

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



Top of waterfall at Charlotte village

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:

Tuesday, 21 September 2010

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
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Thabo Mbeki may testify at Taylor trial

By Alpha Sesay

Defense lawyers for Charles Taylor have indicated that they want former South African President Thabo Mbeki to testify in The Hague about the circumstances under which Taylor stepped down as president of Liberia in 2003.

This was disclosed in a September 16, 2010 news article by the Associated Press (AP) after an interview with Taylor's lead defense lawyer Courtenay Griffiths, who is presently in South Africa on an investigative trip. In the AP interview, Mr. Griffiths said he wants to speak with Mr. Mbeki about the circumstances under which Mr. Taylor stepped down as president of Liberia in 2003. Griffiths said he also wants to speak with South African weapons makers about allegations that Taylor purchased war materials in South Africa while on a visit there in the late 1990s.

"It is suggested by the prosecution that Mr. Taylor did not step down voluntarily as president of Liberia - he was forced out of office by among others,

Thabo Mbeki... Mr. Taylor flatly denies that he was put under any pressure to step down," Mr. Griffiths said in his interview with the AP.

Griffiths said he believes that Mbeki's evidence about the issue would support Taylor's account that he was not forced out of power by African leaders but that he voluntarily relinquished power in 2003.

Griffiths said he has asked to meet and speak with Mr. Mbeki in South Africa. The former South African president's spokesperson, however, says that no request has been received to speak with Mbeki on the matter.

Griffiths has also said that he does not intend to subject Mr. Mbeki to any subpoena by the Special Court for Sierra Leone. He said he wants the former president to voluntarily speak about the issue, and if he decides not to testify about the issue, then Taylor's defense team will not pursue it further.

Defense lawyers also want to disprove allegations that Taylor bought weapons from South African weapons makers during a 1997 visit to South

Africa. Prosecutors allege that Taylor did buy war materials with proceeds from rough diamonds that were given to him by rebel forces from Sierra Leone. It is alleged that Taylor gave some of these rough diamonds to British supermodel Naomi Campbell after they both attended a star-studded dinner that was hosted by former South African president Nelson Mandela.

During Taylor's testimony in January 2010, lead prosecutor Brenda Hollis suggested in her cross-examination that when the accused returned from South Africa in 1997, he had a problem with the Economic Community of West African States Monitoring Group (ECOMOG) commander General Victor Malu because General Malu believed that Taylor had brought war materials back with him from South Africa. Taylor denied these suggestions.

Griffiths now believes that speaking with weapons makers in South Africa will help clarify whether Taylor was involved in any arms deals during his visit to South Africa.

Standard Times

Monday, 20 September 2010

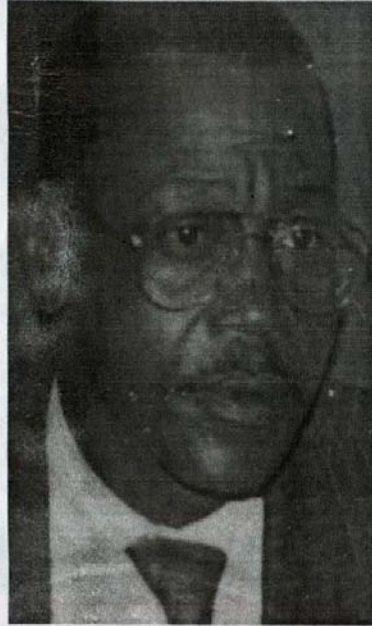
FROM THE EDITOR'S DESK

BY JOSEPH A. K. SESAY

On 2nd to 4th September 2009, parties in the trial of convicted leaders of the former Revolutionary United Front (RUF), Issa Hassan Sesay, Morris Kallon; aka Bilal Karim and Augustine Gbao; aka Augustine Bao, first, second and third accused respectively, made oral arguments to the Appeals Chamber of the Special Court for Sierra Leone (SCSL) before Justice Ranate Winter presiding, and George Gelaga King, Emmanuel Ayoola, Jon Kamanda and Shireen Avis Fisher being the other Justices.

The Parties made their oral arguments in addition to written briefs submitted in July this year as part of the Chamber's determination pursuant to Article 20 and Rule 106 of the Court's Rules of Evidence and Procedure, to either affirm, reverse or revise the judgment of February 2009. Trial Chamber I convicted Sesay and Kallon on 16 of their 18 counts indictment and Gbao on 14 of the 18 counts and subsequently sentenced them to a separate term of imprisonment that should run and be served concurrently. Sesay was sentenced to a maximum of 52 years imprisonment, Kallon 40 years and Gbao 25 years for crimes including acts of terrorism, collective punishment, extermination, murder, violence to life, rape, outrageous upon personal dignity, conscripting children under the age of 15 years into an armed group and intentionally directing attacks against personnel involved in humanitarian assistance or peace keeping mission. The defence submitted 95 grounds of appeal, while the prosecution appealed on 3 grounds, suggesting that they seemingly agrees with the Trial Chamber's decision. The grounds of appeal were based on errors on the question of law and facts which the appellants thought invalidated the decision of the Trial Chamber, thereby, leading to a miscarriage of justice. The oral arguments were intended to respond to the opposing side's arguments and submissions and also supplement those in the written briefs and not to reiterate the briefs themselves. Defence for all three convicted persons requested the Appeals Chamber to revise the decision of the Trial Chamber and consequently reverse the sentences of April 2009.

Wayne Jordash, led counsel for Sesay (first appellant), in his submissions questions the Trial Chamber's decisions and noted that errors of fact and law undermine the fairness of the proceedings right from the inception of the trials. Further they questioned Sesay's involvement in a Joint Criminal Enterprise (JCE) and his subsequent conviction for the recruitment of child soldiers and argue as to why they believed that the sentences should be overturned. Starting with the proceedings, Counsel noted that right from the inception, the indictment was flawed as most of the rules developed from the International Criminal Tribunal for Rwanda and Yugoslavia (ICTRY) pay little respect to the rights of the appellant as provided for in Article 17 (4) (a) and (b) of the Court's rules which provide that an accused should be informed of the nature of his charges and should be given adequate time to prepare his case. Further, he



IBM Kamara

Special Court Holds Appeals Hearing in the RUF Accused Trial in Sierra Leone



Morris Kallon

Augustine Gbao

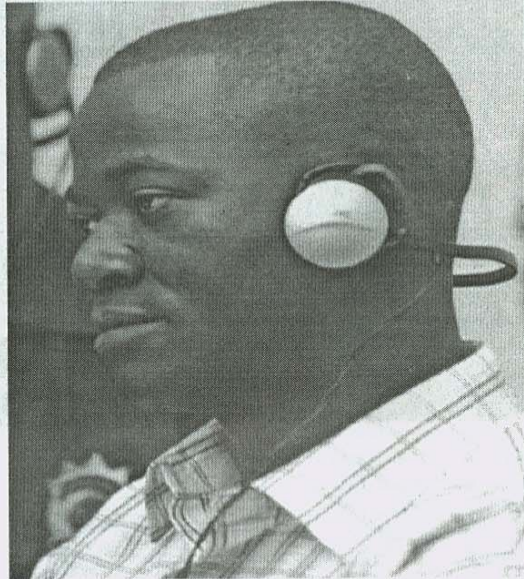
noted that the prosecution failed to include in Sesay's indictment "material facts underpinning his charges" and that nothing was stated as to what constitutes Sesay's acts as a superior, nor the acts of his alleged subordinates.

The appellant further questions conviction and subsequent sentence for the recruitment of children under the age of 15 years. Counsel submitted that Sesay's culpability should have been determined in relation to preparation of the said offence. He noted that Sesay was not engaged in any activity that amounted to planning or using children as combatant as the only evidence involving any activity with children relates to children above 15 years.

Submitting on the issues of sentence, Counsel noted that 52 years imprisonment does not further the Court's purpose of deterrence and retribution as the trial chamber erred in assessing the gravity of the offences for which Sesay was convicted. He further noted that reconciliation and rehabilitation should have given greater weight in terms of sentencing objective as those were pertinent to Sesay's role during the conflict. In relation to gravity, Sesay was not directly involved in the commission of crimes that he stands convicted for. He submitted that if the JCE should remain, Sesay's involvements would still be at low ebb; hence his participation might still be indirect. He made an instructive comparison to the case of leaders of the Armed Forces Revolutionary Council (AFRC), noting that First accused Brima was convicted for an array of crimes that he directly committed and there was no mitigating factor, and he receives 50 years imprisonment, while Sesay might have committed alleged offences indirectly and yet gets 52 years. He further assesses Kallon's liabilities and submitted that a difference of 13 years is unjust. Noting Sesay's individual circumstances which he thought should have been taken into consideration during sentencing, Jordash noted that evidence relating to Sesay's character and his effort to bring the war to an end were not considered by the Trial Chamber and no reason was given for such omission. He noted that there is no case at an International Court that an accused has succeeded in calling so many civilians to testify in his/her favour, or an accused before an International Criminal Court who has succeeded in disarming a whole rebel faction and contributed to a peace process. He submitted that these were present in the case of Sesay and the Trial Chamber should have considered them as mitigating factors.

Charles Taku made the oral submission for Kallon, second appellant. He noted that the Kallon team relied on the written brief earlier submitted to the Appeals Chamber and asked the Chamber to adopt that brief. He recalled that both prosecution and defence witnesses

tendered evidence that should have exculpated the appellant and those evidence were disregarded for evidence that incriminated Kallon. He acknowledged the fact that the Trial Chamber has the discretion to select evidence and determines the amount of weight to be given thereof. He submitted that whilst the Trial Chamber has this discretion, reasons should be provided for such discretions in order for the process to be deemed as fair and just. He also noted that the Trial Chamber has erred in their judgment when they rule that Kallon fabricated his testimony to suit his case. Reading portions of the transcript of a prosecution witness that the Trial Chamber relied on in repudiating the testimony of Kallon, he submitted that the testimony corroborates instead of refuting Kallon's assertions. He submitted that the defence for Kallon was repudiated instead of rejected as no mention was made in the whole judgment as to Kallon's response in relation to alleged charges. Taku further recalled conviction on attacks on UNAMSIL and how the Trial Chamber accords the personnel with civilian status. He submitted that whilst the personnel should be considered as hors de combat at some point they should not be given the status of civilians. Mr. Kennedy Ogetto made the rest of the oral submission for Kallon. He adopted the submissions made by Jordash in relation to particulars in the indictment and convictions for JCE. He further submitted that the indictment for Kallon is very broad and this allows the prosecution to "mould" their case as evidence enfolded during the course of the proceedings. He noted that the prosecution transformed their case to suit the evidence that were adduced during



Issa Sesay

the course of the proceedings and this deprived the appellant to defend himself as he was not adequately informed of the charges he was to defend. Turning to sentences, Ogetto noted that the Trial Chamber has no discretion to ignore mitigating factors once they have been established. He however agreed with the Appeals Chamber that the Trial Chamber determines mitigating factors. He concluded by submitting that the appellant's rights have been violated and this has resulted in most of his convictions. He called on the Appeals Chamber to invalidate the convictions against Kallon and overturn the sentences.

John Cammegh made the oral submission for the third appellant, Augustine Gbao. His submissions touched on issues relating to JCE, conviction for the attacks on UNAMSIL and sentences. He reiterated the point that an accused has to know the case against him and noted that Gbao was deprived of this fair trial right. He stated that Gbao was convicted as part of a JCE through his participation as an "idealist" and the prosecution never gave adequate notice with regards this mode of liability. He submitted that for an accused to be found liable pursuant to his participation in a JCE, he must have been a part of a plurality of persons acting together. He noted that there is no evidence that Gbao participated in a meeting, or neither was he a member of the AFRC Supreme Council or any finding that he held a responsible position in the junta government. He submitted that he only would have acted in concert with other senior members of the RUF and AFRC if he was a part of such plurality of persons. He further stated that

there should also be a common purpose and a common plan through which the JCE existed. With regards conviction for acts of terrorism as charged in count 1, he submitted that the Trial Chamber contradicted its findings as on one hand they found that the prosecution failed to prove acts of terrorism in Kailahun and on the other hand they found Gbao liable for acts of terrorism in the same district. Further Cammegh stated that the Trial Chamber's finding that Gbao trained all RUF fighters was false as it appears to have contradicted itself by saying that RUF fighters only received "scant ideological training" and were unaware of the objectives of the RUF movement. He submitted that the prosecution did not meet their burden of proof as no witness testifies that Gbao trained RUF fighters. Supporting his submission, he noted the dissenting opinion of Justice Pierre Boutet, noting that there was no evidence to

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Africa News

Monday, 20 September 2010

Charles Taylor wants Mbeki to testify

Kent Mensah, AfricaNews editor in Accra, Ghana



Former South Africa president Thabo Mbeki might be testifying in The Hague about the circumstances under which ex-president of Liberia Charles Taylor resigned.

According to defence lawyers, Taylor is being pictured to have stepped down under duress in 2003 from external forces including Mbeki.

"It is suggested by the prosecution that Mr. Taylor did not step down voluntarily as president of Liberia - he was forced out of office by among others, Thabo Mbeki... Mr. Taylor flatly denies that he was put under any pressure to step down," lead counsel Courtenay Griffiths told the AP.

Griffiths said he believes that Mbeki's evidence about the issue would support Taylor's account that he was not forced out of power by African leaders but that he voluntarily relinquished power in 2003.

Griffiths said he has asked to meet and speak with Mbeki in South Africa. The former South African President's spokesperson, however, said that no request has been received to speak with Mbeki on the matter, the AP reports.

Griffiths has also said that he does not intend to subject Mbeki to any subpoena by the Special Court for Sierra Leone. He says he wants Mbeki to voluntarily speak about the issue, and if the former South African president decides not to testify about the issue, then Taylor's defense team will not pursue it further.

Times Live (South Africa)

Sunday, 19 September 2010

It's all in a day's work for Griffiths

His clients: bombers and warlords

By SASHNI PATHER

The razor-tongued barrister representing alleged warlord and former Liberian president Charles Taylor caused a storm this week when he jetted into town on a fact-finding mission.

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THE RASTA BARRISTER: Courtenay Griffiths is defending former Liberian president Charles Taylor in his trial at The Hague Picture: RAYMOND PRESTON

Courtenay Griffiths, the flamboyant criminal lawyer who has, over the last 20 years, represented IRA bombers, terrorists and murderers, told the Sunday Times that he wants to hold court with former president Thabo Mbeki and that he would love to defend Robert Mugabe.

The 55-year-old Griffiths' quirky one-liners and references to rapper Grandmaster Flash in his address to The Hague - where he is representing Taylor - grabbed as much attention as Naomi's Campbell's explosive evidence in the case. Campbell was alleged to have received blood diamonds from Taylor, which she denied.

Griffiths, who pulls no punches, said the landmark trial got no attention until Campbell took the stand. "The only time there was any media attention was when a somewhat over-the-hill model and actress took the stand."

He added that he was interested in tracing Taylor's movements while in SA in September 1997 when he allegedly gave Campbell the diamonds at a celebrity-studded dinner hosted by then president Nelson Mandela.

"The prosecution in this case has claimed that it was around this time that my client used diamonds to broker some kind of arms deal in SA.

"There is no truth to this allegation whatsoever, but I am keen to find out how the meeting with Campbell came to pass," he said.

He also said Mbeki had a lot to answer for. "Back in 2003, when the democratically elected government of Liberia was on the verge of being overthrown by rebel forces, there were peace talks involving Mbeki, Taylor and other African heads. The prosecution put it to Taylor that contrary to his assertion that he stepped down voluntarily, he was actually forced out of office by Mbeki and others."

Griffiths is adamant that Mbeki needs to give answers.

"While I won't subpoena him to The Hague as I don't want to embarrass him I cannot understand why he won't answer a simple question: 'Did you put pressure on him to step down?' "

He said while this might seem peripheral, it was central to Taylor's credibility. Taylor wrote to Mbeki in 2007 but has yet to receive a response.

Referring to Taylor, Griffiths said: "Here you have a 60-year-old president who, if convicted, will be sentenced to at least 50 years, which means he will die in prison ... this is his life on the line."

Among the notable cases he has handled are the Brighton and Harrods bombings and several high-profile murder trials. "I've been sent excrement in the mail and called a big, burly barrister. The only words they left out were black and bastard," he laughed.

The person he would most like to defend was Mugabe. "The whole world thinks he is an ogre who has unleashed blood-thirsty Zanu-PF thugs to drive white people off their farms. I would love to challenge that narrative."

The Rastafarian, who was born in Jamaica and worked as a DJ before embarking on his legal career, is a big fan of rapper Grandmaster Flash and has been known to quote him in court.

Agence France Presse

Monday, 20 September 2010

UN court laments failure to arrest Serbia's Mladic

THE HAGUE — Failure to arrest Bosnian Serb military chief Ratko Mladic, wanted for genocide and war crimes, would be the "worst of signals" for international justice, the UN war crimes prosecutor said on Monday.

The former Bosnian Serb military commander, 68, is the most wanted fugitive of the International Criminal Court for the former Yugoslavia (ICTY) based in The Hague.



"The non-arrest of Mladic would be the worst of signals for international justice" and "to those still out there", the court's prosecutor Serge Brammertz told reporters.

Ratko Mladic has been on the run since 1995

It "would mean you can sit out international justice over time," he said, adding it would have an impact "broader than the ICTY".

Brammertz said Mladic's capture was the priority of his office and vital for the stability of the Balkans.

It would be a "disaster for the victims" if he were not judged, he said.

He said the situation was far from perfect and urged the ICTY to bridge a "gap between the political discourse, what's (happening) on the ground and what needs to be done to be efficient."

Prosecutors have a "working hypothesis" that Mladic is still alive, Brammertz added, after a Serbian court rejected a request from his family earlier this month to declare the fugitive dead since March 1 2008.

Mladic is accused of masterminding the 44-month siege of Sarajevo that left 10,000 people dead in 1995 and the July massacre that year of around 8,000 Muslim men and boys in Srebrenica.

He faces charges of genocide, war crimes and crimes against humanity and has been on the run since the war ended in 1995.

Since its creation in 1993, the ICTY has indicted 161 people, including former Serbian president Slobodan Milosevic, who died in detention in 2006 at The Hague and Radovan Karadzic, former Bosnian Serb political chief, whose trial is still under way.

Hirondelle News Agency

Monday, 20 September 2010

Ex-Rwandan mayor denies Interahamwe presence in his commune

Former Rwandan Mayor and genocide-acquitted person, Jean Mpambara Monday said before the International Criminal Tribunal for Rwanda (ICTR) that there were no Interahamwe militiamen of the MRND ruling party in his Rukara commune in Kibungo prefecture (Eastern Rwanda).

The witness was testifying in defence of MRND President, Mathieu Ndirumutse, jointly tried alongside his Vice President, Edouard Karemera who had already completed his defence case.

"There were no Interahamwe in my commune," Mpambara told the Chamber during examination in chief led by the accused Co-counsel, Frédéric Weyl.

The prosecutor indicted Ndirumutse and his co-accused Karemera for seven counts including genocide, complicity in genocide, incitement to commit genocide and crimes against humanity allegedly committed by members of their party and its youth wing, Interahamwe.

According to the witness those who were involved in the attacks and killings of civilians, mostly Tutsis, were young delinquent people possibly from all political parties represented in Rukara commune including PSD, MRND, MDR and PL.

The witness also denied that the MRND boss planned and organized genocide against Tutsis.

"Such allegations if made by any one would be baseless because as far as I know there has never been a meeting with the agenda of planning and organizing genocide against Tutsis," Mpambara told the Chamber presided over by Judge Dennis Byron.

The witness who was also a member of Kibungo prefecture MRND committee meeting cleared the accused on the allegation that he participated in the joint criminal enterprise with other leaders of the party, government authorities and the military to eliminate Tutsis.

Mpambara was arrested in Western Tanzania on June 21, 2001 and was tried for genocide by ICTR. He was acquitted of the offences on September 12, 2006.

The ex-mayor concluded his evidence leaving the witness box to the former Rwanda Information Minister, Pascal Ndengejeho who continues with his evidence on Tuesday.

NI/ER/GF

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Reconciliation Village Hosts Victims, Perpetrators of Rwandan Genocide



Zack Baddorf

Photo: VOA - Z. Baddorf

Residents cook food behind their homes in the Reconciliation Village

It's been more than 16 years since the 1994 genocide in Rwanda that left about 800,000 Tutsis and moderate Hutus dead. Rwandan President Paul Kagame, who was re-elected in August with 93 percent of the vote, says now there are no longer Hutus and Tutsis in Rwanda, only Rwandans. As a test of how well the different ethnic groups can live together, victims and perpetrators of the genocide are living side-by-side in a small community known as the Reconciliation Village.

Jaqueline Mukamana was 16 years old on April 7, 1994. It was the day after the plane carrying the presidents of Rwanda and Burundi, both Hutus, was shot down over the Rwandan capital, sparking the genocidal killings throughout the country for about 100 days. It's a day she'll never forget.

"That very day, I was not at home," she says. "My parents had sent me to get milk from where we graze our cows. When I came back, I found all of my family members dead."

A group of her Hutu neighbors had formed up in the village center. They went to her house and started the killing.

In all, 12 of her family members were hacked to death with machetes and swords. She fled to the fields to hide and then left for neighboring Burundi to survive the genocide.

In 2005, Mukamana was selected to move into a Reconciliation Village, located some 30 kilometers south of the Rwandan capital Kigali. The village is funded by the non-profit Christian organization Prison Fellowship International, under the condition that survivors and perpetrators of the genocide agree to live together peacefully. The founding members of the community voted on who could live there, typically choosing families most vulnerable to poverty or illness.

Now, Mukamana lives right next door to some of the people who slaughtered her family.



VOA - Z. Baddorf

A Reconciliation Village resident, who is also a genocide survivor, stands outside her home

Forty families live in the Reconciliation Village tin-roofed concrete and brick houses that they built themselves. The government provided the land and some organizations like Norwegian Church Aid helped pay for the homes.

But before the killers could become residents, they had to ask forgiveness.

She says the soldiers brought the perpetrators to meet Tutsis at the local government office. "They told us that they were the ones who killed our family members. From there, there was no problem," she says. "They asked forgiveness, and we forgave them."

They showed Mukamana where they buried her family so the victims could be given a proper burial.

Children of both ethnic groups beat drums and sing in the Reconciliation Village. Mukamana herself has three children today who play with the children of the perpetrators. She said the country has reached unity and reconciliation. In the Reconciliation Village, she says she sees the people who killed her family on a regular basis.

We interact, she says, they even come and visit me and we talk about life in the village. We don't have any problems.

Fredrick Kazigwemo didn't kill Mukamana's family members but he did kill other Tutsis during the genocide. He and about 200 other men in his village formed up and killed their victims with different weapons - swords, machetes and even Rwandan traditional spears.

"Me, I used a machete," he says. "During the genocide, I went to hunt for the Tutsis so that we can kill them because the former government told us that they were enemies so they should be killed. One day his group killed seven people."

Kazigwemo said now he believes in unity and love. He blames the genocide on bad leadership.

He says it was political propoganda that Tutsis are bad people so they should be killed. Even in the school, they taught us those things, he says. Hutus was told to make Tutsis stand up so that we should know them. So they wanted to eliminate

Tutsis. But luckily enough, he says, god protected them. They were not all killed.

Kazigwemo arrived in the Peace Village in 2006 after spending eight and a half years in prison for his crimes.

He got out of jail early thanks to a 2003 presidential pardon. Crowded prisons and an overwhelmed justice system led the government to release tens of thousands of perpetrators.

While in prison, Kazigwemo started writing letters to the victims' family members. After he was released, he went to their homes and asked for forgiveness in person.

A farmer now, the 41-year-old man and his wife have four children. Most of the Reconciliation Village residents work as farmers so they work together in the fields. They have agriculture and livestock cooperatives. The men do carpentry work together and the women make handcrafts.

Pastor Deo Gashagaza, the Executive Director of Prison Fellowship Rwanda, said reconciliation has to involve economic initiatives like these.

"This helps because reconciliation without acts, without any initiatives for economy is zero. We need to see how reconciliation goes with economy because when the genocide had taken place there is destroying the economy also. Many things were destroyed, like cows, like small businesses everything. Houses were destroyed," he said.

The community is still going through economic challenges.

Survivor Janette Mukabyagaju is the President for Board of Advisors in the community. She was 17 years old during the genocide and, except for one brother, lost her entire family. She said the problem now is not ethnic.

"We don't have conflicts because we consider ourselves all Rwandans, not Hutus or Tutsis. The challenges we face are about poverty. We don't have sources of income and even you can see we don't have power here. So it's all about poverty," she said.

Gashagaza, who founded the Reconciliation Village, says the village wasn't designed to help the genocide survivors and perpetrators with food. The pastor said residents are from this area so they can provide for themselves.

He added that the Reconciliation Village is building the hope of the nation.

"This is a good thing to see because reconciliation is now a good success. But we are still continuing to do that because it's a process. It's not automatic, one thing you can do in one day. It's a journey. But there is a hope for this program," he said.

There are four such Reconciliation Villages located around Rwanda.

Business Day (South Africa)

Tuesday, 21 September 2010

RICHARD GOLDSTONE: International justice

SA leads the way in standing up against war criminals

UNTIL the last 15 years of the 20th century, international criminal justice did not exist. Since the establishment by the United Nations (UN) of the International Criminal Tribunal for the former Yugoslavia in 1993, the growth and development of international justice for war criminals has grown at a dramatic pace.

The successes of the Yugoslavia tribunal and the Rwanda tribunal that followed in 1994 were sufficient to spur many nations to move towards the establishment of a permanent International Criminal Court (ICC). They also spawned the so-called mixed or hybrid tribunals for East Timor, Sierra Leone, Cambodia and Lebanon.

These criminal courts demonstrated that international criminal justice can work efficiently, that fair trials in international courts are possible and that their work advances the development of the law. The most important development has been the prosecution of gender-related crimes and especially systematic mass rape.

The Rome Treaty of 1998 established the ICC. It required the ratification of 60 states to bring its provisions into operation. Even its most optimistic supporters did not anticipate that it would take less than four years for that to happen. SA has been one of the ICC's most active supporters and helped gain important support from other governments in our region. The ICC became operational on July 1 2002. Today, there are 113 nations that have joined the ICC by ratifying the Rome Treaty. The African region leads, with 31 ratifications, followed by every member of the European region.

This wide support for the ICC was accompanied by the unexpected reference of its first investigations by three African governments — Uganda, the Democratic Republic of Congo and the Central African Republic. The court did not seek those referrals — those governments sought the intervention of the court. The fourth situation — that of Sudan and the crimes committed in Darfur — was referred by the UN Security Council itself. Only the fifth, Kenya, has come about as a result of the prosecutor's initiative.

This last situation arises from the violence that accompanied the 2007 elections in Kenya and followed a recommendation from former UN Secretary-General Kofi Annan and a Kenyan commission of inquiry.

The ICC became involved only after Kenya's parliament decided not to set up its own domestic investigation.

It thus becomes apparent that the allegation that the ICC is in some way biased against African states or was set up to deal only with Africa is unfair and without substance. In addition, the prosecutor has made clear he is investigating other situations in Latin America and the Middle East.

The ICC operates on a system of "complementarity". This means that the court has no jurisdiction at all in any case if the government of the nationality of the suspect is willing and able to investigate and, if there is sufficient evidence, to prosecute that person. Such a domestic investigation undertaken in good faith is conclusive regardless of the outcome and will deprive the ICC of any jurisdiction in the matter. The ICC is thus a court of last and not first resort. Modern international criminal law recognises that it is more appropriate for war criminals to be investigated and prosecuted by domestic rather than by international mechanisms.

The courts of Sudan are clearly not willing or able to investigate Sudanese leaders who have credibly been found by the ICC to be answerable for the most serious crimes, including genocide. The ICC has issued arrest warrants for a number of Sudanese leaders, including President Omar al-Bashir. The governments of nations that have ratified the Rome Treaty are legally obliged to arrest those people. To its credit, the South African government warned al-Bashir that should he visit SA, he stands to be arrested and handed over to the ICC. That is an obligation SA

undertook when it ratified the Rome Treaty. It is also its obligation pursuant to the terms of a binding and peremptory resolution of the UN Security Council when it referred the Darfur situation to the ICC.

It is a matter of deep regret that Kenya failed to live up to those same obligations when al-Bashir recently visited Nairobi. Kenya has been roundly criticised for failing to uphold its international obligations. The only body that is able to sanction Kenya for flouting its international obligations is the security council. The law is clear and what is necessary is the political will to do something about it. The security council has the power and the right to impose appropriate sanctions against Kenya. If the security council fails to take such action, its own credibility will be called into question. It would be recognising the ability of member states of the UN to flout binding resolutions of the council.

Even in the absence of appropriate action by the security council, Kenya has made itself an international outlaw and has diminished its standing in the international community. Countries that do not uphold and implement their international obligations, seriously assumed, will undoubtedly suffer other prejudicial consequences, especially in the sphere of international trade and commerce. The adherence by nations to their international obligations is an important benchmark for major nations entering into trade and other relationships.

It was because of the system of complementarity that recognises the right of nations to investigate allegations against their own citizens that the UN and the European Union called upon Israel, the Palestinian Authority and Hamas to investigate the serious findings contained in the fact-finding mission on Gaza that I headed last year. Secretary-General Ban Ki-moon also called on the parties to hold independent domestic investigations into the conduct and consequences of the Gaza conflict.

In March, the UN Human Rights Council decided to establish a panel of independent experts to monitor the independence, effectiveness and genuineness of the investigations and their conformity with international standards. That panel is being led by one of Europe's leading international lawyers, Prof Christian Tomuschat.

To date, Hamas has launched no investigations at all. The Palestinian Authority, for its part, did establish an independent domestic investigation and its findings were recently handed to the secretary-general. The Israeli military conducted its own investigations behind closed doors. Those inquiries have confirmed some of the most serious incidents detailed in the Gaza report. Judgment on the extent to which the parties have carried out their international obligations in this regard must await the report of the Tomuschat panel. That report is soon to be presented to the Human Rights Council.

From the foregoing, it should be apparent that international criminal justice has developed at an impressive pace in recent years. At its core is the protection of civilians during times of war. Too many millions of innocent children, women and men have died in the wars that plague our planet. For too long there has been effective immunity for the war criminals responsible. That immunity is steadily being withdrawn as many nations join the ICC. South Africans should take pride in our government having been one of the leaders in this movement.

- A former judge of the Constitutional Court, Goldstone will be giving a public lecture reflecting on International Accountability for War Crimes on September 27 at the University of Johannesburg.

The Associated Press
Tuesday, 21 September 2010

International court to launch cases in Kenya violence

THE HAGUE, Netherlands — The prosecutor at the International Criminal Court in The Hague, Netherlands, says he will launch cases against as many as six suspected instigators of postelection violence in Kenya that left more than 1,000 people dead in 2007-08.

Luis Moreno Ocampo says in a statement he will present two separate cases to judges before the end of the year charging between four and six people he believes "bear the greatest responsibility for the most serious crimes."

Tuesday's statement did not mention the names of any potential suspects or give more detail on when Moreno Ocampo would file the cases to judges at the court, who would have to authorize any arrest warrants.

UPI.Com

Saturday, 16 September 2010

War crimes charges filed for Khmer Rouge

The U.N.-backed tribunal for the Khmer Rouge announced four surviving members of the former regime were charged with war crimes and crimes against humanity.

The Extraordinary Chamber in the Courts of Cambodia announced Thursday that Khmer Rouge acting Prime Minister Nuon Chea, Deputy Prime Minister Ieng Sary, Social Affairs Minister Ieng Thirith and Khieu Samphan, the head of state, were indicted on war crimes and crimes against humanity, including genocide.

The U.N.-backed chamber said an estimated 1.7 million to 2.2 million people died under the Khmer Rouge regime in Cambodia from 1975-79. Roughly 800,000 of those deaths were considered "violent," the chamber said.

The court said it focused on forced displacements, the regulation of marriage, crimes perpetrated against certain ethnic and religious communities, so-called killing fields and the "re-education of 'bad elements' and the elimination of 'enemies' in security centers and execution sites."

Kaing Guek Eav, a 67-year-old math teacher, Christian convert and Khmer Rouge prison chief, was convicted in July of crimes against humanity committed during the Khmer Rouge reign.

Eav, commonly known as comrade Duch, was director of the notorious Tuol Sleng prison, or S-21, in Phnom Penh. He is challenging his conviction.

The tribunal didn't say when the trial for the four former leaders would take place.