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In-Depth

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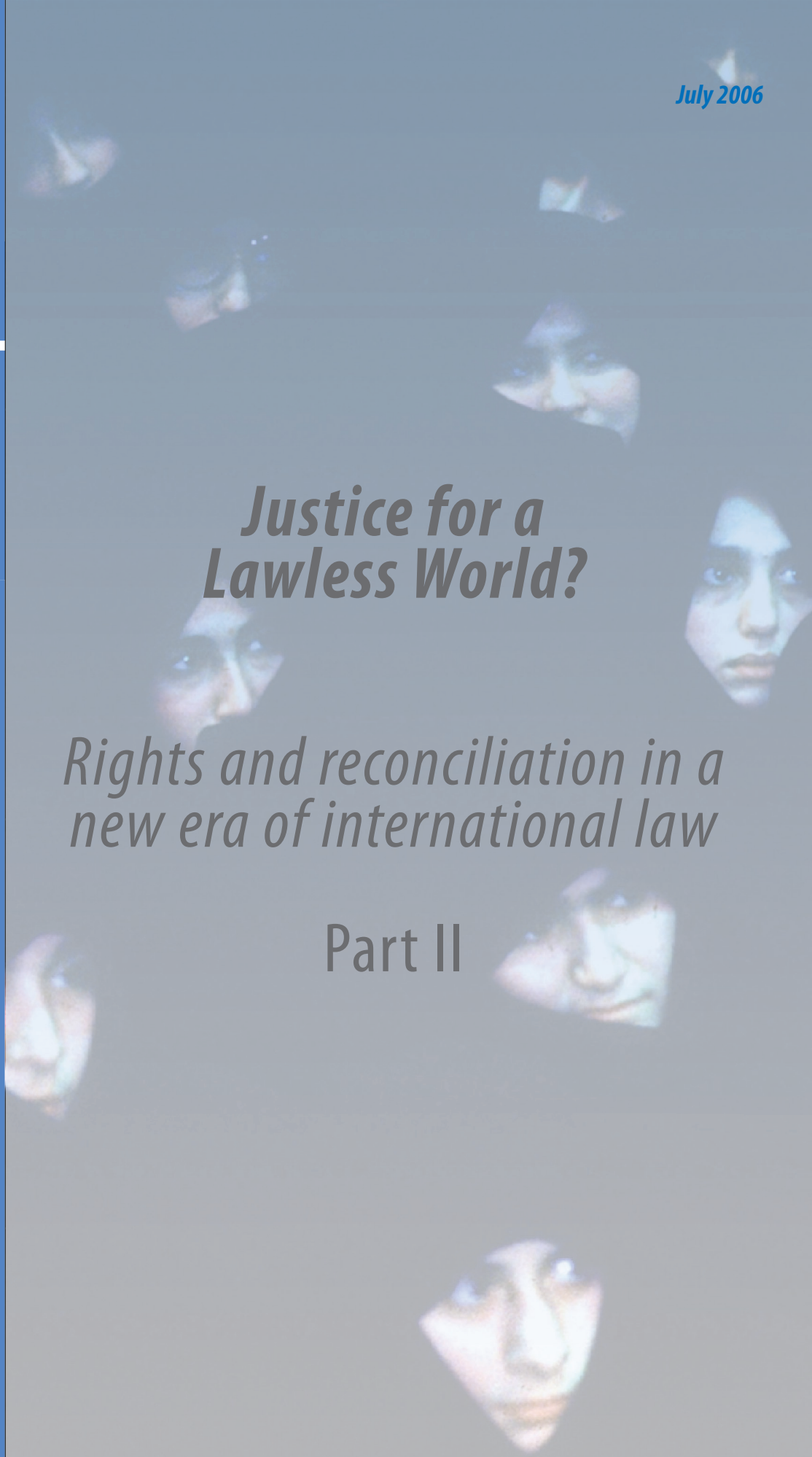
Justice for a Lawless World?

Rights and reconciliation in a new era of international law

Part II



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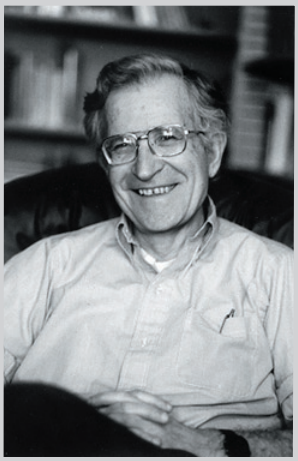
4. Interviews - Professor Noam Chomsky



Professor Noam Chomsky.
Credit: Donna Coveney/MIT

Professor Chomsky is one of America's most prominent political dissidents. A renowned professor of linguistics at MIT, he has authored more than 30 political books dissecting such issues as US interventionism in the developing world, the political economy of human rights and the propaganda role of corporate media.

QUESTION: You argue that the Nuremberg trials were essentially unfair inasmuch as the Allies were free to dictate what constituted war crimes and what did not. What was the alternative? As the Allies were never going tto put themselves in the dock, isn't some justice better than no justice?

ANSWER: Yes. We have advanced to the stage where there is something superior to that: the International Criminal Court (ICC). The trouble is, the more powerful states will not submit themselves to that. The United States is so extreme that it even imposes penalties on countries that are willing to participate. It even got to the point where the US delayed the UN Resolution on Darfur because of some mention in it of bringing Sudanese criminals to the International Criminal Court. It is really fanatic.You have heard of the American Serviceman's Protection Act which is sometimes referred to in Europe as the Netherlands Invasion Act. It grants the President authority to use force to rescue any Americans who are brought to The Hague to the ICC.

Q: Do you see any room for optimism in that the US did not veto the UN Security Council resolution for the ICC to investigate the acts in Darfur, which some have seen as a tacit acceptance that the ICC will have to coexist with American foreign policy?

A: It is good that it happened. But the administration found itself caught in a political dilemma. A large part of their voting base is ultra right Christian fundamentalists for whom Darfur is a huge issue. They had to offer something to them and for that they were willing to stand by while there was a reference made to the ICC.

Q: You are not optimistic for the future of the US's acceptance of ICC jurisdiction with respect to Americans?

A: There is almost no chance. The Bush administration is way out in the extreme on this. It is worth noting that the US generally does not accept any international authority.

Look at the Universal Declaration of Human Rights of 1948. That is a series of declarations and principles.The idea was that there were to be enabling resolutions passed by the General Assembly that would develop means of implementing the conventions and declarations on the rights of the child, the rights of women, civil and political rights and so on. But they don't even formally apply to states unless the states ratify and sign them. The US has a very poor record of ratification. The US and Somalia are the only states not to have ratified the Convention on the Rights of the Child. I think it is true to say that every case where a convention has been ratified, that has been done on the condition that it is non self-executing, i.e. that it does not apply to the United States. I think that is without exception.

There was a recent World Court case that Yugoslavia brought against NATO. They invoked, among other things, the Genocide Convention of 1948. The US did finally ratify that in 1988 but on condition that it not apply to the US. The US therefore excused itself from the World Court trial and the World Court accepted that. So the US is exempt from trial on genocide.

So the US is essentially granting the President of the US the right to commit genocide. And that is true in case after case. In the 1986 World Court case regarding Nicaragua vs US, the US refused to partcipate. The case was heard, and Nicaragua's case was presented by a very distinguished Harvard University law professor. The World Court threw out a large part of the case because, when the US accepted World Court jurisdiction in 1946, it added a reservation that the US would be exempt from any case involving international treaties such as the United Nations Charter. Consequently, the World Court had to restrict itself to a narrow, bilateral US-Nicaragua treaty and customary international law. That is the case in issue after issue. The US simply refuses to accept any constraint on sovereignty by international institutions.

Take a look at the record of its vetoes at the United Nations. In the early years after the Second World

War, the US was essentially running the UN. Since the mid sixties, after decolonisation, when the UN became somewhat more representative of the world, the US has been far in the lead in terms of numbers of vetoes; Britain is second, and no other country is even close. That is all again rejection of any international authority. The current ambassador, John Bolton, has been particularly brazen about it. He has said, virtually in these words, there is no United Nations. If it is useful for US purposes, we will allow it, if not, we will do what we want. Likewise with the International Criminal Court. It cannot have any success without international force behind it. It cannot be successful unless the great powers agree to subordinate themselves to it. International tribunals do have effect, but only against defeated countries.

I don't reject the Iraqi tribunal and I don't reject the Nuremberg tribunal either. I am glad it took place. They condemned maybe the worst criminals in history, but it was seriously flawed. The same is true of the Iraqi tribunal. It is the trial of a person who was overthrown by the US/UK invasion, and the trial is very carefully shaped to ensure that the worst criminals are not there, such as Donald Rumsfeld or people from the Thatcher government. Look at what he is being tried for: right now he is being tried for crimes committed in 1982. 1982 is an important year in US/Iraqi relations. That was the year in which Reagan dropped Iraq from the lists of states supporting terrorism so that the United States could start a very substantial flow of aid to Saddam including: military aid; means of developing weapons of mass destruction; biological weapons; and means to develop nuclear missiles and so on. Shortly after Donald Rumsfeld was sent to Iraq to firm up this agreement.

The next set of charges coming up against Saddam are for the Al Anfal massacre and the gassing at Halabja. There was no protest about that from Britain or the US because Saddam Hussein was a good friend of theirs. They were providing him with aid, including military aid. And that went on after the atrocities, after the end of the war with Iran, which was a horror story in itself.

In 1989, Iraqi nuclear engineers were being brought to conferences in the US to be trained on how to develop nuclear weapons. In fact the US stopped sending weapons just before the invasion of Kuwait, but Britain continued sending military aid up until a couple of days after the invasion as they could not stop it in time. There are others as well: Russia, France Germany and so on. But for Britain and the US to stand by while Saddam Hussein is tried for crimes which they were supporting, that is a level of hypocrisy that compares to the Nuremberg trials.

Q: Do you think there is any room for cultural relativism in human rights?

A: In general I am opposed to it. But notice the way the discussion is skewed in the west. In western discourse, when you talk about cultural relativism it is about Asians, communists and others who do not accept some of the provisions of the Universal Decalaration of Human Rights. They are relativists.

But how often have you seen discussion of the fact that 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. At a recent UN meeting, the US was alone in voting against a resolution calling for protection of the right to diversity of culture. On socio-economic rights the US totally rejects them. They were described by Reagan's secretary of state as a letter to Santa Claus that means nothing. Bush's ambassador to the Human Rights Commission, Morris Abram, described them as preposterous and a dangerous incitement. Paula Dobriansky, now undersecretary of state for democracy and global affairs, wrote bitterly about what she called myths concerning human rights, namely that social and economic rights are indeed rights. That is a myth that is polluting human rights discourse, according to her.

Q: Are discussions of socio-economic rights hijacked by people who reject first generation human rights saying it is all right for you in the west who are wealthy to talk about human rights, but the right to eat is more important than the right to protest?

A: If that's hijacking then the US and often its allies like Britain are worse hijackers, because they condemn what you are describing while they hijack it, by rejecting the social and economic rights and the cultural rights. It is symmetrical. And incidentally the US does not observe the political and civil rights either. Does it observe the conventions on cruel and unusual punishment and torture? Does it observe Article 9 that is supposed to grant political asylum? Does Britain accept that? Certainly not. Let's take Britain as an example. When Jack Straw was British home secretary he was in charge of granting asylum requests. In 2000, he received a request from an Iraqi who had escaped from Saddam's prisons where he was being tortured and he was requesting political asylum. Jack Straw turned this request down, saying he had faith in Saddam Hussein's justice system and so if this man returned to Iraq he could be confident that he would receive fair treatment because the justice system was honorable. He was talking about Iraq in 2000.
So let's look at Article 9 in that context. Can you say Britain abides by it? There are innumerable other

cases. The rich and powerful countries more or less accept the political and civil rights when it is in their interests to do so. The US completely and explicitly rejects the social and economic rights not because anybody is hijacking it, but because it simply does not regard those as rights. They pollute human rights discourse in the words of the current undersecretary for human rights.They are preposterous and an incitement. So we drop those and the cultural rights.

There are relativists and we do not have to look very far to find them. It is much easier to talk about other countries' failures that are grave no doubt. But looking in the mirror is useful too.

Q: With respect to the US and the UN, do you think it is fair that he who pays the piper should call the tune?

A: If you think the world ought to be run like the mafia, yes. If you do not, and if you think that those fine words are actually supposed to mean something then no, of course not.

Q: Is armed intervention for humanitarian reasons acceptable?

A: The only answer that I can think of to that is a statement that is attributed to Gandhi, whether or not he actually said it is not known, but he is supposed to have been asked once what he thought of western civilisation. He replied that he thought it might be a good idea.

Humanitarian intervention might be a good idea. If you look at history, just about every use of force even by the worst monsters is justified on the basis of humanitarian intervention in the most noble language: the rhetoric brings tears to your eyes. But try to find a case where that is actually true.

It is sometimes suggested that the NATO bombing of Kosovo was for humanitarian reasons. That is utterly fallacious. Take a look at the first Milosevic indictment which is for crimes in Kosovo. All but one of the crimes was after the NATO bombing. The NATO bombing was undertaken on the assumption that it would lead to an escalation of atrocities, which it did. It was not a pleasant place before, but by international standards it was not that terrible, unfortunately. The atrocities were fairly evenly split. The British parliamentary inquiry determined that until January most of the atrocities were attributable to the KLA guerrillas coming over the border to kill Serbs, trying to elicit a repsonse. And we know from the OECD reports that nothing much changed in the following months.

On Kosovo, we now have an authoritative statement from the highest level of the Clinton Administration: Strobe Talbot, who was Clinton's lead negotiator during Kosovo and the head of the joint State Department-Pentagon mission dealing with diplomacy. He recently wrote the introduction to a book by his director of communications, John Norris. In it, Talbot says that for those who want to understand the Clinton administration thinking on Kosovo, this book gives you the answers. Norris says that the motive for the bombing of Serbia in 1999 was not humanitarian concerns. It was because Serbia was refusing to enact the socio-economic reforms that the US wanted. Those are the reasons given by the highest level of the Clinton administration. It was not humanitarian in intent. We know what the rate of atrocities was after the bombing. The idea that it was humanitarian intervention is very self-serving propaganda.

In the post war period, there are two cases that at least begin to qualify. The interventions were not taken for that purpose but they did bring to an end huge atrocities. The two examples are the Indian invasion of Pakistan and the Vietnamese invasion of Cambodia which drove out the Pol Pot regime at the time when the atrocities were peaking.

They are not counted because they were not carried out by the US or Britain. The US was strongly opposed in both cases. In the Vietnamese invasion, the US and Britain turned at once to supporting Pol Pot and the Khmer Rouge. The US imposed very harsh sanctions on Vietnam for terminating the Pol Pot regime. They endorsed the Chinese invasion to teach the Vietnamese a lesson for committing the crime of driving out Pol Pot. Britain and the US insisted that the Khmer Rouge, under the name the Democratic Republic of Kampuchea, retained their seat in the UN. Obviously that intervention cannot enter history.

The US was so furious about the Indian invasion that it actually threatened war. It sent an aircarft carrier into Indian waters to warn them, and there were sanctions and so on. The reason was that the Indian invasion was spoiling a photo op that Henry Kissinger was planning. He planned to go through China secretly, through Pakistan, and then have a photo op of him being in China that would have been a step forward in US-China relations. That was spoiled by the Indian invasion of what is now Bangladesh, saving millions of lives.

Those are the two best candidates, but they are obviously not counted. It tells us a lot about ourselves.

ICC Chief Prosecutor Moreno Ocampo

Moreno Ocampo.
Credit: Reporters Photo agency

Luis Moreno Ocampo is a 1978 graduate of the University of Buenos Aires Law School. He rose to prominence as the assistant prosecutor of the National Commission on the Disappearance of Persons in the 1984-1985 "Military Junta" trial. It was the first prosecution of senior commanders for the mass killing of civilians since the Nuremberg Trials. Over the next few years, Ocampo established a reputation for his willingness to confront the rich and the powerful of Argentina. As well as his professional duties, he has been highly active in the anti-corruption NGO Transparency International, being the former president of its Latin America and Caribbean office and a current member of its global governing board. Ocampo was elected unopposed to the position of the International Criminal Court (ICC) Chief Prosecutor in 2003. His initial investigations have concentrated on the abuses in the Democratic Republic of Congo (DRC) following the formal end of the Second Congo War, the insurgency of the Uganda-based Lord's Resistance Army and the Darfur conflict of western Sudan.

QUESTION: Critics claim that due to the political process that results in any case being taken up by the ICC, its authority and autonomy is inevitably neutered by the powers that be, and the ICC effectively becomes a political tool. How would you respond to this?

ANSWER: We always fulfil our duties in respect to the law in all aspects of our work including the collection of evidence. I do not find that I am politically constrained. I have the possibility to choose cases that I feel are required. The main difference between what I do with the ICC and my work as a prosecutor in Argentina is that people have the possibility to disengage from the process of the case. In the case of Uganda for example, we cannot compel people to engage, and some people are saying they don't want the ICC to intervene and when we do their response is to disengage. This is not a normal position for a prosecutor to face. My only comment is that this does not stop my work. My work is to stop crime. We have a legal obligation that brings us political problems because we operate politicised situations.

Q: What about the view that culturally or philosophically the ICC, and other bodies representing international justice, are expressions of 'western' values and traditions, and therefore cannot represent different cultures - in particular Islamic cultures?

A: This court has 100 states parties. Most are African and only 12 are Asian. Most countries are not from North America or Europe. Then again there are over 100 states who are not party to the ICC. No, the ICC celebrates diversity and one can find different traditions working side by side. For example, in Uganda there are five indicted who will be dealt with by the ICC, but the rest of the perpetrators will be dealt with by local remedies. Therefore, we understand and accept that this process is negotiated and diverse, so there are no contradictions in this regard.

Q: One of the main intentions of the special courts and tribunals, as well as the ICC, is to concentrate their energies prosecuting the 'big fish' accused; and to leave the medium and small fry at large. If true, how can these fora ever claim to bring justice to a people who see the majority of the perpetrators living free ?

A: We work with a system of complementarity with states parties. This means 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. In Uganda, again, as an example. Mass crimes require a massive number of perpetrators. There is no way the ICC could deal with the whole problem. We will indict five people and that is all we can do. In Argentina we faced the same problem.

Also in Nuremberg where the Germans had been so organised and had literally tons of documents that could have been used to convict many of the Nazi criminals. When I met Benjamin Ferencz, [a former Nuremberg Prosecutor] in New York I asked him why they only prosecuted 22 individuals in each trial. He said: "Well, we saw we only had 22 chairs in the chambers." Of course this is a problem. There is no law to choose amongst criminals. Ethiopia tried to prosecute over a thousand alleged criminals from the previous regime and Rwanda is trying to prosecute many thousands. 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.

Q: What happens when in the pursuit of international justice local people accuse bodies like the ICC of exacerbating local frictions and interfering with what they regard as a domestic issue? Are there higher ideas that the ICC represents that permits the ICC to continue prosecutions despite such accusations?

A: The essential issue is to control crime. Prosecuting the main people is the only way to stop it. The Uganda example shows that we can respect the negotiations of the local people to achieve peace while continue with our case. We respect other initiatives but many war crimes and crimes against humanity are not confined to national boundaries. No nation can claim to have a monopoly of the solution because more than one country is normally affected.

Q: If the implementation of international justice involves the conviction and punishment of those guilty, how do you view the rise of truth and reconciliation initiatives that may only expose, but then pardon the perpetrators of crimes?

A: There are different ways to seek the prevention of crime. Truth and reconciliation processes can provide good information for criminal processes. We need to use all tools possible and tackle the problem from different sides. These commissions are not working in opposition to the ICC.

Q: International Justice is very costly. For example, money that is spent on the pursuit of perpetrators might be better spent on basic services for those living in poor countries. How would you answer critics who argue that the cost of convicting a handful of criminals is too high in this regard?

A: I agree that justice is not the only thing they need but the end of crime is overwhelmingly needed by any country as a foundation. We are also trying to keep our justice cost-efficient and effective.

Q: The ICC and other courts pursue justice after the event. To what extent do some world powers rely on these bodies to salvage their consciences in place of the much more complicated task of intervening in situations while atrocities are actually being committed - for example in Sudan and Uganda today?

A: Yes, and let's not forget the lack of intervention in Rwanda [in 1994]. This world is made up of nation states that are established within the notion of sovereignty. It's a very big and complex decision for one nation to send troops into another country. Even the idea of the ICC is a threat to national sovereignty for so many countries. Of course I hope nation states can do more to intervene when crimes are being committed but in the meantime my job is to focus on the questions of justice.

Q: Despite the previous antagonism from the US, do their recent concessions concerning Sudan suggest that we may see a future softening and even compliance from the US in relation to ICC?

A: There are more than a hundred that are not party to the ICC. The United States is one of those and I cannot comment on any aspect of one state's decision not to be engaged with the ICC. All I can say on this is that if we do our job properly and people see that we are stopping crime, I believe more and more countries will join the ICC.

Q: Is international justice a flash in the historic pan or is it here to stay? If it is here to stay, please speculate what shape it might take in the coming decades?

A: The world is a complicated place but it is also evolving. Punishing crimes against humanity is not an easy task, but after only two and a half years of existence we are already showing that it is working. I feel it is developing very well. We need to have this idea of world justice. If we have global communications and global business, we also need global justice. Ultimately, I am optimistic.

Samantha Power, Professor of Practice in Human Rights Policy

Samantha Power.

Samantha Power is a Professor of Practice in Human Rights Policy. Her book, "A Problem from Hell: America and the Age of Genocide", was awarded the 2003 Pulitzer Prize for general non-fiction and the 2003 National Book Critics Circle Award for general non-fiction. Power was the founding executive director of the Carr Center for Human Rights Policy (1998-2002). From 1993 to 1996, Power covered the wars in the former Yugoslavia as a reporter for the U.S. News and World Report, the Boston Globe, and the Economist. She is the editor, with Graham Allison, of "Realizing Human Rights: Moving from Inspiration to Impact". She is currently writing a book on the life of the murdered UN official Sergio Vieira de Mello.

QUESTION: Historically international 'law' has been honoured more in its breach than its observance. Is there more than a symbolic value to international law, and is there a deeper change taking place? Are we in fact witnessing a new era of human rights and international justice?

ANSWER: I think as tempting as it is to give in to despair in the 21st century, in light of the teeming proliferation of threats and the continuation of mass atrocities, one only has to flash back 15 years to recall that a perpetrator of mass crimes against humanity, genocide, etc. was guaranteed to walk if his state was unwilling or unable to punish him. Usually, of course, the perpetrators of such atrocities are normally doing the bidding of the state or they are actually running the state. So, the very fact that Charles Taylor has to suffer the indignity of fleeing his home in the wake of an extradition request – in his bathrobe; the very fact that Ratko Mladic for all his alleged impunity is utterly unable to be a political or security factor in the former Yugoslavia because he has to hide under ground; the fact that when you go to the tribunals in The Hague or Arusha, or now in Freetown, you see people who committed those crimes who had every expectation of being able to live out their lives spending the 'fruits' of their labours, you know 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.

Q: To what extent, in the current age, is international law in essence waging a war of attrition with customs/assumptions of traditional national sovereignty?

A: There is certainly a prevalent mindset among states that have every incentive to keep their practices off-limits from international scrutiny or international enforcement mechanisms. To hear Robert Mugabe, to hear the Sudanese government, and even to hear President Bush talk, you would think international law has no place for them. We don't live in a world where people wait until they are already completely compliant to some law and then sign on to international legal commitments. We live in a world where people sign onto international legal commitments and then one hopes that those international legal commitments acquire national force.

There are probably a lot of countries that do see it as a war of attrition or a trade off, but there are probably at this point an equal number that see it differently either for financial reasons or for reasons of reputational enhancement, or because of some domestic constituency that want to adhere to these laws. There is no doubt that it going to take some time for many of the countries to be convinced that these principles of international law are in their interest, including major sovereignty fetishists like the United States that for reasons of self interest, and also culture, keep themselves free at all times to do whatever they want in the moment rather than invest in the structures and institutions that might create greater stability over all.

Q: The International Criminal Court (ICC) has just made its first arrest in the Democratic Republic of Congo (DRC) and is extending its activities relatively fast. How important do you think the ICC will be in the future and why?

A: The ICC's impact is going to be far harder to measure than just the number of suspects in the dock. The fact that a voice is going to be speaking inside the heads of some of the people who are capable of committing terrible harm saying – "Some of the bad guys are going to jail!" – how are we ever going to measure what hasn't happened as a result of that voice? How are we going to capture the brain waves of the deterrence?

Obviously, the ICC is not deterring all crimes. We live in a very bloody world and it is very hard to say

that we are living in a less bloody world than before the courts were established. However, as bad as things are in Darfur, for example, how much worse might it be if people didn't have at the back of their minds the thoughts of these courts. This is not about absolute deterrence. It's about relative deterrence. Let's face it – national laws don't successfully deter criminals so one can't hold international laws, courts to a higher standard. What is probably going to make the big difference is better enforcement.

Secondly, because of specific sovereignty concerns, perhaps the ICC's greatest impact will be to expedite the development of domestic legal enforcement tools in countries where atrocities actually happen through complimentarity, 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 Luis Moreno Ocampo, might make countries go ahead and prosecute their bad guys themselves.

Q: Even if big world powers do comply with, and support the demands of, international justice, to what extent do they, and will they, continue to use it as a scapegoat for not acting, as crimes against humanity are being perpetrated… preferring the non-risk, low-cost and relatively politically neutral approach of letting the UN (or others) prosecute war criminals after the carnage has been wrought?

A: Yes, that's the pattern right now. As hard as it was for the Bush administration to stomach the referral of the Darfur crimes to the International Criminal Court by the Security Council, or being part of that process by abstaining, that was much more palatable than meeting the public cry for genocide suppression with the mobilisation of international resources. It's always going to appear less risky and more appealing - for a thousand reasons - to punish perpetrators after the fact. And frankly, the very habits and tendencies that make states unwilling to stop the crimes as they are occurring, are the same that make states pretty lousy at enforcing indictments that are issued by these international courts. The message is pretty clear: Be for international justice, but don't risk international lives to make it happen.

Q: Some of the most vociferous criticisms of the US's approach to international justice are coming out of America. How widespread is the US's resistance to international justice or is the resistance and refusal led by military and political elite and unrepresentative of regular Americans?

A: I actually don't think there is much of a vocal or politically relevant constituency in the US for us joining the ICC. The very fact that none of the Democratic candidates in the 2004 election thought it was in any way politically advantageous to mention is testament to that.

There are people here who are harshly critical, and appropriately so, of the Bush administration's position but we have in this country, unfortunately, a long tradition of not participating in human rights treaties; of not signing them or not ratifying them when we have signed them. I don't know how long it takes to change a norm, but the norm here is a norm of aversion to this kind of obligation. The phrase one hears here over and over again is that the big fear is that there will be 'trumped up charges'.

Q: In relation to international intervention, including action to prevent genocide, how do you respond to the charge that however 'just' or morally driven a military intervention may appear, there will inevitably be innocent deaths and possible human rights violation in the process?

A: I am essentially a humanitarian hawk in this regard. I acknowledge the charge and accept it totally, and recognise it is something that has to be weighed very, very carefully. I mean the predictable consequence of using force, the reliably predictable, the foreseeable consequence of using force, is that innocent people will die. There's no such thing as an immaculate intervention.

Look at Kosovo. It's the definition of war and calling it humanitarian intervention shouldn't make us lose sight of the fact that it's war. So then the question becomes: "compared to what?" and it becomes a question of costs and benefits to the intervene, and certainly to the intervener. For example, when one contemplates intervention in Darfur – not in a million years I would not advocate US troops being deployed to Darfur because they would be a ready and ripe target for jihadis and, if it's conceivable, make Darfur even more dangerous for the civilians there than it is today.

As in Indonesia and East Timor, sometimes you have to create the spectre of a broad-based international coalition in order to stave off the very confrontational intervention that necessitates bloodshed, or which inevitably causes bloodshed. However one cannot be misty-eyed about the cost of confrontational intervention.

Juan Mendez ,President of the International Center for Transitional Justice

Juan Mendez.

Mr Mendez has been the executive director of the Inter-American Institute of Human Rights in Costa Rica, and a member of the Inter-American Commission on Human Rights of the Organization of American States. Mr. Mendez was appointed the United Nations' special adviser on the prevention of genocide. As a result of his involvement in representing political prisoners, the Argentinean military dictatorship arrested him and subjected him to torture and administrative detention for more than a year. During this time, Amnesty International adopted him as a "Prisoner of Conscience."

QUESTION: Justice Geoffrey Robertson, QC in his book "Crimes Against Humanity" said, referring to the way the ICC's powers are triggered, that "the politicians and diplomats of the superpowers remain in the driving seat". Do you think that is a fair assessment of the ICC?

ANSWER: I think it is fair in the sense that the ICC's jurisdiction is dependent on ratification and acceptance by states. In a specific scenario on referrals by the Security Council, the states that have championed the Treaty of Rome definitely have a commanding seat. But I do not think that it is fair if it is understood in the sense that the ICC is less than an independent court or an independent office of the prosecutor.

Mr Robertson is talking about a partial aspect of the court's jurisdiction. If the whole jurisdiction of the court were to come out of the Security Council's power, which was the US position during the discussions about the ICC, then I think it would be a completely non-independent court and therefore not worth supporting.

The Security Council has to have a judicial "tool" for situations in which accountability is an important part of peace and security. It is important that it does so with an independent court that is permanent and already set up rather than create ad hoc courts every time a need arises.

Q: Would you say that the fact that it is to an extent "political" can lead to a negative perception of it? The Security Council will only approve an investigation in relation to a state that is not an ally.

A: I do not think that is the case, because the jurisdiction that would arise out of a Security Council referral is only partial because the court will be operating in cases where the Security Council is not involved. For example, the investigations in DRC, the indictments in Northern Uganda and investigations in Cote d'Ivoire.

The Security Concil is not equal, but that is true in general, not specifically with respect to referrals to the ICC.

Q: But in the examples you mention, the state itself has said that the ICC can operate there. As such, those are "friendly" acts by the ICC not "hostile" ones.

A: Yes but the friendly act does not deprive the ICC of jurisdiction to investigate even crimes committed by the state. What is a friendly act is the concession of jurisdiction, the invitation for the ICC to investigate. However, both the court and prosecutor are independent. They will investigate the actions of all actors in the conflict.

Q: The Acholi community in Northern Uganda have turned around the slogan "No peace without justice" to say "No justice without peace". Do you think the ICC is fairly criticised for exacerbating the problems of Northern Uganda?

A: No, I think that is an unfair criticism. I would understand where people thought peace was at hand, just as the ICC was about to interject. But that was not the case. 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.

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 further down the road it may be exactly what is needed to get a stable peace in Northern Uganda.

Q: Do you think a truth commission and criminal prosecution can co-exist meaningfully with the same people as objects of investigation?

A: Yes, I think they can, and should, work together harmoniously. However, I do not disregard the fact that in actual operation they do have complications. The relationship between the two is never easy. 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.

So it is important that the courts be complemented by an investigation that is less formal and addresses a wider range of issues, patterns and episodes. You have a sense of more comprehensiveness. That said, I would never support a truth commission as a substitute for criminal prosecution. A truth commission and court working in tandem are important.

There is also a problem with sequencing. One of the issues that might have been a cause of friction in Sierra Leone is that they were both working in the same timeframe and under tight time constraints.

In Argentina, the truth commission operated at the first instance and immediately thereafter, the courts started exercising jurisdiction over more or less the same episodes. That was a lot smoother because the truth commission had to avoid making judgments that would impede prosecutions down the road. At the same time, they amassed evidence that was very useful for the prosecution.

Q: Is that a violation of people's rights for those who are later going to be subject to prosecution?

A: You have to take precautions at the time that you are conducting the non-judicial truth exploration. That is something that can be arranged. You obviously cannot ask people to say what they know and allow them to incriminate themeselves and then turn around and prosecute them. But you can invite them to say what they can say on the clear understanding that if evidence is found down the road they will be prosecuted. Even in the case of South Africa where they made a concerted effort to ascertain the truth from the perpetrators themselves, the overwhelming majority of the evidence came from the victims not from the perpetrators. Therefore there is no serious due process violation if you are invited to testify and you do so knowing what the consequences may be. Even where perpetrators do not testify, there are serious questions about tampering with evidence and whether the evidence has been too widely repeated to be meaningful when brought to trial. But that can be safeguarded so that prosecutions can proceed later and be completely fair.

Q: Would you describe yourself as in favour of mandatory retribution, without qualification?

A: I think both aspects, truth-telling and prosecutions of perpetrators are obligations of the state in transitional justice and both have to be conducted in good faith and to the greatest extent possible. So what I reject is the notion that the state can say it will not prosecute anyone but it will give the victims a report on what happened. That is a travesty because it tries to exchange the demands for justice for a truth telling exercise that becomes a substitute for justice. There are many examples of countries trying to get away from their obligations to prosecute by instituting truth telling mechanisms. The most successful truth-telling mechanisms have not been predicated on impunity for the perpetrators but rather have been a step in the direction of justice.

Most of the information that is gathered comes from truth commissions or from serious investigations of documents in the power of the state or physical evidence. Many of the truth commissions have found mass graves that were previously unknown or have found concentration camps.

Q: The Supreme Court in Argentina has declared the Full Stop Law and Due Obedience Law unconstitutional, allowing cases to be brought in connection with the abuses perpetrated under the military regime. As a victim of detention and torture, will you personally be bringing a case?

A: No. My case compared to the thousands of other cases is relatively minor. I survived. I was not one of the disappeared. There is not a need for me to contribute to a societal exploration for the truth. There are many more serious cases. Also, it is not a question of flooding the courts.

Q: Do you think amnesties have a role?

A: Yes, as long as they are carefully drawn. The problem is blanket amnesties that have the effect of not permitting the investigation or the prosecution of anybody under any circumstance. Those are the ones that international law prohibits.
There are two kinds of amnesty that might pass muster under international law. One is the amnesty that is mandated by the laws of war, by the protocol to the Geneva Conventions. This says that at the end of an internal conflict parties should give each other a broad and generous amnesty. It has been authoritatively interpreted to mean amnesty for the crime of armed rising against the state: the crime of sedition or rebellion. It specifically does not include crimes that are conducted in war that constitute grave breaches to laws of war, for example, killing an enemy that has been rendered hors de combat or firing against civilians etc. Those crimes cannot be part of the amnesty. But this type of amnesty is important for persuading a rebel army to lay down their arms and participate in the political process.

The other kind is the conditional amnesty. There the law is more complicated. There have not been any international law decisions saying that conditional amnesty, for example conditioned on making reparations or on confessing, would be legal under international law. But 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. As long as it does not go so far as to let someone off the hook who committed incredible atrocities and has made only a token gesture towards reconciliation.

If I were sitting in an international court, hypothetically, I would say that international law would have to give a lot of deference to the amnesty awarded by South Africa, precisely because it is not a blanket amnesty.

It is a different question whether a specific application of that amnesty would also pass muster. But I do not think there would be a rejection of it in entirety as there was of the blanket amnesties in South America.

Q: What do you think of the Iraqi Special Tribunal (IST)?

A: We are one of only two or three international organisations that have been awarded observer status. We think that the tribunal had some weaknesses from the start in the way it was set up and the fact that it retains the death penalty. However we do not want to take an absolutist position and say that it is illegal or illegitimate. We think that depending on how the trial is conducted it could still, on the whole, pass the test of legitimacy and conduct a fair trial.

However, the longer the trial goes on, the harder it is to make a positive judgment. In other circumstances, the fact that two or three defence lawyers have been killed even before the trial started would bring us to make a more definitive judgment. But the circumstances in Iraq require that we withhold judgment until we see the result.

Q: Do you think a hybrid tribunal, possibly held outside Iraq, would have been a better idea?

A: A hybrid tribunal would have been a better policy choice by both Iraqis and the occupation forces. It would have eliminated some of the infirmities I am talking about. 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.

The circumstances in Iraq are particular and there are the added difficulties of trying to conduct the trial of a former head of state in the middle of a conflict that seems to get worse day by day. 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.

Q: So you would not agree with Professor David Crane's assessment that "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"?

A: That depends on when he said that. I would have endorsed that sentiment when the first judge was

still in charge. But a court which changes judges during the trial already requires close scrutiny. It is not fatal, but it should raise concerns. Just as concern was raised by attacks on the defence lawyers.

The replacement of the judge was complicated by the de-Ba'athification process. That was an attack on the independence of the judiciary that should raise concerns.

We have to wait till the end to judge whether the trial has lived up to international standards. If there are problems which do not fatally affect the whole exercise, they can still be corrected. We are observing the trial very closely and will produce our assessment at the end.

Q: Do you think de-Ba'athification is an acceptable form of vetting?

A: No. I think it makes a mockery of what vetting should be all about. De-Ba'athification is presented as the same thing as de-Nazification in post-war Germany. The way it operates links whole categories of people in a form of collective guilt.

We are in favour of vetting, but this is not the way it should operate. 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 witch hunt, chasing after people for the sole "crime" of having had to sign a membership card or the like.

The way de-Ba'athification is being used is as a tool for a power struggle within the Iraqi government.

Justice Geoffrey Robertson Q.C.

Justice Geoffrey Robertson.

Geoffrey Robertson Q.C. has been counsel in many landmark cases in constitutional, criminal and media law in the courts of Britain and the Commonwealth, and he makes frequent appearances in the Privy Council and the European Court of Human Rights. In 2002, Robertson was appointed as an appeal judge for the new UN war crimes court in Sierra Leone, and served as that court's first president. He is the author of "Crimes Against Humanity – The Struggle for Global Justice".

QUESTON: In your book "Crimes Against Humanity", you argue that there is no place for cultural relativism. How fair do you think it is to say that the human rights movement has swept cultural differences under the carpet in a bid to universalise fundamentally western rights?

ANSWER: I do not accept that basic civil and political rights are "fundamentally western": 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 was a bogus "Asian values" debate some years ago, set up by Kuan Yew and Suharto, but that has been seen off by Asians themselves, who demanded so-called "western" rights; e.g. to protest. 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. There was a case in Australia the other day where an Aboriginal elder brutally raped a 14-year-old virgin and claimed a tribal right to do so; he was jailed, and rightly so. There are plenty of opportunities to take cultural differences into account in respect to economic and social rights, indeed, the "right to be different" requires a degree of multiculturalism. But tribal or national practices that are, objectively, barbaric and primitive, cannot be countenanced.

Q: Do you think that the US's abstention on the Security Council vote with respect to an International Criminal Court (ICC) investigation of Sudan is evidence of a softening of their position?

A: I certainly hope so. There was a living memory of how the US, and the UK for that matter, pretended 10 years ago, to the UN Security Council, that what was happening in Rwanda was not genocide. There was a genuine wish to avoid that mistake, and a calculation that only the ICC was in place and equipped to investigate. There was a dim recognition, which I hope will become brighter as the years pass, that the ICC can be a valuable institution for prosecuting mass murder and torture and genocide; and is never going to indict American politicians or generals.

Q: The amount of money expended on international tribunals is money that could have been invested in improving infrastructure in those countries affected by conflict, as well as increasing police forces and the rule of law. Are international tribunals justifiable expenditure?

A: This is always an attractive argument at first blush. But then you realise it is an illegitimate alternative. 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. The international community chooses to invest in international tribunals because by prosecuting those who have committed crimes against humanity, they may bring some closure to victims, and may deter others from committing such crimes in the future. Also, they may assist re-establishment of the rule of law in war-ravaged societies. If they achieve these goals, even to a limited extent, then the money will be well spent. It is an act of faith, I suppose, but just as we have faith in national criminal laws to deter local crime, so we should have faith that international criminal law may deter horrendous crime in the future.

Q: Certain people we have spoken to in Angola have stressed that they want to put the past behind them and that they are not interested in transitional justice. Do you think it is fair for external players to override their wishes?

A: "Certain people" in every society have vested interests in forgetting, but the dead have a tendency

to come back and haunt. In Argentina and the Latin American states, the early cover-ups did not work. The people wanted justice, no matter how little or how late. Even in places like Spain, where Franco[1]s crimes were swept under the carpet for 50 years, they are now being exposed and condemned. In Northern Ireland, relatives of the death squad victims are asking where the bodies are buried. Besides which, it is not up to local interests to forgive crimes against humanity. These crimes are so heinous, that the very fact that a fellow human can conceive and commit them diminishes us all as human beings, wherever we live, in Angola or Anguilla, in Andorra or Argentina or the Artic Circle. The international community is, for that reason, entitled to intervene and to punish barbarities, irrespective of the wishes - which may be induced by fear - of locals.

Q: You came under a lot of criticism in the Sierra Leone Truth Commission report for preventing Hinga Norman from testifying. Do you think the criticism was warranted?

A: I did not prevent Chief Hinga Norman from testifying to the Truth Commission. On the contrary, I facilitated that testimony by permitting him to give it on affidavit, and to meet with the TRC in the detention centre for further discussion. What I rejected was an exorbitant TRC request to commandeer our courtroom and to permit indicted men to address the nation for several days, just before their trial was due to start, in a country where the security situation was tense, and in circumstances where they would have no protection against self-incrimination. To take an extreme example, can you imagine the Allies allowing Hermann Goering to broadcast to the German people for several days, just before his trial at Nuremberg? In order to understand my reasoning, you will have to read my judgement, but I have to say that most impartial commentators, and TRC supporters, agree with it. I should also make clear that this was the only subject of disagreement between the Special Court and the TRC, otherwise, [it was] a very co-operative relationship and [we] did not tread on each others toes. I think the Sierra Leone experience showed that Special Courts and TRCs can work together fruitfully.

Q: In post-conflict societies, you speak in terms of challenging impunity, prosecutions and other forms of retributive justice. Do you think that this can have the effect of furthering rifts in society as opposed to helping heal them?

A: Well, I suppose you can always have rifts with those who are corrupt, or those who are prepared to kill and torture to seize or keep power. I think they are necessary rifts to have. I do not believe in “healing” if it anoints mass-murderers with the balm of forgiveness. You can forgive a repentant thief or a one-off tax cheat, but I do not consider that crimes against humanity can or should be forgiven.

Q: Can truth commissions alone ever be satisfactory?

A: I doubt it. Certainly there has been no TRC report anywhere that has been regarded as a sufficient single answer to genocide or mass murder. The record shows that human rights violators very rarely confess or ask forgiveness at TRC sessions. They usually justify their crimes by some warped appeal to the national interest. TRCs serve useful purposes in allowing victims to tell their stories, in tracing the history of conflicts and providing blueprints for the future. But they are not, like courts, instruments of accountability and deterrence.

Dr Fanie du Toit, Programme Director for Educating for Reconciliation at the Institute for Justice and Reconciliation in South Africa

Dr Fanie du Toit.

Dr Fanie du Toit is Programme Director for Educating for Reconciliation at the Institute for Justice and Reconciliation in South Africa.

The Institute for Justice and Reconciliation was launched in May 2000 and is self-consciously located in post-TRC (Truth and Reconciliation Commission) South Africa. The Institute is committed to using the insights generated through its work in South Africa to engage in dialogue with other African countries.

QUESTION: How do you educate for reconciliation?

ANSWER: In South Africa there has been a huge transformation of the education system which in the time of apartheid was a deeply idiosyncratic system. It was a top down system, ideologically motivated and [it] furthered racial inequality.

When democracy arrived in 1994, there was a concerted attempt to bring in a whole new curriculum, but that was too ambitious, expected too much of teachers (who were schooled in the old system) and ultimately had to be revised. Now the revised curriculum is being implemented. Within this context, the Institute's education programme focuses on three areas:

1. The development of the content for the history curriculum. History was traditionally told from a white perspective. History went back no further than 1652, when white settlers arrived. Now we are incorporating archeological evidence predating that, and showing that colonialism was only one turning point, not the only historical point of reference. To this end, we have developed a series of history textbooks for Grades 10-12 called "Turning Points in History". These have been distributed nationally.

2. We are also empowering teachers. The education system is not delivering as it should. South Africa has one of the highest education budgets in the world yet it is not producing the results. There is a growing realisation that human capacity – specifically at the level of teaching staff – is at the root of the problem. We need therefore to focus on the teachers and ensure we give them sufficient support.

3. We are also producing fresh oral histories and writing them up so that these histories, often of small communities on the edges of society, are not lost and will become an educational resource for the future.

South Africans still live apart. South Africans mix in the formal economy, in public spaces and in education. But nocturnally (and socially) we withdraw. We need to utilise spaces where people do in fact come together. Integration within the education system is not perfect, but it is a very important point of contact between race groups in the country.

Q: The Institute for Justice and Reconciliation has been strongly advocating the payment of reparations to victims of the apartheid regime. Is there not a concern that reparations take money away from a society, which needs investment in infrastructure, and puts it in the hands of certain individuals?

A: This is obviously a concern. There needs to be a balance between development and reparation. And most crucial of all is to wipe out systemic apartheid. But South Africa has enough resources to pay those who suffered most acutely under the apartheid regime. And this is not only a moral stance, but it is expedient too; those people who suffered most are the most likely to want some form of retribution which can then lead to the start of new cycles of violence. Their suffering and pain must be acknowledged, and not only symbolically.

This is a South Africa specific comment that I am making; it is a country of such vast material discrepancies. I am not speaking about reparations in other countries.

The other problem with the reparations is that the TRC did not have the power of implementation. After the handing over of the final TRC report, the government stalled for five years, saying that it had to wait until the amnesty process was over. This resulted in a lot of disgruntled victims; especially as the perpe-

trators walked free immediately. Also the TRC recommended that between 18,000 and 23,000 Rand be paid to each victim annually for six years. The government then said it would pay only 30,000 Rand in a one-off payment.

Q: Are truth commisssions on their own ever enough?

A: No.Truth Commissions alone are never enough. They always have to be part of a bigger transitional process. In transition, you need to achieve a number of things. There is a need to reinstate the rule of law, so that everyone, including the government is subject to the rule of law. And one of the most visble ways to do that is to make the perpetrators accountable.

It is a complicated area. There is an argument for amnesties. 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. But amnesties need also to be conditional on the perpetrator coming clean. And the credible possibility of prosecutions if those conditions are not met is important. If the International Criminal Court (ICC) had been in existence at the time, I would have liked it to be able to say that we are watching carefully to see that the amnesty process is being respected. As it was, the top dogs in South Africa did not bother much with the process and an ICC looking over their shoulder might have provided some additional incentive to come clean.

Transitional justice is the arena where principles and pragmatism clash. But besides a need for shrewd politics, it is also a time to ask what kind of society we are trying to build, and to invest in symbolic acts, such as reparations, to educate the broader society about the values inherent to the new society.

Q: How can you assess the impacts your projects are having on society?

A: There are various forms of assessing impact. We engage in dialogue with other players in this field. We are, for example, holding a conference in April this year looking at the impact of the TRC 10 years on.

Also, we have a national research project called the Reconciliation Barometer. This comprises a questionnaire sent out twice a year nationally to 4,000 individuals - representative of the total population - to assess the state of race relations.

In addition, the Institute also assesses progress in the economy (in areas of growth, education, social development and black economic empowerment) in a project entitled The Transformation Audit.

Q: What weight do you think should be given to the different motivations behind transitional justice: vendetta, retribution, catharsis, healing etc.?

A: You can come at transitional justice in two ways. 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.

The practitioner of transitional justice has to take both sides into account and reach a compromise. It is not about retribution. It is about facilitating the birth of a new society. There is a need to move on, but it is also important to pause for a moment in order to create avenues through which perpetrators may re-enter the moral community and to acknowledge the price paid by victims.

In criminal cases, alleged perpetrators say as little as possible in order to avoid incriminating themselves; but in truth commissions they are free to speak and so we are more likely to get to the truth about what happened. It is also hugely important for families to find out what happened to their loved ones. Truth commissions also provide a forum for the victims where they are given a voice.

Q: The South African TRC is often held up as the model truth commission. Some truth commissions are obviously less successful; Burundi is having its second in less than 10 years. Why do you think the TRC in South Africa has been more successful?

A: The TRC was not perfect. And there are many things we would change now. But it did help to mediate a peaceful transition from the apartheid regime to democracy. South Africans were presented with a unique opportunity to see the world from the victims' point of view. For two years there was extensive daily media coverage of the TRC hearings, specifically of the stories of victims. We all heard what happened. As a consequence, there is much less room for revisionist history in South Africa now.

I would say the idea of a conditional amnesty, the fact that the media were on board, the size of the process and the level of international interest all helped make the TRC successful. These factors are not necessarily present in other truth commissions.

We work a lot with other nations sharing experiences. We have had discussions with Burundi, the DRC, Iraq, Colombia, Peru, Morocco and Rwanda. There is a vigorous debate on truth commissions, the TRC and transitional justice especially between African countries as they seek to move towards more stable democracies.

Abdullah An-Na`im, Ph.D, Charles Howard Candler Professor of Law at Emory University, Atlanta, GA, USA

Abdullah An-Na`im, Ph.D
Credit: Prof. Rosalind Hackett, Emory University

An internationally recognised scholar of Islam and human rights, and human rights in cross-cultural perspectives, Professor An-Na'im teaches courses in human rights, religion and human rights, Islamic law, and criminal law.

QUESTION: Do you agree that personal freedom is a western value?

ANSWER: No. The fact that human rights are due to every human being means that these rights are by definition common to everyone. If human rights are western, then they are not universal, which contradicts the concept of human rights itself. I reject the idea that the authorship of human rights is western or European. The so-called antecedents, being the product of the French Revolution and the American Bill of Rights, were concerned with the citizens of those countries, not with the rights to be accorded to all human beings. In that context, it is also telling that the European Enlightenment legitimised colonisation.

The Universal Declaration of Human Rights was the beginning of the project for defining that concept. We must look at it in terms of both concept and content. The concept is that there are fundamental human rights due to human beings regardless of sex, gender, colour or faith. The content of these rights is a product of development. The human rights paradigm is the child of the UN Charter on Human Rights. Before the Charter, many peoples of Africa and Asia had no voice because of colonialism. The UN Charter initiated the process of decolonisation which enabled colonised people to be true subjects of international law, and thereby contribute to the continuing project of defining human rights. As African and Asian countries became independent, they affirmed the universality of human rights in their own national constitutions, and through participation in the drafting and ratification of human rights treaties. That way, the universality of human rights started as a vision under the UN Charter and Universal Declaration, and gradually became more truly universal as more people around the world became part of the process of defining and implementing these rights.

The post-colonial human rights era should be looked at as both an end and a means. The end is equal human dignity for all human beings, but the means is that of creating a space for human dignity to be affirmed. And it must be affirmed by the individual person everywhere. This is the process by which the universality of human rights is being realised in practice, out of the vision and project started by the UN in the 1940s.

Q: What do you say to the fact that Saudi Arabia only accepted the Charter insofar as it did not conflict with Shari'a Law?

A: 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. If you were to ask a woman of Arabia without inhibition, and free from any fear of retribution, she would lay claim to the Charter on Human Rights. But there are certain ideological elites who claim to speak on behalf of peoples. 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. This is true of many religious and

cultural traditions. But 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.

The human rights concept is not a western construct (and on that point I think western is an unhelpful and misleading adjective in this debate). There is an over-simplification of an enlightened, pluralistic west, versus a despotic and authoritarian east. The colonisation of Iraq by the US and the UK did a tremendous disservice to the possibility of human rights. It clearly shows lack of commitment to human rights by leading western powers. The invasion of Iraq by these western powers in 2003 is colonialism because it was taking over sovereignty of a country and its people my military conquest without legal justification, which is the classical definition of colonialism. That invasion was in effect a total repudiation of the UN Charter which prohibits the use of force except in self-defense or as authorised by the Security Council, and neither of those grounds applied to Iraq in 2003. How can those leading western countries repudiate international law as the foundation of human rights, and yet the claim continues that human rights are western.

Q: How likely is it that there will be an accepted ijtihad in Shari`a (Islamic law)?

A: I think this is highly probable, not only likely. Ijtihad is the application of human reason in the interpretation of Shari`a, which is necessary for the possibility of being Muslim. But as Shari`a was believed to have been fully developed within the first three centuries of Islam, a very technical meaning of ijtihad was imposed by religious authorities to control the process. But, from an Islamic point of view, no human being or institution has the authority to restrict ijtihad or deny the possibility of exercising it.

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. This is simply the same principle that no Muslim can escape his or her obligations, and remain fully responsible and accountable for his or her own actions, regardless of what others say. If I act on a so-called fatwa, a legal opinion issued by Islamic scholars (Ulama), I remain responsible for that action and cannot avoid accountability by saying that that scholar told me to do it. This is what I mean by saying that Islam is theologically democratic because it is always based on the responsibility of every individual for her or his choice and action.

But sociologically, people tend to abdicate their responsibilities and delegate to Imams and Ulama, those graduating from Islamic institutions like Al-Azhar in Cairo or Qum in Iran. This was understandable when very few people were able to read the Qur'an and other sources to determine Shari`a principles for themselves. In sociological terms, in the post-colonial period, there has been urbanisation, increased mobility, increased literacy and education. There is an increasing number of middle class professionals and they are now claiming authority away from the Al-Azhar. There is a decentralising move away from religious authorities. However, you cannot expect the decentralised voices to fit whatever you want them to say.

Now that large numbers of Muslims can read the Qur'an and other Islamic sources for themselves, they will move away from dependency on the Ulama to tell them what to believe. Islamic sources are now readily available; I can even do an electronic search of the Qur'an and Sunna of the Prophet on CD ROM by subject or word, and find all relevant principles for an issue and decide. With this capacity becoming accessible to more and more Muslims, the sociology of Islamic knowledge makes ijtihad an obligation that Muslims can and must perform for themselves. In this way, 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.

I want to make a point about the idea of fatwa as well. This idea is fundamentally un-Islamic. It is a more Catholic idea that a religious leader, like the Pope, can make a binding pronouncement. As I have said, each Muslim has not only a right but an obligation to make his own choices. We need to delegitmise this idea of religious authority. It comes back to the point about the difference between the theological and the sociological. The fatwa is a sociological not a theological concept.

But with this wide 'opening of the gates of ijtihad', there is the risk that some radical views will be expressed by some Muslims as their view of Shari`a. This is unavoidable once people have freedom of religion and belief, and freedom of expression. If you invest certain institutions with the exclusive authority to interpret Shari`a, you will get stagnation and regressive views of the subject. Once you open up the process, you must expect all sorts of views and opinions. The way forward is through dialogue and debate among Muslims, which is secured by their human rights. That is what I mean about human rights being the means and ends of Islamic reformation, allowing views to emerge, be debated,

stand or fall by the free choice of Muslims, and not the exclusive authority of a few elite who control the process of ijtihad.

Q: Is international human rights perceived as a tool of the west to justify interference in other states?

A: The global picture is constantly changing. There are certain areas of tension in the world as a reaction to certain events. In this process, human rights, like other great ideas of our time, will be manipulated by some to justify their own hegemony over the lives of others.

In particular US foreign policy has at times used human rights as a mask for its own imperial ambitions. Other examples can be found in the domestic or foreign policies of African, Asian, Latin American, as well as European, countries. Unfortunately, Americans do not have a monopoly for manipulating human rights to their own selfish ends. At the same time, there are citizens and civic organizations in all countries who are defending the human rights principle against such abuse. Those advocates are also influencing the policies of their governments in favour of more consistent observance of human rights principles.

Q: But what about Bahey El Din Hassan's criticism that "many Arabs perceive internationally recognised human rights as a Western import and thus unsuitable for our societies"?

A: That statement was made in an article which referred to certain actions of Human Rights Watch in Cairo. Human Rights Watch, an organisation for which incidentally I have worked in the past, can sometimes be perceived as an American organization which is almost a puppet of the government. Please note that I am not saying it is so, but only referring to a common perception. I think Amnesty suffers less from this as it is seen as an universal organisation of individual members. Bahey El Din Hassan was referring to a specific incident with that particular NGO. His point, if I may say, was more about the need for human rights organizations to guard against that negative perception that would undermine their legitimacy among the same people they claim to protect against human rights violations. We need to be vigilant to protect the integrity of the human rights movement, wherever that threat may come from. It can come from external forces but it can also come from mistakes made by the organizations themselves.

I would also point out that this idea of the human rights movement being a tool is the exception rather than the rule. In Tunisia for example, Rashid al-Ghannoushi's Islamic movement was persecuted by the Tunisian government. As human rights organizations protested against that abuse in principled and consistent manner, al-Ghannoushi and his movement came to appreciate and support human rights organizations.

Q: As a Sudanese person, what do you think of Sudan's allegations that the US has acted hypocritically in abstaining from the Security Council vote on the investigation by the International Criminal Court?

A: I think that the Sudanese government is not in a position to talk of hypocrisy. Yes, the US has been hypocritical and should adopt the Rome Statute, instead of resisting and trying to undermine it. But the present Sudan has been much more hypocritical for decades. The hypocrisy of one government does not justify that of the other, and we should expose and condemn such behaviour whenever it happens, and whoever is doing it.

Q: Truth Commissions in Arab-Islamic culture: Morocco has produced the first one to mixed reactions. Do you think there is room for optimism and that further truth commissions could be seen in other Arab-Islamic states which may be seen as oppressive?

A: Yes, I think there is room for optimism. I am a pragmatic optimist, which is to keep working for better outcomes whenever circumstances permit, without losing sight of the limitations on the ground. This is the first such truth commission there, and I think it would be naïve and counter-productive to expect it to be perfect.

Justice is not relative, but the possibilities of realising it in a given situation are relative. So we must work within the situation to achieve the most we can. In certain situations you have an opening which you can fill, but the very act of filling this space creates more space.

Q: Are you saying that justice should be tempered by practicality?

A: I am saying that you push for the most that you can achieve at a given time. You should push for the maximum such as prosecutions of human rights violators, but accept what you get only as basis for the next step. When you have a regime in power they are unlikely to hand themselves over for prosecution, but if they are prepared to have truth commissions then this is a very important part of the process. Regression is part of progression and we must look not in terms of absolutes but in terms of incremental success. The problem would be to settle for less when we can keep pushing for more.

Q: Edward Said criticised the perception that western law was dynamic and Islamic law purely conservative. Do you think that is an untrue assessment of the different laws?

A: The development of Islamic law has not stopped. There have been refinements of the content of the law within the framework, which was laid down in the first three centuries after the Prophet. However, the scale of change has not been on a par with certain other bodies of law. Now we need a paradigm shift in the methodology of Islamic law so that we can address new problems. Islamic societies are now in a positive position as a result of what I mentioned earlier: the growth of megacities such as Cairo, Islamabad and Jakarta; there is increased education; children are more independent of their parents, and women are working outside the home. There is a break away from the Ulama, as young educated professionals are making up their own minds about what Islamic law means today. We can expect that there will be a significant paradigm shift.

I would argue that an ijtihad is underway and that 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.

For more information about these ideas and projects I have worked on in Islamic Family law, Women and Land in Africa and the Fellowship Program in Islam and Human Rights please go to: http://www.law.emory.edu/aannaim

Augustin Nkusi, the Director of the Legal Support Unit, National Service of Gacaca Jurisdictions, Rwanda


Augustin Nkusi.

Augustin Nkusi is the Director of the Legal Support Unit, National Service of Gacaca Jurisdictions. Rwanda.The unit is a government department set up to address the trial of genocide crimes in gacaca courts.

QUESTION: Has the gacaca process started in every community in Rwanda?

ANSWER: Yes, but it depends what you understand by started. The investigations have started everywhere, but not necessarily the trials.

The law, codifying the gacaca, was passed in 2001 and then the judges, the Inyangamugayo, were elected. In 2002, the training started; first, there was a programme to train the trainers, and then they started to give training to the judges. On the 19th June 2002 the gacaca process started in a pilot programme in 10 percent of the areas. We closely observed the process, took some lessons on board and made modifications.

In 2005, it was rolled out everywhere. Ten percent have finished the information-gathering stage. The rest are still collecting information. In March 2005, the first gacaca cases were heard.

Q: How many judges are there?

A: There were originally 258,000 but that has now been reduced to 169,000. Every jurisdiction has nine judges. These judges are elected by the community. Five of the judges have adminstrative duties as well, and there is one president.

The president is elected by the other judges. The judges are not paid. They receive small benefits: they get free education for their children, free health insurance. It is a voluntary position.

The court meets one day a week. The entire community is obliged to attend. But there are reasons sometimes why people cannot attend and the obligation is not severely enforced.

Q: What does the training consist of?

A: They are taught about the gacaca law. Avocats Sans Frontieres has assisted us in preparing materials for training. They are taught about the rules of impartiality; about trauma; about how to deal with the witnesses and the defendant - all aspects of the procedure. The training lasts a week.

The idea is of a simplified legal process. They can seek clarification from experts if they wish on certain legal points.

Q: Is it true that if a prisoner confesses to murder during the genocide that they are then released without having to stand trial?

A: Since about 2003, 20,000 people have been released who have confessed. Those who have confessed can benefit from a reduced sentence. They have been in prison since 1994 so they have served a significant period of time.

Those who have been released come from the second category, i.e. they have killed but not instigated the atrocities, or killed in a deliberately cruel or torturous manner. We released the rank and file.

Q: Would it be better if the judges did not come from the same community where they are judging?

A: That might be a better idea but it would present problems. It is expensive to house people in other areas. Furthermore, if these trials are going on once a week, that imposes a huge administrative and financial burden.

Also, I am not convinced that judges from a different area is a better idea. Your suggestion would provide perhaps more neutral judges. But the judges who are present are aware of what happened in the community. They were there; they saw what went on. And that brings its own advantages.

Q: Are you not worried that the judges will have, in effect, prejudged the case? That they are both judge and witness?

A: I agree that the procedure is different from the classical legal theory. But that is not what we are trying to achieve here. We are trying to achieve justice for the community, by the community, in the community.

A person can choose to be a witness instead of being a judge. But it is an important part of the process that the judges are aware of what happened. Also, you have to remember that these trials are taking place in front of the whole community. The people know what went on. Another inherent advantage is that the gacaca trials are also quicker because the people know what happened.

Gacaca trials sometimes receive a bad press. But there have also been acquittals. Six hundred and ninety five were acquitted of charges between March and December 2005.

Q: What do you think of the International Criminal Tribunal for Rwanda (ICTR) in Arusha?

A: It is an important process. 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.

Q: How is the process of reconciliation going in Rwanda?

A: We hold conferences where we extol the virtues of reconciliation, of confessing and of pardoning. There are a lot of ceremonies to remember and to underline that this should never happen again. There are differences between how reconciliation is progressing in the countryside and in the city. The countryside is, you might say, more receptive to the idea of reconciliation. In the city, people are less likely to talk about reconciliation. I do not know why.

Q: Do you believe there is a lot of revisionist history being circulated?

A: Unfortunately in places like Belgium there are a lot of people who try to say that there was not a genocide, or who refer to what happened subsequently in the north as a counter-genocide.

In 1997, there was a war by the border near the Congo. The Interahamwe started regrouping, being rearmed and infiltrating the north of Rwanda; and again spreading propaganda that the Tutsis need to be eradicated. They started killing again, reinstating the genocide. We had to stop that. The problem there was that they infiltrated communities and so it was hard to fight them. But they were were not conspicuous: it was not possible to tell who was Interahamwe and who not. So we told the population to distinguish themselves from the Interahamwe, and those who were Interahamwe, we fought. It was weapon against weapon, not a genocide, as has been alleged.

There were no atrocities.

Q: Does it upset you that Rwanda is synonymous with genocide?

A: Yes, but it is the reality. Rwanda was not known before the genocide. We are the third genocide in the history of humanity. But we must think of the future now.

Rwandans feel that we must unite and work for reconciliation and for a better future. We are addressing the past but we are also looking towards the future by trying to combat poverty and raise the standard of living.

We have a recent history of different classes, along ethnic lines. But that was actually brought by the colonisers who tried to distinguish people by calling them different “tribes”; distinguishing them physically and awarding them different rights. We are moving on from that epoch now. We are all Rwandans.

Q: So are you optimistic about the future of Rwanda?

A: Yes. I am. There is a lot of work to do. And it would be better if those abroad were to return to help rebuild the country. They could help and I think that some of them do not understand, or do not want to understand, the situation here and what we are trying to achieve. They sometimes spread misinformation 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.

I am an optimist.

For more information please go to: http://www.inkiko-gacaca.gov.rw

Benjamin Gumpert, counsel representing Justin Mugenzi, who is currently on trial at the International Criminal Tribunal for Rwanda

Benjamin Gumpert.

Benjamin Gumpert, counsel representing Justin Mugenzi, who is currently on trial at the International Criminal Tribunal for Rwanda. Justin Mugenzi was a politician who participated in the creation of the Liberal Party and is alleged to have led its Hutu Power faction - an allegation that Mugenzi and his counsel strongly deny.

QUESTION: What do you say to those victims of the genocide in Rwanda who criticise the ICTR on the basis that the people being tried live in luxurious conditions, while they still live below the poverty line?

ANSWER: This is an international tribunal which attempts to operate on international bases of fairness and standards of justice. When a court such as this is set up, it must attempt to reach the minimum internationally accepted standards of justice. It is odd to focus on the living standards of the defendants, when those are no more luxurious than the standards afforded to any prisoner in the US or European justice systems. The way that the priosners are kept here is just one of the many ways in which this tribunal differs from what goes on in Rwanda, and is probably the least important. Here there are attempts to hold a fair trial, which is heard in full and allows the defence to call witnesses. These are qualities which are less strongly present in trials in Rwanda.

If we are going to comply with international standards then we need to provide the defendants with decent food, allow them to wear their own clothes and afford them a certain amount of privacy. These men have, after all, not been convicted of anything. My client, Justin Mugenzi, has been living in custody, presumed innocent, for seven years. To hold him and others in the conditions of most African jails for such a period of time would have been a travesty.

Q: Justin Mugenzi was arrested in 1999 and his trial opened in April 2003 but is still ongoing. Why are the trials taking so long?

A: The ICTR has been provided with inadequate facilities. There are not enough judges and not enough courtrooms. Rather than making this plain and holding trials when there is the capacity to start and finish them in one go, the choice has been made to present the situation as though 50 out of the 70 people indicted are on trial. This is not actually true. The trials are not continuous. So the appearance is given that matters are moving forward, but trials are consistently interrupted to make way for each other.

In the case I am working on, the prosecution concluded its evidence in June 2005. There was a recess for a month when the court was on holiday. Then after the court holiday, other trials were heard rather than ours. So we began to present our evidence in November, when we were granted hearing time amounting to just under eight weeks. Thereafter the hearing did not reconvene until March 2006. We are now presenting further evidence until 5 May, and then the case will not reconvene again until 20 August - again for another eight-week session. In the whole of the year 2006, despite our eagerness, anxiety even, to proceed with the trial, the court will only have been in session for 15 weeks.

Q: Do you think that all the trials will be finished by 2008 and the appeals by 2010?

A: I cannot tell you that. All I will say is that the Mugenzi team is near to completing the submission of our evidence. By the time we have finished we will have called about 25 witnesses in a period of 10 months. There are three other defendants in the case. I see no reason why they would call fewer witnesses. On that basis, the trial would have another 30 months to run, and that is before the final submissions are heard and judgments handed down.

It is likely that my client will have been in detention for more than 10 years before a judgment is given. No serious, organised legal system, which I respect, would allow that to happen.

Q: Do you think that the work of the ICTR should be transferred to Rwanda when the ICTR is wound up in Arusha?

A: No. The ICTR was situated away from Rwanda in the first place for a reason. The current Rwandan government regards those detained in Arusha as their bitterest enemies. It was internationally recog-

nised that neutral territory was preferable. It was recognised that otherwise there would be pressure exerted on the defendants, the witnesses and the very machinery of justice. Despite the ICTR being located in Arusha, the Rwandan government has already exerted such pressure.

When Carla del Ponte was chief prosecutor for the ICTR, she had the courage to raise the issue of trials for the crimes committed by the RPF. Fairly soon afterwards, she left the tribunal. I am not saying the two things are connected, although some have. What is certain is that since her departure, the subject of RPF prosecutions is stone cold.

The International Crisis Group, a respected body of neutral international observers, including former cabinet ministers and diplomats from stable and mature democracies - who draw up reports on flash-point areas around the globe - has also stated in its report (No. 30 entitled: "L'urgence de juger"), that it was made aware that the supply of witnesses permitted to travel from Rwanda to the tribunal would dry up, should members of the RPF be indicted. In fact, so it stated, at one point, the Rwandan government stopped sending witnesses until the issue was resolved and discussions of RPF indictments were halted.

Q: Hasn't there been discussion in the last few months about potential investigations?

A: I have not seen any evidence of that or serious talk of RPF prosecutions. In fact, the Head of the Special Investigation Unit has ceased his work. For the sake of appearances, there may be some papers being shuffled in his office, but the serious work has now stopped.

Q: Do you think it is right for the UN, a body that has confessed that it failed to stem the genocide, to dictate the terms of justice if the Rwandans would prefer the alleged instigators to be tried in Rwanda?

A: The 'given' in your question is, in itself, a fairly contentious statement. Massacres certainly happened and hunderds of thousands of people were killed. But although the UN had a presence there, I am not sure it is correct to say they could have stemmed the genocide.

Q: Kofi Annan has said that the UN could have done more.

A: Kofi Annan is a diplomat. He needs to make his partners more emollient. I am not sure that the fact he said that is conclusive. But let us assume that the proposition is correct. The UN is the only body that could realistically set up an international court. The Rwandan government, with its crystal-clear prejudices, obviously could not have provided a fair trial. There have been acquittals in the ICTR. Bagambiki and Ntagerura have just had their acquittals confirmed. The chances of acquittals in Rwanda would have been, I would say, next to nil.

The other point is how do you know what Rwandans want. The people there are not free to exercise any real degree of free speech. They speak when the government requires them to. I would not have total confidence in what IBUKA [the umbrella organization of the 1994 Rwanda genocide survivors] or other victim organisations there have to say. You only need to read the recent Human Rights Watch report on the Rwandan government's actions. It has ejected several NGOs from Rwanda because they were too critical of the gacaca process. It accused them of having a genocidal ideology. These are internationally recognised NGOs, some of whom have even been supporting the Rwandan Justice Ministry in its work.

Q: What do you think of the gacaca process?

A: I have to say that I am not an expert. I am speaking as someone who is as well informed as the average person who reads a quality newspaper every day.

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 are (by that I mean non-lawyers) of being able to conduct complicated trials of genocide or other serious offences. There is little chance of justice in these circumstances.

Q: It is unfeasible though, is it not, to suggest that all of those who were complicit in the genocide be given a full trial in the manner of the ICTR?

A: 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 interna-

tional proceedings does not need to be observed in Africa.

I doubt plucking people from communities to be judges and to hold trials in a gladiatorial atmosphere is going to provide a fair trial. These procedures do not seem sound, and I doubt they would stand up to close scrutiny.

Q: Do you think a hybrid tribunal, such as the one going on in Sierra Leone, would have been better than the ICTR?

A: That would depend on what was proposed. It would have been better had there been more court-rooms and more judges.

Q: Do you think it would have been better to have at least one Rwandan judge?

A: The Rwandan government did propose that, but the reason they wanted to have one Rwandan judge was so that they could exercise some control over the proceedings.

A recent development in the case I am involved with illustrates their attitude to the Tribunal.

A key witness for our defence is a woman called Agnes Ntamabyiliro. She was a founder member of the PL, the party of which my client Justin Mugenzi was president. She was one of four members of the excutive committee of the PL. She was also a cabinet minister, and was the justice minister during the period from April to July 1994. Her evidence is crucial for many reasons, among them these three:

1. One of the major planks of the prosecutor's case against the Government is that the Justice Ministry did not take any action to stop the killings. We contend that this was not practical given the circumstances. She is the witness best placed to comment on these matters.

2. My client has been accused of introducing an anti-Tutsi element to the PL. She can testify from first hand experience whether this is so or not.

3. If there was a conspiracy, as has been alleged, by the pre-April 1994 government to organise a plan of killing Tutsis, she would know.

We wanted to call her as our second witness after Mr Mugenzi. However, we were unable to do that, as the Rwandan government did not allow her to travel to Arusha.

In December, the government said she could not attend the trial but that she could only give testimony by video. We submitted a request to the Chamber that she attend in person, but this was again denied by the Rwandan government in April. So we asked the Chamber to make a ruling and order that she be transferred. The Chamber, to its credit, made such an order and reminded the Rwandan government of its obligation to comply with the statute and cooperate with the ICTR. It also reminded the government that it had a duty to report to the Security Council in the event that the Rwandan government failed to meet its obligations.

After a flat refusal, the Rwandan government then suggested, in a radio interview with the prosecutor general, that Agnes Ntamabyiliro was about to be tried herself. This had not previously been mentioned despite the fact that she has been in custody for nine years since her unlawful capture in Zambia and transfer to Rwanda. The Rwandan government criticised the court for its use of "excessive force" in demanding her attendance at the trial. We have been told that she will now attend but we do not yet know when. The Rwandan government continues to be in flagrant breach, without any explanation, of the order made by the Tribunal. We are entitled to doubt its good faith in the matter, and we do so.

In effect, the Rwandan government only began to contemplate allowing her attendance when they realised that if they did not produce her, the Tribunal might accept the argument that there had not been a fair trial with the result that the indictment against Mr Mugenzi would have to be stayed.

Q: Are you optimistic about the process of reconciliation in Rwanda?

A: I believe the people there are as anxious as any people to achieve reconciliation. However, there is deep dissatisfaction amongst the Hutus in Rwanda that the RPF atrocities have not been prosecuted.

Many Rwandans seem to me to be highly educated and hard-working people. Those are qualities that I believe help any people to recover from such a trauma more quickly. However, the Kagame govern-

ment is a murderous one that suppresses its people's rights to freedom of conscience, association and speech, and conducts itself - especially with respect to the Democratic Republic of Congo - for its own immediate and personal benefit. I think that will have a negative effect on the prospects for reconciliation.

Hanny Megally, Director, Middle East and North Africa Program, International Center for Transitional Justice (ICTJ)

Hanny Megally.

Interview with Hanny Megally, Director, Middle East and North Africa Program, International Center for Transitional Justice (ICTJ).

Hanny Megally has more than 26 years experience in the field of human rights in the Middle East and North Africa. He headed the Middle East Research department at the International Secretariat of Amnesty International. Subsequently, he ran the Ford Foundation's social justice programme in the Middle East from the Foundation's Cairo office, and from 1997 to 2003 he was the executive director of the Middle East and North Africa Division of Human Rights Watch.

QUESTION: Morocco was the first truth commission in the Arab-Islamic world. Do you think this is the way of the future, or do you think the Algerian reaction of banning any investigation into abuses is more likely to continue?

ANSWER: The Moroccan experience is one that is now being looked at by several countries in the Middle East. Bahrain has sent officials to speak to the Moroccan truth commission and they are considering similar steps. It is too early to say where that will go.

Q: Is a truth commission alone adequate or do these countries also need to make criminal prosecutions?

A: That remains to be seen. 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.

People may start to complain about truth with no accountability or reparations with no truth: that could happen. The danger that we are seeing in Algeria, is that those in charge may think that by having some form of compensation, that this may be sufficient, that they are now able to turn the page.

The process in Morocco began in the 1990s with the release of many of the disappeared, followed by some legal reforms that led eventually to the establishment of a compensation commission towards the end of the 1990s. 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.

One step leads to another depending on the situation the country is in, the political will and also the pressures from within and outside.

When I see another country approaching the first step I think that this is a process which may begin.

This is also true in Lebanon. Since the civil war, much has been left buried; there are 15,000 or 16,000 people missing. There has been no accountability for the abuses that occurred during, or even since, the conflict. The fear there is that investigations could re-ignite the civil war.

Q: Do you think there is a time for truth commissions and that you can go in too early?

A: Timing is of the essence. It is not for experts from the outside to dictate when a process of transitional justice should take place. It is up to those in the country to make the assessment. Though sometimes if they do not know the subject matter it may be more difficult for them to judge. That is where an institute like the ICTJ can be of help.

Morocco is a good example of where we brought in [not only] experts who conducted a comparative analysis, but also practitioners, from countries around the world to share their experiences.

Q: Bahey El Din Hassan, the Director of the Cairo Institute for Human Rights Studies, has said that Arabs are averse to the human rights framework because western governments use its rhetoric when defending policies such as starvation of the Iraqi people, through to the strictest economic blockade in history, and the impunity given to aggressive acts by Israel. Do you agree with his assessment?

A: That is a widely held perception. It relates to what is perceived as double standards in how western governments and the US are seen preaching human rights in some countries and turning a blind eye in others.

The other problem is the existence of Israel within the Middle East context and the way the rest of the world has dealt with Israeli human rights violations. It is often seen to be above the law, and there is an impotence with respect to how the Human Rights Commission directions or UN Resolutions are applied there. In other countries, there may be stronger language or even action – as we saw in Iraq - taken by the international community.

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, 30 or 40 years ago many governments would not meet with human rights monitors or would not allow a domestic human rights movement to come into being. There has been a growth in the Middle East and North Africa in domestic human rights. We have seen a much greater acceptance of international human rights monitoring by the governments.

Human rights has become a political ball which can help in some areas but obviously can be a handicap in other areas.

On the positive side, 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.

Q: Are human rights fundamentally a western concept?

A: No. If you go back though Arab and Islamic literature through the centuries, although the terminology may be different, you will see that much has been written about the standards of justice, fairness, impartiality, and how people behave towards each other.

The Arab states were involved from the very beginning in the UN Declaration on Human Rights. One of the key authors was a Lebanese lawyer.

Q: But there was some controversy at the time as to whether the Declaration was compatible with Shari’a law?

A: That has always been part of the issue, particularly with respect to freedom of religion, treatment of women and some of the harsher punishments under Islamic law. In other areas of fair trial, torture and detention, or social and economic rights, there is little contradiction and indeed much complementarity.

Q: So you believe that Shari’a law and human rights can coexist meaningfully.

A: Shari’a law can be interpreted in different ways.

Q: Dr An Na'im speaks of an ijtihad of the Sunna. Do you think that is necessary to make the two compatible?

A: I think it is a question of who is doing the interpreting. For a long time governments have been doing some of the interpreting when it has suited them. Or it has been left to scholars who may have shied away from revisiting or re-interpreting. Certainly women have had very little to do with interpreting Islamic law. Nowadays you see there are prominent legal jurists who are women whose voices have yet to be heard.

As with every aspect of Islamic law, it is a question of interpretation and application. In Saudi Arabia, the interpretation and application of Islamic law will be very different to that in Tunisia.

There is room for revisiting interpretations and bringing them up to date.

Q: So Shari'a law is evolving, not static?

A: Yes. Part of the problem has been the pressure from minorities not to re-interpret or discuss Islamic law. Historically there have always been re-interpretations to adapt to the current situation, to avoid being stuck with one interpretation that was made hundreds of years ago.

Q: The Iraqi Special Tribunal (IST), despite its questionable foundation, has been set up in Iraq, to try Iraqis in Arabic. What do you think of the IST?

A: The biggest problem has been the security situation and whether this type of process can happen there now given that the conflict is continuing.

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.

We are seeing that play out now. However, the people who are involved are trying to learn very fast on their feet and in the glare of publicity. It is a tall order.

The advantage of holding a trial in Iraq and in Arabic is that it should be accessible to the victims and the population at large. It is accessible in that it is televised. But it is not accessible in that it is happening within the Green Zone with limited access to anyone in Iraq.

Q: Iraqi law stipulates that anyone found guilty of a crime will have their sentence carried out within 30 days of appeal being denied. Do you see anything sinister in Saddam Hussein being tried for a relatively minor crime which will avoid other, perhaps politically embarrassing, cases being tried?

A: From the beginning, the tribunal has said that it will try Saddam Hussein and those around him for a number of offences and will have as many as 11 separate trials. They are starting with this one as it was the first to have its investigation concluded.

The next one might well be the Anfal campaign and the one after that the intifada in the south and then maybe the Barzani clan. They have already identified the cases. Whenever that issue has been raised with the tribunal, they have always said that he will be held on several counts and in several chambers. They have said there is no danger that if convicted in this first trial that he will be executed.

Paul van Zyl, Country Programme Director at the International Center for Transitional Justice (ICTJ)

Paul van Zyl.

Paul van Zyl is the Country Programme Director at the International Center for Transitional Justice (ICTJ). Paul van Zyl served as executive secretary of the Truth and Reconciliation Commission in South Africa, helping to establish the Commission and develop its structure and modus operandi. He has also worked as a researcher for the Goldstone Commission and as a department head at the Centre for the Study of Violence and Reconciliation in Johannesburg. Van Zyl was recently director of Columbia University Law School's Transitional Justice Program, and now teaches law at both Columbia and New York University Law Schools.

QUESTION: Are Truth Commissions alone, without prosecutions, ever enough?

ANSWER: Transitional justice should be embraced in as holistic a way as possible.

In general, when nations try to come to terms with the legacy of gross violations of human rights they should seek to achieve justice for the crimes that have occurred, including criminal prosecutions and punishment for serious crimes. They should seek to establish the truth about what has occurred, which is often, though not exclusively, the province of truth commissions; they should seek to offer reparations to victims of gross violations of human rights; they should seek to reform state institutions that were responsible for human rights abuses, in particular the police, military and the intelligence services who are most likely to have been involved in the abuses; and they should attempt to promote meaningful reconciliation on the basis of engagement with the past, rather than seeking to sweep responsibility under the carpet.

Any one of those five approaches will often be insufficient and it is best to try to do as many of those as is possible in the circumstances.

Q: So in South Africa at the time, was it sufficient to have only a truth and reconciliation commission because prosecutions were not possible?

A: Ideally, at the transition of South Africa you would have had an approach which would have allowed for the prosecution of those responsible for the most serious crimes, as well as truth-seeking, reparation, institutional reform and a reconciliation programme.

The delicate and highly-negotiated nature of the transition made justice in the short-term difficult to obtain, and the truth commission was therefore a very welcome and important stand-in in the circumstances. The truth commission was always premised on the idea that those people who did not apply for amnesties, or those people for whom amnesty was refused or denied, would be held accountable and would be prosecuted. There was a sense that it was trying to marry together truth and justice in a rather difficult and delicate political situation.

There are two categories that are eligible for prosecution: those who did not apply for amnesty; and those who applied but who were turned down because their crimes did not fit the definition of political crimes or who failed to make full disclosure.

One of the great disappointments following the truth commission was that it explicitly mentioned that those people who did not apply, or who were denied amnesty, should be prosecuted. But there was no meaningful follow-up by the government in seeking to achieve post-truth commission justice, and committing the necessary resources and political will to prosecuting those people who did not apply for amnesty or who were denied amnesty. That is a serious criticism of the current South African government's approach to this.

Q: There is discussion now though about potential prosecution?

A: It is going in the opposite direction. What the government has done is table a new prosecution policy that effectively gives perpetrators a second bite of the amnesty cherry. Human Rights organisations, victims groups and the ICTJ are deeply troubled by this as it violates the essential spirit of the compromise

that was the truth commission. If you are to grant amnesties, to make the deal meaningful, you have to say that if people do not apply, or are refused, they will be prosecuted.

Q: Is there a role for amnesties in transitional justice?

A: There is a growing recognition that amnesties for gross violations of human rights violate international law. Therefore, they may not be enforceable. There is a trend across the world - but notably in Argentina, Chile and Peru - that amnesties have been overturned. Amnesties for the most serious crimes are either unlawful or they tend with the passage of time to be overturned. When democracies deepen or consolidate, or when militaries or perpetrators lose their capacity to threaten the current political situation, normal and democratic societies begin to question why the people who committed these atrocious crimes should live in impunity. The first point is that the comfort that some perpetrators derive from amnesties may be somewhat illusory.

Q: What about the Sierra Leone Truth Commission's assertion that the withdrawal of amnesties can have a negative effect, and could prolong any conflict?

A: 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.

In a way I would argue that Sierra Leone exemplifies the dangers of amnesties and not the benefits. The problem there was not too much justice but too little justice.

The Sierra Leone Special Court will probably, in the course of its entire mandate, prosecute fewer than 20 people and that is just a tiny fraction of the overall number of people responsible for atrocious crimes.

Sierra Leone is not an example of justice endangering stability. Too little justice has promoted a culture of impunity that has allowed people to commit atrocious crimes with no accountability.

Q: Is it not arguable that Chile's General Augusto Pinochet would not have left power when he did if he had not been granted an amnesty?

A: 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. In contexts where one side in a bloody civil war is not going to give up its arms and stop fighting unless there is an amnesty, or where a very powerful and repressive military regime is not going to relinquish power unless it is granted an amnesty, this presents a genuine ethical and moral dilemma for people on the other side. On the one hand, there are people who want justice. But on the other hand, people do not want the violence to continue, and see the obvious value in a return to peace or in a restoration of democracy.

In that context, 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. 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 historical evidence tends to show that those amnesties do not stick. There are ways to negotiate those amnesties so that they do not give blanket impunity to people on the other side.

It is very important for everybody concerned to recognise that both as a matter of law and as a matter of principle it should be troubling for people who have committed atrocious crimes to be indemnified for the consequences of their actions.

Blanket amnesties should be avoided and everything should be done to allow these amnesties to be challenged in subsequent years. Amnesties should be designed in such a way that they benefit as few people as possible; and as narrow a range of crimes as possible if you have to do it in the first place.

Q: But aren't those who negotiate the amnesties for themselves likely to be the "big fish" and accordingly the very people that the International Criminal Court (ICC) would be going after?

A: The people with the greatest responsibility are often the people with the greatest power in the negotiation. I would not argue that one always has to be a mandatory retributionist or a maximalist, asserting that justice must always be done in an unconditional or unqualified way. The reality of the world is such that in some circumstances it is just not possible to make that assertion. Precisely because people have committed such atrocious crimes, I would be very doubtful whether the ICC would respect those amnesties. They would say that that was a domestic arrangement extracted under circumstances of duress and we do not regard ourselves as bound by it. Most international courts are going to overturn those amnesties if the case comes before them.

It is an illusory assurance that people are seeking to extract for themselves.

Q: What would you say to those who criticise the amount that is spent in for example the The International Criminal Tribunal for Rwanda (ICTR) or The International Criminal Tribunal for the Former Yugoslavia (ICTY) in prosecuting very few people?

A: 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 bomber, the amounts are comparable.

These are large complex cases involving multiple defendants, intensive investigations, with dozens if not hundreds of witnesses. Justice is a costly endeavour. 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. It is useful to look at that as a comparator.

The second point is that if there is a question to be raised about the tribunals, it is how to make sure that we funnel the resources that we have committed to pursuing criminal justice in a way that enhances domestic capacity to prosecute in the future. There are some questions about having the ICTY and the ICTR outside the countries in which the crimes occurred, so they are not having either a developmental or a catalytic effect on the domestic jurisdiction. Hybrid tribunals do have an effect on the domestic jurisdiction. They are a welcome trend. But if you look back to when the ICTY was set up, it is very difficult to see how it could have been set up in the region. There are some particular historical circumstances around Rwanda that make it somewhat more arguable.

The Rwandan government's attitude to prosecuting crimes committed by the RPF/RPA [[Rwandan Patriotic Army] make it difficult to imagine how the ICTR could operate without fear or favour within Rwanda. So there are good explanations for having these tribunals outside the countries.

I think 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. The ICC is only ever going to prosecute a maximum of 10 people in any given context, and so there are going to be hundreds and thousands of people who escape accountability. Domestic institutions need to be given resources, and resource-strengthened, to be able to deal with the impunity gap between the people the ICC targets and the vast majority of people underneath. These people are not only low-level trigger-pullers, there is 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.

And generally on costs: if you consider that justice over time is a general deterrent, or that arresting and incarcerating individuals thereby minimises their power to perpetuate conflict, in that context, when you consider the cost of ongoing conflict and war, - and the ensuing developmental cost that conflict entails - those costs far outstrip the cost of international justice.

Q: Do you think that the ICC will have a deterrent effect?

A: It is important for advocates of international justice and strong proponents of the ICC not to overstate the deterrence argument. The ICC is valuable in and of itself. It may over the course of time come to deter people. But there are many important principled reasons to have a permanent tribunal that holds people accountable for the most atrocious crimes. It does not have to hinge on the deterrence argument.

That said, the certainty that if you commit atrocious crimes you will be caught and punished, will over time tend to deter people. But you also have to bear in mind the kind of people that international tribunals go after. People who are inclined to commit genocide and other atrocious crimes are not the most deterrable kinds of people.

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. But there will be some people who are not deterrable. I do not think that is dispositive one way or another as to whether there should be a tribunal to prosecute people.

Q: The ICTJ is regularly called in to advise truth commissions and governments on aspects of transitional justice. Why has it grown so much and become so influential?

A: It has been responsive to a real need. As soon as we were set up, there was a large number of civil society organisations coming to see us, saying that they wanted to develop a holistic response to dealing with the past. There is a global experience that they wanted to be able to benefit from. I served as the executive secretary of the Truth Commission in South Africa, and part of the reason why the commission was successful was that we were able to look at the experiences of Chile, Argentina and Eastern Europe, and compare the circumstances and adapt what was done elsewhere to our own context. That has been the modus operandi of the ICTJ.

We have tried to go into countries on request and, with modesty and deference, say to the people whose country it is and whose choice it is: we are not going to tell you what to do but what we are going to try to give you a sense of what has been tried elsewhere and show the strengths and weaknesses, the successes and failures, and allow you to craft your own approach to try and deal with what has occurred.

We have invested a great amount of time and energy not only in providing that comparative policy advice but also in seeking to build capacity of local actors and strengthen local NGOs and policy makers. Many of the people in ICTJ worked in human rights organisations in their own countries and have a strong sense that international organisations should be empowering local actors to make good decisions, not supplanting them, and helping them craft the destinies of their own countries.

Johnston Busingye, Secretary General of the Ministry of Justice in Rwanda

Johnston Busingye is the Secretary General of the Ministry of Justice in Rwanda.

QUESTION: How important do you think justice is to a society in transition?

ANSWER: Justice is as important as ever in any society. Rwanda is passing from an ugly period with conflict, genocide, repression, impunity. Justice is one indicator that people are moving from this situation to a better place. Justice is very important in a transitional society.

Q: How important do you think traditional justice is as opposed to other forms?

A: That depends on the context. 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. Where you need to address a number of issues like unity of the people and historical misrule, perhaps you need traditional forms of justice because 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.

Q: Do you think the gacaca courts are a halfway house between western forms of justice and truth commissions?

A: I think so. The gacaca model is our old traditional system adapted to handle a heavier task, genocide. 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.

Q: Do you think that the fact that some suspected genocidaires have been in prison for 12 years without trial can fuel rifts in an already divided society?

A: Perhaps. But we need to understand that traditional justice is not about making people spend long periods in prison. 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. I do not want to have traditional justice equated to having people spend long periods of time in prison. On the other hand, it is important in having justice done as soon as possible, to make the detention without justice as short as possible. In fact, in our estimation the gacaca process will be concluded in a tenth of the time it would take via the modern western form of justice. It is not about the length of time that traditional justice takes. It is about bringing justice fairly and for everybody. Our own specific situation, with people still in prison, is not because of the traditional justice model but because of the particular nature of the situation after the genocide.

Q: To what extent do you think vengeance is at the root of people's desire for justice to be done?

A: We are always monitoring the public response and how much the public has participated in the gacaca process, both from the side of the victim and the accused. Some victims might feel that gacaca, if anything, is letting people off the hook. It is a complex situation; there are issues of remorse, of a need for understanding of the situation. Added to that is the fact that gacaca is a model that was adopted much later in time and is expected to resolve issues in a very short time period. I really do not think vengeance is an issue here at all.

Q: Is it fair to say that some people who are in prison see themselves as prisoners of war as opposed to being prisoners for crimes against humanity?

A: Prisoners of war is a separate issue. There are specific crimes against humanity that those people have been charged with. They know the charges, there is nobody who does not know what he has been charged with, not only in Rwanda but also in Arusha and in other countries where they have arrested some of these people and are trying them. It is possible but it is not honest that someone might consider himself a prisoner of war. I do not think that is genuine.

Q: What has been the reaction to the International Criminal Tribunal for Rwanda's (ICTR) suggestion that it might investigate the RPA for its possible war crimes or crimes against humanity?

A: Our position has always been clear.

The RPA as an institution was not and simply cannot be complicit in any war crimes. The RPA was not an actor in the 1994 genocide. The RPA was responsible for stopping the genocide.

With respect to any crimes that may have been committed by individual members of the RPA, if there is sufficient evidence, then they should be made to stand trial. But at the Arusha tribunals there has never been sufficient evidence to bring a charge.

Q: Is anything being done to address the perception that perhaps justice in Rwanda is one-sided justice?

A: I would say that is an ill-founded accusation. And it is misleading. What is going on now is a response to the genocide that occurred. What are we supposed to do to address this? Are we supposed to go looking for suspects from those so-called other sides just to try to show the judicial process is not one-sided? Those who commit crimes and against whom evidence has been found are being tried. The issue of one-sidedness should not come into play.

Dennis McNamara (Special Adviser on Internal Displacement to the UN's Emergency Relief Co-ordinator and Director of the OCHA Inter-agency Internal Displacement Division) on the rule of law

Dennis McNamara, Director of the United Nations Inter-Agency Internal Displacement Division, OCHA.
Credit: IRIN

Dennis McNamara (Special Adviser on Internal Displacement to the UN's Emergency Relief Co-ordinator and Director of the OCHA Inter-agency Internal Displacement Division) on the rule of law.

QUESTION: Has there been a failure to prioritise the rule of law in post-conflict situations?

ANSWER: 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 peacekeeping context to get sufficient civilian police in place. Similarly in many UN missions.

There is also a problem getting judges. There is a need to get qualified exiles to return to these areas. In the interim, where there is no other option, military courts that comply with international standards, might be a temporary answer. Local law should be used where available, but in these situations we need to be pragmatic. Lawyers can over-complicate the process. Within UNTAC [United Nations Transitional Authority for Cambodia], we entered the prisons in Cambodia and released some prisoners who were being tortured. There was absolutely no legal framework there whatsoever, we just had to step in.

Q: How important is the rule of law for IDPs?

A: The rule of law is of fundamental importance in the protection of displaced people. Millions of displaced do not have access to effective justice systems and there is no system for prosecution or accountability. For example, northern Uganda is effectively a militarised zone, and in South Sudan, the rule of law does not function.

But those targeted do not talk in terms of rule of law; they talk in terms of protection, which is of the utmost importance to them on the ground. They need to be protected and to be able to report what abuses happen to them and who is doing it. Governments speak often about security but they do not translate security into rule of law. Post-conflict countries are often in the mess they are in because of a lack of a functioning legal system to protect civilians. We need to face these situations in the following order: in the frontline of civilian protection should be civilians, then police; then armed police; and only then the military. The military are not trained to provide law and order – they should provide overall security.

Q: What about the culture of impunity?

A: Often political pressures on the leaders mean that they do not pursue proper accountability for serious human rights abuses, as in East Timor (as it then was). People want peace and reconciliation but they also want justice – accountability – for serious abuses.

Prosecutions of major violators send a strong deterrent message, not only to the soldiers on the ground, but also to the leaders. It is hard to prove, but I have to doubt it is effective.

Q: What about the impact of the recent tribunals and the ICC on the concept of sovereignty?

A: We are very much at a transitional stage on the question of sovereignty and the right to intervene (the responsibility to protect); there is a confluence between the old way of doing things and the new. Troops are going in to countries more and more under Chapter Seven of the UN Charter now, at last in terms of their responsibility to protect civilians at risk (for example in MONUC[DRC], UNMIS [Sudan]and UNMIR [Rwanda]).

The frustrating thing is people like Jan Egeland go in regularly to speak to the Security Council about

protection of civilians, where there may be general consensus but often little political follow up by the Council.

President Ellen Johnson-Sirleaf of Liberia is an exceptional woman (with a UNDP and World Bank background) who has made the right noises about prosecutions, but she is having to tread warily. She will have difficulty having Charles Taylor prosecuted, although this is essential for regional stability.

Q: What do you think of countries, such as Belgium, trying to bring extra-territorial prosecutions against non-nationals who are perceived to have committed serious human rights abuses?

A: I fully support this. We need national prosecutions as essential support to those of the ICC, wherever they may be possible.

5. References - The new era of justice: 8 new courts explained

In this section IRIN explains and summarises the function and scope of eight new courts that are in the process of indicting, arraigning and sentencing perpetrators of different forms of crime against humanity and genocide. The following eight courts are summarized in this report with links and references offered for those seeking more detail:

1. The Special Court for Sierra Leone
2. The International Criminal Court (ICC)
3. The War Crimes Chamber (WCC) in Sarajevo
4. Regulation 64 panels in the courts of Kosovo
5. Serious Crimes Panels in Dili District, East Timor
6. Extraordinary Chambers in the courts of Cambodia
7. The International Criminal Tribunal for Rwanda (ICTR)
8. The International Criminal Tribunal for the former Yugoslavia (ICTY)

THE SPECIAL COURT FOR SIERRA LEONE

Core Mandate

Based in the capital Freetown, the Special Court for Sierra Leone was set up jointly by the government of Sierra Leone and the United Nations (Resolution 1315, 14 August 2000). The first staff to work at the Special Court arrived in Freetown in July 2002.

This Special Court represents a significant new model of international justice, often referred to as a "mixed" or "hybrid" tribunal, jointly administered by the United Nations and the Sierra Leone government. The court is staffed by internationals and Sierra Leoneans, and includes elements of international and Sierra Leonean law. It is mandated to try those who bear the greatest responsibility for war crimes and crimes against humanity committed in the territory of Sierra Leone between 1996 and 2002. The maximum sentence that can be imposed on an accused is life imprisonment.

The chief prosecutor of the court is Desmond de Silva, appointed by the UN Secretary-General in May 2005.

Status

Currently, 11 people stand indicted by the Special Court. They are charged with war crimes, crimes against humanity, and other serious violations of international humanitarian law (rape, sexual slavery, conscription of children into an armed force, and attacks on UN peacekeepers, among others). Although individually charged, they have been grouped into three separate trials: the Revolutionary United Front (RUF) trial, begun in July 2004; the Civil Defense Forces (CDF) trial, commenced in June 2004; the Armed Forces Revolutionary Council (AFRC) trial, begun in March 2005.

The single most well known person indicted by the Special Court is the former Liberian President, Charles Taylor, accused of backing the civil war in Sierra Leone by providing arms and training to the RUF in exchange for diamonds. Taylor, taken from exile in Nigeria and presented in handcuffs on the 29 March 2006 to the tribunal in Freetown, is charged with 17 counts of crimes against humanity stemming from a brutal rebellion that left many thousands dead or maimed. Recently, international prosecutors requested that Taylor's trial be moved to The Hague in the Netherlands. According to the court, a trial in Africa is too risky for a man blamed for sparking an unsettled environment within West Africa.

Limitations

A potential problem for the Special Court concerns its funding. Institutions created by the Security Council, such as the previous International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) are funded by scaled assessments, in which each country's contribution is proportionate to its size and wealth. However, because it is not directly established by the United Nations, the Sierra Leone court is financed through voluntary contributions. The court received funds to cover its first three years of operations (US $70 million for 2002-2005).

"We are determined that the Court, after three years of important achievements and with trials at an advanced stage, must not now fail due to lack of resources," declared United Nations Deputy Secretary-General Louise Frechette. She also highlighted what the court meant to the people of Sierra Leone,

particularly since it allowed those who were affected to witness justice being done first-hand, which was vital to the process of national reconciliation. The UN Security Council is currently working with member states to reach the US $25 million goal for the court.

Links of Interest

The official website of the Special Court of Sierra Leone.
http://www.sc-sl.org

The Global Policy Forum monitors policy-making at the United Nations, and produces papers and pamphlets on issues of international peace and justice. Several documents on the Special Court of Sierra Leone are available on the web site.
http://www.globalpolicy.org/intljustice/tribunals/

INTERNATIONAL CRIMINAL COURT (ICC)

Core Mandate

The International Criminal Court (ICC) is the first permanent, treaty-based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished.

The International Criminal Court is an independent international organisation and is complementary to national criminal jurisdictions of those states that have signed and ratified the Statute of Rome. The jurisdiction and functioning of the court is governed by the provisions in Statute. The Statute of the ICC was established in 17 July 1998, during the "United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court". The Statute entered into force on 1 July 2002. Anyone who commits any of the crimes under the Statute after this date will be liable for prosecution by the court. The maximum sentence that can be imposed on an accused is life imprisonment.

As of October 2005, 100 states are parties to the Statute. The United States joined Israel, the People's Republic of China, Iraq, Qatar, Libya and Yemen in voting against it. Their countries' main objections are the interference with their national sovereignty and a fear of politically motivated prosecutions.

The mandate of the tribunal is to conduct investigations and prosecutions for crimes of genocide, crimes against humanity, and war crimes. At a later stage, once the states have agreed to a definition of the crime of aggression, the court's Office of the Prosecutor will be empowered to investigate and prosecute this crime. By conducting investigations and prosecutions, the Office contributes to the overall objective of the court – to end impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes.

The court is composed of the following organs: the Presidency; the Chambers; the Office of the Prosecutor; and the Registry. The Chief Prosecutor is Luis Moreno-Ocampo. The official seat of the ICC is in The Hague (Netherlands); but the Rome Statute permits the court to engage in proceedings anywhere.

Status

In accordance with the Rome Statute, the chief prosecutor opened investigations into three situations: 1) The Democratic Republic of Congo; 2) The Republic of Uganda; 3) Darfur, Sudan. Three state parties have referred situations to the Office: 1) The Democratic Republic of Congo; 2) The Republic of Uganda; 3) The Central African Republic. The UN Security Council has referred one situation to the prosecutor: Darfur, Sudan.

Current Activities

Democratic Republic of the Congo
The most important development in the DRC situation is the arrest of Thomas Lubanga Dyilo. He was the leader of one of the most dangerous militia in the Ituri province. He has been charged with conscription and enlisting children under the age of 15 years, using them to participate actively in hostilities. Under the Statute of Rome, this is considered a crime against children. The court is in the position to convene the first trial this year.

Uganda
In Uganda, activities are ongoing to coordinate and carry out arrests of the Lord's Resistance Army (LRA) leaders. Indictments have been issued for the top five leaders of the LRA. The LRA, founded by Joseph Kony (still at large), has been fighting the Ugandan government for nearly 18 years, by abducting and enlisting children under the age of 15 years, using them to participate actively in hostilities. In addition, the ICC will evaluate information on crimes allegedly committed by other persons, including members of the Uganda People's Defense Force (UPDF), and the armed forces of Uganda, to determine whether the gravity and complementary standards of the Statute are met.

Darfur
The Darfur conflict began in October 2003; it is an ongoing conflict in the Darfur region of western Sudan, mainly between the Janjaweed, a militia group recruited from local Arab tribes, and the non-Arab peoples of the region. The Sudanese government, while publicly denying that it supported the Janjaweed, provided arms and assistance and has participated in joint attacks with the group.

A recent British Parliamentary Report put the number of deaths in Darfur at 300,000. An estimated 2 million people have been displaced from their homes, mostly seeking refuge in camps in Darfur's major towns. Two hundred thousand have fled to neighbouring Chad. The conflict has been described by the media as "ethnic cleasing" and "genocide".

The Security Council, in Resolution 1593 adopted on 31 March 2005, decided to refer the situation in Darfur to the prosecutor of the ICC, Ocampo, and invited him to address the Council within three months. After a careful preliminary analysis, the prosecutor decided on 1 June 2005 to open an investigation into the situation in Darfur.

However, the current precarious security situation in Darfur means that any national or international investigations in that area could cause risk for victims. According to Ocampo, no one can conduct a judicial investigation in Darfur. Nevertheless, a comparative advantage for the ICC is that cases can be more easily investigated from the outside. Witnesses have been interviewed in more than 10 countries.

The ICC presented a clear picture of the crimes in the next report to the Security Council, in June 2006.

Other Situations

The ICC is planning to send missions to the Central African Republic and Cote d'Ivoire to seek information on admissibility, and verify if there are premises to prosecute crimes falling under the jurisdiction of the tribunal.

Links of Interest

The official website of the International Criminal Court (ICC).
http://www.icc-cpi.int

The last diplomatic briefing of the ICC, released on March 2006.
http://www.icc-cpi.int/library/asp/DB6-St_English.pdf

WAR CRIMES CHAMBERS IN SARAJEVO

Core Mandate

The armed conflict in Bosnia and Herzegovina, which lasted from 1992 to 1995, was characterised by grave violations of human rights including mass killings, rapes, widespread destruction, and the displacement of the population. The United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) to address the widespread impunity resulting from the conflicts in the Balkans (Resolution 827/1993).

To date, the ICTY has been relatively successful in trying individuals for the atrocities committed in the former Yugoslavia, including Bosnia. However, by the end of its mandate, it will have prosecuted only a small number of top-level perpetrators of war crimes.

The Security Council, in July 2002, endorsed a broad strategy for the transfer of cases involving intermediary- and lower-level accused to competent national jurisdictions as the best way of allowing the

ICTY to achieve its current objective of completing initial trial activities by 2008, and all appeals by 2010. To continue with efforts to combat impunity, the War Crimes Chamber (WCC) was established in Bosnia as a joint initiative of the ICTY and the Office of the High Representative (Presidential Statement: S/2002/PRST/21/2002). The WCC officially began operations in Sarajevo on 9 March 2005. In addition to a limited number of cases referred to it by the ICTY, the mandate of the WCC includes trying cases initiated locally.

The concept underlying the WCC initiative is that accountability for gross violations of human rights that took place during the conflict ultimately remains the responsibility of the people of Bosnia. Thus, although it presently contains a significant international component, the WCC is essentially a domestic institution operating under national law, within the criminal division of the State Court of Bosnia.

According to a Security Council briefing, in October 2003, the establishment of the WCC would require approximately €30 million for five years' activities. However, like other such justice mechanisms, the WCC operates on a relatively small budget - it currently functions on approximately six percent of the funds considered essential for the operation of the ICTY.

Status

Approximately 550 cases have been referred back to the authorities by the ICTY for prosecution before the domestic courts under category A (i.e. sufficient evidence to prosecute). Only around 10 per cent of these cases, however, had reached trial stage by May 2006.

Exit Strategy

By its resolution 1503 of 28 August 2003, the Security Council called on The Hague-based Yugoslavia tribunal to complete investigations by the end of 2004, end trials by 2008, and close down before the end of 2010. The idea is that the WCC will continue as the ICTY is wrapped up. However, in this regard, Carla Del Ponte, Prosecutor for the ICTY, has recently stated that Bosnia's lack of cooperation, the state of preparedness of domestic jurisdiction, and a shortage of funding are the three major factors impacting negatively on both the completion strategy of the ICTY, and the successful achievements of the WCC itself.

Links of Interest

The UN Security Council briefing document on the establishment of the War Crimes Chamber (WCC) within the State Court of Bosnia and Herzegovina.
http://www.un.org/News/Press/docs/2003/sc7888.doc
The Human Rights Watch website: several reports are currently available on the activities of the WCC.
http://hrw.org/english/docs/2006/01/13/global12428.htm

REGULATION 64 PANELS IN THE COURTS OF KOSOVO

Core Mandate

To try alleged perpetrators responsible for atrocities committed during the armed conflict in Kosovo in 1999, the UN Interim Administration Mission in Kosovo (UNMIK) issued regulations permitting international judges to serve alongside domestic judges in existing Kosovar courts, and international lawyers to join forces with domestic lawyers to prosecute, as well as defend, individual war crimes cases.

The ICTY lacked the resources and the mandate to act as the main venue to bring justice for these crimes. Although a justice system was reestablished in Kosovo following the conflict, underfunding, poor organisation, and political manipulation plagued the newly ethnic-Albanian-dominated system. The new UN administration initially appointed a limited number of international judges to sit on panels with a majority of Kosovar judges without restrictions on the cases that these panels could adjudicate. Subsequently, the UN administration provided, pursuant to Regulation 2000/64, for panels comprising at least two international judges and one Kosovar judge (hybrid mechanism) to adjudicate cases where it is "necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice".

These panels are known as "Regulation 64 Panels" after the regulation that created them. They generally adjudicate cases involving serious crimes committed during the conflict.

Status

In the initial phase of operation, the international judges made up a minority on any individual trial panel, but under a revised regulation, they are now permitted to constitute a majority.

These so-called "Regulation 64 panels" have conducted more than two dozen war crimes trials. Among those, Milos Jokic and Dragan Nikolic, both indicted for genocide.

Links of Interest

The International Centre for Transitional Justice (ICTJ) website: several reports are currently available on the activities of the Regulation 64 panels in the Courts of Kosovo.
http://www.ictj.org/en/where/region4/624.html

The United Nations Interim Administration Mission in Kosovo (UNMIK) website.
http://www.unmikonline.org

SERIOUS CRIMES PANELS IN THE DISTRICT OF DILI

Core Mandate

Following the UN's announcement of election results in East Timor in September 1999, Timorese militias, armed and supported by Indonesian army and security forces, perpetrated widespread violence resulting in the deaths of a substantial number of civilians, widespread rape, destruction, looting of property, and forced mass displacement of the civilian population. These militias were expressing their displeasure at the Timorese people who chose independence from Indonesia in these elections.

On 31 January 2000, the United Nations made public the report of the UN International Commission of Inquiry on East Timor. The report documented the systematic and widespread nature of the terror and violence and recommended the establishment of an international tribunal under UN auspices.

In March 2000, the UN Transitional Authority for East Timor (established by the Security Council in Resolution 1272) created a judicial system for East Timor and promulgated a regulation (N. 2000/11) that set up a system of district courts for East Timor, including the Serious Crimes Panels. The regulation gave the Dili District Court exclusive jurisdiction over genocide, war crimes, crimes against humanity, murder, sexual offences, and torture, for crimes committed between January and October 1999.

Both East Timorese and international judges sat in these Serious Crimes Panels.

Status

Despite good promises, justice made little progress in East Timor. Due to a lack of political and financial support, the UN tribunal shut down in May 2005, six years after it was established. The tribunal did manage to prosecute and convict a significant number of East Timorese militia members, but the majority of the Indonesian indicted, including General Wiranto, the former Indonesian defense minister and armed forces commander, remained at large in Indonesia with no prospect of trial.

Exit Strategy

Both the UN Security Council and UN Secretary-General, Kofi Annan, are seen as caving in to Indonesia as a regional power and important counterterrorism ally. They are currently working on a report commissioned by the Secretary-General that had recommended the tribunal be kept alive. The report also recommended the establishment of an international criminal tribunal if Indonesia continues not to cooperate on the justice front; but the Security Council has not taken any action yet.

Links of Interest

The Human Rights Internet (HRI) website. HRI is a leader in the exchange of information within the worldwide human rights community. Several reports are currently available on the activities of the Serious Crimes Panels in the District of Dili.
http://www.hri.ca/

The Amnesty International online library website. It contains the latest information on East Timor.
http://www.amnesty.org/ailib/intcam/east-timor

UN documents on East Timor are available in this website.
http://193.194.138.190/huridocda/huridoca.nsf/(Symbol)/A.54.726,+S.2000.59.En?OpenDocument

The European Country of Origin Information website is a portal of country of origin information for all parties involved in refugee status determination procedures. A number of documents on East Timor are available on this website.
http://www.ecoi.net

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Core Mandate

On 13 May 2003, the General Assembly of the United Nations adopted a resolution, giving approbation to a proposition of agreement between the UN and Cambodia on the prosecution of crimes committed by the Khmer Rouge between 1975 and 1979 in Cambodia (Res. 57/228 B). The agreement allows the creation of "Extraordinary Chambers", a body attached to the current judiciary system. The composition of the organs of investigation, prosecution, and judgment allows the involvement of Cambodians and foreigners.

The Extraordinary Chambers are mandated to try those responsible for genocide, crimes against humanity, grave breaches of the 1949 Geneva Conventions, other crimes defined by the Cambodian law instituting the extraordinary Chambers, in particular murder, torture, religious persecutions, destruction of cultural property in armed conflict, and violations of the convention of Vienna on the protection of diplomats. The maximum sentence that can be imposed on an accused is life imprisonment.

Status

By royal decree issued on 7 May 2006, King Norodom Sihanouk appointed 17 national and 12 international judges and prosecutors to serve on the Extraordinary Chambers. Those appointed were selected by the Cambodian Supreme Council of the Magistracy on 4 May 2006. The preliminary procedures of the tribunal were scheduled to commence in June 2006 and the actual trials by early next year (2007).

Cambodia is finally set to proceed with a United Nations-prescribed tribunal against former Khmer Rouge leaders for their alleged role in genocide and crimes against humanity, including culpability for the deaths of an estimated 1.7 million people. International prosecutors are expected to unearth compelling new evidence against former senior Khmer Rouge leaders, some of whom now serve in Prime Minister Hun Sen's government (himself a former junior-level Khmer Rouge member).

That will quickly bring into question who will and will not be targeted for prosecution. Pol Pot, the regime's infamous leader, died in the jungle on Thailand's border in 1998; Kae Pok, a senior CPK(Communist Party of Kampuchea) central committee member, died in 2002. Khieu Samphan, 74, the CPK's former head of state, has denied any knowledge or culpability for alleged genocide and crimes against humanity. Ieng Sary, is politically protected against prosecution through his 1996 royal amnesty. At the moment, the only persons indicted are two senior Khmer Rouge leaders: Ta Mok, 75, alias "The Butcher"; and Kang Kech Eav, widely known as Duch, who infamously managed the S-21 prison where many of the executions occurred. Both men are now imprisoned on charges of war crimes and crimes against humanity.

Exit Strategy

As mentioned, the tribunal will effectively start its activities in 2007. Whether the half-foreign, half-Cambodian court will arrive at a credible verdict is very much open to question. Some experts question the desirability of dredging up the painful past during a period of relative peace and robust economic growth. On the ground, there is still a palpable fear that the trial could lead to local-level revenge killings.

Links of Interest

This is the War Crimes Research Office (within the Washington College of Law) website. A detailed timeline of the events that took place in Cambodia is reported.

http://www.wcl.american.edu/warcrimes/krt_updates.cfm

The Track Impunity Always (TRAC) website. Several reports are currently available on the activities of the Extraordinary Chambers in the courts of Cambodia.
http://www.trial-ch.org/en/justice_cambodia.html

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

Core Mandate

The United Nations Security Council created the International Criminal Tribunal for Rwanda (ICTR) by resolution 955 of 8 November 1994. The purpose of this measure is to contribute to the process of national reconciliation in Rwanda and the maintenance of peace in the region. The ICTR delivered the first-ever judgment on the crime of genocide by an international court.

Based in Arusha, Tanzania, the ICTR was established to prosecute those responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994. It may also deal with the prosecution of Rwandan citizens responsible for genocide and other such violations of international law committed in the territory of neighbouring countries during the same period.

Status

The tribunal has indicted 81 people of whom nine are still at large. As of May 2006, the tribunal has handed down 21 judgments involving 27 accused; another 27 are in trial. Fifteen people are awaiting the beginning of their trials, three people have been released, and two people have had their indictments withdrawn.

Human rights organisations and international NGOs (Human Rights Watch, Amnesty International) have expressed criticism and concern about the weaknesses and shortcomings of the ICTR. According to them, the tribunal receives very little cooperation from a few key UN member states, and it lacks funds to operate with full effectiveness because member states have not paid their assessed contributions. Some states have failed to arrest indicted people known to be on their territory: for example Charles Munyaneza, 48, and Celestin Ugirashebuja, 55 - local mayors accused of organising the genocide in their provinces of southern Rwanda, and who are now leading ordinary lives with their families in the UK. Concerns have also been raised over the cost of the tribunal. For 2006-2007, the UN General Assembly decided to appropriate to the ICTR a total budget of US $269,758,400.

Concerns have also been expressed over the fact that Rwanda took months before approving the transfer of detainees in government custody to testify in Arusha, and have not yet complied with all ICTR requests for such transfers. In addition, the authorities in Kigali have not yet provided a large number of documents necessary for trials. Other criticisms of the Arusha process include complaints that none of those responsible for alleged massacres of Hutu communities as the RPF swept through the country ending the genocide, have been investigated or indicted. As such, some critics argue that Arusha represents biased justice.

Exit Strategy

The deadline set for the tribunal's mandate is the end of 2008 for all first instance trials, while appeals will continue until 2010.

During his mission to Rwanda in March 2006, the Registrar of the ICTR, Adam Dieng, held meetings with Rwandan government officials, representatives of the UN agencies in Rwanda and the diplomatic corps accredited to country. The main issue discussed was the transfer of unfinished and outstanding cases to national jurisdictions, including Rwanda. The ICTR Prosecutor's Office, coordinated by judge Hassan Jallow, has already transferred 30 case files to Rwanda. These 30 files form part of at least 45 files that will be transferred to national jurisdictions by handing over dossiers to national prosecuting authorities. Concerning this subject, the main issue is that some national jurisdictions, such as Rwanda, still have the death penalty, and one of the rules of the UN Tribunal is that the maximum sentence that can be imposed on an accused is life imprisonment.

Links of Interest

The official website of the International Criminal Tribunal for Rwanda (ICTR).
http://www.ictr.org
The Guardian website. Several papers on the ICTR are available.
http://www.guardian.co.uk/international
The Human Rights Watch website: several reports are currently available on the activities of the ICTR.
http://www.hrw.org
The Amnesty International website: it contains the latest information on the ICTR and a number of documents on the political issues behind the genocide in Rwanda.
http://www.amnesty.org

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

Core Mandate

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by Security Council resolution 827, on the 25 May 1993. The ICTY is the first international war crimes tribunal established since Nuremberg (set up in 1945 to try the most important leaders of the Nazi regime), and prosecutes people responsible for violations of international humanitarian law, genocide, and crimes against humanity since 1991 in the territory of former Yugoslavia. The ICTY is located in The Hague, The Netherlands. The Chief prosecutor is Carla Del Ponte.

Status

To date, the tribunal has charged 161 persons for war crimes committed during the conflict in the former Yugoslavia. As of April 2006, 12 people are in trial, 43 people have been found guilty and eight people have been acquitted. Six people are at large, including the Bosnian Serb leader Radovan Karadzic, and Ratko Mladic (Karadzic's army chief throughout the Bosnian war). The former president of Serbia and Yugoslavia, Slobodan Milosevic died in March 2006 after five years in prison, with just 50 hours of testimony left before the conclusion of the trial.

The unexpected death of Slobodan Milosevic raised a wave of criticism of the ICTY for being too slow. The New York Sun said that the ICTY "was an embarrassment even before Milosevic's death", comparing its large staff and budget with limited indictments over a period of 12 years. Milosevic was flown to The Hague in 2001 to face charges, notes the paper. That more than four and a half years was not long enough to present and try a case against one of the most notorious war criminals in recent history is a testament to the flaws in the UN's administration of justice, it argues. These criticisms are representative of the common doubts and concerns widespread in the international community.

Exit Strategy

The tribunal is expected to complete trials by the end of 2008 and conclude the appeals process by 2010. Carla Del Ponte, the prosecutor for the ICTY, has recently released a statement saying that there are still incomplete cases and fugitives, and that some cases will likely be turned over to national authorities. Del Ponte also said that she will have to concentrate on those suspects deemed primarily responsible for war crimes while letting lower-level suspects be dealt with by national courts. On this matter, the Security Council, in July 2002, endorsed a broad strategy for the transfer of cases involving intermediary- and lower-level accused to competent national jurisdictions as the best way of allowing the ICTY to achieve its current objective of completing all activities by 2010.

The War Crimes Chamber (WCC) was established in Bosnia as a joint initiative of the ICTY and the Office of the High Representative (Presidential Statement: S/2002/PRST/21/2002). The WCC officially began operations in Sarajevo on 9 March 2005. In addition to a limited number of cases referred to it by the ICTY, the mandate of the WCC includes trying cases initiated locally.

In addition, Del Ponte is accusing Croatia, Serbia and Montenegro, Republika Srpska (the Serbian part of Bosnia and Herzegovina), and the Bosnian Croat party in Bosnia and Herzegovina of not cooperating with the tribunal. Concerning the Belgrade government, she said, "There is no true commitment for cooperation or readiness to take difficult steps" on any suspects. In relation to Serbia and Montenegro, talks between the European Union and Belgrade, concerning their possible future entry into the European Union, were curtailed in May 2006 when Belgrade failed to deliver indictees of the ICTY despite

repeated deadline extensions. The general view is that Belgrade could deliver indictees such as Ratko Mladic and are directly or indirectly protecting him and others.

Links of Interest

The official web site of the International Criminal Tribunal for the former Yugoslavia (ICTY).
http://www.un.org/icty

The New York Sunday website. Several papers on the ICTY are available.
http://www.nysun.com

Global Policy Forum monitors policy-making at the United Nations, and produce papers and pamphlets on issues of international peace and justice. Several documents on the ICTY are available.
http://www.globalpolicy.org/intljustice

Transitional justice, country profiles

The following report represents original research by IRIN charting 59 processes of transitional justice (TJ), enquiries or commissions in 41 countries. This is currently the most comprehensive listing of TJ processes that have taken place since the end of the Second World War. The summarised information is presented alphabetically.

The different 'types of action' listed are defined as:

International Process: International Processes include international criminal tribunals, such as the Nuremberg trials and the International Criminal Tribunal for Rwanda (ICTR).

Hybrid Process: Hybrid Processes are a combination of international and national processes. They are often created by international decrees, but under national jurisdiction. It is common that they mix national and international personnel.

National Process: National Processes include special prosecutors, special chambers and other types of judicial processes, all of which operate exclusively under national jurisdiction. Truth Commission: Truth Commissions are aimed at revealing the truth. They lack legal implications and are intended to create an official record of the past, as well as reconcile former antagonists.

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Algeria

Type of action: Truth Commission

Specific Title: The National Consultative Commission on the Promotion and Protection of Human Rights (CNCPPDH)

Duration Period: 2003 - 2005

Cause: The Commission was set up to investigate cases of torture, violence, and disappearances since 1992 when the Algerian army annulled the democratic elections and began the "dirty war". Seven thousand people are reported to have disappeared and approximately 150,000 Algerians were killed.

Outcome and Status: The Commission presented its final report to the President in 2005. The complete report has not been published, but commission chairman Farouk Ksentini has made some public statements. The findings of the commission indicate that the Algerian Army is responsible for more than 6,000 of the disappearances and many more deaths. The Commission was followed by a referendum, passing a law that gives total amnesty for most crimes committed during this period.

Argentina

Type of action: Truth Commission

Specific Title: National Commission on the Disappeared / Comision Nacional sobre la Desaparicion de Personas (CONADEP)

Duration Period: 1983 - 1984

Cause: The commission was initiated to investigate disappearances and torture conducted by the military regime, from 1967 to 1982. The commission was to receive depositions and evidence concerning these events, and pass the information to the courts, in those cases where crimes had been committed. The commission's report would not extend, however, to determining responsibility, only to deliver an unbiased chronicle of the events.

Outcome and Status: An extensive report was presented in 1984 and the Spanish summary, Nunca Mas , became a bestseller. It was later published in English.

Bolivia

Type of action: Truth Commission

Specific Title: National Commission of Inquiry into Disappearances

Duration Period: 1982 - 1985

Cause: On 28 October 1982, President Hernan Siles Suazo issued a decree establishing the commission to investigate the disappearance of citizens during 1967-1982.

Outcome and Status: The commission documented 155 cases of disappearances, but disbanded three years after its creation without issuing a final report.

Bosnia and Herzegovina / Federal Republic of Yugoslavia

Type of action: International Process

Specific Title: International Criminal Tribunal for the former Yugoslavia (ICTY)

Duration Period: 1993-

Cause: The Tribunal was established by the UN Security Council, as the first international war crimes tribunal since Nuremberg , to prosecute people responsible for violations of international humanitarian law, genocide and crimes against humanity since 1991 in the territory of former Yugoslavia .

Outcome and Status: The Tribunal, with its Headquarters in The Hague , has indicted 161 persons. As of April 2006, 12 persons are on trial, 43 persons have been found guilty and 8 persons have been acquitted. Six persons are at large, including Radovan Karadzic and Ratko Mladic.

Link of Interest: http://www.un.org/icty/

Type of action: Hybrid Process

Specific Title: State Court of Bosnia and Herzegovina and War Crimes Chamber

Duration Period: 2002 and 2005 respectively

Cause: The War Crimes Chamber was set up within the State Court to specifically deal with cases transferred from ICTY. Due to its mix of national and international staff it is seen as a hybrid court.

Outcome and Status: The War Crimes Chamber has only dealt with a couple of cases so far, but additional ICTY referrals to the WCC are expected.

Type of action: Truth Commission

Specific Title: Commission for Investigation of the Events in and around Srebrenica between 10 and 19 July 1995 (Srebrenica commission)

Duration Period: 2003-2004

Cause: The commission was set up by the National Assembly of the Republika Srpska to reveal the full truth about the massacre in Srebrenica.

Outcome and Status: After initial problems the commission presented their final report in June 2004, including information about 32 previously unknown mass graves.

Burundi

Type of action: Truth Commission

Specific Title: Commission to Investigate Killings in Coup Attempt 1993 (also known as the Nikken Commission)

Duration Period: 1995 - 1996

Cause: The commission was set up by the UN Security Council, to investigate the assassination of President Melchior Ndadaye and other killings during and after the coup attempt in 1993.

Outcome and Status: The five commissioners, all foreign, presented their report in August 1996, but it was soon overtaken by the subsequent violence and continued civil war.

Cambodia

Type of action: Hybrid Process

Specific Title: Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea .

Duration Period: 2003 (UN resolution adopted)

Cause: The Extraordinary Chambers were set up to try those responsible for crimes against humanity committed during the Khmer Rouge regime between 1975 and 1979, when more then one million people were killed. The Extraordinary Chambers were created by a UN resolution, following negotiations between the Cambodian government and the UN.

Outcome and Status: The Panel of 30 judges and prosecutors, international and Cambodian, that will work for the Extraordinary Chambers were recently selected and trials are expected to begin early 2007.

Chad

Type of action: Truth Commission

Specific Title: Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habre, His Accomplices and/or Accessories

Duration Period: 1990 - 1991

Cause: The mandate of the commission included investigating crimes such as disappearances, imprisonment, killings and torture, as well as acts of barbarity, attacks on physical or mental integrity of persons and illegal trafficking in narcotics. The time limit was set to the years 1982-1990, during which Hissene Ha bre was president.

Outcome and Status: The lack of funds seriously hindered the commission in its duties, and they also received threats from members of the Intelligence Service who had been members of the former Secret Service. In spite of all the problems, they published a report that stated the involvement of foreign governments in funding the worst perpetrators.

Chile

Type of action: Truth Commission

Specific Title: National Commission for Truth and Reconciliation / Comision Nacional para la Verdad y Reconciliacion (also known as the Rettig report after the chairman)

Duration Period: 1990 - 1991

Cause: The commission was created to investigate abuses resulting in deaths or disappearances during the previous seventeen years of military rule.

Outcome and Status: The commission reviewed approximately 3,400 cases, of which 2,920 fell under its mandate. The commission had a large group of staff members that thoroughly investigated each case and their 1,800-page report was much acclaimed. It was however followed by three assassinations, which effectively brought an end to the discussion on the report. Many of its recommendations have nonetheless been implemented.

In 2004-2005 there was, at the request of President Ricardo Lagos, another commission investigating political imprisonment and torture (The National Commission on Political Imprisonment and Torture). It reported 29,000 cases of torture or imprisonment, mostly during 1973. The report has been heavily criticised for using definitions that would give the kind of result they wanted. The commission made it difficult for victims to testify, and used a different definition of torture to that of the UN. The report can be found on the Internet.

Ecuador

Type of action: Truth Commission

Specific Title: Truth and Justice Commission

Duration Period: From 1996

Cause: The commission was established by President Abdala Bucaram to investigate at least 176 cases of human rights abuses committed since 1979.

Outcome and Status: The commission was aborted before they could publish a report.

El Salvador

Type of action: Truth Commission under UN supervision.

Specific Title: United Nations Commission on the Truth for El Salvador

Duration Period: 1992 - 1993

Cause: The Commission was created to investigate serious acts of violence from 1980. It was established following the peace accords between the government and the Farabundo Marti National Liberation Front (FMLN).

Outcome and Status: The commission was set up by the Secretary-General of the UN, and due to neutrality reasons no Salvadorans were part of either the commission or their staff. In 1993, they published a report that names more than 40 people that were found responsible for human rights crimes. In general the report was well received, but it was also criticised for not fully investigating things like death squads. Less then a week after the report was published, a general amnesty was passed by the legislature.

Ethiopia

Type of action: National Process

Specific Title: Special Prosecutor's Office

Duration Period: 1992-

Cause: The Special Prosecutor's Office was established to investigate and report on human rights violations and corruption during the 17-year rule of former President Mengistu Haile-Mariam, as well as to bring those responsible for such crimes to justice.

Outcome and Status: The Special Prosecutor has charged over 2,200 persons with genocide and other crimes against humanity. The trials were supposed to be finished by 2004, but were not.

Germany

Type of action: International Process

Specific Title: Trial of the Major War Criminals Before the International Military Tribunal (The Nuremberg Trials)

Duration Period: 1945 - 1946

Cause: The trials were held to try the most important leaders of Nazi Germany, who were charged with crimes against peace, war crimes and crimes against humanity.

Outcome and Status: The legal basis for the trials was established in the London charter of the International Military Tribunal, which allowed trials against the major war criminals of the Axis countries. It was derived from the German Instrument of Surrender, which transferred political authority, including the rights to punish violations of international law to the Allied countries, and acknowledged the fact that Germany had signed the Kellogg-Briand Pact. The judges and the prosecutors all came from the allied countries. The accused were 24 major war criminals, together with six criminal organisations including the Nazi party leadership, the Gestapo and the command of the German Army. Of the 24 accused persons, 12 were sentenced to death by hanging, seven were imprisoned, three were aquitted, one was considered medically unfit for trials and one comitted suicide before the trials begun.

Germany (for East Germany)

Type of action: Truth Commission

Specific Title: Enquete Kommission Aufarbeitung von Gesichte und Folgen der SED-Diktator in Deutchland / The Study Commission for the Assessment of History and Consequenses of the SED Dictatorship in Germany

Duration Period: 1992 - 1994

Cause: The commission was set up to investigate human rights violations committed during the communist regime 1945-1989. It was headed by Rainer Eppelman, an East German parliamentarian and human rights activist, and is thus sometimes referred to as the Eppelman-commission.

Outcome and Status: In 1994 the commission presented a 15,000-page report. It is also possible for people to read their own files from the Stasi archives.

Ghana

Type of action: Truth Commission

Specific Title: National Reconciliation Commission

Duration Period: 2002 - 2004

Cause: The commission was set up to investigate human rights crimes committed by unconstitutional governments between 1957 and 1993 as well as recommend reforms for the future.

Outcome and Status: The commission took around 4,000 statements from victims and witnesses as well as conducted over 2,000 public hearings before presenting its final report to the government in October 2004. The report was made public in April 2005.

Guatemala

Type of action: Truth Commission

Specific Title: Comision para el Esclarecimiento Historico / Historical Clarification Commission

Duration Period: 1997 - 1999

Cause: The Commission was established as a part of the peace agreement that put an end to more

than three decades of civil war in Guatemala , and it was mandated to deal with all kinds of violations against human rights committed between 1962 and 1996.

Outcome and Status: The Commission was chaired by Christian Tomuschat, a German law professor, together with two Guatemalans. Their report does not name perpetrators, but attributes most of the atrocities to the security forces, and is gives a comprehensive picture of the crimes committed. The report was presented to the Guatemalan president, representatives from National Guatemalan Revolutionary Unit (URNG), and the Secretary-General of the UN at the same time. The UN later made the report public in English and Spanish.

Guinea

Type of action: Truth Commission

Specific Title: Commission of Inquiry

Duration Period: 1985-

Cause: The commission was set up to investigate violations of human rights committed during the regime of Ahmed Sekou Toure.

Outcome and Status: The commission was abandoned before it could deliver a final report

Haiti

Type of action: Truth Commission

Specific Title: National Commission on Truth and Justice

Duration Period: 1995 - 1996

Cause: The commission was set up to investigate human rights violations committed from 29 September 1991, the coup that overthrew the elected president Aristide, to 15 October 1994, the end of the military junta.

Outcome and Status: The seven-man commission was comprised four Haitians and three foreigners. Their focus was to come up with recommendations on how to change the judicial system and in February 1996 they delivered their final report to the president and the judiciary. The report does not name any perpetrators.

Iraq

Type of action: National Process

Specific Title: Supreme Iraqi Criminal Tribunal

Duration Period: 2003-

Cause: The tribunal was originally set up by a specific statute issued under the Coalition Provisional Authority, and was integrated into Iraqi national law in October 2005. The purpose of the tribunal is to try people accused of genocide, crimes against humanity, war crimes and other serious crimes committed between 1968 and 2003.

Outcome and Status: The most well known of the persons that will be tried before the Tribunal is former president Saddam Hussein, whose case is currently being heard. Apart from Saddam, 11 high-ranking Iraqi officials are in custody awaiting their trials, including Ali Hassan al-Majid ("Chemical Ali"), and Tariq Aziz, the former deputy prime minister. International voices, including Amnesty International, have raised concerns that the trials will not be fair according to international standards.

Link of Interest: www.iraqispecialtribunal.org

Japan

Type of action: International Process

Specific Title: International Military Tribunal for the Far East

Duration Period: 1946-1948

Cause: The Tribunal was held to try the leaders of Japan for Crimes against Peace (Class A), War Crimes (Class B) and Crimes against Humanity (Class C) committed during World War II.

Outcome and Status: The Japanese government had not signed the Geneva Convention prior to World War II, and could therefore not be charged with breaking international law. They had, however, signed the Kellogg-Briand pact in 1929, which made it possible to accuse them of crimes against peace. The prosecutors, as well as the judges, came from 11 different Allied countries. During the tribunal, 28 Japanese military and political leaders were charged with Class A crimes. Of them, 25 were convicted, two died during the trial and one person had a nervous breakdown and was removed. Of the 25 convicted, seven were sentenced to death, 16 to life imprisonment and two were given finite sentences. More than 300,000 Japanese were charged with Class B and C crimes.

Republic of Korea (South Korea)

Type of action: Truth Commission

Specific Title: Presidential Truth Commission on Suspicious Deaths

Duration Period: 2000

Cause: The commission was set up to investigate the death of citizens opposed to past authoritarian regimes, during the democratisation movement.

Outcome and Status: The Commission was set up under the office of the president, but was moved to the parliament in 2004. By that time, it had confirmed 30 suspicious deaths out of 85 reviewed cases.

Kosovo

Type of action: Hybrid Process

Specific Title: Regulation 64 Panels

Duration Period: 2000-

Cause: The Hybrid Court was set up by the United Nations Interim Administration Mission in Kosovo (UNMIK), after regulations were passed in the Security Council. The purpose of the court is to try those responsible for atrocities committed during the 1999 Kosovo war. The court consists of a mixture of national and international judges, serving together.

Outcome and Status: The hybrid court has so far conducted almost 30 trials, including against several people indicted for war crimes or genocide. There are still ongoing processes.

Lebanon

Type of action: Truth Commission

Specific Title: Commission of Inquiry

Duration Period: 2000 - 2001

Cause: The commission was set up to investigate disappearances during the war between 1975 and 1990. A total of 17,415 people are listed as missing since this period, some were immediately killed and some were imprisoned, either in Lebanon , Syria or Israel .

Outcome and Status: The commission concluded that none of the disappeared was alive and that anyone missing for at least four years should be considered dead. They also advocated that compensation and social rehabilitation should be provided to families of the victims, but the whole report of the commission was never made public.

Type of action: Truth Commission

Specific Title: Relatives of the Disappeared Complaints Commission

Duration Period: 2001 - 2002

Cause: The commission was set up by the president after complaints from families with disappeared relatives, since they were not satisfied with the results of the first commission.

Outcome and Status: The commission spent 18 months collecting evidence, receiving complaints from families and conducting hearings covering around 700 cases but they did not publish a final report or even make a public statement about their findings. Neither was it explained by the authorities whether the Commission had been disbanded, or not.

Lebanon (and Syria)

Type of action: Truth Commission

Specific Title: Commission of Inquiry

Duration Period: 2004-

Cause: Since the former commissions had not delivered satisfactory results to the relatives of the disappeared, yet another commission was set up to investigate disappearances during the war between 1975 and 1990. This new commission was set up by the Lebanese and Syrian governments jointly and is mandated to investigate disappearances from both countries.

Outcome and Status: So far, the commission has not produced any results. As long as the question of the disappeared remains unanswered, relatives of the missing are demanding that the UN Security council consider the implementation of the resolution that forces Syrian troops to leave Lebanon .

Liberia

Type of action: Truth Commission

Specific Title: Truth and Reconciliation Commission

Duration Period: 2006-

Cause: Following years of instability and violence, the UN- administered peace accord signed in 2003 authorised the setting up of a truth and reconciliation commission and in February 2006 it was officially launched.

Outcome and Status: The Commission is mandated to examine human rights violations and war crimes committed between 1979 and 2003. In addition to the nine local commissioners there will be three internationally appointed technical advisors, two of whom will be chosen by ECOWAS and the third by the UN High Commissioner for Human Rights. The peace accord does not provide for any criminal tribunal to be set up, but a Dutch citizen, Guus Kouwenhoven, is facing charges in The Hague for his involvement in the Liberian civil war, including providing arms to Charles Taylor in spite of the UN ban on arms exports to Liberia .

Mexico

Type of action: National Process

Specific Title: Special Prosecutors Office

Duration Period: 2002-

Cause: The Special Prosecutors Office was set up to investigate crimes that public servants had committed during the "dirty war" of the 1970s and 80s, when thousands of people were killed or disappeared by the state.

Outcome and Status: The same presidential accord that created the Special Prosecutors Office also released a large quantity of formerly secret documents from the national archives. These documents have been very helpful in the investigations but still the Special Prosecutor has been criticised for not being efficient enough. One of the most well known persons inspected is Luis Echeverria Alvarez, who was president during the Corpus Christi massacre in 1971, when government supporters killed around 50 student demonstrators. It was established by the Supreme Court that Echeverria could be charged with genocide in connection with the Corpus Christi massacre.

Morocco

Type of action: Truth Commission

Specific Title: Equity and Reconciliation commission / Instance Equite et Reconciliation (IER)

Duration Period: 2004 - 2005

Cause: The commission was established by King Mohammed VI to investigate crimes committed during the Years of Lead (1956-1999), the regime of the two former kings, Muhammed V and Hassan II. Among those crimes were indiscriminate arrests, killings and disappearances.

Outcome and Status: The final report was delivered to the King on 30 November 2005, and publicly distributed two weeks later.

Nepal

Type of action: Truth Commission

Specific Title: Commission of Inquiry to Find Disappeared Persons

Duration Period: 1986 - 1991

Cause: The commission was mandated to examine allegations of human rights violations during the autocratic Panchayat system.

Outcome and Status: The Commission presented its report in 1991, but it was not made public until 1994. Almost none of the recommendations made in the report were later implemented.

Nigeria

Type of action: Truth Commission

Specific Title: The Special Human Rights Commission

Duration Period: 1999 - 2002

Cause: The Commission, some times referred to as the Oputa Panel after its chairperson Justice Chukwudifu Oputa , was initially set up to investigate crimes against human rights committed between 1994 and 1999, but its mandate was soon extended to 1984-1999. The mandate included investigating extra-judicial killings and other human rights abuses, the persons who committed them, if they were deliberate acts of the state, as well as come up with recommendations for the future.

Outcome and Status: The commission presented its report in 2002, but it was not made publicly available. The final report, among other things, included the recommendation that three former military rulers, Ibrahim Babangida, Muhammadu Buhari and Abdulsalami Abubakar should be investigated for suspicious deaths and barred from ever governing Nigeria again. Later, the commission was annulled on the grounds of unconstitutionality, and thus its report was no longer valid. I n 2005 it was published by civil rights groups, and is now accessible on the Internet.

Panama

Type of action: Truth Commission

Specific Title: Comision de la Verdad / Truth Commission

Duration Period: 2001-2002

Cause: The Commission was set up to investigate human rights violations committed between 1968 and 1989, during the military dictatorships of Generals Omar Torrijos and Manuel Noriega.

Outcome and Status: The commission presented its report in 2002, including a list of over a hundred documented extra-judicial killings or disappearances. The report clearly states how the military was involved, as well as recommends reparations to relatives of the victims.

Paraguay

Type of action: Truth Commission

Specific Title: Truth and Justice Commission

Duration Period: 2004-

Cause: The commission was set up to investigate human rights violations committed from 1954 to 2003. The main focus of the commission is the 34-year long Stroessner regime that ended in 1989.

Outcome and Status: The Commission aims to identify perpetrators and establish an official number of disappeared persons. They are also mandated to contribute to prosecutorial efforts.

Peru

Type of action: Truth Commission

Specific Title: Comision de la Verdad y Reconciliacion / Truth and Reconciliation Commission

Duration Period: 2001-2003

Cause: The commission was set up to investigate human rights abuses committed between 1980 and 2000, during the administrations of former Presidents Fernando Belaunde (1980-1985), Alan Garcia (1985-1990) and Alberto Fujimori (1990-2000). It was mandated to look into crimes committed both by the military, and rebel groups such as the Shining Path and Tupac Amaru Revolutionary Movement.

Outcome and Status: The commission presented its 9-volume report in 2003, having documented over 69,000 deaths. The worst perpetrator, according to the commission, was the Shining Path guerrillas, with the military in second place and Tupac Amaru Revolutionary Movement in third.

Link of Interest: www.cverdad.org.pe

Philippines

Type of action: Truth Commission

Specific Title: Presidential Committee on Human Rights

Duration Period: 1986-1987

Cause: The mandate of the committee was to investigate human rights violations committed since 1972, when martial law was introduced. It was however restricted to crimes committed by the government or anyone acting on its behalf, since crimes committed by the guerrilla groups were seen as common crimes that could be dealt with by ordinary courts.

Outcome and Status: The committee was from the beginning underfunded and lacked resources to deal with the numerous testimonies given. After less than a year, the committee chairman died of cancer and shortly after almost all of the members resigned. They never finished their report, and no soldiers or other government officials were ever prosecuted.

Rwanda

Type of action: International Process

Specific Title: International Criminal Tribunal for Rwanda

Duration Period: 1994-

Cause: The Tribunal was set up to try those responsible for the genocide, crimes against humanity and war crimes committed in the territory of Rwanda, or by Rwandan citizens in nearby states, between 1 January and 31 December 1994. The Tribunal was created by the UN Security Council, resolution 955 of 8 November 1994.

Outcome and Status: The Tribunal, with its headquarters in Arusha, has indicted 81 persons of whom nine are still at large. As of May 2006, the Tribunal has handed down 21 judgments involving 27 accused and another 27 are in trial. Fifteen people are awaiting the beginning of their trials, three persons have been released and two persons had their indictments withdrawn.

Link of Interest: www.ictr.org

Type of action: National Process

Specific Title: Gacaca Court

Duration Period: 2001-

Cause: The community-based Gacaca system was put in place to investigate crimes against humanity committed during the civil war and genocide. It was estimated that it would take the common legal system a hundred years to try all the accused of atrocities during the war, so to speed up the process Gacaca Courts were created. Another important aim of the Gacaca Courts is to reconcile the Rwandans and reinforce their unity through involvement in the judicial process.

Outcome and Status: The Gacaca Courts are mandated to try people accused of type 2-4 crimes, which includes accomplices of deliberate homicides and maiming, but not the leaders of the genocide or rapists who will be tried according to common law rules. During 2005, 6,734 trials were held, and 6,267 verdicts returned. Six hundred and ninety-five people were acquitted. The list of suspects to be tried by Gacaca Courts contains almost 60,000 names.

Link of Interest: www.inkiko-gacaca.gov.rw

Serbia and Montenegro / Federal Republic of Yugoslavia

Type of action: International Process

Specific Title: International Criminal Tribunal for the former Yugoslavia (ICTY)

Duration Period: 1993-

Cause: The Tribunal was established by the UN Security Council, as the first international war crimes tribunal since Nuremberg , to prosecute people responsible for violations of international humanitarian law, genocide and crimes against humanity since 1991 in the territory of former Yugoslavia .

Outcome and Status: The Tribunal, with its Headquarters in The Hague , has indicted 161 persons. As of April 2006 12 persons are in trial, 43 persons have been found guilty and 8 persons have been acquitted. Six persons are at large, including Radovan Karadzic and Ratko Mladic.

Link of Interest: www.un.org

Type of action: National Process

Specific Title: Office of the War Crimes Prosecutor and War Crimes Panel

Duration Period: 2003-

Cause: The special prosecutors office, and the War Crimes Panel was set up to handle war crimes that are not dealt with by the ICTY.

Outcome and Status: Closely monitored by the ICTY, that can always transfer cases from national level to the tribunal, the War Crimes Panel has handled a few specific cases, among them the Ovcara massacre, where around 200 civilians were taken from a hospital and killed.

Type of action: Truth Commission

Specific Title: Yugoslav Truth and Reconciliation Commission

Duration Period: 2001 - 2003

Cause: The commission was created by then-president Kostunica to investigate war crimes committed in Slovenia, Croatia, Bosnia and Kosovo since 1991.

Outcome and Status: The commission was disbanded when the office of the federal presidency was abolished, and no report was ever published.

Sierra Leone

Type of action: Truth Commission

Specific Title: Sierra Leone Truth and Reconciliation Commission

Duration Period: 2000 - 2004

Cause: The Commission was set up through the peace accord signed under UN-supervision in 1999. The mandate for the commission included investigating human rights violations in 1991 and 1999, as well as making recommendations for the future.

Outcome and Status: There were originally extensive possibilities for impunity offered in the peace accord, and the truth and reconciliation commission was seen as an alternative to justice through a criminal process. The possibilities for impunity were however later reduced, and the international criminal tribunal was created. The Commission presented its report to the president in October 2004, and to the Secretary-General of the UN a few weeks later.

Link of Interest: www.trcsierraleone.org

Type of action: Hybrid Process

Specific Title: Special Court for Sierra Leone

Duration Period: 2002-

Cause: After the peace accord had been signed, there was another outbreak of violence in Sierra Leone , and UN peacekeepers were captured by one of the fighting groups. In August 2000, the UN Security Council adopted resolution number 1315, which mandates the creation of the Special Court , and in 2002 the court was set up trough an agreement between the UN and the government of Sierra Leone.

Outcome and Status: The Special Court is mandated to try those who bear the greatest responsibility for serious violations of human rights as well as Sierra Leonean law committed since 30 November 1996. As of May 2006, the court has indicted 11 people from all three of the former warring factions. They are charged with war crimes and crimes against humanity, as well as specified charges of rape, torture, murder, acts of terror, sex slavery, and other atrocities. The single most well known person indicted by the Special Court is former Liberian president Charles Taylor, who recently appeared before the court in Freetown for the first time. His trial will be held in The Hague , albeit still under the jurisdiction of the Special Court for Sierra Leone .

Link of Interest: www.sc-sl.org

South Africa

Type of action: Truth Commission (under ANC, not government or parliament)

Specific Title: Commission of Enquiry into Complaints by Former African National Congress Prisoners and Detainees

Duration Period: 1992-

Cause: The Commission was set up by Nelson Mandela after a group of 32 former ANC members and detainees of ANC camps had confronted the ANC on detention camp abuses. The commission was mandated to investigate detention camps located throughout Southern Africa .

Outcome and Status: The commission presented its 74-page report to Nelson Mandela after seven months. Without naming any perpetrators, it stated that torture and other abuses had been used against the detainees and Mandela accepted collective responsibility for the leadership of the ANC. The report was published, but was later withdrawn and is now difficult to find. The commission was criticised for being biased since two of three commissioners were ANC members.

Type of action: Truth Commission (under ANC, not government or parliament)

Specific Title: Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuses Against ANC Prisoners and Detainees by ANC Members

Duration Period: 1993-

Cause: Since the former ANC Truth Commission had been accused of being biased and not giving enough opportunity for individuals to testify, Mandela initiated another commission, headed by three independent commissioners from USA , Zimbabwe and South Africa . The commission is sometimes referred to as the Motsuenyane Commission, after Dr Samuel Motsuenyane, the president of the commission.

Outcome and Status: The work of the second commission was very different from that of the first commission. Public hearings were held in the manner of a regular court, with people employed as “prosecutors” and “defenders”. Eleven people who were accused of human rights abuse faced “trials” during these hearings. Regardless of that, the findings of the Motsuenyane report do not differ much

from the report of the first commission, even though the second report names perpetrators and is in all more extensive. The Motsuenyane commission was much criticised for mixing up the two roles of truth seeking and disciplinary procedures.

Type of action: Truth Commission

Specific Title: Commission of Truth and Reconciliation

Duration Period: 1995 - 1998

Cause: The commission was set up to investigate atrocities committed during the Apartheid regime. The Tutu-commission, as it is often referred to after its chairperson Desmond Tutu, was mandated to cover the period 1960-1994.

Outcome and Status: After extensive hearings, in both open and closed sessions, the commission presented its final report to the president in October 1998. It was made public, and is accessible on the Internet. Perpetrators were named and they could apply for amnesty. A separate reparation and rehabilitation committee was established to recommend appropriate forms of compensation for human rights victims.

Link of Interest: www.doj.gov.za

Sri Lanka

Type of action: Truth Commissions
Specific Title: Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons

Duration Period: 1995 - 1997

Cause: The three parallel commissions were set up on identical mandates to investigate disappearances dating back to 1988, as well as to bring about charges against those found responsible for the abductions.

Outcome and Status: The different commissions were set up to cover different geographical regions of Sri Lanka . They all worked independently, covering more than 16,700 of cases of disappearances, before they presented a report together in 1997. The report was first presented to the president, and later it was made public. Compensation was paid to families of some of the victims.

Timor Leste (and Indonesia)

Type of action: Truth Commission

Specific Title: Commission for Reception, Truth and Reconciliation / Comissao de Acolhimento, Verdade e Reconciliacao em Timor Leste (CAVR)

Duration Period: 2002 - 2005

Cause: The commission was initiated to investigate the systematic human rights violations committed during the Indonesian occupation of Timor , between 1974 and 1999.

Outcome and Status: The final report was delivered to the President on 31 October 2005. It was released to parliament and cabinet on 28 November 2005.

Type of action: National Process
Specific Title: Ad Hoc Human Rights Court for East Timor (based in Jakarta, Indonesia)

Duration Period: August 2001 (presidential decree); January 2002 indictments; Hearings March 2002 – August 2003

Cause: The ad hoc court was established by Indonesian Law to try individuals responsible for crimes against humanity committed in Timor-Leste, at the end of the Indonesian occupation (April 1999 and September 1999).

Outcome and Status: 18 defendants were tried and six of them convicted. Five of them were later acquitted and the last case is still pending. Many voices, such as the International Centre for Transitional Justice (ICTJ), have criticised the ad hoc court, and a UN-report concludes that the prosecutions before the ad hoc court were manifestly inadequate.

Type of action: Hybrid Process

Specific Title: The Special Panel for Serious Crimes, of Dili District Court.

Duration Period: 2000 - 2005

Cause: The Special Panel was a mixed court, a combination of International and Timor Leste-judges, with jurisdiction over violations of humanitarian and human rights law. UN's Transitional Administration in East Timor passed a regulation on the organisation of courts in East Timor , which gave the Dili District Court and the Court of Appeal exclusive jurisdiction over genocide, war crimes, crimes against humanity, murder, sexual offences and torture. This applied to the territory of East Timor and was limited to 1 January 1999 – 25 October 1999. The time restriction did not, however, apply to genocide, war crimes, crimes against humanity, or torture.

Outcome and Status: Many have been convicted, but mostly low-ranking Timorese former militia or soldiers. Higher-ranking officers were indicted but remained at large in Indonesia .

Initially the ad hoc court in Jakarta was supposed to be the main way of prosecuting those who committed crimes against humanity in East Timor in 1999. The Dili-processes were supposed to deal solely with people from Timor Leste, but when the results from the ad hoc court were not satisfactory to the Timorese, they decided to indict Indonesians as well, five of them already prosecuted by the ad hoc court.

The UN wants retrials of the ones conducted by the ad hoc court. This could clash with the principle of ne bis in idem which protects a person from being judged twice for the same crime , but according to internationally acclaimed exceptions it is possible to have a retrial if the first one had serious flaws. The retrials should preferably be done by the ad hoc court in Jakarta again.

Type of action: International Process

Specific Title: International Criminal Tribunal for Timor-Leste at the International Criminal Court

Duration Period: (not yet operational)

Cause: If retrials cannot or will not be held by the ad hoc court in Jakarta , the UN suggests that an international tribunal should be created.

Outcome and Status: Proposed, but not yet in practice. The crimes committed in Timor-Leste do not fall under the jurisdiction of the ICC, but the UN intends to use competence there through a special agreement, where the tribunal would be a separate legal entity, but its judges, staff, and premises would be those of the ICC.

Uganda

Type of action: Truth Commission

Specific Title: Commission of Inquiry into the Disappearances of People in Uganda since the 25 January 1971.

Duration Period: 1974 - 1975

Cause: Investigating violations against human rights between 1971 and 1974, the first years of Idi Amin's regime.

Outcome and Status: The Commission was working under Amin, investigating crimes his government had committed, and in the end their report was not officially published. They recommended reform of the police and the security forces, as well as training in human rights. None of the recommendations were followed, and it did not prevent Amin from continuing to commit serious human rights abuses, even if the pace slowed down during the period of the commission. Afterwards, the commissioners faced retaliation from the state, but had at least put the abuses of the pre-1974 period onto the state record. Despite its shortcomings, this is commonly seen as the first Truth Commission.

Type of action: Truth Commission

Specific Title: Commission of Inquiry into Violations of Human Rights

Duration Period: 1986 - 1994

Cause: Investigating violations against human rights committed between 9 October 1962 and 25 January 1986, including the governments of the two former presidents Milton Obote (1966-1971, 1980-1985) and Idi Amin (1971-1979).

Outcome and Status: The commission published the results of its investigations in 1994.

United States of America , Greensboro

Type of action: Truth Commission

Specific Title: Greensboro Truth and Reconciliation Commission

Duration Period: 2004 - 2006

Cause: The Commission was set up to investigate the truth about what happened in Greensboro on the 3 November 1979, the so-called "Greensboro Massacre". During a statewide "Death to the Klan" rally, initiated by members of the Communist Workers Party, five people were killed and 10 others were wounded, when members of the Ku Klux Klan and American Nazi party started shooting during the demonstration. Even though four TV crews captured the killings on film, the perpetrators were still twice acquitted.

Outcome and Status: The commission collected statements and held several public hearings, as well as a public dialogue meeting in November 2005.

Link of Interest: www.greensborotrc.org

Uruguay

Type of action: Truth Commission

Specific Title: Investigative Commission on the Situation of 'Disappeared' People and its Causes

Duration Period: 1985

Cause: Investigating disappearances committed by the military regime from 1973 to 1982. The mandate did, however, not extend to investigate illegal imprisonments and torture, which was much more common than disappearances.

Outcome and Status: A final report was published at the end of 1985, but it was never widely distributed. It presented 164 cases and provided evidence that the Uruguayan security forces had been involved. The report, including the evidence, was forwarded to the Supreme Court, but no legal actions were taken.

Yugoslavia, Federal Republic of - Bosnia and Herzegovina & Serbia and Montenegro

respectively.

Zimbabwe

Type of action: Truth Commission

Specific Title: Zimbabwe Truth Commission

Duration Period: 1985

Cause: The commission was established to investigate atrocities committed by the Mugabe government in suppressing a rebellion in the Matabeleland region two years earlier. An estimated 1,500 civilians were killed in the conflict, a figure that has never been acknowledged by the government.

Outcome and Status: The commission reported directly to the president and their report was never made public.

Rogues Gallery

Former Chadian President Hissene Habre.
Credit: IRIN

Hissene Habre

Hissene Habre is the former president of Chad . He is accused of murder, torture and other crimes against humanity committed during his regime.

Hissene Habre was born in 1942, in Chad and studied Political Science in Paris , France . He returned to Chad in 1971 and after a brief career in the government administration he joined an armed Chadean rebel movement named Forces Armees du Nord. In 1978, Habre was appointed prime minister under president Felix Malloum, a position that he lost in 1979 when Malloum resigned. In the Transitional Government of National Unity that followed, Habre served as minister of defence. In 1982, he seized power in a coup and installed him self as President of Chad, a position he held until 1990.

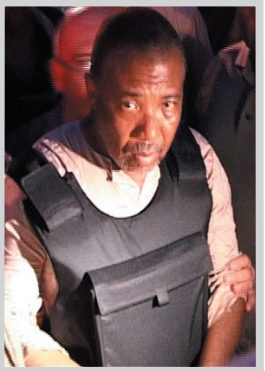
Habre's presidency was characterised by unlawful killings and widespread atrocities. He persecuted ethnic groups he believed were hostile towards him, killing and arresting thousands of people. Some of the groups that were pursued are the Sara, the Hadjerai, Chadean Arabs and the Zaghawa. The exact number of Habre's victims is not known.

In 1992 a truth commission was set up to investigate crimes and misappropriations committed by Habre, but a lack of funds, as well as threats from former members of Habre's Intelligence Service hindered the commission. Nevertheless they did publish a report that stated the involvement of foreign governments in funding the atrocities.

Habre was finally overthrown in 1990, and went into exile in Senegal . Ten years later, a criminal complaint filed in Dakar Regional Court accused Habre of torture and crimes against humanity. The investigating judge, Demba Kandji, was presented with details of 97 political killings, 142 cases of torture, 100 disappearances and 736 arbitrary arrests, as well as the Chadean Truth Commission report. Habre was consequently indicted and trials were about to begin when a Senegalese court ruled that they had no competence to pursue crimes that were not committed in Senegal .

At the same time, 21 victims of Habre's atrocities, including three Belgian citizens, had filed a case against Habre in Belgium , hoping to get him extradited there. Additional evidence was found in 2001, when the archives of Habre's dreaded political police force were found. On 19 September 2005 the Belgian judge issued an international arrest warrant against Habre and demanded Habre's extradition from Senegal . This has been supported by the UN Secretary-General Kofi Annan, among others. The Senegalese court left the decision to President Wade, who left the decision to the January 2006 African Union summit. As of June 2006, the African Union has not given any recommendations and Hissene Habre remains at large in Senegal . However t he United Nations Committee Against Torture recently gave Senegal a 90-day deadline to either put Habre on trial in Senegal or extradite him to Belgium.

Charles Taylor



Former Liberian president Charles Taylor.
Credit: IRIN

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 .

Charles Taylor was born in 1948, in Liberia . He studied economics in Massachusetts , USA between 1972 and 1977, and later worked for the Liberian diplomatic mission in USA . He was accused of stealing more than $900,000 of government funds, and was imprisoned awaiting extradition to Liberia . The legend says that he escaped prison using the classic technique of sawing through window bars and climbing down knotted sheets. Other sources however claim that he was released by the Americans who wanted him to overthrow Samuel Doe, the then-president of Liberia . Taylor , nevertheless, managed to get to Libya , where he was trained by Muammar Qaddafi.

In 1989 Taylor started his armed uprising against Doe from Cote d'Ivoire , together with a group of Libyan trained rebels. He was the leader of the National Patriotic Front of Liberia, which soon controlled large parts of the country. In 1990 Doe was murdered, but the violent conflict did not end with that. It is estimated that Taylor 's rebels, some of them child soldiers, were responsible for thousands of deliberate

killings of civilians. UN estimates say that 150,000 died during the bloody civil war, which also spilled over into neighbouring Sierra Leone .

Taylor continued his struggle for power, and in 1997, a year after the ceasefire was signed, he won a landslide victory in the presidential elections. One slogan he used was, “He killed my Ma, he killed my Pa, but I will vote for him!” and it was widely understood that he would resume the war if he did not become president.

Taylor ‘s presidency was characterised by continuing violence and turmoil, as well as selling weapons to neighbouring countries. He was affiliated with the Revolutionary United Front in Sierra Leone , and helped provide them with weapons as well as advice. His involvement in Sierra Leone made the Special Court for Sierra Leone indict him; he was wanted on 11 counts, including war crimes and crimes against humanity. Taylor is accused of terrorism, murder, rape and enslavement as well as use of child soldiers.

In 1999, the Liberians United for Reconciliation and Democracy (LURD) started a rebellion against Taylor , and in 2003 Taylor only controlled a third of the country. In the peace process, Nigerian President Olusegun Obasanjo offered Taylor safe exile in his country, on the grounds that Taylor stayed out of Liberian politics. Taylor accepted this offer, and resigned on 10 August. It did not take long, however, before the international community suspected Taylor of interfering with Liberian politics, and Interpol put him on their “Most Wanted” list. He remained in Nigeria until the newly-elected Liberian president, Ellen Johnson-Sirleaf asked for the extradition of Charles Taylor, to face justice before the Special Court for Sierra Leone . On 25 March 2006, Nigeria agreed to send Taylor back to Liberia , but before they could do that Taylor disappeared from his villa. A few days later he was arrested, trying to cross the border to Cameroon , and he was sent to Liberia , where a UN helicopter took him to Sierra Leone .

Taylor ‘s first appearance before the Special Court was on 4 April, when he pleaded not guilty. The venue for his trial will be changed to The Hague for security reasons. It will however still be under the jurisdiction of the Special Court for Sierra Leone and if he is convicted he will serve out his time in a British prison.

Former Chilean president Augusto Pinochet.
Credit: Global Policy

Augusto Pinochet

Augusto Pinochet is the former president of Chile . He is accused of crimes against humanity committed during the 17-year military regime.

Augusto Pinochet was born in 1915, in Valparaiso , on the Chilean coast. He received his education at military school, and later taught there. He rose through the ranks and in 1973 President Allende appointed him army commander in chief. Just a few weeks later, Allende was overthrown and Pinochet seized power in a bloody coup d’état.

First as head of the Junta, and later as president, Pinochet ruled Chile until 1990. The Valech report from 2004/5 found 29,000 cases of murder, disappearances, torture and other crimes against humanity. Other sources say that under the UN definition of torture, almost 400,000 people were tortured during Pinochet’s regime. A referendum in 1980 changed the Chilean constitution and made Pinochet president for eight years. In the next referendum in 1988, the majority however voted against a prolongation of his presidency. Presidential elections were held in 1989, and in 1990 Pinochet stepped down as president. He remained as commander in chief of the army until 1998, and also senator for life, a position that granted him impunity.

In 1998 a Spanish Judge issued an arrest warrant for Pinochet over the deaths and torture of 94 Spanish citizens. During a visit to London for surgery, Pinochet was arrested. The Chilean government opposed his extradition to Spain , but the British House of Lords decided that Pinochet’s impunity did not cover cases of torture committed after the International Convention of Torture was incorporated into British law in 1988. This eliminated almost all of the Spanish cases, but not entirely, and thus he could be extradited. However, this did not happen, since his health was considered to be too fragile, and in 2000 he returned to Chile .

The Chilean Supreme Court of Justice decided to withdraw Pinochet’s impunity, but also decided to drop the charges against him due to his fragile health. The following years were filled with confusing and contradicting court rulings regarding Pinochet’s impunity and health. They even involved accusations of tax fraud, which were extended to involve his children and wife in January this year. 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.


Ratko Mladic.
Credit: Global Policy

Ratko Mladic

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.

Ratko Mladic was born in 1942, in what would later become Bosnia and Herzegovina . He began his army career in 1961, and soon rose through the ranks. In 1992 he was promoted to general lieutenant-colonel and began the siege of Sarajevo , just a month after the Bosnian declaration of independence. At the same time Mladic joined the newly created Bosnian Serb Army, and was promoted to the rank of general colonel.

He is expected to have given orders for the 1995 Srebrenica Massacre, where over 7,000 Bosnians were killed by Mladic's troops. At the end of the war, there was a falling out between the former friends Mladic and then-president of Republika Srpska, Radovan Karadzic, when the latter tried to remove Mladic from the post as commander for the Bosnian Serb Army. He was however not successful, and Mladic remained at the post until November 1996.

In July 1995 Mladic was indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY), and in November the same year the indictment was amended to cover the Srebrenica Massacre. He is accused of two counts of genocide, seven counts of crimes against humanity and six counts of war crimes, but still remains at large. There are frequent reports about his whereabouts, but no certain sightings. It is however believed that he lives in Serbia . Carla Del Ponte, Prosecutor of the ICTY, gave Serbia a deadline to hand him over by 1 May 2006, and when he was not extradited on time, the talks between the EU and Serbia were suspended. There is a US $5 million reward for anyone capturing Mladic and Karadzic.

Radovan Karadzic


Radovan Karadzic
Credit: ICJ

Radovan Karadzic was the first president of Bosnian entity Republika Srpska. He is accused of genocide, war crimes and crimes against humanity committed during the 1992-1995 Bosnian war.

Radovan Karadzic was born in 1945, in the Yugoslavian republic of Montenegro . He studied psychiatry in Sarajevo and worked in the city hospital. He wrote poetry, and in 1968 he published a collection of his poems.

In 1990 he cofounded the Serbian Democratic Party, as a reaction to the nationalist movement among Bosnians and Croats. When Bosnia gained independence, he declared the creation of the independent Serbian Republic of Bosnia and Herzegovina , which later became Republika Srpska. He became the republic's first president, and served as such until forced to resign in 1996.

As president, Karadzic had full command over the Bosnian Serb Army, and is accused of involvement in the Srebrenica Massacre (where more then 7,000 Bosnians were killed), as well as the siege of Sarajevo . Together with former friend Ratko Mladic he was indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) in July 1995, with later amendments. He continued to serve as president of Republika Srpska until 1996 when he went into hiding. He is accused of two counts of genocide, five counts of crimes against humanity and three counts of war crimes, but remains at large. There is a US $5 million reward for whoever captures Mladic and Karadzic.


Ante Gotovina.
Credit: ICJ

Ante Gotovina

Ante Gotovina was a colonel-general of the Croatian Army during the 1991-1995 Croatian war. He is accused of war crimes, including murders, wanton destruction, plundering and torture.

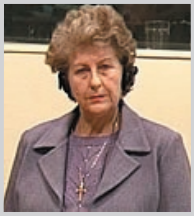
Ante Gotovina was born in 1955, on an island in the Adriatic Sea . He left Yugoslavia when he was 16 and later joined the French Foreign Legion. He served in countries such as Djibouti , Zaire and Cote d'Ivoire . He left the legion with the rank of chief corporal, and became a French citizen 1979. After that, he worked for private secu-

rity companies in France and in Latin America .

In 1991, Croatia declared independence from the Federal Republic of Yugoslavia , and Gotovina returned home to join the Croatian National Guard, and subsequently the Croatian Army. He was a commanding officer during Operation Storm in August 1995, when Croatian forces recaptured areas held by Croatian Serb separatist forces. During and immediately after this operation more than 200,000 Serbs were displaced, and many were killed.

The International Criminal Tribunal for the former Yugoslavia (ICTY) indicted Ante Gotovina in July 2001, and the indictment was later amended. He is accused of war crimes, such as deliberate plundering and wanton destruction of Serb villages, as well as murder and treating people in an inhumane way. At the time of his indictment, he was still living in Croatia . The other two Croatian officers that were indicted at the same time were handed over to the tribunal, but Gotovina fled, and he remained at large until 2005.

Some European Union members considered it a prerequisite for Croatia to hand over Gotovina to the ICTY before they could start negotiations about EU membership, and in December 2005 Gotovina was captured by Spanish police forces on the island of Tenerife . He was handed over to ICTY on 10 December and pleaded not guilty.



Biljana Plavsic.
Credit: UN

Biljana Plavsic

Biljana Plavsic was President of Republika Srpska from 1996 to 1998. She is convicted of war crimes during the 1992-1995 Bosnian war, including promoting ethnic cleansing.

Biljana Plavsic was born in 1930 in Tuzla , in Bosnia and Herzegovina . She studied biology, and later taught at the University of Sarajevo . She also studied in Prague , and is a Fulbright scholar.

She joined the Serbian Democratic Party cofounded by Karadzic and became active in Serbian politics in Bosnia and Herzegovina . In 1992 she became vice-president of Republika Srpska, as well as a member of the Supreme Command of the armed forces of the Bosnian Serb Army. After the Dayton agreement banned Karadzic from office she ran for president, a position she held between July 1996 and November 1998.

In 2001, she surrendered to the International Criminal Tribunal for the former Yugoslavia (ICTY), after being tipped off that there was a classified indictment for her. She was accused of two counts of genocide, five counts of crimes against humanity and one count of war crimes. At her initial hearing before the ICTY she pleaded not guilty, but later she plea-bargained and pleaded guilty to one count of crimes against humanity. She apologised to all innocent victims of the war, but has been criticised for not testifying against former colleagues. In 2003 she was sentenced to 11 years imprisonment, and is currently serving that sentence in a Swedish jail.

Joseph Kony

Joseph Kony
Credit: The Daily Monitor

Joseph Kony is the leader of the Lord's Resistance Army in Uganda . He is accused of crimes against humanity and is indicted by the International Criminal Court.

Joseph Kony was born 1961 in northern Uganda . He dropped out of school early, but is reported to have been a good football player, as well as a good dancer. He was raised a catholic and in the late eighties he formed the Lord's Resistance Army, which is based on the idea that the Acholi people in northern Uganda are chosen by God. Kony claims to be a spirit medium and channels former Ugandan politicians as well as a Chinese general. He reportedly speaks in tongues and gets his instructions from the Holy Spirit.

During the two decades of war fought between the LRA and the Ugandan government, the LRA have repeatedly attacked civilians and often abducted children. The children are forced to serve the LRA, as "bush-wives", servants and regular soldiers. They are often forced to kill members of their own families to ensure that they cannot flee and return to their homes. The fighting has resulted in tens of thousands dead, and almost two million people displaced. It is estimated that 20,000 children have been abducted.

Kony is reported to have dozens of wives and many children. One former wife of Kony, who was married to him when she was only 11, has revealed that Kony has palaces in south Sudan , and has others carry out killings on his behalf. " He says he's a prophet. He wants to overthrow the government [and] replace the Constitution with the Ten Commandments."

The Ugandan government referred the situation to the International Criminal Court (ICC) in 2003. That gives the ICC mandate to indict and try the leaders of the LRA. In 2005 indictments were issued against Kony and four of his colleagues. Kony is accused of 12 counts of crimes against humanity, including rape, murder and enslavement, as well as 21 counts of war crimes, that include murder, deliberate attacks on civilians and the use of child soldiers. Kony, as well as his colleagues, still remain at large.

Ugandan newspaper, The Monitor, recently reported that Kony has offered to enter into peace talks with the government, if he is granted impunity.

Theoneste Bagosora.
Credit: TrialWatch

Theoneste Bagosora

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 .

Theoneste Bagosora was born in 1941, in Rwanda . He studied at the Kigali School for Officers and graduated in 1964, with the rank of Second Lieutenant. He later became the second-commander of Kigali Higher Military School as well as the commander of Kanombe Military Camp, before being appointed director of the cabinet in the Ministry of Defence. He was also military educated in France and Belgium .

In July 1993, the Minister of Defence, James Gasana, fled Rwanda for Europe , and Bagosora effectively took his position. Even though he did not carry the title of minister of defence, he upheld that position until he himself fled the country one year later.

Bagosora has been described as an anti-Tutsi extremist, and he strongly opposed the Arusha peace accords. He spoke openly about "extermination" of Tutsis and distributed weapons to Interahamwe and other groups. As an officer, he is reported to have participated actively in many massacres during the genocide and is believed to have given orders for even more. Bagosora has been accused of being the "mastermind" behind the genocide, the one who planned the killings and organised the militia groups. It is believed that both before and during the genocide, he received frequent reports on what was going on, including all atrocities, but failed to intervene.

He was indicted by the International Criminal Tribunal for Rwanda (ICTR) and arrested in Cameroon in March 1996. His trial at the ICTR in Arusha , Tanzania , began in April 2002, and is still in progress. He is accused of three counts of genocide, six counts of crimes against humanity and three counts of war crimes.

Thomas Lubanga Dyilo

Thomas Lubanga.
Credit: IRIN

Thomas Lubanga is the leader of the Union of Congolese Patriots (UPC). He is accused of atrocities committed during and after the second Congo war, including the massacre of civilians and the use of child soldiers. He is currently on trial before the International Criminal Court.

Thomas Lubanga was born in 1960, in the eastern part of what today is the Democratic Republic of the Congo . He speaks fluent French, but it is not known where he went to school.

Lubanga served as a military commander for the Congolese Rally for Democracy-Liberation Movement (RCD-ML), a rebel organisation with close ties to Uganda , before setting up his own rebel movement, the Union of Congolese Patriots in 2000. Two years later he also created a military wing of the UPC, called the Patriotic Forces for the Liberation of the Congo (FPLC).

Lubanga and his insurgents are major players in the Ituri conflict, an interethnic conflict in the Ituri district of the DRC, between the Lendu and Hema tribes. This conflict continued after the Second Congo War officially ended in 2002. After the end of the war, Lubanga seized power over the town of Bunia in eastern DRC, and it was around this time that the UPC started to commit the gravest atrocities. Within a year, the UPC is suspected of having massacred thousands of civilians, including the massacre in the village of Mongbwalu , where the UPC is said to have murdered more than 800 civilians, the majority members of the Lendu Tribe. The UN-mission's (MONUC) radio reported that Lubanga had declared that each family in the zones he controlled was under the strict obligation to contribute to the war effort by donating something, either a cow, some money, or even a child that could join the ranks of the rebels in his militia force

In an interview in 2003, Lubanga said: "We have confidence in the new deployment of MONUC […] and we hope that this […] will help ensure that no provocations take place. If there are any armed groups planning activities in the region, I believe they will be answerable to MONUC and the international community.

Lubanga is accused of having ordered the killing of nine MONUC peacekeepers in February 2005 as well as being behind the continued insecurity in the area. He was arrested in March 2005 and a year later he was the person to appear before the International Criminal Court. He is facing charges of war crimes, including the use of child soldiers.

Wiranto


General Wiranto.
Credit: IRIN

General Wiranto, who is known by his last name, is an Indonesian Army officer. He is accused of atrocities committed in Timor Leste, during their struggle for independence.

Wiranto was born in 1947 on the island of Java in Indonesia . He attended the national military academy and graduated in 1968. After being posted in Sulawesi and Java, he was picked to be the personal assistant to President Suhartu in 1989. In 1998, he was appointed c ommander in chief of the Indonesian Army and minister of defence, a position he upheld until 2000 when he was forced to retire.

Wiranto is accused being involved in Scorched Earth , the Indonesian revenge campaign after the referendum in which Timor Leste voted for independence. The goal of the campaign, which had been planned for six months earlier, was to carry out wanton killings and destroy the infrastructure of Timor Leste. Around 1,400 people were murdered and more than 250,000 were displaced during the months leading up to, and after, the referendum. Many people were also raped or tortured; UN investigations have confirmed the Indonesian Army's involvement in the atrocities.

The Serious Crimes Unit of the Dili District Court, the hybrid court based in Timor Leste, has indicted Wiranto. He is facing charges of crimes against humanity, such as murder, persecution and deportation. However, he remains at large in Indonesia.


Musa Hilal.
Credit: Human Rights Watch

Musa Hilal

Musa Hilal is accused of atrocities committed by janjaweed militia in the Darfur region of Sudan .

Musa Hilal was born in Kebkabiya , Sudan , in 1960. He is purportedly a janjaweed leader, although he denies any connection to the military and claims to be just a mayoral figure. However, both victims of janjaweed violence and representatives of the Sudanese army name Hilal as one of the top commanders of the janjaweed. Hilal reportedly uses Sudanese army aeroplanes for transport within Sudan , and he meets army officers on a regular basis.

Hilal was made sheikh by his tribe, the Um Jalloul, in 1984, and has always been known as a troublemaker. The authorities tried to arrest Hilal, and in 2002 they finally succeeded. Hilal was arrested for tax fraud, and imprisoned for five months. He was released on the condition that he was not to return to Darfur, but during the uprising of the Sudanese Liberation Army (SLA) rebellion in 2003 he returned and set up training camps for Arabs to suppress the SLA .

The janjaweed are government-backed militia groups that terrorise civilians in Sudan . One theory is that

they are arabising Sudan by killing or displacing the African population, and another theory is that the government turned a blind eye on atrocities committed by these groups as long as they help keep the SLA under control.

The janjaweed is reported to have destroyed wells and cut off water supply in order to force people to leave an area. Summary executions of civilians are common, and women in refugee camps in Darfur are often attacked when gathering firewood.

Hilal's group of militia or janjaweed have been accused of systematic looting of villages and violent attacks on their residents. On one occasion, they arrived at a village and summoned all the men to a meeting. When they men turned up, the men were held at gunpoint while the village was looted and plundered, and the women raped.

Hilal claims that his group of militia is a multi-ethnic guard for the villages within his territory, the Seref Umra, and that they are there to protect the civilians from attacks from either side. Since he claims he is no criminal, he says he is willing to go to court and defend his name against the accusations.

The United Nations imposed sanctions, including the freezing of assets and a travel ban, against Hilal and three other men in April 2006. No legal action has yet been taken.

Ta Mok


Ta Mok.
Credit: ICJ

Ta Mok ("the Butcher") is the war name of Chhit Choeun, Commander in Chief of the Army during the Khmer Rouge regime, between 1975 and 1979 in Cambodia . He is accused of genocide, crimes against humanity and war crimes, as well as other crimes defined by Cambodian law including the destruction of cultural property.

Ta Mok was born in Phnom Pen in 1926. He was actively involved in the 1940s in the resistance movements against the French and the Japanese. Later, he joined the Cambodian Communist Party. His activity was concentrated in the Southwest Zone, and he was nominated as a member of the Central Committee of the Cambodian Communist Party in 1963.

In 1968, he became Secretary of the Southwest Zone, a post that provided the platform from which he became a member of the Standing and Military Committees of the Central Committee. As Party Secretary for the Southwest Zone, he orchestrated major purges in the Angkor Chey district and is said to have had 30,000 people massacred. Ta Mok's own appointees then progressively began to replace those senior party members who had been removed for collusion with Vietnam . In this way the party members of the South West became the spearhead of the revolution.

After the regime was overthrown in 1979, Ta Mok remained a powerful figure, controlling the northern area of the Khmer Rouge's remaining territory from his base at Anlong Veng. In 1997, Ta Mok seized control of one faction following a split in the party, naming himself supreme commander. He held captive the ailing Pol Pot, who died in his custody in 1998. In the spring of that year, at a final gathering, the remaining units of the Khmer Rouge urged him to seek safety in the dense forests that separate Cambodia from Thailand.

On 6 March 1999, the general was captured by the Cambodian army near the Thai border and brought to Phnom Penh , where he joined former comrade Khang Khek Leu (widely known as Duch, who infamously managed the S 21 prison where many of the executions took place) at the Military Prosecution Department Detention Facility. Ta Mok is one of the primary suspects in the prosecution of crimes committed by the Khmer Rouge regime, and is going to be tried within the "extraordinary chambers", a body attached to the current judiciary system, created upon agreement between the United Nations and Cambodia .

Ta Mok was the last leading member of the Khmer Rouge to remain at large in Cambodia ; other senior figures had died or already made immunity deals with the government of Hu Sen, including Nuon Chea, Khieu Samphan and Ieng Sary.

Faryadi Zardad.
Credit: BBC

Faryadi Zardad

Faryadi Zardad was a warlord in Afghanistan . He has been convicted by London 's Criminal Court under the United Nations Convention Against Torture for crimes committed in his own country. In July 2005, he was sentenced to 20 years imprisonment.

Faryadi Sarwar Zardad was born in Afghanistan in 1963, and has lived in London since 1998, running a pizzeria. In the early 1990s, however, he allegedly commanded a group of militia fighters in central Afghanistan . After the withdrawal of Soviet troops from Afghanistan , the country was controlled by warlords. Zardad joined the group of warlord Gulbuddin Hekmatyar known as the Hezb-I-islami, the Islamic party.

Since 1992, Zardad, also known as Zardad Khan, controlled checkpoints in the area of Sarobi on the Jalalabad road some 80 km from Kabul . UK Attorney-General Goldsmith accused him of using "indiscriminate and unwarranted violence on innocent civilian travellers" often beating, shooting, and killing them. In fact, the defendant controlled more than 1,000 men who terrorised, tortured, imprisoned, blackmailed and killed civilians using this road.

The UK attorney-general alleged "a 'human dog' [a wild man] would be set upon these civilians, biting and attacking them, to further the fear and terror. Men would be beaten with rubber hoses and strung up until they 'lost their functions' and were kept in dark rooms for months at a time."

As a result of the Talibans' rise to power in Afghanistan in 1996, Zardad arrived in the UK 1998 seeking asylum with a false passport. He was living in Gleneagle Road , Streatham , Kent , south of London and was running a pizzeria in Bexleyheath in Kent . He was arrested in July 2003.

The Zardad case is a landmark in British law history, since it is the first case where a non-UK citizen has been tried before a British court for crimes committed in another country. In the case of whether or not the UK authorities could extradite Pinochet to Spain , the Law Lords ruled that torture falls under universal jurisdiction, and thus the British court not only could, but was also obliged, to either try or extradite Zardad. Since Afghanistan made no request for extradition, Zardad was prosecuted in the UK .

This point is interesting as there are many people accused of crimes against humanity living in Europe , without fear of being prosecuted. There are for example two Rwandans accused of genocide at large in the UK , even though they are indicted by the International Criminal Tribunal for Rwanda . Maybe the Zardad trial will change this.

Faryadi Zardad.
Credit: TrialWatch

Casimir Bizimungu

Casimir Bizimungu is a former Rwandan politician. He is accused of genocide and other serious violations of international humanitarian law committed during the Rwandan genocide.

Bizimungu was born in Rwanda in 1951. He studied abroad and is a doctor of medicine. He held several portfolios in the Mouvement republicain national pour la democratie et le developpement (MRND) party of Juvenal Habyarimana until July 1994. From 1989 to 1992 he was foreign minister, and from 9 April to 14 July 1994, during the genocide, he was minister of health in the interim government.

From late 1990 until July 1994, Bizimungu is said to have participated in and executed a plan to exterminate Tutsis. This plan consisted of, among other things, recourse to hatred and ethnic violence, the training of, and distribution of weapons to militiamen as well as the preparation of lists of persons to be eliminated. In the execution of the plan, Bizimungu is accused of having organised, ordered and participated in the massacres. He fled Rwanda in the face of the advancing Front Patriotique Rwandais, an opposition movement led by Paul Kagame consisting mainly of Tutsi refugees.

The International Criminal Tribunal for Rwanda (ICTR) issued an indictment against Bizimungu and three other ministers, accusing them of conspiracy to carry out genocide, genocide, direct and public incitement to genocide, and crimes against humanity. Bizimungu was arrested on 11 February 1999 outside his home in Hurlingham, a suburb of Nairobi , Kenya . On 23 February 1999 he was transferred to the custody of the ICTR.

His trial by the ICTR in Arusha , Tanzania started in November 2003. Bizimungu is being tried along with several other former government ministers: Jerome Bicamumpaka (foreign minister), Justin Mugenzi (minister of commerce), and Prosper Mugiraneza (minister of civil service).

Victims' Voices

Transitional justice is a broader form of justice than that provided by courts. One of the key areas is the 'truth commissions' which allow people who have suffered injustice the chance to tell their story. The focus is on the victims and giving them a voice. Below are the testimonies of some victims from around the world, telling their story of what happened to them.

SIERRA LEONE

Fatmata, 11, who lives in a camp for internally displaced people near Port Loko, was one of three children abducted on while out in search of food and wood. Both she and her 12-year-old friend Kadi were raped by the 'rebels'. She described her abduction which lasted for nearly three weeks:

We went to find wood and potato leaves in a village called Mathiaka […] one of the men grabbed me, I got away but then more of them came and surrounded us. They beat me, hit me hard on the back of the neck with a gun and then later gave me a bushel of rice to carry to their camp in Rofurawa. The one who caught made me pound rice and wash his clothes and he was the one who had sex with me. I begged him to let me go to my people but he said, "I'm going to have sex with you until they disarm us." I wanted so much to escape but I didn't know the bush around that place and he kept saying he'd kill me if I ever tried to get away. Some days I complained to his wife. She was so nice […] she sympathised and said she too had been abducted. I was with them for 20 days. I was bleeding so much and still feel so weak. I'm only 11 years old […] I haven't even seen my period yet.

Haja, 17, was one of 10 young women taken off a bus after being ambushed near Rogberi by rebel soldiers on 17 January. She described how all 10 were abducted and later raped:

I was on my way up-country to attend my father's funeral when at around l0:30 a.m. a group of about 40 rebels with RPG's [rocket-propelled grenades], guns and machetes stopped us and forced the driver to go off the road until we reached an abandoned village. He ordered us to come down and walk single file inside a house. We were so frightened and some were crying, so he said, "Why are you crying? Are you bereaved? Because now we're going to cut your throats so you'll really have something to cry over." The rebels searched us and separated all the young girls from the rest of the group. Then they walked the 10 of us to another abandoned village where they made us sit, and started calling us into a house one by one. The first one was a girl named Isatu. We saw five of them go in and heard her crying. I was the third to be called. They told me to lie down on a dirty brown cloth. I said I don't know man business. I started bleeding after the first one and screamed that I was going to die. I pleaded with them but they told me to shut up and that they'd do what ever they wanted with me. Four of them used me that day. I just prayed, "Father save me from these people and return me safely to my home."

Abu, an elder from the village Lalbanka, was one of seven people abducted by the rebels on 14 February and forced to carry zinc roofing panels stripped from abandoned villages. An elderly woman, also abducted from his village, was severely beaten and later shot because she was unable to carry the load. Abu described what happened:

At 3:00 p.m. I'd gone into the field to use the toilet and on my way back they surrounded me. They led me at gunpoint and I saw that six more people from the nearby villages of Lalsoso and Yingesa had also been caught. First they forced us to take zinc panels off the houses and then they gave us bundles of 20 to carry. My neighbor, Hawa, tried walking with that big bundle but she couldn't and dropped it along the

way. Then they took away some of the load and told her to walk but some time later she just collapsed from exhaustion. Two of them started beating her with sticks. They made us stand around and watch. They ordered her to dance and to kiss them. She tried but blood was streaming out of her head. I am a village elder and she came over and grabbed onto my pants and said "They're killing me. Help me." I said she was my daughter-in-law and begged them to stop but they said they would kill me too. We left her there - unconscious and bleeding - with one rebel. Later that night that rebel, who called himself "Junior", boasted that he had killed her and told us that that is what happens to the ones who don't work. She was the mother of six and grandma of seven. I still had her blood from where she held onto my pants.

Human Rights Watch [http://www.hrw.org/]

EL SALVADOR

Carlos Antonio Gomez Montano was a paratrooper stationed at Ilopango Air Force Base. He claimed to have seen eight Green Beret advisers watching two "torture classes" during which a 17-year-old boy and a 13-year-old girl were tortured. Montano claimed that his unit and the Green Berets were joined by Salvadoran Air Force Commander Rafael Bustillo and other Salvadoran officers during these two sessions in January 1981. A Salvadoran officer told the assembled soldiers, "[watching] will make you feel more like a man.''

Another Salvadoran soldier, Ricardo Castro, is the first officer to come forward with information about death squad activity. Castro recalled a class where Salvadoran soldiers asked the adviser about an impasse in their torture sessions:

He was obviously against torture a lot of the time. He favoured selective torture […] When they learned something in class, they might go back to their fort that night and practice […] I remember very distinctly some students talking about the fact that people were conking out on them [...] as they were administering electric shock. 'We keep giving him the electric shock, and he just doesn't respond. What can we do?' […] The American gave a broad smile and said, "You've got to surprise him. We know this from experience. Give him a jolt. Do something that will just completely amaze him, and that should bring him out of it".'

Death Squads in El Salvador : a pattern of US Complicity, David Kirsch

Covert Action Quarterly, Summer 1990 [http://www.covertaction.org/]

BOSNIA

Instead of a blindfold, the Serb soldiers bound Enisa's eyes with their socks. The stench made her throw up, so they hit her until she learned that 'Serb socks don't smell'. Seven 'heroes of the nation' raped her and beat her for days. At first she resisted, but eventually they knocked out her teeth with a rifle-butt breaking her jaw. When she lost consciousness they would 'give her a bath', i.e. douse her in cold water. Terrified that she would be driven mad, she suddenly liked the idea and saw madness as a way out. She began singing Serb songs louder and louder, then dancing with the chetnik who had presumably butchered her husband. The soldiers were dumbfounded. They threatened her, held a knife to her throat, but she only sang louder. Believing she had gone off her head entirely, the soldiers paid less attention to her and she managed to escape, by hiding in a potato sack. When the journalist Seada Vranic spoke with Enisa a few months later, in July 1992, she saw before her a hunched, grey-haired old woman with a contorted face. That was just one month before Enisa's twenty-eighth birthday.

Seada Vranic, Breaking the Wall of Silence

EAST TIMOR

My family was fearful that there would be a lot of violence when the result of the ballot was announced. I was sent off to the Cannossian Sisters' residence early in the morning, at about 6 a.m.. From the beginning the militias were out and making their presence felt around the Cannossian residence. They were shooting into the air to scare the youths out of the residence. TNI (Indonesian National Army) and Brimob (mobile police brigade) were there as well and they were shooting into the air, too. They were shooting from the morning to the night.

A militia member finally broke into the residence on 7 September 1999. The Sister went out and saw that the militia member was right at the door and she tried to negotiate with him. He told everyone that we had to go to the police compound or else we would die. We did not want to go there. We were afraid we would be killed.

The police who were there with guns appeared to be supporting the militias. We were told that from the police compound we would be taken to Atambua and Kupang [in West Timor]. The Sister refused to agree to us going to the police compound. After some negotiations, she announced that we were going to the UNAMET compound instead.Then we walked to the UNAMET compound on foot. We had to leave everything behind. We were not attacked along the way. We were silent, scared and kept our heads down. We went to the school compound which is next door and connected to the UNAMET compound by a small doorway.

On the afternoon of 10 September 1999, the militias attacked the school compound. I saw them coming in on two motorcycles, with three people on each one. When they first arrived there seemed to be a mock struggle with the army. Then they yelled 'Attack, Attack!' The TNI soldiers outside did nothing. They looked the other way. The people on the front of each of the two motorcycles were TNI uniformed soldiers. On the back each had two Aitarak members wearing the Aitarak militia black T-shirts. They came in with swords which they were swinging at people, but they did not hit anyone.

The people inside the compound were panicking and some were so scared that they jumped over the fence which had barbed wire on top. Some parents were so terrified for the safety of their children that they just hurled their babies and young children over the fence. Many of them were cut on the wire or hurt when they fell on the other side. I could see that the army was playing a very direct role in this attack. They were shooting in the air trying to frighten and panic the people and looting all our possessions.

"Rafael" (not his real name) is an 18-year-old student who was attending high school in Dili before the independence ballot. During the period leading up to the ballot, Rafael witnessed a Brimob police officer assault a journalist - whom he describes as "Chinese or Japanese" - who had been filming another Brimob police officer allegedly killing a pro-independence youth. "Suddenly [the] Brimob policeman grabbed the journalist from behind, put one hand over his mouth, threw him in the ditch on the side of the road and jumped up and down on his back."

On the night of the 3 September 1999 Rafael and his family heard that the result of the ballot would be announced the next day. Nervous of what might happen, his parents, brothers and sisters went to the UNAMET compound, but since "it was already dark and I did not have time" Rafael went instead to a Church, where a number of other refugees had also gathered. Early the next day Rafael and about 15 young men climbed a nearby hill, where they had a good view of the church and the school and seminary next door:

The Aitarak militias, the army - although dressed in Aitarak uniform, I recognised some of them as BTT [Territorial Battalion] soldiers from my area - and Brimob police in uniform arrived at the church with two big army trucks. They tried to get the refugees out of the church, but the refugees refused. Then they threw a grenade into the Portuguese headquarters [of the election observers' delegation] which was further along, to frighten them […] I saw that the Brimob police and Aitarak militia had guns and were poking the refugees with them to force them onto the truck. People were screaming and were very upset.

They filled up the two trucks with people and took them in the direction of Comoro. The same thing happened at the seminary and school. Two trucks came. The Brimob and Aitarak and BTT pretending to be Aitarak, attacked the compound, forced people out at gunpoint and then loaded them into trucks. The priests, seminarians and the choirboys were all treated the same way. Those who refused to move were kicked and beaten.

At this point, Rafael and his group came under fire: "Two bullets hit the earth very close, just in front of where I was lying. The bullets came from the direction of the Portuguese compound." The youths fled, pursued for a short while by "about 15 soldiers", according to Rafael. Eluding them, Rafael continued on his way.

One day while he was in the Dili area (Rafael cannot remember the exact date), hiding among some coffee trees with a group of refugees, Rafael says he witnessed the killing of a woman by Indonesian soldiers. He saw two cars arriving filled with what he believes were Kopassus (Special Forces Command) troops. "There must have been others as well because I looked out from the coffee trees and I could see many red berets," he says:

The moment they saw the Kopassus the refugees panicked and started running. The Kopassus troops ran into the trees, fanned out and then started shooting at us. I was running away when I saw an older woman hit by a bullet in her head. She was standing next to her husband who cannot walk and was in a wheel chair. She was looking after him as she always did. When the bullet hit her she fell and her head fell directly into her husband's lap. It was very sad and he was so shocked. She died instantly. She was the mother of five. She was known as Lita and her husband was known as Tilo. They originally lived in Bemori but had fled to Dare when the situation became too bad. There was another elderly lady who was so shocked by the shooting that she fell onto a rock and suffered a head wound. I do not know if any others were injured.

After the shooting incident, Rafael sought refuge in the UNAMET compound in Dili, crawling in through a hole in the wire of the UNAMET fence. There he was reunited with his family. They spent a further three days inside the compound before being evacuated to Australia . His memory of the trip to the airport was of "sitting in an army truck with TNI [Indonesian National Army] soldiers all around us. There was a little boy crying and crying".

Of his future plans, he commented:

I arrived in Australia on Wednesday 15 September 1999. In the future I want to continue my studies. I do not care where, but I want to study. If given a free choice, I would probably want to study in Australia - because many of the schools and the university in Dili have been destroyed - but then I would like to return to East Timor and live in freedom. I am not sure if there is any hope for the future, but I feel that if I could study, I might begin to feel that the future exists.

Amnesty International [http://www.amnesty.org/]

NEPAL

I was sleeping when six or seven soldiers came into our flat early one morning. My brother-in-law was nearly shot when he asked why they were arresting me. As soon as I was dragged inside a van, they tied my hands and blindfolded me. They pushed me down onto the floor of the vehicle. Then, one of the soldiers started hitting my stomach and pounding my head. Another grabbed my testicles so hard that I still feel the pain. They kept on battering for another 30 minutes – after that I could not scream anymore, I fainted.

At the barracks, they put a clip on my ear and began administering electric shocks while shouting that I was a Maoist worker. I fainted again. When I woke up, they started caning me with bamboo sticks and forced water into my mouth and nose. They made me lie flat on the floor and they took turns to step over my stomach and punched my mouth so many times that I vomited blood many times.

They tortured me for four hours until the evening. They offered biscuits but I could not eat as my mouth had swollen due to the beatings and electric shock. The next morning, around six, security personnel came and started kicking me while I was asleep. They told me that they would not torture me if I confessed that I was a Maoist.

The pain was so unbearable that I pleaded with them to just shoot me dead. After a few days the interrogators returned, said that they had made a mistake and that I was an innocent civilian. They said I would be released, but threatened to arrest and torture me again if I reported the incident to anyone.

CHILE

Viviana Uribe, a 48-year-old human rights activist with a warm smile and confident air, dug through her pocketbook for some pills as she prepared to leave her Santiago apartment to do some errands the other day: I feel a lot better, I really do," she said in a strong, steady voice. "I still get my headaches, but maybe they are a little better. Ever since I heard Pinochet would be judged for his crimes, it has been a tremendous relief for me." Given the horrendous torture she experienced - Ms Uribe said that she was raped four times and that among other things, electric cables had repeatedly been clamped to her eyelids, lips, tongue and around her head for bolts of shock during interrogation sessions - she appears to be the picture of a well-adjusted woman.

Clifford Krauss Antiago, New York Times

6. Links - Further research

A brief selection of links useful for further research.
· International Organisations
· Reports and articles
· Books

International Organisations

AI's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights
http://www.amnesty.org/

Human Rights Watch is dedicated to protecting the human rights of people around the world. It stands with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. It investigates and exposes human rights violations, and holds abusers to account.
http://www.hrw.org/

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.
http://www.ictj.org/

No Peace Without Justice is an international non-profit organisation working for the protection and promotion of human rights, democracy, the rule of law and international justice.
http://www.npwj.org/

The United States Institute of Peace is an independent, nonpartisan, national institution established and funded by Congress. Its goals are to help prevent and resolve violent international conflicts, promote post-conflict stability and democratic transformations, and increase peacebuilding capacity, tools, and intellectual capital worldwide. The Institute does this by empowering others with knowledge, skills, and resources, as well as by its direct involvement in peacebuilding efforts around the globe.
http://www.usip.org/

Trocaire is the official overseas development agency of the Catholic Church in Ireland. It was set up by the Irish Catholic Bishops in 1973 to express the concern of the Irish Church for the suffering of the world's poorest and most oppressed people. It has a presence in Rwanda , among other countries.
http://www.trocaire.org/

International Justice Tribune, the first online e-journal to cover international criminal justice, publishes investigative articles and interviews about worldwide efforts to try war criminals, from the International Criminal Court to domestic courts.
http://www.justicetribune.com/

Universal Declaration of Human Rights
http://www.un.org/Overview/rights.html

Chronology of important dates in international law and human rights
http://www.globalissues.org/HumanRights/Abuses/Chronology.asp

International Criminal Court
http://www.icc-cpi.int/

International Criminal Tribunal for Rwanda
http://www.ictr.org/

International Criminal Tribunal for the former Yugoslavia
http://www.un.org/icty/

Sierra Leone Special Court
http://www.sc-sl.org/

United Nations Transitional Administration in East Timor
http://www.un.org/peace/etimor/etimor.htm

Reports and Articles

Making a case for universal jurisdiction in an age of truth commissions, Betty Murungi
http://www.tikenya.org/viewdocument.asp?ID=147

International Justice for Rwanda missing the point: Questioning the relevance of classical criminal law theory, Jackson Nyamuya Maogoto
http://www.bond.edu.au/law/blr/vol13-1/Maogoto.pdf

Truth Commissions: An uncertain path?, Victor Espinoza, Maria Luisa Ortiz Rojas, Paz Rojas Baeza
http://www.mnadvocates.org/6Jul20047.html

Post-Conflict Peacebuilding Revisited: Achievements, Limitations, Challenges, Necla Tschirgi
http://www.ipacademy.org/PDF_Reports/POST_CONFLICT_PEACEBUILDING.pdf

Defining Transitional Justice
http://its.law.nyu.edu/faculty/coursepages/data/DEFINING%20TRANSITIONAL%20JUSTICE%20March%202005.pdf

Towards a Strategic Framework for Peacebuilding: Getting Their Act Together, overview report of the Joint Utstein Study of Peacebuilding
http://www.oecd.org/dataoecd/32/53/33983789.pdf

The Credibility Crisis of International Human Rights in the Arab World, Bahey El Din Hassan
http://cceia.org/viewMedia.php/prmID/606

The Trial of Slobodan Milosevic: The Demise of Head of State Immunity and the Specter of Victor's Justice, Scott Grosscup
http://www.heinonline.org/

Accomplishments and limitations of one hybrid tribunal:experience at East Timor , Nicholas Koumjian
http://www.icc-cpi.int/library/organs/otp/Koumjian-presentation140404

Is Personal Freedom a Western Value? Thomas M.Franck
91 American Journal of International Law, 593-627 (1997)

Books

Geoffrey Robertson, Q.C.,
"Crimes Against Humanity: The Struggle for Global Justice",
Allen Lane, The Penguin Press

Samantha Power,
"A Problem from Hell: America and the Age of Genocide",
Perennial

Philippe Sands,
" America and the making and breaking of global rules",
Allen Lane, The Penguin Press

Hugh O'Shaughnessy,
"Pinochet: The Politics of Torture",
Latin American Bueau Edited by Roy Gutman and David Rieff,
"Crimes of War: What the public must know",
WWNorton and Company

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