

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



See photos from yesterday's Outreach at the Craig Bellamy Foundation football academy at Tombo 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**

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Press clips are produced Monday through Friday.  
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## Reuters

Tuesday, 21 February 2012

### **The Hague makes capital out of criminal courts**

THE HAGUE (Reuters) - In a tiny office on Zeestraat 100, Alice Helbing puts the final touches to a script for an imaginary counter-terrorism exercise in the Netherlands. A few doors down the corridor, staff from a legal aid group are digging into real war crimes in Ivory Coast.

Nearby at Humanity House, a small museum devoted to raising awareness about aid for the victims of disaster, visitors can find out what it's like to be a refugee - to have to flee your home, leaving dinner on the table, with no money, no mobile phone, no passport, just the clothes you are wearing.

Behind its staid Dutch exterior, The Hague has become a hothouse for human rights ventures and international legal services, invigorating the local economy with new jobs and an influx of mainly foreign professionals.

But it has also become so much of an international hub that sometimes locals feel like strangers in their own town.

"The Hague has become an incubator, a sort of legal Silicon Valley," said one diplomat who follows the courts.

Many of the rights and legal groups are housed in two utilitarian office buildings near the city centre: At Zeestraat 100, staff from non-government organization Africa Legal Aid rub shoulders with game designer Alice Helbing and her fellow conflict resolution trainers from the Pax Ludens foundation. Around the corner, Laan van Meerdervoort 70 provides space for groups like the United Network of Young Peacebuilders.

The policy-makers, foreign or defense ministry officials, and students who attend Pax Ludens's training sessions on negotiating tactics can role play to get a taste of what it is like to be U.N. Secretary-General Ban Ki-moon, or to head the Israeli and Saudi Arabian delegations and hold secret talks over the Arab-Israeli conflict.

"We have to be here," said Diederik Stolk, a project officer who develops training programs for Pax Ludens. "We get access to policymakers, ministers, diplomats."

### **ESSENTIAL WORK**

Down the corridor, Africa Legal Aid tracks the work of the International Criminal Court, the world's first permanent war crimes tribunal, whose cases have so far all involved Africa, including investigations in Ivory Coast and Kenya that have had huge political significance at home.

ALA's director Evelyn Ankumah says the ICC's work in the Netherlands is essential to address crimes that otherwise might go unpunished in the places they are committed and, if anything, its remit should be expanded to take on economic and environmental crimes, piracy and human trafficking.

"In Africa, our heads of state, our leaders are committing these crimes against their people, who have no recourse," she said.

"The Hague is a provincial town that has acquired an international reputation, and there are wide-ranging economic benefits," said Menno Kamminga, professor of international law at Maastricht University.

"Certainly what The Hague and the Dutch government want to have is lots of people with high salaries. It's good for the economy: lots of courts, lots of lawyers, lots of conferences."

What originally put The Hague on the peace-and-justice map was the first international peace conference in 1899 - an initiative by Russian Czar Nicholas II to bring together states in Europe and Asia, as well as Mexico, to discuss peace and disarmament.

The conference led to the construction of the Peace Palace that now houses the International Court of Justice, the United Nations' judicial arm set up to settle legal disputes between states such as the long-simmering dispute between Greece and Macedonia over the latter's name.

In 1993, the International Criminal Tribunal for the former Yugoslavia (ICTY) was set up in The Hague to deal with war crimes during the Balkans conflict. It served as a model for the ICC and cemented the city's role.

"It could be Paris, it could be Rome, it could be Brussels. But the Dutch policy is to make The Hague the capital for international justice," ICTY prosecutor Serge Brammertz said.

## **DEEP CHANGES**

As the courts and multinational organizations moved into town, they have changed its skyline, its social fabric and even its tastes in food.

Currently housed in temporary quarters on the outskirts of town, the war crimes court will eventually move into a stunning glass space overlooking the dunes, designed by Danish architects Schmidt Hammer Lassen and due to be completed by 2015.

Construction projects such as the ICC's new premises and the new headquarters for Europol, completed last year, provide a welcome injection for the local economy, but the financial benefits go deeper.

International agencies and courts, from Europol to the ICTY, spent about 2.7 billion euros in The Hague and its surroundings in 2010, and accounted for roughly 11 percent of the local economy, according to a report by consultancy Decisio.

They created more than 18,000 jobs directly, while a further 17,500 jobs were created indirectly as staff spend the bulk of their salaries in the Netherlands.

"One job in the international cluster means two jobs in our economy," Decisio said.

Hotels, shops and restaurants get a lift when celebrities come to town, whether it is supermodel Naomi Campbell testifying at Charles Taylor's trial or actress Angelina Jolie attending Congolese warlord Thomas Lubanga's hearings. High-profile suspects who appear before the courts voluntarily are likely to be accompanied by large entourages.

International staff often enjoy higher salaries and tax benefits, giving them greater purchasing power. Decisio said the average income of such international employees is 79,500 euros a year: Dutch staff earn 54,000 euros on average.

That has created a certain feeling of "them and us," even within the legal community, also in part because there is very little intermingling between the Dutch and foreign lawyers, and very few Dutch judges or lawyers at the courts.

Where many see the benefits for the local economy, some bemoan the changes.

"You see it in the kind of things they sell in the shops - the Americans want their M&Ms, the English want their PG Tips (tea)," said an assistant at an art gallery in the centre of town, and added that property prices in areas such as the fashionable Statenkwartier district are now beyond the budgets of most local people.

"I grew up there, and moved away, but now I couldn't afford to buy a place in Statenkwartier," she said.

## ICTJ

Wednesday, 22 February 2012

### **Brussels must do what it can to stop Bosnian Serb leaders from undermining the country's state court.**

By David Tolbert

The War Crimes Chamber of Bosnia's State Court, the Court of Bosnia and Herzegovina, is one of the most successful undertakings when it comes to addressing the legacy of mass atrocities and to bringing the perpetrators to justice in national courts.

It serves as a model of international assistance, which has been used to create institutions capable of addressing complex cases of serious crimes in countries where systematic and widespread violence occurred.

As this important institution finds itself under serious threat, the European Union must act quickly to put a stop to attempts of the Bosnian Serb political leadership to undermine both this court and Bosnia's capacity to prosecute war crimes at state level.

The War Crimes Chamber was established in 2005 to ensure that war-crimes proceedings were conducted free of political or ethnic bias. The record of this institution and the model, in which international judges and prosecutors work alongside Bosnian counterparts of all ethnicities, is viewed internationally as an important example of best practices.

This court received the vast majority of cases transferred by the International Criminal Tribunal for former Yugoslavia, ICTY, to local judiciaries in the Balkans. It has completed these trials in accordance with international standards, as monitored and assessed by the Organization for Security and Co-operation in Europe, OSCE. To date, the War Crimes Chamber has issued final verdicts in more than 80 cases of war crimes, crimes against humanity, and genocide, making it one of the most effective national institutions of its kind in the world.

With the advent of the International Criminal Court, ICC, as a court of last resort equipped to deal only with those most responsible for international crimes, responsibility to comprehensively combat impunity falls primarily on national courts. The War Crimes Chamber is widely recognized as a model of success in the ongoing discussion on how to ensure successful complementarity between national judiciaries and the ICC.

However, the State Court has been under severe political pressure for some time now, primarily from the political leadership of Republika Srpska, one Bosnia's two administrative entities.

A sustained campaign to undermine the court's work has included budget cuts, the stalling of the National War Crimes Strategy—a system envisaged to complete the majority of Bosnian war crimes cases within 15 years—and a relentless campaign of public attacks. This onslaught has now culminated in the demand by Republika Srpska's parliament to have the court abolished.

The call for dissolution of the State Court is being justified by the decision of the state prosecutor to terminate an investigation into the May 1992 attack on a Yugoslav Army convoy by Bosnian government soldiers in Sarajevo.

The proposed course of action envisages transfer of current state jurisdiction to the courts in Republika Srpska, which would be given resources to “ensure that crimes against Serbs are properly prosecuted”.

The statements validating this dangerous campaign parrot identical attacks by Serb nationalists directed over the years at the ICTY—“the court is anti-Serb; it is trying to re-write history and blame Serbs for majority of committed crimes”, which we naively believed to be rhetoric of times that passed with the Milosevic regime.

In April 2011, the World Bank issued its World Development Report, WDR, which for the first time places massive human rights abuses and transitional justice at the heart of its analysis of conflict, and links them directly with development and security.

The findings are clear: transitional justice measures—such as criminal prosecutions of perpetrators of atrocities—can be crucial tools to prevent the recurrence of cycles of violence. Governments can restore civic trust by indicating a break with the past, in addition to performing basic tasks such as ensuring citizen security and promoting employment.

Bosnia is possibly one of most documented examples of how development and security are directly linked to society’s capacity to achieve accountability and justice for the crimes of a recent conflict. Republika Srpska’s actions against the State Court and the return to wartime rhetoric of ethnic mistrust and stereotyping—on the rise in all Bosnian communities—speak of dynamics diametrically opposite to those prescribed by the WDR. This is of direct concern to all in Bosnia and Herzegovina and the region, but also to the European Union, which continues to support Bosnia in its effort to join the EU.

The EU is actively engaged in the discussion of how to make the principle of complementarity between the ICC and national judiciaries work effectively. In view of this, it is high time Brussels sent a clear message that any intent to undermine Bosnia’s capacity to bring war criminals to justice is not acceptable in the EU or anywhere else. Pursuit of such agenda will not lead Bosnia and Herzegovina to the EU; on the contrary it threatens to lead to a very different outcome—one of instability and dangerous uncertainty where politicians direct the courts.

\*David Tolbert is president of the International Center for Transitional Justice and former Deputy Prosecutor of the ICTY.

This op-ed originally appeared in the Balkan Insight.

# Peace and Conflict Monitor

Wednesday, 22 February 2012

## Transitional Justice in Burundi: Expectations and Concerns

Vital Nshimirimana

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Vital Nshimirimana discusses the transitional justice process as planned by the government of Burundi for 2012. He argues that issues including ongoing insecurity, human rights abuses, lack of dialogue and trust among social partners, as well as lack of rule of law will undermine the process.

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### Introduction

For decades, transitional justice has been a tough topic in war-torn societies. Transitional mechanisms are set up in the aftermath of violent conflict to address the wrongful past. Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reform.



The Burundian people experienced decades of deadly conflicts in which thousands of people died (Bracket & Wolpe, 2005).

From the time of the Arusha Peace and Reconciliation Agreement for Burundi (2000), people are waiting to know the truth about past human rights abuses and expect to access justice. In late 2011, the government of Burundi declared its plan to set up transitional justice mechanisms. Meanwhile, people are concerned about the state of peace in the country. In effect, the 2010 general elections were boycotted by the opposition and post-electoral violence led most leaders of the opposition to flee the country (HRW, 2011). In addition, many activists are often jailed for their statements. In such a context, people are scared to talk. In this article, I discuss the main requirements that need to be fulfilled prior to any transitional justice process. I also question the people's readiness to participate in the upcoming transitional justice mechanisms, their expectations and concerns.

### Which Style of Transitional Justice for Burundi?

Chiefly, transitional justice mechanisms are designed in non-judicial accountability, such as the truth and reconciliation mechanism, or through a judicial accountability mechanism such as a special tribunal.

### Truth and Reconciliation Commission, Special Tribunal, or Both?

People in transitional societies aspire to realize the social, economic and political transformations that will address the causes and legacy of violent conflicts; and they expect that reconstruction programmes and post conflict justice initiatives will help them to achieve these transformations (Aguilar & Isa, 2010). Often, transitional justice deals with two parties: there is one side made up of those responsible for human rights abuses, who are today in power or who lost and are now facing justice; and that of victims who are seeking to know the truth and are asking for reparations.

In 2003, the government of Burundi signed a cease-fire agreement with the then-rebel group, the National Council for the Defence of Democracy-Forces for the Defence of Democracy (CNDD-FDD), and as a result, its leaders were granted provisional immunities and integrated into the government. The same rebel group, which later became a political party, won the general elections in 2005 and 2010. Therefore, some of the people under provisional

immunities are the ones who are running the country; this leads to the question of whether they can activate trials against them.

Basically, transitional justice applies in the context of reconstruction of the state and the spirit of the people, as well. In fact, when war breaks out, it destroys all foundations of the nation: infrastructures, economy, social cohesion, and one's mind, as well. Hence, transitional justice mechanisms have to respond to the specific needs of every country, depending on its culture, history and geopolitics. They have to be well-organized and granted enough resources so that they can achieve their goal, which is ultimately to reconcile people.

Arguably, the transitional justice process is not always fruitful and it could be a huge mistake to understand it as a panacea. In my view, where the judiciary has failed to defend justice and where the rule of law doesn't apply, people should expect less from transitional justice mechanisms. Yet, many support that transitional justice is an alternative for social justice aimed at affording enough space for every citizen to participate in reconciliation. In this respect, Lutz (2011, p.324) writes that, "since its inception, transitional justice movement has operated on the principle that transitional justice, and the goals that underlie it, are by definition a good thing". In addition, whereas justice through courts and tribunals is retributive by essence, the definition of transitional justice rejects a winner-take-all approach as a beachhead to the future. It calls for deeper concessions on either side of the divide and no one party or faction can be fully satisfied (Makau Mutua, 2011).

Even if there are many cases of transitional justice mechanisms that have been set up in several countries and in many contexts varying in size, resources and complexity, there is no one kind of transitional justice mechanism that can be taken as the standard for all others occurring on different sides of the world within different contexts. However, most of them have in common certain structures and procedures. These involve judicial and non-judicial mechanisms, which include individual prosecutions, reparations, truth-seeking, institutional reforms, vetting and dismissals, or a combination thereof (CTJ, 2008). For example, the *Gacaca* system of justice on the ground was created by Rwandans who looked to their own history and culture to find a culturally acceptable solution to an overwhelming problem, in which hundreds of thousands of people who participated in the genocide were heard by their peers (Westberg, 2010). Sierra Leone organized a Truth and Reconciliation Commission and the Special Tribunal for Sierra Leone, and South Africa set up the Truth and Reconciliation Commissions.

After half a decade of civil war, the Arusha Peace and Reconciliation Agreement for Burundi was achieved on 28 October 2000 between the Burundian government, political parties and the rebel movements. This agreement constitutes the political and legal basis of transitional justice mechanisms in Burundi, to be managed by the creation of a truth and reconciliation commission and the international tribunal to investigate and prosecute those responsible for crimes since 1962. However, the same agreement created a peculiar deal of power-sharing, based exclusively on ethnicity. Obviously, the consequence of such a system is that today, those presumed responsible for slaughter and their very victims are sharing 'the cake'; one wonders which party can choose to lose. Therefore, in such a system, justice doesn't have a place.

Meanwhile, the Arusha Peace and Reconciliation Agreement for Burundi provides for the establishment of an international judicial commission of inquiry on genocide, crimes against humanity and war crimes, followed thereafter by an international criminal tribunal to try and punish those responsible should the findings of the report point to the existence of acts of genocide, crimes against humanity and war crimes (Article 6). Despite this provision, the ongoing debate about what kind of mechanism fits Burundi leads to the questions on political will to set up such mechanisms. In fact, in 2005, the UN Secretary-General created a commission in charge of the assessment on the establishment of an international commission of inquiry known as the Kalomoh Commission, which came out with the proposal of a twin accountability mechanism composed of a non-judicial accountability mechanism in the form of the Truth and Reconciliation Commission, and a judicial accountability mechanism in the form of a Special Chamber within the court system of Burundi (UNSC, 2005).

Later, the United Nations Security Council issued Resolution 1606 (2005) on transitional justice, requesting the United Nations Secretary-General to initiate negotiations with the government of Burundi and all parties concerned about the implementation of the mechanisms mentioned above. In 2010, the Tripartite Committee of National Consultations on the Establishment of Transitional Justice Mechanisms issued its findings, in which the overwhelming majority of participants expressed their support for the establishment of a Truth and Reconciliation Commission and a Special Tribunal for Burundi (CTP, 2010).

Nevertheless, the government is not ready to set up both mechanisms: while addressing the nation regarding great projects for the new year (2012), the Head of State did not mention the creation of the special tribunal for Burundi. Simple omission or explicit choice? Arguably, the answer to this question is granted by civil society (Iwacu, 2012), who regret the lack of political will to create a mechanism of such high importance in a war-torn society. In this respect, I wonder why the government prefers the truth and reconciliation commission, leaving aside the idea of a judicial mechanism, which has been proposed twice to deal with the perpetrators of the unimaginable atrocities. One may even question whether truth-seeking without a judicial mechanism would lead to a masquerade of the so-called collective pardon in a context of confusion, relying on a strange discourse attempt to convince all the citizens that ‘everybody killed’, a fake means of propaganda that unfortunately may work in a country whose population chiefly belongs to Christianity and where a significant quota of people are illiterate. Nevertheless, it is obvious that there are those who killed and those who are actually victims, and the former must respond to their responsibility. Also, reconciliation can never happen without justice and reparations of diverse harms.

### **Requirements for Transitional Justice in Burundi**

Transitional justice mechanisms have been announced many times. Still, skepticism keeps growing among different partners who ought to be involved in the process, and plenty of questions arise as to whether transitional justice can work within the current tension between social actors.

### **Are People Ready to Participate in Transitional Justice Mechanisms in Burundi?**

Transitional justice does not evolve in a vacuum. Essential prerequisite measures must be undertaken so as to ensure and guarantee security and physical integrity for everybody. Transitional justice must be organized in a manner such that it meets international human rights standards. It is worth mentioning that it would be in contradiction with the very concept of justice and human rights if transitional justice were designed to serve the criminals, organized mainly to grant pardons to those responsible for grave violations of human rights and support the legitimacy of those in power. Moreover, those in power have to comply with the process, and the government has to commit to a clear political will and create conditions in which genuine accountability can take place. Lutz (2010, p.334) argues:

There can be no public acknowledgement of wrongs committed in the past if there is no legitimate representative political body able to listen to and acknowledge them. There can be no truth -telling without protection from retaliation for those who desire to do so. There can be no trials without laws, and judges, and lawyers, and courthouses, and the means to gather and protect evidence.

On the other hand, transitional justice is possible only when people can trust each other, especially those involved in the decision-making process. In fact, the state of poverty and corruption in the country undermines public trust of government representatives. In late 2011, the United Nations Human Development Index reported Burundi to be among the ten least developed countries in the world (UNDP, 2011). At the same time, many reports stress great concern about the state of corruption: the country is reported to be among the ten most corrupt in the world and the most corrupt in the East African Community (TI, 2011). At the national level, the most corrupt services are those supposed to be close to the population. Therefore, people cannot access basic services in as much as they are unfortunately obliged to bargain their rights. In such a context, trust of leadership collapses, and people find that it is of less use to talk about any issue because there is no significant change.

Coming back to the killings that took place a couple of decades ago, it is worth mentioning that in 1996, many people participated in a series of investigations into the crimes that occurred since 1993. The UN commission of inquiry mandated by the UN Security Council concluded that genocide was carried out against the minority group: “the commission considers that the evidence is sufficient to establish that acts of genocide against the Tutsi minority took place in Burundi since 21 October 1993 and the following days at the instigation and with the participation of certain Hutu FRODEBU functionaries and leaders up to the community level” (S/1996/682 §483). The commission recommended the creation of an international jurisdiction to deal with such acts (Id.§496). Although victims and civil society launched compelling appeals to seek the truth and punishment of those responsible for such crimes, their demands went without any follow-up.

In addition, impunity of crimes is rampant. It often happens that criminals convicted of murder or assassination are released for political reasons. For example, in early 2006, 673 prisoners were released in the so-called liberation of

political prisoners, and this led people to express their skepticism toward the very idea of justice, given that most of the released were sentenced to death for murder and assassination. Civil society and the international community were strongly disappointed by such a denial of justice, especially for crimes committed in 1993 against the minority. Amnesty International (2006) said that such a measure, amongst a series of others taken previously, failed to address the need to end the climate of impunity that has prevailed for decades and may have a detrimental impact on the reconciliation process in Burundi. Amnesty International (2006) also considered that such impunity denies victims and their families the right to have those responsible for the crimes brought to justice in a court, to know the truth and to obtain full reparation.



Prior to transitional justice, such as the truth and reconciliation mechanism, safety and respect for human rights have to be fully granted so that people may feel interested in participating in the process. Nonetheless, the current situation is one of violation of public freedoms; the right to freedom of expression, the right to peaceful assembly, and the right to freedom of association are regularly violated. Human Rights Watch (2012) reported a series of arrests of activists, harassment and intimidation of journalists, activists, and lawyers who, once they raise their voices to denounce human rights abuses and corruption, are accused of working on the behalf of the opposition. In addition, forty people were killed in a bar in late September 2011, and many reported that it was an emerging rebel

group that committed the massacre (BBC, Sep. 2011). At the same time, the opposition leaders withdrew from general elections in 2010, accusing the ruling party of rigging the polls; most of them fled the country after a series of persecutions (Freedom House, 2011). Still, the opposition keeps making compelling appeals for dialogue, but the government is not willing to respond (Vircoulon, 2011).

Obviously, the few cases mentioned illustrate the state of public freedoms and dialogue, which restricts the appropriation of the process by the people. Whenever transitional justice mechanisms are to be set up in Burundi, there is great concern that people may not collaborate because they fear for their security and are disappointed by the previous experiences. This is most complicated since citizens, civil society organizations and judges keep complaining about the lack of independence of the judiciary, its partiality and failure to protect human rights and render a fair justice (OAG, 2011). Moreover, the current judicial system struggles to function effectively or independently, and cannot handle the large number of pending cases, many of which are politically sensitive.

The state of confusion prevailing on the ground remains also on the rule of law, which is actually a prerequisite for justice, especially transitional justice. The rule of law supposes an institutional system in which public power relies on law, where juridical norms bind every person as well as the State. Within this system, there is recognition of equality of subjects of law, the primacy of law and the independence of the judiciary. Without an independent, impartial and competent judicial system that can assess respect for human rights and sanction their violation, the protection of human rights is a dead letter.

## Conclusion

The very idea of transitional justice in a war-torn society like Burundi is not inherently bad. In effect, it aims at addressing the large-scale human rights abuses of the past, provided that it is well-organized and people are ready to collaborate. In many countries that have faced deadly conflict, transitional justice is a means of national reconciliation. Therefore, transitional justice mechanisms have to be designed in accordance with realities on the ground, including the culture, nature and intensity of crimes committed. Some requirements have to be fulfilled prior to the implementation of transitional justice mechanisms, so that people can expect some result. These requirements are, *inter alia*, safety and security for every citizen, public freedoms, free press and respect for human rights, to name but few. Moreover, institutional stability and independence of the judiciary predict a viable process of transitional justice. Prior to transitional justice, Burundi has to enhance its state of peace and security. In effect, the situation prevailing on the ground leads us to expect less from the upcoming transitional justice process: Human rights abuses, lack of safety and fear among citizens, lack of a space for dialogue between social partners,

corruption and lack of independence of the judiciary, to mention a few, are obstacles that will undermine the transitional justice process in Burundi.

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## Outreach at the Craig Bellamy Foundation football academy at Tombo

Wednesday, 22 February 2012

