

UPDATES FROM THE INTERNATIONAL CRIMINAL COURTS

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

THE PROSECUTOR v. ELIÉZER NIYITEGEKA, CASE NO. ICTR-96-14-T

On May 15, 2003, the Trial Chamber of the International Criminal Tribunal for Rwanda rendered its judgment in the case of *The Prosecutor v. Eliézer Niyitegeka*. The amended indictment charged Niyitegeka with genocide, complicity in genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, four counts of crimes against humanity (murder, extermination, rape, and other inhumane acts), and two counts of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. The prosecution withdrew the war crimes charges in its closing brief. Niyitegeka was charged with individual responsibility under Article 6(1) of the ICTR Statute for all counts, and with superior responsibility under Article 6(3) for all counts except conspiracy to commit genocide. He was found guilty of individual responsibility under Article 6(1) for genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and three counts of crimes against humanity (murder, extermination, and other inhumane acts) and was sentenced to life in prison.

Niyitegeka was a journalist and news presenter on Radio Rwanda. He was sworn in as Minister of Information of the Interim Government on April 9, 1994. He was also Chairman of the Mouvement Démocratique Républicain (MDR) in the Kibuye Prefecture from 1991 to 1994, and a member of the national political bureau. The Trial Chamber found that, between April and June 1994, he transported soldiers and weapons to an attack on Rwandan Tutsi, whom he called “Inyenzi” or “Cockroaches;” that, together with other prominent figures, he led several large-scale attacks by soldiers, policemen, and Interahamwe (paramilitary forces) against Tutsi refugees, during which “Tuba Tsembe Tsembe” (“let’s exterminate them”) was chanted; that he shot at Tutsi

refugees during these attacks; that he personally murdered an old man, a young boy, and a young girl; and that he instructed attackers where to go and how to attack refugees.

Based on the findings above, as well as Niyitegeka’s attendance and participation at meetings held to plan and organize the killing of Tutsis, his acts of incitement and encouragement, his ordering of Interahamwe to mutilate the body of a dead Tutsi woman, and his encouragement of the killing and subsequent mutilation of a prominent Tutsi leader, the Chamber ruled that Niyitegeka caused serious bodily or mental harm against the Tutsi ethnic group with the specific intent to destroy them in whole or in part. He was consequently found guilty of genocide and not guilty of the alternative charge of complicity in genocide. The Chamber also found him guilty of conspiracy to commit genocide for participating in an agreement between two or more persons to commit genocide.

The Chamber additionally found that Niyitegeka had directly or publicly incited genocide because he had both the specific intent to commit genocide and the intent to “directly prompt or provoke another to commit genocide.” The Chamber followed the *Akayesu* definition of “direct and public.” The Chamber thus considered whether the incitement was “public” in “light of the place where the incitement occurred and whether or not assistance was selective or limited,” and whether it was “direct” in “light of its cultural and linguistic content.” The Chamber found that Niyitegeka had told attackers to go to “work,” which they had understood to mean kill Tutsis, and which had led to the launching of an attack. Moreover, at a subsequent meeting held to organize the next day’s killings, Niyitegeka had thanked and commended the attackers for their “work,” and encouraged them to participate in future attacks.

Due to the methodical, organized, and large-scale nature of the attacks in which Niyitegeka participated, the Trial Chamber found that he had committed murder, exter-

mination, and other inhumane acts with the knowledge that these acts were part of a widespread or systematic attack against a civilian population on national, political, racial, or religious grounds. The Chamber found Niyitegeka not guilty of rape as a crime against humanity due to insufficient evidence that he had raped a young girl or “caused women to be raped.”

In finding Niyitegeka guilty of murder as a crime against humanity, the Chamber found that he had murdered three Tutsis and participated in the mass killing of Tutsi refugees. In finding him also guilty of extermination as a crime against humanity, the Chamber followed the *Vasiljevic* judgment, which held that the material element of extermination “consists of any one act or combination of acts which contributes to the killing of a large number of individuals.” The Chamber did not address whether these two offenses amounted to impermissible multiple convictions for the same conduct.

In finding Niyitegeka guilty of committing inhumane acts as a crime against humanity, the Chamber followed the *Bagilishema* decision that “an approving spectator, who is held in such respect by other perpetrators that his presence encourages them in their conduct,” may be guilty of aiding and abetting a crime against humanity under Article 6(1) of the ICTY Statute. The Chamber decided that, by encouraging the attackers during the murder, mutilation, and public display of a prominent Tutsi leader, Niyitegeka had supported and encouraged the attack and aided and abetted the commission of the crime. The Chamber decided that by this act, and by ordering the Interahamwe to sexually mutilate the body of a dead Tutsi woman and leave her in plain view for several days, Niyitegeka had participated in a serious attack on the human dignity of the Tutsi community as a whole. His conduct thus met the material requirements for an inhumane act of similar gravity to other enumerated crimes against humanity in the Statute “such as would cause serious physical or

mental suffering or constitute a serious attack on human dignity.”

The Chamber rejected the charge that Niyitegeka had incurred superior responsibility for any of these crimes. It cited *Musema* for the proposition that “a civilian superior may be charged with superior responsibility only where he has effective control, be it *de jure* or *de facto*, over the persons committing violations.” It followed *Delalic* in defining “effective control” as the ability to prevent subordinates from committing crimes or to punish them after they commit the crimes. The Chamber found that Niyitegeka’s position as a Minister of Information did not by itself provide him authority over the subordinates named by the prosecution, such as bourgmestres or Interahamwe. It also found that evidence of influence in the community does not alone establish a superior-subordinate relationship. Thus, although Niyitegeka was found to have led several attacks, to have acted in a leadership position at meetings, and to have instructed attackers to carry out his orders on several occasions, the Chamber found insufficient evidence that he had the ability to prevent or punish the crimes committed by the attackers. Consequently, the Chamber did not examine the other elements of superior responsibility.

Citing *Blaskic*, the Trial Chamber found it appropriate to impose a single sentence for all offenses, as they could be recognized as belonging to a single transaction. The Chamber then sentenced Niyitegeka to life imprisonment after taking into account the gravity of the crimes, the practice of sentencing in Rwanda and in previous ICTR judgments, and the totality of the circumstances in the case.

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

PROSECUTOR V. SLOBODAN MILOSEVIC, CASE NO. IT-02-54

On June 16, 2004, Trial Chamber III of the International Criminal Tribunal for the Former Yugoslavia (ICTY) delivered a Decision on the Motion for Judgement of Acquittal in the case of *Prosecutor v. Slobodan Milosevic*. As one of the most high profile cases before the ICTY, the Milosevic trial has been lengthy and complicated. On February 4,

2004, the Prosecution closed its case. On March 3, 2004, *Amici Curiae* filed a motion on behalf of the Accused arguing for acquittal based on Rule 98bis of the Rules of Procedure and Evidence of the ICTY (Rules). On March 23, 2004, the Prosecution filed a motion in response. The Accused did not file a motion under Rule 98bis.

Rule 98bis outlines the procedures the Accused must follow if he wishes to file a Motion for Judgement of Acquittal. The Accused may file a motion within seven days after the close of the Prosecutor’s case and, in any event, prior to the presentation of evidence by the Defense pursuant to Rule 85 (A)(ii). Then, the Trial Chamber shall order the entry of judgement of acquittal if it finds that the evidence presented is insufficient to sustain a conviction on the charges. The degree of proof necessary in a Rule 98bis motion is “whether there is evidence (if accepted) upon which a tribunal of fact *could* be satisfied beyond a reasonable doubt of the guilt of the accused on a particular charge in question.” *Prosecutor v. Jelusic*, IT-95-10.

The *Amici Curiae* motion argued that, in its case, the Prosecution failed to establish the existence of an “armed conflict” in Kosovo prior to March 24, 1999. The existence of an “armed conflict” is necessary to prove some of the allegations included in the Kosovo Indictment, which is part of the larger indictment against Milosevic. The motion also argued that all “grave breaches” counts in the Croatia Indictment before January 15, 1992, had to be dismissed because the Prosecution failed to establish that Croatia was a state before that time, making the conflict non-international. Non-international conflicts (and the war crimes committed during them) are not under the jurisdiction of the ICTY. The third argument in the motion stated that there was no evidence that the Accused planned, instigated, ordered or committed, or otherwise aided and abetted in the planning, preparation, or execution of genocide, any genocidal acts, or that he was complicit in such. It also argued that the *mens rea* requirement for establishing the crime of genocide was incompatible with the *mens rea* requirement for another offense alleged in the Bosnia Indictment, of command responsibility and involvement in a joint criminal enterprise.

The *Amici Curiae* motion argued that, in its case, the Prosecution failed to establish the existence of an “armed conflict” in Kosovo prior to March 24, 1999. The Trial Chamber concluded that there was sufficient evidence of an armed conflict in Kosovo at the relevant times for the purposes of Rule 98bis. The Trial Chamber noted that an armed conflict exists when there is “protracted armed violence between governmental authorities and organized armed groups.” *Prosecutor v. Tadic*, IT-94-1. This test calls for an examination of the organization of the parties to the conflict as well as the intensity of the conflict. The Trial Chamber found that the Kosovo Liberation Army (KLA) was an organized military force, with an official joint command structure, headquarters, designated zones of operation, and the ability to procure, transport, and distribute arms. In addition, the Trial Chamber noted that the length or protracted nature of the conflict, seriousness and increase in armed clashes, the spread of clashes over the territory, the increase in the number of governmental forces sent to Kosovo, and the weapons used by both parties indicated that the intensity of the armed conflict passed the *Tadic* “armed conflict test” and therefore survived a Rule 98bis Motion for Acquittal.

The *Amici Curiae* motion argued that all “grave breaches” counts in the Croatia Indictment before January 15, 1992, had to be dismissed because the Prosecution failed to establish that Croatia was a state before that time, making the conflict one of a non-international nature. The *Amici* argued that statehood occurred sometime between when the European Community recognized Croatia as a state on January 15, 1992, and May 15, 1992, when Croatia joined the United Nations. The Trial Chamber agreed with the Prosecution that Croatia was a state as of October 8, 1991, the date on which its declaration of independence became effective. The Trial Chamber noted that the best known definition of a state is provided by the Montevideo Convention, Art.1 which reads: “The State as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other States.” The most decisive of these is the last. The Trial Chamber noted that on

October 8, 1991, the Presidents of Serbia and Croatia entered into bilateral negotiations; representatives of Croatia entered negotiations with international observers and signed resulting agreements; and the Croatian government was accepted by the EU and UN Commissions and representatives. As a result of these and other factors, the Trial Chamber concluded there was sufficient evidence that Croatia was a state by October 8, 1991, and dismissed the Rule 98bis Motion with respect to the grave breaches argument.

The third argument in the Motion stated that there was no evidence that the Accused possessed the “special intent” required for the act of genocide. In addition, it argued that there was no evidence that the Accused planned, instigated, ordered, or committed, or otherwise aided and abetted in the planning, preparation, or execution of genocide, any genocidal acts, or that he was complicit in such. It also argued that the *mens rea* requirement for establishing the crime of genocide was incompatible with the *mens rea* requirement for the third category of a joint criminal enterprise and command responsibility, as alleged in the Bosnia Indictment. Genocide is defined in the ICTY Statute as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.”

For the above acts to constitute genocide, there is a “special intent” requirement that the perpetrator intended to destroy, in whole or in part, a protected group, in addition to the criminal intent accompanying the underlying offence. The intent can be inferred from the evidence. The Trial Chamber framed its analysis of this part of the motion by asking five questions regarding whether the Trial Chamber could be satisfied beyond a reasonable doubt that genocide existed, which is the burden of proof for a Motion of Acquittal, and then answered them. The Trial Chamber concluded that for

all five questions related to genocide, it would be possible for the Trial Chamber to be satisfied beyond a reasonable doubt that the elements existed.

The Trial Chamber determined that there was sufficient evidence to support each count challenged in the three Indictments, but that there was no or insufficient evidence to support certain allegations relevant to some of the charges in the Indictments. It enumerated those charges in the Disposition. Since then, the Milosevic Defense has begun, with court-appointed defense lawyers helping Milosevic present his case.

INTERNATIONAL CRIMINAL COURT

ON JULY 29, 2004, Louise Moreno-Ocampo, Prosecutor for the International Criminal Court (ICC), concluded that there was sufficient preliminary evidence to prosecute perpetrators of international crimes in Uganda. Ocampo must now decide how he will proceed in investigating allegations against parties from both sides of the Ugandan conflict—the Ugandan government and the Lord’s Resistance Army (LRA). In deciding its role in this conflict, the ICC must consider the scope of its jurisdictional mandate, its capacity to remain impartial, and the benefits of prosecuting crimes committed by competing parties embroiled in violent conflict.

Article 18 of the Rome Statute grants the ICC jurisdiction to hear matters involving member countries or through referral from the Security Council when domestic courts fail to investigate alleged violations with a “genuine intent to provide justice.” The Statute limits jurisdiction to widespread and systematic acts of genocide, war crimes, and crimes against humanity committed after July 1, 2002. In December 2003, President Yoweri Museveni of Uganda referred the case to the ICC. Museveni claimed that the LRA abducted over 20,000 children for use as child soldiers. Further, the conflict has displaced approximately 1.5 million Ugandans. The ICC is now pursuing charges against LRA leadership for the deployment of child soldiers, executions, torture, mutilation, child sexual abuse, rape, sexual slavery, child trafficking, looting, and destruction of civilian property. Complicating the prosecution of perpetrators of atrocities is the involvement of child soldiers in the conflict.

Museveni’s referral raises questions about ICC impartiality because the Prosecutor is obligated to investigate charges against the LRA on the Ugandan government’s behalf. There are also allegations, however, that Ugandan military personnel committed widespread and systematic acts of torture, rape, and deployment of child soldiers, which would fall within the ICC’s jurisdiction. Human rights groups have blamed the Ugandan government for the humanitarian crisis that ensued after it ordered large segments of internally displaced people (approximately 80% of the population) into camps for years at a time. It remains to be determined, therefore, how the Prosecutor can represent both sides of this conflict simultaneously.

These concerns come at a time when Uganda has not yet finished implementing the ICC’s Rome Statute; nor has it incorporated all ICC crimes into its own legal code. Additionally, there are concerns that President Museveni’s authority over judicial appointments may undermine the neutrality of the court system in Uganda as lower courts might avoid pursuing charges against military personnel for civilian abuses. The courts may avoid prosecuting many of the people the LRA kidnapped and forced to fight against the government. Growing distrust in the judicial system has already led to increasing acts of vigilante justice.

Despite the wide range of concerns associated with prosecuting criminals in this conflict, Ocampo has expressed a commitment to investigate both sides of this conflict unconditionally. Effective trials in local Ugandan courts could strengthen the international perception of integrity of the ICC as the ICC may find itself on both sides of many armed conflicts in the future. The ICC’s recognition as an impartial forum to prosecute human rights offenses, however, provides more legitimacy than trials conducted in local Ugandan courts that are perceived as biased toward the government. If successful, the ICC could possibly alleviate ethnic tension while establishing itself as a credible institution.

Notwithstanding concerns about the ICC’s role in this conflict, there are several levels on which the ICC could address human rights abuses in Uganda. The ICC

could 1) draw international attention to the conflict, 2) deter ongoing offenses, 3) force government and military reformation, and 4) satisfy the general population's desire for justice.

The ICC must work to maintain impartiality, produce visible results, promote a sustainable peace, and work locally with members of civil society. This exercise of jurisdiction has major ramifications for the ICC. A failure to remain impartial in Uganda could undermine the ICC's legitimacy as the only permanent international court for the adjudication of war crimes. At the same time, a failure to act would leave many victims of gross human rights violations without any means of recourse during periods of armed conflict.

EAST TIMOR

IN MAY 2002, UNITED NATIONS Security Council Resolution 1410 established the UN Mission of Support in East Timor (UNMISET). Its mandate set out three main goals: 1) to assist core administrative structures critical to political stability in East Timor; 2) to provide interim law enforcement and public security; and 3) to maintain external and internal security in East Timor. Security Council Resolution 1543 scaled back UNMISET on May 14, 2004, and revised its tasks to include the following elements: 1) support for the public administration and justice system of Timor-Leste and for justice in the area of serious crimes; 2) support to the development of law enforcement in Timor-Leste; 3) support for the security and stability of Timor-Leste. This change reflected a request by the UN Secretary General on April 29, 2004, to reduce the size of the UN presence in Timor-Leste.

With the expiration of UNMISET's mandate rapidly approaching in May 2005, there is growing concern about whether known perpetrators of atrocities during East Timor's secession will ever be brought to justice. The conflict in East Timor originated in 1960 when the country was governed by Portugal and the UN recognized East Timor as a "Non-Self-Governing Territory." When Portugal tried to establish a provisional government and a general assembly to resolve East Timor's status in 1974, a civil war erupted between Timorese who sought independence and those who wanted to reintegrate

into Indonesia. After Portugal's withdrawal, Indonesia annexed East Timor as a province. In 1998, Indonesia proposed limited autonomy for East Timor, and, in 1999, Indonesia and Portugal signed an accord which moved East Timor closer to independence. The accord established that the United Nations Mission in East Timor (UNAMET) would monitor the movement towards independence. Regrettably, however, as the first elections approached in 1999, anti-secessionist militias launched a campaign of violence against pro-secessionists that killed between 1,000 and 2,000 East Timorese civilians and displaced over 500,000 people. Despite the outbreaks of violence, UNAMET's peace-keeping efforts resulted in Indonesia's eventual withdrawal and East Timor's transition toward independence.

Following East Timor's independence in March 2002, the UN and Indonesia established two regional courts to convict perpetrators of the 1999 atrocities, many of whom were Indonesian military officials. The United Nations Transitional Administration in East Timor (UNTAET) spearheaded the Special Panels for Serious Crimes of the Dili District Court to adjudicate war crimes, crimes against humanity, genocide, and torture committed by Indonesian occupation forces during the East Timorese push for independence. In response to pressure from the international community, Indonesia established the Ad hoc Human Rights Court for East Timor in Jakarta, which maintains jurisdiction over perpetrators in Indonesia.

Both the Special Panels for Serious Crimes and the Indonesian Human Rights Court for East Timor have been strongly criticized for their failure to prosecute Indonesian war criminals. While more than 50 of the 380 indictees have been convicted in the UN-supported Special Panels in Dili, only about 6 out of 18 indicted by the Ad Hoc Human Rights Court in Jakarta have been convicted, and all were East Timorese. Further, those convicted are predominantly viewed as scapegoats for Indonesian military commanders. The Special Panels for Serious Crimes could not conduct trials for all those it indicted because Indonesian authorities refused to extradite military officers indicted by the court. At the present rate, the Special Panels for Serious Crimes in East

Timor likely will not complete trial level cases before the expiration of the UN mandate in May 2005. The likelihood that the court will conclude appellate level prosecutions is even lower.

Further complicating the situation is the issuance of an arrest warrant for Indonesian presidential candidate General Wiranto by a UN-funded judge acting under the authority of East Timor's judiciary. Wiranto is accused of commanding members of the Indonesian militia that perpetrated human rights abuses against ethnic Timorese. His arrest soured relations between UN prosecutors and the Prosecutor-General of the Timor Leste judiciary, who attempted to amend Wiranto's indictment in response to political pressure. Many members of Timorese civil society view the Prosecutor-General's conduct as evidence that the tribunals are ineffective and subject to political influences.

Victims, their families, and members of Timor-Leste civil society have staunchly criticized the Indonesian Court as being biased in favor of Indonesian suspects. The failure of the Jakarta court to convict Indonesian suspects has only served to feed the widespread perception that its impartiality is feigned to placate the international community. Long after the creation of the Ad Hoc Human Rights Court in Jakarta, many lead offenders remain at large, including Indonesian officers and militias who killed over 1,500 people when East Timor seceded. Further, Indonesia's constitution does not permit criminal liability for crimes committed prior the implementation of the law allegedly violated. Consequently, Indonesia's new Constitutional Court found the prosecution of Bali bomber Maskur Abdul Kadir unconstitutional on grounds of retrospectivity. This ruling is binding on the Jakarta tribunal despite the non-retrospectivity principle of the International Covenant on Civil and Political Rights. A final ruling in the Jakarta tribunal denying retrospective prosecutions would allow many accused violators to escape conviction.

To address the many concerns with the transitional justice process, victims and their families, members of government, jurists, diplomats, and social justice advocates convened on September 23, 2004, in Dili to dis-

cuss more effective options for reconciliation. Sukehiro Hasegawa, Special Representative to the UN Secretary General, addressed the conference, where participants overwhelmingly advocated for an international criminal court akin to the International Criminal Tribunals in Rwanda (ICTR) and the former Yugoslavia (ICTY). While funding sources for an international tribunal remain undetermined, all agreed that a formal and credible international solution is needed.

Participants in the conference identified five potential avenues of recourse: 1) creating an international Commission of Experts responsible for monitoring and making recommendations for the Jakarta proceedings and the Special Panels in Dili; 2) continuing the Special Panels for Serious Crimes; 3) establishing an international tribunal; 4) deploying an International Truth Commission; and 5) extending the mandate for the Commission for Reception Truth and Reconciliation (CAVR), which was established in February 2002 to investigate human rights violations that occurred between 1974 and 1999 in Timor-Leste.

The proposal for a Commission of Experts would ensure that both courts are pursuing human rights violations without regard to the suspect's race or nationality. The UN Secretary General, however, will not commit to a Commission of Experts until it is shown that both courts have failed to hold the perpetrators accountable. United Nations intervention has received lukewarm response from the Timor-Leste government, as it fears that an international tribunal might impede attempts to reestablish economic ties with Indonesia. The government's reluctance, combined with hesitation by the U.S. to offend Indonesia, has further discouraged the establishment of an international court.

To date, the United Nations has issued no formal statement on whether it will officially support or fund an international tribunal. On September 22, 2004, Secretary General Kofi Annan cited East Timor as capable of achieving progress with adequate training and support. He did not specify, however, whether the UN would provide the funding necessary to operate an international court. Special Representative to the UN Secretary

General Sukehiro Hasegawa agreed that a purely international process is needed, but never committed to funding the operation. Without support from the Gusmao administration, the UN has no incentive to press for an international tribunal.

The future prosecution of atrocities in Timor-Leste remains uncertain. International consensus is far from being achieved; however, there is a growing consensus among victims, victims' families, members of Timor-Leste civil society, and human rights groups that justice in East Timor requires an objective and neutral international body to adjudicate the heinous offenses of 1999. The conclusion of UNMISSET's mandate commands cooperation among members of the East Timorese civil society and the global community. With that call emerges a new responsibility for the Indonesian and Timor-Leste governments to hold perpetrators of the atrocities accountable.

CAMBODIA

ON OCTOBER 5, 2004, after almost ten years of delays, the Cambodian Parliament's lower house ratified an agreement with the United Nations to create an internationalized tribunal in Cambodia called the Extraordinary Chambers. This tribunal will try the few surviving leaders of the Communist Khmer Rouge for atrocities committed during their four-year rule from 1975-1979. Seven major figures, all in their 60s and 70s, are likely to be the focus of indictments.

For many, the creation of this court is long overdue. Figures estimate that 1.7 million Cambodians—one quarter of the population—were killed under the Khmer Rouge by torture, execution, starvation, and disease. Almost every family in the country lost members during the Khmer Rouge's rule. In the aftermath of these atrocities, Cambodia has had no truth commissions or trials addressing the national tragedy of Pol Pot's regime.

The proposed tribunal is hybrid in form and has similarities to other internationalized tribunals. Like other international tribunals, the Cambodian tribunal will have the power to prosecute acts of genocide, crimes against humanity, and grave breaches of the Geneva Conventions. It will also prosecute violations of the 1954 Hague Convention for Protection of Cultural

Property in the Event of Armed Conflict and crimes against internationally protected persons pursuant to the Vienna Convention of 1961 on Diplomatic Relations, neither of which has ever been addressed in an international criminal tribunal before. Additionally, Cambodia's tribunal will be the first internationalized court in which domestic judges constitute a majority.

The Cambodian tribunal will be comprised of five judges—three Cambodian and two international. This poses a particular challenge in a country whose lawyers were targets of the Khmer Rouge's violence. As a result, few sitting judges in Cambodia have formal legal training. Cambodian courts also have little judicial independence. The United Nations' involvement, however, is expected to ensure that international experts and standards of due process will be integrated into the court's investigations and trials and that the judges and staff of the court will receive adequate training. Decisions of the Extraordinary Chambers will require a super-majority vote, with at least one international judge consenting. The UN will not have formal legal power over the court but will contribute judicial officers, funding, and administrative expertise.

While the commitment to establish an internationalized tribunal is a significant accomplishment, there are still several obstacles ahead for the court. Financing for the tribunal is perhaps the most immediate challenge. The UN agreement envisions three years of trials, a staff of 2,000, and an operating budget of approximately US \$60 million. Additionally, although two of the expected indictees are already in custody, the leader of the Khmer Rouge, Pol Pot, died in 1998. Finally, the Extraordinary Chambers will have to be developed and staffed. Trials are not expected to start before mid-2005.

HRB

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