

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



A Panoramic view of downtown Freetown

**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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Press clips are produced Monday through Friday.  
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## We News

Wednesday, 21 November 2012

### World Court Struggles to Finish Mass Rape Cases

UNITED NATIONS (WOMENSENEWS) -- The international war tribunal set up to prosecute those responsible for the atrocities committed during Sierra Leone's 10-year civil war is known for its first-time indictments of rape as a war crime.



*U.N. Women's Michelle Bachelet (right) during a press conference on the work of the Special Court for Sierra Leone. Oct. 9, 2012.*

Credit: U.N. Photo/Mark Garten

It's the first international court run by women, both local and international.

It could also be the first international tribunal forced to

shutter its doors before its mandate expires in September 2013.

The Special Court for Sierra Leone only has enough money to last through the end of October 2012 and then will rely on outstanding funding pledges to carry on its work until the first week of December, the court's registrar, Binta Mansaray, said in a recent phone interview from Freetown, Sierra Leone.

Inadequate funding could weaken the court's capacity to protect witnesses and monitor enforcement of sentences when it moves into a wind-down or "residual" phase next October.

"In the past couple of months there has been an increase in the number of witnesses approaching us and expressing fear about their safety and security," Mansaray said. "Mostly it is women who get more worried about their safety, but men have contacted us as well."

It costs about \$1.3 million a month to run the court, which has indicted 13 war criminals and sentenced eight. Three of those who were indicted died and one remains a fugitive.

The court has never had a fixed annual budget and relies on contributions from countries such as the United States, Switzerland and Ireland.

### Charles Taylor Case Impacted

Lack of money--a recurrent problem for this court--could affect appeals cases being prepared by both the prosecution and defense in the case of former Liberian president and warlord Charles Taylor.

In May Taylor was sentenced to 50 years in prison for war crimes and is being tried in The Hague, instead of Freetown, Sierra Leone's capital, because of security concerns.

The court is expected to hear the appeals next summer in its last piece of official business. If Taylor's sentence isn't overturned, it would count as the court's ninth and final sentencing of war criminals.

"It [the appeals] will be affected, definitely, if the money doesn't come through," Mansaray said.

A lack of sufficient funding could critically impact the prosecutor's and lead defense counsel's ability to prepare their teams working on the Taylor appeals case, said Mariana Goetz, deputy director of programs at the London-based human rights and torture survivors advocacy organization REDRESS. But, she added, the appeals briefs have already been filed by both parties and responses and replies are due by the end of this month. The appeals judgment will then follow next fall.

The Taylor case is unprecedented, said Goetz, who has been following the trial.

"It is the first time a head of state is convicted for 11 counts of international crimes, including rape, sexual slavery and other forms of sexual violence," Goetz said in an e-mail interview. "This case, as well as others . . . are slowly ensuring that violence against women in the conflict contexts are not laughed off in patriarchal societies as private acts."

If the court manages to finish out its business, it will enter a wind-down administrative phase as the Residual Court for Sierra Leone, which doesn't have a set mandate with time limits. In this scaled-back condition the court would have an annual budget of no more than \$2 million and would provide protection for victims through a witness protection program. It would also collect data and track enforcement of sentences for those convicted and jailed.

### **Possible Collaborations**

The court is now talking with U.N. Women about possibilities for collaboration, most likely to support documentation and ongoing outreach to Sierra Leonean communities, said Nahla Valji, a New York-based expert on rule of law and transitional justice for U.N. Women.

"The support would be to the court itself, to allow them to document their lessons learned and archive their work," Valji said.

U.N. Women is currently collaborating with the international tribunals for the former Yugoslavia and Rwanda, which have also struggled with funding, to support similar initiatives. It has worked with the International Criminal Tribunal for Rwanda to finalize their manual on gender-based crimes and witness protection.

Mansaray and the court's president, Justice Shireen Avis Fisher, voiced their concerns for the court's future at United Nations headquarters Oct. 9, in a briefing to the Security Council and a press conference with U.N. Women.

"My fear is that when we go into residual status we will be forgotten," Fisher told the media. "And if we don't get that funding we can't fulfill the promises that we make to the people of Sierra Leone."

Fisher's appeal at the U.N. marked a full circle for the Special Court, which the United Nations set up with the Sierra Leone government in 2002 following its president's request for international assistance.

At the time, a fragile ceasefire and peace agreement in the small West African country was giving way to renewed fighting between government forces and a rebel group, the Revolutionary United Front, which had torn the country from 1991 to 1999.

### **The Most Reported Abuse**

Sexual and gender-based violence was the most reported form of human rights abuse in Sierra Leone's conflict. Physicians for Human Rights, a Cambridge, Mass.-based organization, found that more than half the women who encountered rebels suffered some form of sexual violence.

A significant portion of the court's indictments against rebel-force leaders and supporters, such as Liberia's Taylor, centered on gender-based crimes, said Alpha Sesay, a legal officer for Open Society Foundations, based in The Hague.

The Special Court for Sierra Leone prosecuted forced marriage for the first time as a crime against humanity. It also prosecuted rape in a public setting, another first, as a war crime.

Sesay, who is from Sierra Leone and monitors the Special Court, says he thinks the necessary money will ultimately come through. "It just means there will be some effort," he said.

The Special Court has helped ground an understanding in Sierra Leone about the strength of law, said Ibrahim Tommy, executive director of the Freetown-based Centre for Accountability and the Rule of Law. But the legal and human rights activist doubts the court has been able to spawn a strong foundation for prosecutions of gender-based violence or crimes on a national level.

There is one registered lawyer in the country's northern province, two in the southern province and two more in the western province, he said.

"A lot has happened in this country since the war ended, but there remain serious challenges in terms of prosecuting sex and gender-based violence crimes," he said in a phone interview. "Unfortunately, we don't have the sophistication that is required."

Amy Lieberman has served as a correspondent out of the United Nations headquarters for the past several years. Originally from New York City, she most recently was living in and reporting from Colombia.

## Capital FM

Wednesday, 21 November 2012

### **Kenya: Irish Lawyer Gaynor to Act for Victims in International Criminal Court Case**

Nairobi — Irish Lawyer Fergal Gaynor is the new legal representative for victims participating in the International Criminal Court (ICC) case involving Francis Muthaura and Uhuru Kenyatta.

The former trial attorney at the International Criminal Tribunal for Rwanda will now take up the responsibility of representing the 233 victims participating in Kenya Case 2.

"On the basis of the criteria identified by the chamber in its decision and upon evaluation of the personal information and professional skills of Gaynor, the chamber hereby decides to appoint Fergal Gaynor as common legal representative of all victims in the Muthaura and Kenyatta case," the chamber decided.

Gaynor replaces Nigerian Lawyer Morris Anyah who informed the court that he was not in a position to continue representing the 233 victims that he represented during the pre-trial stage.

"Anyah was given the opportunity to make his views known to the registry on whether or not he would like to be considered as a candidate to continue to act as common legal representative during the trial phase. In response, on 11 October 2012 Anyah indicated to the registry that he was no longer able to continue as the common legal representative in the Muthaura and Kenyatta case," the ICC website indicated.

In an earlier interview with Capital FM News, Anyah who was appointed to represent the Kenyan victims on August 26, 2011, said he was saddened that he had lost several clients of the 2008 post election violence who died under serious suffering.

In its decision, the chamber deemed that Gaynor met the required criteria saying he has rich experience based on his past commitments in criminal litigation and interest in observing interests of victims are prioritised.

"Gaynor fulfils all of the criteria set out in the decision and is willing to maintain an ongoing presence in Kenya. Gaynor has direct relevant experience for the position, demonstrated by extensive previous experience and appears to possess both a genuine interest in ensuring meaningful victims' participation," the chamber indicated.

Sureta Chana has been representing victims in Kenya Case One which is against Eldoret North MP William Ruto and former Radio personality Joshua arap Sang.

On November 15, the Trial Chamber allowed Kenyan NGO - Kituo Cha Sheria to submit observations on victim representation and participation.

This in essence means that Kituo Cha Sheria would be allowed to assist victims to participate in the trials. It will also give views of case and situation victims. Once other parties give their submission regarding the acceptance by the trial chamber, Kituo will also be the common legal representative that will be located in Kenya to work with victims.

Another development at The Hague-based court is the appointment of James Stewart who will deputise ICC Prosecutor Fatou Bensouda.

Agence France Presse

Thursday, 22 November 2012

### UN 'disappoints' Yugoslav prosecutor



THE HAGUE - The Yugoslav war crimes court's chief prosecutor said Wednesday he was disappointed with the UN tribunal's decision to clear on appeal two Croatian generals of war crimes - and insisted there had been enough evidence to uphold their convictions. "Throughout the appeal proceedings, my office explained to the appeals chamber why we believe the evidence was sufficient to support the trial chamber's convictions," Serge Brammertz said in a statement, issued in

The Hague. Accused of war crimes for their part in the 1990s conflict in the Balkans, Ante Gotovina and Mladen Markac, both 57, were dramatically released Friday by the UN tribunal's appeals judges.

"My office is disappointed by the outcome of the judgement, which reverses the convictions," said Brammertz of the decision before the International Criminal Tribunal for the former Yugoslavia (ICTY).

The two generals were initially convicted and sentenced to 24 and 18 years in jail respectively for the murder of 324 Croatian Serbs and the forced displacement of 90,000 others during the 1991-1995 war in Croatia.

## Tamil Net

Sunday, 18 November 2012

### Politics of Genocide

While the Mu'l'livaaykkaal killings and the on-going cultural destruction in the NorthEast can be argued to constitute "Genocide" within the definition of the Genocide Convention of 1948, a virtual codification of the "Never Again" ethos, Western Nations including the United Nations have shown not only any inclination to accept that the crime occurred, but also are likely complicit in allowing the allegedly criminal state to continue to commit genocidal crimes, and to avoid accountability for crimes committed during the war. The criminality that may befall the West arising from Article 3(e), and the violation of Article I of the Genocide Convention for failing to prevent genocide, are likely reasons for the officials of the UN and UN member states to avoid calling the killings a "Genocide."

The Contracting Parties to the 1948 convention confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish. The following clauses that attach criminality to those complicit in genocide, explain the silence of the West, according to Tamils Against Genocide [TAG], a US-based activist organization:

*Article I: The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.*

*Article III(e): The following shall be punishable - Complicity in genocide.*

*Article IV: Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.*

Even while Genocide convention assigns criminality for complicity in genocide, International community was unable or unwilling to prevent genocide through ex ante (before the occurrence) measures in Sri Lanka. While naked political calculations, blindness from the doctrine on U.S.'s war on terror and to allow Sri Lanka to defeat the LTTE by any means, deference to sovereignty, and isolationism may explain the failure, the complicit West was unscathed, has largely avoided accepting responsibility for failing to prevent the massacres, and was not hit by the Article 3(e) culpability arising from the "complicity" clause, TAG said.

The Petrie report has placed considerable blame on the UN staff for "complicity" for war-crimes. However, when and if the emerging new facts surrounding the killings, proven beyond reasonable doubt, establish that killings qualify as genocide, culpability of the West and the UN will follow from the Genocide Convention, according to legal sources in Washington. A selected list of legally significant statements that point towards complicity in the Mu'l'livaaykkaal killings, as analyzed by Professor Boyle, expert in International Law, follows:

- Para 22: UN DPA admits, "we would be complicit if we do not act on it." In other words, establishes criminal intent, mens rea (mens rea - legal term element of crime, "criminal mind").
- Para 25, 26, 28, 29: More whitewashing of GOSL crimes. UN aiding and abetting GOSL crimes, including genocide
- Para 52, 53: UN deliberately understated GOSL atrocities so as to avoid international cries of war crimes, crimes against humanity and genocide that would have produced international pressure on the UNSC to do something. More Ban Ki Moon/UN complicity with GOSL crimes if not worse.
- Para 76: This was a case of UN malfeasance and complicity, not negligence and nonfeasance or misfeasance

"The fact of genocide is as old as humanity,' wrote Jean Paul Sarte, but the law only 50 years old. This dialectic of the ancient fact yet the modern law of genocide follows from the observation that, historically, genocide has gone unpunished. Nazi's were only among the most recent to rely confidently on the reasonable presumption that an international culture of impunity would effectively shelter the most heinous perpetrators of crimes against humanity, writes Prof. Schabas.

Greenfield states that ex post judicial responses once genocide has occurred have also been equally fatal to the promise of the Genocide Convention.

Greenfield says, International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), have made a critical jurisprudential error that has deprived the Genocide Convention, and the Tribunals enacted to enforce it, of an extremely significant deterrent effect. Greenfield asserts that while the Statutes dictate that complicity in genocide is a stand-alone crime, ripe for prosecution, the recent decisions of the Tribunals have erroneously, determined that complicity in genocide is merely a form of liability for the crime of genocide, and not a crime itself.

The ICTY, and ICTR have conflated the "crime of complicity in genocide" with the "crime of aiding and abetting genocide," Greenfield points out, adding, that the drafters of the 1948 convention recognized that the crime of complicity in genocide captures a class of perpetrators broader than those implicated by aiding and abetting the crime of genocide.

Greenfield explains that one found guilty of aiding and abetting the crime of genocide must have the heightened mens rea of the genocidaire—"specific intent specific motive nexus;" by comparison, one who commits the crime of complicity in genocide need not have this heightened mens rea. Instead, a lesser mens rea, such as malice evidenced by reckless disregard, or "specific intent without specific motive," should suffice to attach guilt.

The complicity clause will, therefore, include all States that knowingly allowed the genocide to happen even if they did not have specific "intent" but only "reckless disregard." When a future tribunal on Sri Lanka is constituted legal community representing the affected Tamils should be vigilant to draw-in complicit states to attach criminality as dictated by the Genocide convention and not by the erroneous precedents set by ICTR, ICTY, TAG spokesperson told TamilNet.

Further, Article IV says, "[C]onstitutionally responsible rulers, [and] public officials are not exempt from criminal punishment.

While the hesitancy of the West to aggressively seek accountability for the crime of crimes committed by Sri Lanka may disappoint rights activists and the Tamil people, Nazi's ignominious history as reflected in the Nuremberg trial and the genocidaire hunt still haunting the perpetrators of the holocaust after six decades, might likely also fall on Sri Lanka, a Tamil activist commented.

In a more broader context, one can see central recurrent questions in international law: the relation between the universalism of certain of its principles and the possibility that they are imperialist in nature.

Author, Jouannet illustrates that international law has, from its very origins, been the bearer of a paradox; a paradox that is, moreover, constitutive of the discipline, and from which international law cannot escape without itself ceasing to exist as such.

Actions of Tamil diaspora to seek justice and legal redress, and to establish culpability of the alleged perpetrators of Schabas's "Crime of Crimes" in Mu'llivaaykkaal in international judicial institutions have to be pursued with the full understanding of the politics underlying the term "Genocide," and the awareness of the tensions and hurdles created by powerful nations within the international law regime, TAG spokesperson said.