

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



PRESS CLIPPINGS

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Reinforcing Judicial Independence...

A message to the Chief Justice of Sierra Leone

By Ibrahim Tommy

As the Government and people of Sierra Leone continue to grapple with the country's development challenges, I want to make a point about how judicial independence can be enhanced by judicial accountability. The fact that the Sierra Leone judiciary faces huge challenges is obvious even to the most passive observer. These challenges need to be fixed, and it requires a sense of urgency and political will that currently do not seem to exist. Addressing these challenges would require scaling up funding to such an important arm of government, but more importantly, ensuring that its statutory independence is fully protected and respected.

Judicial independence also requires that judges should not be subject to improper influence from the other branches of government or partisan interests. It also requires that an enabling environment is provided which ideally allows judges to decide cases and make rulings based on law and judicial discretion, regardless of whether decisions are politically unpopular or opposed by powerful interests.

At the moment, a good majority of Sierra Leoneans that I speak to do not believe that the judiciary is completely independent of undue private or partisan interests. This is regrettable, and does not bode well for Sierra Leone's medium and long term peace consolidation and development aspirations. While judges are expected to negotiate salaries or conditions of service, judicial justice is a non-negotiable, priceless service. And those who are statutorily required to dispense it should be allowed to do so without man-made, binding constraints. Indeed, such constraints could unduly affect the course of justice. As Dato Param Cumaraswamy, Former UN Special Rapporteur on the independence of judges and lawyers said, "The worst form of injustice in any civilized society is injustice perpetrated through the judicial process".

Judicial independence, with all its innumerable benefits, ought to be tempered with some institutional checks to ensure that judicial officers are ultimately accountable to the public. Judicial accountability is broad in scope, and ranges from establishing a credible

mode of recruitment, promotions, and security of tenure for judges to maintaining an effective case management system. Additionally, even though members of the bench are not required to provide an explanation to the public for the judgments or rulings they deliver, there needs to be an effective system that supervises particularly junior members of the bench. There are some institutional structures aimed at fostering judicial accountability in Sierra Leone, but enforcement is very weak.

The Centre for Accountability and Rule of Law (CARL) receives regular complaints from individuals who claim to have suffered a great deal of injustice in the criminal justice system, the Local Courts, among others. The complaints relate to delays in proceedings, blatant discriminatory

release on bail a sitting Member of Parliament (MP) facing arson charges. It tells you there is urgent need for some measure of consistency. And, when a Magistrate orders the detention of a person facing criminal libel charges and the decision is overturned right away by those at the top for incomprehensible reasons, while at the same time allowing journalists (the latest being Jonathan Leigh) to be detained for similar charges, it certainly speaks volumes about the degree of mistrust that exists among the public insofar as the judiciary is concerned.

When a senior official in the judiciary tells a group of journalists that their colleagues should "go down" so that he will start writing good stories when "he comes out", it tells you that accused persons seem to be

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conduct by Local Court officials, uneven application of discretion in the adjudication of bail applications by judges, including by imposing onerous bail conditions, and lack of public access to court documents.

Without providing details, each complaint CARL has received seems very serious, and in many ways contributes to the negative public perception of the judiciary. The judiciary, particularly the Honourable Chief Justice, has a huge task of ensuring some concrete steps are taken to help reverse the negative public perception of the judiciary. In particular, there is need for a more effective supervision of Magistrates and Judges with respect of a sacked police officer facing manslaughter charges, while at the same time refusing (three consecutive times) to

pre-judge even by people who hold responsible positions well before trial actually commences. There are instances of Magistrates/Judges imposing exceptionally onerous bail conditions which deprived accused persons their right to bail. CARL has been reliably informed that the passport of Dr. Abass Bundu (a senior member of the opposition SLPP) was seized nearly two years ago, thus preventing him from travelling abroad. Meanwhile, the prosecution has not presented a single witness in his case. Meanwhile, the prosecution has not presented a single witness, and the court has still not discharged the matter. This is not helpful for our justice and rule of law credentials.

Our judicial officers require a more effective supervision. Whoever is reviewing bail conditions or fines



should be sure that the rights of all accused are respected. How much guidance are the young members of the bench receiving? How do even senior members of the bench resist attempts by politicians and private persons to unduly influence their decisions?

This leads me to another significant pillar of judicial accountability - training for members of the bench. The judiciary is one of the least funded government departments in Sierra Leone. In 2013, it received less than 1% of the annual national budget. The security sector alone received about 16% of the budget for the same year. This obviously makes mockery of the conventional wisdom that security and justice are interrelated.

Limited funding to the judiciary undermines access to justice and hampers the ability of the judiciary to sponsor training sessions for members of the bench. While judicial independence is a critical pillar of democracy, the courts have a responsibility to protect it by discharging their functions with the highest degree of professionalism and knowledge. One of the ways to ensure this is to expose them to regular training sessions. The leadership of the judiciary needs to make training for judicial officers a priority going forward. There is also need to continue working on improving the salaries, terms and conditions of service of members of the bench.

Judicial accountability and independence reinforce each other in the sense that if the statutorily guaranteed independence of the judiciary is not handled responsibly, it could prompt appeals from the public for such wide latitude of independence and discretion to be subjected to external checks or control. And that could be dangerous. The judiciary can and must fix its own problems, and the Chief Justice can rely on the good will of many Sierra Leoneans to give her the required support. We can't afford to continue ignoring these monumental problems. This is the time to do it!

Ibrahim Tommy is the Executive Director of the Centre for Accountability and Rule of Law (CARL). The article is culled from THE MONITOR, a monthly newsletter published by CARL.

Hirondelle News Agency

Tuesday, 5 November 2013

Swiss Firm Suspected of Complicity in DRC War Crimes

Arusha — Swiss federal authorities have launched an investigation into Swiss company Argor-Heraeus for suspected complicity in war crimes, in connection with the laundering of three tons of gold pillaged in the Democratic Republic of Congo (DRC) in 2004, Swiss newspaper Tribune de Genève reported Tuesday.

This comes after Swiss NGO Track Impunity Always (TRIAL) filed a complaint against the company to the Swiss authorities. "We have examined this complaint and we have decided to open a criminal investigation into the company for suspected money laundering linked to a war crime and complicity in a war crime," the newspaper quotes a federal government spokesperson as saying. Argor-Heraeus has denied the allegations.

TRIAL's complaint is based notably on 2004-2005 investigations into the DRC-sourced gold supply chain by a UN Group of Experts, under a mandate to monitor the arms embargo on the country. All the African businesses and businessmen implicated were severely sanctioned by the UN Security Council, while Western businesses and businessmen were not, despite the Experts' recommendations, TRIAL notes. According to TRIAL, the FNI armed group in northern DRC continued to exploit a gold concession it seized to finance its operations and buy arms, despite the UN arms embargo.

A large part of this gold was sold to intermediaries who in turn sold it to precious metals refiner Argor-Heraeus. "Argor-Heraeus SA could not have been unaware of the criminal origin of the gold," says TRIAL. The company has strongly rejected the allegations, saying the 2005 UN investigation cleared its name and concluded it was not implicated either directly or indirectly in this affair.

Acts of pillage committed during armed conflict may constitute war crimes. Ordering or encouraging such pillage in any way is also a crime under international criminal law. Thus pillage was one of the war crimes for which the **Special Court for Sierra Leone (SCSL)** this year convicted former Liberian president Charles Taylor and sentenced him to 50 years in jail. Taylor was found guilty of aiding and abetting rebels in Sierra Leone, who pillaged natural resources, among their numerous other crimes. ER/ JC

Human Rights Watch

Tuesday, 5 November 2013

Press Release

Senegal: Case Against Habré Set to Continue

ECOWAS Court Rejects Chad Ex-Dictator's Bid to Halt Proceedings

(Dakar, November 5, 2013) – The decision of the Court of Justice of the Economic Community of West African States (ECOWAS) on November 5, 2013, about the Hissène Habré trial averts a potential obstacle in the path to justice for the long suffering victims of his rule, Human Rights Watch said today.

The ECOWAS court rebuffed Habré's attempt to suspend the proceedings against him by the Extraordinary African Chambers, a special court created by agreement between the African Union and Senegal. On July 2, the Chambers charged Habré with crimes against humanity, war crimes, and torture.

"The ECOWAS court decision means the case against Habré can go forward," said Reed Brody, counsel for Human Rights Watch who has worked with Habré's victims since 1999. "A fair trial for Habré would be a turning point for justice in Africa."

The decision handed down in Abuja, Nigeria, responds to an application filed by Habré's lawyers on April 23 asking the court, as a provisional measure, to "order the immediate suspension of activities, investigations, and prosecutorial acts undertaken or to be undertaken within the framework of the application of the Chambers' statute" on the ground that the Extraordinary African Chambers were not legitimate. Habré's lawyers also alleged that he could not get a fair trial before the Chambers.

The court held that it did not have jurisdiction to rule on the application because the Extraordinary African Chambers were established pursuant to a treaty between Senegal and the African Union. In addition to rejecting the application for provisional measures, the court dismissed the underlying request, thus ending the case before it.

The ECOWAS court decision may end the boycott of the trial by Habré's lawyers, which began with his indictment in July. In 2010, the ECOWAS court ruled that Habré would have to be tried before a "special ad hoc procedure of an international character." In its November 5 decision, the court recognized that the Extraordinary African Chambers were created in the courts of Senegal to conform to its 2010 decision.

"The ECOWAS court's decision is a huge relief to the victims who have been waiting for 23 years to see Habré brought to justice," said Souleymane Guengueng, who nearly died during almost three years of mistreatment in prisons controlled by Habré's political police, and later founded the Association of Victims of Crimes of the Regime of Hissène Habré (AVCRHH). "I want to see Habré in court before even more survivors die."

Habré was president of Chad from 1982 until he was deposed in 1990 by the current president, Idriss Déby Itno, after which Habré fled to Senegal and lived in exile. Habré's one-party rule was marked by widespread atrocities, including the targeting of particular ethnic groups. The files of Habré's political police recovered by Human Rights Watch in 2001 reveal the names of 1,208 people who were killed or died in detention, and 12,321 victims of human rights violations.