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IRIN

In-Depth

## *Justice for a Lawless World?*

### *Rights and reconciliation in a new era of international law*

#### Part I

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## 1. Lead Feature:

### Justice Unfettered? Internationalising Justice in the human rights era

**WANTED FOR GENOCIDE**

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The age of impunity may be giving way to a new kind of global justice. Thanks to television and radio, millions of people worldwide have learned of the atrocities suffered by other human beings, and have become outraged at what they have seen and heard. People no longer accept that perpetrators profit from impunity for their crimes. So, could this be the beginning of a new era of human rights and international justice?

Samantha Power, Harvard professor and author of "Problem from Hell – America and the Age of Genocide", visited Darfur, western Sudan, in the summer of 2005. She asked many people where they would go if they could escape the violence that oppressed them daily. The common answer was "The Hague". Power said they had heard it was home to a court and they "wanted to go testify".

"I wouldn't say they knew about the International Criminal Court (ICC). What they knew was that there was this thing called "The Hague", a place where bad people were sent, and where over the

course of recent years people [who had suffered like them] had had the ability to go and testify," reported Professor Power.

People are beginning to realise that there are courts outside their own countries - international courts - where the culture of impunity may finally be stemmed and where those guilty of abuses may be punished. The dream of "The Hague" for brutalised Darfurians is emblematic of this change.

#### The new measure of human rights

Increasingly, those in power - politicians, the judiciary, police, soldiers and companies - are being measured not only against regional or national standards, but also by universal standards. The same applies to local traditional customs and practices.

As news of human rights violations reaches governments and civilians across the world, a collective sense of outrage against the perpetrators is growing. While the crimes committed are not necessarily new, widespread respect for human rights is. This respect has been bolstered by the idea that it is now possible to prosecute those who commit atrocities.

Slowly, but steadily, the international community is developing conditions where, in extreme circumstances, the long-guarded notion of national sovereignty may yield to a higher order of international justice.

Cesare Romano, of the New York-based Center on International Cooperation, echoes the views of many observers who claim that international criminal justice is "one of the most significant changes in the international architecture that has taken place in the post-Cold War era".

This evolution in international relations and international law is not yet complete, and has spawned controversy and attracted criticism. However, progress is being made, although it is still too soon to tell to what extent these changes will become permanent.

#### The erosion of the Westphalian Model

Since the end of the Cold War, international cooperation has taken a new direction. In today's international society, a growing number of states agree that the worst human rights abuses should be punished at an international level – albeit in national courts.

The importance of this shift away from a system of national justice that dates back to the 17th century cannot be overstated.

The "Peace of Westphalia" of 1648 saw the end the outright authority of the Pope or the Holy Roman



BASRA MASSACRE OF '99. Twenty-nine of 34 sets of remains were identified by family members. All 29 names of those identified appear on the execution list. Under Saddam Hussein's authoritarian rule numerous crimes against humanity were perpetrated. He is currently being tried in Iraq.  
Credit: Human Rights Watch

Emperor, and ushered in a state system that has been in use since. The “Westphalian Model” means that individual states need not recognise any superior authority beyond their own sovereignty. It was another three hundred years before states began to work together to achieve common goals, e.g. as telecommunications agreements, the protection of the Antarctic, or maritime law. These accords and agreements were created using international institutions.

An attempt to limit the brutality of war came with the Geneva Conventions of 1864 and 1865. Here standards were laid out and agreed upon by a majority of powerful states.

Before the ‘globalisation’ of criminal courts, it was the job of national courts to prosecute human rights offenders. Governments and politicians may remain resistant to any erosion of the “Westphalian Model” and state sovereignty, but support for international justice is gathering pace and looks set to continue.

As the former UN Secretary-General, Javier Perez de Cuellar, put it in 1991: “We are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents.”

### **Internationalising justice in the twentieth century**

The aftermath of the First World War saw several failed attempts to create an international judicial body to try suspects for major crimes against humanity.

French and British moves to try Kaiser Wilhelm II were successfully opposed by the USA, fearing a breach of head-of-state impunity. The Versailles Peace Conference of 1919 and the Covenant of the League of Nations did not mention the concept of human rights, despite the 8.5 million lives lost in the war.

It was not until 1922 that the Permanent Court of International Justice, sometimes called the World Court, was established by the League of Nations. Between 1922 and 1940 the court dealt with 29 cases between states, and delivered 27 advisory opinions. It was replaced in 1946 by the International Court of Justice (ICJ) when the United Nations was founded, although it handled only legal disputes between states. Cases could not be brought by individuals or non-governmental groups, nor could individuals or groups be tried.

The ICJ however is hampered by the fact that its adjudication and jurisdiction has to be recognised by the state being tried. This lack of power is the court’s over-riding problem – a problem which is echoed in other agreements.

An ambitious international treaty was developed in 1928 with the Kellogg-Briand Pact, also known as the Pact of Paris. This pact provided for the “renunciation of war as an instrument of national policy”, and is regarded as an important international multilateral treaty because it established the idea that the use of military force can be unlawful.

The Pact was signed by 62 nations, among them Germany. This paved the way for the conviction of those found guilty of starting World War Two (WW2) at the Nuremberg Trials.

The Rome Statute of the International Criminal Court (ICC) condemns crimes of aggression, but cannot make a ruling until clear definitions have been drawn out – this is not expected to happen before 2009.

For some observers this represents an important missed opportunity to outlaw war as an instrument of national policy, and make it an indictable international offence. For others it suggests that Nuremberg may have represented a false, or premature, dawn for international justice. Experts meanwhile have suggested a deadline of 2009 is optimistic while the ICC remains a difficult issue for many governments.

### **Nuremberg and Tokyo: symbolic inspiration?**

The Nuremberg and Tokyo military tribunals, established in the wake of WW2 to prosecute German and Japanese crimes, were keenly promoted by the US. British and Russian leaders favoured execution for German and Japanese leaders, although in the case of Russia, albeit following perfunctory military hearings.

Up until recent years, and before the creation of new international legal bodies, Tokyo and Nuremberg

### **Quotes**

*“We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong shall be observed among nations and their governments that are observed among the individual citizens of civilized states”*

*Woodrow Wilson declaring war in 1917*

served as the most powerful examples of and most symbolic inspiration for international justice. The Chief Prosecutor of the Nuremberg trials, Robert Jackson, described them thus: "Four great nations, stung with injury, stay the hand of vengeance and subject their captive enemies to the judgement of the law ... one of the most important tributes that Power has ever paid to Reason".

However, although as tools of international justice against acts of inhumanity, the trials had their drawbacks. According to Romano: "They were criticised for playing fast and loose with principles of criminal law to ensure convictions, for their slanted military character, and because their ultimate legitimacy rested on the victor's right to decide the fate of the defeated enemy rather than on law".

These trials coincided with the new period of post-war commitment to ensuring that such wartime horrors were never repeated through the creation of international agreements and the UN Charter. Any effective action however was frozen from the late 1940s for the duration of the Cold War.

### Cold War Cynicism

Well-intended calls for global harmony made in the wake of WW2 were short-lived as the world divided itself into teams lining up behind the two super-powers. However, the Cold War period which lasted until 1990 spawned a number of conventions and commitments for a peaceful world, but as one critic suggested, "the road to hell is paved with good conventions."



Despite the 1948 Genocide Convention obliging member states to intervene, in 1994 no country acted to halt the slaughter by the Rwandan Hutus which resulted in the death of almost one million Tutsis and moderate Hutu. These skulls are testament to the limits of non-enforceable international agreements, when put to the test.

Credit: IRIN

While the prosecution for human rights violations were left to the national courts to hear, in practice, crimes went unpunished during this period. In particular, wide-scale violations of rights took place throughout colonial Africa, Spain, apartheid South Africa, Stalinist Russia, China under Mao and the Gang of Four, during the Korea and Vietnam wars and in Central and Latin America.

Millions of people were affected as states and individuals perpetrated violations virtually without sanction. Despite the volumes of human rights treaties and conventions introduced during this period, for many experts the Cold War represented the most cynical period of multilateral efforts towards global rights and justice.

But, the drive to prosecute and avert impunity for international crimes picked up pace at the end of the Cold War. Jurist and human rights writer, Geoffrey Robertson, wrote: "After a half-century of ineffectual treaties and diplomatic thumb-twiddling, there came this end-of-century stampede to put global justice systems in place: an international court, a 'prosecute or extradite' regime for torturers, a precedent for intervening in the internal affairs of sovereign states out of humanitarian necessity."

### Dying to take action

In the final months of the 20th century, some critical developments and interventions took place that suggested the world was getting ready to make individuals accountable for violation of human rights and crimes against humanity.

General Pinochet was arrested in London; Serb and Croat generals, and concentration-camp commandos, were arrested by NATO forces in the Balkans; and in Arusha, Tanzania, the former prime minister of Rwanda was convicted of genocide. Even Libya finally handed over the two suspects implicated in the bombing of a Pan American jumbo jet over the Scottish town of Lockerbie.

Then, in Rome in June 1998, 120 states agreed to set up the International Criminal Court (ICC) that would come into effect four years later following ratification by 60 states.

Those good intentions however failed in 1994 when the international community did not intervene in the Rwandan genocide of ethnic Tutsis. This would suggest that intervention is not based on human rights issues alone.

Nevertheless, interventions into human rights violations did take place in 1999 in the case of NATO's invasion of Yugoslavia, to halt the "ethnic cleansing" in Kosovo; and in the case of the Australian-led, UN-backed coalition that invaded East Timor to end massacres by militias supported by the Indonesian

### Quotes

"According to an authoritative study of genocide and state-sponsored killing at the University of Hawaii, more than 170 million people were murdered by their own governments during the 20th century"

*Harvard International Review*

army.

Although there are those such as Noam Chomsky, one of America's most prominent political dissidents and a professor of linguistics at MIT, who see these interventions being driven by political interests. Meanwhile, others such as David Rieff, the political analyst, claim: "The conflict over Kosovo, the first ever waged by the NATO alliance, was undertaken more in the name of human rights and moral obligation than out of any traditional conception of national interest."

Whatever other strategic reasons may have motivated these interventions, it appeared that nations were prepared to kill for human rights and equally allow their soldiers to be killed defending human rights. For Robertson, this movement may have owed something to: "A sickness at the atrocities of the twentieth century and a wish to do better in the twenty-first. But it did seem to foreshadow a millennial shift, from appeasement to justice, as a dominant factor in diplomatic relations."

### **Biting the bullet: the ad hoc tribunals for former Yugoslavia and Rwanda**

In light of the protracted and brutal Balkan conflict of the early 1990s, the international conscience hoped to use the courts to make up for what they failed to do on the ground. The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established while the conflict still raged. It seemed the world was finally biting the bullet of international justice, with sufficient political will and some force to implement it.

Based in The Hague, the tribunal functions as an ad hoc court and, following the legacy of Nuremberg, makes individuals responsible for violations of the laws or customs of war, genocide and crimes against humanity. It can only try individuals, not organisations or governments, and the maximum sentence it can impose is life imprisonment. Created in 1993, it issued its last indictment in March 2004. It aims to complete all trials by 2008 and all appeals by 2010.

As of 16 March 2006, the ICTY had indicted 161 people. Only six of these remained "at large". The cases against 85 of the indicted had been concluded: 46 were found guilty; eight acquitted; 25 had their indictments withdrawn; and six died (four in custody and three while their cases were being heard). Four cases had been sent to national courts in Serbia or Croatia, for trial. Seventeen of those convicted had completed their sentences and had been released by May 2006.

Those indicted ranged from soldiers to generals and police commanders, as well as prime ministers. Slobodan Milosevic was the first sitting head of state indicted for war crimes; he died while still being tried in March 2006. Other "high level" indictees included Milan Babic, Croatian Serb prime minister of Republika Srpska Krajina; Ramush Haradinaj, Albanian prime minister of Kosovo; Radovan Karadzic, Montenegrin former President of Republika Srpska; and Ratko Mladic, the Bosnian Serb army commander.

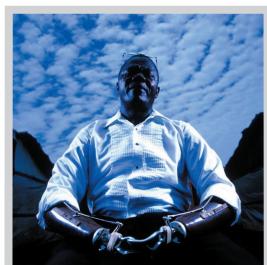
The International Criminal Tribunal for Rwanda (ICTR) based in Arusha, Tanzania, is another ad hoc international court operating under the auspices of the United Nations. Cases there relate to offences committed in Rwanda during the genocide of 1994. The tribunal was created in November of the same year and has jurisdiction over genocide, crimes against humanity and war crimes - which are defined as violations of Common Article 3 of the Geneva Conventions (dealing with war crimes committed during internal conflicts).

To date, the Tribunal has convicted sixteen people, with a further eight appealing convictions; another twenty-seven people are still on trial and 15 are awaiting trial in detention; 18 remain at large.

The first trial, of Jean-Paul Akayesu, began in 1997. Jean Kambanda, the interim prime minister, pleaded guilty and was convicted of genocide. This gave the court early credibility that what happened between April and June 1994 was in fact genocide, and not just civil warfare as many of the defendants claimed. As with the ICTY, all trials will be completed by the end of 2008, and appeals will continue up to 2010.

### **Handing over the tribunal's torch**

Realising that both the ICTY and ICTR would not have completed all their cases by 2010, and recognising the need to pursue justice in the former Yugoslavia and Rwanda, plans have been made to 'hand over the torch.'



Another innocent victim of the butchery of Sierra Leone where rebels terrorised civilians using mutilation. Some of those responsible are currently being tried under international and national law but the majority remain free.  
Credit: Brent Stirton/OCHA

In January 2003, the Office of the High Representative in Bosnia and Herzegovina (OHR), and the ICTY, issued a set of joint conclusions recommending the creation of a War Crimes Chamber Project (WCCP). This project would consist of a specialised chamber for war crimes within the Court of Bosnia and Herzegovina (BiH), and a corresponding special department for war crimes within the Prosecutors Office of BiH. These were established in January 2005, and comprise international and national judges, and prosecutors.

Already the WCCP is taking shape with the transferral of war crimes cases to the appropriate national governments within the states of the former Yugoslavia. In September of 2005, Radovan Stankovic was transferred from the ICTY to the custody of the Court of BiH. In November 2005, Gojko Jankovic was transferred. Future transfers are expected.

On 3 February 2006, the WCCP began hearing its first genocide case starting with the trial of 11 members of the Ministry of Internal Affairs of Republika Srpska, indicted for genocide and complicity to genocide in the Srebrenica massacre.

### Quotes

*"the greatest recent single act of progress for justice, human rights and the rule of law"*

*Kofi Annan on the setting up of the International Criminal Court*

The future of the ICTR is still the subject to international debate while Rwanda still has the death penalty. The ICTR is also unsure that indictees would get a fair trial in Kigali. Rwanda on the other hand, has expressed a willingness to take over outstanding cases, and is keen to do so. The UN and court officials continue to explore options, including Tanzania taking over the court. However, one thing is certain: the trials must go on.

### Netting the big fish

Another important court illustrating recent progress towards international justice - though considered a hybrid - is the Special Court for Sierra Leone. It is an independent judicial body set up to "try those who bear greatest responsibility" - the so-called "big fish" - for the war crimes and crimes against humanity committed during the country's civil war. The court is located in Freetown.



Some months after the Iranian Revolution of 1979 a former political prisoner demonstrates how he was tortured by the Shah's secret police on this specially made chair named "Apollo". Human rights abuses continued in Iran despite the overthrow of the Shah. Their current record is judged to be one of the worst in the world.  
Credit: Manoocher/IRIN

This court was set up following a direct request to United Nations Secretary-General, Kofi Annan, in June 2000, from the then president Ahmad Tejan Kabbah. By August that year, the UN Security Council adopted Resolution 1315, requesting the Secretary-General to start negotiations with the Sierra Leonean government to create a Special Court. By 2002 the court was operational.

To date, the court has indicted 11 people for war crimes, crimes against humanity and other violations of international humanitarian law. Of the 11, 10 are in the custody of the Special Court - including the recently arrested former Liberian President, Charles Taylor. Only the deposition of Johnny Paul Koroma remains uncertain. Koroma was widely reported to have been killed in June 2003, but, as definitive evidence of his death was never provided, his indictment has not been dropped.

Those found guilty face a prison sentence or may have their property confiscated. Like the ICTY and ICTR, the Special Court does not have the power to impose the death penalty.

Apart from the Special Court, there are currently three other active hybrid jurisdictions, incorporating both international and national features. These are the Serious Crimes Panels in the District Court of Dili (East Timor); the "Regulation 64" Panels in the courts of Kosovo; and the Extraordinary Chambers in the Courts of Cambodia, currently being established in Phnom Penh to try the remnants of the Pol Pot regime.

According to Cesare Romano: "These internationalised criminal bodies are an expression of the international community's concerns but, at the same time, they are part of the reconstruction enterprise of a new judicial system in countries where the entire administration had been destroyed by civil wars (Kosovo, East Timor), or they facilitate acceptance of accountability to justice of former national rulers (Cambodia and, in some respects, Sierra Leone), in view of a purely national process of reconciliation." Romano echoes other observers who consider that all these hybrid courts, "bear witness to the will of the international community to have its own peremptory norms respected but, at the same time, they generally answer a national need and, at least to some extent, fulfill national purposes."

A more detailed description of the global varieties of hybrid courts, and truth and reconciliation mechanisms, is available in another IRIN report

### The ICC: the perpetrators' nemesis?

The three courts of the ICTY, ICTR and the Special Court of Sierra Leone, have come under considerable criticism ranging from questions concerning the courts' legality and their impartiality, to their competence. Despite this and the modest number of convictions handed down by these tribunals, it is considered that the momentum produced by the creation of ICTY, and ICTR in particular, has opened the way for the establishment of the ICC.

This train has been slow coming; the idea of an international criminal court or penal tribunal was proposed as early as 1937 by the League of Nations. In the late 1940s and early 1950s the International Law Commission produced some draft statutes for the idea, but it was the 1990s that saw a serious resurgence of the idea that is now, as the ICC, the embodiment of Nuremberg justice - where war criminals and those with command responsibility are indicted and punished as individuals.

Finally, the main perpetrators of terror and violence have their nemesis. A system and a court has been specifically created to deal with the individuals who wreak havoc, holding them individually responsible. However, with more than 100 countries refusing to sign or ratify the Rome Statute to date, there remain many places for indictees to hide.

The ICC was established in 2002 as a permanent tribunal to prosecute individuals for genocide, crimes against humanity and war crimes, as defined by several international agreements, most prominently the Rome Statute of the International Criminal Court of 1998 (the "Statute").

Almost all states participating at the Rome adoption conference voted in favour of the Statute; only the United States, Israel, the People's Republic of China, Iraq, Qatar, Libya and Yemen voted against. Israel went on to sign the Statute just before it was closed for signatures, but later nullified its signature. The United States under Bill Clinton signed the treaty, but never submitted it for ratification. When George W. Bush took office shortly afterwards, he nullified the signature amid generalised congressional consensus.

The Statute became a binding treaty after it received its 60th ratification, which was deposited at a ceremony at United Nations Headquarters on 11 April 2002. The ICC legally came into existence on 1 July 2002, and can only prosecute crimes that occurred after this date. It is regarded as a major development by activists working towards ending impunity and internationalising justice. However, to date, less than half the world's nations have signed or ratified the treaty, and it has fierce opponents.

The ICC is designed to complement existing national judicial systems, however, it can exercise its jurisdiction if national courts are unwilling or unable to investigate or prosecute such crimes. It is known as a "court of last resort," leaving the primary responsibility to exercise jurisdiction over alleged criminals to individual states.

The Chief Prosecutor of the court, Luis Moreno-Ocampo, has decided to open investigations in Uganda, the Democratic Republic of Congo (DRC) and Sudan in the last two years. He declined a recent request to investigate the invasion of Iraq and remains undecided whether to open investigations in the Central African Republic following a request from its government in January 2005. Both Uganda and the DRC requested ICC investigations, while the case of Sudan and the atrocities carried out in Darfur was referred to the court by the UN Security Council in March 2005.

The capacity of the ICC to investigate and prosecute will be limited, which will inevitably result in numbers actually indicted and convicted at the ICC being even fewer than those of the ad hoc tribunals. Ocampo is realistic concerning the issue of the "big fish" versus the "small fish" dilemma, and told IRIN: "It is only my job to do one or two cases, to make my contribution and then leave. The countries themselves continue the work. This doesn't mean our work is only symbolic. The ICC is just part of the solution not the whole solution. But we have practical issues and have to try to maximise the impact by gathering the leaders. To stop organised crime you have to stop the leaders."

Many protagonists for the ICC would argue that the ICC is valuable in and of itself. They argue that a



Women prisoners in Evin prison Thran for being opposed to the Iranian revolution, February 1982. A political prison of sinister reputation, Evin became the symbol of all other prisons of the Khomeini regime. Thousands of people, oppositionists or suspected oppositionists, were tortured or executed without the least form of due process.  
Credit: Manoocher/IRIN

permanent tribunal of this kind should exist for principled reasons alone, despite the limitations it will face and questions of whether it will actually deter future violence. For Power, the deterrent effect remains important albeit unquantifiable. She cites other effects the court may have: "Perhaps its greatest impact will be to expedite the development of domestic legal enforcement tools in countries where atrocities actually happen. Where proud statesmen don't want to turn over their thugs and want to do it at home for a range of reasons. So the threat of the ICC, the spectre of Louis Moreno Ocampo, might make countries go ahead and prosecute their bad guys themselves."

### Towards universal jurisdiction?

The developments in the last 100 years towards internationalising justice and ending individual impunity for atrocities have been significant, and show signs of gathering more momentum. Prosecuting perpetrators is a key element of the increasingly active sector known as "transitional justice", where societies emerging from repressive rule or armed conflict seek to address past abuses through different mechanisms that now include the ICC, as well as the many truth commissions.

Ending immunity for past abuses is not only the interest of the people concerned but is also of global concern, not least because abusive regimes or genocidal events rarely only affect people within the confines of a single territory.

For legal analysts such as Robertson, the politicians have lost the lead, having been taken over by civil society. The "CNN factor" of millions of people being aware of, and appalled by, wrongdoing they see on their screens has led to a growing number of people across the world who will expect nothing less than justice systems capable of ending impunity.

On the eve of the first ICC arrest (Thomas Lubanga in early 2006 from the DRC), investigations Prosecutor Ocampo re-emphasised his personal commitment to the success of universal jurisdiction: "We need to have this idea of world justice. If we have global communication and global business, we also need global justice. Ultimately I am optimistic." To date, however, the ICC is the only palpable evidence of concrete change.

In 1993, Belgium passed an extraordinary War Crimes Law that embodied universal jurisdiction. They argued that certain crimes pose so serious a threat to the international community, that any single state should be able to prosecute an individual responsible for it. It allowed anyone to bring war crimes charges in Belgian courts, which is exactly what people did, resulting in an explosion of impossible depositions often involving serving world leaders.

By 2003, the scope of the 'Belgian Law' was restricted by its own government after considerable criticism from outside Belgium. Was its existence and aspirations emblematic of the current zeitgeist where activists, in some cases states, agree that forms of universal jurisdiction are now required and appropriate? Or was its failure indicative that the world is not yet ready for the inherent degree of loss of sovereignty that such a law expressed?

Historically the willingness of nations to yield some sovereignty to give space to justice represents a huge change. Despite major forces resisting these changes, Power told IRIN: "A shift has occurred. Is it a sufficient shift? Hardly. Is it the beginning, potentially, of a movement towards accountability and enforcement? I think it is, unquestionably."

## 2. Features - Challenging Impunity



Joseph Kony has been indicted by the International Criminal Court. He is the leader of the Lords Resistance Army (LRA) responsible for brutal attacks on civilians in Uganda and Sudan in the last 19 years. Although small in number and its ranks full of abducted children the humanitarian impact of the LRA's terror is immense.

Credit: The Daily Monitor

"The date of 17 July 1998 will long be remembered as the day the world finally united to bring an end to the culture of impunity". This was the message of Kofi Annan, the Secretary General of the United Nations, speaking on 17 July 2002, at a meeting to mark the fourth anniversary of the adoption of the Rome Statute. The Rome Statute is the instrument that created the International Criminal Court (ICC).

Bringing an end to impunity in this context refers to making those responsible for human rights atrocities accountable for their actions. It is an ultimatum to those dictators or warlords of the future that the time-honoured fashion of retiring to the South of France or Argentina to live on the millions creamed from their countries during their periods of brutal misrule has come to an end. As Mr Annan says, it is "a message to those who would commit these heinous crimes that you have nowhere to hide; you will be made accountable".

### Is challenging impunity always in the best interests of society?

There has been much celebration among human rights groups of the progress made in international law which has led to the International Criminal Court, a permanent court set up to hear cases of those responsible for gross systematic human rights abuses. The idea was first mooted at the time of the Nuremberg trials, and so has been 50 years in the making. But challenging impunity does not only mean ferreting out former dictators from wherever they may be in order to stand trial for the crimes they have committed. It also means not extending amnesties to people accused of committing crimes against humanity. Amnesties have long been used as a negotiation tool to bring wars to an end. Is there a possibility that an eagerness to tackle impunity and investigate crimes can get in the way of bringing an end to conflict?

#### Quotes

**"Those who argue that peace cannot be bartered in exchange for justice, under any circumstances, must be prepared to justify the likely prolongation of an armed conflict."**

*Sierra Leone Truth and Reconciliation Commission*

### Denial of amnesty

The Lord's Resistance Army (LRA) has terrorised large swathes of Northern Uganda and South Sudan, kidnapping children and forcing them to become soldiers and sex slaves, as well as massacring and driving out the local communities. Many children who live in the area where the LRA is most prevalent are forced to commute at night to larger towns, often many miles away, in order to avoid being captured in the night raids that characterise the modus operandi of the LRA.



In 1989 General Umar al-Bashir became president and chief of state, prime minister and chief of the armed forces of Sudan. Under his dictatorship, the government's human rights record is poor, including evidence of its involvement in continuing the genocide in Darfur.

Credit: Manoocher/IRIN

In a bid to bring about a cessation of violence, the Ugandan Amnesty Commission (UAC) was set up to offer a blanket amnesty to all militia and soldiers. It was hoped that this amnesty would encourage soldiers to lay down their weapons without fear of reprisal. Then in October 2005, the International Criminal Court issued arrest warrants against five members of the (LRA) in Uganda. This move effectively undid the work of the UAC.

Luis Moreno Ocampo, the Chief Prosecutor for the ICC, told IRIN: "Domestic amnesties are strictly a matter for national authorities and do not act as a bar to an investigation by the ICC." The message was that at a national level, amnesties may be granted, but they will not be guaranteed at an international level. As the first such warrants to be issued under the Rome Statute, this was hailed as a great step forward in the international human rights arena. In Uganda the reaction was more complex.

Peter Onega, the chairman of the UAC, was not optimistic about the potential impact of the ICC warrants, fearing that they could lead to more atrocities because the LRA leadership could react to the warrants as "desperately as a wounded buffalo".

A leader in the Acholi community, which has been one of the communities worst affected by the activities of the LRA, Mr Onega went to The Hague to object to the ICC investigation and said "The priority should be peace first and justice later".

This opinion gained some support when, within days of the announcement of the warrants, the LRA increased attacks and started targeting humanitarian workers in northern Uganda.



Sixties revolutionary Gaddafi who overthrew, and then succeeded King Idris of Libya in 1969. He remains leader of that country's Revolutionary Command Council and as such de facto head of state. A keen supporter of terrorist causes around the World, it remains to be seen if he will one day be indicted by his own people or by the international community for human rights abuses, or worse.

Credit: Manoocher/IRIN

So, did the desire for justice undo any progress towards peace? Juan Mendez, the President of the International Center for Transitional Justice, rejects this idea: "The prosecutor even exercised caution and took time to let peace negotiations develop. He only sought indictments when that latest round of negotiations had already foundered for reasons completely unrelated to the ICC."

He told IRIN: "When you have spoilers like the five people who have been indicted who are really not interested in peace, at some point it is important to remove them from the negotiating table so you can bargain with people who are more interested in peace. This removal, by the fact that they are now under indictment, may initially be seen as an obstacle to peace, but farther down the road it may be exactly what is needed to get a stable peace in Northern Uganda."

### Closing the impunity gap

The rejection of amnesties for perpetrators of human rights abuses on the basis that they are incompatible with the principles of international law has been steadily evolving. The International Criminal Tribunal for the Former Yugoslavia observed in 1998 that amnesties covering certain crimes "would

not be accorded international legal recognition" despite having legal force in that country. Spanish and French courts have also lent their backing to this interpretation, and the Inter-American Court of Human Rights in 2001 stated: "All amnesty provisions....are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations....(which are) non-derogable rights recognised by international human rights law".

These trends in international justice undoubtedly show the impunity gap is closing. However, there is also the very real concern that armed conflicts and abusive regimes would not have ended without the promise of amnesties, and that current attempts to revoke amnesties could negatively affect the prospects for peace.

### Breaking promises

The Sierra Leone Truth and Reconciliation Commission in its October 2004 report stated that "disallowing amnesty in all cases would be to deny the reality of violent conflict and the urgent need to bring such strife and suffering to an end", and further held in its findings that "those who argue that peace cannot be bartered in exchange for justice, under any circumstances, must be prepared to justify the likely prolongation of an armed conflict". There is the unpalatable possibility that attempts to prevent crimes going unpunished could lead to abusive regimes staying in power, and consequently further abuses being perpetrated.



Ratko Mladic is the former Chief of Staff of the Bosnian Serb Army. He is accused of genocide, war crimes and crimes against humanity committed during the 1992-1995 Bosnian war. There is a US \$5 million reward for anyone capturing Mladic.

The UN was accused of inconsistency with respect to the Sierra Leone peace accords. At the signing of the accords in 1996 in Abidjan, which it attended as "moral guarantor" of the peace, it made no comment about the inclusion of a clause stating "the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF". But a similar provision in the Lome accords of 1999 led to the UN representative writing on the document: "The United Nations holds the understanding that the amnesty provisions of the Agreement shall not apply to the international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law".

This shift in position shows a fundamental change in international attitudes to human rights at that time, and was a marker of an adjustment to tolerance levels. The UN decided expressly to set out its position with respect to human rights infractions in a way that it had not considered necessary three years earlier.

The Sierra Leone Truth and Reconciliation Commission has opposed this position, which had the effect of revoking any amnesty after the signing of the Abidjan Agreement, on the grounds that "both the United Nations and the Government of Sierra Leone have sent a message to combatants in future wars that peace agreements containing amnesty clauses ought not to be trusted".

According to them, impunity in certain circumstances is justifiable.

Paul Van Zyl of the International Center for Transitional Justice recognises that, "Where the tension between peace and justice becomes most acute is in the course of negotiation to end a conflict or to allow for a return to democratic and civilian rule".

But he rejects the findings of the Sierra Leone Truth Commission: "Sierra Leone is the exemplary case of the danger of granting amnesties. The Lome amnesty that was concocted was a very broad, blanket amnesty for people who had committed atrocities during the course of the civil war. No sooner had the amnesty been granted than Foday Sankoh and the RUF returned to the bush and continued the conflict".



Hissene Habre is the former president of Chad. He is being held and stands accused of murder, torture and other crimes against humanity committed during his regime. In June 2006 Senegal agreed to host his trial.  
Credit: IRIN

### **Where amnesties have brought peace, but at a cost**

In some instances though there can be little doubt that conflicts or abusive regimes have been brought to a conclusion through amnesties.

Dr Fanie du Toit of the South African Institute for Justice and Reconciliation points out the value of amnesties in the context of the transition from apartheid to democracy in South Africa: "If P.W. Botha and F.W. De Klerk had been indicted at the time prior to or during the transition, there may have been a lot more difficulty in moving towards a democracy. Amnesties can serve a positive purpose."



Augusto Pinochet is the former president of Chile. He is accused of crimes against humanity committed during the 17-year military regime. Judge Juan Guzman Tapia, who indicted Pinochet in 1998, does not think he ever will be prosecuted, neither for crimes against humanity, nor tax fraud.  
Credit: Global Policy

Whether General Augusto Pinochet would have resigned as President of Chile in 1990 had there not been a guarantee of immunity from prosecution, is a valid question to be posed to all those who advocate zero tolerance for the granting of amnesties. The Chilean courts are now attempting to repeal this immunity, and on 20 January 2006 the Court of Appeal repealed his immunity in respect of allegations relating to Operation Colombo, in which 119 people are alleged to have been abducted and later killed. This will need to be passed by the Supreme Court before the ex-dictator can stand trial, but the message is clear: amnesties may provide illusory comfort.

The passage of time is important. Even 20 years after the event, there was a concern in Uruguay that revocation of amnesties could have a destabilising effect. When the armed forces there negotiated their withdrawal from power in 1985, they insisted upon an amnesty provision, which was subsequently ratified by the people. Tabare Vasquez who won the presidential election in 2004, still felt it was necessary in his campaign to assure the military that he would respect that 1985 amnesty law.

Juan Mendez, the President of the International Center for Transitional Justice, who was detained and tortured by the military junta in Argentina, draws a distinction between the different kinds of amnesties. "Blanket amnesties that have the effect of not permitting the investigation or the prosecution of anybody under any circumstance... are the ones that international law prohibits."

He distinguishes between blanket amnesties to all and ones that depend on perpetrators coming forward to confess their guilt and provide information to victims' families: "I think that under certain circumstances, amnesties that are conditioned on conduct by the perpetrator could in principle be legal under international law. I have in mind the South African case, at least as conceived by the statute."

Paul van Zyl stresses that, "There is no doubt that there are instances in which amnesties pave the way for a short term improvement of the human rights position in a country or a reduction in hostilities...the only way that you minimise that tension between peace and justice or democracy and justice is by trying to be creative in the terms of the amnesty: by limiting them as much as possible; trying to make them as conditional as possible; trying to build sunset clauses into them; and trying to ensure that language is built into them which says that if people take up arms again or try to undertake another coup, then the benefits of that amnesty are immediately extinguished."

### **Where justice may not be wanted**

Amnesties are of course not the only form of impunity. Certain countries may think prosecutions for past abuses is not of utmost importance to the country.

Timor-Leste is reliant on good economic relations with its giant neighbour and has found it expedient to remain discreet about the violent occupation by Indonesia.

The Timor-Leste President, Xanana Gusmao, who was himself a freedom fighter and struggled to bring independence to Timor-Leste, only grudgingly released the Truth and Reconciliation report detailing Indonesia's human rights abuses to the UN in January 2006.

Gusmao's apparent reluctance to release the report because of fears of damaging an already fraught relationship seemed to be justified, when a meeting scheduled between the leaders of the two countries was cancelled days after the release of the report, without any official reason. Human rights activists have criticised Gusmao's attitude to seeking justice, but he appears to believe that for the people of Timor-Leste, equity can be gained through enhancing their economy and accordingly their standards of living.

In a speech to the Timor-Leste parliament he stated: "The report says the 'absence of justice ... is a fundamental obstacle in the process of building a democratic society'. My reply to that would be 'not necessarily'."



Charles Taylor is the former president of Liberia. He is accused of atrocities committed both before and during his presidency, and also for his involvement in the civil war in neighbouring Sierra Leone. He is currently being held for trial.

Credit: IRIN

### Quotes

**"Disallowing amnesty in all cases would be to deny the reality of violent conflict and the urgent need to bring such strife and suffering to an end"**

*Sierra Leone Truth and Reconciliation Commission*

Ellen Sirleaf-Johnson, the recently-elected president of Liberia, also came under increasing pressure from the international community and human rights organisations to put justice at the top of her agenda, by pushing for the extradition of Charles Taylor, the former Liberian leader, from Nigeria. He is under indictment at the Sierra Leone Special Court as he is believed to have been instrumental in atrocities carried out by the Revolutionary United Front (RUF) in Sierra Leone during the civil war there between 1991 and 2000.

Sirleaf-Johnson said on 16 January 2006, that her aim was to construct a secure Liberia and that she does not want the "Mr Taylor issue to be the issue that constrains us or the issue that causes us not to be able to do what we have to do here for the Liberian people... we want to see it as a secondary issue, even though it may be of utmost concern to the international community". She has since bowed to pressure and sought his extradition to the Sierra Leone Special Court.

For Sirleaf-Johnson, the stability of Liberia is paramount. External players have dictated what should happen there, in the name of justice and accountability, even though the democratically elected government was not convinced that making Taylor accountable was its priority. In the wake of the Rome Statute, the mood has changed: the question is not whether challenging impunity should be the subject of domestic prioritisation, but whether it can be.

'Bridging the impunity gap' and 'No peace without justice' are slogans which abound in this new age of international justice. This is emblematic of the advances that have been made in the last ten years towards making those responsible for gross human rights abuses accountable for their crimes at an international level. Undoubtedly, this is a major leap forward and gives force to the ideas set out in the 1948 Universal Declaration on Human Rights. However, in the zeal to punish the perpetrators, there is a need to tread cautiously: there may be a danger that the processes of peace are jeopardised by seeking justice at too early a stage. Time is of the essence in making the guilty accountable for their actions. In the words of a member of the Acholi community in Northern Uganda: "The priority should be peace first and justice later".

## Whose justice? Cultural relativism in the human rights debate



Israeli soldiers evacuate arrested Hamas activists from Husan, West Bank, March 11, 1996. Western support for Israel, despite their violations of international law and human rights abuses is a serious weakness in the 'west's' human rights credentials. It also continues to be the strongest 'recruiting officer' for those opposed to the west in other Islamic countries.

Credit: Manoucher/IRIN

"We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong shall be observed among nations and their governments that are observed among the individual citizens of civilized states". So said Woodrow Wilson in an address to the US Congress, when declaring war on Germany in 1917.

The development of human rights up to the 1948 Universal Declaration of Human Rights is often described in terms of a progression of bills, statutes and revolutions in the political history of Europe and North America. If the field of human rights is seen as being of western genesis, then this can be, and has been, used to argue that human rights are an essentially western idea which should not and cannot be universally applied, an argument known as cultural relativism.

Others, meanwhile, have suggested that it is the great powers who are the worst proponents of cultural relativism, in that they apply a certain level of human rights for their citizens, and a lower one for citizens of other nations. Or even that they abuse the discourse on human rights for their own motives.

The question not only affects the debates on human rights but it also has implications for international justice. If human rights are viewed as fundamentally western, then international laws and tribunals based on those human rights treaties can be seen as exclusively western, and their imposition as a form of cultural imperialism.

### Whose human rights?

The development of human rights is often charted by reference to the Magna Carta (1215), the American Bill of Rights (ratified in 1791) and the French Revolution (1789). These are considered landmark events that culminated in the Universal Declaration of Human Rights.

The Magna Carta granted certain rights to noble landowners in England, but did little to enfranchise the common man. The American Bill of Rights, and the constitution established following the French Revolution, codified the rights of the citizens of those nations, 'as individuals'. They were the political manifestations of philosophical advances going on during the age of Enlightenment. The developments focused on the rights of the individual as distinguishable from the society and the state - rights which had not existed before. A new age dawned in which "natural, inalienable and sacred rights" were recognised as belonging to citizens, giving them the power and the standing to challenge those who governed them oppressively.

These benefits were extended to all citizens of the countries that signed the 1948 Universal Declaration of Human Rights. The declaration stated that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

The danger is that if authorship is attributed as a progression from western philosophy to the Universal Declaration, then the drive for human rights can be viewed as a western ideal; therefore, the imposition of such rights on non-western nations is a form of cultural imperialism.

This leads to the argument for cultural relativism; an argument which suggests that human rights are not a universal concept but are, in effect, regional depending on the norms of each society.

### Relativists and the 'bogus' Asian values debate

In the late 1990s, the former Prime Minister of Singapore, Lee Kuan Yew, following Presidents Marcos and Suharto, both of Indonesia, advocated the idea that individual human rights are antithetical to Asian and African mores; he argued that these rights need not be extended to the peoples of those areas. All three presidents believed that the concept of universal human rights should not be applied to societies



Numerous human rights abuses characterise the on-going struggle in Nepal today. Will those suffering most - civilians between the Maoists and the government - ever see justice or compensation for their injuries?  
Credit: Naresh Newar/IRIN

that emphasise the greater good of society as a whole - a form of collective human rights - above those of the individual.

The debate, which Justice Geoffrey Robertson, Queens Council jurist and author has referred to as the "bogus Asian values debate", has been coloured by the many human rights abuses recorded under the regimes of those proponents. The disdain shown for the rights of individuals or minorities was encapsulated in a statement which Lee Kuan Yew made when addressing business leaders at a dinner in 1999. Referring to the well-documented human rights abuses occurring in Timor-Leste he said: "There are many unhappy minorities living very uncomfortable lives in ASEAN (Association of Southeast Asian Nations). You know that, I know that. We look the other way. To go in and intervene would have the whole ASEAN solidarity breaking up."



A young woman gives her vote at a gathering of women at the Faculty of Medicine in Faizabad in order to choose their candidates for the Loya Jirga elections, 2002. Many Afghans are today unhappy that those elected to their new parliament are old warlords and strongmen who for years have acted with impunity and perpetrated countless human rights violations.

Credit: Manoucher/IRIN

The issue is that acknowledging the rights of the individual, or even minorities, can upset the equilibrium and be to the detriment of society as a whole; in this case 'society' refers to the ASEAN bloc. Put another way, the greater good is not served by according rights to individuals.

### Letters to Santa Claus

Professor Noam Chomsky, one of the US's most prominent dissidents and a professor of linguistics at MIT, states meanwhile that some Asian countries have argued for cultural relativism in human rights. However, he believes that "the debate is skewed in the west", saying that there are other countries which are relativists, although they are not commonly referred to as such.

He argues that the US is a relativist in that it only allows certain rights to be considered human rights: "One of the leaders of the relativist camp is the US. It flatly rejects two thirds of the Universal Declaration. The Universal Declaration has three parts: civil and political rights; social and economic rights; and cultural rights. The US vigorously rejects the last two sections." The social and economic rights "were described by Ronald Reagan's Secretary of State as a letter to Santa Claus that means nothing", and by Paula Dobriansky, when she was the assistant Secretary of State for human rights and human affairs, as "a myth that is polluting human rights discourse".

Apart from the rejection of the social and economic rights and the cultural rights (sometimes called second and third generation human rights), Chomsky also points out that even though the US and Britain pay lip service to the idea of political and civil human rights, or first generation human rights, they do not uphold them in practice. According to him: "The rich and powerful countries more or less accept political and civil rights when it is in their interests to do so."

### Quotes

"Sometimes democracy must be bathed in blood"

General Augusto Pinochet

### The view from the Middle East

Bahy El Din Hassan, the Director of the Cairo Institute for Human Rights Studies, has said that "many Arabs perceive internationally recognised human rights as a western import and thus unsuitable for our societies". However, he argues that one of the main reasons that Arabs are averse to the human rights framework is because "western governments use its rhetoric" when defending policies such as starvation of the Iraqi people through the strictest economic blockade in history, and the impunity given to aggressive acts by Israel.

Hanny Megally, Director of the Middle East and North Africa Program at the International Centre for Transitional Justice recognises this argument and concedes that "human rights have become a political ball". He said: "If you go to Egypt and you raise human rights violations there, the first response will be, 'What about Israel and what is happening in Iraq?'"

However, he sees a potentially positive aspect to the politicisation. "If governments have taken up the human rights terminology that means it is also possible to hold those governments to those standards. Whereas the debate 30 years ago was based on the idea that 'human rights' was a foreign concept and was perhaps seen as the west trying to impose its own standards. Now they cannot say that. If Middle Eastern governments are using the language of human rights to criticise what is happening in Iraq or the Occupied Territories, they themselves have to comply with human rights standards."



Undue force against citizens: Against detained children in northern Brazil."They have a type of bomb that explodes. They got me here with something that hits and explodes," Hamilton A., 17, said of injuries from tear gas and rubber bullets fired by state military police who entered the Centro de Internação Espaço Recomeço, Ananí.

Credit: © 2003, Michael Bochenek/Human Rights Watch

## Revolutionary and recent rights

The question remains though, if the development of human rights is understood to stem from western philosophy, whether this is relevant to the debate on the applicability of human rights to all. In other words, does the provenance of human rights dictate the applicability?

Dr An-Na'Im, Charles Howard Candler Professor of Law at Emory University, Atlanta, rejects the basis of the discussion on the grounds that the development of human rights is not exclusively western. He believes that is "an over-simplification of an enlightened, pluralistic west, versus a despotic and authoritarian east". He sees "the human rights paradigm" as "the child of the UN Universal Declaration on Human Rights" established in 1948, and as such as "revolutionary and recent".

An-Na'Im argues that the American Bill of Rights and the French Constitution "were concerned with the citizens of those countries, not with the rights to be accorded to all human beings", and that it was this classification that allowed the European Enlightenment to legitimise colonisation, which valued the life of the citizens above those of other human beings. He believes this was responsible for countless human rights abuses, and displayed considerable cynicism and hypocrisy: the basic rights to life and self-determination were denied to many, while the Europeans congratulated themselves on their internal, national development of social ideas, individual rights and philanthropic enterprises.

On the question of whether human rights can coexist with Shari'a law, An-Na'Im asserts that "human rights are the means by which people come to assert their own voice, their own interpretation of religion and culture, and thereby affirm the universality of all human rights, including the right to understand Shari'a as supportive, and not hostile to, human rights". He does allow that much of Shari'a law, as currently interpreted, can be hostile to fundamental human rights, most particularly those of women.

This basic opposition between Shari'a law and human rights was most clearly demonstrated by Saudi Arabia's agreement to adopt the Universal Declaration on Human Rights in 1948 only to the extent that it did not conflict with Shari'a law. However, he draws a distinction: "It was the ruling regime of Saudi Arabia, a monarchy, which took that position, and not the people of Arabia by their own free choice... A certain elite made that decision in the name of people who continue to be victims of human rights violations. That position is also taken in the name of religion and culture, but it is self-appointed guardians of religion and culture who claim that voice, to the exclusion of other voices among believers and within the culture."

He states that: "Theologically, Islam is a radically democratic religion because every Muslim has the religious obligation to determine for herself or himself what is the position of Shari'a on every issue," and that there is a growing body of Muslims who do not view Shari'a and human rights as incompatible.

The modernisation of society has allowed people to have greater access to education and to assess the words of the Sunna - the words, sayings and deeds of the Prophet Mohammed and the Qur'an. He argues that this means that the "theology and sociology of Islam are coming together to liberate Muslims from archaic views of Shari'a. Human rights are part of the means and ends of this transformation."

The Qur'an is obviously immutable, but a more modern Ijtihad, or application of human reason in the interpretation of Shari'a, a reading which emphasises the rights and obligations of the individual, could, in his opinion, reconcile perceived differences. He goes so far as to say: "Islamic societies are now going through a type of Reformation. When Christian societies were going through this they were not necessarily aware of it at the time. The magnitude of change is often understood in retrospect." This alleged Reformation can seem a long way off in a time when mere cartoons of the Prophet Mohammed can cause riots and bloodshed across the world, and when fatwas are issued against those perceived to be at odds with the message of Islam.

In his essay, "Is personal freedom a western value?", Thomas Franck - writing in the American Journal of International Law in 1997 - points out: "In the Human Rights Committee, a UN body which has now been replaced by the Human Rights Council, Islamic members have been among the most outspoken in rejecting the notion of incompatibility between Islamic law and the global law of the human rights treaty

### Quotes

"If international law is the child of imperialism it is not only.... a dutiful child but also..... a child with oedipal inclinations"

Peter Fitzpatrick

system". This suggests that the idea that Islamic law and human rights are fundamentally incompatible is a view held by only a few Islamic countries.



The corpse of an executed prisoner (woman?) lays on the ground after public execution in Jamshid district in Tehran, 1980, sentenced to death by Ayatollah Khomeini. Beaten, arrested, tortured and executed without any formalities: this was the fate which the regime reserved for its opponents.  
Credit: Manoocher/IRIN

Nevertheless, this is not often discussed in the western media. Instead of analysing the development of human rights from a non-western perspective, there is a perception that before the Universal Declaration the concept of human rights did not exist in such countries. The focus tends to be on the differences in cultures and what some have termed the more 'barbaric' aspects of Shari'a law.

When discussing the human rights framework and its universal applicability, debate often dwells on the repression of women in many Arabic societies, and the extreme forms of punishment, such as cutting off the hands of thieves. It is often forgotten that these practices, including stoning people to death, are only advocated by the more extreme factions within the Islamic religion, and that the Qur'an does not prescribe such activities.

### "Tribal" differences

That is not to deny that these practices do go on, and frequently. Signing-up to conventions is laudable, but it is only paying lip service to the idea of inalienable human rights, if those rights are not respected. When outrage is not felt across the Muslim world when a woman is stoned to death for adultery, some observers in the west claim this a proof that human rights are denied in these countries and this is a result of cultural incompatibility between human rights and Islamic law.

The fact that reports emerge from certain Islamic countries of women being stoned for adultery, and that echoes of outrage do not seem to ripple across the Islamic world, leads some observers to believe that basic human rights are routinely denied as a result of the cultural incompatibility of human rights treaties and Islamic law.

However, there is a difference between advocating against the infringement of human rights in certain parts of the world and presenting human rights as fundamentally foreign to those parts of the world.

As Justice Geoffrey Robertson Q.C. points out: "Freedom from torture and genocide, freedom from hunger and persecution, freedom to worship and to express opinions, the right to fairness at trial, and so on, are not western inventions - they are your entitlement as a human being, whether you live in London or Nairobi, Timbuktu or Tuvalu. On this issue there can be no compromise, no excuse of 'cultural relativism'."

"There are some backsliders in the human rights movement who think that evils like female genital mutilation can be excused as 'culturally relative' because they have happened to a lot of women in Africa, for a long time. That does not justify the practice: it is a form of torture, for which there can be no justification... Tribal or national practices that are, objectively, barbaric and primitive, cannot be countenanced."

To those who reject the universality and inalienability of human rights, this attitude smacks of cultural imperialism.

### Towards universality

The concept of human rights has, since 1948 and the Universal Declaration, entered the mainstream. The language of human rights has long been used in the realms of politics and diplomacy, and it is not unusual for political pressure to be brought to bear on countries in order for them to improve their human rights record. Just one example is the efforts that Turkey has been required to make in order for discussions to begin on its possible accession to the European Union.

However, this language has only recently been given force at a legal level. There have been dramatic steps forward in the international arena in the last fifteen years towards making people accountable for the human rights abuses they have committed. This is a remarkable step forward from dialogue to enforcement. The International Criminal Tribunals for the former Yugoslavia and for Rwanda, as well as the setting up of the International Criminal Court, are evidence of commitments to combat the systematic infringement of human rights at an international, legal level.

### Quotes

*"recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"*

*Universal Declaration of Human Rights*

At last, there is the prospect of power behind the word and concepts.

There is little doubt that despite the grand words in treaties and conventions, the drive to accord all humans with basic rights is a theory not yet practised. There are widespread abuses, sometimes governmental, sometimes stemming from war and sometimes as part of centuries-old practices that communities are loathe to relinquish. It is this last category that proves the thorniest issue in terms of cultural relativism, and potential allegations of imperialism.

Yet, unless the human rights themselves are seen as universally relevant to all humans, such attempts will be open to the accusation that they are a form of cultural imperialism, or even an irrelevance to certain peoples. If human rights are portrayed as culturally relative then they can be denied to certain groups. If the language of human rights is allowed to be politicised, 'relativised' or hijacked for other reasons, this fuels distrust for the aims of human rights treaties or organizations, and alienates peoples from a supposedly Universal Declaration on Human Rights.

## International justice: Developments in the last fifteen years



In Namibia colonial forces pose in front of some of the 65,000 Herero who were shot, hung or forced into the desert where they died of thirst. International law has come a long way in proscribing human rights abuses of this kind although the means to implement human rights laws remains a problem.

Credit: BBC

According to a study conducted by the University of Hawaii, genocide and state-sponsored killing were responsible for the deaths of more than 170 million people who were murdered by their own governments during the 20th century.

Until recently, such flagrant abuse of human rights garnered no more than the occasional tutting of the international community. However, since the end of the Cold War, attitudes to gross human rights abuses have changed at the international level. The international criminal tribunals for the former Yugoslavia and Rwanda spearheaded a move towards accountability for those most responsible for state-sponsored killing; a move which has been followed by the introduction of the International Criminal Court (ICC).

Against this background, transitions from one system of governance to another, whether after war or after regime change, now tend to include investigations into abuses that occurred, and increasingly some form of judicial process.

The motive for such processes is to bring accountability and to help a society address its violent past and move forward.

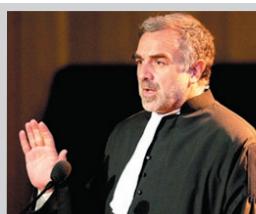
Yet judicial measures are not always palliative and they can even stir up resentment amongst the people in whose name justice is being sought. Those imposing justice are often keen to avoid the victor's justice tag, but as can be seen from the processes in Iraq, Rwanda and the former Yugoslav republics, there are inherent difficulties in achieving justice in transitional situations.

So, can any form of judicial process, imposed by the victorious side, avoid the allegation of victor's justice? Should the terms be dictated by those who are directly affected, or is that the role of a competent international body, if there is one? And have recent advances in international criminal law gone any way to increasing the possibilities of justice in such situations?

### Justice for the Iraqi people, by the Iraqi people

Saddam Hussein is currently being tried in Iraq before the Iraqi Special Tribunal (IST) for his role in the events which took place in Dujail in 1982 where 143 people were killed.

On the face of it, the IST should avoid allegations of victor's justice: it was set up in 2003 by a statute approved by the Iraqi Governing Council to prosecute people accused of, amongst other things, committing genocide, war crimes or crimes against humanity during the period from 1968 to 2003. It is a national court, whose specific mandate is to try Iraqis accused of such crimes. The judges are all Iraqi, although they are permitted to appoint non-Iraqi nationals to act in advisory capacities to "provide assistance with respect to international law and the experience of similar tribunals". The only official language of the tribunal is Arabic. And the proceedings are televised so that Iraqis can see their former leader being held to answer for the crimes he allegedly committed.



The Chief Prosecutor of the ICC, Mr. Luis Moreno-Ocampo, sworn in on the 16th of June 2003. He is currently indicting and pursuing cases in Northern Uganda, Sudan and DRC. He rejected in February 2006 pleas to investigate for possible crimes the invasion of Iraq.

Credit: ICC

### Chances of Saddam getting a fair trial?

Yet despite the IST being Iraqi in the fundamental aspects, there is a perception that it is the puppet of the USA - an image fostered by the fact that the Iraqi Governing Council, which approved the statute, was appointed by the Coalition of the Provisional Authority's Administrator, i.e. a US official.

The International Centre for Transitional Justice (ICTJ) is one of only three official observers at the IST. Its president, Juan Mendez, told IRIN: "Essentially the court was set up by an occupation force which is already questionable under the laws of war. It was then legitimated by the governing body later, but it would have been better to wait for the Iraqi Governing Council to create it from scratch."

Professor David Crane, the chief prosecutor of the international tribunal in

### Quotes

"I will never apologise for the United States of America – I don't care what the facts are"

Bush Snr on the Vincennes attack by the US forces against an Iranian commercial airliner

Sierra Leone, expressed qualified optimism for the IST early on in the trial: "Despite my disdain for the way the IST was created outside of international norms by the United States, I must say I am impressed with the way the judges are carefully taking Iraqi law, along with various principles of international law, and shaping it for their use to ensure that justice is done from an Iraqi point of view."

The fact that the trial was being performed by the Iraqis, reduced the perception that the court was an imposition of justice by the victorious party. Yet some commentators would have preferred a more international element to the proceedings. Hanny Megally, the director of the Middle East and North Africa Program of the ICTJ, commented: "We would have preferred to have a court with more international involvement. The concern was that the Iraqi judicial system, after 30 or 40 years of corruption, oppression and nepotism, would struggle to mount trials on such major issues as crimes against humanity, war crimes and genocide."

Mendez concurs: "A hybrid tribunal (i.e. a court composed of international as well as domestic judges) would have been a better policy choice by both Iraqis and the occupation forces."

The perception that the trial may not achieve impartiality has been compounded by the killing of some defence lawyers, and furthered by the political nature of the make-up of the judiciary; there is a ban on Ba'athists being appointed judges. One judge has already been removed on the basis that he was a member of the Ba'ath party. As one legal commentator pointed out: "Once all Ba'ath judges are disqualified who will be left? Mostly judges who were victims of Saddam's regime."

Mendez also sees the removal of the judge as an attack on the independence of the judiciary, but despite recognising certain flaws, he is not prepared to rule out the possibility of a fair trial. He advocates a wait and see policy, saying: "Depending on how the trial is conducted it could still on the whole pass the test of legitimacy and conduct a fair trial. We have to wait till the end to judge whether the trial has lived up to international standards."

### **The nineties vogue for international courts**

The IST, a domestic court trying Iraqis, has been questioned over its ability to provide a fair trial because of perceived vested interests or victor's justice. An alternative, which exists at the other end of the scale in terms of methods of trial, is the international tribunal. This is a tribunal set up outside the territory where the crimes have been committed, and is presided over by international judges: there is no domestic involvement. Ad hoc international tribunals were set up in the nineties to address the legacies of Rwanda and the former Yugoslavia, and were the first such internationally constituted tribunals since the trials in Nuremberg and Tokyo. The bodies constituted were the International Criminal Tribunal for Yugoslavia (ICTY), which hears cases in The Hague, and the International Criminal Tribunal for Rwanda (ICTR), which hears cases in Arusha, Tanzania. The relevant law is in each case a specific statute passed by a UN resolution.

### **Domestic reaction to international courts**



The massive proliferation of small arms is directly responsible for the rise of militias, criminal elements and the power of oppressive states around the world. If international restraint and regulation was applied to arms transfers there would be less need for international justice dealing with the results of increased access to arms.  
Credit: Brent Stirton/OCHA

The incorporation of international tribunals should prevent any allegations of victor's justice or partisan trials. But this does not guarantee that they are well-received by the countries affected, or at least by the politicians in the countries affected. Both the former Yugoslavia and Rwanda sought to conduct the trials themselves in their own countries, and there was some resentment, at least initially, at a foreign body ordering the extradition of nationals to an international court.

The ICTY was not popular among Serbians when it was created in 1993. It received scant assistance when Slobodan Milosevic was in power, and even refused entry to Louise Arbour when she was the chief prosecutor and was trying to conduct investigations into atrocities. Later, Serbia opposed the extradition of Milosevic to The Hague and initially demanded that his trial be held in Serbia by the people of Serbia. When Milosevic was finally brought before the ICTY he called it "an illegal and immoral institution, invented as reprisal for disobedient representatives of a disobedient people - as once there were concentration camps for superfluous peoples and people".

### **Quotes**

**"The purpose of criminal law, however, is not to punish wickedness. The purpose of criminal law is to punish crime, as codified in statutes"**

*John Derbyshire in National Review*

The criticism here was not that the trial was not going to be fair, but that it should not have happened in the first place; the UN had no right to be meddling in the affairs of other states. Some argue that Serbia's truculence towards the ICTY explains why Ratko Mladic and Radovan Karadzic are still at large. They are also indictees of the ICTY and Mladic is alleged to have been instrumental in the massacre at Srebrenica in which up to 8,000 Muslim men and boys died.

Similarly, the ICTR was not fully welcomed by Rwanda, which voted against its establishment, though for different reasons.

The ICTR has its seat in Arusha, Tanzania and conducts the trials of those who were alleged to have been complicit in the genocide that occurred in Rwanda in 1994. Unlike Serbia with respect to the ICTY, Rwanda was initially in favour of an international dimension to these trials. The Rwandan ambassador to the UN wrote a letter to the UN Security Council requesting cooperation in establishing a tribunal with an international dimension, precisely because it wanted the world to see that it was imposing justice, not vengeance. But the government of Rwanda claimed that the ICTR should be set up in Rwanda, that it should be able to impose the death penalty and that there should be at least one Rwandan judge on the tribunal. Its continued insistence on the death penalty, as well as its perceived inability to guarantee a fair trial, has to date precluded the ICTR from considering Rwanda an acceptable place to refer cases once the ICTR in Arusha is wound up. By comparison, the Bosnia-Herzegovina War Crimes Chamber is now receiving defendants referred by the ICTY.



View from the top of the Great Hall, at the Peace Palace. Being a "court of last resort," the International Criminal Court based in The Hague leaves the primary responsibility to exercise jurisdiction over alleged criminals to individual states signed up to the Rome Statute of 2002.

Credit: ICC

The question remains whether it is right for external parties to exclude domestic involvement and dictate the terms of justice being meted out in the sovereign jurisdiction of other countries.

### A halfway house: hybrid tribunals

The middle ground between international tribunals and wholly domestic courts are courts called 'hybrid tribunals'. This type of court is incorporated in the country where the relevant crimes took place, and is presided over by a mixture of both national judges and international judges. It is the model that some transitional justice experts were advocating for Iraq, in place of the IST.

Such tribunals have garnered praise for four principal reasons: the first is that the cases take place in the community affected, which lends an immediacy to the proceedings. This is sometimes found wanting in, for example, the ICTR trials which many Rwandans feel cut off from and feel has little relevance to their lives.

Hybrid tribunals also tend to avoid allegations that they are partisan as the judicial body is composed of a mixture of domestic judges and international ones. They are also vital in helping to reconstruct a body of legal knowledge in the affected country, which may have been depleted under the previous regime; and they are cheaper than fully international tribunals which take place outside the relevant country.

Nicholas Koumjian, the Deputy General Prosecutor for Serious Crimes in East Timor, points out that the benefits of these hybrid courts include "the ability to better contribute to reconciliation of communities; the ability to help build capacity of domestic judicial systems and respect for the rule of law in the community that suffered the violence; and the lower cost of this mechanism as opposed to an international tribunal".

The hybrid tribunal was the model used in the Special Court for Sierra Leone and in the Special Panels for Serious Crimes in East Timor. It has now been adopted for the war crimes tribunals in Bosnia and the proposed Cambodian courts to try the Khmer Rouge. All of these tribunals deal with crimes committed before 2002, when the ICC was established, changing the landscape of international justice.

### The ICC: a new dawn

In respect of war crimes, genocide and crimes against humanity committed after 2002, the ICC - created by the Rome Statute and located in The Hague - will now be able to exercise jurisdiction. There are two important caveats: one is that the ICC will only deal with such crimes when the country in which the crimes took place has failed to take legal action against the perpetrators. National courts will be responsible for trying those accused of such crimes under the principle known as complementarity. So individual nations get the first bite of the judicial cherry. The second is that the jurisdiction of the ICC is not total, relying as it does on the country in question to invite ICC investigators in, or having no interested friends among the permanent members of the UN Security Council to protect it.

Whatever its flaws, the world now has a permanent body devoted to trying genocide, crimes against humanity and war crimes: an idea first mooted after the Second World War has finally come into being. This means that not only ad hoc international tribunals such as the ICTY and ICTR, but also hybrid tribunals such as the Sierra Leone Special Court, will in theory no longer to be set up under international auspices.

Paul van Zyl of the International Centre for Transitional Justice, although a staunch supporter of the ICC, sees this as a negative. He has described hybrid tribunals as "a welcome trend" which "have an effect on the domestic jurisdiction".

Commenting on the fact that the ICC only has the capacity to prosecute a very few people, perhaps as few as five "big fish" for each war or regime change, he continued: "It would be unfortunate for the international community and donors to view the ICC as a panacea: to say that they have invested in the ICC and there is no need for intervention on the justice front at a domestic level in the countries in question. Domestic institutions need to be given resources and resource-strengthened to be able to deal with this impunity gap between the people the ICC targets and the vast majority of people underneath."



Montagnard demonstrators after being beaten by government security forces during a protest in the central highlands, Vietnam. Citizens all over the world often face harsh treatment from police and national security forces when they attempt to publicise their legitimate concerns. International law increasingly seeks to make states accountable for such abuses.

Credit: Human Rights Watch

"These people are not only low level trigger-pullers, they is also going to be a large number of middle and senior ranking perpetrators who will escape the jurisdiction of the ICC. The Sierra Leone Special Court and others have shown us what hybrid tribunals can do and if anything they make the case for more hybrids not less."

### The future

International justice is itself currently in transition. It exists in various forms in different places: exclusively domestic, exclusively international or hybrid. The ICC has been designed to allow national courts primary jurisdiction and will only step in where that obligation has not been met. Practitioners of international criminal justice welcome the advent of the ICC as an important addition to the armoury in the struggle for international justice, which will bring an end to the impunity human rights abusers have for so long enjoyed. It is the flagship of international justice. However, they are concerned that it should not be seen as the only weapon. There will still be a need for building the capacity of legal systems at a national level, as well as a need to try more than just the few "big fish". The ICC is a symbol of justice throughout the world, but there is room to focus on how it can be complemented by processes at other levels.

### Quotes

*"truly scenes from hell, written on the darkest pages of human history"*

*taken from the indictment of Mladic and Karadzic, indictees of the International Criminal Tribunal for the Former Yugoslavia who are still at large.*

## Justice costs: The price of healing



No amount of justice will return the thousands of limbs brutally severed by the RUF in Sierra Leone, West Africa. Some question the huge cost of processes of transitional justice which are supposed to benefit communities still living in severe poverty.

Credit: Brent Stirton/OCHA

A joke used to circulate among more cynical aid workers about the international community's attitude to justice. It said that if you commit one murder you get sent to trial and prison. If you commit ten, you get sent to an insane asylum. If you commit ten thousand you get sent to Geneva for peace talks.

That joke no longer holds true in the age of international justice that now exists. In the 1990s, international criminal tribunals were set up to try those responsible for war crimes, crimes against humanity, and genocide that occurred in the former Yugoslavia, the International Criminal Court for the former Yugoslavia (ICTY), and in Rwanda, the International Criminal Court for Rwanda (ICTR). In 2002, the International Criminal Court (ICC), the first permanent war crimes tribunal, came into being, heralding the end of impunity.

An enormous amount of money is now spent on the pursuit of international justice. In his 2004 report to the Security Council, Kofi Annan, the Secretary General admitted that the two ad hoc criminal tribunals set up to try those accused of human rights violations

in Rwanda and the former Yugoslavia had "a combined annual budget exceeding a quarter of a billion dollars – equivalent to more than 15 percent of the Organisation's total regular budget". The figure has since risen: the budget for the ICTY alone for 2006-2007 is over \$275 million. As Carla del Ponte, the Chief Prosecutor of the ICTY admitted "Justice is not cheap". The question is whether this level of expenditure can be justified when there are so many ways that those sums of money could be otherwise spent.

### Comparative costs

The cost of war in Iraq has been estimated at costing the USA up to \$230 million per day, i.e. almost the annual budget of the ICTY. The cost of collecting garbage in New York alone is more than the annual UN regular budget. And in terms of the relative cost of justice, the international courts are not more expensive than some domestic trials. As Paul van Zyl, Director of Country Programmes at the International Center for Transitional Justice, told IRIN: "If you compare dollar for dollar the amount that it costs to convict the most senior people before the ICTY, with what it costs to convict for example a Mafia boss in the United States or the prosecution of Timothy McVeigh, the Oklahoma City bomber, the amounts are comparable." It is also important to remember the crimes that the people being tried are alleged to have committed: massacres, genocide, systematic rape and torture. In national courts, we expect lesser crimes to be thoroughly investigated and prosecuted. Should a different level of justice be applied externally?

As Paul van Zyl points out: "Most people would balk at the idea that you should not prosecute mafia crime lords on the basis that it is too expensive. When you look at the kind of people who are being prosecuted before the ICTY and the ICTR, they are responsible often for tens, and sometimes hundreds, of thousands of deaths."

### Money well spent?

Allegations are sometimes made that the money expended on these tribunals could be better spent on infrastructure in the communities most affected. Corinne Dufka, of the nongovernmental organisation (NGO) Human Rights Watch, acknowledges that victims of decades of abusive governance or war would often prefer that the money be spent on their day-to-day needs, but adds "that should not be the indicator. There has to be big picture thinking. That includes helping people understand how important justice is for the longer term".

Justice Geoffrey Robertson, QC a human rights lawyer and formerly judge at the Sierra Leone Special Court, refutes the argument from a different angle: "the money that is being invested in global justice would simply not be made available for infrastructure or policing or even for compensation for victims". He believes that if international justice provides some closure to victims and deters others in the future, even to a limited extent, then this "is money well spent".

The reason for the size of the expenditure is that the cases that are being brought are highly complex. They often involve multiple defendants, hundreds of witnesses and wide-ranging investigations, often

### Quotes

"The priority should be peace first and justice later"

*a member of the Acholi community in Northern Uganda*

not conducted in the first language of the witnesses. The wheels of law are famously slow to turn, and so much more so when they are dealing with subjects of this magnitude. Yet some observers feel that perpetrators of crimes against humanity do not deserve such detailed and costly attention to due process and their rights, especially given how little they observed the human rights of others.

### **Justice that they themselves denied**

Some question whether alleged perpetrators of atrocities should be provided with a standard of justice that they themselves denied their victims. Even Amnesty International, an NGO which investigates human rights abuses and advocates against them, argued at the time that the Rome Statute was being drafted (the statute which created the International Criminal Court), that alleged perpetrators should be denied the standard defences of duress, necessity and self-defence. Justice Geoffrey Roberston QC points out in his book "Crimes Against Humanity" that "What was truly ironic was their zeal for a court so tough that it would actually violate the basic human rights of its defendants".



Soloth Sar (aka Pol Pot) led a movement in Cambodia that led to the extermination of an estimated one million people between 1975-78. Today, thirty years later, the Extraordinary Chambers are starting an expensive and difficult process of convicting the few remaining leaders of the Khmer Rouge. Most Cambodians just want to move on.

Credit: Wikipedia

Such arguments can justify much less costly alternatives. Nicholae Ceausescu, the former dictator of Romania, was hurriedly tried and convicted before a domestic military court on 25 December 1989, before being shot, along with his wife, by a firing squad. Rounding up and summary execution was also Winston Churchill's preferred method of dealing with the Nazi commanders after World War II, though this method was overruled by the US, France and Russia.

This method of dealing with those responsible for human rights abuses has the benefit of being quick and cheap. However, it does not comply with basic legal procedures of hearing evidence and judging guilt or innocence. In societies which have been affected by conflict or brutal regimes, and which are undergoing a process of transition to stability, the establishment of a rule of law, and the following of a legal process, is of paramount importance. As Dennis McNamara, UN Special Adviser on Internal Displacement, told IRIN: "Post-conflict countries are often in the mess they are in because of a lack of a functioning legal system to protect civilians."

If a functioning legal system is a prerequisite for law and order to prevail, it requires more than simply conducting a trial of the head of state under internationally respected legal norms. A thorough investigation of abuses is necessary in order to remove those responsible from all levels of power. The Sierra Leone Truth Commission Report emphasised this aspect of the judicial process: "One of the objectives of the Court was to break the command structure of the criminal organisation responsible for the violence." This not only makes the perpetrators publicly accountable but also serves to build a public perception of confidence in the legal system, demonstrating that the old guard are no longer in control. The very process of justice can play an important part in healing the wounds of a society and publicly underlining that a change has taken place.

### **A healing process**

In addition to the need to establish law and order, investigations can themselves contribute to the healing process. Indeed, truth commissions - accompanied by judicial enquiry - can unearth evidence as to what occurred. This has been proven to help victims in that it provides recognition of their suffering and sometimes even helps them to find the bodies of loved ones; it also provides a testament which discourages any revisionist history. Survivors are often afraid that what they experienced will be forgotten or denied. Augustin Nkusi, a Director at the National Service for Gacaca Jurisdictions in Rwanda makes the point with respect to the ICTR: "There is a need for what happened in Rwanda to be recognised at an international level to avoid any revisionist history. It is a great testimony to what happened."

In effect, investigating, arresting and punishing individuals found guilty of abuses seems to help societies to make the transition to a peaceful existence. In that context, the cost of enforcing international justice is dwarfed by the cost of not doing so, ongoing conflict and war, and the ensuing developmental cost that conflict entails.

But justice is a slow process. The ICTY and the ICTR still rumble on. The numbers of people convicted during the 12 and 13 years respectively since the tribunals were established are not impressive. At the

### *Quotes*

"Contempt for the rule of law is deeply rooted in U.S. practice and intellectual culture"

Noam Chomsky

ICTR, 15 people have been found guilty and a further eight are appealing their convictions. At the ICTY, 42 people have been found guilty with a further 12 still appealing their convictions. Slobodan Milosevic, the former President of Serbia, died in March 2006, near the end of a three year trial, fuelling the concern that the millions of dollars expended on his trial were a waste of money.

### The cruel joke of deterrence?



A boy is injured by government forces while demonstrating for democracy in Nepal. Governments will be increasingly held accountable for their use of force and their failure to protect their own citizens from human rights abuse in this new era of international justice.

Credit: Naresh Newar/IRIN

Aside from justice, a commonly cited justification for the costs involved in bringing criminals to the dock, is that it may deter future perpetrators, saving money in the longer term. The argument is that the prospect of accountability acts as a deterrent.

John Bolton, the US Ambassador to the UN, has countered this suggestion: "Why should anyone imagine that bewigged judges in The Hague will succeed where cold steel has failed? Holding out the prospect of ICC deterrence to the weak and vulnerable amounts to a cruel joke."

The fact that the Lord's Resistance Army (LRA) in Northern Uganda is still forcing children into becoming soldiers, and making sex slaves of others, despite the issue of warrants by the ICC for the arrest of the top five leaders, seems to validate Bolton's point. As does the continuing genocide in Darfur, western Sudan, where ICC investigations are ongoing.

Paul van Zyl told IRIN that it was "important not to overstate the deterrence argument. Human rights advocates can afford to be honest and say that in some contexts it will deter and in some contexts if you manage to incarcerate some perpetrators that will have an effect".

Referring to Joseph Kony, the leader of the LRA and Slobodan Milosevic, he went on: "You also have to bear in mind the kind of people who international tribunals go after. People who are inclined to commit genocide and other atrocious crimes are not the most deterable kinds of people."

### Alternatives

Having funded both the ICTR and the ICTY, the cost of justice is a concern that the UN is aware of. As Kofi Annan pointed out in 2004, "Partly in reaction to the high costs of the original tribunals, the financial mechanisms of the mixed tribunals for Sierra Leone and for Cambodia have been based entirely on voluntary contributions." That is to say, money which individual donor countries have given.

However, the problem with voluntary contributions is that they may not always be forthcoming and that politics is often brought into play.

The Khmer Rouge trials are an example of a process that has suffered under what Kofi Annan termed "the vagaries of voluntary financing". Cambodia was meant to provide \$13 million of the proposed budget of \$56.3 million, but has so far been unable to do so. When Japan came forward in June 2005 to provide the shortfall, cynical commentators suggested that this was part of Japan's bid for a permanent seat on the Security Council. Whether or not that is true, the spectre of politics which consistently plagues the quest for international justice, again entered the debate. The US, by contrast, has been criticised for its failure to provide any funding for the trials, despite its involvement in that region at the time. Comparison has been drawn between its enthusiasm for the Iraqi Special Tribunal, which was set up to try Saddam Hussein and his accomplices and has received \$128 million from the US, and its attitude to the Khmer Rouge trials. There have however been suggestions recently from Ambassador Pierre Prosper, from State's Office of War Crimes Issues, that the US might contribute financially to the Khmer Rouge Tribunal if it shows itself to be "independent" and up to "international standards".

### Justice on the cheap

The first hybrid tribunal to be set up was in Dili, East Timor. In 1999, in the lead up to and aftermath of a referendum on the independence of East Timor from Indonesia, there was widespread killing, rape and destruction in the region. The UN Security Council authorised the establishment of the UN Transitional Authority for East Timor (UNTAET) on 25 October 1999. UNTAET then promulgated a law in 2000 giving the Dili District Court authority to investigate genocide, war crimes, crimes against humanity, sexual offences and torture which occurred in East Timor between 1 January 1999 and 25 October 1999.

Though there is less information on this topic than other tribunals with an international dimension, the

trials conducted there have not been widely held to be a success. Two major criticisms have emerged. Firstly there has been a failure to prosecute any of the “big fish” responsible for orchestrating the violence: those prosecuted have been middle or low-ranking perpetrators. Secondly, the attempts to attain justice have been frustrated by a crippling lack of funds.



A self-help group of women in Sierra Leone, all bearing scars of sexual abuse and violence suffered during the civil wars there. The high cost of the Sierra Leone Special Court doesn't mean any tangible benefits trickle down to the victims. Many girls are turning to prostitution.  
Credit: Brent Stirton/OCHA

The annual budget for the Dili District Court in 2001 was, according to David Cohen, author of a report entitled ‘Seeking Justice on the Cheap’, a mere \$6.3 million. Of this, \$6 million was allocated to the prosecution and only \$300,000 to the tribunal itself, most of which was spent on the salaries of the international judges. According to the report, there were no law clerks, administrators, researchers or even qualified translators. At the time he reported there was not even a functioning Appeals Chamber. This meant that proceedings were often chaotic and sometimes fell short of what might be called internationally accepted standards. There was no mechanism for producing transcripts, without which an appeal process is almost impossible. As Mr Cohen points out: “Without an official record of the trial how can defence counsel make a case and how can the Appeal Chamber review it?”

The defence were even worse served in terms of budget. Unlike the prosecution there was no money for them to cover the expenses of bringing witnesses to trial. As a result in the first fourteen cases heard, not one witness for the defence was called.

The failure in Dili to achieve a credible examination of the events of 1999 or a credible prosecution was exacerbated by the concurrent proceedings in Jakarta, Indonesia. The Indonesian Human Rights Commission had found evidence that high level Indonesians had been funding and instigating the atrocities in East Timor. Cases were brought before the courts, but few of the major players were convicted. Furthermore, the Indonesians refused to hand over any indicted persons to the Dili courts. A UN Commission of Experts sent in to examine the Indonesian proceedings, reported to Kofi Annan in 2005 that they had fundamental concerns and suggested that several of the trials should be reopened. Kofi Annan has so far failed to respond to the report.

An open letter to Kofi Annan of 24 March 2006, written by a coalition of human rights organisations stated that “the demand for justice and accountability remains a fundamental issue in the lives of many East Timorese and a potential obstacle to building a democratic society based upon respect for the rule of law and authentic reconciliation between individuals, families, communities and nations.”

The budget of the UNTAET-sponsored court in East Timor is dwarfed by the amounts spent on other tribunals. The Sierra Leone Special Court has an annual budget of approximately \$100 million. As mentioned, the ICTY biennial budget now exceeds \$250 million. If justice is to be equally applied in all instances, and if defendants are to be provided with a credible attempt to defend themselves, then perhaps it is true that assessed contributions remain necessary, and that “the vagaries of voluntary financing” cannot be relied upon.

### **Money talks**

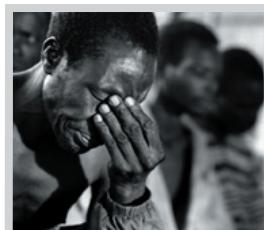
The effect of finance on international justice extends beyond the courtroom: it can also have a role in actually bringing those most responsible for human rights abuses to the court.

The arrest of Slobodan Milosevic in April 2001 and his extradition to the ICTY is widely believed to have come as a result of financial pressure exerted upon Serbia by the US. Janes’ Intelligence Review, an intelligence gathering service, reported that the US Congress had threatened to block a \$100 million aid package to Serbia if Milosevic was not handed over.

The European Union has also been using the language of finance and commerce to apply pressure to the Serbian authorities to hand over another suspected war criminal, Ratko Mladic. On 3 May 2006, it called a halt to talks on Serbia’s proposed accession to the European Union. The Chief Prosecutor at the ICTY, Carla del Ponte said: “The obvious conclusion I can draw is that I was misled when I was told at the end of March that the arrest of Mladic was a matter of days or weeks.”

The EU Enlargement Commissioner Olli Rehn confirmed the suspension of negotiations, saying: “I must say that it is disappointing that Belgrade has been unable to locate, arrest and transfer Ratko Mladic to The Hague...The Commission is ready to resume negotiations as soon as Serbia accedes full co-operation.”

Few proponents of human rights are disturbed at this use of finance to draw out suspected criminals. Alison Smith, of the NGO No Peace Without Justice, is sanguine on the matter:



A man sits in despair in Northern Uganda. "You also have to bear in mind the kind of people who international tribunals go after. People who are inclined to commit genocide and other atrocious crimes are not the most detestable kinds of people."

Credit: Sven Torfinn/IRIN

"We take the view that if it gets them there, then that's the important thing. It does not sully justice, it helps it along. If one motive for their handover is to get aid, then that's just the way it is."

### **Justice at any price**

On a BBC website which posed the question: "Do you believe justice is worth pursuing at any price?", Blessing Ruzengwe of Zimbabwe had this to say: "Where there is poverty there is no justice. You have to address poverty first." Another person added: "Justice is a luxury for Africans."

The headline figures of a quarter of a billion dollars expended every two years on just one international tribunal while people go starving fuel this perception. But can justice ever be considered a luxury or is it a prerequisite for a civilised

and ordered society? If Churchill had had his way and money had not been spent on the Nuremberg trials, international law would not have the concept of individual accountability for acts committed supposedly on behalf of the state. That would mean that those who ran the concentration camps and gassed prisoners would not have been legally liable for their actions; and that those who ran Interahamwe death squads in Rwanda could claim they were just following orders. Spending money on justice is spending money on infrastructure: not the infrastructure of roads, but the building blocks of a society where human rights violators are made accountable. As Corinne Dufka, of the NGO Human Rights Watch, points out: "Justice is an essential pillar of a stable democracy."

## Transitional justice: Paving the way to peace



Relatives hold portraits of the "Disappeared" in Chechnya between 1999-2001. The bitter struggle in Chechnya and the serious violations of human rights by both sides will mean that, when the conflict is over, meaningful reconciliation and a perception of justice being performed will be needed if the Chechens are to live peacefully with Russians again.

Credit: Human Rights Watch

A Rwandan woman explained her view of how to reconcile Rwandan society and try to prevent future bloodshed: "We are Abel and they are Cain. The government should force Cain to be good." She lost her sister during the genocide in 1994, and several of her children.

Against this backdrop of a still divided society, the Rwandan government ensures that the slogan "Never again" is writ large on monuments across the country, and is frequently pronounced in newspapers and television programmes. It has set up gacaca courts, which are an attempt to dispense community-based justice in a country where the tension between the past and the present is almost palpable; a country that seems to be struggling with the demands of reconciliation.

Reconciliation is just one aspect of efforts to help a society move forward from its troubled past to a more stable and less bloody future. A variety of organisations - principally NGOs and the UN - work in assisting countries and communities to rebuild themselves after conflict; an area of development which is commonly known as peacebuilding.

According to a 2003 World bank report, that 44 percent of countries which have suffered violent conflict return to violence within 5 years, underlining the importance of trying to build strong foundations around peace accords.

### Why peacebuilding is not in vogue

Despite the obvious need for peacebuilding processes, in a world where 15 of the 20 poorest countries have experienced significant periods of conflict in the last decade, peacebuilding is not always top of the aid agenda. The term peacebuilding was first used in 1992 by the then Secretary General of the UN, Boutros Boutros-Ghali in a report called "An Agenda for Peace" which set out the UN's toolkit to respond to conflicts at the end of the Cold War. The toolkit consisted of preventive diplomacy, peacemaking, peacekeeping and peacebuilding.

The international environment that existed then was more favourable to consensual peace initiatives. The attack on the United States on September 11 2001, and the subsequent wars in Afghanistan and Iraq, have since divided the international community; and the priorities set out in "An Agenda for Peace", "no longer remain at the nucleus of the UN system", in the words of Dr Necla Tschirgi, Vice President of the International Peace Academy. The emphasis has moved to the national security interests of the more powerful member states; the focus being on regime change in parts of the world which may directly affect the interests of those same powerful member states.

Aside from a lack of political will, the fact that peacebuilding is a slow process also counts against it. A report on the joint Utstein Study of Peacebuilding - commissioned by the governments of Norway, the Netherlands, UK and Germany - (the "Utstein report") points out "following bitter conflicts, sustainable peace is only available on the basis of sustained effort lasting a decade or more".

It can be hard to justify a decade or more of consistent involvement in one peace process in one country, when so many conflicts or humanitarian disasters compete for international attention. Domestic political pressure can also be a factor as people want their governments to respond to the crises which get media attention and coverage, not to longer term peacebuilding projects which occur away from the cameras following forgotten wars in far off countries. The frenzy of donations that followed the 2004 Asian tsunami, both from individuals and governments, attests to this. By comparison, there is an almost complete lack of political will to fund solutions to the problems of the Democratic Republic of Congo, where a war has been raging since 1998, with a death toll higher than in any conflict since World War II. The Lancet, a UK medical journal, estimates that there are more than a thousand deaths occurring there every day.

### Quotes

**"He killed my father, he killed my mother – still I voted for him"**

*was the explanation of many Liberians who were war-tired and feared a renewal of the fighting in case Taylor would lose the presidential elections*

## Value for money

Compounding the problem is the fact that it is hard to assess what impact peacebuilding projects have in contributing to lasting peaceful relations after upheaval. Quantifying the results of any peacebuilding or conflict resolution initiatives is notoriously difficult. Even the significance of different outcomes of such initiatives will vary in importance from context to context. This makes funding initiatives less appealing; it is always difficult to raise money for projects which have no concrete results.



The burning library of Sarajevo, once containing a huge collection of old and precious books and documents, was destroyed completely on August 26, 1992, deliberately targeted by Serbs. During the siege of Sarajevo about 400,000 residents were trapped, and were cut off from all basic supplies. Thousands of civilians were killed and wounded, suffered from rape and starvation.

Credit: Manoocher/IRIN

Dr Fanie du Toit of the Institute for Justice and Reconciliation, a South African NGO, has worked on various projects designed to promote reconciliation in South Africa. The Institute produces questionnaires that are widely distributed in different regions of South Africa to gauge how the process of reconciliation is progressing. Despite these laudable attempts, he agrees on the difficulty of assessing individual peacebuilding processes: "I do not think there is a way you can measure that, though I would say we have had a positive impact." This is a common claim of peacebuilders which can leave donors cold.

There is a conflict between the desire for tangible results and the very nature of peacebuilding, which attempts to rebuild and reconnect different aspects of society over the medium to long term.

## How do you "build" peace? Aspects of the peacebuilding palette

The term peacebuilding covers the range of projects designed to reconstruct the social, economic and legal fabric of a society following a conflict. Many NGOs are active in different sectors trying to build a stronger society on fragile peace accords. These organisations work in all areas of peacebuilding including enhancing security, trying to address poverty, building infrastructure and strengthening the political framework.

## Security

Peacebuilding can only start once there is security: governments are responsible for demobilising former combatants, but it is often the NGOs that are instrumental in re-integrating these former soldiers into society, clearing mines and establishing programmes for handing over weapons and small arms so that they are not circulated to criminal elements, fuelling insecurity.

The problem of trying to reintroduce child soldiers back into the community is a long, difficult and sometimes unsuccessful process. It requires community-based rehabilitation projects, that enable former child soldiers to obtain education, to address the trauma of the conflict years, and to create opportunities for an alternative to military life. As the NGO Amnesty International points out in a report on child soldiers in Burundi: "NGOs can play a vital role, complementing the formal process, in preparing both the child soldiers to return and the communities - also traumatised by years of political or ethnic violence and armed conflict and largely impoverished - to accept them, as well as by developing rehabilitation programmes."

## Rebuilding economies



As wars end and/or rebel forces lay down their arms local government and the international community grapple with the issue of how to prevent battle hardened soldiers drifting back into violence if they find the peace unrewarding or hopeless. Disarmament, Demobilisation and Reintegration (DDR) programmes are fraught with problems.

Credit: Brent Stirton/OCHA

The construction of socio-economic foundations and a functioning political framework complement security. The physical reconstruction of cities, development of healthcare, education, water provision, electricity, roads, livestock, and crop production all need to function for a country to get back on its feet and return to some kind of normality.

This requires investment from outside. However, another urgent need is skilled manpower. Many people were forced to flee their communities during times of conflict, resulting in a 'brain drain'. Ellen Johnson Sirleaf, the recently elected President of Liberia, has broadcast appeals to Liberians to return home, to bring back the skills that the country urgently needs to develop the healthcare, education and governmental infrastructure.

## Political framework

Democratisation, re-installing the rule of law, building institutions and ensuring that human rights are being safeguarded systemically are other aspects that the UN and NGOs focus upon to strengthen a society emerging from upheaval.

Dennis McNamara, Special Adviser on Internal Displacement to the UN, criticises the failure to prioritise the rule of law in post-conflict situations:

"The failure is pretty total. We don't seem to grasp the need to have rule of law aspects addressed on the ground with the appropriate people at the critical time, when conflict is low-level or ending. The military cannot do it. In Kosovo, the (British) forces arrested people who were burning down houses, but then they had to release them as there was no civilian justice system to turn them over to. In Afghanistan, it has been impossible in a peace-keeping context to get sufficient civilian police in place."

Without a judicial system in place, and a functioning police force which can apprehend those engaging in criminal activity, there can be no hope of a return to ordered civil society. The situation in Iraq at the moment is a classic example of a state operating without effective rule of law, the absence of which precludes any serious reconstruction efforts.

The fourth area of what was termed the peacebuilding palette in the Utstein report, is reconciliation and justice.

## Reconciling torn societies

How to bring about some form of reconciliation and healing in a society which has witnessed genocide, widespread rape, torture or systematic limb amputation is a problem with no easy answer, not least when the preconditions to conflict may still be present and unchanged.



A man recovers from a brutal beating in the North Uganda conflict. For him and hundreds of thousands who have been terrorised, raped, mutilated, displaced and abducted what is the process of healing and what kind of justice can they ever expect?

Credit: Sven Torfinn/IRIN

Practitioners of transitional justice advocate a holistic approach to the issue including: criminal prosecutions; truth commissions to uncover what occurred and to give the victims a voice; financial reparations for those who have suffered egregious violations; reform of state institutions to root out those who were involved in the human rights abuses; and meaningful dialogue between various parties including victims' groups.

As Paul van Zyl, Programme Director at the International Centre for Transitional Justice, told IRIN: "Any one of those five approaches will often be insufficient and it is best to try and do as many of those as is possible in the circumstances."

Unfortunately, it is rarely the case that all five aspects are implemented. Often, apart from financial constraints, there are political ones which affect what steps can be taken at a particular time. Unsavoury compromises, such as granting amnesties to perpetrators of gross human rights abuses, are sometimes seen as the only alternative to a return to open conflict.

## A thousand mile journey begins with one step

In Morocco, a truth and reconciliation commission (the IER) was set up to examine the state-sanctioned abuses that occurred under the regimes of the previous two kings, between 1956 and 1999. This was the first commission of its kind in the Arab-Islamic world. It has been criticised on the basis that there have been no prosecutions and so no punishment for those who have confessed to human rights abuses.

However, as Hanny Megally, the Director of the Middle East and North Africa Programme at the International Centre for Transitional Justice (ICTJ) points out, even the process of having a truth commission has taken time. In the early 1990s some of the disappeared were released from the detention centres where they had been held. This was followed by compensation committees set up to make reparations to those who had suffered. In 2006 the IER published the report on its findings. "Each step was presented as the last step before turning the page. The compensation process paved the way for the truth commission. There is no reason not to think that other steps, whether further reforms, the removal of those responsible for abuses from public office or even prosecution, have been completely ruled out."

He also told IRIN: "Each country has its own specificity as to how it will go about addressing a legacy of past abuses. With the Middle East and North Africa, impunity has reigned for the last 40 to 50 years. Any

effort to break that wall of silence has to be seen as a positive step forward."

The story of Morocco is not atypical: the brief history of transitional justice has been one of small steps towards justice. It is not always an option to hold an open and thorough examination of past abuses, and to make those responsible accountable. Timing is of the essence.



Humanitarian demining teams (MAG) take a rest in north-west Cambodia. Many of the workers are mine victims themselves. Offering employment to those injured and mutilated by conflict or oppressive regimes is often a higher priority to the victims than a public show of 'justice' which may net a few 'big fish' but makes no different to their daily struggles.

Credit: (By kind permission) Sean Sutton/MAG

### Timing is of the essence

In Lebanon, where there were widespread massacres and human rights violations during the civil war which ravaged the country between 1975 and 1990, there has so far been no effort even to investigate, let alone bring those responsible to justice. Calls for justice have so far fallen on deaf ears, partly because as Megally says: "The fear there is that investigations could reignite the civil war." Justice can only begin to be done when the structure of peace is solid enough to withstand the pressure of potentially divisive investigations.

The importance of timing in transitional justice measures is still being seen in parts of South America. It has taken more than 20 years for Argentina and Chile to confront those responsible for human rights abuses in court. Argentina did hold truth commissions in the early 1980s to investigate the abuses perpetrated under the military junta that held power there, but steps towards criminal prosecution caused the threat of a new military coup. Legislation, in the form of the 1986 Full Stop Law and the 1987 Due Obedience Law, was brought in to impede any prosecutions. Only in 2005 did the Supreme Court there declare those laws to have been unconstitutional and thereby open the door to criminal prosecutions of the abuses that occurred in Argentina.

Similar moves are taking place in Chile to reverse the immunity that General Pinochet accorded himself when he stepped down in 1990. As Patricio Aylwin, who succeeded Pinochet, said at the time: "We will tackle the excesses of the past," but added, "within the realm of the possible." Thanks in large part to mounting external pressure after the extradition trial held in London in [ ], Pinochet's immunity is being stripped away on a case by case basis, and it is now possible for him to be made to stand trial. After a lapse of some sixteen years, the country is in a position to examine its past.

### Are truth commissions alone ever satisfactory?

Practitioners of transitional justice advocate a holistic approach to healing the community. But can truth commissions alone, without judicial measures, bring about reconciliation?

The Truth and Reconciliation Commission (TRC) in South Africa, which eased the process of transition from apartheid to democracy, is often trumpeted as the model truth commission success story, and is held up as an example of why truth-telling mechanisms can be more palliative to the community than trials.

However, the TRC was predicated on the basis that there would be trials for those who did not cooperate in the process. Human rights and civil societies have levelled criticism at the South African government's failure to follow up this initiative. Paul Van Zyl, who served as executive secretary to the TRC, is disappointed with the government's recent initiatives in this area: "What the government has done is table a new prosecution policy which effectively gives perpetrators a second bite of the amnesty cherry... (this) violates the essential spirit of the compromise that was the truth commission."

Truth commissions are seen as an important process in helping a society come to terms with the legacy of its past. Whereas the role of courts is to judge the guilt or innocence of the alleged perpetrator, the focus of truth commissions is on the victims and their individual stories. The information that is uncovered in truth telling procedures has a dual role: it can be a form of catharsis for the victims and it can be an effective method of amassing evidence for prosecution later. Families often learn what happened to people who disappeared, which enables them to start the process of grieving. Furthermore, Juan Mendez, the President of the International Centre for Transitional Justice, points out: "Courts will never be able to investigate every episode, and therefore there will always be a sense of inconclusiveness about justice and dissatisfaction on the part of victims of human rights violations that their case was not properly aired in a court." Truth commissions can fill the gaps left by judicial procedure and close gaps where revisionist history might grow.

### Quotes

"While the law is first applied against German aggressors ... if it is to serve any useful purpose it must condemn aggression by any other nations, including those who sit here now in judgment."

*Robert H Jackson, Chief of Counsel for US at Nuremberg*

## Truth commissions as a panacea

Increasingly however, truth commissions are being employed by governments instead of seeking full criminal prosecutions for human rights abusers. As Mendez, himself a victim of detention and torture under the military junta in Argentina, told IRIN: "That is a travesty because it tries to exchange the demands for justice for a truth telling exercise that becomes a substitute for justice. I would never support a truth commission as a substitute for criminal prosecution."

Justice Geoffrey Robertson, Q.C., a human rights lawyer, also rejects the idea that truth commissions and other reconciliatory measures can be used to replace trials. He told IRIN: "I do not believe in "healing" if it anoints mass-murderers with the balm of forgiveness."

In transitional justice, principles and pragmatism clash. Du Toit recognises the dilemma of balancing the desire for retributive aspects of criminal proceedings, which entails meting out punishment to perpetrators, with the need to heal a society as a whole: "The human rights standpoint would say that there is not enough justice in transitional justice measures. The political would say that there is too much justice and that we should just move on, as Spain did", following the oppressive regime of Franco.

## A clean sweep

The process of vetting, whereby those who were complicit in the violations committed by the previous regime are removed from their positions of office, is considered another necessary step towards attaining a reconciled society and drawing a line under the previous system.

Although justice is an important component of any transition, it is not sufficient on its own. This is because the judicial process can only address the tip of the iceberg of systemic abuse. Despite the prosecution of a few individuals, often a considerable number of human rights abusers who were part of the previous system are left in positions of responsibility. As a study published in the Harvard International Law Journal points out: "Some victims of human rights violations may identify the court with the perpetrator if the perpetrator was a state agent at the time of the abuse." In order to build public confidence in the system, and to show that the regime change is more than superficial, those who were identified with the previous regime should be ejected from official state bodies.

In Afghanistan, there has been little or no vetting, which has translated into known warlords holding seats in parliament. This damages the credibility of the government and promotes an image of lawlessness. A system of vetting those who were standing for election would have counteracted this. The difficulty is that the warlords still maintain considerable political power, and the removal of such individuals may have violent and destabilising consequences. Again, timing is of the essence, and unpalatable choices may have to be made in the short term for longer term stability.

Mendez points out that vetting is a tool that can also be open to abuse. The process of de-Ba'athification which is going on in Iraq at the moment - that is the removal of anyone who belonged to Saddam Hussein's Ba'athist party from official positions - "makes a mockery of vetting" in his words. It is being abused as a political process what is being conducted is in effect "a witchhunt, chasing after people for the sole 'crime' of having had to sign a membership card".



Some of the disarmed child soldiers of South Sudan prepare to board a plane to return them to their parents and peace. Reversing the conditions that contribute to the start of conflicts is a colossal undertaking in terms of human and economic resources.  
Credit: UNICEF

## Prospects for peace

If the international community is serious about reducing the likelihood of a return to conflict or abusive regimes, then peacebuilding needs to be high on the agenda. Once the peace accords have been signed and the guns have been put down, the work of building a society with a realistic prospect of peace and stability begins. This means ensuring ongoing security, investing in physical reconstruction and economic infrastructure, fostering good governance, and trying to help a wounded society heal itself. No one aspect of this peacebuilding menu is sufficient on its own. It is a positive step that truth and reconciliation commissions are now regularly mentioned in the early stages of any discussion on promoting peace in the wake of conflict, although the cynical might note that truth commissions are one of the less expensive peacebuilding procedures. The challenge to donor governments is whether they will be far-sighted enough to fund what is inevitably a long and expensive process with few tangible results.

## Neither forget nor forgive: Justice in Rwanda



Billboards in Kigale call people to take part in the Gacaca courts. "If you tell the truth you can be forgiven or the punishment is reduced."

Credit: IRIN

Rwanda is a country that has become synonymous with genocide. The figure given by the current Rwandan government is that one million Tutsis and moderate Hutus were slaughtered in the 100 days between April and July 1994. Twelve years on, the country is dealing with the legacy.

The capital, Kigali, bears all the hallmarks of a poor country being patronised by richer nations. Roads have been built in the capital and to every major urban settlement with donor funds. Shiny four-wheel-drive vehicles, driven by foreign aid workers, cruise along the freshly tarmac-ed streets. The collective guilt of an international community that stood by and failed to act in the face of such an atrocity is almost palpable. But there is a question as to whether these efforts are helping a country deal with its past.

The efforts to help the country come to terms with the effects of the genocide occur daily. Different NGOs have set up programmes to provide assistance to those traumatised and to promote dialogue in the communities. Assistance and anti-retro viral drugs are given to those with HIV/AIDS (which spreads rapidly after a genocide), as well as to victims of rape. The quest for justice is also a major consideration when dealing with the past.

### Justice for the community, by the community

The genocide is officially remembered every year on 7 April, the date that the Interahamwe set up road-blocks around the country and began what they termed their "public work" of exterminating an ethnic group. Purple bunting hangs from public buildings, flags fly at half-mast, and the newspapers are full of government messages stating "Never Again". The image is of a country united in its grief and horror at the events of the past; of people remembering their dead, in the same way as other countries mourn those lost in a war. The emphasis seems to be on recognition, healing and justice.

The genocide in Rwanda is most notorious for the rate at which killing occurred; a rate which far oustrips even the Holocaust. The high rate of killing was made possible as Hutus murdered their neighbours with machetes.

Despite the number of people involved, the Rwandan government has said no to any form of impunity. Often other countries that have experienced widespread atrocities have chosen to prosecute the main instigators but not prosecute the ordinary people. However, Rwanda has declared that justice must be done at all levels.

After preliminary investigations were concluded, it was estimated that 100,000 people would need to be prosecuted. As Caroline Stainier, of Avocats Sans Frontières, points out: "No ordinary courts could digest that quantity and give them a fair trial in a decent amount of time", much less courts emerging from a society ravaged by genocide and exodus. The gacaca procedure was chosen as the best alternative to the problem.

Gacaca literally means grass, but also refers to a traditional justice procedure in Rwandan society. Local-level courts that were traditionally used by village communities would gather on a patch of grass to resolve conflicts - usually between families - using the head of each household as a judge. Faced with the dilemma of wanting to reject impunity, yet aware that the ordinary courts could not handle the number of trials required, the Rwandan government introduced the "gacaca process". The law provided for gacaca courts to be set up throughout Rwanda to try certain cases relating to genocide.

The gacaca courts are able to retain most of their traditional elements; they are essentially community courts, run by members of the community with no legal background. There are nine Inyangamugayo, literally meaning 'people of integrity', who are elected by the people in the community to serve as judges. They receive one week of training on the gacaca law and process. They are not paid, although they receive some minor benefits from the state. There is no official prosecutor and no counsel for the defence. The gacaca courts are supposed to be held one day a week, and the entire community is obliged to attend.

### Quotes

"Rwandans often speak of a million deaths, and they may be right. The dead of Rwanda accumulated at nearly three times the rate of Jewish dead during the Holocaust. It was the most efficient mass killing since the atomic bombings of Hiroshima and Nagasaki".

*from the preface of Philip Gourevitch's book "We Wish To Inform You..."*

The gacaca courts currently only hear what are called Category 2 crimes (murder, physical injury and rape) and Category 3 crimes (theft and other property issues). Category 1 crimes, being those who encouraged or directed the genocide, or organised or perpetrated particularly brutal murders, are heard in the Rwandan courts.

There are currently two levels of gacaca court, although a third has been proposed: the secteur level which has the authority to hear Category 2 crimes, of which there are 1,545; and the cellule level, which has authority to hear Category 3 crimes, of which there will ultimately be approximately 10,000. The investigations are undertaken at the cellule level.

The scale of the undertaking is immense. In March 2002, the pilot phase began at the secteur level (limited to 118 secteurs), out of the total 1,545. These 118 secteurs are the only courts that have to date made final judgments. In January 2005, the process was rolled out at the cellule level across the country, and these are all involved in the information gathering stage.

There are 169,000 gacaca judges in all.

### Diluting justice



Prisoners carry out a dead body from Kigali's central prison, 1995. Tens of thousands of mainly Hutu prisoners were held in poor conditions for years without trial. The under-resourced Rwandan courts were overwhelmed following the genocide.

Credit: IRIN

The gacaca process is revolutionary in that it is a formally drafted, yet at the same time, traditional procedure. Reaction to it has been mixed. Certain observers believe that the gacaca courts do not provide the defendants with any of the protections normally afforded them, and that as a result, rough justice is being handed out.

Benjamin Gumpert, who acts as counsel for the defence of Joseph Mugenzi, a man being tried before the International Criminal Tribunal for Rwanda (ICTR), has said: "I think the idea of people's justice is in theory delightful. However, I think that the Rwandan people are no more likely than any other ordinary people (by that I mean non-lawyers) of being able to conduct complicated trials of genocide. There is little chance of justice in these circumstances."

"I think either you can hold a fair trial or you cannot. But I do not think that you can dilute the principles of justice. There seems to be an element of double standards at play here. You are effectively saying that the manner of trial that we consider appropriate in courts in North America, Europe or other international proceedings does not need to be observed in Africa."

Others are more circumspect. Alison Smith, of the NGO No Peace Without Justice, believes that the gacaca process could form "part of a range of measures to try to bridge the impunity gap". However, she points out that the gacaca process in its current incarnation is: "...not really traditional justice. It is what I would call neo-traditional. By that I mean it has been adapted from what it was, essentially a forum for resolving civil disputes, to one where criminal cases are heard." She also expressed some concern as to whether the courts were fulfilling due process rights of defendants, or even promoting the rule of law.

### Defending gacaca

Those working in the justice system in Rwanda are quick to defend the process, arguing that the critics have not fully understood the procedure. Johnston Busingye, the Secretary General of the Ministry of Justice, underlines that the process has more than one dimension: "Western models of justice are okay in certain contexts. In any case, I do not think there is one agreed model of western justice. Traditional justice is also helpful in specific circumstances like our own where we really needed to address a number of issues not simply an 'eye for an eye' type of justice."

"Gacaca cuts across the whole range of issues that we are looking at: punishment, teaching the public a lesson, reconciliation etc. There are a lot of things which are addressed by traditional justice. It addresses issues of unity, issues of reconciliation, transition itself, getting out of the ugly past and walking to a better future in a society that was divided but is becoming reconciled."

The NGO Avocats Sans Frontieres has been involved both in the training of judges and in monitoring the gacaca process since its inception. Stainier accepts the differences between gacaca and ordinary courts of law, but says: "As an alternative, it should be respected. That does not mean we did not have doubts, and still do."

Their doubts centre on the extent of power in the hands of the judges. "Most judges seem to work with

an enormous amount of goodwill, especially given the size of the task and the fact that they are not paid. But goodwill is not always enough. They often do not have the requisite skills to conduct discussions and ask the right questions. And at the end of the discussions, it is not always clear what has been decided or even why a decision has been taken." This runs counter to fundamental legal principles of fairness and clarity. And yet these judges have the power to imprison people for up to 30 years.

It is the possible amendment to the current gacaca law that is particularly worrisome to Avocats Sans Frontieres and other NGOs at this time. A revised bill was issued in September 2005 that proposed that Category 1 cases should be heard in national gacaca courts, not in ordinary courts as they had been up until then. Avocats Sans Frontieres, along with Penal Reform International, RCN Justice & Democratic and The Danish Centre for Human Rights, have written a letter to the National Service of Gacaca Jurisdictions, the Rwandan body that runs the gacaca process, protesting the new law.

They point out that there are 10,000 people detained on Category 1 charges, who could be liable for the death penalty, and accordingly deserve a full hearing. Between 1997 and 2003, the ordinary courts were judging 1,000 people per year, but since 2003, all activity with respect to genocide trials has stopped. If the motivation for moving the cases to a new national gacaca court is speed, then why there has been no progress on genocide cases since 2003?

### **Quest for compensation: money talks**

The Rwandan government has been talking about compensation, but so far, no money has been forthcoming. The idea of compensating for the loss of family members may seem at some level bizarre or even insensitive. However, the fact is that Rwanda is an extremely poor country and many people support themselves by subsistence farming. In that context, the loss of family can have an economic as well as emotional cost. The theft of property that many Tutsis experienced has also meant that many survivors of the genocide have been left further impoverished.

Stainier, of Avocats Sans Frontieres, notes the effect that this has had on the gacaca process. "The gacaca judges only have the power to order compensation for goods which were stolen or destroyed. This can sometimes lead to trials where the debate focuses more on the theft of a goat, rather than on the children who were killed", said Stainier. Although she adds: "Perhaps that is just because it is more difficult to discuss the loss of loved ones."



The logo of the International Criminal Tribunal for Rwanda based in Arusha, Tanzania. Although successfully convicting dozens of genocide perpetrators the courts have been widely criticised in Rwanda for being expensive, slow and convicting a tiny proportion of those guilty.  
Credit: ITCY

### **Prisoners in pink and the outside threat**

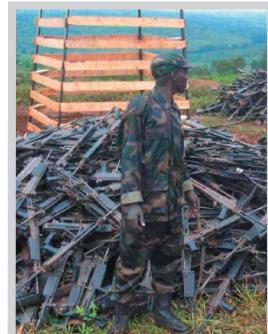
After putting an end to the genocide in 1994, the Rwandan Patriotic Front (RPF) rounded up all those suspected of complicity in the genocide and imprisoned them. Ten thousand in all were captured. The basis on which the suspects were gathered seemed to outside observers to be arbitrary. The journalist, Aidan Hartley, reported that among those accused of genocide, he found "an inmate of seven [years of age] and a paraplegic who had been confined to a wheelchair for 20 years". The prison system could not cope with the numbers being detained, and hundreds of prisoners were crammed into cells designed to accommodate less than a tenth of the number of people. Conditions were dire.

As images of these people rotting in prisons in their standard issue pink pyjamas were broadcast around the world, international outrage heightened. Some thought the conditions, which were like a medieval vision of hell, were an acceptable punishment for those accused of genocide; others thought that prisoners should not be denied the most basic human rights, regardless the crimes of which they were accused. As the government in Kigali pointed out, criticisms from the international community were meaningless unless backed by adequate funding for prison renewal.

The majority of those who were responsible for the worst crimes fled as the RPF advanced. The wealthier fled to sympathetic African or European states; those less privileged headed into neighbouring Zaire, now called the Democratic Republic of Congo. In the summer of 1994, an estimated two million Hutus flooded over the border. There has been ongoing fighting around the border ever since, in what the Rwandan government claims is defensive action against an outside threat, and others have called a counter-genocide.

### **Capacity**

Many of the 100,000 alleged killers detained in 1994 have since been held, awaiting trial. The fact that so many people still wait in prison to have their cases heard, 12 years after the genocide, is a "travesty



Piles of arms left by fleeing Hutu entering DRC at the end of the 100 days of slaughter that left almost one million dead.

Credit: IRIN

of justice" in the words of Benjamin Gumpert. However, Johnston Busingye pointed out: "This was part of our unique situation in that immediately after the genocide the whole country was devastated, including manpower, legal capacity and traditional justice capacity." Some steps have been taken to reduce the problem.

In August 2005, 20,000 prisoners were released by presidential decree. These were people who had confessed to a crime relating to the genocide, and who had already spent longer in prison than their crime merited under Rwandan law. This was the third wave of releases, which began in 2003. The number of genocide suspects in prison fluctuates, as some are released, some have died, and further suspects have been interned as a result of gacaca investigations.

This process of release has had other consequences; some people who were imprisoned for reasons unconnected to the genocide have been coming forward to confess to genocidal crimes on the basis that they might be released earlier. Not all the survivors are pleased with the releases. Even though the former detainees will still have to go through the gacaca process, the victims feel that their liberty before trial is an insult and a rejection of the suffering the victims went through.

### Information gathering

One point that most observers agree upon is that the information collection phase of the gacaca process is a useful tool, not only for uncovering the people responsible for committing various acts, but also because it can provide information as to where some of those murdered have been buried. One woman in a village on the outskirts of Kigali, who has lost her sister as well as other members of her family, recounted how an accused person had confessed to the crime and indicated where her sister was buried, allowing the body to be exhumed and reburied in consecrated ground. The knowledge of where her sister lay let the woman move through the grieving process: "I am at peace now. I can move on."

There have been suggestions that instead of trying to set up traditional courts, a truth and reconciliation commission would have served the same purpose without dividing the community. Information would have been unearthed, and the victims would have had a chance to tell their story, without the rights of defendants being jeopardised.

Since the information collection phase, the estimated number of people who have been accused has swelled to 800,000. As impunity is not tolerated, all these cases will need to be heard.

One NGO worker, who has been monitoring the gacaca process, commented: "The idea of absolutely no impunity is over-ambitious, almost counter-productive. It would have been better to focus on those who were most responsible."

### Quotes

"these traditional forms of justice are not single-issue courts; they have a wider scope and role in terms of keeping society as peaceful as it can be"

*Johnston Busingye -Secretary General of the Ministry of Justice in Rwanda*

### Other choreographers of mass murder



The living and the dead in Rwanda 1994.

Credit: Corinne Dufka

Corinne Dufka, of the NGO Human Rights Watch, draws a contrast between the approach of the Rwandan government and that in Sierra Leone. During the 10-year civil war in Sierra Leone, which ended in 2000, countless atrocities were committed. She agrees that "the profound culture of impunity" that had existed in Sierra Leone needed to be tackled, but does not agree that the correct way to achieve that is by prosecuting every member of the lower ranks: "It is the choreographers of the whole process who most need to be made accountable for their actions."

Sierra Leone also relied to some extent on traditional methods, but only to address the crimes of the lower-level perpetrators. "For years after the war, there were informal procedures going on in communities throughout Sierra Leone in which people would admit their guilt and be cleansed before being accepted back into the community."

However, as Dufka points out, the situations cannot be compared in one fundamental respect: "In Sierra Leone 85 percent of those fighting with the rebel forces had been forcefully abducted. There is a fine line

between victim and perpetrator in those circumstances."

### **Reconciliation: the view from the ground**

Many Rwandans will assert that the country is on the road to some sort of reconciliation. The terms Hutu, Tutsi and Twa are no longer accepted. According to one survivor: "We are all Rwandans now." However, it is not clear how deep the idea of reconciliation cuts.

The words Hutu and Tutsi may not be used, but there is an awareness of which "tribe" people come from, especially in the smaller towns. There is also a certain feeling of paranoia that pervades the country. People are reluctant to voice any criticism. The few who do seem wary and talk of "potential repercussions".

One villager said that he had been imprisoned for three months for missing one gacaca session, despite having submitted a request for his absence. He said that the gacaca was a great idea, but that the president of each court had too much power, which was often abused for personal reasons: "He wants me off my farm, so he sent me to prison for three months."

Others say that the Tutsis, despite being the minority, have all the power and that Hutus are removed from positions of authority. One NGO worker spoke of a gynaecologist in Butare, Dr Pasteur Habaruka, who was commonly believed not to have been involved in any genocidal activity, but who was recently thrown into prison because "they do not like Hutu intellectuals".

Criticising the gacaca process, or even the regime in Rwanda, can have serious consequences. Several NGOs were forced to move out of Rwanda as the government accused them of having "a genocidal ideology". At all levels of government, there is a concern, almost a suspicion, that outsiders may have a desire to downplay the magnitude of the genocide. As Augustin Nkusi, the Director of the Legal Support Unit for the National Service of Gacaca Jurisdictions warns: "Unfortunately in places like Belgium there are a lot of people who try to say that there was not a genocide. They sometimes spread misinformation, also about processes such as the gacaca process. It would be better if they were to return and we could work together to build a future in peace."

It is hard to disentangle the complex webs of suspicion and distrust to find the 'truth' of what is going on in Rwanda. Reaction to the current events there differs hugely depending on who is being asked. Some have expressed their concerns by escaping. In 2005, after the gacaca process was rolled out at the cellule level across the country, according to the NGO Refugees International, approximately 10,000 Hutus fled Rwanda to refugee camps in Burundi, claiming that they feared reprisals in the gacaca courts.



Theoneste Bagosora was Director of the Cabinet in the Ministry of Defence and a high-ranking officer of the Rwandan Armed Forces during the Rwandan genocide. He is accused of genocide, crimes against humanity and war crimes, and is currently on trial at the International Criminal Tribunal for Rwanda in Arusha, Tanzania.  
Credit: TrialWatch

Yet the gacaca process has had some proponents, although their number does seem to be dwindling with the prospect of the introduction of a new law. At the least, Rwandans do feel that the gacaca process is relevant to them and part of their lives; whereas the ICTR is a remote entity about which they know and care little about. The fact that the ICTR has to date, 12 years after it was set up, only convicted 24 people, of whom eight are still appealing their convictions, does not enhance its image.

The gacaca courts were set up to provide a zero tolerance approach to impunity for anyone who was involved, no matter how small the involvement, in the genocide. They were also meant to commence the process of healing a divided society, but many feel that the courts are actually deepening divides. As Stainier replied to a question about the link between justice and reconciliation: "Sometimes I think too much is expected from justice. Justice does not equate to reconciliation. A fair justice is only one step on the road towards reconciliation, which is something organic, something which cannot be decreed."

## RAPE: Zero tolerance under international law



Two Bosnian soldiers comfort a stunned Muslim woman in Bosnia in 1993. Those with her claimed she had been raped by Serbian troops some moments earlier. Tens of thousands of women were raped by Serb forces during the conflict.

Credit: Anthony Loyd

"If you looked, you could see the evidence, even in the whitened skeletons. The legs bent and apart. A broken bottle, a rough branch, even a knife between them. Where the bodies were fresh, we saw what must have been semen pooled on and near the dead women and girls. There was always a lot of blood. Some male corpses had their genitals cut off, but many women and young girls had their breasts chopped off and their genitals crudely cut apart. They died in a position of total vulnerability, flat on their backs, with their legs bent and knees wide apart. It was the expressions on their dead faces that assaulted me the most, a frieze of shock, pain and humiliation."

The extract is from *Shake Hands with the Devil*, by Lt. Gen. Romeo Dallaire, Force Commander of the UN Assistance Mission to Rwanda, 1993-94.

The statistics that have emerged from recent conflicts give an indication of the extent of violent sexual abuse in warfare. Of a sample of Rwandan women surveyed in 1999, 39 percent reported being raped during the 1994 genocide. Seventy-two percent said they knew someone who had been raped. An estimated 23- to 45-thousand Kosovar Albanian women were believed to have been raped between August 1998 and August 1999.

Evidence collected in the last decade reveals the use of rape as a method of oppression in wars all around the world, ranging from the Democratic Republic of Congo to Chechnya, Bosnia, East Timor, Sierra Leone and Colombia. Its use as a form of torture has also been documented, revealing the lengths gone to in order to achieve the sexual degradation of those being interrogated: one torture chamber in General Pinochet's Chile had a dog trained to perform sexual acts upon female detainees.

The sexual violation and torture of civilian women and girls during periods of armed conflict has until recently been ignored. Recent efforts to collect data on the issue have revealed the extent and extreme brutality of this violence against women. Some argue that the statistics are only now bringing to light the size of a problem that has always existed; others that the very nature of warfare is changing, and there is a new emphasis on rape and sexual abuse in the conduct of war.

Against this background, there have been great leaps forward in the past decade in recognising rape, not only as a crime under international law, but also as a deliberate weapon of war.

### Rapists at the ICTY

The following text is an extract from one of the indictments of Dragoljub Kunarac and Radimir Kovac before the International Criminal Tribunal of the former Yugoslavia (ICTY). The names given in the indictment have been changed to Woman 1 and Woman 2.

"Dragoljub Kunarac took Woman 1 and Woman 2 several times to his headquarters .... On or around 16 July 1992, Dragoljub Kunarac, together with his deputy [nick-named] "Gaga" took Woman 1 and Woman 2 to this house for the first time. When they arrived at the headquarters, a group of soldiers were waiting. Dragoljub Kunarac took Woman 2 to a separate room and raped her, while Woman 1 was left behind together with the other soldiers. For about 3 hours, Woman 1 was gang-raped by at least 15 soldiers (vaginal and anal penetration, and fellatio). They sexually abused her in all possible ways. On other occasions in the headquarters, one to three soldiers, in turn, raped her."

This is just one example of the widespread sexual violence which occurred in the town of Foca, which was overrun by Serb forces in April 1992. The Serb forces rounded up some women and children from the Foca region and took them to sports halls or schools which served as detention centres. There they were repeatedly raped. Some women testified that they had been raped so many times that they were consequently unable to assess with precision the number of times they had been raped. Others were sold or rented. Girls as young as 12 years were taken.

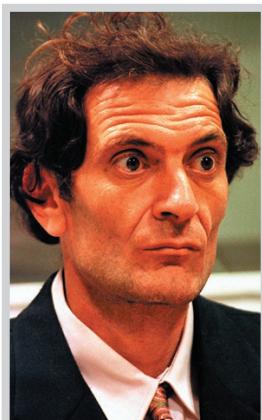
In another indictment, Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, were accused of the abuse

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"As a human rights issue, the effort to end violence against women becomes a government's obligation, not just a good idea."

*Charlotte Bunch*

of women at what was effectively a rape camp in the Foca High School. Kunarac was the commander of a special reconnaissance unit of the Bosnian Serb army in Foca. All three defendants were accused of crimes against humanity and violations of the laws and customs of war. Specifically, Kunarac was charged with rape, enslavement and torture, and committing outrages upon personal dignity; Kovac was charged with rape, enslavement and committing outrages upon personal dignity; and Vukovic was charged with torture and rape.



Bosnian Serb rapist Dragoljub Kunarac pleading guilty to rape at the ICTY in 1998. During these trials, in a landmark ruling, rape was, for the first time, officially recognised as a war crime.  
Credit: Jerry Lampen/AFP

In 2001, Kunarac, Kovac and Vukovic were found guilty of war crimes and crimes against humanity for acts that the presiding judge described as "a nightmarish scheme of sexual exploitation". She commented that the defendants: "thrived in the dark atmosphere of the dehumanisation of those believed to be enemies."

This is not the first example of the successful prosecution of rape under international law, but it was a landmark decision which developed international law pertaining to sexual violence and enslavement. It expanded the definition of crimes against humanity and applied war crimes standards to the acts of rape and sexual enslavement.

It also clarified the definition of rape. The Trial Chamber defined the act of the crime of rape in international law as: "The sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances." It also defined the necessary intent as the intention to effect this sexual penetration and the knowledge that this occurs without the consent of the victim.

The defendants appealed the decision. Kovac in particular contended that the definition of rape required continuous or genuine resistance to provide notice to the perpetrator that the sexual intercourse was unwelcome. He argued that: "Resistance must be real throughout the duration of the sexual intercourse because otherwise it may be concluded that the alleged victim consented to the sexual intercourse." He argued that such resistance had been lacking in the women who had been detained.

The appeal was denied. Kunarac received a sentence of 28 years, Kovac 20 years and Vukovic 12 years. Kunarac has been transferred to a prison in Germany, where he is serving his time; the other two are in prisons in Norway.

### **The Geneva Convention and rape**

The prosecution for rape under international law is a recent development. Neither the Nuremberg nor Tokyo Trials addressed the issue of rape in war. However, they did issue convictions on the basis of enslavement, which the ICTY subsequently expanded to include sexual enslavement. This allowed the ICTY to give a ruling that enslavement, and consequently sexual enslavement, had become established parts of customary international law.

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War came into force in October 1950. It was the first international law to state that: "Women shall be especially protected from any attack upon their honour, in particular against rape, enforced prostitution, or any form of indecent assault."

Article 3 of this convention, which is also found in the three other Geneva Conventions, and so is often referred to as Common Article 3, lists prohibited acts which include:

Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; and  
Outrages upon personal dignity, in particular humiliating and degrading treatment.

The ICTY ruled that the cases of rape in Foca constituted an outrage upon personal dignity, and thus a war crime. They also constituted crimes against humanity pursuant to Article 5 of the ICTY enabling statute. Article 5 specifically states that the tribunal shall have the power to prosecute persons responsible



Former abductees recently freed or escaped from the Lord's Resistance Army in Uganda. These girls would have been forced to work for the LRA as well as be sex-slaves and/or commanders' 'wives'. Many became pregnant and bore the children of their captors creating huge problems as they return to their communities.  
Credit: Sven Torfinn/IRIN

for certain crimes committed during armed conflict, when they are directed against a civilian population, including rape, torture and enslavement.

The tribunal held that the actions committed by Kunarac and others were systematic attacks upon Bosnian Muslim women in Foca, and that they were intentionally directed against a civilian population.

The tribunal found that the accused: "...knew that one of the main purposes of that campaign was to drive the Muslims out of the region. They knew that one way to achieve this was to terrorise the Muslim civilian population in a manner that would make it impossible for them ever to return. They also knew of the general pattern of crimes, especially of detaining women and girls in different locations where they would be raped.

### Rape, Genocide and the ICTR



Julie sits with her baby; a child of rape by a neighbour while she was living as a displaced person, with her mother, having fled the violence in Colombia. No charges were pressed against the perpetrator – the police declined to investigate.  
Credit: Jennifer Szymaszek

The International Criminal Tribunal for Rwanda (ICTR) was set up one year after the ICTY, in 1994. In a case that preceded the Kunarac case, the ICTR in 1998 convicted Jean-Paul Akayesu of genocide and crimes against humanity for his role in raping Tutsi women and encouraging others to rape Tutsi women.

Akayesu was the mayor of Taba, a small Rwandan village. He was charged with facilitating the commission of sexual violence, beatings and murders by allowing the sexual violence and beatings and murders to take place at the mayor's offices. By virtue of his presence during the commission of the sexual violence, beatings and murders, and by his failure to prevent these acts, Akayesu was charged with encouraging these activities.

According to witness testimony, Akayesu incited men to rape with the words: "Don't ever complain again that you don't know what a Tutsi woman tastes like."

The Akayesu case is a landmark decision. It was the first time that rape was legally found to be both a form of genocide and a crime against humanity. One sign of how dramatic the Akayesu judgment is in terms of international law is that, despite documentation of the widespread rape during the genocide in general and in his commune in particular, the charges of rape were only added to the Akayesu indictment mid-trial, following concerted pressure by NGOs.

The Trial Chamber was satisfied that the systematic sexual violations wreaked upon Tutsi women were done with genocidal intent. Many of the rapes were committed next to mass graves so that the women could be violated, mutilated, killed and then dumped in the pre-prepared graves. The judgment declared: "Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole."

Akayesu was found guilty on the basis of violation of: Common Article 3 of the Geneva Conventions; Article 2 of the enabling statute of the ICTR which echoed the Convention for the Prevention and Repression of the Crime of Genocide; and Article 3 of the enabling statute of the ICTR, under which an act constituting a crime against humanity must be committed as part of a widespread or systematic attack directed against a civilian population on discriminatory grounds.

While previously rape was accepted as an unpleasant, but fairly inevitable, side effect of conflict, this is no longer the case. In recent years the law on sexual violence as an international humanitarian crime has developed at a startling pace. By virtue of a combination of statutory law and case law, rape can now be considered as a form of genocide, a war crime and a crime against humanity. The act of rape itself can qualify as torture.

### Other cases

Only two cases have been mentioned here, but the cases of Hazim Delic, Anto Furundzija, Zdravko Mucic before the ICTY have all contributed to the development of sexual violence in international law. Delic, in the case known as the Celebici case after the name of the prison camp where

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"While I was still standing up he was taking off my shirt, and then he pushed me to the ground. I felt so much pain when he raped me. He just left me there."

(11-year-old girl in Democratic Republic of Congo)

### Quotes

"States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women..."

*Declaration on the Elimination of Violence Against Women, proclaimed by General Assembly resolution 48/104 of 20 December 1993, paragraph 4*

the acts took place, was found guilty of torture for the rapes he committed. Mucic, in the same case, was found guilty for the command responsibility of rape. It was held that rape by his subordinates in the camp was so widespread and notorious that he must have known about them. Furundzija was found guilty of violating the laws of war. While he was interrogating a Bosnian Muslim woman the woman was orally and vaginally raped by his subordinate.

**Further and more detailed information is available on these topics at:**

The official website of the ICTY: <http://www.un.org/icty>

The official website of the ICTR: <http://www.un.org/ictr>

Human Rights Watch: <http://www.hrw.org>

Amnesty International: <http://www.amnesty.org>

The Vanderbilt Journal of Transnational Law "The prosecution of rape under international law" by James R McHenry III: <http://law.vanderbilt.edu/journal/35-04/McHenry.pdf>

## 2. Frontlines - ARGENTINA: Justice, impunity and the 'dirty war'



Portraits depicting Argentina's military junta members, top officers and ministers directly involved in the country's "dirty war" 1976-1983. Thousands were kidnapped and never seen again; prisons overflowed with so-called political prisoners, torture was common and there were no trials or even pretense of legal processes.

Credit: IRIN

Thirty years after Argentina's last military dictatorship seized power, the country remains divided on whether justice has truly been done.

Known for their English-cut suits and commitment to "western Christian civilization", behind the scenes, General Jorge Rafael Videla and his fellow military leaders oversaw a regime of clandestine kidnappings, torture and murder.

Human rights groups estimate that as many as 30,000 Argentinians were 'disappeared' during their bloody regime, which ran from 1976 to 1983. However, official figures put the figure closer to 9,000. The victims of the so-called 'dirty war' ranged from left-wing guerillas to student activists or trade unionists.

Once democracy was restored in 1983, the commanders of the military dictatorship were put on trial for a series of human rights

atrocities carried out during the junta's seven-year regime. General Videla and fellow junta member Emilio Massera were sentenced to life imprisonment. Seven other ex-commanders received sentences of between four and 17 years.

Other military officials were also brought to justice, helped in large part by the government-backed National Commission for Forced Disappearances. In total, around 450 torturers and enforcers received prison sentences.

But towards the end of 1986, the government of President Raul Alfonsin determined it was time for the country to move on. Under the Full Stop Law (Law No. 23,492), prosecutors were given two months to bring cases against members of the military. After that period, any new case was ruled inadmissible.

Junior officers and other security personnel received additional judicial protection under the 1987 Law of Due Obedience (Law No. 23,521). The legislation confirmed the constitutional validity of those that claimed they were only acting under orders.

In 1990, Alfonsin's successor, Carlos Menem, used similar arguments of national reconciliation in order to issue Videla and his fellow junta members with pardons. At the time, the amnesty divided the nation between those who believed such a move was necessary for Argentina to move on, and those who saw it as an aberration of legal due process.

"The amnesty under Alfonsin was understandable. The democratic system was still fragile. He was looking to strike a balance that would keep democracy alive," said 55-year-old businessman, Alfonso Bustamante.

"But what Menem did wasn't at all necessary. They [the military junta] had already been condemned. It was just a cynical political move on his part to win the support of those who backed them, especially those in the economic classes."

Support for Menem has shrunk drastically over the last fifteen years, especially since the country's 2001 economic crisis (a phenomenon many blame of the former president's policies). Few today agree that the pardons were the right decision, although many will admit off the record that it was the right decision at the time.

Behind some of this unspoken defence of judicial impunity lies some residual support for the military dictatorship. For example, in the run-up to the thirtieth anniversary of the 1976 coup, a spate of pro-dictatorship graffiti appeared in Santa Fe, a city in the more conservative interior of Argentina.

"The country was a mess before the military. I think it right that they clamped down on the Montoneros [a radical left-wing guerilla group active in the 1970s]. What I think was wrong was that they did it in secret," says Patricia, a mother of two and Sunday-school teacher from Greater Buenos Aires province.

Since the end of the Menem years (1989-1999), the mood of political opinion has swung back in favour of a judicial solution to past human rights abuses. In 1999, a Federal Court reopened cases against Videla and Massera for the kidnapping of children born to political dissidents.

The prosecution argued that as crimes against humanity, both international law and the Argentinian court rendered the previous amnesties illegal.

The same court officially declared the Full Stop and Due Obedience laws null and void in 2001, when Argentinian judge Gabriel Cavallo sentenced two policemen for the 'disappearance' of a Chilean-Argentinian couple. The ruling was supported by Congress in a 2003 bill, and upheld by the Argentinian Supreme Court in June 2005.

"The Supreme Court's ruling shows that no matter how many years go by, laws that block justice for gross abuses of human rights remain a thorn in the side of democratic governments," commented Jose Miguel Vivanco, Americas director of Human Rights Watch, the US-based campaign group.

The families and relatives of those 'disappeared' during the 'dirty war' also welcomed the Court's decision. Estela Carlotto, president of the Grandmothers of the Plaza de Mayo, one of the most vocal opponents of the amnesty laws, described it as a vindication for their 25-year campaign for justice.

"The laws created an impunity which has afflicted us for years," 76-year-old Carlotto told reporters. "We have had to live with these thieves and assassins walking freely among us."

For the first time since the end of the military dictatorship, human rights activists have the ear of the ruling administration. The repeal of the 1980s amnesty laws was one of the first actions taken by centre-left president Nestor Kirchner after coming to power in May 2003.

More recently, the president has pushed forward plans to turn the Naval Mechanics School in Buenos Aires - one of the military's most notorious torture centres – into an official museum of memory. The Kirchner administration has also agreed to mark 24 March – the date of the 1976 coup that brought Videla's junta to power – as a 'National Day of memory, truth and justice'.

Young Argentinians, many of whom have become politicised by the country's 2001-2002 political and economic crisis, are generally sympathetic to the country's ongoing search for justice.

"There ought to be fair and objective justice met out to those who committed these terrible crimes," says Diego Frontera, an actor in his late twenties. "I'd also like to see a deeper investigation into those business interests who helped fund the military forces."

But not all Argentinians back the return to a debate they would rather consign to history. Among the most vociferous critics is the Catholic Church, which still holds a powerful sway on public opinion, despite losing some influence for its perceived association with the military regime.

One archbishop, for example, went on record as saying the proposed museum was "created out of a morbid need to return to the past because of an inability to deal with the future". Another argued that President Kirchner's pro-justice stance only served to "divide society up into the pure and the impure".

Split as public opinion may be, the issue of the 'dirty war' shows no signs of going away. News of exhumed bodies or the identification of former torture centres regularly appear in the nation's press.

The media gave wide coverage, for example, to last year's discovery of Azucena Villaflor's remains. A founding member of the campaign group, Mothers of the Plaza de Mayo, Villaflor was arrested in December 1977. She is believed to have died after being thrown out of a military plane into the sea.

Last year's repeal of the impunity laws by the Supreme Court, however, has not resulted in the flood of new cases that many predicted. In fact, the majority of recent legal action has come from outside Argentina.

Spain has met with particular success in securing the extradition of several former Argentinian military officials. In April 2005, a Spanish court condemned ex-naval officer Adolfo Scilingo to 640 years in prison for his part in the murder of 17 people during the military dictatorship.

For Dolores Centurion, the question of legal justice against the perpetrators of Argentina's 'dirty war' is important but secondary.



Some of the famous 'mothers of the disappeared' protest group show Argentinean President Nestor Kirchner portraits of their lost sons. For nearly three decades, these mothers have fought for the right to re-unite with their abducted children.  
Credit: Wikipedia

"What's most important for me is finding where my parents are buried," says the 30-year-old nurse, whose mother and father were killed during the military dictatorship. "Only then will I really be at peace and able to move on with my life."

This report was written by Oliver Balch for IRIN

## BURUNDI: Truth and reconciliation - challenges facing a nation emerging from 12 years of civil war



A Burundian refugee woman quenches her thirst at the Tanzania-Burundi border before beginning the next stage of her journey home. According to Amnesty International, returnees to Burundi face violations of their civil and political rights, including arbitrary detentions and threats from government officials.

Credit: Joel Frushone

The international community is backing an experiment to address four decades of violence in Burundi by creating two distinct but interrelated institutions: a "special court" to bring justice and a "truth commission" to bring reconciliation.

A United Nations mission was in Burundi in March 2006 to negotiate with the government on how exactly the two institutions will function. What has been decided is that both institutions will look into violence that has taken place in Burundi since independence from Belgium in 1962. The country saw ethnic violence in 1965, 1972, 1988, 1991, and 1993 after which a civil war broke out that lasted 12 years.

Hostilities have been mostly between the two main ethnic groups in the country, the Hutus and the Tutsi, with representatives of each group laying responsibility on the other for the many crimes committed.

In a letter to the president of the UN Security Council in 2005, the UN Secretary-General, Kofi Annan, said past UN inquiries into such crimes have been inadequate: "Three United Nations commissions of inquiry have been established in the last decade at the request of the Government of Burundi... No legal or practical effect, however, has been given to any of their recommendations, and no action has been taken by any of the United Nations organs."

The letter is a preamble to a report by a UN assessment mission to Burundi, which states: "The United Nations can no longer engage in establishing commissions of inquiry and disregard their recommendations without seriously undermining the credibility of the Organisation in promoting justice and the rule of law."

The report recommended "the establishment of a twin mechanism: a non-judicial accountability mechanism in the form of a truth commission, and a judicial accountability mechanism in the form of a special chamber within the court system of Burundi".

A truth and reconciliation commission would essentially operate as an auxiliary of the Burundian court system. It would be empowered to hear victim complaints, to summon the people they accuse to appear, and to decide what reparations to allocate. Reconciliation efforts boosted

The March 2006 visit by the UN delegation, led by the Under-Secretary-General for Legal Affairs, Nicolas Michel, was aimed at speeding up efforts to establish the truth and reconciliation commission, as well as the special court. The UN delegation held five-day talks with government officials on the ways and means of setting up these two mechanisms.

"We are mandated to carry out negotiations with involved parties to establish the necessary juridical framework for establishment of a truth and reconciliation commission and a special court," Michel said on arrival in the capital, Bujumbura, on 26 March 2006.

At the end of the consultations, the UN delegation announced it was happy with Burundi's commitment to boost reconciliation and justice. "We are happy the Burundi people and its leaders are engaged in a direction aimed at rendering 'irreversible' the progress towards lasting peace," Michel said. He added that sustainable peace could be achieved only through a combination of truth and reconciliation with justice.

He went on to say that reconciliation and the fight against impunity would have to be a participatory process involving the Burundian people, government and the civil society; this within a participative process.

The UN mission was urged to carry out consultations with political actors, the civil society, and various representatives of the Burundian society in preparation for the setting up of the judiciary and non-judiciary bodies.

### **Government's proposal**

At a meeting with the UN delegation, the Burundian government submitted a 19-page memorandum to the UN mission, detailing its proposals and recommendations on the setting up of the truth and reconciliation commission. The government recommended that the commission be made up of seven members, including four Burundians and three expatriates.

"Members of that commission would be selected by a committee to be appointed by the head of state after consultations with the UN Secretary-General," the document stated. According to the memorandum, the commissioners should "be chosen on the basis of their high moral values, including impartiality and integrity". The head of state would therefore appoint the president, vice-president, the reporter, and members of the commission, after consultations with the UN Secretary-General. The administration of the commission and the support staff would be run by a non-Burundian executive secretary, with a Burundian assistant.

Regarding the special court, Burundian officials discussed with the UN delegation another document containing its proposals. According to the government's proposal, the tribunal "will try people allegedly involved in crimes committed on the Burundian territory since Burundi's independence in 1962, until the date of the setting up of the truth and reconciliation commission". A person who is prosecuted by a local court can also be summoned to the special court. Before passing sentence, the special tribunal will have to take into account any previous convictions. A foreigner will chair it, with three Burundian vice-chairpersons. The special court will have three branches: in Bujumbura, the central province of Gitega, and the northern province of Ngozi.

The government proposed that in consultation with the UN Secretary-General, the Burundian president would appoint the tribunal's chairperson, the vice-chairpersons and its judges. The court's managing staff will be appointed for a three-year term. The court and the truth and reconciliation commission will then collaborate with other states while seeking witnesses to testify in its trials. The status of the court's staff is the same as that of UN workers.

The government's memorandum attempted to address the issue of time limits for the two institutions. Initially, it was stated in the Arusha peace accord that the special court would deal with cases ranging from crimes committed since independence, to the date of the signing of the Arusha peace accord (28 August 2000). Civil society officials and politicians had raised concern that major crimes committed after the signing of the peace deal would, therefore, not be taken into account. Indeed, by proposing that both mechanisms be included in the Burundi justice system, the UN mission of May 2005 maintained the spirit of the Arusha accord instead of unilaterally applying it.

### **Objectivity**

However, Burundi's opposition leaders have questioned the proposed bodies' objectivity. The truth and reconciliation commission "should comprise only members of the civil society in order to prevent endless misunderstanding among politicians," said Leonce Ngendakumana, a former speaker of the National Assembly, who is also the leader of the main pro-Hutu political party, the Front pour la democratie au Burundi (FRODEBU).

The opposition leader said although they supported the creation of the two bodies, they were unhappy

that they had been excluded from negotiations, thus giving undue influence to the former rebel-group-turned-ruling party, the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD).

A government official, who requested anonymity, said negotiations with opposition parties would take place once the government and the UN concludes talks on the two mechanisms.

Aloys Rubuka, the head of the second main opposition party in the country, the pro-Tutsi Union pour le progrès national (UPRONA), said the international personnel should outnumber Burundians in the two mechanisms. However, the government wants the truth and reconciliation commission to consist of four Burundians and only three expatriates to ensure "national appropriation of the reconciliation process", according to the official who declined to be named. At the end of their March 2006 visit, the UN officials and the government agreed to continue consultations on the setting up of the commission and the special court.

### **Whose justice and accountability?**

Often, extremist Hutus and Tutsis blame each other's community for the atrocities that have taken place in the country since independence. They claim that true justice should be the one that punishes the other ethnic group.

A Burundian lawyer and legal consultant, Francois Nyamoya, says the justice being sought is "justice for victims of the violence or their parents". But civil rights activist Jean-Marie Kavumbagu, the leader of the Iteka Human rights league and communication officer of the Ligue des Droits de la personne dans la région des Grands Lacs, is of the opinion that the justice being sought is also "justice for the entire country".

Kavumbagu said such a justice would restore trust from the international community and attract foreign investment into the country. Accountability for crimes that have taken place in Burundi is often blamed on the country's leadership. Amani Jean-Pierre, a lawyer, said the executive and the judiciary are mostly responsible for the "evils that devastated" Burundi, leaving hundreds of thousands dead and even more displaced. "In the past, police and the army, instruments of the executive, perpetrated a major part of the crimes," he said.

According to Kavumbagu, the crimes can be ascribed to "both the rulers and the various rebellions whose confrontation provoked unspoken killings". Meanwhile, Justice Minister, Clotilde Niragira, has indicated that justice would also be done to the victims or their families through a system of "compensation". She said even persons who had not been jailed, despite being found guilty of crimes, would also face justice.

However, there have been claims of manipulation regarding the time limits for the proposed truth and reconciliation commission and the special court. The law on the repression of genocide, crimes against humanity and war crimes of May 2003 stated that related investigations would bear on crimes committed from independence until the day the law is promulgated.

### **Ethnicity, hope and scepticism**

All is not lost. There are prospects for a sustainable reconciliation among Burundians. According to Amani, there is now "real communication" between all ethnic groups. "People now interact; Hutus and Tutsis do not perceive each other as enemies any more, as the political mood is clean," he said. The significant reduction in problems bedevilling the justice and security sectors, which have brought about a sense of power sharing, constitute hope for the long-awaited social stability and togetherness, Amani said.

Efforts to revamp the country's judicial system have seen Hutus being included in nominations for key judicial positions made in early March 2006 by President Pierre Nkurunziza. A Hutu magistrate was appointed deputy president of the Supreme Court. "It is the first time since 1972 that a Hutu is holding such a high post," Amani said, analysing the ethnic composition of the appointments in the justice sector.

"There seems to be ethnic balance in the appointments," Capitoline Sabugoga, the private secretary at the Ministry of Good Governance, said. "The Hutus who had been complaining of marginalisation in the top management of justice have been appointed to higher posts."



Burundian Justice Minister, Clotilde Niragira, told IRIN that victims of the atrocities taken place in the country since independence will be helped through a system of "compensation".  
Credit: IRIN

Amani said that at least 40 percent of the newly appointed magistrates are Hutus. "It is difficult, however, to attain total balance as not many Hutus attended higher law education," he said.

The appointments served to rejuvenate the justice leadership as, according to Sabugoga, the magistrates who have been replaced had served since at least 1998. Another feature of the appointments is that they are gender-sensitive. The president of the association of women magistrates, Marjolie Niyungeko, praised the appointment of women to key positions such as that of president of the Supreme Court. "I salute the president for having nominated women to higher posts. It is a sign that women are now allowed access to important positions and that they can perform better than men," she said.

However, Niyungeko said the appointments did not reach the 30 percent representation in government institutions for which women had advocated. Kavumbagu said the remaining challenge is to see if the new appointees will perform as expected.

### **Political prisoners**

Another move by the Burundian government to promote reconciliation and justice, is the release of at least 3,000 political prisoners since January 2006. Justice Minister Niragira said the provisional release was for prisoners who had been incarcerated in connection with the killing of President Melchior Ndadaye in 1993 and the violence that followed. Most of these people were Tutsis but there were also others - mostly Hutu - who allegedly took part in the military coup of 1993 in which President Ndadaye was killed, and those who have been blamed for the killing of the Tutsis after the coup.

"They will be granted provisional immunity as they have been freed temporarily," Niragira said. She said their cases would be taken before the truth and reconciliation commission once it is formed. Selection for provisional release was based on the Penal Code description of political crimes. Those who committed common law offences such as rape were not released.

However, Burundian leaders remain divided over the definition of a political prisoner. Pierre Claver Mbonimpa, the leader of the Association pour la promotion des droits humains, said the commission, mandated to compile a list of political prisoners, should have clearly defined the criteria for qualification as a political detainee.

Dimede Rutamucero, the leader of a former pro-Tutsi militia group known as Puissance d'Auto defense Amasekanya, said the prisoners' release was tantamount to a return to the days of "impunity and the genocide of the Tutsis".

UPRONA leader, Aloys Rubuka, said people should trust the judiciary and the commission mandated to inquire into political crimes, while FRODEBU leader Leone Ngendakumana, said he was satisfied with the release of the prisoners. However, he expressed concern that the decision to release them had to have parliamentary approval. "I am worried that there may have remained other political prisoners in prison," he said, adding that the prisoners suspected of backing Agathon Rwasa's Forces nationales de libération (FNL) should also be released. The FNL is Burundi's only rebel group that is still active; the others have since joined the government and transformed into political parties.

Venant Bamboneyeho, the leader of the anti-genocide organisation known as Accord-Cadre (AC-Genocide-Cirimoso), opposed the release of prisoners and called on the UN to order a stop to the release in order "to bring first the prisoners before justice". He is not opposed to pardon as, he says, "justice is not always punishment".

According to lawyer Francois Nyamoya, the release of some political prisoners posed a disturbance, especially for cases which were at a stage of compensation. "Families of victims lost their time and energy," he said.

The leader of the Centre National d'Alerte pour la Prevention des Conflicts (CENAP- the National Centre for Prevention of Conflicts), Charles Ndayiziga, does believe that the release of political prisoners would wake up dormant ethnic antagonisms and revenge against those who accused them. "The release of CNDD-FDD political prisoners in June 2004 did not create any particular problem. They were jailed or condemned for acts whose political and military masterminds had already received amnesty for," he said.

However, he said the release of prisoners who had been sentenced for such crimes could be considered by some as "a political de-penalisation, reinforcing the idea of repeating the acts in case of a new conflict".

## Lobbying by human rights groups

Already, several organisations, including the human rights league, Iteka, the Observatoire de l'Action Gouvernementale (OAG), and the Forum de Reinforcement de la Societe Civile (FORSC) - which gathers tens of local civil organisations including the Confederation of Burundian Trade Unions - have already lodged a case before the constitutional court seeking the monitoring of the political prisoner release. "We agree with a principle to release real political prisoners. We, however, oppose the process in which the release was carried out," Kavumbagu said.

To Kavumbagu, the prisoners who had been sentenced to death or life imprisonment should not have been released. "Those who had not been sentenced should have been the ones released," he said. He added that describing as 'political prisoners' those who committed blood-related crimes (war crimes, crimes against humanity and others that provoked bloodshed) as an apology to impunity. "The FNL and other criminals can shed blood and claim release, considering themselves political prisoners," he said, adding that it is a dangerous precedent for society, as his human rights group had already recorded cases of some of the released political prisoners threatening their victims' families, especially in eastern province of Karuzi.

Francois Nyamoya, the lawyer who took the civil organisations' appeal to the constitutional court, said the ministerial ordinance, under which the political prisoners were released, violated the constitution that states that laws are passed by the parliament. "Laws are voted in by the parliament and promulgated by the president, which was not done in the case of the recent release of political prisoners," he said.

According to the lawyer, there remains the problem of the separation of powers and political interference in justice issues. He said that the releases on bail and presidential pardons could have been applied, instead of carrying out "random" releases. Reacting to the civil societies' appeal to the constitutional court, Justice Minister Niragira said these organisations have the right to appeal, but she stressed the necessity of checking whether the constitutional court was entitled to receive a complaint from such organisations.

## Reforms

Regarding reforms in the justice institution, several laws have been passed. They include a law on the repression of the crime of genocide, crimes against humanity and war crimes dating from May 2003. It provides for suits and prosecutions by an international judiciary inquiry commission and an international tribunal for Burundi.



South African peacekeeping troops in Burundi.

Credit: IRIN

In September 2003, a law was introduced on the mission, composition, organisation, and function of a national observatory for prevention and eradication of genocide, war crimes, crimes against humanity and exclusion. The law states that the observatory is a rapid response mechanism that serves to draw the public's attention to potential conflict. It is a body that monitors situations likely to lead to interethnic violence. The body is also charged with preventing the recurrence of genocidal acts, crimes against humanity and impunity.

Another law, passed in September 2003, is aimed at speeding up appeal hearings by decentralising penal jurisdiction. It also introduced the right of appeal and redressed ethnic imbalance in those courts, with the promotion of 70 Hutus to posts.

One more law, from June 2003, concerns the organisation and functioning of the high magistrates' council. The members of this council were appointed in early March 2006. Niragira said the council will "supervise the justice administration and guarantee independence for the magistrate". For the first time, magistrates appointed half of the council's members. Previously, the president of the republic appointed all the members.

Provisional immunity and amnesty are unprecedented tools for reconciliation. The Government-CNDD Pretoria protocol on power sharing of 2003 - signed between the then rebel CNDD-FDD and the transitional government that was led by President Dominique Ndayizeye - the Arusha peace agreement, signed in August 2000, and a law on provisional immunity, provided amnesty for political leaders returning from exile. Therefore, such leaders cannot be charged for political crimes. Amnesty has been granted to combatants of political parties and movement supporters for crimes committed during their involvement in the Burundian conflicts, before the signing of the Arusha accord, in genocide crimes, war crimes and crimes against humanity as well as participation in coup attempts.

Indeed, reconciliation and truth establishment form the pillars of peace in Burundi. "Recognition of the

wrongs and the crimes committed and eventual pardon for them are fundamental," Kavumbagu said. On his part, Nyamoya said truth and reconciliation would only be necessary if it helped unearth the whole truth.

### Challenges

Challenges abound for justice in Burundi. A report by a UN mission to the country in 2005 criticised judicial reforms as being "incomplete and carried out late". The report also said that no steps to implement some of the reforms has been taken into account, making the reforms purely theoretical. The report singled out lack of required materials, logistics, and infrastructure building.

Magistrates have highlighted this problem. In March 2006, magistrates complained at a meeting with the first vice-president in Gitega Province, that problems such as lack of transportation contributed to delays in prosecution. They said their low salaries were at the root of often-reported cases of bias.

The UN mission report also pointed out insufficient human resources in the justice sector. Most judicial officers are poorly paid. The low pay is also claimed to be the cause of corruption among some judicial officials, and is also responsible for the departure of magistrates for better-paid jobs in organisations such as NGOs and the UN system.

According to the UN report, laws are published late in the state journal and in French, while many Burundians only speak Kirundi, the national language. Burundian magistrates also lack the required judicial skills, as there is no institution to train them. The UN High Commission for Human Rights has been trying to support the judiciary system through an aid programme and the convening of workshops for police, civil and military judges, and penitentiary staff.

The UN report says the Burundian public considers the country's judicial system to be flawed and biased because of the influence exerted on it by the executive and the legislative bodies. "Despite the constitutional statements guaranteeing independence to the magistrates, the latter is seen by the public as being partial, ethnically prejudiced, and client to political powers," the UN mission reported.

The leader of CENAP, Charles Ndayiziga, said in a recent report on challenges for consolidation of peace and democracy that, "Burundi's judicial incapacity should cease by no more relying on the sole police authority." He said the government's failure to implement instruments contained in the Arusha accord was hampering effort to secure lasting peace and reconciliation.

Perpetrators of massacres and other violations of human rights and international humanitarian law have not yet been brought to justice. The UN commission has also noticed that in several instances, the Burundian justice system has been carrying out what it calls 'a two-speed justice'. "While nobody has been prosecuted in connection with the massacre of at least 80,000 Hutu civilians in 1972, massive arrests of Hutu civilians have been carried out with diligence in the aftermath of the coup d'etat of 1993 and massacres that followed," the UN report says.

Realities such as lack of trust and respect for the Burundian justice institutions, failure to protect citizens and to ensure true justice, forced the UN mission to point out the incapacity of the justice administration to tackle such complex issues as genocide, crimes against humanity and war crimes.

Another challenge regarding reconciliation is that it is difficult to adequately compensate victims and survivors of certain crimes. "What is necessary and feasible is [the] easing of the victims' suffering through social solidarity and encouragement, for there is no price for a human life," Nyamoya said.

The UN mission of 2005 noticed that time limits for provisional immunity were theoretical and that political crimes remained "ill-defined" as they were said to be excluding genocide acts, crimes against humanity, and war crimes.

The government's move to expose the alleged authors of human rights offences is not appreciated by everyone. The leader of APRODH considers this a violation of human rights, especially when their files are not yet closed. "Even if persons are not in jail, this does not mean there are not among them [those] who committed offences," he said.

The police spokesman, Pierre Claver Gahungu, said exposing criminals as assassins, rapists, counterfeiters and other offenders can "prevent repetition of such crimes".

Despite efforts to set up the truth and reconciliation commission and the special court, Rwanda's FNL is still

fighting, especially in Bujumbura Rural and Bubanza provinces. Lawyer Amani says Burundians should not wait for total political peace and security to set up the truth commission. For him, "what matters is that moderate persons accept the reconciliation moves".

### No specific reconciliation model

Burundi has no fixed model for reconciliation and justice, as contexts vary from country to country. According to Kavumbagu, truth and pardon will "help avoid generalisation of accusations that victimise even the innocent". He says if truth is established, there will be less manipulation. Kavumbagu added that the idea to seek truth is a favourable asset for reconciliation.

Lawyer Nyamoya does not believe in a model for reconciliation for Burundi. He says it is fundamental "to struggle day and night for a rule of law, and to be creative enough to find adequate mechanisms likely to help settle conflicts". He says Burundi can take a cue from foreign models instead of copying them. "The conflict is ours, and the solutions should be ours too," he said.

Creativeness, according to Nyamoya, is crucial. It would most notably be reflected in the reduction of sentences for those who help in advancing justice by searching for truth. "If prisoners languish in custody, this can undermine society," he said. Collective condemnation is harmful to society as accountability for crimes is individual, Nyamoya said.

However, there are views like those of the CENAP leader, Charles Ndayiziga, that "peace must precede justice and not the reverse". For Ndayiziga, peace must not mask the truth and hide those responsible for the crimes.

Burundians and the international community await the setting up of the truth commission and the special court. If inquiries on truth are made, they should, as lawyer Nyamoya said, "be in the sense of ending impunity instead of provoking reoccurrence of crimes committed in the past".

## CAMBODIA: Trial of Khmer Rouge takes shape after 27 years



Thousands of men, women and children were duly photographed, tortured, their forced confessions transcribed and then killed at S-21, the former school converted into the secret police headquarters. The walls of the school today are covered with the photos of those killed.  
Credit: Archives of the Cambodian Genocide Program

The long-awaited trial in Cambodia for surviving members of the Khmer Rouge (KR) marks a historic event. It will be the first time members of a communist regime have been tried under UN auspices for their actions while in power. This process took a giant step forward on 8 May 2006, when King Norodom Sihanouk approved the official list of Cambodian and foreign judges and prosecutors.

The 17 Cambodians and 13 foreigners will serve on what is officially being called the Extraordinary Chambers in the Courts of Cambodia (ECCC), a joint UN-Cambodian Government-organised trial process that is expected to cost around US \$50m.

Unofficially, the process has already come to be known as the Khmer Rouge Tribunal, or KRT for short.

The Khmer Rouge, led by the infamous Pol Pot, ruled Cambodia from 17 April 1975 until 7 January 1979.

After a bloody civil war from 1970 to 1975, the Khmer Rouge overthrew the US-backed Lon Nol regime and imposed an extreme totalitarian form of communism that led to the executions, starvation and disease of almost two million of the country's population - one of the worst examples of human rights abuses in the history of the twentieth century given the high percentage of the population that was killed.

Urban areas were emptied, people with high school education and above were arrested and killed, religion was banned, all schools were closed, and Cambodia was completely cut off from most of the world.

After repeated cross-border raids against neighbouring Vietnam in 1977 and 1978, the communist government in Hanoi, a former ally of the Khmer Rouge, finally decided to oust the KR and organised a full-scale military invasion of Cambodia in late December 1978. A pro-Vietnamese political system was established in Phnom Penh, led by Heng Samrin, a member of the Khmer Rouge who had previously fled to Vietnam in fear of being killed. Samrin, along with Cambodia's current prime minister, Hun Sen, as well as other Khmer Rouge defectors, formed the Peoples' Republic of Kampuchea (PRK) in January 1979.

With Vietnamese and Soviet Bloc support, the PRK organised a tribunal in 1979, at which Pol Pot and KR deputy prime minister and foreign minister, Ieng Sary, were convicted of genocide in absentia. They were sentenced to death.

Most observers believe that the trial was a politically motivated showpiece, lacking international legal standards. At the time, even the defence lawyer for the KR officials made no attempt to plead their innocence.

Although the KR had been ousted, they remained unbeaten. Pol Pot and his followers fled to the Thai border areas in the west of the country where they were given sanctuary by Thailand.

In one of the strangest combinations of Cold War bedfellows, ASEAN (Association of Southeast Asian Nations), the US and China actually helped revive the Khmer Rouge, along with two other armed Cambodian factions, out of fear that Cambodia would remain occupied by the Vietnamese army.

The 1980s saw a protracted guerilla war between what was called the Coalition Government of Democratic Cambodia (CGDK), which held a seat at the United Nations and included the KR, and the Vietnamese-backed PRK. Thus, any efforts at the time to prosecute the KR leaders were thwarted by political considerations.

Extensive negotiations led to a peace treaty signed in 1991, which resulted in the establishment of the UN Transitional Authority in Cambodia (UNTAC). At the time, it was the UN's largest and most expensive peacekeeping operation, involving the deployment in Cambodia of 26,000 military, police and civilians, and costing about \$2.3bn.

UNTAC organised and supervised elections (which the KR boycotted) in 1993 and which led to the formation of a new, internationally-recognised government - a first in more than 18 years. The KR was left in remote jungle areas, devoid of any major foreign backers.



Khmer Rouge secret police turned this Phnom Penh high school into its headquarters between 1975-78, renamed it 5-21 and tortured and executed thousands in its former classrooms. Today it is a museum to remember the genocide.

Credit: Archives of the Cambodian Genocide Program

At this stage, with Cambodia no longer a pawn in a power chess game, calls were again made for a trial to prosecute Khmer Rouge leaders.

The country's two co-prime ministers, Norodom Ranariddh and Hun Sen, wrote to the UN Secretary-General, Kofi Annan, requesting help to conduct such a trial in 1996.

A prolonged, six-year negotiation process between the UN and the Cambodian government - interrupted by Cambodia's own internal political disturbances and complicated by divergent views on what it would take to conduct an internationally recognised judicial process - resulted in an agreement to create a mixed UN-Cambodian tribunal in Phnom Penh.

That tribunal - the ECCC - is now firmly established with the appointment of the judges and prosecutors.

So what do the Cambodian people think about these tribunals? The short answer is that the response is mixed.

The Center for Social Development (CSD), an NGO with headquarters in Phnom Penh, conducted a series of public enquiries designed to look at the topic "Khmer Rouge and National Reconciliation".

At meetings held in Phnom Penh, Battambang and Sihanoukville, participants were asked in a secret questionnaire: "Which solutions can bring about a true national reconciliation?" Participants were allowed to choose more than one answer, and an overwhelming 84 percent picked: "The former Khmer Rouge

leaders must be tried" as their first answer.

When the CSD meetings took place, it was already clear that the period within which crimes would be examined for the KRT would be limited to the 17 April 1975 to 6 January 1979 period; this in spite of the fact that Cambodia had been engulfed in various forms of civil war from 1970 to 1998.



Former Khmer Rouge general Ta Mok, known as 'The Butcher'. On March 6, 1999 the general was captured by the Cambodian army near the Thai border and brought to Phnom Penh. He was the last leading member of the Khmer Rouge to remain at large in Cambodia.

Credit: Archives of the Cambodian Genocide Program

Accordingly, the CSD also listed the option: "The trial should apply to persons from all regimes both before 1975 and after 1979 and not just to the Khmer Rouge leaders".

More than 56 percent of respondents chose this as their first answer, indicating that substantial segments of the population want something more than what the KRT will provide.

Youk Chhang, a survivor of the Khmer Rouge era, has been working closely with other survivors to help prepare them for the trial. As director of the Documentation Center of Cambodia (DC-Cam), Youk has spent the last decade collecting information on the Khmer Rouge. By the end of this year, DC-Cam will have brought more than 6,000 people who suffered during the Pol Pot regime to Phnom Penh to be acquainted with the trial process.

"The public has benefited from the discussion," said Youk, reflecting on the many years it has taken to get the trial underway. His comments no doubt reflect that with such a high illiteracy rate in Cambodia, and the fact that high school graduates do not study the Khmer Rouge, many people have only scant information on the trial.

"People will use the tribunal in different ways and some have found justice already. They have overcome the fear of their killers," he added.

"As for the \$50m price tag for the trial, only a few people argue it is too much money," says Youk.

One of those people is Cheng Eam, 53, from Kampot province. As one of the participants that DC-Cam brought to Phnom Penh to learn about the trial, Eam said the trial would be worthless and that the money should be spent on building houses.

In spite of the various opinions on the Khmer Rouge trial, it is clear that the wheels are turning on a process the outcome of which is difficult to predict.

"Once a trial begins, it is an organic thing, it takes on a life of its own," says Peter McGuire, author of a book on the Nuremberg trials, and another called "Facing death in Cambodia". "If Cambodia believes they can control the outcome of a credible war crimes trial, they are sadly mistaken."

This report was written by Michael Hayes of the Phnom Penh Post for IRIN

## DRC: Transitional justice and sexual violence in the Democratic Republic of Congo: which way forward for reconciliation?



Soldiers from the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) watching over a IDP camp in Ituri. The country's five-year civil war ended in 2002, but persistent ethnic fighting and revolts have continued in the east of the country.

Credit: IRIN

The Democratic Republic of Congo (DRC) is the setting for what has been described as the worst and most ignored humanitarian crisis in the world.

According to the UK-based NGO, Oxfam, the daily death toll in DRC is approximately 1,200, with an estimated 100,000 conflict-related deaths occurring between February and May 2006. In the past eight years, an estimated 3.9 million people have died.

Recent work carried out by Professor Angelique Sita-Akele Muila at the University of Kinshasa, shows that the past 40 years have seen catastrophic results for the socio-political life of the DRC. Muila's findings form the basis for this summary report, and assess possible solutions, in terms of transitional justice, in dealing with massive human rights abuses and sexual violence against women.

As part of her assessment, Muila cites the historic, detrimental impact of the Mobutu regime (which lasted from 1964 to May 1997), the 1996 war which led to the overthrow of the Mobutu regime, and the current insecurity and civil conflict which started in 1998 (which has also involved the neighboring countries of Rwanda, Uganda and Burundi).

Hostilities officially ceased in June 2003, however rogue factions and different militias remained active in the east of the country and the humanitarian suffering and killings have continued. The consequences of these wars have been tragic both in terms of the loss of lives and serious acts of violence - particularly against the most vulnerable groups such as women, children, internally displaced people (IDPs), minority groups and refugees.

The scope and severity of violent sexual crimes against women in the DRC is being increasingly documented by international and national NGOs and other observers. Hospitals and clinics are inundated with cases of violent rape which they fear represent only the tip of the iceberg. Women and girls take the full brunt of the civil war, the breakdown of society and dissolution of law. According to Muila, these crimes include widespread rape, sexual enslavement, abductions and sexual mutilation.

In October 2003, the Special Rapporteur for the United Nations on the situation of human rights in DRC, Julia Motok declared: "Human rights violation in DRC can be considered as one of the most serious situations in the world." Some observers claim the situation has only deteriorated since 2003.

Motok's report made clear that the widespread human rights violations fall under the definition reported in the Rome Statute of the International Criminal Court (ICC), and therefore require a mechanism to be established to document all abuses. This mechanism should be international but should also involve the DRC justice system. Motok stated that impunity should be stopped to ensure the sustainability of the peace and reconciliation process in the country.

Concerning the crimes committed - and which continue to be committed -, against the population during the two wars, observers inside and outside DRC are calling for clear and severe punishment for those responsible for these ongoing violent crimes. However, the communities involved in the conflict also need to start living together again through reconciliation. The big dilemma, claims Muila, is whether aggressive pursuit of those responsible for human rights violations is the only option available, or whether there are other ways of solving the conflicts.

"There is no peace without reconciliation; there is no reconciliation without justice; there is no justice without reparations; there are no reparations without forgiveness; there is no forgiveness without truth," said Professor Luzolo of the University of Kinshasa. His comment suggests that it would be difficult and undesirable to build a sustainable peace process without including truth and justice.

A country may also decide not to put on trial those people responsible for crimes against humanity in order to facilitate the peace and reconciliation processes. If this route is chosen, political agreement is required, both at national and international level.

In her 2006 report "Transitional Justice and the Cessation of Sexual Violence against women in DRC",

Muila claimed that it is important to obtain as much political backing as possible at the national level, and to a lesser extent within the civil society. She believes that this consensus needs to be established clearly and democratically - probably through a referendum. The following step, she argued, would be negotiations with the international community in order to obtain the support of the UN member states.

To date, those who have committed crimes during the wars have acted with complete impunity. The courts as well as the police force of DRC have been weak, ineffectual and corrupted; and in some cases, have resulted in a lawless society where militias, war lords and unregulated soldiers rule by force.

According to Muila, despite the existing institutions - national courts; the parliament; the DRC Truth and Reconciliation Commission, and the ICC - very little progress has been made in terms of setting up judiciary mechanisms. Mechanisms, which Muila hopes, will not only address violations, but also have the backing of the population and the political parties. This, Muila believes, is the best way forward to reconcile the fractured and wounded community.

Acts constituting crimes against humanity, war crimes, or genocide committed after 1 July 2002, fall within the jurisdiction of the newly established ICC and can be tried in DRC through national courts or in The Hague (under ICC auspices). The DRC is a party to the Rome Statute that underpins the ICC.

At the request of the DRC government, and following the agreement and subsequent investigation by the ICC, Tomas Lubanga became the first Congolese to be indicted. He currently awaits trial in The Hague.

Crimes committed before July 2002 cannot be investigated or prosecuted by the ICC, and can only be prosecuted by national courts - or some form of special international tribunal for DRC, if one were to be established.

What is important, according to Muila's report, written for the Nairobi-based Forum for Early Warning and Early Response, is that no action will be successful without the involvement of civil society, and the people who directly suffered the cruelty of these wars. The report concludes with a recommendation for two options for new judicial instruments to address the numerous and violent crimes committed.

Firstly, she recommends the establishment of an International Criminal Tribunal for DRC. The Lusaka Ceasefire Agreement of 1999 justifies the creation of this tribunal.

The second mechanism could be the introduction of hybrid courts, using local and international jurists, as has been done in Sierra Leone and in Cambodia.

The idea of mixed courts has already been discussed at various conferences, but has not won much support, being seen as an interference with the sovereignty of the country and the establishment of the preferred International Criminal Tribunal for DRC.

Brutality against civilians, specifically sexual violence, is an integral part of the war in Congo. Forces involved in acts of sexual violence against women continue to be rewarded by their leadership and by their powerful patrons for their actions. As long as the climate of impunity persists in DRC, women will continue to be targeted in what human rights organisations, as well as women's organisations, have begun referring to "a war within a war" and to a "war against women". The civil society, particularly women, need to be empowered to face and respond to such situations, and, according to Muila, implementing the rule of law is the first necessary step towards this empowerment.



A survivor of a militia attack in Ituri. The war-related death toll in DRC is estimated to be a staggering 1,200, per day. Approximately 100,000 people died between February and May 2006.  
Credit: Lucy Hannan/IRIN

## LIBERIA: Post-war justice stirs division



Former rebel leader and ex-Liberian president Charles Taylor currently being charged for war crimes committed in neighboring Sierra Leone. Credit: AFP

The impending trial of former rebel leader and ex-Liberian president Charles Taylor for war crimes committed in neighbouring Sierra Leone has divided his countrymen on how best to pursue justice after 14 years of brutal civil war.

The March arrest of the charismatic strongman, who still has many supporters in Liberia, was internationally hailed as a major step towards ending the culture of impunity in Africa.

"Taylor's trial should send a strong message around the continent and around the world that warlords in other parts of Africa cannot assume they will get away with their crimes and that impunity will not be allowed to stand," said UN Secretary-General Kofi Annan on a recent visit to Sierra Leone.

But in Liberia, many feel that the search for justice has only just begun with the launch of a new Truth and Reconciliation Commission (TRC) in June. The commission, opened by President Ellen Johnson-Sirleaf, is to investigate 24 years of instability and seek out the root causes of the civil conflict.

The nine-member commission has begun seeking information on gross human rights abuses ranging from murder to sexual violence on the basis of voluntary statements.

Like the TRC in neighbouring Sierra Leone, which wrapped up hearings from that country's decade-long civil war in 2004, Liberia's TRC cannot submit actions for prosecution.

However unlike its Sierra Leonean counter part, the Liberian commission can summon people to testify.

Fighting in Liberia left hundreds of thousands dead and forced 300,000 more men, women and children to run for their lives, sheltering in refugee camps across West Africa. Many have yet to return home nearly three years after Taylor stepped down as president under international pressure led by the US.

Liberia now has its first elected government since the war ended. Sirleaf, Liberia and Africa's first elected woman president, recently told IRIN that Liberia's TRC is not just about justice but reconciling the war-battered country.

### **Breaking the silence**

To encourage Liberians to come forward and tell their stories, a sign at the creaking metal entrance gate to the commission's temporary offices explains: 'The TRC is not a court, and cannot send you to jail'.

Inside, Chairman Jerome Verdier said the commission would seek access to Taylor if considered necessary to the fulfilment of its duties, but he warned it was "myopic" to reduce all of Liberia's problems to one man.

"We Liberians understand that the conflict didn't start with Charles Taylor," Verdier told IRIN. "It has deep historical roots and in finding a durable solution we have to review the past and we have to have all the Liberians on board."

"What is essential now is a process that gives Liberians the opportunity to search their hearts, revisit the past and correct those historical wrongs that have impacted the current situation as a way for laying the building blocks for the future," he said.

The commission was created under a peace deal signed in August 2003 by Liberian warring parties and civilians. Delegates initially rejected establishment of a Sierra Leone-style war crimes tribunal, under whose jurisdiction Taylor now must stand trial.

### **Opening old wounds?**

At the end of two years, the TRC is expected to make recommendations for reparations to victims and proposals on how to proceed with the justice process. A further tribunal based on the TRC findings has not been ruled out.

But some believe the 24-month mandate of the TRC is too short to achieve its goals, even if the government exercises its right to extend the TRC mandate by three months. They warn that airing Liberia's past atrocities without redress will only open old wounds.

"Will the true victims come forward, and will what they reveal lead to justice or to more bitterness, feelings of betrayal and unfulfilment?" an editorialist of the daily Analyst newspaper wondered at the official launching of the TRC last month.

Others say there is no use in documenting human rights violations in the past as long as the abusers remain at large. They say that perpetrators could easily seek revenge on those who tell their stories to the TRC.

"Why should I go tell who killed my brother 10 years ago?" a Liberian citizen who declined to be named told IRIN. "Why should I risk having my door kicked in at night by his cronies?"

Many Liberians are now backing a campaign led by a group named Forum for the Establishment of a War Crimes Court in Liberia, which has filed a petition that will be discussed at the Liberian Upper House this month. The Forum says Liberia should have its own war crimes tribunal working alongside the truth commission, much like in Sierra Leone.

"Paradoxically, there were fewer people killed in Sierra Leone than in Liberia, but Sierra Leone has a war crimes court and we do not. So we think the international community has a responsibility to establish a war crimes court here," said Forum representative Mulbah K. Morlu as he sat in a noisy, overcrowded backyard where the group regularly meets to plan its campaign.

### **Others need to be tried**

The trial against Charles Taylor will not resolve Liberia's problems until other war criminals who have retained influential positions in the country are also brought to justice, Morlu said.

Several notorious militia leaders, including Adolphus Dolo, also known as General Peanut Butter, and Prince Johnson, who has been accused of rape and murder, were elected to seats in parliament in elections last year.

"Taylor was not just taken to court because of what he did in the past, but because of his potential to wage war in the future," Morlu said. "We need to cleanse this society of extremists: people who we believe still possess the military potential to foment war in this country."

"You can't put the past behind you if individuals who committed mayhem are riding around in luxurious cars and are trying to evade justice by finding security behind the corridors of power. Until these people are brought to court, there is no assurance that we won't go back to war."

The Forum is not alone in calling for a broader justice for Liberia. Ironically, many of Taylor's ex-combatants say it is unfair their leader is awaiting trial while those who took up guns to topple him remain free.

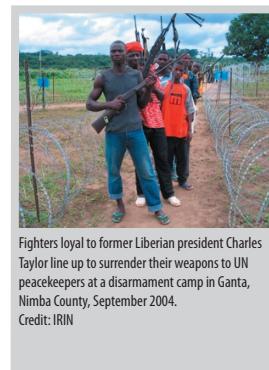
"Taylor is arrested, but why are the rebel leaders who destroyed the country not arrested?" said a Taylor supporter known as Gola Ray, who said he was concerned about his safety. "They should go to court too."

Some international human rights activists agree. The former prosecutor of the Special Court in Sierra Leone, David Crane, recently called for the establishment of a regional 'hybrid war crimes tribunal', saying the international community should consider extending the mandate of the Sierra Leone court to cover Liberia and Côte d'Ivoire, divided since rebels seized the north nearly four years ago.

Referring to the victims of the Liberian civil war, Crane said: "We cannot walk away from 600,000 human beings. The ultimate atrocity in my mind is that we don't do something and that these people go quietly into the night and that there is no record of their horrible deaths."

### **Sirleaf cautious**

But others insist that Liberia's peace is still too fragile to begin hauling prominent criminals to court. They say a war crimes tribunal would fuel political tension and put the new government under undue pres-



Fighters loyal to former Liberian president Charles Taylor line up to surrender their weapons to UN peacekeepers at a disarmament camp in Ganta, Nimba County, September 2004.  
Credit: IRIN

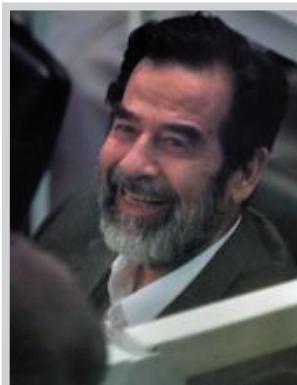
sure.

President Sirleaf says there is time yet. Justice is "a two-step thing", she told IRIN and a tribunal could be discussed after the TRC completed its two-year mandate.

"Our first step is to find the means to rehabilitate those who were conscripted into war," Johnson-Sirleaf said, referring to the thousands of child soldiers who were forced to fight. "Then we can talk about who should face a court."

"It's not a question of undermining justice. We are trying to find a balance between justice on the one hand, and reconciliation on the other."

## IRAQ: The rocky road to transitional justice



Former Iraqi president Saddam Hussein is now in the dock. According to right groups, approximately 300,000 people remain "missing" after his 34-year rule. Mass disappearances, torture, arbitrary detentions, extra judicial killings, and the use of chemical weapons have been widely documented.

The trials of members of Iraq's former Ba'athist government have been branded "an unprecedented opportunity to provide some measure of truth and justice", according to the NGO, Human rights Watch (HRW).

The first such trial began in October 2005, representing the hundreds of thousands of victims of grave human rights violations that occurred at the hands of the Iraqi state between 1979 and 2003..

No fewer than 300,000 people remain "missing" after the 34-year rule of former President Saddam Hussein, according to rights groups. Mass disappearances, torture, arbitrary detentions, extra judicial killings, and the use of chemical weapons have been widely documented, along with reports of the destruction of thousands of villages, mass displacement and ethnic cleansing.

Iraqis are keen on retribution. A countrywide survey released two years ago found strong support across ethnic and regional lines for transparent public trials and even the death penalty. These trials – being held on Iraqi soil and controlled by Iraqis - will try Hussein, his family, and his closest followers.

Iraqis emphatically rejected the prospect of trials dominated by either the international community or other foreign states, the International Centre for Transitional Justice (ICTJ) and the Human Rights Centre at the University of California reported in their findings. There was mixed support for international "assistance".

"The anger and disappointment at the failure of the international community, particularly the UN, to effectively protect Iraqis, may explain the negative attitude toward international involvement in, for example, the prosecution," said the ICTJ. Iraqi lawyers and judges had also expressed the need to restore the dignity of the domestic legal system and national pride.

As early as 2003, however, two separate assessments conducted by both the US-led Coalition Provisional Authority (CPA) and the UN High Commissioner for Human Rights concluded that the Iraqi judicial system did not have the capacity to conduct the necessary trials.

"The concern was that the Iraqi judicial system, after 30 or 40 years of corruption, oppression and nepotism, would struggle to mount trials on such major issues as crimes against humanity, war crimes and genocide," explained Hanny Megally, director of the Middle East and North Africa Programme at the ICTJ.

Legal experts and rights groups advocated the establishment of an Iraqi-led international commission of experts to review the country's needs, and propose a "comprehensive strategy" for addressing its past.

However, amid accusations that the US wanted to maintain sole "control" over the judicial process, the CPA insisted on an Iraqi-led tribunal without establishing any process of formal consultation with victims, according to HRW.

In August 2005, the Supreme Iraqi Criminal Tribunal (formerly called the Iraqi Special Tribunal) - currently trying Hussein and seven associates for the alleged executions and disappearance of over 140 individuals by security forces in the town of al-Dujail in 1982 - was born as a result.

### **Problems at the Iraqi tribunal**

A dozen separate trials are expected to be held by the tribunal, each focusing on separate incidences, such as the gassing of Kurds in Halabja in 1988, or the 1991 repression of the Shi'ite uprising. Despite the fact that under Iraqi law, those found guilty should face the death penalty within 30 days, assurances have been made that Hussein will be tried on several different counts. "They have said there is no danger that if convicted in this first trial he will be executed," said Megally.

While the tribunal is being held in Arabic, within Iraq, and before television cameras, thereby guaranteeing accessibility to the Iraqi population, its statute and procedures have been the subject of widespread criticism from legal and rights experts since its inception.

The tribunal's very establishment by the US, which necessitated making alterations to domestic Iraqi law to accommodate the crimes of genocide, war crimes and crimes against humanity, may contravene international humanitarian law, according to the ICTJ.

"Essentially the court was set up by an occupation force which already is questionable under the laws of war. It was then legitimised by the governing body later, but it would have been better to wait for the Iraqi Governing Council to create it from scratch," said ICTJ president, Juan Mendez.

Furthermore, criminal procedure law in Iraq and the tribunal's rules of evidence and procedure do not provide sufficient safeguards to ensure fair trials, according to rights groups. "Of concern is the fact that many positive elements borrowed from international practice that were present in the original statute have since been stripped away," the ICTJ reported.

Aside from security concerns, by October 2005 five tribunal employees had been killed, as well as a defence lawyer.

Meanwhile, rights groups' complaints have included the following: the language of some of the lesser offences is vague and open to politicised interpretation; the standard of proof required for a conviction is considerably lower than the internationally recognised "beyond reasonable doubt"; the role for international judges has been significantly reduced.

They add that defendants have insufficient access to lawyers and facilities to prepare a defence; access of the defence team to documents and evidence is unequal; judicial personnel are susceptible to dismissal at any time; and that parliamentarians have requested that judges be dismissed.

Ra'ad Juhi, the tribunal's chief investigator, has defended the tribunal's fair standards. "We are adhering to standards of international law in compliance with the sovereign law of Iraq and are working hard to keep its quality and fairness based on international human rights law," he said.

But based on its observation of trial proceedings between October and December 2005, HRW said it had "real concerns" about the capacity of Defence Office lawyers to effectively defend their clients, in particular given their lack of training.

### **Political interference**

"We are independent from any committee or government because we are the law. For sure we would not put a person in a judge chair without being sure of his capacity and honour," said a prosecutor at the tribunal, Khalid Muhammad.

Nevertheless, direct and indirect political interference in the proceedings has been ongoing, say some rights groups. This has been facilitated by revisions to the tribunal statute, which, for example, require that no member of its staff has ever been a member of the Ba'ath party, a standard far higher than those stipulated by ongoing de-Ba'athification mechanisms.

Paradoxically, membership of the party was a prerequisite for admission to judicial training.

According to Mendez, the tribunal's vetting procedures are being used as a tool in the ongoing power struggle in Iraq. "We are in favour of people who participated in abuses being excluded from participating in a reconstituted set of democratic institutions, but it cannot be done as a witchhunt, chasing after people for the sole 'crime' of having had to sign a membership or the like," he said.

"Several politicians see the trials as a means to attain political advantage; the government ...has made repeated prejudicial comments that call the court's independence into question," the ICTJ noted in a recent report.

The tribunal's heavy financial dependence on the US has also raised many eyebrows. The 2005 budget for supporting the tribunal's investigations and proceedings – which is taken from a unit in the US embassy in Baghdad - was US \$128m, in sharp contrast to the US \$15m from the Iraqi general budget.

"The original suggestion by many human rights organisations that a hybrid court be set up that would exercise Iraqi jurisdiction, but with major support from the international community outside Iraq, would have been a better choice," Mendez said.

### **Victims' rights**

Aside from a desire for accountability, the ICTJ/Human Rights Centre survey also found broad support for an official process of truth seeking. There was also widespread support for both material and symbolic compensation for losses: "Most felt that a programme of compensation and rehabilitation was necessary if Iraqi society was going to be able to move beyond the legacy of Saddam Hussein," said a report.

However, the rights of the Iraq's victims have largely been ignored by both the international community and the authorities, according to the International Commission of Jurists (ICJ).

Again, the statute's rules of procedure fall short of international standards, failing to ensure victims' rights to a remedy and compensation, despite the fact that they are guaranteed by international legal instruments such as the International Covenant on Civil and Political Rights, which Iraq ratified in 1971.

In international law, victims not only have a right not to financial assistance, but also to rehabilitation measures, such as medical and psychological care, as well as legal and social services. "These aspects of the right to reparation are extremely important in the Iraqi context, as they would finally mean the official recognition of the victims' suffering after more than twenty years of silence and repression," said the ICJ in a recent report.

Furthermore, victims have a right to seek and obtain information about past violations of human rights, including receiving the bodies of executed or "disappeared" loved ones.



Irqi men searching for the "missing". By international law, victims have a right to seek and obtain information about past violations of human rights, including receiving the bodies of executed or "disappeared" loved ones.  
Credit: Mike White/IRIN

Criminal prosecutions and truth-telling mechanisms are both obligations of a state in transitional justice, according to Mendez. "I think they can, and should, work together harmoniously," he said. "It is important that the courts be complemented by an investigation that is less formal and goes to a wider range of issues, patterns and episodes."

In August 2005, Laith Kubba, spokesman for the then interim Prime Minister, Ibrahim al-Jafari, announced that the Ministerial Council had approved a draft law to establish a commission "to take care of the martyr's families", which would be forwarded to the National Assembly.

As yet no further information on the law, or any form of truth and reconciliation commission, has been made available to the public, according to Isabelle Scherer, officer for the Middle East and North Africa with the ICJ. At the same time, discussion about such a commission "can only become relevant once the political climate and leadership are mature enough for this mechanism," she said. "This prerequisite is currently non-existent."

### **Uncertainty ahead**

The manner in which justice is delivered by the Iraqi tribunal and other mechanisms will set a precedent for respect for the rule of law not just in Iraq, but perhaps the entire region, say certain rights groups.

For the time being however, many questions about Iraq's so-called transition and the political will to obtain justice remain unanswered. When are the middlemen who perpetrated atrocities going to be tried? How can the historical record be set straight in the current security climate? How can we speak of justice in Iraq with ongoing human rights abuses being leveled at insurgents, criminals, Iraqi security elements and occupying forces alike? Notably, the Iraqi tribunal has no jurisdiction over non-Iraqi nationals, including the coalition forces.

Given the current climate in Iraq, and the uncertainties about the ongoing trial of Saddam Hussein, the prospects for justice remain ever more uncertain. "The longer the trial goes on, the harder it is to make a positive judgment," said Mendez. "But the circumstances in Iraq require that we withhold judgment until we see the result."

## MOROCCO: History will keep its secrets



Deceased Moroccan King, Hassan II. Numerous crimes during his reign have been or are waiting to be investigated by the Morocco's Equity and Reconciliation Commission (Instance Equite et Reconciliation – IER).

While great steps have been taken by Morocco's Equity and Reconciliation Commission (Instance Equite et Reconciliation - IER) to expose many of the crimes committed during the reign of King Hassan II, there still remain some hidden in the shadows of history.

Most notable is the case of the opposition politician, Mehdi Ben Barka, who mysteriously disappeared in Paris in 1965 – a case that is currently being investigated by the French authorities. However, the Ben Barka case is just one of the IER's many files which remain open. Others include 66 'Disappearances': among them notable figures – both trade union activists- Abdelhak Rouissi, whose grave has just been discovered; and Hocine Manouzi who was kidnapped in 1972.

Other cases waiting to be investigated include the mass graves of strikers massacred in 1981, and the harshly suppressed uprisings of 1958 and 1959 in Rif, a region in the north of Morocco that rebelled against the Alaouite Dynasty's rule.

Since it was established in 2004 by King Mohammed VI – son and heir to Hassan II – the IER has operated with a restricted remit. The commission's brief is to expose human rights abuses, however, it is not able to identify and prosecute offenders. The commission is focusing its investigations on the period between 1956 (the date of Moroccan independence), and 1999 (the year in which Hassan II died) – the period known as the "years of lead" during which time the worst acts of violence were committed.

Morocco has opened up to the outside world in recent years, with greater freedom of speech for the people and the press. Some of the country's old guard have been dismissed, including the former vizier of Hassan II, and issues such as the Royal Family and the armed forces are more openly discussed. Part of this new openness for Morocco also means that Mohammed VI is now under pressure to expose the darker secrets of his country's past, including the use of torture.

By establishing the IER, Mohammed VI hopes to erase his father's legacy without upsetting the foundations of the monarchy. The IER therefore must reconcile two contradictory issues: how to appease the people (who want to know the full truth about the crimes committed and those involved) without implicating his father, Hassan II.

By limiting the remit of the commission, the state hopes to dispell any idea that the commission represents victor's justice. Comprising a president (and former political prisoner), and 16 members of different political views, the commission had a strictly consultative role. It was authorised to give an audience to victims, to make various enquiries and finally to draw up recommendations.

The IER investigated and ruled on 16,861 individual cases, awarding compensation to 9,280 of these. The commission also determined the total death toll during this period to be 592. Despite disputes regarding this figure, the IER deserves credit for taking a number of bold steps. It firmly established the state's role in perpetrating abuses and demanded a public apology. However, it will not be the king who apologises, but rather the head of state. If Mohammed VI were to apologise for crimes committed during his father's reign, he would put his own legitimacy as heir to the Alaouite throne at risk.

The commission also emphasised the importance of constitutional reform. Changes to the constitution would enable the eradication of impunity and the guarantee of human rights. Reforms recommended include the separation of powers and the prioritisation of individual rights in domestic law. The IER also recommended the eventual establishing of an independent judicial system, and called for greater transparency in the security forces. Impunity was rife in the services that relied on verbal communications, making accountability almost impossible.

Endorsing these recommendations, the king asked the Consultative Council on Human Rights – presided over by the same Driss Benzekri who had directed the IER – to ensure that action was taken. Benzekri himself is a former dissident who experienced torture. But to what extent is it possible to implement the recommendations?

Transparency in the security forces is an important issue to a country like Morocco, a country where the security services have been accused of torturing Islamic militants following the Casablanca bombings of 2003, in which 33 civilians died.

The Parti Justice et Developpement (Justice and Development Party - PJD), a moderate political party and the favourite contender to win the country's elections in 2007, has profited from the political rift created by the IER. The PJD is demanding a review of the investigations following the 16 May (2003) bombings, during which many of its supporters were imprisoned.

Implicit in this demand is criticism of the unfair way in which the PJD believes the cases were tried, although the party is reluctant to jeopardise its political future by taking an official stand on the matter. On the other hand, Jamaa Al Adl Wal Ihssane – a radical yet very popular Islamic group whose name means 'justice and charity' – has been quick to reject entirely the IER's approach. The reaction of this group is hardly surprising given its regular and frank admissions of reservation about the current government.

At an international level, the work of the IER has been perceived by commentators both as a glass half-empty, and a glass half-full. However, the establishment of such a commission is unprecedented in the Middle East and North Africa. It is the first time that an Arab country has decided to examine its past and to invite victims to give their testimonies, an initiative that has been commended by South Africa, one of the pioneers of the notion transitional justice. The activities of the IER have certainly received worldwide attention – and Morocco cannot waste such an opportunity to improve its image, which was until recently that of an "exporter of terrorists".

The stakes for Morocco are also geopolitical. By contrast, neighbouring Algeria – the major economic force in the region (due to its hydrocarbon riches) and a major political rival over the Sahara – is making no headway with its own reconciliation process. Unlike Morocco, Algeria has chosen not to examine its past, but instead has drawn a line under it, criminalising public discussion about the decade-long conflict.

The Algerian government has granted an amnesty to guerrillas who lay down their weapons and has promised to compensate the relatives of those who disappeared. However, it does not go so far as to seek the truth about what happened during the war years. The fate of the disappeared, the use of torture, the role of the army and of Islamic militants – all are questions that have not been publicly addressed in Algeria. In Morocco, they have. But even given all of these efforts, is Morocco really reconciled with its past?

This report was written by Nadia Lamlili for IRIN

## NAMIBIA: Reopening old wounds



A close-up of a mass grave of alleged PLAN fighters killed around April 1989. The body of another woman, possibly even a teenager, can be identified amongst those of the men. The governor of the Onhangwa Region, Usko Nghaamwa, told reporters that some people who had served in the former SADF and Koevoet police counter-insurgency unit responded to President Hifikepunye Pohamba's call for information on mass burials during the liberation struggle.

Credit: IDAF – National Archives of Namibia

In the sleepy town of Eenhana in northern Namibia, the discovery of a mass grave dating back to the country's struggle for independence from South Africa, has reopened old wounds that some say have had little opportunity to heal in the 15 years since the conflict ended.

The grave was accidentally uncovered in November 2005 by a construction crew laying pipes for a new sewage processing plant. Word spread quickly and townspeople flocked to the site to view the bones.

Many people from this area, a few kilometres south of the Angolan border, still have unanswered questions about the fate of family members who disappeared during the war. Some of the missing relatives had belonged to the People's Liberation Army of Namibia (PLAN), the armed wing of SWAPO, which now forms Namibia's ruling party. Others had served in the former South African Defense Forces (SADF) while others were civilians caught up in the conflict.

But the only clues as to the identity of these remains were their location close to a former South African military base and a few scraps of clothing. Some of the clothes were clearly PLAN fighter uniforms, but several townspeople say they also saw civilian clothes in the grave before it was exhumed and its contents transported to the National Forensic Science Institute in Windhoek.

"You didn't know what happened on the military base. You didn't go there because it was dangerous," recalls Elias Mungonena who grew up in a nearby village and who now works for the regional office of Namibia's National Society for Human Rights (NSHR). "You only heard gunfire and sometimes saw dogs with human body parts, but you didn't know where they came from."

Victoria Silas, who lives on the same plot of land a short distance from the grave site that her family occupied during the war years, says the discovery has stirred up old resentments and animosities that belie the government's policy of reconciliation.

"People started making accusations, calling each other enemies of the government," she told IRIN. "It caused some people to feel bad."

One target for such accusations was Sackaria Hamukoto, who worked as a translator for the SADF during the war years. People here have not forgotten the abuses they suffered at the hands of the SADF and in particular the "Koevoet," a paramilitary unit that gained a reputation for torturing civilians to extract information about SWAPO's movements. Hamukoto says people blamed him for the bodies in the grave and that he has received threats.

"It was better before they found the bones," he sighs.

During a visit to the site, President Hifikepunye Pohamba called for anyone with information about other graves to come forward. Several villagers did and 17 other sites have since been located, but there are believed to be many more dotting the entire border region.

According to Phil ya Nangoloh, executive director of the National Society for Human Rights (NSHR), to call the graves a "discovery" is misleading.

"Everybody knew of the existence of these mass graves," he says. "When the president called on Namibians who might have information, people rushed to our offices country-wide and said they were willing to give evidence, provided there's a law put in place to ensure they won't be prosecuted and persecuted thereafter."

The President of Namibia's largest opposition party, the Congress of Democrats, Ben Ulienga agrees that the existence of the graves was public knowledge.

"The whole incident showed us how we haven't properly dealt with our past," he says. "Even if you don't want to open up old wounds, they will open themselves up."

South Africa's truth and reconciliation commission (TRC) revealed numerous details about killings and torture perpetrated by the SADF, but following independence and a landslide election victory in 1990, SWAPO signed an agreement with the South African government not to take legal action against individuals for atrocities they committed during the war

## SIERRA LEONE: The justice experiment



A young woman in Sierra Leone who was abducted from her family at age 10 by rebels from the Revolutionary United Front. When she tried to escape, the rebels poured acid over her arm and breast as a warning to other abductees.  
Credit: Brent Stirton

In post-war public hearings, Sierra Leoneans shared with their compatriots stories of how rebel fighters cut children into pieces in front of their parents, and forced people to drink the blood of slaughtered family members.

Four years on, the Sierra Leonean people are still learning how to move on from such horrors and their causes. Punishing perpetrators is part of that recovery but, as Sierra Leoneans are quick to point out, only a part.

With ex-Liberian president Charles Taylor behind bars and awaiting trial for war crimes committed in Sierra Leone's brutal 1991-2002 civil war, one of Africa's biggest 'big men' has been halted. Taylor's impending trial before a UN-backed Special Court is set to be the first time a former African president faces an international tribunal for crimes allegedly committed while in office. If convicted at his trial in The Hague, Taylor will serve out his sentence in a British jail.

Alhaji Ahmed Jusu Jarka, who had both hands hacked off by rebels whose guns were allegedly supplied by Taylor, says many Sierra Leoneans are happy Taylor will finally be judged. "This is what we have been looking for. Everybody is anxious for the Special Court to try him."

But the book should not stop there, says Jusu Jarka. He and many other Sierra Leoneans stress that while Taylor's trial is important, other means of seeking justice, such as Sierra Leone's truth commission, should not be sidelined.

Unique to Sierra Leone's post-war recovery is the simultaneous operation of the Special Court and a Truth and Reconciliation Commission (TRC), both established under the 1999 Lome peace accord. While the Special Court deals with "those most responsible" for war crimes in Sierra Leone, the TRC provided a forum of the multitude of crimes committed at the grassroots and as well as war-related murder, torture and rape.

National civil society and rights groups say implementing the recommendations of the TRC, which wrapped up its work in 2004, is vital to tackling conditions that contributed to the outbreak of war and which persist today: corruption and lack of accountability in government, weak human rights protections, and crippling poverty and unemployment.

The 'hybrid' Special Court, created by an agreement between the UN and the Sierra Leonean government, comprises judges and staff from in and outside the country, and covers violations of both local and international law. Taylor is one of just 13 people indicted to date.

By contrast, the broader truth commission was created to probe the causes and nature of the violence, establish an impartial record of human rights abuses, and promote reconciliation and healing to prevent a repetition of such acts.

In 2004, the commission published sweeping recommendations for reparations for war victims, action against corruption and human rights protections.

"The TRC recommendations are more relevant to the Sierra Leonean people today than the Special Court," said Oluniyi Robbin-Coker, a Sierra Leonean civil society and rights activist who has led a push for the Sierra Leone government to implement the TRC recommendations.

TRC Chairman, Bishop Joseph Christian Humper added that their report must not remain mere words on paper. "For us to leave it on the shelf would mean business as usual."

### **Successful experiment?**

Debate continues over whether running the court and the Truth Commission at the same time is the best approach. Some observers say citizens did not fully understand the roles and interaction of the two bodies. Despite the court's limited mandate to try only a handful of the worst offenders, many combatants guilty of offences were afraid to speak to the TRC for fear of indictment.

For many, like human rights activist and former head of the national forum for human rights, Joseph Rahall, running the two at the same time is not the way to go.

"It undermined the ability of the TRC to actually get the information it could have gotten, if the Special Court had not been operating, because many of the combatants shied away from giving testimony at the TRC," Rahall said. "Reconciliation was not achieved for a lot of these combatants because they did not come out and confess and ask for forgiveness. They are still finding it difficult to go back to their communities."

A civil society coalition in Sierra Leone – the Working Group on Truth and Reconciliation (WG) – says efforts to clarify the relationship between the TRC and the court did not succeed. "Every Sierra Leonean we interviewed referred to the way in which ordinary people were confused by the relationship between the two institutions until very late in the TRC process, fearing indictment by the Special Court should they cooperate with the TRC," the WG said in a report entitled "Searching for Truth and Reconciliation in Sierra Leone".

Sierra Leonean student, Josephus Williams, agreed: "If it was the TRC before the Special Court then maybe a number of rebels would have come forward to tell us what happened in the bush."

In an interview with the civil society group that questioned Sierra Leoneans in 2005 about the process, one woman said: "I was told by the elders that I would go to prison if I gave a statement to the TRC. There is no support in the village for the Special Court. I now regret not talking to the TRC. I would still like to tell my story."

Sierra Leone's simultaneous approach was seen as a potential model for other post-conflict settings, but the civil society group cautions that it should not automatically be seen as the best route. "We are worried that an 'official view' may take shape at the international level that the 'experiment' was a success and that concurrence will uncritically be endorsed as 'best practice,'" the WG report said.

The civil society working group says it hopes its report will be just the first step "to what should be a much wider and deeper debate in Sierra Leone and internationally".

Some in neighbouring Liberia, which launched its own Truth Commission in June, are calling for a tribunal to run at the same time. Sierra Leone TRC chairman, Humper, says Liberians must study lessons learned from Sierra Leone and other countries, and choose the best approach for Liberia based on its own circumstances. "They have to decide on the right route to sustainable peace and development and lifting up the masses."

Whatever the observers' view of running the two bodies concurrently, most see both mechanisms as critical to healing and progress.

"The TRC and the Special Court are on a journey," Humper said. "They are moving in one direction: a place called 'justice and peace'. But they are taking two different routes." He said the two can be effective simultaneously if the people are properly educated about their roles. He added that the two bodies must



A group of sex workers in Freetown, Sierra Leone. Displaced from their villages by civil conflict, these girls fled to the capital. As the last means to support themselves they have been forced to work as prostitutes.

Credit: Brent Stirton

be given equal attention: "Then and only then will we arrive at our destination."

Rights activist Rahall agreed: "Both mechanisms are vital. Impunity had taken over the country, so for it to be gotten rid of was vital."

### **Arrest, trial of 'local hero' sows dismay**

The Special Court engendered scepticism among some Sierra Leoneans, with the 2003 arrest and subsequent trial of Samuel Hinga Norman, who led a civil force against rebels bent on toppling President Ahmad Tejan Kabbah. The court is trying leaders from all three of the main warring factions: the Revolutionary United Front (RUF) rebels, the rebel Armed Forces Revolutionary Council, and the pro-government Civil Defence Forces (CDF).

Hinga Norman led the CDF militia, made up mostly of traditional hunters who battled alongside Kabbah's soldiers. While the militia is charged with torturing and killing civilians during the war, Hinga Norman's arrest sparked debate over the legitimacy of the court and its mandate. Many see Hinga Norman as a local hero who fought off the dreaded RUF rebels, and think he should be congratulated, not condemned, whatever the CDF's methods.

"This is why I do not like the Special Court," said Mabel Sesay, a trader in Sierra Leone. "You mean the man who sacrificed his life to save us is the one they have arrested?"

In 2004, the then deputy prosecutor Desmond de Silva, spoke of the Hinga Norman trial controversy, and told the BBC: "I'm afraid you can fight on the same side of the angels and nevertheless commit crimes against humanity."

Student Williams – who claimed that he suffered at the hands of the Kamajors, the largest group within the CDF – said no matter one's cause, the killing and maiming of innocents must be punished. "I cannot argue the issue of who bears the greatest responsibility, but nobody has the right, no matter on what side you are fighting, to take the life of innocent people – if you do that then you must pay."

### **Miles to go to justice, peace**

Meanwhile, countless wrongs must be righted in Sierra Leone. Unemployed youths continue to roam the streets, and amputees - shocked and angry that the very ex-combatants who hacked off their limbs have seen more benefits than they have – are still fighting for a satisfactory compensation package. According to Humper, frustrated former fighters, without a path to reintegrate into society, are "a threat to security".

Transparency and accountability in government remain fairly weak, said Marieke Wierda, the Sierra Leone expert with the New York-based International Center for Transitional Justice. And national rights activists say the government has yet to put in place a viable TRC follow-up process and human rights commission. The civil society working group says in its report: "If there is not a credible and effective follow-up phase, many Sierra Leoneans will legitimately ask whether the TRC was ever more than an expensive 'talking shop'."

## SOUTH AFRICA: 10 years after the Truth Commission: survivors are frustrated



Newspaper headline on a Johannesburg street refers to a government plan in 1982 to cede territory and people to Swaziland. The people in question were not consulted in the matter.

Credit: UN

It is now more than 10 years since South Africa's Truth and Reconciliation Commission (TRC) began gathering testimonies about gross human rights abuses committed during apartheid.

Over the course of two years, the TRC took statements from more than 21,000 survivors. In its seven-volume final report, the commission ultimately pointed the finger at apartheid-era political leaders and security operatives; particularly citing the National Party government - its State Security Council.

The TRC, headed by Archbishop Desmond Tutu, was a process aimed at uncovering the truth of apartheid-era violence by offering individuals amnesty, in exchange for public disclosure of crimes committed. It continues to be cited as one of the best examples of transitional justice in the world, but for many people in South Africa trying to confront the horrors of the past, it did not deliver the healing it promised.

Many who worked closely with the TRC are increasingly critical of the government's follow-through. Critics point out that reparations to survivors were far short of TRC recommendations, and that the government has not yet allocated the proper resources to investigate and prosecute apartheid's most horrendous crimes. As a result, observers say, reconciliation is far from finished

"The tendency has been to give the international community a picture of a reconciled nation," said Oupa Makhalemele, a researcher in the transitional justice programme at the Centre for the Study of Violence and Reconciliation in Johannesburg. "As much as a bloodier situation was prevented in terms of racial conflict, we still have a long way to go to address the legacy of racial segregation."

The individual outcomes of South Africa's project – namely, monetary reparations and limited criminal prosecutions – will raise important questions about a nation's ability to pursue a meaningful reconciliation.

### Birth of the TRC

Under apartheid, government secrecy about state-sponsored violence meant countless numbers of South Africans – particularly among the nation's black majority – were detained, mistreated, abused, tortured and killed. Censorship laws at the time distorted and obscured the government's increasing preoccupation with security, which included military and police engagement within and outside South Africa's borders.

South Africa's TRC was first established in 1995 to shine a light on this obscured past. The court-like body was to be a crucial part of the transition to a fully democratic South Africa; a nation whose constitution stressed a need for "understanding but not for vengeance; a need for reparation but not for retaliation".

To this end, the TRC process offered amnesty to perpetrators who testified before the Commission, on the condition that their crimes were politically motivated, and that they disclosed the whole truth of their actions. The TRC's Amnesty Committee eventually granted amnesty to 849 perpetrators, but rejected 5,392 applications.

It also encouraged victims of gross human rights abuses to testify about their experiences before the Commission's Human Rights Violations (HRV) Committee. More than 21,000 shared their stories, though advocates maintain this is only a fraction of those who experienced major human rights violations during the years of the TRC's mandate - 1960 to 1994.

"We estimate that throughout South Africa there are about 110,000 survivors of gross human rights violations nationwide," said Dr Marjorie Jobson, acting director of Khulumani, a support group for survivors of apartheid-era violence. Jobson said the organisation currently has more than 48,000 members who have documented their stories with supporting evidence, affidavits and police records.

## **Survivors frustrated after process**

Most survivors called to testify before the HRV committee got a single reparations payment of R30,000 (roughly US \$3,700 at the time), financial compensation that was to be symbolic as well as practical. Yet this figure is well short of the TRC's recommendation of a multi-year payment totalling nearly US \$17,000.

In recent weeks, Archbishop Tutu has made numerous public statements criticising the relatively small payment to survivors.

The government has pointed to its development strategy, which includes educational and housing initiatives, which it claims will benefit all previously disadvantaged citizens, including apartheid-era survivors.

But some survivors are frustrated and say they feel forgotten. "I'm not happy, because what the government promised us, they didn't do," said Jacob Mzumkhulo Ramokonopi, who was shot in politically-motivated revenge violence in Kattlehong township in South Africa's East Rand in 1992.

"They promised that they would find out what happened to you," said Ramokonopi, 36. "The government was also told by the TRC to give us money for six years, but we just got the one-time payment."

Though he received his reparations grant in 2004, he said it lasted only three months. Most of the money went to food for his extended family, and to renovating a cluster of outbuildings where he still lives with his siblings and their many children. He remains unemployed, and dependent on his younger brother, who is the family's breadwinner.

Throughout the country, thousands of other survivors are also disappointed that they never had a chance to testify to the TRC before its hearings closed in 1998.

In November 1990, Florina Mkwena's husband was murdered in political violence in their neighbourhood of Zonkizizwe, in the East Rand. "It is still a pain in my heart even today," she told IRIN. "I still want to get the truth about what happened. I want to know what the government is doing to investigate, and what it will do about the situation."

Holding the well-worn file where she has kept the paperwork related to her husband's death, Makwena said she lamented that she never had the chance to add her story to the public record, nor receive the reparation money that other survivors did. "When I went to the TRC, I found it was already closed," she said.

## **Limited investigations and prosecutions**

In the years after the TRC process, justice has been mitigated by the slow pace of investigations and prosecutions of apartheid-era crimes.

Piers Pigou, a former TRC investigator and consultant for other international restorative justice projects, said only a handful among the thousands of instances cited by survivors and perpetrators during the TRC were fully investigated.

"Almost all – definitely the vast majority – of those who came to the TRC's HRV Committee didn't receive anything back that they didn't already know," said Pigou, who now heads the South African History Archives.

So while the TRC's seven-volume final report contributes to the nation's "big-picture" story of what happened, Pigou said, most South Africans have never seen it.

"The Commission's output is in general an alien thing to most people," Pigou added.

Pigou said that the TRC was unable to fulfill its mandate of investigating the cases due to a massive lack of resources and an unrealistic timeframe. "The TRC laid a foundation for ongoing work," Pigou said. "It is not an end, but only the beginning of a process. But the work never continued."

The government body charged with continuing the work, the National Prosecuting Authority (NPA), has made little progress.

The South African press reported in early 2006 that the NPA is completing a handful of investigations

against apartheid-era criminals, including a number of security policemen and liberation-movement leader, Letlapa Mphahlele, the former commander of the Azanian People's Liberation Army.

But barring a small number of cases, the NPA failed to pursue criminal prosecutions of the more than 5,000 perpetrators who applied for – but were not granted – amnesty.

"In a sense, the last 10 years has seen really no commitment to prosecuting those who didn't meet the conditions [for amnesty]," said Graeme Simpson, director of country programmes at the International Centre for Transitional Justice in New York.

Nor has the NPA pursued cases of those who chose not to participate in the TRC process altogether. Notably, prominent apartheid-era leaders and known criminals who shunned the process have largely escaped trial, and have in many instances faded into obscurity.

"It's clear that the big fish are still out there," said Advocate Howard Varney, a human rights lawyer based in Johannesburg.

Varney said that while some efforts had been made to prosecute apartheid figures such as Wouter Basson, former head of South Africa's secret chemical and biological warfare project, they were merely "middle management".

"Survivors are expecting the planners and decision makers of apartheid to be prosecuted, and they are also expecting political leaders to come forward and take full responsibility for the actions of the security forces," Varney said.

### **Redefining criminal justice**

In January 2006, the government unveiled policy amendments regarding the prosecution of some apartheid-era political crimes. The new rules grant the National Directorate of Public Prosecutions (NDPP) the discretion to choose whether to prosecute select crimes, including murder.

The International Bar Association later expressed "deep concern" about the amendments, arguing that they undermine the human rights of victims by giving the government power to effectively grant immunity.

"In many respects, it's simply a rerun of the former amnesty process under the guise of prosecutorial discretion," Varney said.

Varney said the government's amendments have international implications, because they promote impunity, flying in the face of South Africa's international law obligations.

"Other considerations, not necessarily on an international scale, are that it completely undermines the constitutional design of the TRC process and the compromises victims had to make because of the amnesty factor," Varney said.

"Amnesty was never intended to be an ongoing process," he added.

Current government leadership includes those who took up arms during South Africa's liberation struggle, and critics have speculated that the new policies have been implemented in part to protect those in power.

"The government is not advocating an ongoing process for its own people, and I think it's because it doesn't want the light shone back on them," Pigou said.

"The failure to deal with these things more comprehensively – not just through prosecutions but in communities – undermines our ability to build faith and trust in the creation of a new and legitimate criminal justice system," he added.

### **Towards a true reconciliation**

Finally, some observers called for new reconciliation processes that focus on the more subtle ways in



Mourners at a funeral ceremony for those killed by South African police on 1985's International Day for the Elimination of Racial Discrimination, at Langalanga Township in Uitenhage.  
Credit: IRIN

which all South Africans were affected by – and sometimes benefited from – the apartheid regime.

"The white community largely escaped any introspection into their role and response as beneficiaries of apartheid," Pigou said.

Looking forward, Makhamalele said civil society and government must "thoroughly and sufficiently" address ongoing racial imbalances if South Africa to live up to its international reputation as a reconciled nation. He said future efforts must include a significant engagement by white South Africans, who largely remain in positions of power and influence.

"And as long as a majority of white South Africans refuse to acknowledge that they benefited from apartheid, it's hard for them to play a meaningful role in addressing the imbalances of the past."

Those imbalances are ongoing in most South African communities today, observers say, rendering the existing effects of the TRC process mostly symbolic.

"Despite all of its flowery language around reconciliation, it really had very limited impact in terms of providing healing and justice for survivors and providing reintegration into communities for perpetrators," said Hugo van der Merwe, project manager with the Centre for the Study of Violence and Reconciliation.

"Those dynamics are ones which stay with society and that require further engagement by government and civil society."

## SUDAN: The International Criminal Court (ICC) in Darfur



Sudan People's Liberation Movement Army (SPLMA) entering Juba on 4 December 2005. In western Sudan-Darfur, hundreds of thousands of people have been killed and many more displaced in what is the largest humanitarian crisis in the world.

Credit: IRIN

In Darfur, the western region of Sudan, hundreds of thousands of people have been killed and more than two million have been displaced in what has become known as the largest humanitarian crisis in the world.

The crisis began in Africa's largest country in early 2003, when two rebel forces took up arms against the government, to provide protection to civilians in land disputes in the region.

In response, the Sudanese government has allegedly funded the nomadic militias, known as Janjawid, who have destroyed villages, and killed, raped and abducted people.

Besides death, destruction and displacement, the crisis has been the cause of many setbacks for Sudan, despite the recent signing of a Comprehensive Peace Agreement (CPA) in January 2005, to end a civil war which has raged in the country's southern region for more than twenty years.

Instead of following in the footsteps of its southern counter part, Darfur has refused a ceasefire, and in the last year the situation has spiraled out of control with ongoing reports of attacks on civilians, aid workers and security forces.

In July 2003, the UN Security Council made its first referral to the International Criminal Court (ICC) on the grounds that the Sudanese government had failed to convict suspects of war crimes and crimes against humanity in the region. Following this referral, the International Commission of Inquiry presented the ICC with a list of 51 suspects, comprising civilians, army and governmental officials. Other evidence provided consisted of more than two thousand documents, video footage and interview transcripts.

But the response to the ICC investigations in Darfur, which began in June 2005, has not been welcomed

by the Sudanese government. One week after the ICC announced that it would begin its investigations, Sudan established a National Court to hold its own trials of 160 alleged suspects. In response, the human rights group, Amnesty International (AI) accused the Sudanese government of establishing the court in order to avoid prosecution by the ICC.

"What we have here is a court system that is willing to silence newspapers and aid workers who are attempting to speak the truth about human rights violations in Sudan. How can we trust that same system to bring to trial those accused of these violations?" Director of AI Africa Programme, Kolawole Olaniyan, pointed out in a press statement the same day the National Court was established.

Olaniyan accused the Sudanese government of shutting down local newspapers that had published information about the government's involvement in forced relocations of internally displaced people living in camps in the outskirts of the capital, Khartoum. Olaniyan also noted that in May 2005, the Sudanese authorities charged two employees of the medical aid agency Médecins Sans Frontières (MSF) with "publishing false information" and "crimes against the state". The move came just two months after MSF published a report that exposed more than 500 accusations of rape on Darfuran women.

The opinions of local Sudanese folk vary when it comes to the ICC's involvement in the Darfur war crimes, as does their support for the Sudanese government.

Victor Aleeza, a man working as an accountant for a small shop in Khartoum, says that he felt the ICC's involvement was a good thing.

"Innocent people are being killed. If the government is responsible for the planning of this, then the ICC should step in. I mean, people are dying and what is being done about it by this government? Nothing! How can we expect them to carry out fair trials when they are the ones being accused of the crimes?" Aleeza said.

Ibrahim Ahmed Osman, a Supreme Court Judge working in Khartoum, expressed a different opinion. He says: "I myself am a member of a special circle within the Supreme Court, which handles the Darfur crimes and I have, since this crisis began, found many guilty of such crimes and have sentenced many to death."

Ahmed then pointed out that the Sudanese judiciary was capable of making fair and unbiased decisions on the Darfur situation, because unlike other Arab countries, its judiciary was not a part of the executive power, allowing them freedom from the influence of the government.

Abu Bahkr Wasiri, a local journalist, said that Sudan should be responsible for its own problems, and went on to voice his concerns about the duration of ICC intervention.

"This could take years! The ICC will have to pinpoint accusations, make investigations and provide proof, while trying to remain fair and treat this as a legal issue and not a political one," said Wasiri.

The Darfur crisis has not only led to countless sanctions being imposed on Sudan by the United States, but has also brought a massive amount of negative media attention to the country. Another setback was Sudan's failure to take up the Chair of the African Union (AU) in February 2006. Sudan had initially won the support of other African nations to take up the temporary position, however, the plan was dropped after the US announced that it would not support Sudan as president of the AU while the Darfur crisis existed. The presidency went to Congo.

According to Ahmed, this decision by the US government caused an unnecessary loss for Sudan. "Darfur is one state out of 26 states in Sudan. There are many problems all over the world. Why do the Americans select Darfur? Why is this place getting all the attention?" he argued.

James Both, a third-grade teacher at a local school in Khartoum, said that he didn't know much about the ICC or what was being done, but he felt it inappropriate for Sudan to take up the AU Chair under the present conditions.

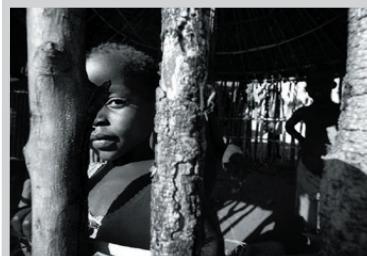
"In Sudan we have many problems, and I don't think it is good for Omar Bashir to head the AU until he sorts out the problems in Darfur," Both said.

However, Deng Ajak, a southern Sudanese man working in a print shop on a busy street in the capital disagrees: "Right now, Sudan is trying to implement the CPA. We could have supported it much better if the Sudanese government had been given a chance to solve the Darfur problem as a leader of the AU,

and with AU troops - because the world would have been watching, expectations would have been higher and pressure would have been strong."

Wasiri says that it was ridiculous for Sudan to even consider chairing the AU with its current internal problems: "How can Sudan be a leader when we cannot even resolve our own problems? If Sudan wants to be president of the AU, let us prove that we can be the boss of our own situation before we are the boss of others."

## UGANDA: ICC's balancing act on the peace process in the north



When the sun goes down in northern Uganda, thousands of people leave their homes in villages, outlying suburbs and IDP camps, seeking nightly shelter in major towns. Many are children between eight and 16 years – those most likely to be kidnapped by rebels.

Credit: Sven Torfinn/IRIN

Thousands of children kidnapped, thousands of people killed, gruesome atrocities committed; it is a tale of shocking brutality, suffering and massive displacement spanning two decades in northern Uganda.

It is a battle pitting the Uganda People's Defence Forces (UPDF), the country's army, against the mythic Lord's Resistance Army (LRA) - a rebel group made up of mainly children, some as young as 10 years. It is a battle that has made northern Uganda a theatre of bloody crimes.

This is where the rebel fighters descend from the bush onto defenceless civilians to gather their harvest before disappearing into the night with their loot: children that they turn into killing machines or sex slaves.

But the rebel group in this part of the world is unique in its form. No headquarters, preferring instead to wander nomadically through the bush.

It initially claimed to be fighting to topple a government that has "marginalised" people of the region; but they quickly turned against the same people when support was not forthcoming.

They control no territory and rarely try to capture strategic government assets; and this made fighting or arresting perpetrators a nightmare for the government army, until the Ugandan authorities found a new way to exert pressure on their existence.

The Government petitioned the International Court of Justice (ICC) in The Hague to investigate and indict rebel leaders for their crimes against humanity.

The ICC responded, and last year issued warrants of arrest for five of the rebel leaders. However, mediators who tried to broker negotiations in the war are not amused. They think that the justice being sought by the ICC was not the immediate requirement, but a luxury that could be put aside for a while as peace is sought.

Religious, cultural and some political leaders in the northern region say that what is required is to find avenues for lasting peace and stop the violence that targets mainly the civilian population.

The Court itself had remained an institution in isolation as far as the population in Uganda is concerned. Many saw its efforts as the wrong note in a song for peace. Its location, thousands of kilometres away, did not help the situation.

Jane Ajok, the 45-year-old mother of five children, two of whom were abducted and recently returned, was not aware that there is an international body pursuing the rebel leaders for their crimes, though she said she would support efforts for the local justice system if it could convince others to come out and end her suffering.

These are the perceptions the ICC has to balance. It has since tried to liaise with a cautious society, already nervous over the indictment of top LRA leaders.

The Hague-based court, and some international human rights groups, insist on justice and not impunity in situations of crimes against humanity but they face a section of the Ugandan public that believes that justice at the expense of peace and reconciliation is "not good enough".

Speaking from the Hague, Arnest Sagaga, the spokesman for the court, told IRIN that a year ago a lot of misconceptions about the court existed, but that a recent effort to have a dialogue with the community had paid off by reducing the proximity gap and by establishing a field office in Kampala, the Ugandan capital. It has since distributed up to 80,000 information kits outlining its work and benefits.

"It has been important to continue with the dialogue because already we have achieved much better understanding of the court in Uganda. We have been meeting people at all levels, and this has fostered understanding," he said.

However, Sagaga admits that the challenges are many, including balancing what the court wants to achieve and what the Ugandan systems have to offer - especially the cultural efforts to reconciliation.

"The ICC is just complementary to the local justice systems and relies on national policing systems to implement some of its decisions," Sagaga added; but many say this is its main weakness.

### Balancing the act

The Catholic Archbishop in northern Uganda, John Baptist Odama, who has headed a local effort to end the rebellion through peaceful means, sees the court's decision to issue indictments against the LRA leadership last year as the "last nail in the coffin" for efforts to achieve dialogue.

He said that the apprehension over the indictment is not purposely to oppose administering justice, but the impact they have had on the peace process.

"We have not had any direct contact with them (the rebels) since January 2006?, because the last time I talked to Vincent Otti, the role of the ICC figured prominently in our discussion," Odama said.

"Many people have asked the ICC questions that have not received the necessary answers. The people have been asking the ICC that if there is a strong process of reconciliation, what is there to achieve by the court rushing to issue indictments and instead sending these people far away?" Odama told IRIN.

He added, "How soon are those people going to be arrested?". Sagaga admitted that he did not have a direct answer to this.

"We rely on the state police and I cannot give you an answer as to when we can implement the indictments. We have asked states to cooperate with the court and Uganda has promised to cooperate," he said. "ICC would not interfere with other initiatives to achieve peace and reconciliation."

But on reconciliation, local leaders in the north believe that "it takes two to tango". James Otto, a human rights activist in Gulu, said that the feeling among the people is that the ICC blocked the reconciliation process because the process -known as the Mato Oput - depended on the involvement of the rebel leaders.

A senior politician in the district has described the ICC's intervention in northern Uganda as "antagonism" to "already successful processes on the ground" - referring to a blanket amnesty that the government extends to surrendering rebel fighters.

Walter Ochola, the out-going Gulu district council chairman, was also referring to the traditional ritual on justice and reconciliation, Mato Oput, although he recently told IRIN that he now believes that the LRA leader, Joseph Kony, will never talk peace.

"ICC's new approach to interface with the public is very appropriate because if Kony were apprehended it would send a signal that one cannot commit atrocities and get away with it," said Ochola.

The cultural leader of the Acholi sub-tribe, Rwot Acana II, had started performing these rituals as the cultural head of the community. He however said that he and other leaders were not against the prosecution of those who commit crimes against humanity, "but it is a question of when".



The actions of a fanatical rebel movement, the Lord's Resistance Army (LRA), have displaced over 1.6 million people and forcing them to live desperately poor conditions in IDP camps that are neither secure nor well-provisioned. Here children seeking nightly safety in towns, the so-called 'night commuters' prepare to sleep.  
Credit: Sven Torfinn/IRIN

Ochola was however sceptical. "Even if the chief prosecutor wanted them arrested, who would arrest Kony?" He added that judging from recent video and communication from Kony, the rebel leader does not accept that "he has wronged the people of Acholi, and therefore he is not ready for the Mato Oput". The ceremony starts with accepting your wrong and asking for forgiveness. Compensation then comes before reconciliation."

However, others say that the ICC indictment has instead sent the LRA farther away from the reconciliation process, with some pointing to the behaviours of the rebel group soon after the indictments were issued.

Some recall that in October 2005, many aid agencies had to suspend or curtail activities after two relief workers were killed in LRA ambushes in the north; two others were also killed in neighbouring South Sudan in attacks that appeared to target them. The ICC had just issued the arrest warrant against the rebel leaders.

Odama agrees: "With the ICC, no senior LRA leader will come out, but they will continue to maintain a strong control on the officers and men under them. Mato Oput requires confession by the offender before the victim can accept. The perpetrator has to pay a certain compensation determined by the cultural leaders before both parties drink from the same calabash, with their heads touching one another and eating together."

Mato Oput is an elaborate cultural ceremony - which in the Acholi language literally means to drink a bitter potion made from the leaves of the oput tree. The prodigal sons and daughters receive forgiveness and are welcomed back into their communities.

The ceremony is conducted by a council of elders. The guilty party crushes a raw egg to symbolise a new beginning and then steps over an "opobo" (bamboo stick) to represent the leap from the past to the present.

As the rite reaches its climax, both the guilty party and the wronged party drink a brew made from the herbs of the oput tree to show that they accept the bitterness of the past and promise never to taste such bitterness again.

This has been the justice system that the community has used to reintegrate former rebels into the very communities they previously terrorised as a way to prevent the breakdown of society.

Odama said this could not be achieved when the war is still going on. "The main thing to work on is to end the war and the ICC is not the remedy that will end the war," he said.

The ICC would need to reach out to Ajok, who took the ICC to be the American government and its contemporaries, if its work is to be appreciated by all. The court will also have to win support from all sections of the population that the court's work aims to benefit - the necessary balancing act it needs.

# Contact IRIN

For more information on IRIN activities and funding requirements, please contact the IRIN Coordinator, Ms Pat Banks at the following address:

## OCHA-IRIN

c/o P.O. Box 30218, Nairobi, Kenya  
Tel: +254 20 7622 147  
Fax: +254 20 62129  
Email: [irin@IRINnews.org](mailto:irin@IRINnews.org)

## Contact Information

Coordinator, Ms. Pat Banks,  
Tel: +254 20 6213,  
Email: [pat@IRINnews.org](mailto:pat@IRINnews.org)  
Editor-in-Chief, Ms. Catherine Bond  
Tel: +254 20 62147  
Email: [bond@IRINnews.org](mailto:bond@IRINnews.org)

## Headquarters, IRIN Central & East Africa

IRIN Horn Of Africa - Nairobi  
UNOCHA House, UN Crescent, Off UN Avenue,  
P.O. Box 30218, Nairobi, Kenya  
Tel: +254 20 62147  
Fax: +254 20 62129 or 624356  
Email: [irin@IRINnews.org](mailto:irin@IRINnews.org)

## IRIN Central Asia - Ankara

Room B03, UN House,  
Birlik Mah, 2 Cadde, 11,06610,  
Cankaya, Ankara, Turkey  
Tel: +90 312 454 1177/75  
Fax: +90 312 495 416  
Email: [irin-asia@IRINnews.org](mailto:irin-asia@IRINnews.org)

## IRIN Southern Africa - Johannesburg

3rd Floor, Sandton City Office Towers,  
Rivonia Road, Sandton 2146  
P.O. Box 1617, Parklands, 2121,  
Republic Of South Africa  
Tel: +27 11 895 1900  
Fax: +27 11 784 623  
Email: [irin-sa@irin.org.za](mailto:irin-sa@irin.org.za)

## IRIN West Africa - Dakar

Sur La Vdn - Villa N° 9368 Sacré-Coeur 3,  
Bp: 45792 Dakar-Fann, Senegal,  
Code Postale 12523  
Tel: +221 867 27 30  
Fax: +221 867 25 85  
Email: [irin-wa@IRINnews.org](mailto:irin-wa@IRINnews.org)

## IRIN Liaison Office - New York

United Nations Plaza,  
New York 10017, USA  
Tel: +1 917 367 2422 or +1 917 367 9228  
Fax: +1 917 367 7002  
Email: [daltonm@un.org](mailto:daltonm@un.org)

## IRIN Liaison Office - Geneva

Office A827, OCHA/ESB/IRIN,  
Palais Des Nations,  
8-14 Avenue De La Paix, Ch-121  
Geneva 10, Switzerland  
Tel: +41 22 917 1135  
Fax: +41 22 917 0067  
Email: [joanne@IRINnews.org](mailto:joanne@IRINnews.org)

## IRIN Middle East - Dubai

Dubai Humanitarian City, Bldg 4, Dubai,  
P.O. Box 506011,  
United Arab Emirates  
Tel: +971 4 308 1021/22  
Fax: +971 4 1023  
Email: [irin-me@IRINnews.org](mailto:irin-me@IRINnews.org)

## IRIN Customer Service

Contact: Gertrude Tah  
Tel: +225 22 40 44 40 ext. 443  
Email: [gertrude@IRINnews.org](mailto:gertrude@IRINnews.org)