

**SPECIAL COURT FOR SIERRA LEONE  
OUTREACH AND PUBLIC AFFAIRS OFFICE**



**PRESS CLIPPINGS**

**Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office**

**as at:**

Thursday, 29 April 2010

Press clips are produced Monday through Friday.  
Any omission, comment or suggestion, please contact  
Martin Royston-Wright  
Ext 7217

### Local News

Fayia Musa Testifies in Charles Taylor's Case / *Independent Observer* Page 3

### International News

Charles Taylor Refuses To Go To Court.../ *Charlestaylortrial.org* Page 4

George Weah: "It's Charles Taylor's Right to Live in Liberia.../ *The Liberian Journal* Pages 5-6

UNMIL Public Information Office Media Summary / *UNMIL* Pages 7-11

The ICC's Role In Sudan: Peace Versus Justice / *Institute for Defence Studies and Analyses* Pages 12-16

Bemba Lawyers Challenge War Crimes Charges at ICC / *Voice of America* Page 17

# Fayia Musa testifies in Charles Taylor's trial

During the Sierra Leone decade long civil war hundreds of civilians lost their hands or legs to amputation, and thousands were reportedly driven from their homes and held hostage by the Sierra Leone rebels, the RUF and their allies. But Defence Witness, Fayia Musa has told the Special Court in The Hague that the RUF did not take civilians hostage. Mr. Fayia also testified that Mr. Taylor had relationship with the RUF beyond 1992, but he did not give military support to the rebel organization... John Kollie reports...

Continuing his cross-examination Defence Witness Fayia Musa has told the court that the RUF did not take any civilian hostage during the Sierra Leone civil war. He said civilians' decision to stay in RUF controlled territories were based on reports from Guinea and Freetown that Sierra Leoneans were being killed on suspicion of being rebels.

Mr. Fayia Musa emphasized that civilians were not forced to stay in the RUF territories.

But Prosecution Lawyer, Nicholas Kumjian reminded the witness that civilians were not free to leave RUF territories and Mr. Fayia denied.

Former Liberian President, Charles Taylor is accused of supporting the Sierra Leonean rebels who allegedly rained terror on the civilian population. Mr. Taylor and

his Defence Team have consistently told the court that he severed all relationship with Former RUF Leader Mr. Foday Sankoh and his rebel movement in August 1992. But Defence Witness, Fayia Musa said in 1995 Mr. Taylor invited an RUF delegation to the provincial city of Gbarnga, Mr. Taylor's former headquarters in Bong

County. Mr. Fayia said Mr. Sankoh turned down the invitation, but some senior members of the RUF including himself persuaded Mr. Sankoh into accepting the invitation.

The Defence Witness told the court the RUF delegation visited Gbarnga and was later taken to Accra Ghana by Mr. Taylor on what he called site seeing.

Charlestaylortrial.org

Wednesday, 28 April 2010

## **Charles Taylor Refuses To Go To Court In Protest Against Treatment By Dutch Security Personnel**

By Alpha Sesay

Charles Taylor today refused to attend his trial in protest of security measures by Dutch security personnel responsible for taking him from his detention facility to the courtroom in The Hague.

When the Special Court for Sierra Leone resumed this morning, Mr. Taylor was conspicuously absent. The former Liberian president's defense counsel, Morris Anyah, explained to the judges that Dutch security personnel had handcuffed Mr. Taylor and kept him waiting in a vehicle for 15 minutes. This irritated Mr. Taylor and he refused to go to court today. Mr. Anyah called this action by the Dutch security personnel unnecessary and disrespectful.

Explaining to the judges what transpired between Mr. Taylor and the Dutch security personnel, Mr. Anyah said that "he was handcuffed, he was placed in a vehicle, and this is where the problem arose. He was left in that vehicle, for in his estimation, 10 to 15 minutes while the detention center personnel went to transport or bring another detainee from upstairs to another waiting vehicle to be transported to the same court house."

"What we submit, objectively speaking, is unnecessary and is disrespectful, is to have the accused sit in a van waiting for several minutes while he is handcuffed," Mr. Anyah added.

When the court adjourned and resumed in the afternoon, the judges informed the parties that they had done some investigation into what transpired between Mr. Taylor and the Dutch security personnel.

Presiding judge, Justice Julia Sebutinde, said that the actions of the Dutch security personnel were not disrespectful to Mr. Taylor as he was represented by his defense counsel. The learned judge said that Mr. Taylor had only been made to wait for those minutes because the Dutch security personnel wanted to transport him to the court alongside the other detainees.

"Now in our view, unanimously, we do not think that what happened this morning — whereby the authorities requested Mr. Taylor to wait for some 15 minutes, and I don't know whether he actually waited for 15 minutes or less — that that was necessarily an unreasonable request, given the circumstance that there was that one team ready to bring a number of accused persons," Justice Sebutinde said.

"Secondly, it is common knowledge that Mr. Taylor is not the only accused person standing trial in the past few months. And that these various accused persons have been transported in similar manner from the same detention center together, perhaps in convoy in the same way. Of course I — we — would expect Mr. Taylor to respect the conditions of the detention center and the transportation regimes," the presiding judge added.

As the judges ordered that the trial would continue in Mr. Taylor's absence, the ninth defense witness, Liberian national and former Brigade Commander for Revolutionary United Front (RUF) rebel group, Martin Flomo George, concluded his testimony. He reiterated that Mr. Taylor did not provide support for RUF rebels in Sierra Leone as alleged by prosecutors.

Before court adjourned today, Mr. Taylor's tenth defense witness, a Liberian national and former member of the Armed Forces of Liberia (AFL) during Mr. Taylor's presidency, Karnah Mineh, took the witness's stand.

Mr. Mineh's direct-examination will continue tomorrow.

# The Liberian Journal

Thursday, 29 April 2010

## George Weah: “ It’s Charles Taylor’s Right to Live in Liberia...If”

By: Gardea V. Woodson



Mr. George Weah of CDC

Mr. George Weah of the Congress for Democratic Change (CDC) says it’s Charles Taylor’s constitutional rights to live in Liberia if he’s acquitted by the UN-backed War Crimes Tribunal in The Hague, for crimes against humanity in Sierra Leone.

Weah, a 2005 presidential candidate on CDC’s ticket, said he sees no reason why the former president can’t live in Liberia, saying “Liberia did not send Taylor to The Hague, neither accused him of any crimes...he should be allowed to return to his native country as a free citizen and should be welcomed by all as such.”

In an interview with Radio Netherlands on Tuesday, April 27, 2010, Mr. Weah, an international soccer celebrity, said if Liberians think that Taylor committed crime and he needed to be tried, “It’s a good thing, you know.”

Mr. Weah was, however, quick to point out that “If The Hague says he’s not guilty, and Liberians don’t put charges on him, he’s a free citizen.”

Asked if Mr. Taylor would be a risk to the Liberian society if he does return after his acquittal, Mr. Weah said although he can’t read his heart, he’s of the view that Mr. Taylor has no intention to cause trouble in Liberia, pointing out that it would be Mr. Taylor’s intention to make peace with people he had wronged in the past.

He said there are Liberians who committed crimes against their fellow countrymen, yet, the victims and perpetrators are coexisting in Liberia, adding “that shows that Liberians will be glad to interact with him.”

Questioned on his possible run in the 2011 elections in Liberia, Mr. Weah said it’s CDC’s decision to make at the party’s convention, where a standard bearer is selected.

Mr. Weah said if he has to contest the elections as a presidential candidate, he will convince his fellow partisans to

nominate him as a viable option among the pool of candidates.

Touching on his education, a major hurdle for him during the 2005 presidential elections, Mr. Weah said he's studying Business Administration and Criminal Justice, pointing out that "It's good to go to school, and I'm enjoying it."

Meanwhile, Mr. Weah has welcomed the Liberian government's decision to set up a special tribunal for war crimes, similar to the one in neighboring Sierra Leone.

He said the court will show to those who do not respect human rights that they stand to face the consequences of their action in court.


**United Nations**      **Nations Unies**

United Nations Mission in Liberia (UNMIL)

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**UNMIL Public Information Office Media Summary**  
**28 April 2010**

*[The media summaries and press clips do not necessarily represent the views of UNMIL.]*

**UN News in Liberia**

**UNMIL News**

**UNMIL Opens 3-day Workshop ... As Political Officer Calls for Factual Reportage**

[In Profile Daily, New Vision]

- The Chief of Political Planning of the United Nations Mission in Liberia (UNMIL) has called on Liberian journalists to be committed to reporting the facts.
- Mr. Ademola Araoye said media seek to achieve unfettered purveyance of unlimited ideas and vision of society.
- Mr. Araoye said the hallmark of a good media is its inherent capacity to build a space where ideas are traded unhindered for the creation of a better society for the good of every citizen.
- The UNMIL Chief of Political Planning spoke Tuesday at the opening of a three-day political reporting workshop for journalists in Monrovia under the auspices of UNMIL.

**Local News on Liberian issues**

**President Sirleaf Expresses Satisfaction over Liberia, Sierra Leone Ties**

[Public Agenda, The Informer, New Vision]

- President Ellen Johnson Sirleaf has recalled with deep satisfaction the close bonds of friendship, solidarity and harmony which have characterized Liberia-Sierra Leone relations over the years.
- According to a Foreign Ministry release, President Sirleaf made the statement in a congratulatory message to the President Ernest Bai Koroma, the Government and People of Sierra Leone on the occasion marking the 49th Independent Anniversary of that sisterly Republic.
- In the message to her Sierra Leonean counterpart, the Liberian leader conveyed heartfelt congratulations and sincerest best wishes to President Koroma, the Government and People of Sierra Leone on behalf of the Government and People of Liberia.
- President Sirleaf further noted that the relations happily subsisting between the two countries and their peoples is not only limited to government interactions but is deeply rooted in family and kinship ties.

**House Passes Threshold 'Controversial' Population Threshold Bill At 46,000**

[New Democrat, Public Agenda, In Profile Daily, The News, National Chronicle, The Inquirer, Daily Observer, Heritage]

- The House of Representatives has passed into law another version of the 'controversial' population Threshold Bill.
- In its session Tuesday, the House voted to set the threshold at 46,000 per electoral constituency squashing the Senate's version of the Bill.
- The House said the reversed compromised Threshold Bill passed by the Senate at 54,500 with the creation of an automatic seat for each county violates the Constitution.
- Meanwhile, House Speaker Alex Tyler has constituted a 5-member Conference Committee chaired by Bong County Representative George Mulbah to reconcile the House and Senate's version of the Bill.
- According to reports, the 46,000 threshold passed by the House would provide a total number of 76 lawmakers in the House.

**Three Grand Gedeh Lawmakers React To Colleague's Claim, Call Him Liar**

[The New]

- Three Grand Gedeh lawmakers have angrily reacted to a statement by Senator Isaac Nyenabo that the County's Legislative Caucus lacks intellectual capacity.
- Representatives Rufus Gbeior, Kai Farley and Zoe Pennue described Senator Nyenabo's statement as unfortunate.
- They said Nyenabo's statement clearly shows that he remains traumatized after losing the seat of President Pro-tempore of the Senate.
- Representatives Gbeior, Farley and Pennue also described their kinsman as a liar and an unaccomplished lawmaker.
- Their joint statement comes days after Senator Nyenabo questioned the intellectual capacity of the Grand Gedeh Legislative Caucus and advised his kinsmen to vote wisely in 2011.

### **Teachers Lay Down Chalk In South-eastern Liberia**

[Daily Observer]

- Replaced teachers and newly recruited teachers in Grand Gedeh County are carrying on a go-slow because of what they term as 'no money to pay them'.
- The spokesman of the teachers alleged that they had not been paid for a very long time and as such, they were downing their chalk until their plight were addressed by the education authorities.
- Mr. Neewray Wea added that they had reached the decision to lay down their chalk following series of engagements with the government concerning the regularization of their status.
- About 400 teachers are involved in the go-slow across the county.
- But Grand Gedeh Chief Education Officer, Bestman Charpy denied knowledge of the go-slow.

### **Star Radio** *(News monitored today at 09:00 am)*

#### **House Passes Threshold 'Controversial' Population Threshold Bill At 46,000**

*(Also reported Truth FM, Sky FM, and ELBC)*

#### **House Holds Public Hearing On Bill To Amend LMA Act**

- Public hearing is underway at the House of Representatives into the controversial bill to amend the Liberian Marketing Association (LMA) Act.
- The hearing is being conducted by the House Joint Committee on Judiciary and Internal Affairs.
- The hearing is intended to solicit expert opinions from the public to enhance the process of decision making.
- LMA founding executive member Samuel Daniels is among the invitees presenting papers at the hearing.
- The first attempt by the House to pass the draft LMA Act last month suffered a setback following protest from majority lawmakers.

#### **Three Grand Gedeh Lawmakers React To Colleague's Claim, Call Him Liar**

*(Also reported Truth FM, Sky FM, and ELBC)*

#### **LBS Director General-designate's Confirmation Suffers Another Setback**

- The confirmation of rejected LBS Director General-designate of the Liberia Broadcasting System (LBS) Darryl Ambrose Nmah has suffered its third setback in the Senate.
- It followed the decision of the Senate to again defer the confirmation of Mr. Nmah to Thursday, April 29 noting that it could not take a vote to decide the fate of the rejected Director General-designate because of some difficulty.
- Senate presiding officer Daniel Naatehn did not elaborate but said a motion was raised for Mr. Nmah's confirmation to be postponed.
- Senator Naatehn also announced that the confirmation of several other Presidential nominees was deferred to Thursday.
- He further said the obstacle surrounding the confirmation of Deputy Information Minister-designate for Public Affairs, Jerolimek Piah, has been removed.
- According to him, the Judiciary Committee has established there is an Act of 1972 that provides for the President to appoint more than one Deputy Ministers.

*(Also reported Truth FM, Sky FM, and ELBC)*

#### **Education Ministry To Use US\$4 Million US Government Fund To Pay Newly Recruited Teachers**

- The Ministry of Education says the US\$4 million provided by the US government through USAID will be used to pay all newly recruited teachers.
- The money which is in support of education recovery in post war Liberia will cover teachers of the Rural Teacher Training Institute (RTTI) in 15 counties.

- The ministry says modalities were being worked out with the management of ECOBANK to pay all newly recruited teachers and RTTI graduates.
- A Ministry of Education release says the process has begun with Montserrado County and will gradually move to the leeward counties.

#### **Former Lawmaker Wants All Lofa Confab To Settle Voinjama Crisis, Others**

- Former Lofa County Representative Philip Tali has called for an all Lofa Conference to resolve the Voinjama crisis and other outstanding issues in the county.
- Mr. Tali said the issue of a seven-member committee to handle the Lofa crisis must be abolished.
- The former Lofa lawmaker suggested that the conference be held in Voinjama in the shortest possible time to identify the root cause of the problems in Lofa County.
- According to Mr. Tali, the Conference shall include all district commissioners, traditional chiefs, religious leaders and two elders from each district.
- He said the delegates must also include women and youth representatives from each district and representatives of male and female zoes.
- The proposed Lofa Conference shall also include the Ministries of Justice and Internal Affairs, the Governance Commission, Lofa Bar Association, and civil society among others.
- Mr. Tali is the current chairman of the Fact-finding Committee on the Lofa Crisis.

#### **Truth Fm** *(News monitored today at 10:00 am)*

#### **Bong Lawmaker Wants Finance Minister Provide 'Genuine Answers' To GAC Report**

- Senator Jewel Howard Taylor of Bong County wants Finance Minister Augustine Ngafuan to provide what she called genuine answers to the audit report on the ministry by the General Auditing Commission (GAC).
- Senator Taylor however differed with the recent clarification that the Minister could not be held liable for the disappearance of US\$5 million as revealed in the GAC report.
- According to the Bong lawmaker, Minister Ngafuan must take responsibility for the disappearance of the funds by providing adequate responses to the GAC report on the ministry.

### **International Clips on Liberia**

#### **WISCO Starts Work On Iron Ore Project In Liberia**

<http://www.capitalvue.com/home/CE-news/inset/@10063/post/1180760>

The parent company of Wuhan Iron and Steel, Wuhan Iron and Steel Group (WISCO) has started work on an iron ore project in Liberia jointly with China Development Bank's China-Africa Development Fund, reports news.cnxianzai.com, citing unnamed sources from Wuhan Iron and Steel Group. According to the report, the iron ore project is the largest project in the history of China-Liberia economic relations. On March 12, 2010, Wuhan Iron and Steel Group had signed a cooperative agreement and equity transfer agreement to purchase a 60 percent stake in China-Union Investment from China-Africa Development Fund. Through this stake purchase, Wuhan Iron and Steel Group will obtain a controlling stake in the Liberian iron ore project which has total reserves of 4.1 billion tons.

#### **Liberia detains 41 workers; Bangladeshi peacekeeping mission works on their repatriation; envoy goes to Benin for bailing out 31 stranded seamen**

<http://www.thedailystar.net/newDesign/news-details.php?nid=136208>

The 41 Bangladeshi workers recently detained in Liberia for their irregular status are expected to be brought back home soon by UN peacekeeping mission flights. A brigade commander of Bangladeshi peacekeepers in Liberia told Dhaka that he is hopeful to get the UN Headquarters' permission for transporting the workers in phases, said Saida Muna Tasneem, director general of the external publicity wing of the foreign ministry, yesterday. In another development, Bangladesh's Chargé d' Affaires in Morocco Lutfar Rahman is going to Benin to help repatriation of the 31 Bangladeshi seamen stranded on eight ships offshore the West African country. Lutfar Rahman, who was scheduled to start for Benin last night, will meet foreign ministry and port officials there. Benin earlier assured Bangladesh of hosting the stranded seamen until their repatriation and help get airfare for the crewmembers, said Saida Muna. The date of repatriation of the workers detained in Liberia was, however, not confirmed yet, she said. It could not also be known when the jobseekers went to Liberia.

## **George Weah not oppose to Taylor's return if acquitted**

<http://runningafrica.com/news-04272010Weah-TaylorReturn.html>

Opposition politician and Liberian soccer legend Mr. George Opong Weah says the creation of a proposed Special Tribunal in Liberia to try those responsible for the commission of war atrocities and violation of human rights and international law will "provide safety and show that those who do not respect human rights will be taken to court." In an interview with Radio Netherlands monitored on Philadelphia on Tuesday, Mr. Weah said "for such a country like Liberia, the setting up of a Special Court to adjudicate war crime allegations is good for the people; it's beneficial to us". Asked what his position would be if former rebel leader turned former President Charles Taylor were acquitted at his current war crimes trial in The Hague, the Netherlands, Mr. Weah who indicated he didn't understand the context of the question however volunteered that if Mr. Taylor were acquitted it means he is set free. In continuation of his response, Mr. Weah said, "Liberia did not send Charles Taylor to The Hague neither accused Charles Taylor of any crime. So if Sierra Leone accused Mr. Taylor of a crime and he is in The Hague and is acquitted and Liberia also has nothing against Mr. Taylor, he is a free citizen and I think he must go back to his country." He asked that Liberians then should welcome Mr. Taylor as a citizen of the country.

## **Morning Brew: Hockey jerseys popular in Liberia**

<http://www.kansan.com/news/2010/apr/27/morning-brew-hockey-jerseys-popular-liberia/?sports>

Hockey holds a different meaning in Liberia. This poor, sub-Saharan African country is without ice and in many circles, water. There are no hockey sticks, rinks, pads or Zambonis. Most civilians know nothing about the sport at all. But they've got jerseys. The exchange of used clothing from North America has created an underground market in Western Africa. Liberia still suffers from the aftermath of its second civil war, which ended in 2003 and claimed 150,000 casualties. Some gracious Americans and Canadians donate their unworn or under-appreciated threads to a cause that they see on their televisions or read about in their magazines. Then the giant blocks of clothing are shipped off on a boat and unloaded to coastline towns in Africa. Liberia happily rakes in the goods and hockey jerseys are its hottest commodity. A National Post photo gallery captures the meaning of the hockey jerseys in Ganta, a small town in Liberia. One boy stops for a picture while transporting chopped watermelon on top of his head. In the picture he wears a turquoise San Jose Sharks jersey that matches his similarly colored shorts.

## **International Clips on West Africa**

### **Guinea**

#### **Guinean woman wins stay of deportation**

<http://www.ottawacitizen.com/Quebec+Guinean+woman+wins+stay+deportation/2959071/story.html>

A woman who was slated to be sent back to her native Guinea on Tuesday has won a stay of deportation. Vic Toews, the public safety minister, made the announcement in the Commons. Earlier in the day, Sayon Camara Sow was hiding in a car at Montreal's Trudeau Airport while her lawyer waged a last-ditch battle to allow her to remain in Canada. Had the appeal been rejected, two border agents were at Trudeau waiting to escort the woman, who is 24 weeks pregnant, on a flight to Guinea, where she was sold by her family into a forced marriage and assaulted by her former husband.

### **Ivory Coast**

#### **Gbagbo invites Mills for talks on maritime boundary demarcation**

<http://www.citifmonline.com/site/news/news/view/5230/1>

Ivorian President Laurent Gbagbo has invited President John Evans Atta Mills to his country to discuss the recent rumpus over demarcation of boundaries for the two countries. The invitation was delivered by a delegation from Ivory Coast led by its Minister of Internal Affairs, Desire Tagro. It is recalled that President Mills some three weeks ago inaugurated a 16-member boundary Commission, chaired by Lands and Natural Resources Minister, Collins Dauda, to engage neighboring West African States in thorough negotiations over its maritime and land boundaries. The creation of the Commission became necessary after Ivory Coast reportedly laid claim to some portions of Ghana's oil wells in the deep waters of the Western Region. Some experts drawn from the Ghanaian side after the Commission's inauguration have already visited Ivory Coast to engage in talks. In the interim, the Ivorian President Laurent Gbagbo wants a meeting with President Mills to ensure that issues surrounding the various countries boundary demarcation are thoroughly discussed. Interacting with Press Men on their mission to President Mills, the

Ivorian Minister of Internal Affairs Desire Tagro expressed the hope that the two countries would work in the same spirit that they demonstrated in resolving the land boundaries issue. Receiving the sealed message earlier President Mills indicated that he would work expeditiously on the contents and wished the **Ivoirians** well in their upcoming elections.

## **Sierra Leone**

### **Fresh Corruption Issues Dog Former British P.M. Tony Blair in Sierra Leone**

[http://news.sl/drwebsite/publish/article\\_200515236.shtml](http://news.sl/drwebsite/publish/article_200515236.shtml)

Former British Prime Minister Tony Blair's penchant to engage in activities that result in him being accused of corruption has dogged him into the West African nation of Sierra Leone where he now finds himself embroiled in a national scandal that he collected the equivalent of ten billion worth of the country's leones currency from American Computer Billionaire Bill Gates' charitable foundation but never announced it to the locals on whose behalf Blair's Office is claiming to have collected the money to assist them. Ten billion leones is equivalent to about two and half million United States dollars. Sierra Leone's biggest and most widely read news daily, the Awareness Times, is hot on the issue of the former Prime Minister so much so that the Government, which perceives Mr. Blair as a sort of Godfather, has stepped in and subtly threatened the newspaper's owners with possible sanctions if the paper did not let up on the allegations of corruption being levied at Mr. Tony Blair. Pro-government news outlets especially an obscure one with professed links to Tony Blair, have also launched vicious personal attacks on the paper's very popular female publisher, Dr. Sylvia Olayinka Blyden. The Publisher, one of the country's leading molders of public opinion in Sierra Leone, remains unfazed and has described some of the attacks on her character as "more on the amusing side than anything else".

### **250,000 Women in Sierra Leone to be given Free Medical Treatment, Medicines**

(NNN-UNFPA) -- Beginning April 27, all medical treatment and medicines for pregnant women, lactating mothers and children under 5 will be provided free of charge in all government health facilities in Sierra Leone, currently one of the most dangerous places on earth to get pregnant. The new programme is expected to cover some 250,000 women and a million children. In addition, health workers will receive a general salary increase as part of the Free Health Care directive launched by President Ernest Bai Koroma with support from government and development partners, including UNFPA, the United Nations Population Fund. This groundbreaking initiative is just one of the kinds of improvements to the well-being of women that Bunmi Makinwa, UNFPA's Africa Region director, expects to see across the continent as the result of the Campaign on Accelerated Reduction of Maternal Mortality in Africa (CARMMA). "In two to three years, we would like to see maternal mortality reduced -- not just plateau -- in every country," he said, adding that in some areas, maternal mortality has actually been on the rise.

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# Institute for Defence Studies and Analyses

Wednesday, April 28, 2010

www.idsa.in

## **The ICC's Role In Sudan: Peace Versus Justice**

By Mayank Bubna for IDSA

The ICC's approach to the Sudan crisis has been flawed because it failed to acknowledge the political implications of its rulings. It has only targeted the ruling elites of the Sudanese government, which poses a problem because these same elite perceive such indictments not as legal edicts but as tools of coercive diplomacy in the international arena. It is very difficult to enforce law in an ongoing conflict, and trade-offs are necessary between short-term deterrence and long-term prevention strategies. In order for ICC jurisdiction to truly have a sway it needs to be credible as a deterrence mechanism, and it should keep track of the political strategies used by various actors to resist a tribunal.

On 14 July 2008, the International Criminal Court's Chief Prosecutor, Luis Moreno-Ocampo, handed over evidence towards an arrest warrant application for Sudanese President, Omar Hassan al Bashir. On 4 March 2009, the warrant was approved by the pre-Trial Chamber at the ICC. The charges included responsibility for five counts of crimes against humanity and two counts of war crimes under Article 25(3) (a) of the Rome Statute.<sup>1</sup>

This indictment is not the first time that a sitting head of state has been condemned for war crimes – Charles Taylor of Liberia and Slobodan Milosevic of Serbia were both charged on similar accounts while in office. Yet the subsequent expulsion of aid workers from Sudan's Darfur region has brought back into limelight the debate over the effectiveness of international criminal justice. On the one hand, the additional pressure on the Sudanese regime by the international community has been welcomed by many. On the other hand, there is the fear that such an indictment will mark the end of diplomatic efforts to bring peace within the country. Either way, it highlights the dual role that the ICC is compelled to adopt for itself – a legal obligation alongside a political act.

Prosecutions during an ongoing conflict such as the one in Sudan present an ethical dilemma in international law for an international court – there is the need to balance the need for justice as a deterrent towards future atrocities alongside the possibility of an exacerbation of conflict because wanted criminals ignore such rulings. This is in recognition of the fact that shaming certain individuals or passing certain kinds of verdicts has widespread repercussions in so far as they can incite wanton violence. More than simply administering punitive reparations the court needs to also account for the possibility of future atrocities due to its legal rulings.

In other words, ICC decisions have to be carefully calibrated because of the on-the-ground and political ramifications they can have. Legal deterrence, while necessary, is limited in its scope to prevent atrocities if not backed by political muscle power, intimidation and force. This brief examines the existing debates around the dual objectives of peace and justice for the ICC, and its application to the Sudan case. It shall also demonstrate how the two cannot be reconciled simultaneously without a credible enforcement mechanism from the international community.

### **ICC Verdict in the Sudan Crisis**

When the ICC issued its arrest warrant for Sudan's president, it did so in compliance with Article 5 of the Rome Statute, which allows it to address crimes related to genocide, crimes against humanity, war crimes and crimes of aggression.<sup>2</sup> In a UN-issued mandate (Resolution 1564), an International Commission for Inquiry in Darfur was created to “investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, determine whether or not acts of genocide have occurred, identify the perpetrators of violations of international humanitarian law and human rights law in Darfur, and suggest means of ensuring that those responsible for such violations are held accountable.”<sup>3</sup> The report found guilty the Government of Sudan and the Janjaweed for “serious violations of international human rights and humanitarian law.”

It also determined the government forces and certain militia groups were responsible for indiscriminate killings, albeit not amounting to genocide.<sup>4</sup> The matter was only subsequently handed over to the ICC's jurisdiction under Resolution 1593, whereby the Sudanese government was required to cooperate with the Court despite the fact that Sudan is not a party to the Rome Statute.<sup>5</sup>

The ICC, under the leadership of Prosecutor Moreno-Ocampo, conducted an investigation and issued warrants against two government officials in 2007 – Ahmed Mohamed Haroun and Mohamed Abdel Rahman Kushayb. Later in 2009, President al Bashir himself faced an arrest warrant.

### **Referral of the Darfur Case to the ICC – A Political Move**

In carrying out the tasks given to it by the UNSC, the ICC fulfilled a legal obligation. But it also carried out what can be deemed as the political will of the international community.

Security Council Resolution 1593 was adopted in 2005 with eleven favourable votes and four abstentions in the Security Council.<sup>6</sup> Most voting countries recognized the urgent need to address the “culture of impunity” prevalent in Sudan. In many ways, violations of humanitarian law had been recognized much earlier, and the international community had reached a general consensus that the war in Darfur had crossed humanitarian boundaries; a verdict from the ICC only served to legalize the international community's joint opinion on the Darfur activities.

The pursuit of justice in an ongoing conflict through the ICC is a conscious decision by the international community to direct the conflict in a certain way and achieve some set objectives. An examination of the legal and political debates reveals that they all rely chiefly on a deterrence rationale, i.e. to end a “culture of impunity”. Indeed many international lawyers and academics of law have claimed that deterrence was one of the most important reasons for the creation of international criminal tribunals and the ICC in the first place.<sup>7</sup> However, legal deterrence of the sorts administered by an international court has no place for realist politics. It only advances justice for those who have been wrongfully affected by humanitarian or war crimes. It also assumes that by punishing wrongdoers, it will prevent future abominations from occurring.<sup>8</sup>

Yet, in referring the Darfur problem to the ICC, UN Security Council (UNSC) members demonstrated that this was as much a political move as it was a way to address the issue of human rights violations. Although the ICC is technically independent of the Security Council, it shares a very complex relationship with the UNSC. In the Darfur case, the Prosecution began work only after referral from the Security Council, despite the fact that Sudan is not a party to the Rome Statute. The referral itself was made a full two years after the Darfur crisis had begun. Initially, the UNSC paid scant attention to the region – they were more concerned about the Naivasha peace process, a conflict resolution plan that would bring to an end the longer running civil war between the northern Khartoum government and the Southern command led by John Garang.

Yet the Darfur issue got increasing attention after human rights groups in the United States began to publicize the human rights violations occurring in the region. Although the US government at the time was involved in delicate counter-terrorism activities with the aid of the Sudanese government, it began to also get increasingly vocal about the Darfur atrocities. Resolution 1547, the UNSC's first resolution on the region, supported an intergovernmental African mission to Sudan along with a Chapter VI style political mandate.<sup>9</sup> In the subsequent Resolution 1556 in 2004, the UNSC took a stronger stance by acting under Chapter VII of the UN Charter thus employing peace enforcement mechanisms as well as welcoming the involvement of African Union troops to stop the humanitarian catastrophe playing out in Sudan. Yet, there was no mention of the kind of sanctions that would be in place should parties to the conflict fail to comply with the resolution.

The reason for this purposeful gap in the resolution was the varying interests of the UNSC member states. For the United States, Darfur was not at the top of the agenda. Russia and China did not want sanctions in place because they had vital economic interests in Sudan (oil wealth being the driving factor for China, and arms trade being the key for Russia). Others such as the United Kingdom did not want the Naivasha peace process to fall apart as a result of sanctions.<sup>10</sup> The task of managing Darfur was handed over to the African Union forces.

Security Council Resolution 1564 followed along the same vein, reiterating some of the same comments and commitments made in the earlier resolutions. It did call for an expansion of the role of the African Union as well as the establishment of an International Commission of Inquiry into the human rights violations. The commission's

report, released in 2005, did not substantially assert that perpetrators had acted with genocidal intent. For, genocidal intent, according to the Commission, was a “determination that only a competent court can make on a case by case basis.”<sup>11</sup>

When such a verdict was made, then the only logical choice left was for an international court like the ICC to take on the Darfur case. However, since Sudan was not a party to the Rome Statute treaty, the case could only be referred to the ICC via a UNSC resolution, which meant having to overcome the veto authority of Russia, China and the United States. Juan Mendez, the UN Special Advisor to the Secretary General on genocide, asserted that “the ICC offers the quickest, most effective way to initiate judicial proceedings against those responsible for war crimes and crimes against humanity in Darfur.”<sup>12</sup> Facing increasing political isolation as well as increasing public activism on its stance, the UNSC finally decided to send the Darfur case to the ICC on 31 March, 2005.<sup>13</sup>

### **Impact of the ICC Decision on the Darfur Crisis**

The prosecution of the sitting Head of State of Sudan, among other people, by the ICC provoked a series of reactions within the country. The most immediate impact was on the National Congress Party (NCP), the leading party to which al Bashir belongs. Members of the NCP perceived the indictment as a method for foreign governments to undertake regime change in Sudan, and viewed it as “the gravest threat to its survival it has ever faced and a matter of life and death.”<sup>14</sup> Hassan al Turabi, an opposition leader, was placed under arrest for stating that he was in agreement with the ICC decision. Even within the party, Bashir and his supporters are facing opposition from another group under the leadership of Second Vice President Ali Osman Taha, intelligence chief Salah Abdullah Gosh and energy minister Awad al-Jaz, who fear that Sudan is increasingly turning into a pariah state under al Bashir’s leadership.<sup>15</sup>

The NCP also came under fire from its traditional Arab allies such as Egypt. President Hosni Mubarak expressed his disappointment in 2008 regarding al Bashir’s failure to press forward with the Comprehensive Peace Agreement (CPA), and for encouraging Southern Sudan towards independence, thus setting hurdles in Egypt’s unhindered access to the Nile River’s waters.<sup>16</sup> Darfur’s rebel groups such as the Justice and Equality Movement (JEM) welcomed the indictment, and have used it “to gain some legitimacy at the expense of the regime”<sup>17</sup> claiming that “it [was] a great moment for the people of Darfur.”<sup>18</sup> The Sudan People’s Liberation Movement (SPLM), the largest army after the Sudanese national army, had mixed reactions towards the indictment. Some like Salva Kiir, the President of the Government of Southern Sudan, believed that al Bashir’s prosecution would be the beginning of the end of the CPA. Other elements within the SPLM were hopeful about regime change within Sudan.

The work of the UN Mission in Sudan and the AU troops on the ground was also adversely affected. Al Bashir “made it clear that he considers the UN responsible for allowing the ICC Prosecutor to proceed with his application for an arrest warrant, and he will hold the Secretary General and the Security Council responsible should the warrant be issued.

Should this happen, all relations with the UN will be up for reconsideration.”<sup>19</sup> Although the UN enjoys relative safety within the country, what was affected was their credibility as a neutral mediator in the conflict. The NCP suspected the UN of being partial (perhaps rightfully so), which in turn could adversely affect the weak comprehensive peace agreement. Within days of the indictment, al Bashir’s government also expelled major humanitarian aid groups from Sudan because the government suspected “aid organizations of collaborating with the court by providing evidence and helping prosecutors gather testimony from victims.”<sup>20</sup> Although the government promised to take over the aid delivery project, this dismissal had a catastrophic effect on the humanitarian situation on the ground.

### **Problems with the ICC Decision**

An assessment of the immediate impacts of the indictment suggests that it only served to prolong the conflict and suffering in Sudan, without necessarily affecting al Bashir’s own agenda – a point that had been duly noted by many states even within the Security Council. There are several juridico-political problems associated with the ICC decision.

Firstly, although the ICC has attempted to build a strong legal case based on procedural matters of law, it has not managed to translate its judicial proceedings into changing the way the international community thinks about and

acts upon the Darfur crimes. The ICC has been caught up in trying to formulate international norms and winning legal debates, without necessarily understanding the political repercussions. The fact that very few people have been indicted and the spotlight has been placed on al Bashir suggests that these are the sole perpetrators who masterminded the Darfur atrocities, whereas the truth is that past Sudanese governments and many more people have also been complicit in carrying out military or military-proxy campaigns against civilians.

Secondly, incoherence between the Charter of the ICC and practical requirements for legal proceedings makes for a weak legal case for the prosecution. The ICC mandate acknowledges the stress that exists between peace and justice. For instance, Article 53 allows the Prosecutor to inform the pre-trial chamber to pause an investigation “in the interests of justice.” In addition, Chief Prosecutor Moreno Ocampo has also stated in an Al-Jazeera interview that “My job is to present evidence to the judges. I have a mandate and I am driven by my mandate...but the negotiators’ job is to stop [the atrocities].”<sup>21</sup> Yet, the ICC is often perceived as the go-to organization not just to solve legal problems, but also deal with humanitarian catastrophes, state building, conflict resolution, prevention of future conflict, and a host of other activities that fall outside its purview.

Furthermore, the ICC has been unable to dispense its legal duties in the pursuit of deterrence because of inherent flaws within its mandate. For example, the Rome Statute requires the cooperation of state parties to end impunity. It also provides assistance to those countries that are either unable or unwilling to carry out prosecutions locally.<sup>22</sup> The legal absurdity here is that the ICC depends on those very states, leaders and governments for cooperation against whom it is carrying out an investigation. This sort of reliance creates a situation where evidence is defective or insufficient, thus incapacitating legal arguments.

Thirdly, the indictment does not do what it was meant to accomplish, i.e. reduce human rights violations and prevent violence against civilians. Historically too, ICC rulings have not had much deterrence value, although this has not been empirically proven. Among the various ways to reduce crime, rigorousness of punishment backed with credible force is one. In the Sudanese proceedings while the severity of the sentence can be harsh, it is hardly credible. For one, the ICC has no enforcement mechanism. It can only penalize al Bashir if he is brought to court. But if the Sudanese government refuses to turn al Bashir over (which it would do as long as he is in power), there is little the ICC can do. There has also been an absence of a credible punishment mechanism for non-compliance with the ICC ruling. There is no reassurance from the international community that it would use force in Darfur if it had to. Most members of the UN Security Council have their own varied interests in the region. Troop contributing nations from the African Union are not powerful enough to monitor the entire Darfur region or prevent all the atrocities. Peaceful settlement of the dispute through mediation or through the UN is the approach that the international community has decided to take. An ICC verdict without credible deterrence thus becomes redundant.

Finally, the ICC’s ruling has created conditions in which it is not in the interest of rebel leaders to return to the negotiating table or reduce civilian casualties. In an effort to remove al Bashir from power, they would allow the atrocities to continue, perhaps even highlighting them in order to expose the ineptitude and dirty internal politics of the present government. This has not only significantly hampered the peace process, but also converted a legal ruling of the ICC into a political tool to leverage the interests of certain actors in the Darfur arena. Solutions for the conflict therefore, lie not in law but in politics. The ICC has been forced to adapt itself to the ground realities and acknowledge its role not only as a court of international criminal law, but also as a space where the politics of peace mix with justice.

### **Peace or Justice?**

Of the three likely follow-up scenarios – first, removal of al Bashir from the office of head of state; second, renewal of civil war; third, a confrontation between the Sudanese government and the international community – the third one seems most likely under the current circumstances. In the months following the arrest warrant, as the world waited with baited breath for Sudanese politics to unravel, there has been little indication that al Bashir has faced challenges by others to his control. If anything, it has been the reverse – propped up by Sudan’s oil wealth, al Bashir has managed to almost triple the nation’s GDP since he took power.<sup>23</sup> Even though several independent sources critiqued the president’s unfair election campaigning in 2010, ground reports suggest that he did not actually need to rig the elections – people would have voted for him anyway. The fact that he is a wanted criminal by the ICC does not seem to affect most Sudanese, who have thrived in the economic boom.<sup>24</sup>

The ICC's approach to the Sudan crisis has been flawed because it failed to acknowledge the political implications of its rulings. It has only targeted the ruling elites of the Sudanese government, which poses a problem because these same elite perceive such indictments not as legal edicts but as tools of coercive diplomacy in the international arena. It is very difficult to enforce law in an ongoing conflict, and trade-offs are necessary between short term deterrence and long-term prevention strategies. In order for ICC jurisdiction to truly have a sway, it needs to be credible as a deterrence mechanism (which requires the strong backing of the international community either in the form of military intervention or sanctions), and it should keep track of the political strategies used by various actors to resist a tribunal.

The ICC has evolved into a space where international legal instruments have to work alongside political ones. The Darfur case, for all the reasons mentioned above, cannot be treated as simply a law and order problem. If peace is to be reconciled with justice, then political solutions need to be sought too. Complex cases such as Darfur point to inherent inconsistencies and paradoxes even within the Rome Statute. While the statute claims that the ICC's goal is to end impunity, it also states that nations shall "refrain from the threat or use of force against the territorial integrity or political independence of any State" or "intervene in an armed conflict or in the internal affairs of any State."<sup>25</sup> Yet, without a credible force backing it, the ICC is reduced to playing only second fiddle to the UNSC. The ICC, like other international tribunals, does not operate in a legal bubble, rather in a more complex context where law without politics is essentially rendered meaningless.

Mr. Mayank Bubna is Visiting Fellow at the Institute for Defence Studies and Analyses, New Delhi. Originally published by Institute for Defence Studies and Analyses ([www.idsa.in](http://www.idsa.in)) at [http://www.idsa.in/system/files/IB\\_ICCsRoleinSudan.pdf](http://www.idsa.in/system/files/IB_ICCsRoleinSudan.pdf)

## Voice of America

Wednesday, 28 April 2010

### **Bemba Lawyers Challenge War Crimes Charges at ICC**

Lawyers for former Congolese rebel leader Jean-Pierre Bemba are challenging the case against him at the International Criminal Court.

ICC prosecutors are charging Bemba with two counts of crimes against humanity and three counts of war crimes for leading troops into the Central African Republic to put down a coup attempt against then-president Ange-Felix Patasse.

At the time, Bemba was leading a rebellion in northern provinces of the Democratic Republic of Congo against the government in Kinshasa. His Movement for the Liberation of Congo was supported by both Uganda and the Central African Republic.

Bemba eventually won a vice presidency as part of a 2003 peace deal. Elections that followed put him in a head-to-head run-off against President Joseph Kabila. Bemba lost that vote and was charged with treason after his militia fought government troops in the capital.

He was arrested in Belgium in 2008 and is now being held at the International Criminal Court's detention center in The Hague.

Defense lawyer Nkwebe Liriss says the case against him is legally inadmissible.

Liriss says he is not asking judges to be certain that this case is inadmissible. He is asking them to verify, based on the level of probability, whether this case is admissible to the court. And he says it is not.

Liriss argues that Bemba has been denied due process, in part, because he is facing trial in the Netherlands rather than in Africa.

Liriss says there is no longer even the faintest proof against Bemba. But he says there is one irrefutable proof, what he calls the interference of politics in this case by sending his client to the International Criminal Court.

The Central African Republic's lawyer in this case, Emile Bizon, says Bemba's legal team is using delaying tactics to obstruct justice.

Bizon says defense lawyers talking about obstructions to this procedure are themselves using delaying tactics to obstruct the law. He says it is a highly lamentable and abusive frivolity.

Bemba's trial was initially scheduled to begin this week but was delayed by judges so they could hear the defense challenge of admissibility. Pending a ruling on that challenge, his trial is now set to begin July 5.