

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



See photos from yesterday's security exercise in today's 'Special Court Supplement'.

PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Press and Public Affairs Office

as at:

Thursday, 6 December 2007

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

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Independent Observer
Thursday, 6 December 2007

Why Justice Bankole Thompson should withdraw from RUF trial... *the arguments*

14 November – 880: Sesay and Gbao joint motion for voluntary withdrawal or disqualification of Justice Bankole Thompson from the RUF case. [9 pages plus 29 pages of authorities]

Counsel for Sesay and Gbao (later joined by counsel for Kallon) contend that in Justice Bankole Thompson's "separate concurring and partially dissenting judgment" in the CDF trial, which would have found Fofana and Kondewa not guilty on all counts, that he had reached conclusions and made statements which suggested he had already made up his mind about the guilty of the RUF defendants. The Defence lawyers request that Justice Thompson either withdraw from the case, or the Trial Chamber disqualify him.

20 November – 885: Kallon Defence statement in support of the motion.

20 November – 886: Prosecution response to the motion. [10 pages and 8 pages of authorities]

The Prosecution RESPONSE states that (1) the Defence has taken the Judge's statements out of context, and (2) Justice Thompson's findings in his Dissent are based on evidence heard in the CDF trial which is "almost entirely different from the evidence heard in the RUF trial."

The Prosecution concludes that the facts of each trial must be determined based on evidence produced (in that trial). "It is settled law that a Judge cannot be disqualified based on a position taken in a parallel case on an issue in dispute in the case now before him or her." The Prosecution asks that the motion be dismissed, arguing that there is nothing in the Dissenting Opinion to suggest that Justice Thompson is biased.

21 November – 887: Sesay and Gbao joint reply to the Prosecution response. [7 pages and 1 page of authorities].

The Defence, in their REPLY to the Prosecution RESPONSE, argue that the Judge's specific words used to describe "the enemies of the CDF" suggest that "no reasonable person, let alone the Accused, would reasonably conclude that the Learned Judge

had not concluded that the AFRC and its allies were criminals."

23 November – Addendum to Sesay and Gbao joint reply.

28 November – Comments by Justice Thompson. [9 pages]

Preliminary Comments:

(1) Justice Thompson states that the motion seeks to litigate his dissenting judgment in the CDF case with the remedy being his disqualification in the RUF trial. He says the motion is "repugnant to the notion of judicial immunity from suit, action, or litigation for any matter or thing done or said by judges in the performance of their judicial functions."

(2) The rule (on the removal of judges) does not apply to things done by a judge in the performance of his judicial functions, but only to things done outside those functions (such as a public lecture or an interview in the press).

(3) The Rule (on the removal of judges) is not intended to be an alternative to the appeals process.

Substantive Comments:

1. His comments were taken out of context and the motion is in fact a disagreement with his judicial views as expressed in his dissenting opinion in the CDF trial.

2. As a Judge it is his role to determine the guilty or innocence of a person based on the evidence presented in that trial, and not in another trial. He said there is no basis for concluding that he is biased. It is "flawed to conclude that because he found the CDF indictees not guilty, that automatically means he would find the RUF indictees guilty."

28 November – Corrigendum by comments by Justice Thompson.

Awoko

Thursday, 6 December 2007

Special Courts holds a day's seminar

A one-day seminar for women, children, and women and children's serving agencies has taken place at the Holy Trinity Parish hall along Blama Road in Kenema city.

The theme of the seminar was "operations of the Special Court and its impacts on the rights of women and children".

The chairman of the ceremony, Bob Kandeh, said the Special Court existed to try people who bore the greatest responsibility for committing crimes against the people of Sierra Leone.

He stated that the outreach team had explained how the court was operating in Freetown, and that that was why they were moving around the country to explain to

people.

In his keynote address the resident minister East, William Juana Smith, said abuses on the rights of the child and women had been going on for a very long time.

He stressed that series of abuses, tortures and deprivations of children on education had sent children on the streets in areas like Tongo field, Kenema and Kono where they provided cheap labour in mine-fields.

Hon Smith said the UN also adopted a convention on the elimination of the discrimination against

women, adding that this convention intended to enhance income and education for women especially those that lacked the relevant opportunities for equal participation in national development.

"The government is aware of all these lapses and therefore is putting mechanism in place to review all legislations relating to child abuse and the deprivation of women," he said and noted that "the government takes the responsibility to ensure that parents care for their children".

The acting Outreach coordinator of the Special Court, Patrick Fatoma, gave a talk on the establishment and milestones covered by

the court and the prospects of the court closing in 2009.

Concord Times
Thursday, 6 December 2007

Accusations against Justice Sector grow

By Rachel Horner

An official of the United Nations Integrated Office in Sierra Leone (UNIOSIL) has said the Sierra Leone justice sector has been violating international human rights laws.

Benedict F. Sannoh, Chief of

Human Rights and Rule of Law at UNIOSIL, said Tuesday that "UNIOSIL has noted a number of cases where accused persons have been charged under the wrong laws and detained for prolonged periods."

He continued: "This does not
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Accusations against Justice Sector grow

From page 1

only undermine the quality and integrity of the criminal justice process, but it also results into violations of the rights of the accused."

Sannoh said too few state attorneys in the country means that often police are prosecuting crimes on behalf of the state - which could result in a violation of human rights laws.

"Police prosecutors are not lawyers and had no prior comprehensive training in the areas of charging and prosecuting offenses," he said.

Sannoh also said police prosecutors should be the exception and not the norm, and any reform of the justice system must provide for a phase-out of police prosecutors.

He also noted that the weak response to growing insecurity on the part of women because of

increased incidents of violence - including domestic violence, rape, and FGM - poses a threat to the basic human security of women.

He also cited the poor condition in the prisons, in which detainees get sick and often languish for years while their trials are postponed.

"Over the past two months, 16 prisoners have died at Pademba Road Prison as a result of poor conditions," he said. "It is necessary that prisoner's conditions be addressed."

Dennis Dove, a Freetown student of Human Rights, also confirmed that there is great violation of human right in the justice sector.

"As a human rights activist I am advocating that this will stop as human rights are basic standards that are prescribed by international or national law to promote

human dignity," he noted.

Secretary General of Bar Association Mustapha S. Turay confirmed that there are instances of corruption and human rights violations. "Magistrates sentence people above the statutory limits, which contradict the 1965 court act as amended," he said.

Turay said a recently concluded conference ensured a court monitoring committee will be created.

"It should be independent as it will serve as a watch dog on the judiciary-charged with the responsibility to receive public complains and punish when necessary," he said. "Any one found wanting will be prosecuted or even go to jail, it will minimize corruption."

Turay also called on his colleagues to be proactive in the execution of their duties.



Sierra Leone Law Court Building

Overcrowded jails filled with prisoners awaiting trial

*By Mariama Kandeh and
Danny Glenwright
in Makeni*

Fatmata Jalloh is raising her one-year old boy in an unconventional setting - from within the confines of the Makeni prison.

Jalloh, a young mother awaiting trial, has been behind bars since she was seven months pregnant. At the time she was arrested for theft.

Local police arrested her instead of her boyfriend, who managed to escape with his friend, who had stolen computers from Freetown. The computers were found in her home and Jalloh was the

only person there - she was arrested for the crime and has been languishing in prison ever since.

"There are no witnesses, nobody has come forward to say I committed the crime," she said last week from her cell. "I wish to get out of here."

Jalloh stays with her son and three other women in the female quarters of the prison.

The women share one grey, open room and a courtyard, where they prepare food, braid each other's hair and play with Jalloh's son, Junior.

They have mosquito nets above their mattresses, which

sit on the cement floor, and Jalloh said they are well looked after by prison officials.

Despite this, Jalloh said she would prefer to be raising her son in the free world.

Makeni prison, like most jails in the country, is overcrowded and small - unable to accommodate all the prisoners awaiting trial, especially male prisoners.

"I have 137 prisoners," said S.S. Koroma, prison-officer in charge of Makeni prison. "I'm supposed to have 80."

He said in Makeni there are 40 prisoners awaiting trial, many of whom have been

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Overcrowded jails filled with prisoners awaiting trial

From page 1

there for years, and only 72 prisoners have been convicted.

Koroma said many prisoners sleep on the floor because there are no mattresses. As well, there is not enough medicine or supplies for the extra men and his monthly supply of food and rice from the government always arrives late.

"The past government, they didn't pay us anything," he said. "The contractor was paid only Le 1,630 per person to feed them, which was meant to provide three meals a day."

The government recommended 20 ounces of food per day, not nearly enough, said Koroma.

But Koroma said prisoners are mostly frustrated because they have not been indicted or charged.

Betty Alimamy Sesay, a Makeni radio journalist



Padamba Road Prison

and activist, said the state of prisons and the justice system in the country is unacceptable.

"Many of them are in there and they shouldn't be," said Sesay, who is also a member of the Sierra Leone Court Monitoring Programme. "They are languishing in the prisons with no witnesses and their cases are not being heard."

Sesay said there is one foreign judge in Makeni attempting to get innocent people out from

behind bars, but she said the justice system in Makeni and the rest of the country is corrupt, slow and in need of restructuring.

She has been monitoring and attempting to expedite many of the Makeni cases, including Jalloh's. "I've been watching her case for awhile, ever since she came in here pregnant," said Sesay.

Another case Sesay has taken interest in is Abu Marrah's, a lance

corporal from the military who has been behind bars in Makeni since 2002.

Marrah was arrested for an alleged murder in Kono, taken into Freetown where he appeared at the high court for six months and, because of lack of witnesses, eventually transferred to Makeni, where he still waits.

"I've appeared three times in court in Makeni," said Sesay, from the men's prison

yard in Makeni. "The judge said the police aren't allowed to take me to court until they have a witness, but in the meantime I am stuck here."

Several men gathered around Sesay, nodding in agreement. Some washed their clothes and hung them on a clothesline; others crouched in corners of the small prison yard, away from the sun. Many of their cases are similar - many of them have sat in prison for months or years because the police or justice systems do not have adequate resources or training.

Dauda Kamara, the new Minister of Internal Affairs, agreed with Sesay and said although he has not yet had time to visit the prisons, he knows they are in a sorry state.

"I am told that Padamba Road Prison in Freetown has 1084

prisoners, but there is only room for 300," said Kamara. "There is serious overcrowding and it is not tolerable conditions."

Kamara blamed the overcrowding on the judiciary, who he said are slow and often not available to try cases - resulting in hundreds of prisoners awaiting trial throughout the country. "Everybody wants reform, reform, reform," he said, "I agree, but let us use effectively what we have now. It is a problem of getting them to do their work at all."

On Tuesday, Sierra Leonean Justice George Gelaga King delivered a scathing address to the Sierra Leone Bar Association in which he labeled the judiciary 'corrupt' and 'disrupting'.

Kamara said the prisons will not improve until the judges do. "It is a terrible situation," he said.

The Patriotic Vanguard

Thursday 6 December 2007

"No further indictments"---Special Court

By Gibril Koroma

SLPP members of Parliament recently took many people by surprise when they called for the indictment of former president Ahmad Tejan Kabbah (who is also a former leader of the SLPP) for war crimes and crimes against humanity at a public forum in Freetown.

I recently asked Peter Andersen, a Special Court spokesman, to comment on what may be described as the strange request of the SLPP MPs.



He said Special Court prosecutor Stephen Rapp has always maintained that there will be no further indictments but he cautiously added that the prosecutor's official line has been that while a prosecutor never says "never", he (prosecutor) does not anticipate any further indictments.

Asked what would be the court's reaction if the current government were to decide to indict or prosecute any member of the former government on their stewardship during the war, Andersen said:

"It would not be appropriate for the Special Court to comment about other courts, or to speculate about what other courts may or may not do."

Asked to comment on the fundraising efforts of the Court so far, Andersen pointed out that fundraising has always been a challenge because the Court is funded by voluntary contributions from interested countries.

"The nature of the process is that countries cannot commit funds for future years. Funds are released according to a country's budget cycle. The last I heard, there was money in the bank to last until February, with additional commitments having been made. This was a month or two back. I am confident that the countries which set the Court up and have backed it financially will not allow it to fail for lack of funds," he said.

The Patriotic Vanguard wanted to know where the CDF indictees would serve their sentences.

In reply, the Special Court spokesman said no decision has been made yet on where the CDF convicted persons will serve their sentences because the appeals process is still underway.

"The Prosecutor is asking that the sentences be adjusted upwards, while Kondewa is appealing his conviction and sentence. Fofana is not appealing, but is represented by appeals counsel to respond to appeals by the Prosecution," he explained.

He further added:

"The speculation was that Fofana, who would have about a year and a half left on his sentence as handed down by the Trial Chamber, could serve it here(Sierra Leone) because the Special Court will still be in operation at that time. Kondewa, if his sentence stands, would have two more years than that. The AFRC convicted persons received much longer terms from the Trial Chamber. Presumably (because the sentences are being appealed) the Court and its detention facility will no longer be here by the time their sentences end."

Photo: Peter Andersen, left, and PV Holland correspondent Teddy Foday-Musa at the Hague in June this year.


United Nations **Nations Unies**

United Nations Mission in Liberia (UNMIL)

UNMIL Public Information Office Media Summary 5 December 2007

[The media summaries and press clips do not necessarily represent the views of UNMIL.]

International Clips on Liberia

There were no relevant stories on Liberia in the international media today.

International Clips on West Africa

There were no relevant stories on West Africa in the international media today.

Local Media – Newspaper

Security Executives to Discuss Crime Control

(Public Agenda and The Analyst)

- According to sources, more than 40 law enforcement and security executives will participate in a security executive round-table discussion under the auspices of the Liberia National Law Enforcement Association (LINLEA). Themed: Effective Security Governance: A Catalyst for Promoting Human Rights and Rule of Law, the discussion will examine administrative and operational challenges related to crime control, the rule of law and the management of law enforcement agencies. It will also reflect on the ongoing security sector reform in order to identify areas for improvement and intervention.

Government Presents “Evidence” in Treason Trial

(New Democrat, Daily Observer, Heritage, The Informer, The Inquirer, Public Agenda and The News)

- Court reporters said that public reaction to the Government’s video and audio evidences which were displayed yesterday at the Criminal Court “A” in the ongoing treason trial of former Armed Forces of Liberia Colonel Andrew Dorbor and General Charles Julu, was mixed.
- In an interview, some people opined that the video evidence lacked all it takes to convict the Andrew and Charles while a defense lawyer said that presentation lacked clarity and visibility and therefore could not link the two men to the crime. However, others took exception saying that the evidences clearly indict the accused.

Government, UN Launch Human Development Report

(The Informer and New Democrat)

- Liberia’s Lands, Mines and Energy Ministry and UNDP yesterday launched the Human Development Report 2007/2008 with Lands, Mines and Energy Minister Dr. Eugene Shannon alarming that the Liberia was facing dire consequences as the globe heats up.
- For his part, UNDP Country Director Dr. Dominic Sam noted that climate change poses serious danger to poverty in Liberia and Africa, putting poor people at the heart of the discussion on climate change. He encouraged the media to get involved in the campaign against climate change by advocating for stronger policies and actions by policymakers.

Ruling Unity Party Candidate Leads in By-Election

(Daily Observer)

- Preliminary results from the Gbarpolu County Senatorial By-Election put the Unity Party candidate Theodore Momo in the lead followed by Independent candidate Armah Jallah, Malike Dukuly of the Congress for Democratic Change and Kannie Weaso. The National Elections Commission had announced that turn-out began at a slow pace but later took an upward trend when farmers turned out en masse around noon time to cast their votes. The

poll was prompted by the death of the Senator Samuel Tormetie who died in Accra sometime ago.

Local Media – Radio Veritas *(News monitored today at 9:45 am)*

Ruling Party Candidate Leads in Gbarpolu Senatorial By-Election

(Also reported on ELBS, Star Radio, SKY Radio and Truth FM)

UN Report on Climate Change Launched in Monrovia

(Also reported on ELBS, Star Radio, SKY Radio and Truth FM)

State Prosecutors Present Video and Audio Evidences at Treason Hearing

(Also reported on ELBS, Star Radio, SKY Radio and Truth FM)

Reconstruction of Tubman Boulevard Progresses

- A Radio Veritas reporter, who Tuesday visited the site of the ongoing reconstruction of the Tubman Boulevard in Sinkor, said that work on the thoroughfare was progressing with the Chinese construction firm, CHICO, hiring more Liberians who now operate the heavy duty machines that are being used for the road work.

(Also reported on ELBS, Star Radio, SKY Radio and Truth FM)

Bomb Fear Grabs U.S. Embassy Community

- Curious onlookers yesterday told Radio Veritas that a bomb scare raised over a suspicious “black bag” left a few yards from the American Embassy disrupted normal activities and movement in the Mamba Point area, but it later turned out to be a false alarm. The owner of the abandoned “black bag”, Mr. Aaron Koweah had allegedly made threatening remarks.

(Also reported on ELBS, Star Radio, SKY Radio and Truth FM)

Lawmaker Commends UN for Removing Travel Restriction on Minor

- A member of the House of Representatives from Grand Gedeh County, Kai Farley thanked the United Nations for lifting the ban on former President Pro Temp of the Senate Grace minor and appealed to the UN to review their cases. In an interview, Representative Farley said that he and others who are being perceived as threat to the peace process were rather contributing immensely to peace in Liberia and there was a need for the ban to be lifted to enable them seek external help for their people.

(Also reported on ELBS, Star Radio, SKY Radio and Truth FM)

Complete versions of the UNMIL International Press Clips, UNMIL Daily Liberian Radio Summary and UNMIL Liberian Newspapers Summary are posted each day on the UNMIL Bulletin Board. If you are unable to access the UNMIL Bulletin Board or would like further information on the content of the summaries, please contact Mr. Weah Karpeh at karpeh@un.org.

United Nations

Tuesday, 4 December 2007

Cooperation Is Essential In Determining Effectiveness Of International Criminal Court, Secretary-General Tells States Parties To Rome Statute

Following is the text of UN Secretary-General Ban Ki-moon's remarks at the general debate of the Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court, in New York, today, 3 December:

I am pleased to welcome you here at United Nations Headquarters in New York for your Sixth Assembly.

Last July marked the fifth anniversary of the entry into force of the Rome Statute of the International Criminal Court. Next July, we celebrate the tenth anniversary of the adoption of the Rome Statute.

Today's Assembly, falling midway between these two historic dates, is a welcome opportunity to take stock of the Court's standing and to reflect on some of the main challenges ahead.

Permit me to start with some brief historical context. The origins of the International Criminal Court lie with the International Criminal Tribunals for the former Yugoslavia and for Rwanda. These courts, established by the Security Council, pioneered the enforcement of international humanitarian law and the development of international criminal justice.

Their work opened the door to other forums to fight impunity under international law. The Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia followed the lead of the original Tribunals and brought a measure of justice and closure to the victims of unspeakable crimes.

At the Dayton peace talks in 1995, Slobodan Milosevic could not have believed that just a few years later he would be held accountable before the International Criminal Tribunal for the Former Yugoslavia. More recently, Khmer Rouge leaders such as Kaing Guek Eav, known as Duch, Ieng Sary, former Foreign Minister, and Khieu Samphan, former Head of State of the Democratic Kampuchea regime, were taken into the custody of the Extraordinary Chambers in the Courts of Cambodia. And of course Charles Taylor is getting ready to stand trial before the Special Court for Sierra Leone early next year.

The success of these courts fed a growing sense among the international community that a more permanent forum to address the most egregious atrocities was needed.

The International Criminal Court emerged as the answer.

Unlike ad hoc tribunals of all kinds, the International Criminal Court is a permanent institution. Already, in the relatively short period of its existence, the Court has established itself as the centrepiece of our system of international criminal justice. It both embodies and drives a profound evolution in international culture and law. It serves notice to any would-be Milosevic or Charles Taylor that their actions today may lead to international prosecution tomorrow.

Indeed, I note with some satisfaction that two of the individuals indicted by the Court have been arrested and transferred into its custody. Yet, there are still a number of outstanding arrest warrants that have to be executed. I urge all Member States to do everything within their powers to assist in enforcing these warrants.

The single most important determinant of success for any international tribunals is cooperation. Cooperation from States, cooperation from the United Nations and other international organizations, cooperation from civil society and the NGO community, and cooperation from victims, witnesses and other individuals. Cooperation that results in financial support and political backing, and which flows from expressions of support in public, as well as behind closed doors.

And it is cooperation that will determine the effectiveness of the International Criminal Court, and the success of the Trust Fund for Victims that was also established under the Rome Statute.

Let me assure you that the United Nations will continue to cooperate with the International Criminal Court under our Relationship Agreement. We feel the UN can assist the Court in many ways. It can provide documents and information, it can supply logistical and other technical support to Court field operations, and it can even accommodate the Court in its security arrangements. Of course, the arrest and surrender of indicted individuals can only be undertaken by States, even where peacekeeping operations have been mandated to assist with the task.

That is why the cooperation of all States is essential to the work of the Court. Without it, the International Criminal Court cannot function. The Court, and the Trust Fund for Victims, needs the support and assistance of all States parties for the important work that is under way.

At present, the Court's Prosecutor is investigating four situations: in the Democratic Republic of the Congo, where, during one of the bloodiest conflicts in Africa, thousands of civilians, including countless children, have become victims of mass atrocities and abuse; in Darfur, where unspeakable crimes on a massive scale are still being committed; in northern Uganda, where the Lord's Resistance Army abducted thousands of children and used them as child soldiers, servants and sex slaves; and in the Central African Republic, where particularly egregious allegations of rape and other acts of sexual violence against women have surfaced.

Some of these situations are still unstable, and peace has not yet completely taken hold. Under such circumstances, questions about the relationship between peace and justice are unavoidable.

There are no easy answers to this morally and legally charged balancing act. However, the overarching principle is clear: there can be no sustainable peace without justice. Peace and justice, accountability and reconciliation are not mutually exclusive. To the contrary, they go hand in hand.

And so the work of the International Criminal Court goes hand in hand with that of the United Nations. Our struggle for peace cannot succeed without your efforts for justice.

So let me thank all of you for your contributions to our system of international justice, and I look forward to cooperating with you to strengthen the Court, and to advance the cause of justice and peace everywhere.

Voice of America

Wednesday, 5 December 2007

ICC Prosecutor Accuses Sudan of Defying UN

By Barbara Schoetzau
New York

The Chief Prosecutor for the International Criminal Court, Luis Moreno-Ocampo, says Sudan is defying the United Nations by protecting two indicted war criminals. From VOA's New York Bureau, correspondent Barbara Schoetzau has the details.

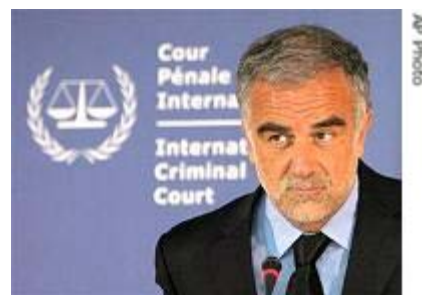
In May, the International Criminal Court issued arrest warrants for Ahmed Haroun, Sudan's Minister of Humanitarian Affairs, and Ali Khosheib, a leader of the pro-government Janjaweed militia in Darfur. The Court charges both with crimes against humanity.

Briefing the Security Council on his latest report on Sudan, Ocampo says the Council must remind the Sudanese government of its duty to cooperate with the Court and arrest the two men. Ocampo says Haroun's appointment in September as Sudan's lead investigator into human rights abuses in refugee camps in Darfur is worrisome.

"The fact that Ahmed Haroun is now the person in charge of safety of 2.5 million persons, when I see these persons under attack so Ahmed Haroun is not protecting them," said Luis Moreno-Ocampo. "On the contrary, we have this year shown a clear pattern of attacking these people. That is an additional concern for me."

Khartoum says Ocampo is politicizing the issue and undermining the road map to peace in Darfur, including a hybrid UN-African Union peacekeeping force.

Prosecutor Ocampo has also announced the Court will begin investigating attacks on humanitarian workers and a September attack that killed 10 peacekeepers in Darfur.



Luis Moreno-Ocampo (February, 2007 photo)

International Justice Tribune

Monday, 3 December 2007

ICTY, justice against all

Heikelina Verriijn Stuart

From its very creation in May 1993, The Hague-based ICTY was branded the heir of the 1945 Nuremberg tribunal. But while the Nuremberg prosecutors had only Germans in the dock, this new UN court would make a point of not being victor's justice. With the UN Security Council mandate "to maintain and restore international peace and security" came the Tribunal's obligation to investigate and prosecute crimes committed by individuals on all sides of the conflicts in the former Yugoslavia. The ICTY has done this, but it has not avoided political justice.

The ICTY started investigations with the war in Bosnia raging. The ICTY's temporal jurisdiction, which runs from 1991, has no time limit (unlike the ICTR, which can only deal with crimes committed in 1994). The Tribunal became a live witness of the crimes it was to punish and the wars it was hoped it would help prevent. The ICTY had already been in existence for two years when 8,000 Muslim men and boys were massacred in Srebrenica in July 1995 and when Croatia launched Operation Storm to regain territories lost to the Serbs in 1991. It was six years old and had delivered several judgments when war broke out in Kosovo. These events served to discredit the sales pitch that international justice would have a deterrent effect on war crimes and crimes against humanity.

Not victor's justice

Nonetheless, the Tribunal's record shows convincingly that it managed to avoid delivering victor's justice. Of the 161 indictments it has issued, 36 were withdrawn or ended in a plea agreement. Of the remaining 125 individuals indicted, the prosecution breakdown is as follows: Bosnian Serbs form the largest group by far with 64; there are 12 Serbs from Serbia and 5 Serbs from Croatia, 6 Croats and 21 Bosnian Croats, 9 Bosnians (Bosnian Muslims), 6 Albanians from Kosovo and 2 Macedonians. Whether this division is proportional to the violence on the ground is difficult to assess, but the fact is that all ethnic groups involved in the main wars that destroyed the former Yugoslavia during the 1990s have been targeted by the ICTY prosecutions.

No coherent indictment strategy

The degree to which there has ever been a coherent prosecution strategy and a strong vision on the part of the three successive ICTY prosecutors remains a subject of much bitter internal debate. While the first ICTY president Antonio Cassese wanted a top-down approach, the first prosecutor Richard Goldstone preached a bottom-up strategy, maybe not out of conviction but because he needed suspects in the cell and in the dock. According to Milosevic prosecutor Geoffrey Nice, who spoke in Amsterdam on November 5 at the viewing of the recently released film "Milosevic on Trial", there has never been a coherent indictment strategy. Anonymous sources in the Office of the Prosecutor say that the only existing strategy was to indict first and find evidence later. Louise Arbour, who replaced Goldstone in 1996, reversed the bottom-up strategy. According to deputy prosecutor David Tolbert, it really was under the third prosecutor Carla del Ponte (1999-2007) that the policy to prosecute all sides was systematically applied. According to him, "Investigations were started into individuals on all sides, but Carla del Ponte really focused on dividing resources and lawyers equally over investigations. We could spend all our time on Srebrenica, but that is not our mandate."

Prosecuting all sides has generated enemies on all sides. With every indictment a new political group started opposing the Tribunal. Each state of the former Yugoslavia became convinced of its own victim status and of its right to wage a just and defensive war. These states also sometimes had international backers. Tensions became visible between politics and law.

One of Del Ponte's most daring acts has been to prosecute Ramush Haradinaj, the former Kosovo Liberation Army (KLA) hero, the former prime minister of Kosova, and the protégé of the Organization for Security and Co-operation in Europe (OSCE) and the UN mission in Kosovo (UNMIK), which wanted him to broker peace with Serbia. During his provisional release, Haradinaj was allowed to play his political role, much to Carla del Ponte's dismay. The decision to let him do so went against international organizations concerned with peace, experience from the Limaj et al case and a group of ICTY prosecutors who protested Haradinaj's indictment. Why go against international organizations concerned with peace, against the experience with an earlier KLA trial and against a group of ICTY prosecutors who, according to our sources, protested the indictment against Haradinaj? "Well, there was a scrupulous judge who did ultimately confirm the indictment," retorts Tolbert. After threatened witnesses withdrew their statements or sought shelter in North America, Del Ponte fell back on her last resort, the media. "I am losing witnesses left and right in the case against Haradinaj," she told Der Spiegel on October 18, 2007. Haradinaj's defense strongly protested that trial by media. On November 28, the Trial Chamber closed the prosecution case, not willing "to get involved in a never-ending story about witnesses whose testimony might be expected on some uncertain date in the future". On November 29, the Defense decided not to call any evidence, and ended its case.

"A world ruled by power politics"

Several ICTY insiders think the Office of the Prosecution has been overcompensating, for instance in the Operation Storm and KLA cases, just to show that there is no victor's justice. Regardless of its eventual success in prosecuting all sides, the ICTY never managed to avoid politics. According to Carla del Ponte, things got worse after 9/11. "In a spectacular swing, we have been thrown from a world on its way to a rule of law system into a world ruled by power politics and arbitrariness," she told the Basler Zeitung on March 26, 2007. Del Ponte continues to criticize the lack of political will to arrest suspects at large, but politics have permeated all aspects of the legal process.

The judgments are not just the result of the evidence presented and arguments over legal issues. Some judges had never been part of a criminal bench before presiding over the trials in The Hague. Some were completely shocked by tearful witnesses rendering horror stories. Most did not have a clue about Bosnia. Their election was part of the UN system of job distribution.

In addition, even judgments based on robust legal reasoning and a transparent weighing of evidence were targets of political distrust. For example, the recent Vukovar judgment against three officers from the Yugoslav army, which resulted in one acquittal and two convictions with lesser sentences than expected [IJT-75], not only led to explicit protests from Croatia but also to a resolution by Christian Democrats in the European Union parliament and a letter of protest from international diplomats, including Peter Galbraith, the former United States ambassador to Croatia.

A line that no one can cross

The ICTY was supposed to be about holding individuals responsible, whether they fought a war of aggression or a just war. The Tribunal's message is that there is a line that no one on any side can cross. Whether the ICTY has succeeded in imparting that message remains to be seen. As Dutch lawyer Abel Herzberg, a Nazi camp survivor, noted after the Eichmann trial, "Trials have their own fate. Old dossiers of long forgotten trials about crimes we have not lived through, with victims we have not known and

suspects against whom we don't feel any grudge, will be read with great interest." These words resonate in Geoffrey Nice's conclusion in the film "Milosevic on Trial" when he says that maybe it is for the best that the trial of the most important accused of the ICTY did not end with a judgment. In the end, everybody may be able to judge for themselves on the basis of the trial records. But there is still great uncertainty about who will hold the Tribunal's archives and which rules of public access will apply. Even if all materials are ultimately made available to the public and scholars it is unknown who will be able to develop a method to open this system in a useful way.

BoxText:

Three international tribunals; the International Criminal Tribunal for Rwanda (ICTR), that for the former Yugoslavia (ICTY) and that for Sierra Leone; are scheduled to complete their trials by the end of 2008. After having started an evaluation of the Special Court for Sierra Leone [IJT-69], IJT makes an initial assessment of the ICTR [IJT-78] and the ICTY, before turning its attention to the chamber for the war crimes in Sarajevo, the inheritor of the ICTY.

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U.N Secretary General Wants Uganda Rebel Leaders Arrested

By Peter Clotey
Washington, D.C.

United Nations Secretary General Ban Ki-Moon is urging all countries to do everything in their power to arrest and bring to justice the leader and top commanders of Uganda's Lord's Resistance Army (LRA) rebels. The Hague-based International Criminal Court (ICC) had issued arrest warrants for LRA rebel leader Joseph Kony and four other commanders for allegedly committing various crimes against innocent civilians in northern Uganda during more than 21 years of a rebel insurgency against President Yoweri Museveni's government.

But the rebels, who are in peace talks with government, claim they would only sign a long-lasting peace agreement when the arrest warrants against their leaders are dropped. From the capital Kampala, Uganda's chief government negotiator Ruhakana Rugunda tells reporter Peter Clotey that the government generally agrees with the UN secretary general.

"We appreciate the concern of the UN Secretary General's interest to make this matter resolved finally and see that justice is done. This is exactly the same position that Uganda has. And in fact, Uganda is not only looking for justice being done, but as you know, we are negotiating a final peace agreement, which would bring both justice and also bring reconciliation, under which accountability would be in place. Therefore, it's just a question of different modalities. But the final aim between Uganda and the UN secretary general to achieve peace in Uganda and to see justice and no impunity are identical. We have similar objectives," Rugunda noted.

He denied the UN secretary general's pronouncement would put the government in an awkward position with the rebels during the next round of peace talks in Juba.

"We don't see a fundamental problem. We believe the objective of Uganda and of the UN secretary general is to see lasting peace coming back to northern Uganda. There may be differences in modalities, in methodologies of reaching this objective, but really our main objective is the same. The focus of Uganda is to negotiate, reach final peace agreement, ensure there is accountability, ensure there is justice, but also ensure there is reconciliation and also lasting peace in our country," he said.

Rugunda reiterated the government's commitment to achieving a long-lasting peace for others to return to northern Uganda.

"The emphasis is not only on peace, but also on reconciliation. It's not only on justice, but also reconciliation. And of course, not condoning impunity," Rugunda pointed out.

He said although the government is in peace negotiations with the rebels the top rebel leadership would be held accountable for crimes they allegedly committed during their insurgency.

"Really the methodology that the government has embarked upon as you very well know is to negotiate, reach a final peace agreement, ensure that the Lord's Resistance Army leadership account, using the normal laws of Uganda and traditional methods of conflict resolution, to ensure there is no impunity and ensure that there is accountability -- reconciliation that would consolidate peace, bring everybody back from the bush, and reintegrate them into society. Our emphasis is on total peace, lasting peace, and reconciling the community. One should not look at Kony's arrest as if it is the final point that one is targeting," he said.

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