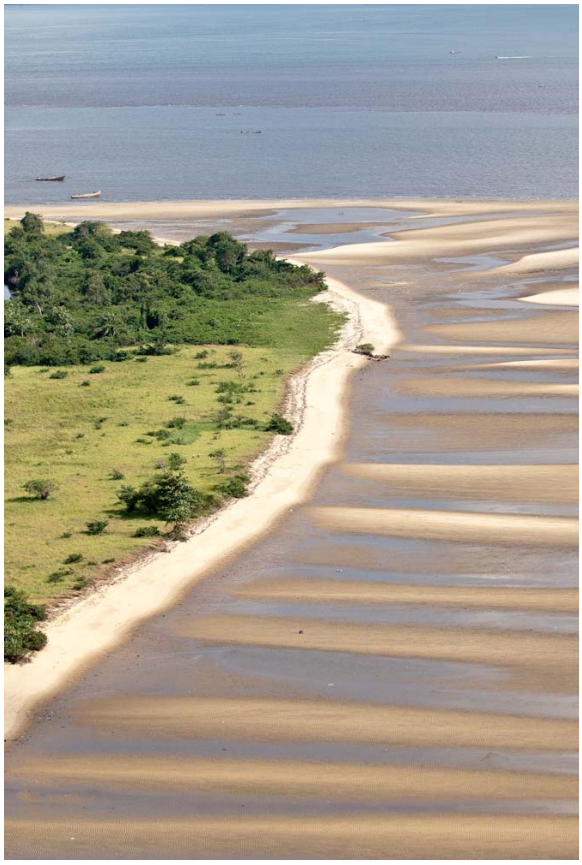
SPECIAL COURT FOR SIERRA LEONE
OUTREACH AND PUBLIC AFFAIRS OFFICE



PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office
as at:
Monday, 1 November 2010

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
Martin Royston-Wright
Ext 7217

Local News

International News

Concord Times
Monday, 1 November 2010

UK calls for action on the global abolition of the death penalty

By Jeremy Browne,
UK Minister of State

Following the recent seventh World Day Against the Death Penalty, it is grimly disturbing that we are continuing to see such widespread use of the death penalty across the world. Amnesty report that in 2009, 18 countries carried out executions, with a total of 714 people executed during the year, and this does not even include figures from China, where these remain a state secret. The majority of the world's executions take place in China, so the actual figure is likely to be in the thousands.

Some of the crimes committed by people who have been sentenced to death are appalling. Why then does the Government remain absolutely opposed to the death penalty in all circumstances, no matter what the crime?

The answer to my mind is clear.

First, there is no evidence to suggest that a person who commits a crime which carries a life sentence in prison would have acted any differently if he or she had known that their crime could have resulted in their execution.

Second, any miscarriage of justice leading to the imposition of the death penalty is irreversible and irreparable. It is difficult to forget the case of Derek Bentley, executed in 1953 when he was only 19 years old and eventually cleared 45 years later.

Third, if the state has the authority to execute its own citizens as a criminal penalty, the balance between the rights of the individual and the power of government is fundamentally altered.

Finally, the existence of the death penalty undermines human dignity and has no place in the 21st century. Abolishing the death penalty is a vital step towards the development of full and universal human rights.

There is now clear international momentum towards global abolition. In the past 10 years alone, 22 countries have abolished the death penalty. But global abolition is still many years away, and considerable challenges remain before we can live in a fully abolitionist world. Only 58 countries retain the death penalty. But that is still 58 too many.

Tomorrow the Government will launch its new strategy for global abolition of the death penalty. We will direct our work at the most prolific users and in those places where we can make a real difference.

This may sometimes require a pragmatic approach with some countries. For example, encouraging states to formally establish moratoriums on the use of the death penalty. And we call on those countries that continue to rely on the death penalty, to ensure that international minimum standards are adhered to, including never executing juveniles, pregnant women or persons who have become insane, and ensuring rights to a fair trial and to appeal.

Our international project work is also yielding results. The Foreign Office funds projects to bring legal challenges to the constitutionality of the imposition and the application of the death penalty. We have recently supported successful challenges in Kenya, Barbados and Uganda among others.

Removal of the mandatory death penalty can significantly reduce the number of prisoners who are sentenced to death. Just last month, 167 prisoners on death row in Uganda had their sentences commuted to life imprisonment as a result of an FCO funded project and last year Kenya commuted the death sentences of its entire death row of 4000 prisoners. These are steps in the right direction.

But we cannot stop there. The abolition of the death penalty will not happen overnight and there is much hard work ahead. The UK remains firmly committed to taking action on its own and together with our international partners in order to achieve our ultimate aim of global abolition.

The Nation
Monday, 1 November 2010

Justice & Human Rights

ICC Inducts Republic of Seychelles Today as New Member

The International Criminal Court (ICC) today, 1 November, 2010, will hold a ceremony to welcome the Republic of Seychelles as its newest State Party to the Rome Statute. The event is to take place on the day that the Rome Statute takes effect in Seychelles. In a symbolic act, the President of the Court, Judge Sang-Hyun Song will present a special edition of the Rome Statute to the Ambassador of Seychelles, H.E. Ms Viviane Fock Tave. The ceremony will be held in the presence of the Vice-President of the Assembly of States Parties, the Ambassador of Mexico, H.E. Mr. Jorge Lomónaco, as well as several high-ranking officials of the Court. The government of Seychelles deposited its instrument of ratification to the Rome Statute on 10 August, 2010. The Statute enters into force for Seychelles on 1 November, 2010. Seychelles is the 112th State Party to the Rome Statute.

ICC Pre-Trial Chamber I Requests Kenya on Enforcement of Arrest Al Bashir Warrant

The Pre-Trial Chamber I of the International Criminal Court (ICC) has requested observations from Kenya on the enforcement of warrants of arrest against Omar Al Bashir. In the case of the Prosecutor vs. Omar Hassan Ahmad Al Bashir in the situation of Darfur, the Pre-Trail request this not later than Friday 29 October, about any problem which would impede or prevent the arrest and surrender of Omar Al Bashir in the event that he visits the country on 30 October, 2010. The Chamber, being seized on a notification of the Prosecutor informing the Judges of the possibility that Omar Al Bashir might travel to Kenya for an Inter-governmental Authority for Development (IGAD) summit on 30 October, renewed its request to the Republic of Kenya to take any necessary measure to ensure that the President of Sudan, Omar Al Bashir, in the event that he travels to Kenya, be arrested and surrendered to the Court in accordance with its obligations as a State Party to the Rome Statute since 1 June, 2005.On 27 August, Pre-Trial Chamber I had issued two decisions informing the Security Council of the United Nations and the Assembly of States Parties to the Rome Statute about Omar Al Bashir's visits to the Republic of Kenya and the Republic of Chad, 'in order for them to take any measure they may deem appropriate'. On 4 March, 2009, Pre-Trial Chamber I issued a first warrant of arrest against Mr. Al Bashir, considering that there are reasonable grounds to believe that the suspect is criminally responsible for five counts of crimes against humanity and two counts of war crimes. A second warrant of arrest was issued against Mr. Al Bashir on 12 July, 2010, for three counts of genocide.

Banda and Jerbo Charges Start December 8

The charges of hearing in the case against Banda and Jerbo have been confirmed to start 8th December, 2010. The situation involves Darfur, Sudan in the case of the Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus. The Pre-Trial Chamber I of the International Criminal Court (ICC) has decided to reschedule the confirmation of charges hearing in the case of The Prosecutor v. Abdallah Banda Abakaer Nourain (Banda) and Saleh Mohammed Jerbo Jamus (Jerbo) to Wednesday, 8 December, 2010, in light of developments that have occurred in the composition of Chambers and of the Court schedule, as well as of the number of courtrooms which are available to the Court.

The hearing was initially scheduled to start on 22 November, 2010. The confirmation hearing is held to ensure that no case goes to trial unless there is sufficient evidence to establish substantial grounds to believe that the person committed the crime with which he or she has been charged. The suspects have the right to attend the hearing or, in their

Cont. back page

Banda and Jerbo Charges Start December 8

absence, be represented by counsel. Pre-Trial Chamber I decided that, should the suspects intend to waive their right to be present at the confirmation hearing, the written request to the Chamber in this regard must be submitted no later than Monday, 8 November, 2010. Mr. Banda and Mr. Jerbo are charged with three war crimes (violence to life, in the form of murder, whether committed or attempted; intentionally directing attacks against personnel, installations, materials, units, and vehicles involved in a peacekeeping mission; and pillaging) allegedly committed during an attack carried out on 29 September, 2007, against the African Union Mission in Sudan (AMIS), a peace-keeping mission stationed at the Haskanita Military Group Site, in the locality of Umm Kadada, North Darfur.

It is alleged that the attackers killed 12 and severely wounded 8 soldiers, destroyed communications facilities and other materials and appropriated property belonging to AMIS. This case is the fourth in the situation in Darfur after the cases of The Prosecutor v. Ahmad Muhammad Harun (Ahmad Harun) and Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb), The Prosecutor v. Omar Hassan Ahmad Al Bashir and The Prosecutor v. Bahar Idriss Abu Garda. The suspects (Harun and Kushayb, and Al Bashir) in the first two cases remain at large. Abu Garda appeared voluntarily before the ICC on 18 May, 2009. The confirmation of charges hearing took place from 19 to 29 October, 2009. On 8 February, 2010, Pre-Trial Chamber I declined to confirm the charges against him. The situation in Darfur was referred to the International Criminal Court by United Nations Security Council resolution 1593 on 31 March, 2005, under article 13(b) of the Rome Statute.

Cocorioko
Saturday, 30 October 2010

Sierra Leone's Permanent Representative to UN takes part in General Assembly debate on the ICC

Published by Cocorioko News

UN Permanent Representative H.E. Mr. Shekou M. Touray

At the outset, allow me to express my thanks and the appreciation of my delegation for assuming the Presidency of this Assembly and to the President of the International Criminal Court, His Excellency Judge Sang-Hyun Song for presenting the comprehensive report of the Court. My delegation aligns itself with the statement delivered by the distinguished Permanent Representative of Zambia on behalf of the African Group of States Parties to the Rome Statute and would like to make few comments from a national perspective.

STATEMENT BY HIS EXCELLENCY MR . SHEKOU TOURE ON AGENDA ITEM 73 -REPORT OF THE INTERNATIONAL CRIMINAL COURT AT THE PLENARY DEBATE OF THE 65TH SESSION OF THE GENERAL ASSEMBLY ON FRIDAY OCTOBER 29, 2010

Mr. President,

At the outset, allow me to express my thanks and the appreciation of my delegation for assuming the Presidency of this Assembly and to the President of the International Criminal Court, His Excellency Judge Sang-Hyun Song for presenting the comprehensive report of the Court. My delegation aligns itself with the statement delivered by the distinguished Permanent Representative of Zambia on behalf of the African Group of States Parties to the Rome Statute and would like to make few comments from a national perspective.

Sierra Leone welcomes the annual report of the International Criminal Court (ICC) as contained in document A/65/313 the significant judicial progress made by the Court. My delegation also congratulates the Government of Uganda, the Bureau of the Assembly of States parties to the Rome Statute, States and non States Parties, Non Governmental Organizations (NGOs), Civil Society Organizations and all those

who in diverse ways immensely contributed to the successful outcome of the Review Conference held in Kampala from 31st may to 11th June 2010. The historic achievements made in Uganda including the adoption of the definition of the crime of aggression and the conditions for the exercise of jurisdiction regarding such crime is a major milestone in the development of international criminal justice.

Mr. President,

Universality of the Rome Statute is critical in the fight against impunity. In this vein, my delegation welcomes the ratification of the Rome Statute by Seychelles, Bangladesh, Saint Lucia, and the Republic of Moldova. We encourage non state parties to consider becoming members of the Rome Statute.

Like other International Courts and Tribunals,(ICTR, ICTY and Special Court for Sierra Leone) cooperation continues to be the main challenge facing the ICC. Having regard to the diversity of situations in each case in terms of mandate, local situations, political will and methods of funding to mention a few applicable to each of these ad hoc tribunals; specific lessons learnt in terms of cooperation as experienced in each case could be of tremendous significance to the ICC. We therefore support the need for each and every State to do everything within its power to cooperate with and provide support for the court in the implementation of its judicial mandate. We should always remember that the Court's potential for deterrence lies mainly in the likelihood of the threat of prosecution being carried out. Any dilution of that threat makes the worldwide fight against impunity and the ICC's role within that process much more difficult and more at risk of failure.

Mr. President,

As we all know, the ICC does not have the advantage of being focused only on one situation. It operates in situations that can be volatile, where the security situation can vary from day to day. It operates in situations where there are difficulties in spreading information, where the infrastructure is usually challenging at best. We know this type of situation very well: not so long ago, that was the situation facing my country. Just one decade ago, we were in a state of crisis. But as of now: we have peace, we have justice and we have a functioning democratic system. Many challenges await us, but we are in a good position to meet those challenges. One reason for our success is that we faced the need for accountability head-on and took steps to address that need.

Of course, the Special Court for Sierra Leone cannot and does not claim sole responsibility for our change of fortune: that is done by the good men and women of Sierra Leone and the existing political will backed by the support and assistance of the International Community. But the Special Court has in its own way made an important contribution to the restoration of the rule of law, which has help us moved forward. It has done so through being present in the everyday life of our country; not interfering in politics or internal matters, but being there and making an effort to be known, to be understood and to engage with all Sierra Leoneans. Here we want to reaffirm and acknowledge the support and cooperation of the international community, the people of Sierra Leone and Civil Society Organizations.

Mr. President,

In the area of complementary, we recognized the fact that the roles of national jurisdictions are crucial in the prosecution of perpetrators of war crimes, crimes against humanity and genocide. In this respect, Government has drafted a bill for the domestication of the Rome Statute and currently collaborating with the SCSL for the establishment of a Witness and Victim Support Unit (WVS) within the national judiciary. Thus, all actions and activities through potential partner countries aimed at supporting national jurisdictions in meeting their obligations under the Rome Statute, including related activities (like those of the Rule of Law Unit of the United Nations) aimed at strengthening the rule of law and domestic systems are pivotal to the fight against impunity.

Justice must be protected, as justice is a critical component of peace: without justice, there can be no peace. And without peace, the lives of hundreds of thousands of people are put in jeopardy, right now and for future generations. We must not allow a weakening of international criminal justice processes; instead, we must support them, promote them, protect them and defend them. This is the only way forward to lasting peace and prosperous future for all.

To conclude, my delegation reiterates its supports to the Court as a key element in the restoration of peace and international rule of law. To maximize its potential, we must continue our efforts towards universal ratification and implementation of the Rome Statute, we must provide the Court with clear and steady cooperation and, above all, we must assist the court by providing it with clear guidance and constructive support. We recognize the fact that capacity-building is the hallmark for the realization of this objective.

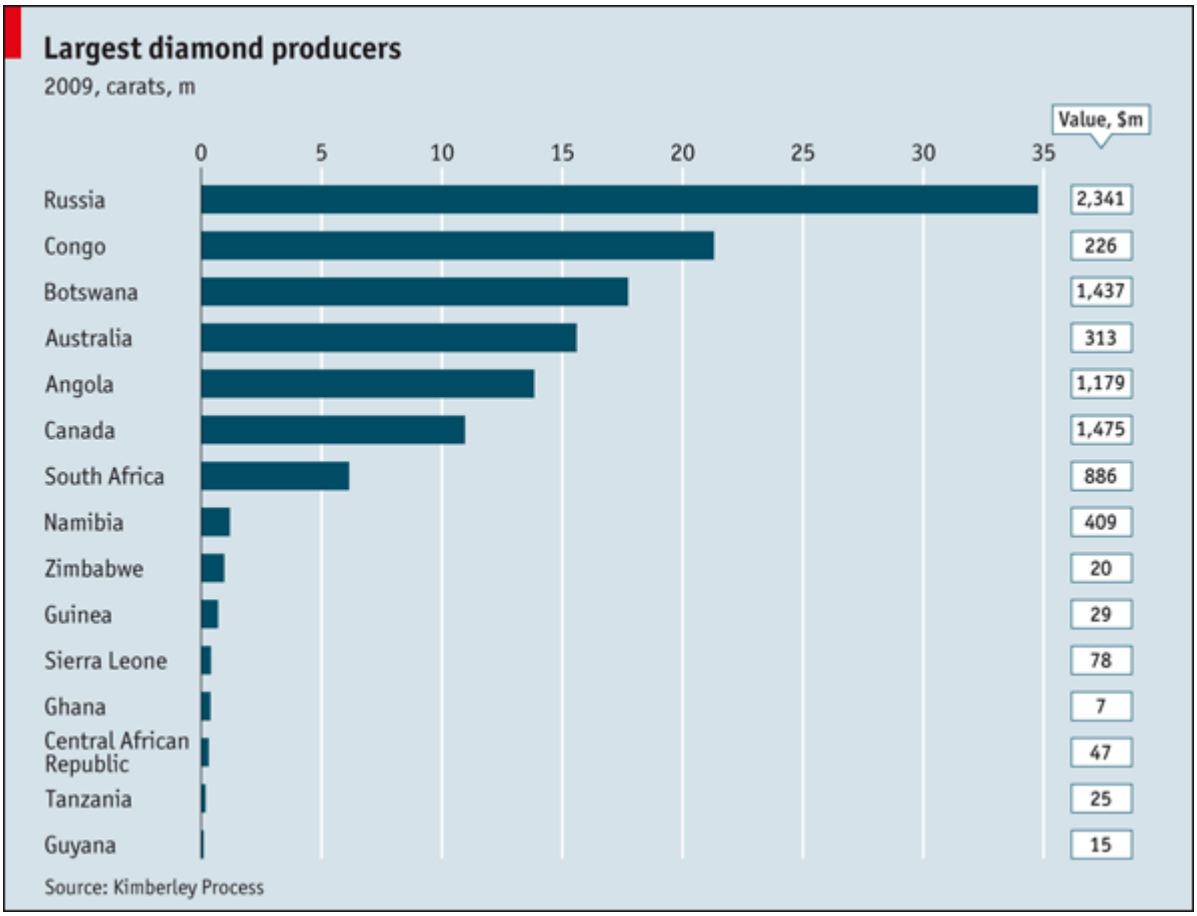
I thank you.

The Economist Online
Monday, 1 November 2010

A model's best friend

Who produces most diamonds?

AMID much media interest, Naomi Campbell, a model, gave evidence on Thursday August 5th at the special court for Sierra Leone in The Hague. Charles Taylor, the former dictator of Liberia, who is on trial for war crimes in neighbouring Sierra Leone, is accused of giving Ms Campbell a “blood diamond” in 1997. Ms Campbell admitted receiving a gift of “dirty looking stones”. Since 2000, the governments of over 75 countries have signed up to the Kimberley Process, which certifies that diamonds produced for foreign markets have not helped to fund violence. The Process has its critics, who point out that diamonds from the huge Marange mine in Zimbabwe have just been cleared for sale, despite much evidence of government-sponsored violence there.



Voice of America
Monday, 1 November 2010

Conference Urges Full Implementation of Liberia's Truth Commissionn Report

Liberian playwright Joseph Gbaba says Liberians should set up an interim government because the current leadership has been implicated in the TRC report

James Butty

Former TRC Commissioner Massa Washington

A two-day New York symposium on the future of Liberia following a final report by the Truth and Reconciliation Commission (TRC) has called for the implementation of all recommendations to ensure those guilty of war crimes are punished.

The TRC was set up to look into the causes of the Liberian conflict from 1979 to 2003.

Its final report, released in December 2009, recommended the prosecution of all warring faction leaders.

It also barred President Ellen Johnson-Sirleaf and dozens of others from holding public office for 30 years for their actions during the conflict.

Joseph Gbaba, an exiled Liberian playwright and chairman of a new group called the *Movement for Holistic Peace in Liberia* told VOA that, instead of elections in 2011, Liberians should set up an interim government because the current leadership has been implicated in the TRC report.

‘What we are determined to see happen is that we would like, at the end of Mrs. Sirleaf’s term of office in 2011, for Liberians to have the opportunity to establish an interim government. Why we want an interim government is because those who have perpetrated crimes against the Liberian people are the ones who are the

leaders of the country. And, this is not a good sign for our children to see that those who have committed atrocities are awarded with state power," he said.

Since the report's release, President Sirleaf, whose government commissioned and funded the TRC, has been criticized for being slow in its implementation.

Members of the president's cabinet have said that some of report's recommendations are unconstitutional.

Patrick Seyon, former president of the University of Liberia, who also was a panelist at the New York symposium, called for a national conference to discuss the report's recommendations and come out with a framework for their implementation. Gbaba said he agrees with Mr. Seyon's recommendation of a national conference.

"Definitely, because there is no way that we can establish an interim government without a national conference. So, what Dr. Seyon has said is right in place," Gbaba said.

Gbaba said he led a delegation of Liberians to the U.S. State Department in Washington two weeks ago (October 22) where they met with the department's desk officer for Liberia, Andrew Silski.

"One of the issues that we raised at that time was, well, we have come to the State Department to request the American government to assist us bring this carnage in Liberia to an end because the root cause of the Liberian crisis began with the mysterious release of Charles Taylor from a maximum prison in (the state of) Massachusetts. We asked the American government why he shouldn't be held liable for the destruction that he committed in Liberia," Gbaba said.

Ghaba said his delegation told the State Department official that, if Charles Taylor is being put on trial at the International Criminal Court in The Hague, then the rest of the Liberian warlords should be arrested and put on trial.

"The response of the official was that this is a Liberian crisis. What you want us to do is what we will do. So, you as Liberians have to come up with a decision regarding what you want to do with your warlords," Gbaba said.

He reiterated that Liberians should immediately hold a national conference to call for the postponement of the 2011 general elections.

"Instead what we want is the establishment of an interim government because the establishment of an interim government consisting of individuals who will not be implicated in war crimes that were reported in the TRC report. They will be charged with the responsibility to make sure that a war crimes court is established, that those who committed atrocities are brought to justice," Gbaba said.

Other speakers at the symposium included three former members of the commission, including chairman Jerome Verdier and Commissioner Massa Washington.

The Scotsman
Thursday, 28 October 2010

Kenya's missed chance to try election rioters

By Mike Pflanz

Kenya has blown its best chance to prosecute those behind post-election violence, a British legal expert has said.
Currently, only the International Criminal Court at The Hague is investigating clashes following the 2007 disputed presidential poll, which left 1,300 people dead.

Charges are expected as early as December, but it is understood fewer than six of the most senior figures will be indicted.

The middlemen and machete-wielding foot-soldiers who carried out the killings are likely to avoid any prosecutions.

Plans for proceedings within Kenya's notoriously corrupt courts were dismissed early on. "I don't think all the possible options were properly debated here in Kenya," Courtenay Griffiths QC, the British barrister defending Charles Taylor, Liberia's former president, told The Scotsman on a visit to Kenya.

"It appears to have been a straight choice between Kenyan courts or the ICC. There seems to have been very little debate about the model of a hybrid court in (Kenya], under the UN."

Such a court was set up in Sierra Leone after a civil war in 2002. Eight of 11 people indicted were convicted and jailed for 15-52 years. Mr Taylor is still on trial, and two accused have died.

Hirondelle News Agency
Friday, 29 October 2010

Judgement of former Rwandan businessman to be delivered Monday

The International Criminal Tribunal for Rwanda (ICTR) will deliver its judgement next Monday in the case of genocide-accused and former Rwandan businessman, Gaspard Kanyarukiga.

Kanyarukiga-65- has pleaded not guilty to charges of genocide, complicity in genocide, as alternative count, conspiracy to commit genocide and extermination as crime against humanity.

He was specifically accused of taking an active part in organizing and ordering killings and the demolition of Nyange Church in his native commune of Kivumu in Kibuye prefecture (western Rwanda) where about 2,000 Tutsi refugees hosted in the church were killed.

Kanyarukiga is not the only Rwandan linked with the massacre at the Nyange church. Others are parish priest Athanase Seromba, who has been sentenced to life imprisonment, Grégoire Ndahimana, former mayor of the commune currently facing genocide charges and ex-judicial police inspector Fulgence Kayishema, who is in the wanted list to be indicted at ICTR.

He was not an educated, but was influential businessman in Rwanda and money is what made him known in the society. Apart from his native commune, Kanyarukiga had also business in Kigali where he had a second wife.

During closing arguments in May, the prosecutor requested for a maximum penalty of life imprisonment to be imposed on the accused, claiming that he directed the driver of a bulldozer on how to destroy the church. He is alleged to have remained there until the church was completely destroyed on April 16, 1994.

‘'The most appropriate sentence is imprisonment for the remainder of his life," ICTR Senior Trial Attorney Tanzanian Holo Makwaia submitted, adding, ‘'Innocent civilians including children and women were killed brutally and in a barbaric manner in the house of God."

However, Canadian lead defence Counsel, David Jacobs, sought for acquittal of his client, claiming that the prosecution had failed to prove its case beyond reasonable doubts.

‘'My client is what he is. He is an innocent man, a family man and a respected businessman," Jacobs alleged insisting that the accused was not a member of a joint criminal enterprise, as portrayed by the prosecution.

The defence closed its case on February 12 after presenting 22 witnesses whereas the prosecution completed theirs on September 17, 2009 after fielding 11 witnesses. Kanyarukiga's trial took off on August 31, 2008. He was arrested in South Africa on July 16, 2004 and transferred to Arusha three days later.

FK/NI/ER/GF

The Nation
Thursday, 28 October 2010

Judging the War Crimes Tribunal

Barbara Crossette

Less than two decades ago the concentration camps, mass killings and rapes in Bosnia sent a blunt reminder that a modern era of genocide and crimes against humanity—with its millions of victims in Mao's China, Stalin's Russia, Nazi Germany and Cambodia under the Khmer Rouge—was not over. Bosnia was followed by Rwanda in 1994. By the late 1990s the United Nations was propelled, or shamed, into action. War crimes tribunals were established to try those responsible for the carnage in the former Yugoslavia and Rwanda; courts for Cambodia and Sierra Leone would come later. The country-specific courts proved to be templates for something much more ambitious: a permanent international court to try the perpetrators and masterminds of atrocities.

In 1998, after long negotiations, 120 nations adopted the Rome Statute (named for the city of its birth), and the International Criminal Court (ICC) came into existence. Four years and sixty country ratifications later, the court was preparing to open for business. In 2003 a prosecutor was sworn in: Luis Moreno-Ocampo of Argentina, a human rights lawyer and prosecutor whose résumé includes bringing to trial senior Argentine junta commanders from the period of army rule in the 1970s and early '80s. More recently he had been a visiting professor at Stanford and Harvard.

For an institution of this historic significance and complexity, the process of establishing the ICC was accomplished in record time, driven by events. And there were ripple effects. When the court began issuing arrest warrants for those charged with being most responsible for mass crimes—in Sudan, Uganda, the Democratic Republic of Congo—the idea of justice beyond the manipulative reach of autocrats and warlords began to have an impact on public perceptions. In Gulu, in northern Uganda, the court has become part of the conversation about what to do with the leader of the catastrophically brutal Lord's Resistance Army, Joseph Kony (who is under an arrest warrant), if and when he is found. In Kenya the possibility of the court's involvement in determining culpability for political violence in 2008 is fiercely debated. African nations have been active in invoking the court's jurisdiction. Kenyan environmental activist and Nobel Peace Prize winner Wangari Maathai told the Inter Press Service in June that the ICC is the only hope for abused citizens everywhere.

In the United States, where the court is not very well known, the study of international criminal law has nonetheless grown—some say exponentially—in leading law schools. New York University, Columbia, Georgetown and Duke are among those with faculty specialists offering courses and writing papers that expand thinking about the contemporary war crimes courts. New links are being forged between human rights law and international criminal law.

"There's been a sea change in the last ten to fifteen years," says David Scheffer, US negotiator in the creation of the ICC and now a professor at Northwestern Law as well as director of the university's Center for International Human Rights. "International criminal law as a course offering was extremely rare until the late 1990s. Now almost every law school that is a major law school in this country has to offer international criminal law to be credible." Undergraduates, too, are signing up for courses that look specifically at genocide in Rwanda, Balkans atrocities or brutal African civil conflict, Scheffer adds. "As students pursue both international criminal law and international human rights law, the two dovetail with each other very nicely."

In the real world, however, the ICC is struggling with the delays and setbacks that are to be expected when scores of countries with differing opinions and political cultures are asked to live up to the treaties they sign. Similarly, in the regional tribunals, for example in Bosnia and Cambodia, there have been long delays and a widespread feeling among the population that those who suffered are not benefiting from the trials.

Two high-profile cases illustrate these quandaries. No country—least of all in Africa—has tried to detain President Omar al-Bashir of Sudan, wanted in arrest warrants on charges of war crimes, crimes against humanity and genocide in Darfur. The African Union opposes the warrants. When Bashir visited neighboring Chad in July, where

the government was treaty-bound to arrest him, he was welcomed officially as "a valued friend." A visit to Kenya, whose government is also an ICC signatory, followed. Kenyan officials said that African Union decisions trumped the court's demands.

There are also diplomats and officials in the global North who argue that the pursuit of Bashir and other prominent Sudanese officials is no way to get lasting peace in Darfur, where the UN says at least 300,000 people have died. They point to the success, so far, of the negotiated settlement of another dispute in Sudan, between its Arab-Muslim North and Christian and animist South, which is scheduled to culminate in a referendum on southern independence in January. Scott Gration, the Obama administration's special envoy to Sudan, has opened rifts between himself and Congress—and reportedly between himself and Susan Rice, the US ambassador to the UN—by meeting with Sudanese government officials and emphasizing that there has to be dialogue with them if Sudan's North-South dispute can move to lasting resolution. He has also been critical of the ICC indictments against Bashir.

Alex de Waal of the Social Science Research Council, who has written extensively on Sudan and is considered a global expert, has warned that hot pursuit of Bashir for the crimes of Darfur could have negative consequences for resolving the North-South conflict. He wrote in the March 19, 2007, issue of *The Nation*: "While the crisis in Darfur has captured the attention of Western activists, that conflict developed partly because of the incomplete resolution of the North-South war. And both conflicts arose from the same general phenomenon: regional discontent with exploitation, of both people and resources, by the central government in Khartoum. The Darfur crisis can neither be understood nor resolved apart from the more deep-rooted North-South confrontation."

Mahmood Mamdani, Herbert Lehman Professor of Government at Columbia University and the author of *Saviors and Survivors: Darfur, Politics and the War on Terror*, is a leading critic of the court. Mamdani argues that its prosecutor has failed to understand or acknowledge the history of the conflict in Darfur and has glossed over the complexities of the situation to create a simplistic and unfair case against Bashir. He also sees the ICC as a tool of big powers acting under cover of humanitarian intervention. "The emphasis on big powers as the protectors of rights internationally is increasingly being twinned with an emphasis on big powers as enforcers of justice internationally," he wrote in the conclusion to his book, excerpted by *The Nation* two years ago ["The New Humanitarian Order," September 29, 2008]. "This much is clear from a critical look at the short history of the International Criminal Court."

The second tangled case is that of Thomas Lubanga Dyilo, a rebel warlord in Congo who, Moreno-Ocampo says, "recruited and trained hundreds of children to kill, pillage and rape." That trial was recently suspended because the prosecutor refused to turn over documents to Lubanga's lawyers that might have put at great risk victims willing to testify. Moreno-Ocampo dug in his heels and won an appeal on the ground that witnesses and others who testify must be protected. The Lubanga trial can now proceed in The Hague, where the ICC is based.

"We believe we have the duty to protect, and we are trying to be sure that the protection of victims is established," Moreno-Ocampo said in an interview from The Hague, explaining that in establishing the principles and procedures of the court every step he takes is new terrain. "That's what the debate is about—the scope of witness protection. We cannot expose the lives of people who cooperate with us." He said that even before a formal trial opens, the case of Lubanga has had an impact: "In Nepal, 3,000 kids were released as soldiers because of the Lubanga case."

Scheffer of Northwestern says, "There's a large point to be made here. This is a process that investigates and prosecutes atrocity crimes—massive assaults on large numbers of civilians and egregious conduct of war against soldiers. Anyone who thinks this can be done at an extremely efficient and rapid pace, as we might see in the Cook County courthouse in your basic criminal case there, is simply fooling themselves."

Many people have petitioned the court to open cases. Between July 2002 and mid-August of this year, the prosecutor received over 8,700 communications from more than 140 countries. A majority of those requests were from people in the United States, Britain, Germany, Russia and France.

There are only three formal ways a case may be put on the docket of the ICC: a referral from the UN Security Council, a request by a nation that is a full member of the court or directly by the prosecutor, acting alone or on the request of others. Numerous critics say that in using their own legal teams to draft the court's statute, the big powers have built in, or are at least enjoying, an unfair immunity. This is a valid point. Take, for example, the US invasion

of Iraq, Russia's of Chechnya, the Chinese in Tibet, Israel in Gaza in 2008–09 or, more recently, Indian forces in Kashmir—none of which have been formally referred for investigation or prosecution.

Under the first route to trial, there is no way that a case will be brought against any of the five permanent members of the Security Council, which hold veto power. Three of those P-5—China, Russia and the United States—are not full members of the court. (Three out of four major aspirants to permanent membership, Brazil, Germany and Japan, are full ICC members. India, which has a powerful security apparatus accused of many serious abuses but protected by law against prosecution, is not.) This means that a case cannot be referred directly by those countries, which are, in any case, further protected by "complementarity." Under that provision, any nation has the right to try an accused person first; only if it cannot or will not do so can the court officially step in. Bashir and others were formally charged with atrocities in Darfur after a referral from the Security Council; no effort has been made within Sudan to put those accused on trial (only individuals may be accused, not nations, armies or other institutions).

Nations with full membership in the ICC (the 114 that have signed and ratified the Rome Statute) can lodge cases against nonmembers. Afghanistan, for example, is a member and could theoretically bring charges against US citizens at some point; Iraq is not. Israel is not a member—it signed the treaty but then, like the United States under George W. Bush, withdrew cooperation. The Central African Republic is a court member, and as such requested the arrest of Jean-Pierre Bemba Gombo, a Congolese warlord responsible for large-scale attacks across the border into the CAR (Congo is also a court member).

Uganda is an interesting footnote. The birthplace of the Lord's Resistance Army, Uganda is an ICC member, and its government requested and got arrest warrants for LRA leader Joseph Kony and several of his colleagues, all Ugandan citizens. The LRA, which has been largely driven out of Uganda, has been accused of atrocities in several neighboring countries, potentially broadening the scope of the charges.

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The first case recommended by the prosecutor acting on his own initiative (with some preliminary work and backing from eminent Africans, including Kofi Annan) deals with leaders of political violence in Kenya after the disputed 2007 election. However, that case, like all others, must first clear a pretrial panel of judges, who essentially conduct their own evaluation of the charges and preliminary evidence. The pretrial chamber, if it agrees there is a case, then sends it to the trial chamber. Meanwhile, an appeals panel can hear challenges. Numerous appeals can hold up the progress of cases for extended periods.

When asked repeatedly why he has not gone after bigger fish—or why he has expended so much effort on Africa—Moreno-Ocampo points out that African nations have requested arrests and trials, and Sudan was referred by the Security Council after a huge international outcry over several hundred thousand deaths in Darfur. He also says that he wants to choose cases he can win, or at least ones that can go to trial. Evidence for the scale and intent of crimes for which the court was created (genocide, crimes against humanity and war crimes) would be hard to amass and pin on individuals when there is no apparent mastermind, like Slobodan Milosevic or Radovan Karadzic in the Balkans tribunal, or identified perpetrators of genocidal acts in Rwanda. France recently arrested a Rwandan Hutu, Callixte Mbarushimana, for crimes committed in Congo, where he operated after apparently fleeing Rwanda in 1994. The ICC had charged him with crimes against humanity and war crimes allegedly committed in 2009 in Congo's Kivu region, where widespread violence has long severely tested UN peacekeeping missions. But the brutal reality is that "collateral damage" alone, or unintended unleashing of sectarian or ethnic violence, like that unleashed by the American invasion of Iraq, would be hard to prove as a war crime under current definitions.

Moreno-Ocampo has been criticized for an aggressive, noncollegial style and for not putting enough time into the management of the prosecutorial section, while traveling widely and speaking to many audiences about the court. Although few people anywhere would recognize the court's judges, who are drawn from all over the world, Moreno-Ocampo has become its public face. He chuckles a little wearily at hearing these indictments read to him again. There seem to be no chinks in his self-confidence. "I have different responsibilities. I have to do all of them," he says. "I have to be the best lawyer. We requested thirteen arrest warrants. We got all of them. We're very confident that we will get the convictions. We have debates, and sometimes people have different opinions, but that's normal." Moreno-Ocampo has to work with the cumbersome three-chamber court structure: the pretrial chamber, which must approve cases before they can proceed with indictments and arrest warrants; the trial chamber, which hears cases; and the appeals chamber, which not only would hear petitions against convictions or

acquittals but is also called on to decide disputes that arise while cases are in progress, such as the debate over protection of victims.

"I have to be the best possible investigator," Moreno-Ocampo continues. "We have to investigate in impossible circumstances. Darfur was our biggest challenge. We had to investigate without visiting the crime scene. We did it in twenty-one months." Bashir was the high-profile target, he said, but the prosecution soon also focused on a lesser-known Sudanese official, Ahmad Harun, for whom an arrest warrant has also been issued. Moreno-Ocampo says that Harun, a former interior minister who coordinated early attacks on villages, is now governor of Kordofan, a critical province from which he can recruit militias to attack civilians in southern Sudan, where peace is still fragile. The prosecutor's office believes Harun could provide a trove of information on how the crimes in Darfur were organized and carried out.

Moreno-Ocampo continues with his list of duties. "And then, I have to be manager. I have 300 people from seventy countries working together." To keep the court in the public eye, he says, "we are preparing policy papers explaining exactly what we are doing."

* * *

Washington's relations with the ICC would be the stuff of comedy, were the issue not so profoundly serious. Under Scheffer, the Clinton administration's ambassador at large for war crimes issues in the late 1990s, the United States took an active part in writing the statute that created the court. From the start it was pre-emptively opposed in the Pentagon, which feared that American service members and officials would be targeted, and by a right-wing posse in the Senate, where the late Jesse Helms announced that the treaty would be "dead on arrival" if it was sent for ratification. Clinton had a hard time deciding whether to sign the Rome Statute.

"President Clinton was known for not making decisions until the very last moment," Scheffer said recently, recalling the tense last forty-eight hours before the deadline for signing on December 31, 2000 (nations had to adhere to the Rome Statute by that date in order to be founding members of the court, though ratification could come later). The midnight deadline fell on a Sunday night—New Year's Eve. A blizzard had buried Washington and New York, where the treaty was waiting at the UN. Scheffer, in Ashburn, Virginia, was ordered to go to New York and wait for instructions. There had been no decision from Clinton, who was at Camp David.

There were no flights along the snowed-in East Coast, but Scheffer managed to get to New York by train on deadline day. After his arrival Secretary of State Madeleine Albright called and told him Clinton had made his decision: Scheffer was authorized to go to the UN and sign. He slogged on foot through the snow to First Avenue—no taxis were available—while trying to round up the UN's chief legal counsel, Hans Corell, to open the building. Washington had to fax Scheffer the necessary plenary powers to sign. With only hours to spare, the United States joined the ICC. Scheffer can be seen wearing his snow boots in the official photo.

In retrospect, that may have been the high point in the saga. In his waning days in office, Clinton never considered sending the treaty to the Senate for ratification. And not long after taking office, President Bush renounced the American signature in a letter to the court drafted by John Bolton, under secretary of state for arms control and international security, later UN ambassador, who had long taken the position that the United States should not be subject to international law.

Legal experts have argued, however, that it is not possible to "unsign" the Rome treaty, although a nation can go on record saying it will not abide by or take part in the court's activities, which is what the Bush administration in effect did. If this is so, then it would require only a letter from President Obama to recommit the United States formally as an active observer, even without discussing ratification. That might have been politically possible a year or more ago, but advocates of the court say that in the current climate—with a looming GOP takeover of the House and possibly the Senate—sending such a letter would take a monumental act of courage and salesmanship, given the right-wing hostility to the very idea of the court. Senate ratification, which would give Washington a full say in court affairs, seems out of the question.

William Pace, leader of the Coalition for the International Criminal Court, a New York–based partnership of more than 2,500 civil society organizations from 150 countries, says the United States is at least a decade or more away

from any serious consideration of full membership. But Obama is showing increasing interest. "The US has sent a much clearer message to governments and to officials of the court that it is interested in being more constructively engaged in the coming years," Pace says.

Washington began inching slowly toward recognition even while Bush was still in office. A watershed was its 2005 decision not to block a UN Security Council resolution referring the case of Bashir and Darfur to the court. Instead of using its veto, Washington abstained, along with Algeria, Brazil and China.

In late May of this year the Obama administration, which has been taking part as an observer in meetings of the court's member nations, sent a high-level team to Kampala, Uganda, for the first extensive official review of the court's progress. The relatively large US team was led by Harold Koh, legal adviser to the State Department, and Stephen Rapp, ambassador at large for war crimes issues. Koh told reporters after the review ended that the US delegation "worked extremely hard to resume engagement with the court."

The most contentious issue on the table—and of prime importance to the United States—was the crime of aggression. When the ICC was created, four crimes were placed within its jurisdiction: genocide, crimes against humanity, war crimes and the crime of aggression. But no clear definition of aggression could be agreed on, so years of negotiations followed. When the review conference opened in June, concrete proposals were finally ready. The definition adopted in Kampala, to the surprise and satisfaction of many, was this: "The planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." Think US invasion of Iraq in 2003.

The Kampala conference, having agreed on a definition, proceeded to build in a seven-year moratorium on action. Thirty nations must ratify the definition, and for a year afterward no one may be charged. This means no action until 2017 at the earliest. There are no ex post facto provisions of the kind that allow ad hoc tribunals such as those for Cambodia, Rwanda, the former Yugoslavia and Sierra Leone (all of which operate separately from the ICC) to dig into history and address crimes that predate the formation of the tribunals. In other words, there's no chance of a trial connected to the American wars in Iraq and Afghanistan.

At the Coalition for the International Criminal Court, Pace says the delay in implementing the crime of aggression is not necessarily a setback. "Having the crime of aggression in a major international treaty is itself a major development in international law, even though the Security Council and the ICC must wait several years before exercising jurisdiction. For now, it is more prevention than detention."

The US delegation in Kampala was clearly relieved. Koh restated at a briefing later that the United States has safeguards against what officials have called "politically motivated" attempts to charge Americans, even if Washington ratifies the court treaty someday. "The prosecutor cannot charge nationals of nonstate parties, including US nationals, with a crime of aggression," Koh said. "And if we become a state party [i.e., ratify] we'd still have the option to opt out from having our nationals prosecuted for aggression. So we ensure total protection for our armed forces and other US nationals going forward."

Moreno-Ocampo, whose nonrenewable term runs out in mid-2012, believes the court will gradually overcome teething details and management concerns. "This is a global social contract," he said. "One hundred fourteen states agree to commit themselves to end genocide and war crimes, and we commit to bring issues to the International Criminal Court when they cannot act." He says the "shadow of the court" is already large. He sees its preventive power as providing great hope that abuses will diminish as arrests are sought and trials held. Moreno-Ocampo would like to see convictions decided while he is in office, but he accepts that these cases may take years. He returns to the case of Darfur.

"It's a matter of time," he says. "Harun, Bashir—their destiny is to face justice, whether in two years or twenty years. The court is permanent. The court can wait. The victims, they can't wait. The victims are suffering genocide today. Stopping the crime is the priority."

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Court urges arrest of war crimes suspects

UNITED NATIONS (AP) — The president of the International Criminal Court urged the international community on Thursday to intensify efforts to arrest eight people sought for alleged war crimes, crimes against humanity or genocide — including Sudan's president and four commanders of the Lord's Resistance Army.

Judge Sang-Hyun Song told the U.N. General Assembly on Thursday that the failure to arrest these men is "deeply troubling" and is having "a devastating effect" on victims and communities affected by the crimes.

The International Criminal Court, or ICC, has no police force and is "completely reliant" on member states to enforce its orders, he said.

"If states do not provide the cooperation necessary for the court's functioning in accordance with their legal obligations, the ICC will not be able to fulfill its mandate and impunity will continue to flourish," Song warned.

The judge cited Sudanese President Omar al-Bashir's recent visits to Chad and Kenya — which are parties to the Rome Statute that established the court — and the failure of both governments to arrest him despite outstanding warrants for alleged war crimes, crimes against humanity and genocide in Darfur.

Last month, the African Union asked the Security Council to delay al-Bashir's prosecution for a year because a trial would interfere with efforts to end the seven-year conflict in western Darfur which has left up to 300,000 people dead and forced 2.7 million to flee their homes, according to U.N. figures.

Judge Song backed the referral of the failure of Kenya and Chad to arrest al-Bashir, which is required under the statute, to both the U.N. Security Council and the court's Assembly of States Parties which includes all 114 countries.

He also lamented Sudan's failure to arrest South Kordofan Gov. Ahmed Harun and militia leader Ali Kushayb who were accused of war crimes and crimes against humanity in 2007.

The court's pretrial chamber has referred Sudan's noncompliance with its obligation to cooperate with the court to the Security Council in May, Song said.

The judge said warrants for the arrest of four alleged commanders of Uganda's notorious Lord's Resistance Army, which has waged a vicious two-decade insurgency, were issued five years ago alleging war crimes and crimes against humanity. Among those being sought is rebel leader Joseph Kony.

"I urge the international community to intensify its efforts to bring these persons to justice," Song said.

He also criticized the failure to arrest Congolese warlord, Bosco Ntaganda, sought by the court for war crimes, who is reported to be in Goma in eastern Congo, "allegedly contributing to ongoing crimes."

"This arrest warrant must be executed and I call on all relevant actors to cooperate to that effect," Song said.