

The Special Tribunal for Lebanon: Lessons Learned

Day of International Criminal Justice – 10 July 2010

The Hague, The Netherlands

Judge Daniel D. Ntanda Nsereko

Appeals Chamber, Special Tribunal for Lebanon

Your excellencies, colleagues, ladies and gentlemen,

We thank Ambassador Korać for inviting us to the celebration of this year's Day of International Criminal Justice. Unlike the courts to which my fellow brother and sister Judges belong, my institution, the Special Tribunal for Lebanon (STL) is, as they say, 'the newest kid on the block.' It is the most recent of the modern international tribunals. It was established to try persons responsible for the attack that resulted in the death of former Lebanese Prime Minister Rafik Hariri and in the death and injury of hundreds of others. It also has jurisdiction over a number of cases connected to that attack. The trials are under Lebanese – and *not* international – law, which we are mandated to apply. The application of substantive domestic law is one feature that distinguishes the STL from other tribunals and in this way makes the Tribunal truly 'special'. Indeed, the STL's unique features make for an interesting journey along the path of international criminal justice.

Additionally, unlike other tribunals, we have a Defence Office as an organ of the Court, of equal status with the Office of the Prosecutor, Registry and Chambers. No other international court has an organ with such status dedicated solely to the interests of the defence. Thus, in a number of matters before the Chambers, we have had to determine the competence of this Office to intervene in pending matters in a rather unique context. Similarly, the STL is currently conducting trials *in absentia*, unheard of at the other modern

international criminal tribunals. The exception of course, is the World World II-era prosecution *in absentia* of Martin Bormann by the International Military Tribunal at Nuremberg. However, this was conducted in an era that predated many of today's modern human rights instruments. Our various decisions on this matter, whilst guided by rulings from human rights courts, do not have the benefit of precedents on the subject by any other international criminal tribunal. Furthermore, two Lebanese corporations have recently been charged with contempt of court. This is the first time, in the history of international criminal justice, that this has been done. As a result, we are dealing with matters that have never before been considered by any international criminal tribunal.

Thus, while the STL may not have been around as long as the other international tribunals, it will certainly have lessons of its own to impart in the near future. However, at this moment in our history it is really quite early to look back and recount the lessons we have learned in carrying out our work. Within a few years, we hope, we will be able to do so.

But this does not mean that we do not look to the existing international criminal tribunals for guidance in our work. Far from it; we are certainly not in the business of reinventing the wheel. It simply means that in some matters we can derive important lessons from other existing tribunals; but in others, we must tread our own independent path.

For example, in our decision of 24 October 2012, the Appeals Chamber departed from ICTY jurisprudence and held that we could not review the decision of the United Nations Security Council that established the Tribunal. Similarly, in our decision of 10 April 2013, the Appeals Chamber departed from ICC jurisprudence and permitted participating victims to initiate interlocutory appeals. Such decisions, of course, were not handed down in haste, but after lengthy and painstaking deliberations.

The STL will of course continue to consider the established practices and procedures of other criminal tribunals and, where appropriate, adapt them as our

own, in the interests of justice and judicial economy. Thus, from the very beginning, the STL has permitted the admission of evidence of a witness in the form of written statements (STL Rule 155, 156, 158), a practice that began at the ICTY and has also recently been adopted by the ICC. Similarly, the STL allows witnesses to testify via video link (STL Rules 124), another innovation we adopted from the ICTY. Finally, the accused can also attend hearings via video link, provided that his counsel attends the hearings in person (STL Rule 105).

By proceeding in this fashion, the STL aims at expediting proceedings, as it is specifically required under its Statute to “take strict measures to prevent any action that may cause unreasonable delay”(Article 21(1)). It also aims at promoting the rule of law and, ultimately, best serve the people of Lebanon and gain their confidence. However, in trying to achieve all these goals, the Tribunal will not waver from maintaining its role as an independent and impartial court whose sole aim is to discharge justice fairly without fear or favour.

I thank you.