops were always under the authority, command, and control of Jean-Pierre Bemba and not under the authority of Patassé.”

Two other witnesses, a rape victim and an expert witness, have so far testified in court.

## Nuremberg: cornerstone of international justice

By Pablo Gamez, The Hague



*Hilversum,  
Netherlands*

This November marked the 65th anniversary of the Nuremberg war crimes tribunals. International Criminal Court Chief Prosecutor

Luis Moreno Ocampo looks back at the historical trials and discusses their impact on current international justice.

### **What is Nuremberg's legacy?**

Nuremberg is a cornerstone which had precedents and that generated the current situation where there is an institutional system for the world and for the future.

The most important point about Nuremberg is the idea that humankind is a community. Crimes like the ones that happened in the Nazi period not only affected Germany, Czechoslovakia, Hungary, the victim countries or specific communities like the Jews and other social groups, but they were also crimes against humankind and that was new.

### **Which previous events had led to Nuremberg and the ICC?**

The ICC and the Rome Statute are a direct result of Nuremberg. But in some way, it began with the development of the mass media. International Humanitarian Law originated when The London Times showed front page pictures of the Crimean War (1853-1856). This led to a movement to establish some rules for war.

In 1873 one of the founders of the International Red Cross, Gustave Moynier, pointed out that while International Criminal Law and Humanitarian Law existed, they were not being used. No army punished its soldiers. He remarked the need of impartial and independent International Criminal Laws to judge those crimes in 1873.

After World War I, the Versailles Treaty created a Criminal Court. But at the end, nobody was tried. Finally, Nuremberg came in 1945, and then the convention

against genocide was adopted in 1948. This convention sets the need for an International Criminal Court. However, it could not be done due to the Cold War and we had to wait until 1998.

The evolution from Nuremberg to the Rome Statute is that an exceptional law became an institution. Nuremberg has changed into something permanent and institutional to rule in the coming centuries. That is the Nuremberg miracle.

### **Are you afraid that the memory of the Holocaust would fade in time?**

What Nuremberg created cannot be erased. The thing is how to keep them alive, and for that we need to make the connection with what happened later in different genocides around the world, such as in the Balkans, Rwanda, Cambodia or what is happening now in Darfur. We need to see the similarities to keep it alive.

### **Has international criminal law evolved since Nuremberg?**

It is really difficult and complex to reach a global agreement. The next difficulty is to apply that agreement to a specific case. But we have made progress in both.

We have Nuremberg which has allowed the evolution. After Nuremberg we have the Cold War period in which nothing happened. Soon after that ended, Yugoslavia took place. Again, the information about what was happening there is shown throughout Europe. Then the UN established the International Criminal Tribunal for the former Yugoslavia in 1993. This was the first time that we came back to Nuremberg: an ad hoc court to make justice in a specific case. Similar incidents and tribunals followed, such as Rwanda and Sierra Leone.

### **What do you think about truth and reconciliation commissions?**

Massive crimes produce social catastrophes for which trials are not enough. Many other things are needed, including the analysis of truth commissions to understand what has happened in a wider perspective, not only regarding the crimes but also the pain of people, the number of victims.

For example, a truth commission was established in 1984 in Argentina following the Dirty War, and that was the source of the information used in the subsequent trials. In South Africa for example, there is a Commission that followed the Argentinean and Chilean models but it did not lead to trials. Different models were built as part of the response and effort of humanity in the face of things that cannot be told, of unbelievable things that happened.

## Dispatch Online

Thursday, 2 December 2010

### Kudos for Rhodes law team



RHODES University's Law Faculty has chalked up a second prestigious African victory – this time at the African International Humanitarian Law Moot Competition in Arusha, Tanzania.

Rhodes LLB students Haruperi Mumbengegwi, Robyn Jones and Rutendo Urenje emerged as the overall winners of the prominent competition last week.

Mumbengegwi also emerged as the overall best speaker, securing sponsorship to do an internship at the International Criminal Tribunal for Rwanda (ICTR).

The annual competition, organised by the International Committee of the Red Cross in Arusha, is in its 10th year. It brings together undergraduate law students from Anglophone Africa to be challenged on matters of international humanitarian law and humanitarian action, said Rhodes law professor Laurence Juma .

Eleven teams took part this year. Two – one from Rhodes and the other from the University of Johannesburg – represented the Southern Africa region.

Juma, who coached the winning team, said participants were placed in a fictional conflict scenario and required to assume the roles of various stakeholders and demonstrate their legal knowledge and debating skills.

He said it also gave students the chance to network with others from the continent. “They are able to see how law can be applied to help alleviate suffering caused by armed conflict.”

The final round of the competition traditionally takes place in one of the ICTR's court rooms and is decided by a panel of three sitting judges of the tribunal.

Mumbengegwi yesterday expressed delight in their victory and said it had changed her life. “The world needs more humanitarian lawyers, and I'm definitely going to be one of them.”

She said she felt privileged to have been given the opportunity to go up against some of Africa's best. Mumbengegwi said she would definitely be taking up the internship at the ICTR.

Jones said the competition had been “tough” and “nerve-racking” and winning it had made them “extremely proud”.

Rhodes also fielded the winning student team of Ingrid Cloete and Fausto di Palma at the African Human Rights Competition in Benin last month.

Cloete and Di Palma have now been invited to participate in the Commonwealth Lawyers Association Moot Competition to be held in Hyderabad, India, in February next year . - By ADRIENNE CARLISLE

# Special Court Supplement Prosecution Outreach to Magburaka Wednesday, 1 December 2010



