

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



A panoramic view of Freetown business district.

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

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Wednesday, 13 April 2011

Press clips are produced Monday through Friday.
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International News

Judges Order Prosecution to Review Its Case Against Nzabonimana / <i>Hirondelle News Agency</i>	Page 3
Rwanda: Govt Welcomes ICTR Decision on Kabuga / <i>The New Times</i>	Pages 4-5
Last and Flat: Duch's Appeal at Cambodia Tribunal / <i>Radio Netherlands Worldwide</i>	Pages 6-8
Genocide, Responsibility and International Law: An Interview... / <i>Peace & Conflict Monitor</i>	Pages 9-11

Hirondelle News Agency

Tuesday, 13 April 2011

Judges order prosecution to review its case against Nzabonimana

The International Criminal Tribunal for Rwanda (ICTR) has ordered the prosecution to conduct a comprehensive review of its case-in-chief against former Youth Minister Callixte Nzabonimana to determine what paragraphs of the indictment, if any, remain unsupported by its evidence.

"In the exercise of the powers afforded the Trial Chamber under Rule 54 of the Rules of Procedure and Evidence, the Chamber concludes that it would materially serve the interests of justice and the economy of judicial resources to order the prosecution to conduct a comprehensive review of its case-in-chief, with a view to withdrawing any paragraph for which it has not adduced any evidence," it said.

"The Chamber believes that such an exercise could prove extremely beneficial in streamlining the issues to be addressed during the course of closing arguments and final deliberations," the order further reads.

According to the order, the review should be done as soon as possible and no later than May 6, 2011, the prosecution must indicate to the Chamber and defence which paragraphs of the indictment, if any, it seeks to withdraw due to lack of evidence.

The Chamber recalled that on numerous occasions throughout the trial, the defence had been asserted that the prosecution did not adduce evidence in support of all the paragraphs contained in the indictment, allegation that appeared to have not been squarely denied by the prosecution.

Such order comes at the final stage of proceedings after presentation of prosecution's case and the Tribunal has already declared that Nzabonimana defence case was officially closed, with the exception of the hearing of two French witnesses whose identities were not disclosed.

The trial resumes on May 3, when the prosecution is expected to call its witness to rebut the defence of alibi of Nzabonimana that he was at the French Embassy in Kigali between April 7 and 11, 1994.

In the case, Nzabonimana is charged with genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, extermination and murder. He has denied all the charges.

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The New Times (Kigali)

Wednesday, 13 April 2011

Rwanda: Govt Welcomes ICTR Decision on Kabuga

Edmund Kagire

The government has welcomed the move by the International Criminal Tribunal for Rwanda (ICTR) to start special deposition proceedings against Felicien Kabuga and Protais Mpiranya, two of the most wanted Genocide suspects still on the run.

The move by the ICTR follows a motion by the prosecution requesting the tribunal to start hearing charges and assess evidence and cross examine witnesses, pinning Kabuga and Mpiranya, so that the evidence is preserved and archived for future use.

This means that the ICTR Prosecution would go ahead, beginning May 16, to press charges on the two men, present evidence and arraign witnesses so that the evidence can be preserved until the two men are eventually apprehended.

Speaking at a news conference, yesterday, the Minister of Justice, Tharcisse Karugarama, welcomed the ICTR's decision, noting that it was a practical way to ensure that justice would, at some point, take its course.

"This is a good decision. It is a practical way of solving issues and it is encouraging. As a government, we are happy that the evidence against these wanted men is going to be preserved," the Minister said.

"It can take one, ten or twenty years to arrest them, but this evidence will remain fresh awaiting them. We are aware that as years go by, witnesses' age or die, evidence wears away and soon the ICTR will close shop. This is a good and timely move," Karugarama said.

Karugarama said that a public notice had been issued by the ICTR announcing the proceedings and called upon all Rwandans who can testify, against or for the two men, to show up at the ICTR.

He noted that the families of the two suspects had been informed and could follow the proceedings. A Kenyan lawyer has been appointed to represent Kabuga's interests.

Karugarama noted that if the ICTR closes before the suspects arrested, the UN would name a competent court to try them. He added that Rwanda would be willing to take on the cases, and any others that may remain.

"We are always ready; we have been prepared for the last five years to receive these cases. We have always said that everything is in place so it's up to the UN to decide," Karugarama said.

Judge Vagn Joensen, who will preside over the proceedings, said in the scheduling order that the session would continue until the depositions of all the prosecution witnesses are recorded.

"The proceedings will take place from Monday through Thursday each week, with a break during the week of June 6 to 10, 2011," he said.

Kabuga, the main financier of the 1994 Genocide against the Tutsi, has been on the run since an Interpol Red Notice was issued against him in 2001.

Prosecution also seeks to safeguard evidence against Augustin Bizimana, the former Minister of Defence of the genocidal government and Mpiranya, former Commander of the Presidential Guard.

The ICTR Prosecutor, Hassan Boubacar Jallow, on February 7, 2011, filed the motions for the taking of deposition pursuant to Rule 71 bis of Rules of Procedure and Evidence.

Rule 71 bis states, among others, that; "If within a reasonable time, a warrant of arrest has not been executed, the Prosecutor may submit a request to the President that evidence relating to the indictment be preserved for a further trial by special deposition recorded in a proceeding conducted by a single Judge."

The requests are the first of their kind in the ICTR history.

Karugarama called upon the countries that harbour the suspects to cooperate in apprehending them.

Radio Netherlands Worldwide

Wednesday, 13 April 2011

Last and flat: Duch's appeal at Cambodia tribunal

By Thierry Cruvellier, Phnom Penh



Phnom Penh, Cambodia

March 28: The first time the appeals bench of the Extraordinary Chambers in the Courts of Cambodia (ECCC) appears in public session. The learned assembly of nine judges, sitting behind eighteen flat computer screens, curves like a spine.

Wearing a beige jacket, blue shirt and grey pants, Duch, the 68-year old former director of the Khmer Rouge torture and death centre, S-21, stands before them.

“The main point is personal jurisdiction. It is purely a legal matter,” he says. Then he sits down and leaves the floor to his lawyers.

Nothing to do with facts

Kaing Guek Eav, (Duch), was convicted last July of crimes against humanity and war crimes for the detention, torture, and murder of more than 12,000 people between April 1975 and January 1979. He was sentenced to 30 years imprisonment. His appeal, however, had nothing to do with the facts or specific legal findings of the Trial Chamber. He now claimed that his case was outside the jurisdiction of this tribunal because he was neither a “senior leader” nor “most responsible” for the crime committed by the Communist Party of Kampuchea under Pol Pot’s rule.

“Duch was chairman of a prison security centre. How could he be most responsible? He received orders from the Communist Party. He was a perpetrator, of course, but he should not be under the jurisdiction of the ECCC. Why only Duch out of 195 prison chiefs?” asked defence lawyer Kar Savuth.

“Personal jurisdiction is strictly about those who were senior leaders and most responsible. A request for a broader interpretation has been bluntly rejected by the Cambodian government,” he said, inadvertently admitting political interference in the judicial process.

Most responsible

The response by national co-Prosecutor Chea Leang was that “Duch is most responsible within the framework of S-21. The security apparatus was at the heart of the CPK’s policy and S-21 was the most important office in the apparatus. Duch was at the highest level of security services.” This makes him one of the “most responsible” people.

In challenging the prosecution strategy, the defence highlighted the fact that Duch is the only mid-level commander to be tried before this court while both the national prosecutor and the Cambodian government are effectively blocking additional prosecutions against five other suspects, including two generals who were more senior than Duch in the Khmer Rouge hierarchy.

80% Khmer Rouge

The defence also touched upon the disturbing fact that 80% of the victims at S-21 were former Khmer Rouge cadres, including senior Party members who would stand accused today had they not been purged by the regime they served.

Kar Savuth, 76, has survived all political regimes in contemporary Cambodia. He shares with some of his Cambodian peers a taste for exaggeration and provocation, but he is cunning and he doesn’t lack eloquence and charisma.

“We do not challenge the ECCC’s jurisdiction. The ECCC has the competence to try the senior leaders. But we question the prosecution’s method of depicting Duch as one of the most responsible for the crimes committed. Who are the main perpetrators? Those who gave orders. Duch was receiving orders from Son Sen and Nuon Chea,” former members of the CPK’s standing committee, he stressed.

85% admission

The trial of Duch, who admitted 85% of the facts alleged in the indictment, was exceptionally devoid of legal wrangling. Neither the Defence nor the Prosecution challenged any factual finding of the Trial Chamber. The Prosecution, however, wants a few legal conclusions by the Trial Chamber to be corrected.

While the trial judges decided to bring all charges for crimes against humanity under the single count of persecution, co-prosecutor Andrew Cayley asked the Appeals Chamber “to create consistency of law” between the ECCC and all other international courts, where criminals can be convicted on multiple charges. The Prosecution also asked the Appeals Chamber to recognize rape as a distinct crime, and to add a conviction on enslavement for the entire S-21 complex, not only for the “re-education” camp of S-24.

Outcome

“It is our submission that forced labour is not a requirement for enslavement,” Cayley argued. But he admitted that such legal challenges “will not have great influence on the sentence.” It is hard to imagine that the court would decide at this stage that it lacks jurisdiction in the case against Duch. As a result, the only outcome of the appeal that may be expected to trigger public interest and reaction is whether the 30-year sentence pronounced by the Trial Chamber will be confirmed or altered by the Appeals Chamber.

At the end of the trial, the prosecution asked for 45 years imprisonment, reduced to 40 years in order to compensate for Duch’s illegal detention by Cambodian’s military justice before the ECCC took the case. The Trial Chamber eventually ruled on a 35-year sentence reduced to 30.

Mitigating circumstances

The Prosecution now said that Duch’s challenge of the very fact of being tried, and his last-minute request to be acquitted, nullify the mitigating circumstances that initially justified a reduced sentence.

“Our position is that any mitigating circumstance in this case has vanished,” said Cayley. He argued that Duch’s cooperation with the court—his admission of most charges in his own case and his testimony against four top leaders whose trial is to start this year—“was not given in a voluntary capacity.” According to him, Duch’s expression of remorse lacked sincerity, and his belated challenge on the court’s jurisdiction and his request for relief were “inconsistent with his admission of responsibility.”

Life sentence

Only a life sentence could now reflect the gravity of the crimes committed, Cayley said. To support his claim, he provided the court with a chart of jurisprudence from the Yugoslav and Rwanda tribunals. As often with such arguments, the case law could have been easily challenged by the opposing party. But there appeared to be no one in the entirely Cambodian defence team with the knowledge to do so.

An assertive judge Klonowiecka-Milart noted that both the 2009 Cambodian penal code and the ICC norm contemplate 30 years as the maximum penalty.

“Why and how would it frustrate the purpose of the law if it corresponds to international law?” she asked. Civil party lawyers did not have a say in the debate over sentencing. But they expressed their dismay at the rejection of several of their clients by the trial judges. About a third of some ninety civil parties who were admitted at the beginning of the trial were eventually declared inadmissible by the Trial Chamber in their judgment.

“After doing everything they were asked, producing whatever they were asked for, coming with great expectation, the day of the judgment they were told that the civil party status they had been granted previously has been revoked. This was most unpalatable. It was a shock,” pleaded Karrim Khan, who had nine clients rejected.

Rules have changed

Whatever the decision of the Appeals Chamber on this issue, it will have no bearing on the next trial before the ECCC: in the meantime, rules have changed, and this issue must be cleared up prior to the beginning of the trial.

Duch remains the only important Khmer rouge commander to ever admit responsibility and acknowledge the criminal policies of the Communist Party of Kampuchea that cost the lives of an estimated 1,7 million people between 1975 and 1979. He testified at length about the creation and functioning of S-21, and what he knew about the leadership and policy of the CPK. He expressed remorse and asked for forgiveness many times. Then, at the end of the proceedings, after he realized that victims’ families were not satisfied and would not pardon him, he gradually appeared to withdraw into himself. The last day of the trial, in a spectacular twist, he had asked to be acquitted and released.

Fateful logic

“Where is Duch today? In which depths has he fallen?” asked civil party lawyer Canonne, wondering about “the fateful logic” followed by the former Khmer rouge.

March 30: two years exactly after Duch’s opening statement before this court. Looking significantly older, he delivers an emotionless and bureaucratic final speech. He looks calm, as if he had perfectly withdrawn into a protected tower by now. He maintains, in an even tone, that he is taking responsibility for the crimes committed at S-21, repeats his apologies and request for forgiveness. But now, he thinks, only the top leaders of the Party, and the leaders of the Cultural Revolution in China who influenced them, should be punished. Duch then takes off his glasses, carefully slips them into his jacket, stands up and walks away. No date has yet been set for a verdict.

Peace & Conflict Monitor

Tuesday, 22 March 2011

Genocide, Responsibility and International Law: an Interview with genocide scholar Dr. Gerald Caplan

Ingmar Zahorsky

In a thought provoking interview, genocide scholar Dr. Caplan examines the effectiveness of international law in genocide prevention, outlining both the failures and potential strengths of the UN system. Dr. Caplan also discusses the responsibility of nations and individuals and comments on the role social media could play to design a potent intervention. He ends with a reflection on how the study of genocide has changed him as a person.

The last century was filled with a succession of genocides. After the Holocaust the world said "Never again". Why have we failed to prevent and stop contemporary genocides?

Why don't you ask me an easy question Ingmar? Because human beings are still human beings and we seem to be filled with rage and anger and resentments and we have a capacity when things are going well to look for trouble, it sometimes seems. The disputes that cause so many of these conflicts, whether they are big or small, whether they end up being genocidal or mass atrocities are often so trivial that it makes you weep for the human condition. So the first reason we have them is because we are people and wherever there is people there is trouble – that is the first thing to be said.

How effective is international law in preventing and punishing genocide as outlined in the Convention on the Prevention and Punishment of the Crime of Genocide?

Well, it has been pretty weak so far, but the convention is very weak, it is a deeply flawed document as anybody who has ever studied it knows. It is the product of many, many compromises among fifty nations who could barely agree on the time of day, let alone what should be in the genocide convention and so it's very easy to ignore it, to pay no attention to it, and that has been done. On the other hand, I want to stress that if you are in a good mood, if you are in a positive frame of mind, if you want to cheer yourself up, that there have been major institutional structural changes over the last ten or fifteen years, really since the Rwanda genocide, that allow the world – I don't like using the word “international community” because it doesn't exist – to be more successful in stopping conflicts and punishing conflicts. It is not clear yet how these institutions – the international criminal court is the most prominent, the office in the secretary generals department in the United Nations on genocide prevention – it is not clear yet how useful they will be but they are there, and they didn't exist before.

In the case of the Rwandan genocide, several heads of states and their members in the UN Security Council were informed but yet refused to act on the knowledge they had. Why did the UN and its member fail Rwanda?

Everything comes down to a matter of political will and political self-interest for all the nations in the world. If we look at the five veto-wielding permanent members of the United Nations, and their behavior in Rwanda and in Darfur and in Bosnia and, we are not sure yet, maybe now in Tripoli, we see that they have interests that act against intervention. Interests are not old fashioned Marxist economic interests necessarily; they are not always oil pipelines. They could be crass political interests. For example, Bill Clinton in 1994 had a congressional election coming up in November, the genocide is April, May, June, and they were very worried that their democratic candidates will be hurt in an election. That is a terrible calculus right? “Are we gonna lose a few seats in Mississippi, while a hundred thousand, two hundred thousand Rwandans are being killed?” Well the answer is yes, that is the calculus they used.

Everybody has interests. In Sudan, for example, the Chinese had a great interest in keeping good relations with the government in Khartoum, from which they got oil and to which they contributed huge amounts of money. The Russians had a great interest: they were selling piles of weapons to the government of Khartoum. The Americans were working closely with the government of Khartoum on Anti-Terrorism in the Horn of Africa, so, for them, what happened in Darfur was too bad but not nearly as important. Time after time, self-interest prevails and the political will to intervene doesn't exist. Political will is more important than any convention or any proclamation or any covenant or any declaration – that's what has to exist, and often it has to be civil society that forces a government to have that political will.

Some may argue that it is not our responsibility to intervene into the affairs of other sovereign states. What responsibility do nations have and what responsibility do we have as individuals to intervene when a genocide occurs?

I have two answers. One is a kind of a moralistic namby-pamby, soft-mushy-liberal answer that we are all people and that we all have a responsibility to love each other and we are all our brother's keeper and all that stuff, and I believe just that. I just don't think it drives people very far most of the time. But I believe more importantly, and I have written a lot about it, that the western world, of which I consider myself a member, has had the responsibility for causing, for enabling many of the conflicts that exist in the world. We have supported many of the tyrants, many of the dictators. Our economic policies have deeply hurt and destabilized communities in many, many ways over the last sixty or seventy years. Western countries – including mine, Canada, including yours, Germany, including certainly the United States, which in my view is the biggest perpetrator, but Canada is an ally, therefore, that implicates me – we have caused an amazing amount of human suffering, either directly or indirectly, and so I think we should intervene, because we have a responsibility to correct what we have created.

The court system in Rwanda as well as the international court have successfully prosecuted a number of the perpetrators of the Rwanda genocide. Do you think there should be an accountability of political leaders that could have prevented the genocide? Should they be prosecuted as well?

I do, but I understand that that it is not going to happen. I understand first of all that it is genuinely complicated. Who exactly do you prosecute in the American government? Bill Clinton himself or the ambassador of the United Nations or his senior advisors. It is a real question. Who do you prosecute in the French government? This is an even more complicated question – I am not sure you understand this. The French government was in one of its periods of dual governance so that the president didn't control the government, there was the president on one hand, and the cabinet on the other, which was controlled by a different party that had won the election, but both were involved in what I consider France's complicity in the genocide. So who in the world do you get? You can't get the president because he is dead so that's no good, and his advisors in the Africa office? Well they are just advisors you know, the president doesn't have to listen to him. Or the prime minister who knew what was going on? These are legitimately difficult questions and they are also politically impossible questions.

Having said all that, one of the problems that the International Court must very quickly repair is that every single one of the small number of people that they are after so far is African, and that is infuriating African leaders – and I don't mean corrupt African leaders, I mean the best African leaders, the civil society leaders. What is the message that they are sending? We have this new institution to deal with the worst atrocities in the world and the only people that are guilty are African? Please, it's a serious issue. But so far it is true, nobody but Africans have been indicted by the court and they actually have to change that. I don't know who they are going to get. They are not going to get George Bush on Iraq, but I think he is a perfect case for doing it. But they actually must stop picking on Africans and show that impunity has to be ended for everybody, not just for some African soldiers who get caught because it is easy to make them suckers for the big guys.

What role do you see for the UN to play in that in the future? What role would you like the UN to play?

That is an interesting question. I am a big, idealistic believer that the only source of legitimate international law in the entire world is the United Nations and its institutions. So, for example, I don't believe that NATO should start intervening anywhere in Afghanistan. Who is NATO? NATO has no legitimacy in my view, it's a bunch of countries coming together in military alliance because they want to come together. Only the United Nations can create international law, by international law only the Security Council, for example, can choose to have a peace

keeping unit. Only the United Nations can say “this is an illegitimate conflict in which the world has to intervene”, and I am a big believer in that.

Now, the problem is that there are two United Nations, or three United Nations. One is the United Nations of agencies, the one that we all know about that does an awful lot of good work for refugees, for children, for World Health, and all those things, and it’s hard to know what we would do if the United Nations didn’t exist; the second is the large international civil service that constitutes the United Nations, and they have some limited kind of power; but the third is the security council, and it’s kind of unfair to call them the United Nations because they are really just fifteen independent countries, but they come together and they are the bearers of this international law. So, yes, I see that as the source of whatever hope we have. But it means that in all our individual countries we have to make our governments carry messages to the security council of what we expect of them. So I keep coming back to the same theme of the role of civil society, in short the role of the students and faculty at UPEACE, to be activists and to put pressure on their own governments, who will then put pressure on the security council to intervene where appropriate.

What role can social media play in genocide prevention in the future?

I want to say on the record that I am waiting for my students give me a series of papers on this issue. And once they do, I will have a better idea of what I am thinking about all of this. Social media is changing the world in ways we don’t understand and I think truly it would be foolish to generalize or to anticipate until we have some more time. Obviously they played some role in Egypt, although nobody knows how big a role. Could you say it wouldn’t have happened without social media? I don’t know. And Tunisia? We just don’t know all of this. I also believe that things are changing so quickly – look at how Facebook didn’t exist a few years ago, and Google didn’t exist a few years ago – so, in two or three years we don’t even know if the same social media will exist or whether some entirely new development will happen – that is what technology is doing. So, first of all, I don’t know. Secondly, it is hard to anticipate, and thirdly, whatever technology emerges can be used just as much by the bad guys as by the good guys.

You can argue that in Rwanda, in 1994, if the victims or the United Nations people who were so helpless had been able to document what they were seeing and send it around the world quickly enough, it would have forced some action. You could equally argue that if the genocide plotters had had the same technology they could have wiped out the Tutsi. So how this will all play out is certainly unknown to me.

Has the prolonged study of genocide changed you as a person?

I don’t know. I don’t know what to do with all of it. I don’t know where it goes. It deepens my sorrow of what humans are capable of. It makes me always remember that if they could do it, I could do it. If hundreds of thousands of Hutu farmers could be brainwashed and mobilized into committing those acts, how could I possibly say I wouldn’t have done it if I had been born into those circumstances? So I think that is the important and frightening thing to realize – that each of us has the capacity for terrible things, which is another way of saying we have the capacity not to do terrible things, and so the job is to create that environment, an atmosphere, a circumstance in which people are happy to be decent rather than fulfilled by being indecent.

Gerald Caplan is a political activist, writer, and analyst. He has written extensively on Africa. His writings on Africa include the comprehensive report called Rwanda: The Preventable Genocide and his latest book, The Betrayal of Africa, an assessment of the reasons for Africa’s many troubles, published in 2008. Caplan’s commentaries appear regularly in various Canadian media.

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