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Updates from the International and Internationalized Criminal Courts

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UPDATES FROM INTERNATIONAL AND INTERNATIONALIZED CRIMINAL COURTS & TRIBUNALS

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

A New Face

In December 2008, the International Criminal Tribunal for the former Yugoslavia (ICTY) launched a new website giving itself a fresh, new face. The new layout, design and innovative additional content helps the ICTY achieve judicial transparency and accountability and provides insight into challenges and achievements. The new website pays tribute to the contributions the Tribunal has made to international humanitarian law and human rights issues. The Tribunal hopes to use the website to educate the international community about the massacre at Srebrenica, rapes committed by members of the Bosnian Serb armed forces, and the persecution that occurred in the Omarska, Keraterm and Trnopolje camps, amongst other horrendous events which will now become part of an undeniable historical record. The ICTY plans to use this new and improved forum to spread the ideals of international justice not only by sharing updates on the convictions and trials of some of the most notorious criminals, but also by sharing the tragic stories and the courageous voices of hundreds of victims.

Voice of the Victims

The ICTY created the Voice of the Victims section on their website to honor the courage and bravery of those victims who testified before the Tribunal, facing the people who caused them so much suffering. It recognizes the importance of giving victims a chance to tell their stories to bridge the gap between the Tribunal, situated so far away in The Hague, and the communities who have the most interest in the information about its work.

One of the victims includes a 17-year-old Muslim teenager who testified in the case against Bosnian Serb Army

commander Radislav Krstić. He related his experience of being captured by the Bosnian Serb army, the Vojska Republika Srpska (VRS), while he was hiding in a forest during an attempted escape from Srebrenica. He had been seized and lined up in a meadow along with dozens of men. The men were shot and killed, but the boy managed to survive, escape, and tell his story. The Tribunal convicted Radislav Krstić and sentenced him to 35 years' imprisonment. Another victim, Grozdana Čećez, a 43-year-old Bosnian Serb woman, testified in the case against Zdravko Mucić, Hazim Delić, Esad Landžo, and Zejnil Delalić, commanders and deputy commanders in the Čelebići prison camp. She had been raped by Hazim Delić and multiple other men in the camp. After the experience, she said that she was driven to commit suicide but was stopped by another detainee who had also been raped. The case of Hazim Delić, who was sentenced to 18 years' imprisonment, was a landmark case in international law marking the first time the court found rape as a form of torture.

Another witness, a Bosnian army prisoner of war testified about being tortured in the Široki Brijeg prison near Mostar, in southern Bosnia and Herzegovina. He was repeatedly beaten and bloodied with boots, belts and fists. He talked about being interrogated while being attached to wires from an induction telephone passing electricity from his fingers to his toes. He recalled that for food, the prisoners received a quarter loaf of bread every two or three days and no water. The Tribunal convicted Mladen Naletilić and Vinko Martinović of a number of crimes against Bosnian Muslims in the Mostar area and sentenced them to 20 and 18 years imprisonment, respectively.

Amongst the many stories captured on the ICTY website run common tragic themes of pain and suffering. Numerous victims' stories of what they saw and experienced have been featured, including stories from farmers, doctors, housewives, students and children, many of

them victimized only because of their ethnicity. This ICTY initiative will serve as a useful tool for understanding and appreciating the atrocities which occurred in the former Yugoslavia and support the efforts by the international community to secure justice for the people who were most affected.

Future of the Tribunal

The ICTY is working towards the completion of its mandate and has devised a plan to complete its mission successfully, in a timely manner, and in coordination with domestic legal systems in the former Yugoslavia. The Tribunal's current goal is to complete all proceedings by 2012. Of the 161 Accused indicted by the Tribunal, only five Accused remain in the pretrial stage, twenty-six are in the course of trial and ten have appeals pending. With the arrest of Stojan Župljanin and Radovan Karadžić on June 11, 2008 and July 18, 2008 respectively, only two accused, Ratko Mladić and Goran Hadžić, are still at large. All the other cases have been completed.

The ICTY has bolstered its completion strategy by focusing on the most senior leaders suspected of crimes within its jurisdiction and transferring cases against intermediate and lower-level perpetrators to competent national courts set up in Bosnia and Herzegovina, Serbia, and Croatia. The impact of referrals on the overall workload of the Tribunal has been significant. Ten accused have been transferred to the War Crimes Section of the State Court of Bosnia and Herzegovina; two were transferred to the authorities of Croatia; and one was transferred to Serbia for trial before the domestic courts of these countries. The Tribunal has continued to stay involved and monitor the progress of these trials, however, ensuring full adherence with human rights norms and due process standards.

As the ICTY enters the final years of its mandate, it continues to conduct a wide range of outreach activities includ-

INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA

**The Prosecutor v. Protais
Zigiranyirazo, Case No.
ICTR-01-73-T**

On December 18, 2008, Trial Chamber III of the International Criminal Tribunal for Rwanda (ICTR) convicted Protais Zigiranyirazo for genocide and extermination as a crime against humanity and sentenced him to 20 years imprisonment. The Chamber found that the Prosecution failed to establish that Zigiranyirazo was criminally responsible for conspiracy to commit genocide, complicity in genocide and murder as a crime against humanity.

Protais Zigiranyirazo, also known as "Mr. Z," was born in 1938 in the prefecture of Gisenyi, Rwanda. He served as the Prefect of Ruhengeri between 1974 and 1989. Although he subsequently became a businessman, he remained influential in politics by virtue of the fact that his sister, Agathe Kanzig, was married to President Juvénal Habyarimana. According to the Prosecution, Zigiranyirazo was a member of Habyarimana's entourage and thus exercised a great deal of de facto authority over the military, the Interahamwe, and government officials. In 2005, the Prosecution charged Zigiranyirazo with five counts under the ICTR Statute, namely conspiracy to commit genocide, genocide, complicity in genocide, extermination as a crime against humanity, and murder as a crime against humanity. Zigiranyirazo's trial took place between October 3, 2006 and May 29, 2008.

At trial, the Prosecution put forth five incidences of the accused's involvement in genocide: the massacres at Kesho Hill and Rurunga Hill; and roadblocks in Gisenyi prefecture, Kiyovu, and Kigali prefecture. Genocide is defined as performing one of five enumerated acts with the specific intent to destroy in whole or in part, a national, ethnic, racial, or religious group as such. A person can be charged with genocide even if that person did not directly carry out any physical act of violence. In this case, the Prosecution claimed that Zigiranyirazo was liable for genocide by either (i) ordering, instigating, or committing joint criminal enterprise (JCE) or (ii) aiding and abetting.

ing the facilitation of trial coverage by local media, direct community outreach in the former Yugoslavia by officers on the ground, and capacity-building efforts with national judicial institutes dealing with war crimes. The focus of the Tribunal is now on the mechanisms that will be left in place to address residual issues after the completion of the cases on the Tribunal's docket. Some of the key issues being addressed include the location, public access, security, and preservation of ICTY records. The Tribunal has also compiled their best practices, which will be published and disseminated by the United Nations Interregional Crime and Justice Research Institute (UNICRI), their partner in this endeavor.

As the Tribunal's work winds down, it remains committed to ensuring that its achievements endure. The capture of the two remaining fugitives, Mladić and Hadžić, are of utmost importance to the ICTY and the United Nations Security Council. Serge Brammertz, chief prosecutor of the ICTY, confirmed that efforts are being taken in the collaboration with Serbian authorities for the two renegade defendants to be brought in while the ICTY is still functioning.

The ICTY will be remembered as the first and most successful international criminal institution, and its legacy will continue through its partnerships with domestic judicial institutions in the former Yugoslavia. The Tribunal has urged the Security Council to continue support of these institutions to ensure the development of a peaceful society based on the rule of law.

**WAR CRIMES CHAMBERS IN
THE COURT OF BOSNIA AND
HERZEGOVINA**

The War Crimes Chamber (WCC): Court of Bosnia and Herzegovina (BiH), assisting the case load of the ICTY, handles litigation of low and mid-level ranked suspects regarding a wide range of major and minor crimes.

On January 15, 2009 Stojan Perković was taken into custody. He will be held for one month due in part to a belief that he may attempt to influence witnesses. Perković, a former squad commander in the

Republika Srpska Army, is charged with participating in the disappearances, rape, and murder of civilians from the town of Rogatica, BiH, in 1992. A few days later, Tomo Jurinović was taken into custody as well to be held for one month. Jurinović, a member of the Croatian Defense Council, along with others, is accused of having taken a family from their home in Novo Selo, and transported them to another town. In the process, the family was abused, and one family member was killed.

Dragić Gojković, Rada Gojković *et. al.* pled not guilty to the offense of illicit trafficking in arms, military equipment, and products of dual use. They are charged with abusing their authority and duty by facilitating the illegal sailing and importing of military ships into BiH through the country's harbors and ports. Momir Pelemiš and Slavko Perić, suspected of committing genocide, pled not guilty. They are charged with permanently and forcibly transferring Bosniak civilians from a UN safe area in Srebrenica in order to execute Bosniak men and boys.

The busy docket shows that the WCC is making progress fulfilling its objectives. Many difficulties still exist, however. The need for increased legal resources and better and more widespread protection of witnesses from intimidation and violence are still prevalent. These deficiencies in meeting the needs of victims further endorse the need for a sustained international presence. The achievements of the WCC and its international and national judiciary benefactors, however, will hopefully provide guidance and direction as well as a basis for the country's judicial and political system for the future. The eventual transition from combined international and domestic judges to strictly local and regional judges will set the foundation for future peace and stability and will begin to provide confidence in Bosnia and Herzegovina's autonomy and sovereignty.

While the Chamber held that the Prosecution failed to establish that the accused's involvement amounted to genocide in respect to the roadblocks in Fisenyi préfecture and Kiyovu cellule, Kiglaie préfecture, it did find that Zigiranyirazo bore criminal responsibility for acts of genocide at the Kiyovu roadblock and at Kesho Hill. Specifically, the Chamber found that the accused was guilty of genocide through aiding and abetting acts of genocide at the Kiyovu roadblock by (i) offering firearms to those manning the roadblock, (ii) giving instructions to check identity papers, and (iii) ordering Corporal Irandemba to ensure food was brought to the roadblock so that the men could remain at the roadblock. In addition, the Chamber determined that Zigiranyirazo had participated in a JCE, the purpose of which was to kill Tutsis at Kesho Hill, and that the Accused possessed the requisite genocidal intent. The Chamber also found that Zigiranyirazo's acts at Kesho Hill, which included accompanying a group of government officials, Interahamwe, and civilians to the hill where a number of Tutsi refugees had gathered and giving a speech to the group before massive killings of the Tutsis began, constituted the crime against humanity of extermination.

Despite finding that the accused participated in a joint criminal enterprise to commit genocide at Kesho Hill and that he aided and abetted acts of genocide at Kiyovu roadblock, the Chamber found insufficient evidence that Zigiranyirazo had entered into a conspiracy to commit genocide. The Prosecution argued that, before and after the death of President Habyarimana on April 6, 1994, Zigiranyirazo met with government, military and family authorities in the préfectures of Kigali-ville and Gisenyi to plan, prepare, and facilitate attacks on Tutsis. According to the allegations, the intent of the planners was to destroy, in whole or in part, the Tutsi ethnic group. In addition, the Prosecution alleged that Zigiranyirazo was involved with creating and supporting the Interahamwe.

The Chamber refused to consider a number of the meetings relied upon by the Prosecution to establish the conspiracy charge, though, on the ground that the Prosecution had not included reference to

those meetings in its indictment against the accused. In addition, while the Chamber did agree with the Prosecution that the accused held a position of influence within the Habyarimana administration, it was not convinced by the allegations that Zigiranyirazo was involved in the establishment or support of the Interahamwe. Finally, the Chamber found that the Prosecution failed to lead evidence in support of other allegations underlying the charge of conspiracy, including the claims that the Accused had entered into an agreement on 11 February 1994 with his sister and Colonel Anatole Nsengiyumva to kill the enemy and accomplices and that the three had established a list of Tutsi and Hutu to be killed. Thus, the Chamber concluded that the Prosecution failed to establish Zigiranyirazo's criminal responsibility for conspiracy to commit genocide. As to the remainder of the charges, the Chamber found insufficient evidence to establish the accused's responsibility for complicity in genocide or the crime against humanity of murder.

The Prosecutor v. Siméon Nchamihigo, Case No. ICTR-01-63-T

On September 24, 2008, Trial Chamber III of the ICTR convicted Siméon Nchamihigo for genocide and the crimes against humanity of murder, extermination, and other inhumane acts. The Chamber sentenced him to imprisonment for life. Nchamihigo was a Rwandan deputy prosecutor in Cyangugu province prior to, and during, the Rwandan genocide in 1994. Then in July 1998, he began working as an investigator for the ICTR under the false name of Sammy Bahati Weza. He did this until May 2001, when he was identified by a witness at a trial taking place at the ICTR and was arrested.

The Prosecution charged that Nchamihigo was responsible for the alleged crimes based on his planning, instigating, ordering, committing, and aiding and abetting of others in the killing of Tutsis, accomplices of the Rwandan Patriotic Front, and Hutu political opponents. According to the Prosecution, these acts resulted in the killing of specific individuals, killings at roadblocks, and the massacre of Tutsis seeking refuge in various locations. Nchamihigo did not deny that the killings

and massacres referred to in the indictment took place, but did deny that he was in any way involved in the events. Based on the evidence presented at trial, however, the Chamber found Nchamihigo's alibi to be unbelievable and determined that the Prosecution had established the accused's guilt on each of the charges beyond a reasonable doubt.

One interesting aspect of the judgment is the Trial Chamber's consideration as to whether the Prosecution's charge of genocide could be supported by evidence that Nchamihigo was responsible for the killing of moderate Hutus. The Chamber began its analysis of this question by noting that genocide is "a crime against a national, ethnic, racial or religious group committed with intent to destroy the group in whole or in part." It then concluded that, although Hutu political opponents of the 1994 regime were a "group," killing the members of that group did not amount to genocide because the group was not a national, ethnic, racial or religious group. The Chamber nevertheless found that Nchamihigo was responsible for the killing of Tutsis with intent to destroy that group in whole or in part and thus convicted him of genocide. Furthermore, the Chamber used the evidence of Nchamihigo's involvement in the killing of Hutu moderates to support the Prosecution's charge of the crime against humanity of extermination.

The Nchamihigo judgment also includes a notable discussion on the issue of sentencing. The Prosecution asked for a life sentence in order to punish the crime, deter future crimes, and properly reflect the suffering of the victims. In response, the Defense argued that the Tribunal's punishment should not be an act of vengeance, but rather should be balanced with compassion. It also asked the Chamber to consider Nchamihigo's good character and the fact that he was a good father. In making its determination, the Trial Chamber considered the gravity of the crimes committed and aggravating and mitigating factors. The Chamber focused on the fact that Nchamihigo had directly and personally committed many of the crimes for which he was convicted, as opposed to aiding and abetting those crimes. In addition, the Chamber stressed that, as a deputy prosecutor during the time of the

genocide, Nchamihigo was expected to “uphold the rule of law and principles of morality.” Instead, he planned and promoted violence. Moreover, others trusted him because of his position and believed that they could commit the acts they did without consequences. Thus, the Chamber concluded that Nchamihigo created an environment in which atrocities could take place and expressed no remorse. While the Chamber did not deny that he was a good father, it held that this fact did not have a large impact on the sentencing and found that mitigation was not warranted based on any other circumstances.

ICC

Lubanga Trial Started

The trial for Thomas Lubanga Dyilo, the first suspect to be tried before the International Criminal Court (ICC) started on January 26, 2009. Lubanga is charged with the war crimes of conscripting, enlisting, and using children under the age of fifteen in armed combat. Lubanga has pled not guilty to the charges against him.

Lubanga was a leader in the Union of Congolese Patriots (UPC), a rebel group operating in the Democratic Republic of Congo (DRC) with close ties to Uganda. He was arrested by the DRC in March 2005 and transferred to the ICC one year later pursuant to an arrest warrant issued by the Court’s Pre-Trial Chamber I.

The Prosecution’s opening statement recounted witness statements provided to ICC investigators about beatings Lubanga’s soldiers used to enforce discipline among children being used as soldiers and to discourage attempts to escape. It also presented video footage of Lubanga with bodyguards who were, in the words of the Prosecutor, “manifestly under the age of fifteen.” Moreover, the Prosecution told stories of female child soldiers that included “daily examples of commanders raping girl soldiers.” Chief Prosecutor Luis Moreno Ocampo said that it is his “mission” to show that Lubanga was criminally responsible for the “atrocities committed against those little girl soldiers.” Lastly, the Prosecution reminded the Trial Chamber that, under the Rome Statute governing the ICC, children can-

not “voluntarily” participate in armed conflict.

Following the Prosecution’s opening, the representatives of approximately 100 victims participating in the Lubanga trial, who have been divided among seven groups, each with its own counsel, gave brief opening statements. Several of the victims’ attorneys focused on the rape of girl child soldiers in their opening statements.

The Defense presented opening statements on the second day of trial, arguing that Lubanga’s fair trial rights had been compromised by delay, insufficient disclosure, and a plethora of ex parte meetings held between the Chamber and the Prosecution, outside of the presence of the accused or his counsel. The Defense also claimed that Lubanga is simply a “scapegoat” who is being tried by the ICC at the behest of DRC President Joseph Kabila’s government. Finally, Lubanga’s counsel objected to the fact that both the Prosecution and the victims’ legal representatives discussed allegations of sexual abuse in their opening statements, even though no charges of sexual violence have been formally entered by the Prosecution or confirmed by the Court.

Witness Confusion at Lubanga Trial

The Prosecution’s first witness in the Lubanga case was to testify about his experiences as a child soldier in Lubanga’s army. The witness originally told ICC investigators that Lubanga’s men had kidnapped him while walking home from school and that they took him to a training camp for child soldiers. His testimony, however, quickly changed, stating that he could not answer the Prosecutor’s questions because he had taken an oath. The witness took the stand after a short recess and stated that his statement was not true. He told the court an unidentified human rights organization told him what to say.

Fearing he would not be safe when he went back to the DRC, the Prosecution claimed that the witness changed his statement and therefore requested protective measure for the witness and his family. After the court decided that the first witness could not testify until he was

in an “appropriate state,” the prosecution attempted to call the boy’s father as a second witness. The testimony of this witness, however, was delayed due to a finding by the Court that the witness had not been adequately informed regarding the risk of self-incrimination.

Two weeks later, both witnesses returned and testified before the Court. The former child soldier was permitted to tell his story without interruption from the Prosecution, victims’ representatives, or the Defense. Although Lubanga could view the witness on a video monitor, the witness and Lubanga could not see each other directly. Upon returning to the stand, the former child soldier testified that soldiers from Lubanga’s militia kidnapped him and took him to a training camp. The witness testified that he and other children were beaten for being tired, sick, or trying to escape.

Pre-Trial Chamber Considers Bemba Charges

The ICC held the confirmation of charges hearing in the case against Jean-Pierre Bemba Gombo between January 12 and January 15, 2009. To date, Bemba is the only person charged in connection with the situation in the Central African Republic (CAR), although the investigation is ongoing. Bemba is accused of rape, torture, and murder as crimes against humanity and rape, torture, outrages upon personal dignity, pillage, and murder as war crimes.

The Pre-Trial Chamber presiding over the Bemba confirmation proceedings must now decide to: (i) confirm the charges proposed by the Prosecution; (ii) dismiss the charges; or (iii) adjourn the hearing and request that the Prosecution present further evidence on a particular charge or amend the charges. The Chamber is required to issue its decision within sixty days of the submission of final observations from the parties on matters that arose at the confirmation hearing.

**THE EXTRAORDINARY
CHAMBERS IN THE
COURTS OF CAMBODIA**

**Corruption Stalls Progress
in the ECCC**

Progress in prosecuting former members of the Khmer Rouge has been slow as the Extraordinary Chambers in the Courts of Cambodia (ECCC) have experienced an increase in criticism during the last year. In particular, the ECCC has been charged by funding sources, the media, and the international community with pervasive corruption that has resulted in profound delays in the delivery of justice. The ECCC has made some notable progress in the way of preliminary decisions since its inception in 2006, including its first public hearing, on the pretrial detention of Kaing Guek Eav (also known as Duch), who commanded the infamous Khmer Rouge torture center, Toul Sleng. In spite of this progress and the arrests of high profile officials like Khieu Samphan, who served as head of state during the Khmer Rouge era, the Chambers have been plagued with various set backs and have yet to hold their first trial.

With a timeline to wrap up operations in Cambodia by 2010, the ECCC must act to expeditiously try those charged. In July 2008, the UN received a number of complaints that ECCC's Cambodian

staff were paying bribes to retain their positions. Reportedly a common practice in other areas of government work in Cambodia, such corruption caused many international funding sources to withhold funds while the UN responded to the charges. As a result, the approximately 250 Cambodian staff had their paychecks withheld. Given the hybrid nature of the tribunal with a system that integrates Cambodian and international workers, the functioning of the ECCC is threatened by the possibility that Cambodian workers will leave their employment if they remain unpaid. Although the UN is attempting to investigate the complaints, the Cambodian government asserts that it holds jurisdiction over these allegations.

The tension over defining the proper authority to review the recurring complaints of corruption and kickbacks is symptomatic of the setbacks of the ECCC. In its October 2008 update on developments in the ECCC, the Open Society Institute's Justice Initiative noted problems of inadequate transparency and administrative divisions stemming from corruption allegations and recommended that donors condition funding on "the meaningful resolution of longstanding concerns about perceived corruption at the ECCC." Given conflicts over jurisdiction, no progress has been made towards resolving corruption allegations. Nonetheless, Australia has recently announced

its allocation of nearly \$3.5 million to support the ECCC. Despite widespread fears of corruption within the ECCC, the international community and donors remain committed to the fair and timely completion of the trials, keeping in mind that the old age and health conditions of many of the accused require that justice be rendered before it is too late. **HRB**

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