

**Former Chief UN Rwanda Prosecutor, Carla Del Ponte:
“Obama War-Crimes Nominee – Complicit in War Crimes Cover-up.”
*Does Obama Knowor Care?***

Prof. Peter Erlinder

The July 9, 2009 *New York Times* reported that the Obama administration had selected Stephen Rapp to replace the Bush administration Ambassador-at-Large for War Crimes, Pierre Prosper.¹ Rapp, a former U.S. Attorney in Cedar Rapids, Iowa and Democrat *politico*, began his international career at the UN Security Council Criminal Tribunal for Rwanda in 2001, while Carla Del Ponte was Chief UN Prosecutor for Rwanda. Rapp’s nomination was proposed just a few months after the publication of Del Ponte’s memoir which recounts her years as Chief UN Prosecutor.

Del Ponte’s book describes in detail the systematic U.S.-initiated cover-up of crimes committed by the current Rwandan government during the 1994 Rwanda Genocide.² She also explains how she was removed from her ICTR position in 2003 by U.S. Ambassador Prosper, himself, when she refused to cooperate with the U.S.-initiated “cover-up” on behalf of a U.S. ally.³

According to Del Ponte, her ICTR Office had the evidence to prosecute Kagame for ordering the assassination of Rwanda’s former President Juvenal, Habyarimana, long *before* 2003.⁴ The assassination of Habyarimana, and the president of neighboring Burundi, in a missile attack on Habyarimana’s plane is well-understood as the crime that “touched-off” the Rwandan genocide.⁵ She also details the dozens of massacre sites involving thousands of victims, for

which the current Rwandan President, Paul Kagame, and his military should be prosecuted.⁶

The well-publicized *canard*, that “the identity of the assassins of Habyarimana is unknown”⁷ is a bald-faced lie, well -known by ICTR Prosecutors, according to Ms. Del Ponte’s book.

Two years *after* Del Ponte was removed from office in 2003, Stephen Rapp became “Chief” of ICTR Prosecutions with access to all of the evidence known to Ms. Del Ponte, and more.⁸ During his four years at the ICTR, like Del Ponte, Rapp *also* was in a position to prosecute Kagame and members of the current government of Rwanda. But, not ONE member of Kagame’s military has been prosecuted at the ICTR, to date...and the “cover-up” revealed by Del Ponte, continues today.⁹

And, unlike, Ms. Del Ponte, who was fired by the U.S., Mr. Rapp was first rewarded with an appointment as Chief Prosecutor at the U.S.-funded Sierra Leone Tribunal and now, has been nominated for a coveted ambassadorship.¹⁰

Former Chief ICTR Prosecutor Del Ponte Details War Crimes “Cover-up”

According to Del Ponte, in May 2003 she was called to Washington D.C. by Prosper (ironically, also a former ICTR prosecutor with knowledge of Kagame’s crimes) who informed her that the U.S. would remove her from UN post, if she carried through with her publicly-announced plans to indict Kagame and members of his government and military.¹¹ According to Del Ponte, when she refused to knuckle-under because “she worked for the UN, - not for the U.S.,” Prosper told her that ICTR career was over.¹² True to his threat, by October

2003 Del Ponte was replaced by a US-approved ICTR prosecutor, Hassan Abubacar Jallow,¹³ who elevated Rapp to “Chief of Prosecution” two years later.

ICTR Trials: More Evidence of Rwanda Crimes Cover-Up

Del Ponte’s revelations are not the only evidence that a U.S.-initiated “war crimes cover-up” at the ICTR is creating impunity for crimes committed by the Kagame and his military. A September 10, 1994 memo in evidence in the ICTR Military-1 Trial confirms that U.S. Secretary of State Warren Christopher was informed that Kagame’s troops were killing “10,000 civilians a month” in military-style, according to an investigation funded by US Agency for International Development (USAID).¹⁴

And, as early as January 1997, Chief ICTR Investigative Prosecutor and former Australian Crown Prosecutor Michael Hourigan;¹⁵ former FBI Agent James Lyons;¹⁶ and former UN-Chief of Military Intelligence in Rwanda, Amadou Deme;¹⁷ reported Ms. Del Ponte’s predecessor, Louise Arbour, that Kagame should be prosecuted for assassinating Habyarimana. Arbour scuttled the investigation, suppressed the report and disbanded the investigative team.¹⁸ They all resigned shortly thereafter, ending their UN careers.

Shortly, thereafter, Arbour was elevated to Canada’s Supreme Court and has recently been chosen to head the prestigious International Crisis Group (ICG), after serving in equally prestigious UN Security Council-appointed posts during an illustrious UN career.¹⁹

Former ICTR Prosecutor Rapp Complicit in War-Crimes Cover-up

But, even though Arbour suppressed the “Hourigan Report” in 1997, Del Ponte, Rapp and other ICTR prosecutors certainly knew about it because ICTR judges ordered Del Ponte’s Office to release the “Hourigan report” to a defense team as early as the year 2000,²⁰ a year *before* Rapp began his ICTR work, and three years before Del Ponte was fired by Prosper. But...to date, not *one* indictment has been issued against Kagame by *any* ICTR Prosecutor.²¹

Kagame & Co. Already Indicted in France and Spain

Although the U.S. has been successful in preventing Kagame’s crew from being indicted at the ICTR, *other* courts *have* indicted Kagame and members of his retinue. In late 2007, French Judge Bruguiere indicted the assassins of Habyarimana and personally recommended to Kofi Annan that Kagame be prosecuted by the ICTR.²² And, in February 2008, Spanish Judge Merelles issued a 180-page indictment specifically charging Kagame with: Genocide; War Crimes; Crimes Against Humanity; including the massacres of more than 300,000 civilians.²³

And, Mr. Rapp’s former boss, Mr. Jallow, publicly admitted in a UN Security Council in spring 2008 that Kagame’s military is responsible for the assassination of Rwanda’s Catholic leadership in 1994....but, still, no ICTR prosecutions.

The Consequences of the ICTR Cover-up of Kagame’s Crimes

The tragic consequence of the failure to prosecute Kagame at the ICTR, from 1994 to date is that Kagame has been free to invade the Congo in 1996 and

again in 1998. Rwanda continues to occupy part of the eastern Congo many-times larger than Rwanda, to this day.²⁴ No less than *four* UN Security Council-commissioned *Panel of Experts Report(s) on the Illegal Exploitation of the DR Congo* (in 2001, 2002, 2003 and December 2008) have detailed the massive rape of the Congo's resources by Rwandan forces that has brought vast riches to Kagame and his inner circle.²⁵

While Rapp was ICTR Senior Trial Attorney in 2003, Kagame was effectively elected President-for-Life with 95% of the vote,²⁶ after banning opposition parties and jailing opponents in "a climate of intimidation," according to EU observers.²⁷ According to the *Economist* report on 10th Anniversary of the "genocide" in 2004:

[Kagame] tolerates no serious domestic opposition, nor much in the way of free speech. Rwanda today is a thinly-disguised autocracy, where dissidents are usually accused of genocidal tendencies, live in fear, or exile, or both. The regime is a threat to its neighbors.²⁸

"Chief of Prosecutions" Rapp Withheld Exculpatory Evidence, from ICTR Judges and Defendants,, in Violation of ICTR Rues

As it this wasn't enough, in February 2009, judges at the UN Rwanda Tribunal issued a Judgement the Military-1 case (a main case at the ICTR) in which Mr. Rapp personally appeared for the Prosecution. Although massive violence did occur in Rwanda, which no one disputes, the court recognized that blaming only one side for the violence WAS a falsehood, when it *acquitted* all of the "architects of the killing machine" (as Mr. Rapp called the defendants in court) of conspiracy or planning to kill civilians both before, and after, the assassination

of Habyarimana. And, the highest ranking military-officer was acquitted of all charges.²⁹

Although it is now clear from Ms. Del Ponte's memoirs that Mr. Rapp had the evidence to *clear* ICTR defendants of the assassination charges and that blaming *only* the losing side for all crimes committed in Rwanda in 1994 is simply not true. Simply put, Mr. Rapp and other ICTR prosecutors, have: withheld evidence that would be beneficial to the defense, contrary to Tribunal Rules;³⁰ prosecuted Kagame's vanquished opponents for crimes they knew were committed by Kagame's forces; and, created a system of "judicial impunity" at the ICTR, that has permitted Kagame to kill millions in the eastern Congo since 1994.

This "inconvenient-*African-truth*," raises an uncomfortable question regarding President Obama's nomination of Mr. Rapp, in the first place: Are Obama and his advisors ignorant of the public record regarding Rapp's complicity in the ICTR Cover-up....or do they just not give a damn?

And how will Democrat and Republican Senators vote when asked to confirm the appointment? But....its only Africa, so who is paying attention, anyway? Certainly not President Obama.

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¹ Marlise Simons, "Lawyer Picked for U.S. War Crimes Post," *New York Times*, July 9, 2009

² Del Ponte and Sudetic, *Madame Prosecutor: Confrontations with Humanity's Worst Criminals, and the Culture of Impunity* (The Other Press, NY 2009).

³ *Id.* at 231-234. See also, Steven Edwards, "Del Ponte says UN caved to Rwandan pressure," *National Post (Canada)*, Sept 17, 2003; John Hooper, "I was sacked as Rwanda Genocide Prosecutor for Challenging the President, Says Del Ponte", *Guardian*, Sep. 13, 2003; Felicity Barringer, "Annan is said to Want a New Prosecutor for Rwanda War Crimes," *New York Times*, July 29, 2003. See also, UN Doc S/Res/203/1503, Aug. 28, 2003, requesting nomination by the Security Council for a new ICTR prosecutor and nominating Del Ponte for re-appointment as ICTY prosecutor.

⁴ *Id.* at 234-235.

⁵ ICTR Military-1 Exhibit DNT 315. April 7, 1994 cable from U.S. Ambassador Prudence Bushnell, "If, as it appears, both Presidents have been killed, there is a strong likelihood that widespread violence could break out in either or both countries, *particularly if it is confirmed that the plane was shot down.*" Emphasis added.

⁶ *Id.* 176 to 192 and 223 to 241.

⁷ As late as 2004, the *Economist* asked, "Who Shot the President's Plane?" March 27, 2004. p. 26.

⁸ See, 2007 and 2008 Indictments of Kagame issued by France and Spain, *infra*

⁹ To date, the ICTR has not prosecuted any members of the victorious Kagame military or government, but other nations have, *see infra*.

¹⁰ Marlise Simons, "Lawyer Picked for U.S. War Crimes Post," *New York Times*, July 9, 2009

¹¹ Prosper was ICTR Lead Prosecutor in the *Akeyesu* Trial prior to Del Ponte's tenure.

¹² Del Ponte and Sudetic, *Madame Prosecutor: Confrontations with Humanity's Worst Criminals, and the Culture of Impunity* (The Other Press, NY 2009). Pp. 232 to 234

¹³ *Id.* at 239-240

¹⁴ ICTR Military-1 Exhibit, DNT 264, September 10, 1994 Memo from George Moose to Warren Christopher, U.S. Secretary of State:

A UNCHR investigative team that spent July and August in Rwanda [i.e. Gersony] has reported systematic human rights abuses by the GOR (i.e. RPA/F) forces – including systematic killings – in the south and southeast of the country. The team has concluded that the GOR is aware of these reprisals against Hutu civilians and may have sanctioned them

On the basis of interviews with refugees/individuals, the UNCHR team concluded that a pattern of killing had emerged. The RPA convened meetings of displaced persons to discuss peace and security. Once the displaced persons were assembled, RPA soldiers moved in and killed them. In addition to these massacres, the RPA engaged in house to house sweeps and hunted down individuals hiding in camps. Victims were usually killed with hoes, axes, machetes and with fire. Although males 18-40 were at the highest risk the young and elderly were no spared. The team estimated that the RPA and Tutsi civilian surrogates had killed 10,000 or more Hutu civilians per month, with the RPA accounting for 95% of the killing.

The UNCHR team speculated that the purpose of the killing was a campaign of ethnic cleansing intended to clear areas in the south of Rwanda for Tutsi habitation. The killings also served to reduce the population of Hutu males and discouraged refugees from returning to claim their land.

¹⁵ See Military-1 Exhibit DNT 365, Affidavit of Michael Hourigan

¹⁶ See Affidavit of James Lyons, April 6, 2001 at www.rwandadocumentsproject.net.

¹⁷ See, Proposed Military-1 Exhibit DNT 366

¹⁸ See Hourigan Affidavit, Exhibit DNT 365

¹⁹ "Louise Arbour Begins As President of International Crisis Group," *Reuters*, July 22, 2009.

²⁰ See, Chambers Order Release of Hourigan's Memorandum to Parties, ICTR Press Release, June 8, 2000, www.ictor.org cited in Kingsley C. Moghalu, *Rwanda's Genocide: The Politics of Global Justice*, (Palgrave MacMillan 2005) (former official spokesperson for the ICTR), Ch. 2, fn. 66.

²¹ <http://www.hrw.org/en/news/2009/06/01/rwanda-tribunal-risks-supporting-victor-s-justice>

²² Del Ponte, *Madame Prosecutor*, pp. 234-235, 240.

²³ "Spain judge indicts Rwanda forces" BBC News, February 6, 2008.. See, Indictment of February 6, 2008 alleging war crimes, crimes against humanity and genocide committed by Paul Kagame and 40 senior officers, allegations include civilian deaths by Prefecture.

²⁴ . See generally, Gérard Prunier, *AFRICA'S WORLD WAR: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (2009); Catherine Philp, "Yesterday a victim, today an oppressor: how aid funds war in Congo," *The Times of London*, April 7, 2009.

²⁵ *UN Security Council Panel of Experts Report on the Illegal Exploitation of National Resources and Other Forms of Wealth from the Democratic Republic of the Congo*, October 20, 2003. (s/2003/1146, October 20, 2003). *The Rwandan army stole nature resources worth \$250 million from 1999-2000 alone*. Adam Hochschild, *The dark heart of mineral exploitation in Congo: back on the brink II*. International Herald Tribune, Dec. 24, 2004, p. 6. *UN Security Council Panel of Experts Report on the Illegal Exploitation of National Resources and Other Forms of Wealth from the Democratic Republic of the Congo*, December 12, 2008. (s/2008/1146, December 12, 2008).

²⁶ *Kagame won, a little to well, Rwanda's Presidential Election*, *The Economist*, Aug, 30, 2003, p.

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²⁷ See generally, U.S. State Department 2003 Human Rights Report on Rwanda, February 25, 2004; See also, Rptr. Collette Flesch, *Report of European Observer Mission*, September 2003; Colin Waugh, *Paul Kagame and Rwanda: Power, Genocide and the Rwandan Patriotic Front* (MacFarland, USA 2004), pp. 185-206

²⁸ "Rwanda, remembered: Lessons of a genocide," *Economist*, March 27, 2004, p. 11

²⁹ ICTR Judgement, Military-1, February 9, 2009 acquitted the top four military officers of conspiracy to commit or plan genocide and acquitted General Gratién Kabiligi of all charges.

³⁰ ICTR Rules of Procedure and Evidence: Rule 66 and Rule 68, *Disclosure of Exculpatory Information by Office of the Prosecutor*.