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:
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Local News

International News

Standard Times
Monday, 30 May 2011

Last week I wrote about the TRC, and this week it is the Special Court for Sierra Leone

FROM THE EDITOR'S DESK

PART ONE

By: Issa B. M. Kamara

_The way I perceived the two approaches was simply that they were complementary. One is for stability and unity within the Country. The second is that according to international law or inhuman crimes against humanity are punishable. In South Africa it was only the TRC, now in the Ivory Coast we are hearing about the ICC. Atimes in both, we depend highly on hearsay evidence or what victims or perpetrators say. This has been my dilemma to rationalize the two as we had it in Sierra Leone. I have decided to bring back to you what I presented to you some time ago:

_"For quite a long time I have been thinking about the validity of hearsay evidence in any court of Law. The more I thought about it the more confused I become. Someone will say why do you have to feel that way? The reason is very simple, because as a professional journalist, someone will give me some news which I may pass out to others though I may not have been at the scene. What would you say about a hearsay evidence tendered in Court and yet well collaborated in Court? Well it appears I have been rescued by some legal mind. Admissibility of Hearsay Evidence in the Special Court for Sierra Leone.

(Courtesy Angelo Stavrianou...in The Monitor)

I. Introduction

The rule against hearsay is a fundamental rule of evidence applicable in most common law jurisdictions. The adhoc international criminal tribunals and the International Criminal Court are more flexible in the admissibility of evidence. It is well established that hearsay evidence is admissible in the Special Court for Sierra Leone (Special Court), the International Criminal Court, the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). When determining whether evidence will be admitted these courts and tribunals are concerned with the relevance of a statement, rather than its reliability which is assessed at the end of the trial.

The decision to allow hearsay into evidence has perplexed many

IBM Kamara

Last week I wrote about the TRC and this week it is the Special Court for Sierra Leone, to clear my confusion as to which is more appropriate for reconciliation, justice, and peace

international commentators, who argue that this compromises the right of the accused to a fair trial. This paper examines the rule against hearsay, the position taken by the Special Court, and arguments for and against the admissibility of hearsay evidence. It asks the question: Should the court continue to admit hearsay, or limit admissible evidence to direct evidence?

II. THE RULE AGAINST HEARSAY

The rule against hearsay operates as follows:

An assertion other than one made by a witness while testifying in the proceedings is inadmissible as evidence of any fact asserted.

Hearsay encompasses statements made by a witness that are based on what someone else has told them. Such statements are inadmissible if the object of the evidence is to prove the truth of what was said. It is not hearsay and is admissible when the object of the evidence is to establish not the truth of the statement, but the fact that the statement was made.

The effect of the rule is that witnesses are only permitted to testify in relation to what they have personally seen and heard. They are not permitted to testify as to the assertions of others.

III. ADMISSIBILITY OF HEARSAY IN THE SPECIAL COURT

A. Statute

While the Rules of Procedure and Evidence for the Special Court for Sierra Leone (**Special Court Rules**) do not directly address the issue of hearsay, the Trial Chamber has discretion under Rule 89 © to admit any relevant evidence, including hearsay.

Similar provisions exist in the Rules of Procedure and Evidence for the ICTY and ICTR; however they specify that the evidence must also be probative. It was pointed out by the Prosecution in the Fonfana Bail Appeal Decision that while the Rules for the ICTY explicitly refer to the probative value of the evidence, and the Special Court Rules do not, the requirement that the evidence is relevant is essentially the same as the requirement that it be probative.

B. Case Law

The Special Court has consistently decided in favour of admitting hearsay into evidence, finding that relevance is the only condition for the admission of evidence, and that its reliability is considered at a later stage.

Hearsay is admitted on the basis that the Trial Chamber consists of professional judges who are capable of evaluating the weight to be given to it.

Determinations on the admissibility of hearsay are considered to be a waste of the court's time.

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On the 24 May 2005 the Trial Chamber in the AFRC case handed down a decision on a joint defence motion to exclude the evidence of a witness on the grounds that it was hearsay.

The disputed evidence of the witness was that he was present when a man named Mr. Saj Alieu reported to his uncle that a person referred to as "55" (an alternative name given to the accused) shot a woman.

Defence counsel argued that hearsay evidence should only be admissible where there are difficulties in obtaining first-hand accounts. The Trial Chamber disagreed, stating that it is not necessary for the Prosecution to establish that the other people involved in the conversation are not available to give evidence. The Trial Chamber decided that this issue goes to the weight, rather than admissibility, of the evidence.

In reaching a decision the Trial Chamber considered the decision of the Appeal Chamber in the *Fonfana Bail Appeal Decision*. In that decision the Appeal Chamber found that the Trial Chamber erred in law in refusing to admit hearsay evidence. The Appeal Chamber interpreted Rule 89 (c) as follows:

Rule 89 © ensures that the administration of justice will not be brought into disrepute by artificial or technical rules, often devised for jury trial, which prevent judges from having access to information which is relevant.

Judges sitting alone can be trusted to give second hand evidence appropriate weight, in the context of the evidence as a whole and according to well understood forensic standards.

With this in mind, the Trial Chamber found that the reliability of evidence does not affect its admissibility. The Trial Chamber confirmed that its decision to admit hearsay evidence 'does not imply that it accepts it as reliable and probative.

The Trial Chamber will admit evidence on the basis of its relevance, and at the end of the trial it has the responsibility of 'evaluating the evidenced as a whole, in light of the context and nature of the evidence itself, including the credibility and reliability of the relevant witness'.

The Trial Chamber ruled that the evidence was relevant and therefore admissible under Rule 89 ©.

This decision was consistent with the Fonfana Bail Appeal Decision where the Appeal Chamber remarked that evidence is admissible once it is shown to be relevant: the question of its reliability is determined thereafter, and is not a condition for its admission. These decisions reflect the view taken by the Special Court that the trials are conducted by professional Judges who are

capable of determining the weight to be given to hearsay evidence.

IV. ARGUMENTS FOR AGAINST THE ADMISSION OF HEARSAY EVIDENCE

The following section considers the arguments for and against the admission of hearsay evidence.

A. The reliability of hearsay

The rule against hearsay reflects the fact that hearsay evidence is not as reliable as direct evidence. This section examines factors undermining the reliability of hearsay evidence.

1. No opportunity to cross-examine the primary witness

Juries, and in international tribunals, Judges, have the onerous task of evaluating the evidence of each witness. The reliability of their testimony is affected by their honesty, perception, memory and narration.

These factors can be tested in cross-examination; however, in the case of hearsay evidence as the primary witness is not coming before the court this is not possible. If a witness providing secondary evidence has misheard or misremembered a statement, or taken it out of context, this is not evident to the court unless the primary source of the statement is cross-examined.

Cross-examination gives the court the opportunity to test the reliability of evidence and assess the credibility of a witness by observing their demeanour.

The Special Court has ruled that whether or not evidence can be tested by cross-examination goes to the weight of the evidence, not its admissibility.

Hearsay evidence coming before the Special Court is of an even more extraordinary nature as in many cases it is not just second-hand but third and fourth-hand accounts. In countries with a largely rural population, such as Sierra Leone, the majority of information travels by words of mouth.

When a witness testifies it is impossible to test how many individuals a statement they are making has passed through before it reached them. This further compromises the reliability of such a statement.

2. Hearsay evidence is not provided under oath

The reliability of hearsay evidence is further undermined because it is not provided under oath. When evidence is provided under oath a witness is required to testify in the solemn context of proceedings in court, being instructed as to their obligation to tell the truth and the consequences for not doing so. It is common for people to mislead others, particularly when they are not aware of the implications of their statements. It is a lot less likely that someone will make misleading statements before a courtroom, while under oath.

New Liberian
Saturday, 28 May 2011

Special Court for Sierra Leone to Hold Contempt Proceedings

By Alpha Sesay

Special Court for Sierra Leone judges have issued orders for two separate contempt proceedings to be held in respect of allegations that several individuals have attempted to contact prosecution witnesses with bribes for them to recant their evidence against accused or convicted persons.

The first contempt proceedings relate to allegations that persons acting on behalf of the defense for Charles Taylor attempted to bribe several prosecution witnesses, including those with protective measures for them to recant their evidence against the former Liberian president who is on trial for allegedly controlling and providing support to rebel forces in Sierra Leone.

Prosecutors say that Mr. Taylor is responsible for war crimes, crimes against humanity and other serious violations of international humanitarian law committed in the territory of Sierra Leone from November 1996 to January 2002. Mr. Taylor has denied the allegations against him.

The second contempt proceedings relate to allegations that convicted members of the Armed Forces Revolutionary Council (AFRC) who are now serving jail terms in a Rwandan jail personally attempted to contact protected witnesses by phone while at the same time disclosing the identities of said protected witnesses to agents in Freetown with instructions to offer the witnesses bribes to recant their evidence against them.

Two AFRC convicts, Ibrahim Bazzy Kamara and Santigie Borbor Kanu, aka 55, both of whom are serving jail terms in Rwanda, and two former members of the AFRC, Hassan Papa Bangura, aka Bomblast and Samuel Kargbo, aka Sammy Ragga, both of whom reside in Sierra Leone are alleged to have breached such protective measures for witnesses. The AFRC were a group of Sierra Leonean soldiers who overthrew the democratic government of Sierra Leone in May 1997. The AFRC teamed up with RUF rebels to establish a junta government which ruled Sierra Leone until they were forcefully removed from power by West African peacekeepers in 1998.

On February 25 2011, Prosecutors filed a motion in which they alleged that former investigator for Mr. Taylor's defense team, Prince Taylor and Eric Senesie, a former member of Sierra Leone's Revolutionary United Front (RUF), the rebel group which Mr. Taylor is on trial for allegedly supporting, attempted to bribe prosecution witnesses, including protected witnesses who had testified against Mr. Taylor for them to recant their testimonies against the former Liberian President.

The Trial Chamber judges granted the Prosecution's request and directed the Registrar of the Court to appoint an independent counsel to investigate whether the allegations were true. The Registrar appointed William L. Gardner as independent counsel on March 18 2011.

On April 21 2011, the independent counsel submitted a report of his findings in which he concluded that while there was insufficient evidence to proceed in contempt against Mr. Prince Taylor, “there are sufficient grounds to proceed against Eric Senessie for contempt of Court.”

The Trial Chamber therefore ordered that an “Order in lieu of Indictment” be issued against Mr. Senessie and directed the independent counsel to prosecute Mr. Senessie pursuant to said indictment.

In the said indictment, Mr. Senessie is alleged to have offered bribes to Prosecution witnesses Mohamed Kabbah, Dauda Aruna Fornie, protected witnesses TF1-516, TF1-585 and Aruna Gbonda all of whom testified against Mr. Taylor in The Hague. It is alleged that Mr. Senessie tried to influence these witnesses to recant their testimonies against Mr. Taylor.

In the case of the AFRC convicts serving jail terms in Rwanda and former AFRC commanders in Freetown, the Trial Chamber on March 18 2011 issued a decision in which the judges directed the Registrar to appoint an independent counsel to investigate allegations that convicted persons Mr. Kamara and Mr. Kanu, together with former AFRC members Ragga and Bomblast had attempted to influence a protected witness who had testified in the AFRC trials before the Special Court for Sierra Leone in order to have him recant his evidence.

The Registrar appointed Robert L. Herbst as independent counsel on March 23 2011. On May 11 2011, the independent counsel submitted a report of his findings.

In his report, the independent counsel submitted that there are sufficient grounds to believe that all four persons had indeed breached protective measures for witnesses by contacting a protected witness asking him to recant his evidence.

The Judges therefore ordered that an indictment for contempt be issued against all four persons and that the independent counsel prosecutes them pursuant to said indictment. In the said indictment, all four persons are accused of trying to influence Protected Witness TF1-334 who testified against the AFRC convicts before Special Court for Sierra Leone judges in Freetown.

It is not yet clear where the contempt proceedings will be held but it is a possibility that the AFRC convicts Kamara and Kanu will be made to leave their Rwandan jail for a temporary period to attend said proceedings if they are held at a place outside Rwanda.

Justice Teresa Doherty, a judge of the Trial Chamber hearing Mr. Taylor’s trial has been assigned as designated judge for both contempt proceedings.

Editor @ May 28, 201

Tehran Times
Monday, 30 May 2011

Western governments have seized more than $30 billion of Col. Muammar Gaddafi's assets since the Libyan leader launched the first attacks against his own citizens in February.

Secretary of State Hillary Clinton said earlier this month that those funds should be used "to help the Libyan people," and Sen. John Kerry (D) of Massachusetts says he is already at work on the legislation that will make that happen.

But here in West Africa – where rebels who were trained, funded, and armed by Colonel Gaddafi terrorized citizens for much of the 1990s – some people are saying that a chunk of that money should be set aside for them.

"Over a million Sierra Leoneans and Liberians were killed as a result of the Gaddafi-induced war," wrote Kofi Akosah-Sarpong, an editor at the London-based Newstime Africa daily's website earlier this week. "Now is the time for them to get their compensations direct from Gaddafi's looted billions."

Qaddafi's ties to the region date back to the 1980s, when he was looking to spread his influence across Africa and break off the continent's ties to the West. He was rumored to have been incensed by Liberia's cozy relationship with the Reagan administration under Samuel Doe, and by the Western-friendly stance of Sierra Leone's then-president Joseph Momoh.

So the Libyan leader invited some young, radical-thinking West Africans to visit his "World Revolutionary Center," a training camp outside the eastern Libyan city of Benghazi that the historian Stephen Ellis has called the "Harvard and Yale of a whole generation of African revolutionaries." There they learned how to deploy weapons and gather intelligence, and they were immersed in anti-Western ideology.

Charles Taylor – the former Liberian president who reigned over six years of terror in his own country and who is now on trial for his role in Sierra Leone's civil war – trained at Gaddafi's center in the 1980s. So did Foday Sankoh, the leader of Sierra Leone's main rebel group. Gaddafi supported both men with money and weapons after they had returned home from their training. The people of Sierra Leone and Liberia suffered the consequences.

"The idea of compensation is not far-fetched," says David Crane, the original chief prosecutor for the Special Court for Sierra Leone, a UN-backed body that was set up to "try those who bear greatest responsibility" for the country's civil war.

"(Compensation) is called for in the statute that created the (Special) Court," Mr. Crane says. "It is certainly worth filing that claim on behalf of the people of Sierra Leone." He adds that Gaddafi's "political involvement" in the country's conflict "was obvious and clear."

West Africans don't need to be told twice. Jesmed Suma, the Executive Director of the NGO Sierra Leone Policy Watch, calls Gaddafi a "terrorist kingpin" who needs to be brought to account.

If Gaddafi paid about $1.5 billion for his role in the Lockerbie bombing that took the lives of about 270 victims, then it would not be unreasonable to ask for $5 billion for the lives of about 200,000 (according to many estimates) Sierra Leoneans.

Suma hopes to put together a legal team to fight for the claim.

"With basic funding, I believe victory is very likely," he says. (Source: The Christian Science Monitor)

The Analyst (Monrovia)
Monday, 30 May 2011

Liberia: PYJ Speaks Tough - Wants TRC Report Fully Implemented

Perhaps what is 2011 Elections' most paradoxical political talk has come to the fore, with Senator Yormie Johnson, an indictee of war crimes as per the Truth and Reconciliation Commission's report, criticizing another indictee, President Ellen Johnson Sirleaf, for failing to fully implement the TRC recommendations which, amongst other things, call for a thirty-year ban from politics of some indictees in the country. Whether this is just a political talk or not, Senator Johnson sounds very upbeat that if elected to the Liberian presidency, he would ensure the full implementation of the TRC report, thanking the crafters of the report, including former Chariman Jerome Verdier, for the report. He also spoke on a wide range of national issues last Saturday at the Convention of his National Union for Democratic Progress party in his stronghold of Nimba. The Analyst reports.

"I would have like for the entire TRC report to be implemented. But unfortunately President Sirleaf decided that her desire to run for the Presidency was more important than implementing the recommendations of the TRC. At her State of the Union Address in January 2010, President decided to trash the TRC report and announced to the world that she was running for President, even though the TRC has banned her for 30 years. By her action, she completely undermined the recommendations for sanctions."

Those were the words of Senator Prince Y. Johnson, standard-bearer of the National Union for Democratic Progress (NUDP) when he spoke to a huge crowd of partisans in the northern city of Saclepea, Nimba County, where they had gathered for their first national convention.

Senator Johnson, who is indicted by the TRC, told his partisans that he criticized the TRC report because he felt it was not fair to him, since his participation in the civil war was to ensure that the people of Nimba were not being slaughtered.

"I felt then that I was fighting for political freedom. Under my leadership during the war, I protected civilians against brutal warriors. I also said that the 'gun that liberate should not rule.' I followed that basic principle and allowed in Liberia the IGNU Government under Dr. Amos Sawyer," PYJ, as he's commonly called, said.

"I was therefore selfless to allow another Liberian to take power when I had the opportunity to do so. This is why we have thanked Sekou Damante Konneh, Kabineh Janeh, Dr. Vamba Kanneh, George Dweh, Yaya Nimley and others who also did not take power by force but allowed Charles Taylor to leave Liberia for an interim Government not headed by them. Like me, LURD and MODEL could have used military power to take power but we did not because we love democracy."

Senator Johnson said the democracy and the freedom of association and press that Liberians enjoy today is because of him and others who refused to take power by force but instead allowed politicians to take power when they (the fighters) had risked their reputation to remove dictatorships.

"But today we are maligned for the peace and stability that we brought to Liberia. This is a measure of democracy, which is our ability to withstand criticism of all kinds," he said, adding, "Unlike this President that has sued Tom Woiwewu, New Democrat, New Broom and other papers for speaking out, I have never sued a single soul in Liberia for criticizing or insulting me."

He said as President, he will not sue a single person for speaking their minds.

"I do not like some of the things that newspapers write against me, but I do not have to sue them. That is freedom of expression and speech guaranteed by the constitution. But today papers like FrontpageAfrica and New Democrat have spent money to defend themselves against lawsuits from people who have defrauded the Government. New Broom also got strangulated for law suit filed by the President Sirleaf," Senator Johnson further said.

Voice of America
Sunday, 29 May 2011

ICC Prosecutor: Kenya Trying to Stop Probe into Post-Election Violence

The International Criminal Court's chief prosecutor says Kenya is trying to undermine his probe of the country's 2007 and 2008 post-election violence.

In a statement Sunday, Luis Moreno-Ocampo said Kenyan officials are pursuing “regional and political campaigns” to halt the case against six suspects accused of organizing the violence.

He says the campaigns send the wrong signal and promote a “climate of fear” that intimidates potential witnesses.

The post-election violence killed about 1,300 people and displaced hundreds of thousands more. The ICC is investigating six prominent Kenyans accused of being “most responsible” for the attacks.

Kenyan leaders agreed to cooperate with the probe in 2009 but recently challenged the ICC's jurisdiction over the case, saying Kenya can try the suspects itself.

The six suspects are Finance Minister Uhuru Kenyatta, Cabinet Secretary Francis Muthaura, Postal Corporation chief Hussein Ali, suspended government ministers William Ruto and Henry Kosgey, and radio executive Joshua Arap Sang.

A delegation from the ICC prosecutor's office is due to visit Kenya on Monday.

The Daily Star
Sunday, 29 May 2011

STL defense in absentia will mean uncharted waters

By Marie Dhumieres

BEIT MERY: The Defense Office for the Special Tribunal for Lebanon is conducting training to prepare the teams of lawyers for the possibility of having to defend the accused in absentia for the first time in an international trial, said the head of the office in an interview with The Daily Star.

“Nobody in [such a] court has ever conducted a trial in absentia, and nobody knows today how it is going to turn out,” François Roux said, referring to the United Nations-backed probe into the assassination of former Prime Minister Rafik Hariri and 22 others in Downtown Beirut on Feb. 14, 2005.

A trial in absentia would mean that one month after the court asks the Lebanese authorities to summon those mentioned in the indictment, the accused have not been arrested or have not appeared in front of the tribunal. The president could then decide to advertise the indictment in the media to inform the accused that they are being prosecuted, and inform them of their duty to appear before the tribunal. If after one month the accused have not appeared, the STL could proceed with conducting a trial in absentia.

“Today nobody knows if there will be trials in absentia; nobody knows if some will appear spontaneously, if some will be arrested, nobody knows,” Roux repeated, adding he was personally convinced that it was completely possible for some of the accused to appear in front of the court of their own will, or to be arrested and brought to The Hague, the headquarters of the STL.

“Our work, in our office, is to envisage all the possibilities and to try to be ready,” he added, explaining the office had already conducted three sessions of intensive training with some of the STL’s defense lawyers.

“We had them role-playing. We put them in a courtroom and conducted mock trials to train for all the new concepts of this tribunal.”

“We’re trying today to anticipate the maximum number of problems we might face when the trial starts,” he said.

Roux explained that the STL has four special aspects, compared to other international courts, which have been convened to treat mass violence in countries such as Rwanda, Sierra Leone, and the Former Yugoslavia.

The STL will be the first international tribunal to rule on guilt involving an act of terrorism, to have an independent pre-trial judge, to authorize a trial in absentia and to have a defense office as an organ of the tribunal.

He said that one of the reasons the concept of trial in absentia was implemented was that the creation of a completely independent Defense Office guaranteed the respect of the rights of the accused.

However, even in the event of a trial in absentia, the tribunal also allows the possibility for the accused to ask for a new trial at any time, and even after being found guilty.

Roux acknowledged a trial in absentia would put defense attorneys in a difficult and completely new situation.

“They won't have the possibility to discuss with the accused, they would have to elaborate their own strategy of defense without knowing what the accused wishes… it’s an additional difficulty,” he acknowledged.

“Their role will be to ‘defend the defense,’ to defend the rights of the accused in general,” he said, arguing the lawyers will still be able to discuss and even challenge the prosecutor’s evidence.

The Defense Office has so far recruited 107 defense lawyers, of whom only four are Lebanese – a topic that found its way into Roux’s presentation Friday at the Bustan Hotel in Beit Mery during a panel entitled “The rights of the accused in international criminal proceedings” as part of a three-day conference on International Criminal Justice.

Roux strongly regretted the fact that only four of the defense lawyers were Lebanese nationals and called for more to register, “even if you’re opposed to the tribunal,” he said, addressing the audience.

“This is completely insufficient,” he said, insisting on the fact that the STL was a tribunal “for” Lebanon, as indicated by its official title.

Roux, who has been in his post since March 2009, said his office has been engaged primarily in preparing future defense teams, who will be private lawyers, and not STL employees.

He stressed that the Defense Office was not directly involved in the defense’s strategy but was in charge of preparing and supporting the lawyers who will be defending the accused.

“An international trial has nothing to do with a national trial… there are juridical debates and unexpected situations almost every day.”

He stressed that the defense teams will only have a few weeks to absorb a huge amount of information, while the prosecutor’s team have been working on the case for two to three years.

“These are going to be extremely technical and rigorous debates. The Defense Office is here so even if the lawyers are surprised, they’re not unsettled.”

“It’s really important to remember that there is no investigative judge in this procedure… every party must conduct its own investigations,” he added.

Since his team was created, Roux’s staff has also been working on preparing dozens of memoranda on the juridical themes that are expected to be discussed at the tribunal and guidelines on deontology, or the study of duties and ethics, for the defense lawyers.

Pre-Trial Judge Daniel Fransen is currently reviewing amendments to Prosecutor Daniel Bellemare's indictment, and this review has been ongoing since the first submission of indictment in January.

Roux insisted that such a process required time, and that the public needed to “respect the [time-frame] of justice.”

For the time being, his office supports the idea of the confidential process, in the interest of justice and of the accused.

“Today we can very well imagine that in the indictment filed by the prosecutor there are obviously names. But are we going to throw names at the public to feed their hunger when the indictment has not been confirmed?” he asked.

“The trial doesn’t happen in the streets, it doesn’t happen in the media but in a courtroom… that’s where the trial is going to happen. The rest is just rumors and expectations.”

During the conference, Roux admitted being a defense lawyer in an international court could be “a bit schizophrenic.”

“Lawyers are also citizens; we find the crimes committed odious and our first thoughts go to the victims, but then when we are assigned as lawyers we put on our court robe to defend the accused.”

He also noted that 25 per cent of the indictments presented in both the international tribunals for Rwanda and the Former Yugoslavia resulted in acquittals, saying the international community tended to forget this.

“Let’s respect the time that is required by justice, which is inevitably a bit long, but we’re getting there. If the indictment is confirmed there will be a trial, which will be public. There will be contradictory public debates. It’s taking some time, but what matters is that it happens, and what matters is that the truth emerges.”

Hirondelle News Agency
Friday, 27 May 2011

Prosecution lines 44 witnesses against Kabuga

The prosecution is expected to call at least 44 witnesses in special deposition proceedings in the case of most wanted genocide fugitive, Félicien Kabuga, before the International Criminal Tribunal for Rwanda (ICTR), according to ICTR press services.

Four witnesses have testified since the commencement of the proceedings on May 23, 2011. The proceedings presided over by Judge Vagn Joensen are being held in total closed session.

This is the first case in the ICTR history for the prosecution to call such big number witnesses in a single case. Kabuga (76) is charged with 11 counts of conspiracy to commit genocide, genocide, complicity in genocide and direct and public incitement to commit genocide.

He is also facing charges of crimes against humanity for murder, extermination, rape, persecution and inhuman acts and other charges of war crimes. During the events for which he was indicted, Kabuga was a businessman and was related by marriage to the family of President Juvenal Habyarimana.

His indictment alleges that he was main financier and backer of main political parties, National Republican Movement for Democracy and Development (MRND) and Democratic Republican Movement (MDR) and their militias, who allegedly played crucial role during genocide.

He was also President of the National Defence Fund's Provisional Committee, allegedly provided funds to the interim Rwandan government for the purposes of executing the 1994 genocide. He also headed Initiative Committee of Radio Television Libre des Mille Collines (RTLM), allegedly propagated hatred against Tutsis.

Kabuga's case is among three involving top-level fugitives that would be proceeded with in such way under Rule 71 bis of the ICTR Rules. The other cases involve Protais Mpiranya, who was Commander of the Presidential Guard and Augustin Bizimana, former Minister of Defence.

These are first requests of this kind in the ICTR history. The ICTR Prosecutor Hassan Jallow filed motions for the taking of deposition in the three cases for fears that evidence against them may be lost or deteriorates due to the passage of time, death and incapacity of unavailability of witnesses later on.

ICTR sources allege that Kabuga is said to be carrying out his commercial activities in Kenya, while Mpiranya is allegedly being protected by senior officials in Zimbabwe, whereas Bizimana may be hiding in the Democratic Republic of Congo (DRC).

FK/ER/GF

Agence France Presse
Friday, 27 May 2011

Former Lebanese general appeals tribunal order

A former Lebanese general who was detained for four years in connection with the death of former Prime Minister Rafiq Hariri indicated Wednesday he would appeal a special tribunal judge's decision to give him partial access to his case file.

"The applicant is asking the appeals chamber to cancel the decision in that it denies rights of the applicant in a general and absolute way to access three categories of documents," Jamil El Sayed's lawyer Akram Azoury said in a notice of appeal.

Azoury's request was published on the website of the Special Tribunal for Lebanon (STL) and dated May 20.

Sayed, Lebanon's former security services director, was arrested following the death of Hariri and 22 other people in a Beirut bomb attack on February 14, 2005.

He claims his detention between August 30, 2005, and April 30, 2009, was decided on the basis of libelous denunciations made during an inquiry into Hariri's death.

On May 12, pre-trial Judge Daniel Fransen of the tribunal based in The Hague ordered that Sayed be given access to more than 270 documents in order for him to launch proceedings in another court.

But the STL said at the time that "a large majority" of documents would be disclosed to Sayed, whilst others could be inspected only by his council.

The tribunal also stated that the documents could be used only for "legitimate" purposes and that it had to respect the "presumption of innocence, the right to defence and the right of privacy of third parties."

The tribunal was created at Lebanon's request by a 2007 UN Security Council resolution to find and try Hariri's killers.

Asiacorrespondent.Com
Saturday, 28 May 2011

Khmer Rouge senior leaders and/or those who were most responsible

By Albeiro Rodas

Buo Men, Khmer Rouge S-21 torture and execution center's survivor, shows Kaing Guek Eav, director of the infamous center. On his left, a photo of Pol Pot. Photo Rodas.

The Extraordinary Chambers in the Courts of Cambodia, ECCC, face this month great pressure and legal discussion. Although the Co-Investigating Judges stated yesterday in a reply to an article by the International Justice Tribune, '*Cambodia's troubled tribunal*', [1] that they are '*resolved to defend their independence against outside interference, wherever it may come from,*' [2] it seems that the ECCC's credibility is at its lowest level.

You Bunleng and Siegfried Blunk of the office of the Co-Investigating Judges said that they never threatened the international co-prosecutor [Andrew Cayley] and that it is a '*malicious rumor intended to disrupt the harmony within the Court*.' They said also that saying that the '*tribunal is heading for an irreparable crash*' is baseless and that the reported statements that '*the tribunal is in danger of collapse*' and '*the court's future hangs in the balance*' [3] are '*nonsensical and do not correspond with reality*.'

Last May 22, David Scheffer, who was the US Ambassador-at-large for War Crimes and participated in the creation of the ECCC, published in his Cambodia Tribunal Monitor blog an essay on the matter with the title '*The Negotiating History of the ECCC's Personal Jurisdiction*.' [4] Scheffer gives a detailed description of the negotiation to establish the UN-Cambodian tribunal to prosecute the leaders of the Khmer Rouge. On January 2, 2001, the Cambodian National Assembly approved the ECCC Law stating that the mission of it was to prosecute '*senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian laws.*'

The current status quo of the ECCC seems, therefore, locked in the prosecution of the senior leaders (Case 002): Khieu Samphan, former Head of State, Ieng Sary, former Prime Minister in Charge of Foreign Affairs, Nuon Chea, former Deputy Secretary of the Communist Party of Kampuchea and Mrs. Ieng Thirith, former Minister of Social Affairs, which initial hearing will commence on June 12, 2011.

The problem has been, therefore, the 003 and 004 cases that seem to include other suspects, although it is difficult for the public opinion to determine if the persons that are

mentioned in that preliminary investigations fall within the competence of ECCC because the information is confidential. Thus the statement of International Co-Prosecutor Andrew Cayley has produced too much concern and pressure over the Court, because his consideration that the investigations were not appropriated.

In an email to Asian Correspondent, Mr. Cayley replied:

'The discussion has centred, of late, on whether cases 003 and 004 should go ahead. Whether the country needs them. There is a much wider issue - that of due process. In other words whether these cases proceed or are dismissed the journey to get to that procedural point must be legal and proper. Officials, including me, must act under the law and do their duty My responsibilities here are as clear as those of the Director of Public Prosecutions in England. It is not part of my function to respond to external influences. It is simply to ensure the rules are followed and the law applied. I will, as you describe, continue to exert "concern and pressure" to ensure that justice is not only done but is manifestly and undoubtedly seen to be done.'

The question is if there are four senior leaders of the Khmer Rouge regime ready to face prosecution, where are those of the second group that fall within the competence of the Court that are called the '*most responsible during the period of Democratic Kampuchea'*? It is also clear that the four senior leaders and those who died already like Pol Pot, Ta Mok and Son Sen, were not direct mass murderers. Even we can forecast that their defense will rely on that and that they will insist in their innocence until the end. Therefore, who killed so many people? Expanding the number of defendants – with a very clear boundary, will not, by sure, conduct to a civil war, but omitting them will not bring peace to the victims and justice to the history.

Last Thursday, the ASRIC group, a US-based organization of survivors of the Khmer Rouge, declared that the war crimes tribunal will fail to deliver justice, [5] because the judges closed the 003 case that could bring new suspects into investigation, something that International Prosecutor Andrew Cayley said was deficient. Other critics even foresee the '*crush of the tribunal*' like the International Justice Tribune [6] or like Peter Maguire, the author of '*Facing Death in Cambodia*', who says in The New York Times that '*the biggest problem facing the ECCC is living up to its own hype. Claims that such trials lead to healing, closure, truth and reconciliation are speculative at best. How does one measure 'healing, closure and reconciliation?*'. [7]

Yesterday, the United Nations rejected also the statements of the president of the Cambodian Center of Human Rights, Ou Virak, who questioned the intentions to close down the 003 and 004 cases and suggested external interferences to the UN-Cambodian tribunal. Virak singled German Co-Judge Siegfred Blunk and said in a letter to Clint Williamson, who acts as liaison between UN headquarters and the government, that '[Blunk's] *actions raise the question of whether the United Nations has conceded to the demands of the [Cambodian government] and is now acting to prevent any further cases from going to trial and to ensure the closure of the [tribunal] with the conclusion of Case 002*'. [8] [9]

The eyes of many are now on ECCC and it must look for the way to defend its credibility, especially before the victims. '*There are only two mistakes one can make along the road to truth; not going all the way, and not starting*,' says Siddhartha in a Buddhist kingdom like Cambodia.