

SPECIAL COURT FOR SIERRA LEONE OUTREACH AND PUBLIC AFFAIRS OFFICE



Solomon Moriba and Priscilla Nzabanita of Outreach & Public Affairs represented the SCSL at Hague International Day.

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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Radio Netherlands Worldwide

Tuesday, 27 September 2011

Sierra Leone: Tinker, Taylor, Soldier, War Criminal?

Geraldine Coughlan

Leidschendam — The judgement in the high-profile trial of former Liberian President Charles Taylor is expected within months.

Taylor is the first African former head of state to stand trial for war crimes and crimes against humanity. He has pleaded not guilty to all charges. Charles Taylor was one of Africa's most feared warlords. He fled Liberia in 2003 and is on trial before the Special Court for Sierra Leone, sitting in Leidschendam. He is accused of supporting Revolutionary United Front (RUF) rebels during the civil war in neighbouring Sierra Leone during the 1990s.

Brenda Hollis is the Prosecutor of the SCSL and the chief prosecutor in the Taylor trial.

As lead prosecutor in the Taylor trial, what is your main task in prosecuting a former head of state?

"First of all, one of the fundamental challenges is - just how do you prepare an indictment? An indictment that is both efficient and reflective of the crimes that you allege the accused is involved in. This has to be done within a reasonable period of time. So that's the first challenge - how do you actually fashion the indictment?"

How do you make sure you get the accused into custody?

The second challenge is - if you have an indictment that's been approved - how do you actually get physical custody of an accused? Especially if you're talking about a senior-level accused, it may be very difficult because political agendas - concerns about impacts on states or regions - and security issues may be very significant factors as to whether a state or region will support turning someone over. It may be almost impossible to get someone.

Or it may be that a number of years pass before a person is turned over to the court. So these kinds of political and security issues that are totally beyond the ability of the court to control may actually preclude you from bringing a person to court physically to be given a fair trial.

How do you go about selecting the evidence in these large and complex cases so that you can prove your case efficiently?

These crimes usually extend over long periods of time, over many locations, with such a variety of victims and survivors. You may also have issues with insider witnesses who perhaps are still affiliated with a former head of state, and so will not come forward to give the information that they have. Or maybe they're concerned about their own personal liability and won't come forward.

You may also have resistance from regional, state or international actors who have interacted with the accused or the perpetrator groups. For various political or other reasons they may not want to give you access to the evidence within their possession - and don't want to give evidence themselves. So you have real issues in selecting your evidence and making a manageable case.

Protecting witnesses is another big challenge. Former heads of state and their high-level former commanders and associates may have very organised means of interfering with witnesses - by bribing, threatening or harming them. So you have to be worried about their protection before, during and after trial.

Lawyers call it Just Convict Everyone, but is JCE (Joint Criminal Enterprise) the best way to prosecute former leaders like Charles Taylor?

Of course, there are different forms of liability that you may allege. And the issue that arises very often where an accused is involved over a long period of time is that the accused - especially a high-level accused, may engage in various forms of liability at various times.

For example, they may give orders to the perpetrator groups that are criminal in nature, resulting in heinous crimes being committed. They may aid and abet from the very beginning till the very end. And they may be part of a Joint Criminal Enterprise (JCE).

The challenge here is not so much the breadth of the JCE: the breadth of it simply means you have more evidence that you have to present. But the issue of the JCE for the prosecution and the defence. Also for the trial chamber in reaching its judgement is to understand the concept and to be able to clearly apply the law. But I believe the JCE is a very appropriate form of liability for these cases."

BBC Online

Wednesday, 28 September 2011

France rejects Rwanda's Habyarimana extradition bid



Agathe Habyarimana has been living in France for years, and denies responsibility for the genocide

A French court has rejected a Rwandan bid to extradite the widow of ex-President Juvenal Habyarimana, whose killing sparked the 1994 genocide.

Rwanda accuses Agathe Habyarimana, 69, of helping to plan the genocide. She denies the accusations.

Rwandan Justice Minister Tharcisse Karugarama told the BBC that he respected the ruling, but said she should now face trial in France.

More than 800,000 Tutsis and moderate Hutus died in the massacres.

Juvenal Habyarimana, a Hutu, was killed when his plane was shot down above Kigali airport on 6 April 1994.

Within hours a campaign of violence, carried out mostly by Hutus against Tutsis, spread from the capital throughout the country.

The Hutu militias blamed the Tutsis for downing the president's plane, although it has never been proved who was responsible.

It is widely believed that Hutu extremists and the government had long planned the genocide.

Rocky relations

- **1994:** France **sends troops to Rwanda** as part of UN-led mission; Rwanda later accuses France of protecting genocide suspects
- **2006:** French judge accuses Tutsis including President Paul Kagame of the 1994 Habyarimana killing; Rwanda **breaks diplomatic ties**
- **2009:** Rwanda joins Commonwealth; **restores diplomatic ties** with France
- **2010:** Nicolas Sarkozy visits Rwanda, **admits France made mistakes** in 1994
- **2011:** Mr Kagame visits Paris, says it is time to **leave history behind**

After the Paris court gave its judgement, Mrs Habyarimana told journalists: "I'm relieved, I've always had faith in the French justice system."

Mr Karugarama told the BBC's Focus on Africa programme that Rwanda would respect the ruling "for whatever it is worth".

"Whether we are happy with it or not is a different matter," he said.

He called for Mrs Habyarimana to be tried in the French courts.

She already faces a case in France's civil courts, brought by rights activists in 2008.

But her lawyer, Philippe Meilhac, said the extradition ruling would cause problems for the civil case.

"We can't stay like this for ever. The very serious accusations against Mrs Habyarimana are old and completely denied by Mrs Habyarimana," he said.

France and Rwanda have no extradition treaty, so each case is dealt with separately.

In recent years French courts have turned down several extradition requests for genocide suspects on the basis that the individuals would not get a fair trial.

Rwanda's Tutsi-led government, which seized power after the genocide, has often accused France of not doing enough to help provide justice for the victims

The Daily Star (Lebanon)

Tuesday, 27 September 2011

Jumblatt: Hezbollah able to defend suspects at The Hague September



Walid Jumblatt. AP

BEIRUT: Progressive Socialist Party leader MP Walid Jumblatt expressed confidence that Hezbollah could mount a capable defense for four of its members indicted in the assassination of statesman Rafik Hariri and reiterated his support for funding the Special Tribunal for Lebanon (STL).

“I don’t think Hezbollah lacks the ability to get lawyers or that it needs someone to defend itself, I even think that Hezbollah can argue with the tribunal to prove the innocence [of its members],” Jumblatt said in an interview with As-Safir newspaper that was published Saturday.

Jumblatt added that a viable defense was possible, “especially given that [Secretary-General] Sayyed Hasan Nasrallah presented evidence of high value.”

Hezbollah has on several occasions presented what it says is strong evidence implicating Israel in the assassination of Hariri.

Jumblatt, who was one of the leading figures of the March 14 coalition following the assassination of Hariri but later re-positioned himself with the March 8 alliance, has said that he aims to remain a centrist alongside President Michel Sleiman and Prime Minister Najib Mikati while being part of a wide alliance within the March 8 alliance.

In his interview with As-Safir, Jumblatt also reiterated his support for funding of the U.N-backed court, echoing recent statements by Mikati, who has expressed a commitment to pay Lebanon’s share to the STL, “if it remains in the country’s interest.”

Mikati has also said that Lebanon cannot afford to abandon its international responsibilities, which would place the country in confrontation with the international community.

Jumblatt, in the interview, agreed with Mikati that cutting the funding of the tribunal would place Lebanon in confrontation with the international community, adding that Lebanon cannot afford to face any sanctions.

“I fear that if Lebanon fails to fund the tribunal, then we will have to face sanction that we cannot handle. I think it is necessary to ensure the funding and then let the court take its course for years,” Jumblatt said.

Lebanon has not yet paid the 49 percent share of the court’s funding for 2011, amounting to \$65 million, which it is obliged to pay under the U.N. Security Council resolution which established the court to probe the 2005 assassination of five-time Prime Minister Hariri.

“I support financing the tribunal especially that there is a segment of Lebanese who believe in this tribunal and who place great hope on its ability to reveal the truth of who assassinated Prime Minister Rafik Hariri and others,” the PSP leader said.

Financing the tribunal, which indicted four Hezbollah members in late June, has been a disputed issue between rival political parties.

The March 8 alliance, led by Hezbollah, has voiced skepticism regarding the tribunal, accusing it of being politicized and biased, and has urged the Cabinet to halt funding and withdraw Lebanese judges working with the court. The rival March 14 coalition, led by Hariri’s son, former Prime Minister Saad Hariri, has insisted that the government meet its international obligations, particularly toward the STL and the court’s funding.

Hezbollah, which has repeatedly denied involvement the assassination of Rafik Hariri, regards the four indicted suspects - Mustafa Badreddine, Salim al-Ayyash, Hasan Aineysseh and Asad Sabra – as honorable members of the resistance who had fought valiantly against Israel.

Nairobi Star (Nairobi)

Tuesday, 27 September 2011

Kenya: ICC Will Clear Me, Says Ruto

Simbi Kusimba

Eldoret North legislator William Ruto is exuding confidence that he will be cleared by the International Criminal Court (ICC) of charges leveled against him early enough so he can contest the presidency in next year's election. Ruto said his rivals for the top job who were celebrating that they will get positions after the Ocampo six are indicted at the ICC "are in for a rude shock".

Addressing a fund raiser at Friends School Matulo in Bungoma County on Sunday, the former Higher Education minister declared "we will be on the ballot in 2012 and beat all those who thought we shall be locked up at the ICC so that they have a smooth sailing". He opined that the G7 grouping was a strong alliance that will emerge victorious at the election in the first round. "I have no doubt we will form the next government that will perform and deliver on the wishes of Kenyans," Ruto said adding "we are competing for ideas and we are not out to remove any particular person," he said in reference to Prime Minister Raila Odinga.

Ruto said his alliance with Saboti MP Eugene Wamalwa, Deputy Prime Minister Uhuru Kenyatta and Vice President Kalonzo Musyoka was keen on the elimination of hunger and poverty besides empowering young people. "If eliminating hunger and fighting poverty amounts to eliminating an individual then let it be so," he said.

East African

Uhuru Kenyatta, son of Kenya's founding president, is accused of crimes against humanity.

He was categorical that the next government to be formed by his team will focus on creating employment opportunities for the youth who form 70 per cent of the population. He said his team will deliver on the promises unlike others who are out to tell stories and riddles. "The record of those in the G7 is very clear. They are people who have been performers in positions they have held," he said.

Wamalwa insisted he will also go all the way to the presidential ballot on a New Ford Kenya ticket in the impending polls. He said the election's date should be as provided in the new constitution and warned against any amendment at this early stage with nominated MP Musikari Kombo pointing out that amending the new constitution as envisaged by the cabinet will lead to its mutilation as happened in the case of the old constitution. "The former supreme law of the land was changed many times until it could not be recognised any more," Kombo lamented.



REPORT

International Criminal Court
By Thijs Bouwknegt, The Hague

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Kenya on tenterhooks

Uhuru Kenyatta is sure his file at the International Criminal Court does not contain anything that implicates him in crimes against humanity. "We go to The Hague in the full expectation that justice will prevail and the truth emerges. We are innocent," he said ahead of a series of hearings that may bring him to trial.

"I am fine," Kenyatta said when he stepped down from a black Mercedes at the court last week. He said he is "absolutely" ready for the confirmation of charges hearings. It is his second time in The Hague this year. In April, he sang Kenya's independence anthem on the stairs of the ICC, in honour of his father, Kenya's founding president Jomo Kenyatta. This week he will be on the witness stand to counter allegations that he among "those most responsible" for violence that killed at least 1,133 people and displaced more than 663,000 others.

ICC Chief Prosecutor, Luis Moreno Ocampo filed charges against six alleged ring-leaders of Kenya's post-elections violence and is trying them in two cases. From the beginning of September three judges have been able to look at the evidence he has collected.

Contrary to the other cases at the ICC, the Kenyan cases draw huge attention. Family and friends of the suspects have reserved seats at the front row in the packed public galleries. They are kindly requested to make no contact with the defendants in court, but the judges do not interfere with the occasional wink of an eye.

Judge Ekaterina Trendafilova explained that her "duty is to distinguish between those cases which should go to trial or not on the evidence provided." She explained the confirmation hearings are "neither a trial before trial or a mini trial."

Kenyatta is in the dock together with the head of the country's civil service Francis Muthaura and former police chief

Hussein Ali. They all face allegations of murder, deportation, persecutions and rape. The three suspects entered the courtroom last Wednesday surrounded by a bevy of lawyers, who say that the prosecutor did not do his job and that the wrong men were in front of the judges. "There is zero evidence against Ambassador Muthaura," said Karim Kahn, adding that "this evidence has the potential to call occasion a miscarriage of justice."

The prosecution claims that Kenyatta, Muthaura and Ali are the architects of revenge attacks against supporters of Kenya's main opposition party, the Orange Democratic Movement (ODM). Ocampo told the judges that Kenyatta and Muthaura - who both support President Mwai Kibaki's PNU - held two key meetings in Nairobi in late 2007 and early 2008 at which revenge attacks on supporters of Raila Odinga's ODM were discussed.

The prosecutor went on to say Muthaura used a criminal gang called the Mungiki to carry out murders and rapes in the Rift Valley province while police commanded by Ali established "free zones" where crimes could be committed with impunity.

The three suspects shook their heads while listening to Ocampo. They hope to convince the judges that Ocampo's evidence is too shaky to authorise a trial. Their lawyers hinted that anonymous prosecution witnesses had fabricated evidence, "offering to give evidence to the prosecution if they are given a good way of life."

Muthaura told the court he feels sad to be presented as a monster by information gathered from the bush." He said he considers himself "a firefighter who was mistaken or arrested as a nationalist by irresponsible policeman who came to the scene too late." He continued: "What I heard from the prosecution was packaged lies from people who want to make money

and favours from the prosecutor. He asked the judges "to separate facts from lies and ensure justice is done."

Kenyatta's lawyer, Steven Kay, presented his client as a man of peace. On the contrary Kay argued, "no one else was responsible for the violence except supporters of Raila Odinga. The violence was started by the ODM who had been inciting to challenge the election results." Kenyatta will be heard as a witness on Wednesday.

The prosecutor supports the allegation that ODM supporters had spearheaded the violence in Kenya. In a separate case, the judges heard evidence against three other Kenyans: Kenyatta's direct opponent William Ruto, alongside former Minister for Industrialisation Henry Kosgey and radio host Joshua Arap Sang. Ocampo accuses them of being part of a "network targeting" PNU supporters "with the ultimate goal of gaining power and creating a uniform ODM voting block."

Ruto, Sang and Kosgey say they have nothing to do with the violence. "The violence that broke out in Kenya had never been witnessed before. We think the devil must have made a short journey to the republic but not at the invitation of William Ruto," Ruto's lawyer David Hooper said, who claimed that Ocampo's team omitted to investigate properly. "How is it possible that he would have come away empty handed as far as exonerating material is concerned?"

The same line was followed by Sang's lawyer, who said "that every single item that the Prosecutor brought is exculpatory of my client. There is nothing incriminating in it." He went on to say his team was "very surprised" that the prosecution did not use its opening statements "to apologise" to Sang.

The hearings run to October 5 and a decision on whether the cases will go to trial is expected just before Christmas.

France - Rwanda: “now is the time”

During his first visit to France since the 1994 genocide Rwandan President Paul Kagame repeated his will to “move forward”, to “overcome past disputes” and enter without delay into the second phase of reconciliation.

Kagame’s three day visit to Paris, from the 11th to the 13th September, would surely not be enough to overcome the strained relations that have existed since 1994 - Rwanda has always maintained allegations of French complicity in the genocide. Kigali broke off diplomatic ties in 2006 after a French judicial inquiry fingered president Kagame in the April 6 plane attack which triggered the violence. That investigation is still ongoing, now with a new judge and a more balanced approach, and Rwanda is waiting for ballistic results conducted by French judge Marc Trevidic in Kigali on September 2010. The recurrence of tensions may well depend on their results, now scheduled before the end of this year.

French president Nicolas Sarkozy made the first step towards reconciliation by visiting Kigali on 25 February 2010. He publicly acknowledged a series of mistakes made in 1994 and assessed a form of blindness in not seeing the genocidal dimension of what was unfolding.

Two days after Kagame’s visit, Sarkozy further explained his position at an unofficial lunch with nine historians at the Elysee Palace, as French daily Le Figaro reported: I went as far as I could as a president to settle the past and renew our links. We didn’t have to repent, because we were the only ones there, unlike the Americans or the British. We might have made mistakes, but we also saved people.

This compromise is hard to swallow for the current French Foreign Minister Alain Juppé, who occupied the same post during the genocide, and was personally targeted in 2008 by the Mucyo Commission as an accomplice of the massacres. To avoid the heavy Rwandan delegation – no less than five ministers and more than a hundred businessmen – he went on a diplomatic visit to the Pacific. Number two in the French order

of protocol, the Senate president, also found no room in his agenda to meet the delegation. Some MPs and high-ranking officials of the military Operation Turquoise, conducted by France in 1994 in Rwanda, expressed harsh opposition to the visit.

But 17 years later, both leaders seem to have common interests. Kagame needs to diversify his support, while his traditional Anglo-Saxon allies are critical of his democratic governance as in the Africom report, last June in Washington. London too did not appreciate assassins being sent to target Rwandan dissidents last May on its soil, during Prince William’s wedding. And inside Rwanda, several officials close to the president defected last year. Rwanda and Africa are now entering in a new area of their development, describes president Kagame during a conference he gave at the French Institut for International Affairs. Now is the time to adjust our relationship and accept our new role, he said.

The history between our two countries has been very difficult, but we can’t wait for excuses before moving forward. Because in this changing world, France and Rwanda need each other, added Rwanda Foreign Ministry Louise Mushikiwabo, who later explained that Kigali is now very much interested by West Africa, where it signed five cooperation agreements in the last two years. On the French side, strong engagements in Ivory Coast and Libya show what Nicolas Sarkozy wants to be seen as signs of a new African policy. In that context, that reconciliation symbolizes a break with the past, even if no more immediate benefits are expected.

Openly marked by realpolitik, Kagame’s visit left little room for judicial diplomacy. But backstage, the judicial files remain a major point of progress as well as potential tension between France and Rwanda. During his 2010 visit to Kigali, President Sarkozy promised to make sure that Rwandan genocide suspects living on French soil be found and punished. Since that time, judges and investigators have been travelling

to Rwanda on a regular basis, filling up the 20 cases currently opened by four Parisian judges, while a specialized war crimes unit is scheduled to open in Paris, with more human and financial resources, on 1st January 2012.

“We can see significant moves on the judicial side”, says former International Tribunal for Rwanda expert witness professor Andrzej Guichaoua.

But to date, none of these proceedings appear to be ready for a trial, and we are not far from exceeding the provisional detention delays for some of the defendants. Apart from that, cases have also been opened against the French soldiers suspected of rape during the Operation Turquoise. We can’t tell today what the conclusions will be.

What we ask, what we hope is that things move forward, said Rwandan Justice Minister Tharcisse Karugarama said during Kagame’s visit. So long as things move forward, there is no problem. But justice must be seen to be done.

On Wednesday 28, a Parisian court will announce its decision on the extradition of the former president’s widow, Agathe Habyarimana, considered a “big fish” by Kigali but ignored by the ICTR.

ECCC splits case 002

Four former Khmer Rouge leaders on trial for genocide at the Extraordinary Chambers in the courts of Cambodia (ECCC) will first face charges of crimes against humanity after the UN-backed court on Thursday announced a plan to separate the prosecution process.

The trial will be divided into smaller sections, beginning with “the forced movement of population (phases one and two) and the related charges of crimes against humanity,” the court said.

The defendants, including “Brother Number Two” Nuon Chea and former head of state Khieu Samphan, face a range of charges over the deaths of up to two million people from starvation, overwork, torture or execution during the Khmer Rouge’s 1975-79 reign of terror. The Tribunal said the division of the case is “to speed up the proceedings”.

Extradition of Rwandan genocide suspects?

The Netherlands is lobbying the European Court of Human Rights to allow the extradition of genocide suspects living in Europe to Rwanda, International Justice Tribune has learned.

Officially the Dutch government does not consider the Rwandan legal system fit for extraditions. Human rights organizations and Dutch legal experts, asked for their reaction, criticise the Dutch initiative at the European Court of Human Rights in Strasbourg. Rwanda does not yet have a judiciary that is fully independent, they say.

"In theory, Rwanda is reforming its judiciary, but in practice those measures are still insufficient", said Carina Tertsakian from Human Rights Watch. Amnesty International and the Commonwealth Human Rights Initiative (CHRI) are also surprised by the Dutch government's initiative. Rwanda-expert Frederick Cowell: "In Rwanda, politicized processes still take place, without adequate rights for suspects."

According to the Dutch ministries of Foreign Affairs and Security & Justice, extraditions are not to be considered until Rwanda provides "the necessary guarantees" for independent legal procedures, regardless of a positive decision by the European Court of Human Rights (ECHR). A possible extradition treaty has to be voted on first by Dutch parliament.

Debate on the issue began when The Netherlands became involved in a legal case currently being considered by the ECHR. Its judges will have to decide whether or not to allow the extradition to Rwanda of Sylvère Ahorugeze, who is wanted for genocide and crimes against humanity. Ahorugeze, the former head of the Rwandan civil aviation authority, is suspected of having killed twenty-eight Tutsis in April 1994 in the Rwandan capital Kigali. He denies the charges.

Ahorugeze was arrested in July 2008 in Stockholm and the Swedish government decided he could be extradited to Rwanda. Ahorugeze's lawyer is challenging this decision at

the ECHR, but it is unclear when the court will give a ruling.

Dutch advice

The Netherlands is putting its weight behind the Swedish opinion that the extradition should go ahead, despite its criticism of Rwanda's legal system and the official Dutch position that Rwanda is not ready for extraditions. The International Justice Tribune has come into the possession of the written intervention of the Dutch representative at the ECHR, dated July 27th 2010. She writes, Rwanda has, "over the years (made) substantial and fundamental progress in furthering the rule of law". Since the mass killings of 1994, Rwanda has – through Dutch financial support – built new court houses and the "state-of-the-art-prison "Mpanga", and has trained judges. Among the "most relevant developments" are the abolition of the death penalty and of life imprisonment in isolation.

Extradition floodgates

If the ECHR approves extradition, a flow of genocide suspects living in Europe could begin. Many of these people received asylum status after 1994 but in recent years suspicions have been mounting about the involvement of some in the 1994 events. Still, to this day not a single suspect has been extradited. Judges, including in Germany, France, Great Britain and Finland, have always blocked extraditions in appeal cases. Critics argue that in Sweden it was not the judiciary that decided to extradite Ahorugeze, but the government.

Larissa van den Herik is professor of Public International Law at Leiden University. She presumes that The Hague believes it will be useful if the ECHR has already cleared all legal obstacles, ready for when the Netherlands reaches a bilateral extradition treaty with Rwanda at a later date. In addition to that she believes political motives are in play, "The Netherlands is a driving force behind the reforms in the Rwandan legal system. If the ECHR approves

extradition, that will also be seized on as confirmation of Dutch policy. The Dutch authorities clearly have an agenda."

Law not politics

The departments of Foreign Affairs and Security & Justice deny that the Netherlands is lobbying the ECHR because of political reasons. The Hague argues it is promoting extradition on a European level merely to draw attention to the positive effects of Dutch investments in the Rwandan legal system. "If the ECHR disapproves of extradition, that will also be a valuable verdict. Such a verdict (...) will refine the insight of the areas on which Rwanda still needs assistance to reach the level required by Europe."

Roelof Haveman, a Dutch legal consultant, believes Rwanda is ready to handle extradition cases. Haveman assisted the Rwandan government in setting up a training institute for the judiciary. He points out that in June this year the Rwanda-tribunal handed over the case of Jean Uwinkindi to Kigali, the first time this has happened.

Critics argue that the Netherlands already encouraged the ECHR last year to allow extradition, well before the Rwanda-tribunal handed over the Uwinkindi-case. "But back then it was clear already that the Rwandan legal system was moving in the right direction", Haveman said.

Haveman points out how aware Rwanda is of the outside world's watchful eyes on its proceedings. "Kigali realises that any genocide case will be closely followed and therefore needs to be flawless. Otherwise, European countries might put a hold on further extraditions." Human Rights Watch, Amnesty International and the CHRI do not share Havemans opinion.

They point to the case against Victoire Ingabire, the opposition leader who is on trial in Rwanda for alleged ties to a terrorist organisation. The case of Ingabire is high profile, but nevertheless president Paul Kagame has publicly stated that Victoire Ingabire belongs behind bars. A fair trial is therefore impossible say critics, improved judiciary in Rwanda or not.

Sri Lankan justice plays out in foreign courtrooms

Three cases around the world reflect a new trend in international justice – while Sri Lanka shows no intention of properly dealing with accusations its military committed atrocities in the closing months of the civil war in 2009, cases have opened in the Netherlands, Switzerland and the U.S. against both the Tamil Tigers and the Sri Lankan military.

On Monday two ethnic Tamils filed a case in New York against a Sri Lankan general now serving as a UN diplomat. They claim Major General Shavendra Silva was commanding officer of the army's 58th Division which helped crush the Tamil Tiger rebels in 2009 – and in so doing killed thousands of civilians through the shelling of no-fire zones and hospitals. The case is using the US's universal jurisdiction to prosecute war crimes outside of its territory.

Last week in Switzerland, prosecutors made the unprecedented step of declaring that if the Sri Lankan diplomat and former army General Jagath Dias returns to the country they will have him arrested and prosecuted for alleged war crimes, also relating to the end of the civil war in 2009. Mr Diath had been in Switzerland serving as a Deputy Ambassador until recently and is now believed to have left the country.

Currently in the Netherlands, five alleged supporters of the LTTE or Tamil Tigers rebel group are on trial for supporting a terrorist organization. Their case brings the question of what makes an organization terrorist in nature under Dutch criminal law. The hearing continues until the end of next week.

DIY justice

All lawyers and experts agree, where a state's judicial structure is strong enough it should prosecute its own war crimes cases. In Sri Lanka there is little international credibility given to the state's Lessons Learned and Reconciliation Commission, which has been criticised widely for not addressing questions of justice and for brushing claims of military atrocities under the carpet.

Mounting pressure from the UN

and international media this year has led many to call for a full and independent investigation into claims of war crimes in 2009, and the establishment of a tribunal to hold major players in the bloody denouement to the conflict accountable. The problem is that this is the last thing the current Sri Lankan government wants as it basks in the popularity it gained by ending the 30 year conflict.

Who needs international courts?

The fact that there are now three separate prosecutions in motion dealing with war crimes in Sri Lanka, thousands of miles away from the tiny island nation, is a very positive development for International Criminal lawyer Goran Sluiter.

"These (international) tribunals are extremely costly, often quite inefficient, slow and bureaucratic. We should be very careful in setting up something new or using the ICC. So if at the national level you have all these cases there's even less need to go to the ICC to set up a new tribunal - it's only when at the national level nothing is happening that it's important to go the ICC," he said.

Does this mean that national courts stepping in and using their own Universal jurisdiction to pursue war criminals from other countries is the way forward?

"Yes of course that's wonderful, but maybe not as much as one would hope, and national courts are dependent on the accused happening to be on their territory - and the big fish may not be on their territory, so then (prosecutions) may be fragmented".

Courts like the International Criminal Court are keen to stress they are courts of last resort and wherever possible will try to help national prosecutors achieve high standards of justice. These principles are widely held to be sound, but in the absence of a nation's political will to pursue justice there is perhaps an ever expanding moral imperative for other states to pursue war criminals through their own courts.

Ivory Coast launches TRC

Ivory Coast President Alassane Ouattara will on Wednesday launch a promised reconciliation commission tasked with healing wounds from the west African nation's bloody post-election conflict.

The Commission on Dialogue, Truth and Reconciliation (CDVR) will be inaugurated in Yamoussoukro, the Ivorian political capital founded by the country's first and longtime president Felix Houphouet-Boigny (1960-1993) after independence from colonial ruler France. The 11-member commission will include one Christian, one Muslim religious leader and five representatives of the country's major regions.

The commission has a two-year mandate to "bring the country as quickly as possible to normality" and "rebuild the social fabric" of the once west African powerhouse, the government has said. Inspired by the Truth and Reconciliation Commission set up in South Africa after the end of Apartheid, the Ivorian panel will have to deal with a decade of turmoil, coup attempts, political and sometimes ethnic-religious violence, that culminated in the post-poll unrest from last December to April.

Ouattara promised reconciliation when in May he assumed the presidency of the world's biggest cocoa producer. At the same time though his regime is rounding up Gbagbo allies. Besides the ex-president and his wife Simone, dozens of pro-Gbagbo civil and military officials have been detained for "economic crimes" or "breaches of national security."

Ouattara's administration does not hide its desire to send Gbagbo off to be tried at the International Criminal Court (ICC) in The Hague, the world's only permanent war crimes tribunal, which still has not decided whether to open an investigation.

And Ouattara has faced criticism not only from Gbagbo's camp but also international rights groups accusing him of victor's justice - not one of the new president's supporters has been charged with any crime. According to the United Nations, both sides committed acts of violence during the post-poll crisis, especially in the west of Ivory Coast.

Tinker, Taylor, Soldier, War Criminal?

The judgement in the high-profile trial of former Liberian President Charles Taylor is expected within months. Taylor is the first African former head of state to stand trial for war crimes and crimes against humanity. He has pleaded not guilty to all charges. Charles Taylor was one of Africa's most feared warlords. He fled Liberia in 2003 and is on trial before the Special Court for Sierra Leone, sitting in Leidschendam. He is accused of supporting Revolutionary United Front (RUF) rebels during the civil war in neighbouring Sierra Leone during the 1990s.

Brenda Hollis is the Prosecutor of the SCSL and the chief prosecutor in the Taylor trial.

As lead prosecutor in the Taylor trial, what is your main task in prosecuting a former head of state?

"First of all, one of the fundamental challenges is - just how do you prepare an indictment? An indictment that is both efficient and reflective of the crimes that you allege the accused is involved in. This has to be done within a reasonable period of time. So that's the first challenge - how do you actually fashion the indictment?"

How do you make sure you get the accused into custody?

The second challenge is - if you have an indictment that's been approved - how do you actually get physical custody of an accused? Especially if you're talking about a senior-level accused, it may be very difficult because political agendas - concerns about impacts on states or regions - and security issues may be very significant factors as to whether a state or region will support turning someone over. It may be almost impossible to get someone.

Or it may be that a number of years pass before a person is turned over to the court. So these kinds of political and security issues that are totally beyond the ability of the court to control may actually preclude you from bringing a person to court physically to be given a fair trial.

How do you go about selecting the evidence in these large and complex cases so that you can prove your case efficiently?

These crimes usually extend over long periods of time, over many locations, with such a variety of victims and survivors. You may also have issues with insider witnesses who perhaps are still affiliated with a former head of state, and so will not come forward to give the information that they have. Or maybe they're concerned about their own personal liability and won't come forward.

You may also have resistance from regional, state or international actors who have interacted with the accused or the perpetrator groups. For various political or other reasons they may not want to give you access to the evidence within their possession - and don't want to give evidence themselves. So you have real issues in selecting your evidence and making a manageable case.

Protecting witnesses is another big challenge. Former heads of state and their high-level former commanders and associates may have very organised means of interfering with witnesses - by bribing, threatening or harming them. So you have to be worried about their protection before, during and after trial.

Lawyers call it Just Convict Everyone, but is JCE (Joint Criminal Enterprise) the best way to prosecute former leaders like Charles Taylor?

Of course, there are different forms of liability that you may allege. And the issue that arises very often where an accused is involved over a long period of time is that the accused - especially a high-level accused, may engage in various forms of liability at various times.

For example, they may give orders to the perpetrator groups that are criminal in nature, resulting in heinous crimes being committed. They may aid and abet from the very beginning till the very end. And they may be part of a Joint Criminal Enterprise (JCE).

The challenge here is not so much the breadth of the JCE: the breadth of it simply means you

have more evidence that you have to present. But the issue of the JCE for the prosecution and the defence. Also for the trial chamber in reaching its judgement is to understand the concept and to be able to clearly apply the law. But I believe the JCE is a very appropriate form of liability for these cases."

Kwoyelo gets amnesty

A Lord's Resistance Army rebel leader charged with 53 counts of murder and other crimes, including kidnapping and robbery, walked free from a court in Uganda last Thursday.

Uganda's Constitutional Court ruled that LRA commander Thomas Kwoyelo should be given amnesty, ending the trial which started three months ago. Kwoyelo was arrested in 2009 and stood trial before the International Crimes Division (ICD) of the High Court of Uganda

The Kwoyelo case was its first and the prosecution was eager to see it through. The body was set up in the wake of the failed peace talks with the LRA between 2006 and 2008. It was established to try the rebel group's second tier of commanders. The ringleaders - including leader Joseph Kony - were indicted by the International Criminal Court (ICC) in The Hague. At the same time the ICC works closely together with the ICD, sharing information and training material.

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