

**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

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Chief Justice takes lessons in Rwanda



Sierra Leone's Chief Justice is in the Rwandan capital of Kigali on a four-day working visit to see how commercial courts function in that country.

Her Ladyship Justice Umu Hawa Tejan-Jalloh hopes to draw lessons from Rwanda's already established commercial courts to take back to Sierra Leone whose counterpart courts were only being established. She was received by her Rwandan counterpart, Chief Justice Aloysie Cyanzayire.

Speaking to the press upon arrival at the Kanombe International Airport in Kigali, Justice Tejan-Jalloh acknowledged that the Rwandan commercial courts had made a mark, which was the motivation of her visit.

"We heard so much about the strides Rwanda made and we thought we should come and see how far you have gone, so that when

we go back and utilise what you have done to bring this country to this position," she said.

Madam Tejan-Jalloh noted that the reason Rwanda was chosen was because the two countries have certain things in common.

"It is a way of healing our own wounds to see somebody else who has gone through the same history being able to pick up the pieces and move ahead, and we would like to follow the footsteps so that our country too will be like Rwanda," she said.

"Our commercial courts are new. They were dedicated in December last year. We would like to see someone whose courts have done something. As you know, every country that has just gotten out of conflict tries as much to woo investors to come back, now Sierra Leone is open for investors."

Responding, Rwanda's Chief Justice Aloysie Cyanzayire said her

country's commercial courts will offer the Sierra Leonean delegation best practices, as well as tips to overcome the challenges that may arise.

"When people face a turbulent past, they have to use extra energy to get to where others are. This is what our two countries are doing by learning from one another," Cyanzayire said.

According to the president of Rwanda's Commercial High Court, Benoit Gakwaya Gatete, the commercial courts were set up in 2008 and inherited a backlog of more than 33,000 cases. More than 85 percent of the cases have so far been cleared, he said.

He emphasized that well-functioning commercial courts encourage investments as no investor would want to invest in a country where they cannot get justice in case of any problem.

Justice Tejan-Jalloh is the third woman Chief Justice in Africa after Rwanda and Ghana.

During the visit, she and her delegation will visit the Supreme Court and the Commercial Court in Kigali and Musanze district.

On Tuesday evening, the delegation visited the Kigali Genocide Memorial Centre.

The Los Angeles Times

Monday, 22 August 2011

Rwanda genocide trials leave a mixed legacy

By Christopher Goffard, Los Angeles Times

The country's community-based *gacaca* court system was seen as the most practical way to heal the rift between Hutus and Tutsis. But it hasn't quite worked out that way.

Issa Munyangaju is willing to tell his story, but he requires a beer. He sips a Primus in a dim concrete bar and talks about the houseboy he shot during the genocide.

They were friends, he says, until they came to a roadblock manned by Hutu militiamen. They gave Munyangaju, also Hutu, a gun. They told him he would be killed if he didn't execute his friend, whose ethnic group, the Tutsis, had been targeted for extermination.

"I followed their orders," Munyangaju, 44, says. He put a bullet in the young man's stomach, and was within earshot when another shot finished him off.

While he was in prison, government officials visited to tout the benefits of confessing at a type of trial known as *gacaca* (pronounced ga-CHA-cha), a radical experiment in community justice. *Gacaca* translates from the Kinyarwanda tongue as "justice on the grass," and many such trials played out on fields, atop hills and under trees. There were no lawyers, and instead of professional judges, panels of elders determined guilt or innocence.

Munyangaju says his confession at his *gacaca* reduced his prison time from 30 years to 10 and helped ease the burden of his guilt. "Now I can go to heaven," he says.

The ethnic massacres claimed more than 800,000 Tutsis and their perceived allies in 1994. When the trials began eight years later, Rwanda's government argued that the *gacaca* process would not only relieve prisons bursting with genocide suspects, but would accelerate cases that might take decades to unfold in conventional courts hobbled by the slaughter of much of the trained judiciary.

Survivors would learn who killed their loved ones and where to find the bodies. Killers who confessed would receive reduced sentences and the chance to reenter society. Ultimately, it was hoped, there would be reconciliation.

But as the courts hear the last of more than 1 million cases, the trials' legacy is sharply contested. In a recent report titled "Justice Compromised," advocacy group Human Rights Watch contends that the process has been used to settle personal beefs, as well as to silence journalists, activists and outspoken officials.

The report says the courts have ignored widespread killings attributed to the Rwandan Patriotic Front, the party that halted the genocide and now runs the country.

The report also cites the lack of "fair trial rights" for the accused, such as access to lawyers, and decries poorly trained volunteer judges, unencumbered by evidentiary rules, who sometimes rely heavily on hearsay.

Munyangaju says that upon his release from prison, he found that his wife had been impregnated by another man, and in revenge he implicated the man in genocide-related attacks. Later, he says, he admitted that he had lied.

Now he sits on a plastic chair by the road and repairs shoes, earning barely enough to support his wife and two children. His house is crumbling. He tried to breed goats, but someone killed them, and now he is suspicious of his neighbors. Maybe someone from a survivor's family did it; he can't be sure.

"I don't know who killed my goats," he says. "That person can come kill me. I think everyone might be the one who killed my goats."

The genocide began in April 1994, when Hutu extremists seized on the killing of Rwanda's president to unleash soldiers, militias and the Hutu people against the minority Tutsis.

Radios blared orders to exterminate Tutsis like cockroaches; an estimated three-fourths of the Tutsi population was massacred. Yet it has been Hutus, the country's majority ethnic group, who often sit in judgment of other Hutus in *gacaca* court.

"In the beginning, it was very difficult to understand how Hutu can judge other Hutu," said Naphtal Ahishakiye, 37, who works for a survivors group. He lost both parents and four brothers, and escaped the militias by hiding in a river under the roots of a tree, his body submerged for weeks, until his skin turned white and sloughed off his arms. As he recovered, he hungered for revenge.

"Just after the genocide, as survivors, we thought killers should be killed also," he said. "It was hard to think about any other kind of punishment."

He said he came to appreciate the *gacaca* process, where he confronted some of his family's killers, who happened to be neighbors and, before the genocide, friends. Some remain in prison; some are fulfilling their sentences in public service projects.

"There is no village for survivors [and another] village for Hutus," he said. "We live together and there is nothing to do. You cannot take revenge."

Because of the relatively light sentences many receive at *gacaca* trials, even some of the system's supporters don't hesitate to call it "half-amnesty."

Among them is Reverien Interayamahanga, 39, a researcher at the Institute

Sri Lanka may invoke Universal Jurisdiction to contain LTTE rump

Jinadasa Bamunuarachchi, BA MA - Attorney-at-Law

Following the conclusion of separatist war in 2009, Sri Lanka is currently facing a number of crucial challenges at home and out of its national boundaries. Although the LTTE is militarily defeated in Sri Lanka and its striking capability is destroyed its prevalence in the international arena and its operational capacity in diverse forms remains to date intact.

It is known that SL Government has obtained the services of a PR firm in London for image building; nothing constructive has been done to contain the LTTE propaganda bombardment and its criminal activities across the globe. This seems to be the most difficult task of the government as it lacks resources and competent people at its disposal.

LTTE activists who have fled the country after committing heinous crimes at home claimed asylum in countries that offer safety and international protection to persons escaping persecution, and thus these countries have become safe havens for wanted criminals. Upon receiving asylum they continue to work for and further their political ends with the help of state benefits that are being offered to refugees. Following the riots in 1983 mass migration to Europe occurred under the patronage of LTTE international wing. This was well organised campaign and they had established a unit that provided advice and guidance to people who aspire to migrate for various reasons. Sinhala and Muslim underworld criminals too arrived in Europe using this route paying massive sums to the outfit.

LTTE rump in Europe is engaged in systematic and persistent campaign to brand Sri Lanka as a lawless country that is unsafe to live in. This is being done to facilitate their human trafficking programme for economic reasons. A number of their vessels are in the international waters carrying people to Europe, Canada and Australia. International drug dealers of LTTE supplying narcotics to Asian region are the biggest fund raisers of the rump. LTTE rump has become the successors to the LTTE business empire. The massive income generated through the supermarket chain of the LTTE in the United Kingdom provides the biggest cash flow to its criminal activities. Sri Lanka has so far failed to adequately arrest the international criminal activities of the rump. It is therefore worthwhile to study the availability of international legal apparatus to contain the illegal operations and criminal activities of the LTTE carrying on outside Sri Lanka.

Universal jurisdiction is one apparatus that is available to states to deal with such situations. This apparatus is of course available for use only under scope of international legal mechanism.

Universal Jurisdiction is a principle in public international law as opposed to private international law whereby states claim criminal jurisdiction over persons whose alleged criminal activities were committed outside the boundaries of the prosecuting state, regardless of nationality, country of residence, or any other relation with the prosecuting country. The state backs its claim on the grounds that the crime committed is considered a crime against all, which any state is authorized to punish, as it is too serious to tolerate jurisdictional arbitrage.

The concept of universal jurisdiction is therefore closely linked to the idea that certain international norms are *erga omnes*, or owed to the entire world community, as well as the concept of *jus cogens* – that certain international law obligations are binding on all states and cannot be modified by treaty.

According to critics, the principle justifies a unilateral act of wanton disregard of the sovereignty of a nation or the freedom of an individual concomitant to the pursuit of a vendetta or other ulterior motives, with the obvious assumption that the person or state thus disenfranchised is not in a position to bring retaliation to the state applying this principle.

The concept received a great deal of prominence with Belgium's 1993 law of universal jurisdiction, which was amended in 2003 in order to reduce its scope following a case before the International Court of Justice regarding an arrest warrant issued under the law, entitled *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*. The creation of the International Criminal Court (ICC) in 2002 reduced the perceived need to create universal jurisdiction laws, although the ICC is not entitled to judge crimes committed before 2002.

According to some critics a proponent of universal jurisdiction, certain crimes pose so serious a threat to the international community as a whole, that states have a logical and moral duty to prosecute an individual or organization responsible for it; no place should be a safe haven for those who have committed serious offences such as Human trafficking and drug dealing

On 14 February 2002 the International Court of Justice in the *ICJ Arrest Warrant Case* concluded that State officials did have immunity under international law while serving in office. The court also concluded that immunity was not granted to State officials for their own benefit, but instead to ensure the effective performance of their functions on behalf of their respective States. The court stated that when abroad, State officials enjoy full immunity from arrest in another State on criminal charges, including charges of war crimes or crimes against humanity. The ICJ did qualify its conclusions, stating that State officers "may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction. Examples include the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda . . . , and the future International Criminal Court."

In 2003 Charles Taylor, the former president of Liberia, was served with an arrest warrant by the Special Court for Sierra Leone (SCSL) that was set up under the auspices of a treaty that binds only the United Nations and the Government of Sierra Leone. This is different from the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda (that were specifically mentioned in the *ICJ Arrest Warrant Case*), that were set up under the UN Security Council, acting under Chapter VII of the United Nations Charter that grant powers to the Security Council that are binding on all UN member states. In this respect the SCSL is more like the International Criminal Court that although it denies immunity to Heads of State, States that are parties to the Rome Statute would be in violation of the ICJ ruling if they handed over a visiting head of state of a non-party State to the ICC.

LTTE activists are mostly operating in the UK, France Switzerland Germany, Denmark, Norway, Netherland, Belgium, Italy, Spain Australia Canada and to some extent in certain East European countries. Many of these countries have their own arrangement and legal provision to enforce Universal Jurisdiction. These countries have at one point or other sought to encompass the provision of their national laws in relation to Universal jurisdiction.

United Kingdom

The United Kingdom has asserted universal jurisdiction over war crimes under the Geneva Conventions Act, and over a few other offences of exceptional gravity, because of its international obligations and its commitment to ensuring that there is no impunity for those accused of such crimes. That commitment is unwavering.

It is important, however, that universal jurisdiction cases should be proceeded within the UK only on the basis of solid evidence that is likely to lead to a successful prosecution—otherwise there is a risk of damaging its ability to help in conflict resolution or to pursue a coherent foreign policy.

An offence is generally only triable in the jurisdiction where the offence took place, unless a specific statute enables the UK to exercise extra-territorial jurisdiction. Following instances can be tried under universal jurisdiction.

- Sexual offences against children (s. 72 of the Sexual Offences Act 2003)
- Murder and manslaughter (ss. 9 and 10 of the Offences Against the Person Act 1861)
- Fraud and dishonesty (Criminal Justice Act 1993 Part 1)
- Terrorism (ss. 59, 62-63 of the Terrorism Act 2000)
- Bribery (s. 109 of the Anti-terrorism, Crime and Security Act 2001)

In December 2009 a court in London issued an arrest warrant for Tzipi Livni in connection with accusations of war crimes in the Gaza Strip during Operation Cast Lead (2008–2009). The warrant was issued on 12 December and revoked on 14 December 2009 after it was revealed that Livni had not entered British territory. The warrant was later denounced as "cynical" by the Israeli foreign ministry, while Livni's office said she was "proud of all her decisions in Operation Cast Lead". Livni herself called the arrest warrant "an abuse of the British legal system." Similarly a January visit to Britain by a team of Israel Defense Force (IDF) was cancelled over concerns that arrest warrants would be sought by pro-Palestinian advocates in connection with allegations of war crimes under laws of universal jurisdiction

France

The article 689 of the *code de procédure pénale* states the infractions that can be judged in France, when they were committed outside French territory either by French citizens or foreigners.

The following infractions may be prosecuted:

Torture, Terrorism, Nuclear smuggling, Naval piracy, Air plane hijacking

Belgium

In 1993, Belgium's Parliament voted a "law of universal jurisdiction" (sometimes referred to as "Belgium's genocide law"), allowing it to judge people accused of war crimes, crimes against humanity or genocide. In 2001, four Rwandan citizens were convicted and given sentences from 12 to 20 years' imprisonment for their involvement in 1994 Rwandan genocide.

There was an explosion of suits:

- Prime Minister Ariel Sharon was accused of involvement in the 1982 Sabra-Shatila massacre in Lebanon, conducted by a Christian militia
- Israelis deposed a suit against Yasser Arafat for his responsibility for terrorist actions
- In 2003, Iraqi victims of a 1991 Bagdad bombing deposed a suit against George W Bush Colin Powell and Dick Cheney.

Confronted with this sharp increase in deposed suits, Belgium established the condition that the accused person must be Belgian or present in Belgium. An arrest warrant was issued in 2000 under this law against the then Minister of Foreign Affairs of the Democratic People's Republic of the Congo was challenged before the International Court of Justice in the case entitled *ICJ Arrest Warrant Case*. The ICJ's decision issued on 14 February 2002 found that it did not have jurisdiction to consider the question of universal jurisdiction, instead deciding the question on the basis of immunity of high ranking State officials. However, the matter was addressed in separate and dissenting opinions, such as the separate opinion of President Guillaume who concluded that universal jurisdiction exists only in relation to piracy; and the dissenting opinion of Judge Oda who recognised piracy, hijacking, terrorism and genocide as crimes subject to universal jurisdiction.

On 1 August 2003, Belgium repealed the law on universal jurisdiction, and introduced a new law on extraterritorial jurisdiction similar to or more restrictive than that of most other European countries. However, some cases that had already started continued. These included those concerning the Rwandan genocide, and complaints filed against the Chadian ex-President Hissène Habré (dubbed the "African Pinochet"). In September 2005, Habré was indicted for crimes against humanity, torture, war crimes and other human rights violations by a Belgian court. Arrested in Senegal following requests from Senegalese courts, he is now under house arrest and waiting for (an improbable) extradition to Belgium.

Canada

To implement the Rome Statute, Canada passed the Crimes Against Humanity and War Crimes Act. Michael Byers, a University of British Columbia law professor, has argued that these laws go further than the Rome Statute, providing Canadian courts with jurisdiction over acts pre-dating the ICC and occurring in territories outside of ICC member-states; "as a result, anyone who is present in Canada and alleged to have committed genocide, torture anywhere, at any time, can be prosecuted [in Canada].

It very important for the Sri Lankan authorities to pursue Canadian situation to deal with LTTE rump in that country as no such attempt have hiterto have made.

Spain

Spanish law recognizes the principle of the universal jurisdiction. Article 23.4 of the Judicial Power Organization Act (LOPJ), enacted on 1 July 1985, establishes that Spanish courts have jurisdiction over crimes committed by Spaniards or foreign citizens outside Spain when such crimes can be described according to Spanish criminal law as genocide, terrorism, or some other, as well as any other crime that, according to international treaties or conventions, must be prosecuted in Spain. On 25 July 2009 the Spanish Congress passed a law that limits the competence of the Audiencia Nacional under Article 23.4 to cases in which Spaniards are victims, there is a relevant link to Spain, or the alleged perpetrators are in Spain. The law still has to pass the Senate, the high chamber, but passage is expected because it is supported by both major parties.

In 1999, Nobel peace prize winner Rigoberta Menchú brought a case against the Guatemalan military leadership in a Spanish Court. Six officials, among them Efraín Ríos Montt and Óscar Humberto Mejía, were formally charged on 7 July 2006 to appear in the Spanish National Court after Spain's Constitutional Court ruled in September 2005, the Spanish Constitutional Court declaration that the "principle of universal jurisdiction prevails over the existence of national interests", following the Menchu suit brought against the officials for atrocities committed in the Guatemalan Civil War.

In June 2003, Spanish judge Baltasar Garzón jailed Ricardo Miguel Cavallo a former Argentine naval officer, who was extradited from England to Spain pending his trial on charges of genocide and terrorism relating to the years of Argentina's military dictatorship.

On 11 January 2006 the Spanish High Court accepted to investigate a case in which seven former Chinese officials, including the former President of China Jiang Zemin and former Prime Minister Li Peng were alleged to have participated in a genocide in Tibet. This investigation follows a Spanish Constitutional Court (26 September 2005) ruling that Spanish courts could try genocide cases even if they did not involve Spanish nationals. China denounced the investigation as an interference in its internal affairs and dismissed the allegations as "sheer fabrication". The case was shelved in 2010, because of a law passed in 2009 that restricted High Court investigations to those "involving Spanish victims, suspects who are in Spain, or some other obvious link with Spain.

Australia

The High Court of Australia confirmed the authority of the Australian Parliament, under the Australian Constitution, to exercise universal jurisdiction over War Crimes in the *Polyukhovich v Commonwealth* case of 1991. It is illegal for any Australian citizen or resident to engage in sexual relations with anyone under 16 years of age, anywhere in the world, and such an act is treated as an instance of child sex tourism, a severe crime punishable by a term of imprisonment of up to 17 years and this applies even in jurisdictions where such acts are legal because the age of consent is lower than 16.

Northfield Patch

Monday, 22 August 2011

Northfield Legal Center to Assist War-Crimes Victims

The International Criminal Court gives victims a role in trials.

By Mary Schier



Northfield attorney John Fossum's interest in international law has taken him around the globe.

He has worked for the U.S. State Department helping Afghan police and judges understand how trials work. He's taught Moroccan lawyers how to manage multi-lawyer firms, something that has been allowed in the country only since 2008. His biggest endeavor involves assisting victims of genocide and other international war crimes whose cases are before the International Criminal Court (ICC) at The Hague, Netherlands.

Fossum founded the Reparations Center for Victims of War Crimes in 2010 and currently represents one person seeking recognition as a victim.

"All of the current cases are tied up in the Congo wars," Fossum said of the court, which is supported by 116 countries, though not the United States. "These are civil wars that have spread out and have been going on for about 20 years."

The six investigations opened by the court so far involve "charges against humanity," such as conscripting child soldiers, sex slavery and mass murder. The active cases are against 24 individuals from Darfur, Sudan, the Democratic Republic of Congo, Central African Republic, Uganda and Kenya. Preliminary investigations also are under way in nine additional countries, including Korea, Colombia, Afghanistan and Honduras. The largest case involves more than 1,600 victims, each of whom must be recognized by the court.

"At this point, the reparations center is more of an idea than anything else," says Fossum. "It's a way of differentiating that part of what I do from what I do most of the time."

Barbara Frey, director of the human rights program at the University of Minnesota's College of Liberal Arts and a human rights lawyer for more than 25 years, says Fossum is the only Minnesota lawyer she knows who has been approved to practice before the ICC, which is "a long bureaucratic process."

He has twice taught Minnesota lawyers about the ICC through the Minnesota State Bar Association's Criminal Law Section.

"By going through the process as a lawyer, he is helping to educate attorneys about how this court works in practice, as opposed to in theory, which is how we often teach about it," said Frey, who noted that because the U.S. is not a party to the treaty creating the court there is a "reduced opportunity" for U.S. lawyers to participate.

A different kind of law

Founded in 2002, the ICC is the culmination of an idea that has been around since World War I. It re-emerged after the Nuremburg and Tokyo Tribunals after World War II, and again after special tribunals were needed to address crimes committed in Rwanda and the former Yugoslavia in the 1990s. The United Nations General Assembly created the court, but it operates independently of the U.N.

For an American lawyer, the ICC requires a significant change in perspective and a lot of patience, Fossum said. The court is modeled on the French system, which allows victims to be part of the prosecution of crimes.

"The victims have a limited opportunity to participate," he said. "The prosecutors prove up the case, but the victims can jump in and say, 'here's what you're missing.'"

For example, in the court's first case, which is against Thomas Lubanga, who is accused of conscripting children for service in his militia in the Democratic Republic of the Congo, victims objected that the court should have included charges of sex slavery in the indictment against Lubanga. Judges eventually ruled it was too late to include those charges.

"The presence of a third party, like the victims, can slow things down," Fossum said, "but it increases the thoroughness of the process."

Unlike American courts, the ICC also does not allow for punitive damages—payments above expenses incurred for financial losses and physical and psychological distress.

"In reality, there is no reparation for what happened to many of these victims, but they get something," he said.

A world of courts

Legal systems vary widely across the globe, Fossum said. In Morocco, for example, practicing law has been legal only since the 1950s.

When Fossum spent nine months in Afghanistan in 2007 working with the U.S. State Department, translating legal concepts was a struggle. Working from Jalalabad and Kunduz, Fossum found that many judges in Afghanistan have never seen live testimony in their courts. Prosecutors prepare a dossier of charges, present it to the judge, and he then asks a few questions and decides the sentence.

In addition to encouraging the use of Afghanistan's criminal and civil legal code rather than tribal law, Fossum had to deal with literal translation difficulties.

"The legal code in Afghanistan is like the French legal code as interpreted by Egyptians with elements of Sharia law," he said. "Often you are dealing with laws that have been translated from French to Arabic to Dari to English—the translation is not always high quality."

In addition to doing "a little bit of everything" as a lawyer, Fossum has been a public defender and currently is a court-appointed defender in federal criminal cases. He also serves on the Northfield School Board.

What's ahead

The future of the ICC is "an open question," Fossum said. The court has been criticized for taking too long and costing too much.

"The court could fail miserably, if government support stops," Fossum said, "Still it has the possibility of success, if it has been a fair process.

"Part of what the court does is provide a full explanation of what really happened—building a record of what really did happen."