

**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:

Monday, 11 May 2009

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

International News

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UNMIL Public Information Office Media Summary 8 May 2009

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

International Clips on Liberia

Delta Reconsiders Liberia Venture

Johannesburg, May 08, 2009 (Business Day/All Africa Global Media via COMTEX) -- DELTA Mining has not yet made a decision whether to re-tender for the Western Cluster iron ore project in Liberia, after the Liberian government last week cleared it of any irregularities in the first tender, Delta chairman Bernard Swanepoel said yesterday.

International Clips on West Africa

Guinean Goldmine Cave-in Kills 13

CONAKRY, May 8, 2009 (AFP) - At least 13 people died and 10 were missing in Guinea after a goldmine caved in at Maleya 700 kilometres (450 miles) northeast of the capital Conakry, police said Friday. A further five people were hurt in the accident, a police official told AFP.

"They are certainly buried in the galleries of the mine, which are worked by traditional gold washers," the official said. The mine is located near an industrial pit run by the Gold Company of Guinea (SAG), a subsidiary of South African group AngloGold Ashanti.

Local Media – Newspaper

ERU Arrest Several Armed Robbers, Drug Dealers - Confiscates Weapons, Drugs

(Liberian Journal, The Inquirer)

- The Emergency Response Unit (ERU) of the Liberia National Police on Thursday nabbed several armed robbers and drugs dealers in the Richardson Yard, Sinkor Old Road and confiscated cutlasses, other weapons and marijuana.
- The Liberia Journal quotes residents as saying that at least four suspected arm robbers were arrested while a lady was picked up for being in possession of one bag and two buckets of marijuana.
- The residents said two other women suspected of being drug dealers are currently on the run.
- Meanwhile, the Inquirer reports that the police also arrested several drugs users who were caught in an unfinished building opposite the 'OK Dry Cleaning' on Benson Street.

Legislative Reporters Issue Media Block-out Against Pro-Temp Wortorson

(Heritage, The News, The Inquirer, Liberian Journal)

- The Legislative Reporters Association yesterday issued a media blackout against the President Pro-Tempore of the Liberian Senate, Cletus Wortorson for his alleged assault on a reporter of a local station, Truth F.M.
- In a statement, the group said it was deeply concerned over the action of Pro-Temp Wortorson and demanded an unconditional apology from him. However, the Press Attaché to the Pro-Temp, Hilary Mentoe denied his boss assaulted the journalist saying instead it was reporter Solomon Ware who assaulted the Senator.

- Meanwhile, Press Union of Liberia President, Peter Quaqua says the union was very concerned about the alleged attack on journalist Ware and would issue a statement following its investigation.

Local Transport Union Boss, another to Restitute L\$122,000

(Daily Observer)

- The Federation of Road Transport Union of Liberia (FRTUL) says its President General, Mr. Alexander A. Suah, and his Vice President for Administration, Mr. Eric P. Saye, are liable of misappropriation of the union funds and are to make restitution of the money (L\$122,000).
- The Executive Council of the FRTUL, however, made the decision to have Mr. Alexander Suah retain his position as President General of the Union after the National Executive Council had ruled that Mr. Suah was liable for allegedly using his influence to misapply L\$48,000 of the Union's money.

Government Records US\$11 M Revenue Fall....Executive Suggests Budget Cut

(Heritage)

- [Sic:]There are reports that the budget of the Legislature is to be reduced due to a huge shortfall of revenue in the National Budget. According to the reports, the Finance Ministry has officially written the Legislature, informing it of an eleven million U.S. dollars shortfall in the revenue of the country's National Budget. The reports also indicate that the budget of the Legislature is to be reduced by some US\$948.000 dollars. The Legislature was allotted over US\$17 million in the current budget, which is due to end within two months.

Loan Officers of Access Bank-Liberia Protest Salary Increment

(Daily Observer)

- Thirteen loan officers of the Access Bank-Liberia have staged two separate demonstrations, demanding pay increase and benefits. The loan officers also claimed their start-up salary of US\$200 have been reduced to US\$130. But the Management of Access Bank-Liberia says normal banking activities are taking place despite a go slow action by some of its loan officers.
- The Managing Director of Access Bank, Madam Mary Odong said the loan officers' salaries are not fixed and are determine on a performance basis. Madam Odong said the bank would not bow down to demands of salary increment but assured that the salary levels of all employees would be reviewed by July this year.

Local Media – Star Radio (News monitored today at 09:00 am)

Final First post-war census Results still put Liberia's Population at nearly 3.5 million

- The Liberia Institute of Statistics and Geo-Information Service (LISGIS) today officially announce the final results of the 2008 National Population and Housing census. LISGIS, the body which spearheaded the census put the country's population at nearly 3.5 million people.
- The 2008 census, conducted in March last year, was the first post-war census after 24 years. Results from the last census in 1984 put the country's population at 2.5 million. Prior to the conduct of the new census, rough estimates had indicated that there were approximately three million or more people in Liberia.
- Star Radio says the current results show a 2.1 growth rate over the period of 24 years.
- This pronouncement will put to rest controversy over the delay in the passage of the population threshold bill, especially now that the final census results are public knowledge.

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(Also reported on Truth F.M., Sky F.M. and ELBC)

President Sirleaf Addresses US University Commencement

- An Executive Mansion release issued in Monrovia said President Ellen Johnson Sirleaf has left the country for Florida, the USA to deliver the commencement address at the University of Tampa.
- Liberia's Honorary Consul to the State of Florida, David Straz invited the President and will underwrite bulk of the expenses of the trip.
- The release further states that Mr. Straz has agreed to provide funds for the completion of the technical institute in Sinje, Grand Cape Mount County which is estimated at little over US\$1 million.
- The President will also use the opportunity to obtain commitment for scholarships for Liberian students.

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Malaria Programme Wants Tax Waiver for Anti-Malaria Drugs

- The Program Manager of the National Malaria Control Program, Dr. Joel Jones has called for tax waiver on the importation of Anti-Malaria Drugs and Products saying there was no reason to impose tax on a life-saving commodity like malaria drugs.
- Speaking Thursday at a turn-over ceremony of 430-thousand mosquito nets for malaria prevention, Dr Jones vowed to arrest anyone caught in the sale of mosquito nets on the Liberian Market.
- The donation is part of U.S. President Malaria Initiative Support to the Ministry of Health through USAID.

- For her part, USAID's Mission Director, Pamela White stressed the need for the proper usage of the bed-nets.

District Education Officers Receive Motorbikes

- The Ministry of Education has distributed Yamaha motor-bikes to 52 District Education Officers.
- Education Minister, Dr. Joseph Korto said the motor-bikes are intended to empower the DEOs to effectively carryout their responsibilities.
- Dr. Korto said the ministry had earlier distributed similar motor-bikes to over twenty District Education Officers. He put the total cost of the motor-bikes at two hundred six thousand United States dollars and said they were purchased by government.

Baffour's Beefs



Baffour Ankomah

Reaping the whirlwind

"I do not admit that a great wrong has been done to the Red Indians of America or the black people of Australia by the fact that a stronger race, a higher grade race, has come in and taken its place" – Winston Churchill to the Palestine Royal Commission, 1937.

What perspective gave birth to a Ghanaian proverb which loosely translates like this: "You cannot hide behind your finger." In 2002, thousands of Britons voted Winston Churchill as the "greatest Briton" that ever lived. Yes, the man had great attributes, including this quote: "I do not understand the squeamishness about the use of gas. I am strongly in favour of using poisonous gas against uncivilised tribes," he wrote in 1919 as president of the Air Council. And yet Churchill is the "greatest Briton" that ever lived!

Well, let me look over my shoulder and refrain from upsetting my host country. Let me concentrate on the matter at hand. In 1938 Pastor Martin Niemöller was arrested by Hitler's Gestapo and was freed by Churchill and his Allies after Hitler had killed himself. Pastor Niemöller then put his thoughts on paper, and what he said rings true today, especially in the case of the current African anger over the International Criminal Court (ICC) indictment of the Sudanese president, Omar al-Bashir. Niemöller wrote: "First, they came for the Jews and I did not speak out – because I was not a Jew. Then they came for the communists and I did not speak out because I was not a communist. Then they came for the trade unionists and I did not speak out because I was not a trade unionist. Then they came for me – and there was no one left to speak out for me."

It was a wise man who said: "There is always something new out of Africa." How else can we explain the current outrage across the continent about the ICC indictment of President Bashir, when only three years ago Africans folded their arms, kept their mouths shut and watched as a former African president, Charles Taylor, was arrested and flown to the ICC facilities in The Hague in chains?

"Okoto nnwo anoma" (A crab does not give birth to a bird), say our elders in Ghana. If you sow plaintain, you can't reap cassava. We allowed the Americans who would not permit even their lowliest citizen to be tried by the ICC to seduce us with sheer propaganda about Charles Taylor. Aided by their cousins in Europe, the Americans succeeded in using some misguided African human rights activists dragooned into the unholy alliance that called itself the "Campaign Against Impunity" to lead the chant for Taylor's head – a man that not only "the African leadership" but also the UN, US and Britain had given an immunity-from-prosecution deal that saw him voluntarily step down as president of Liberia in 2003.

At the time of his arrest in March 2006, when the African leadership said nothing in his defence, Taylor, like Pastor Niemöller before him, warned: "Today it is me and only God knows who it will be tomorrow. Indeed, these developments extend well beyond me and require some serious reflection and action by you [the African leadership] and others for the sake of our continent." Among other things, Taylor asked the African leadership to set up "a commission to look into the political and legal underpinnings of how I ended up in Europe to face trial and their implications for other African heads of state and governments." The African leadership still did nothing, to this day! And, strangely, they are now shouting themselves hoarse over President Bashir. Why?

I even hear the former Nigerian president, Olusegun Obasanjo, is also criticising Bashir's indictment. *Haba*, what else can one do with President Obasanjo? This man never ceases to amaze me. In

mid-2003, Obasanjo's government issued a lengthy statement through its high commission in London about Zimbabwe having finished serving its suspension from the Commonwealth and thus should be allowed to attend the next Commonwealth Conference then impending in the Nigerian capital, Abuja, in November 2003. On the

same day, South Africa, perhaps encouraged by the Nigerian stand, also issued a similar but shorter statement via its high commission in London.

A few months later, Obasanjo, lent upon by Tony Blair's Britain and the white Commonwealth, would not even give the Zimbabweans an invitation to attend the Abuja Conference. The most galling aspect of it all was when Obasanjo's government banned the SADC leaders in the Commonwealth from holding a press conference in Abuja to express their dissatisfaction at the way Blair & Co had handled the Zimbabwe issue. They were told to go back home and hold the press conference there, not on Nigerian soil.

In that same year, 2003, Obasanjo was one of five presidents (the rest were: Ghana's John Kufuor, South Africa's Thabo Mbeki, Mozambique's Joaquim Chissano, and Sierra Leone's Tejan Kabbah) who met in the Liberian capital, Monrovia, at the behest of "the African leadership", to give assurances to President Charles Taylor to step down in exchange for an immunity-from-prosecution deal approved and secured by the UN, US and Britain, that would ensure that he would not be tried by the Special Court for Sierra Leone. Part of the deal was that Nigeria would give Taylor a safe haven

"The Americans would not permit even their lowliest citizen to be tried by the ICC. How come they want African leaders to be tried by the ICC?"



The Special Court for Sierra Leone building in Freetown. There is more to the Court than meets the eye, and Africa should beware

in Calabar in southeast Nigeria. Yet, three years later, Obasanjo, again lent upon, this time by the Americans, surrendered Taylor to the very Special Court from which he had been given immunity. And what was worse - the duplicitous way in which Obasanjo's government went about the job was absolutely disgraceful.

Abuja claimed that Taylor was arrested when he tried to escape from Calabar into Cameroon. But the facts of the case, as published by *New African* in May 2006, are that there was no "escape" in the normal sense at all. Abuja had, in fact, impressed upon Taylor to leave Calabar and seek refuge in another country because Nigeria could no longer withstand American pressure to give him up. Abuja did give Taylor money, two getaway cars, and security escorts to spirit him away. But midway through a journey that saw Taylor and his escorts travel over 1,250 km to Maiduguri in the far north of Nigeria, Obasanjo's government shamelessly double-crossed Taylor by announcing that he was a fugitive! But tell me, who goes to Cameroon from Calabar via Maiduguri? Please check your map.

I have just finished reading a 109-page record of a Congressional Subcommittee hearing held on 8 February 2006 on "*The Impact of Liberia's Election on West Africa*". But don't be deceived by the title because, in reality, it was a hearing on Charles Taylor and why it was "a top US priority" to see him tried by the Special Court. Everybody who testified that day, including the Special Court's former prosecutor, David Crane (*see story on pp. 30-33*), made the important point that bringing Taylor to trial was "in the US national interest", despite the US having agreed to Taylor's immunity deal two years before.

In his testimony, David Crane, an American lawyer who in earlier life had worked as the "assistant general counsel for the Defence Intelligence Agency", congratulated the Congressional Subcommittee on Africa, Global Human Rights and International Operations for working with him over three years to indict Taylor. "I think it is very important for the record to recognise the tremendous, steadfast, and bipartisan support this Committee has given me personally, professionally and politically during my tenure as the chief prosecutor of the Special Court for Sierra Leone," Crane enthused. "For three years, we all worked together to face impunity in West Africa..." Crane went on to cite the US House of Representatives 420-1 vote in May 2005 calling for Taylor to be handed over to the Special Court for trial, which itself had followed a similar 95-0 vote by the European Parliament in February 2005,

asking for the same thing. And then, Crane went for the hyperbole: "*In this period when we celebrate and recognise the principles laid down at Nuremberg 60 years ago,*" he told the Subcommittee, "*we must resolve as human beings who care about humanity and the rule of law, that there cannot be an African exception to those principles.*"

Crane had earlier been introduced at the hearing as a "distinguished visiting professor of law at Syracuse University College of Law in the summer of 2005". But what a poor "distinguished professor" he is when he pretends to know no history. Where was the Distinguished Professor Crane when "an African exception" was made to the "Nuremberg principles" in South Africa in 1994? And in Zimbabwe in 1980? And Namibia in 1990? And Mozambique and Angola in 1975? And Kenya in 1963? And everywhere else in Africa where white people had been the killers of Africans before independence! And even in DR Congo in 1996-2003 where the US had used Rwanda and Uganda as the public face of an American project to overthrow President Mobutu (and, as a booty, hand over the exploitation of Congo's strategic minerals to Western companies), a project which saw an estimated five million Congolese dead, directly and indirectly from the war! And yet, the presidents of Rwanda and Uganda who had allowed their armies to be used to do America's dirty work are free from prosecution today! An exception to the Nuremberg principles indeed!

Dear Distinguished Professor Crane, you and the Congress should not deceive yourselves that the world doesn't know why you picked on Charles Taylor. In any case, since when did America care about human rights in Africa? Didn't Washington support the hateful apartheid system all those years? Hasn't America supported some of the odious dictators in Africa?

For the avoidance of doubt, let me say here that I'm not against African leaders being made to answer for their crimes, using international justice. But don't do it selectively! And if international justice is to have any meaning, American and European leaders, like Bush and Blair whose disastrous wars in Iraq and Afghanistan have killed hundreds of thousands of innocent people, should also be made to answer for their crimes.

For Africa, there is one lesson in this for us. We allowed ourselves, in Taylor's case, to be dragooned into what is patently a political trial serving "American and British national interests" more than Africa's, and we shouldn't complain when the ICC comes for more, in the shape of President Bashir. We dug our grave, and it is only fair that we lie in it. **■NA**

Selective justice

On 4 March 2009, the International Criminal Court (ICC) issued an arrest warrant against the Sudanese president, Omar al-Bashir, only the second ever sitting president to be so indicted. This has caused outrage and anger among the normally placid African Union and its member countries. AU chairman and Libyan leader Muammar AlGathafi has said it is akin to “new world terrorism”, and that “all developing countries are opposed to the so-called ICC”. But why are African leaders incensed about Bashir’s indictment, when they did nothing in 2006 when one of their number, the former Liberian president Charles Taylor, was indicted, arrested and taken to the ICC to stand trial in The Hague? Is Africa asserting itself now because it feels targeted by the ICC?, ask **Osei Boateng** and **Ifa Kamau Cush** in this lead piece of our 33-page special report on the “ICC and Africa”.

EXACTLY THREE YEARS AGO THIS MONTH, the former Nigerian foreign minister Prof A. Bolaji Akinyemi, writing for *New African’s* special report on the arrest of former President Charles Taylor (see *NA May 2006*), made a telling comment that illuminates the current brouhaha over the ICC indictment of the Sudanese president, Omar al-Bashir. The seasoned Nigerian diplomat wrote:

“The issue at stake [in Charles Taylor’s arrest in Nigeria] should not be perceived as a conflict between the US and Nigeria. It is much more serious than that. The competing versions of the strategic doctrine of the regional enforcer as played out in the Liberian case are in fact an illustration of a clash of civilisations. African civilisation does not emphasise revenge. It emphasises conciliation and forgiveness. This has been amply demonstrated in post-colonial attitudes towards former colonisers and in the most dramatic case, in the attitude of Nelson Mandela towards his persecutors.

“Western civilisation, on the other hand, with its roots in the ‘eye for an eye syndrome’ emphasises vengeance in the name of justice. While few African societies have blood feuds going back centuries, European culture is noted for such blood feuds. Getting this distinction right is important as Africa and

President Omar al-Bashir of Sudan – his indictment by the ICC has aroused anger and outrage in Africa and beyond



Al-Jimta Qafi, a prominent figure in the Sudanese opposition, is seen here wearing a white turban and glasses. He is smiling slightly and looking towards the camera. He is wearing a white garment, possibly a thobe, and a dark strap is visible over his shoulder. The background is dark and out of focus.

Cover Story

ICC AND AFRICA

The former Liberian president, Charles Taylor (centre), was led in chains to The Hague in March 2006; but unlike Bashir, Africa said nothing in his defence

the rest of the world square off over Darfur and whatever African conflicts may be in the pipeline."

Prof Akinyemi should have been a prophet. But he was not finished. "Africans," he continued, "were baffled [by Taylor's arrest], and quite a lot of people (puzzled at the timing of the arrest warrant) wondered at the motive of the chief prosecutor of the [Special Court for Sierra Leone] who also happened to be an American... At this juncture, one must wonder at how American domestic opinion and an administration that are basically hostile to their citizens being tried by any international tribunal, and who have gone to a considerable extent, both legal and illegal, to undermine the credibility of the international judicial system, would now be the arrowhead of the firestorm driving Taylor. It simply shows the capacity for hypocrisy."

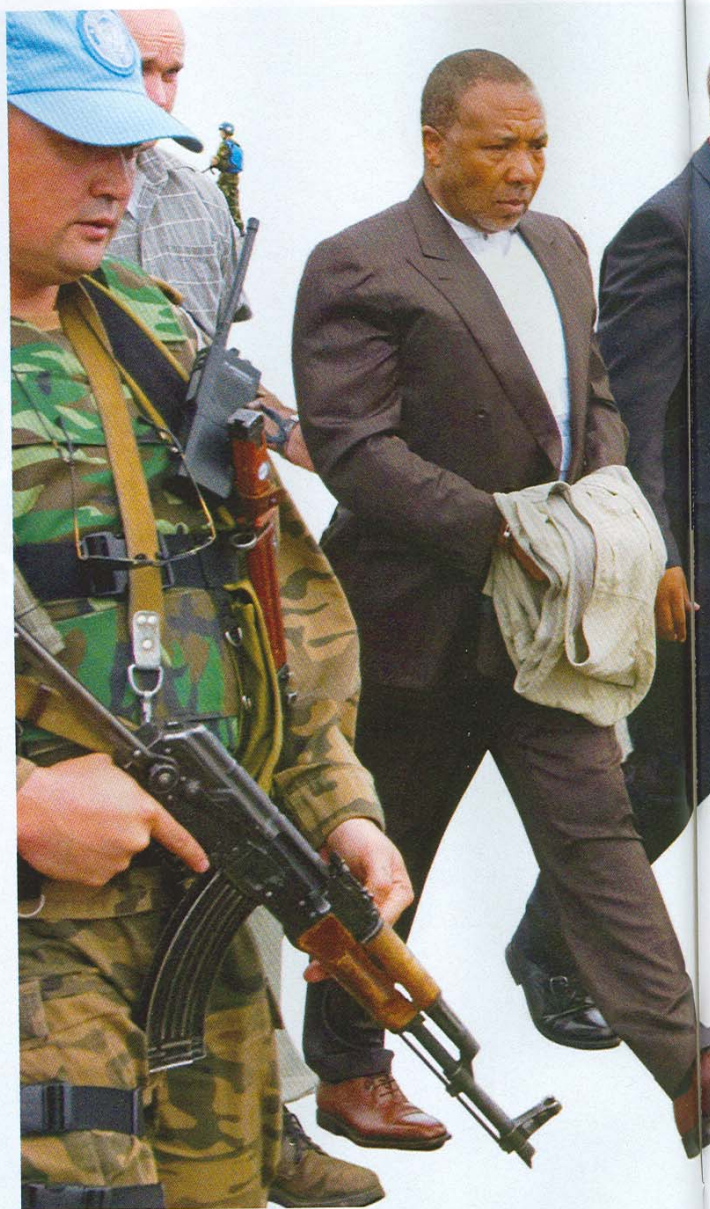
One can thus understand the fury emanating from Africa about President Bashir's indictment, which like Taylor's, has been orchestrated from beyond Africa's borders, with American hands deep in the mire (see Khadija Sharife's article on pp. 26–29). But why is Africa angry now? Does the continent feel unduly targeted by the ICC? (see Millius Palayiwa's article on pp. 16–20). Or has Africa just realised the danger in allowing itself to be seduced by American and Western propaganda in Taylor's case, and thus permitting the "purveyors of justice" to come for more? In short, have the scales finally fallen from African eyes?

At the moment, there are more questions than answers; and despite all the fury coming from Africa, no one has as yet put up a coherent case of why the continent should be angry now when it wasn't in Taylor's case. Why nobody has answered that question is in itself baffling. First, there are uncanny similarities between the manner in which Taylor's indictment was handled by the UN-backed Special Court for Sierra Leone (which later flew him in chains to the ICC), and the manner in which the UN-backed ICC has handled Bashir's indictment. Thus, logically, one arrest should not receive Africa's quiet approval and the other ire. There must be *something* more to Africa's indignation than simply not liking Bashir's indictment.

Perhaps Millius Palayiwa comes close to resolving it when he reveals in his aforementioned article on pp. 16–20 that: "By October 2007, the ICC prosecutor, Luis Moreno-Ocampo, had received 2,889 communications about alleged war crimes and crimes against humanity in at least 139 countries, and yet by March 2009, the prosecutor had opened investigations into just four cases: Uganda, DR Congo, the Central African Republic, and Sudan/Darfur. All of them in Africa! Thirteen public warrants of arrest have been issued, all against Africans."

Targeting Africa?

In Taylor's case, there was a homegrown African solution in progress at the time of his indictment in 2003. In fact, on the very day his indictment was announced by the Special Court for Sierra Leone on 4 June 2003, Taylor was in Ghana attending peace talks sponsored by the African Union and the UN aimed at ending Liberia's then ever-expanding war and humanitarian catastrophe. Five African presidents (including the host, John



Agyekum Kufuor, the then chairman of Ecowas) were at the talks. The others were South Africa's Thabo Mbeki; Mozambique's Joaquim Chissano (the then AU chairman), Nigeria's Olusegun Obasanjo; and Sierra Leone's Ahmad Tejan Kabbah.

It was a high-powered African delegation trying to find an African solution to an African problem. And yet, the chief prosecutor of the Special Court for Sierra Leone, an American lawyer, David Crane, felt no compulsion in disrespecting the African leaders and their initiative for peace and reconciliation, and went ahead and emailed (imagine, *emailed!*) the indictment to the Ghanaian government, asking President Kufuor to push the peace talks aside and arrest Charles Taylor and hand him

“My intent was to humble and humiliate Charles Taylor before his peers, the leaders of Africa, and to serve notice to Taylor and others that the days of impunity in Africa were over,” says David Crane, the Special Court’s former chief prosecutor

over to the Special Court. Even more disturbing was the fact that the indictment had been approved and sealed by the Special Court on 3 March 2003, but kept secret until 4 June, the day of the Liberian peace talks in Accra. No one needs the brain of a rocket scientist to deduce that David Crane’s motive was to scupper the peace talks painstakingly put together by the African leaders.

According to Crane himself, in a testimony to the US Congress Subcommittee On Africa, Global Human Rights and International Operations that he gave on 8 February 2006: *“The indictment [was] signed in a moving ceremony on 3 March 2003, in my office in Freetown, Sierra Leone. I told the assembled trial counsel and investigators that ‘the ghosts of 100,000 Sierra Leoneans are in this room right now’. The unsealing of the indictment against Charles Taylor on the day he arrived in Accra, Ghana, for the peace talks in June 2003 was a calculated move on my part to publicly strip, in front of the world, this warlord of his power by my signature on the indictment. It was never intended to force his transfer that day to the tribunal, though we would have accepted him and were ready to arraign him on the charges within the indictment immediately.”*

Crane went on: *“My intent was to humble and humiliate him before his peers, the leaders of Africa, and to serve notice to Taylor and others that the days of impunity in Africa were over. Taylor is the first African head of state ever to be indicted for war crimes and crimes against humanity and only the second in history... It must be noted that the United States was given a copy of the Taylor indictment two months before I unsealed it in June 2003. It was personally given to Walter Kansteiner, then the assistant secretary of state for Africa, at a breakfast meeting in April 2003 with the US ambassador, Peter Chavez, at his home in Freetown. Another copy was given to Pierre Prosper, the [US] ambassador at large for war crimes issues as well. All [the US] parties were warned 24 hours in advance of the unsealing [of the indictment] while Taylor was in Accra. The government of Ghana was served with the indictment and the warrant of arrest the morning of the unsealing of [the] indictment.”*

Later, President Kufuor told *New African* that he “felt betrayed by the international community” when news of the indictment reached him. “Five African presidents,” Kufuor said, “were meeting in Accra to find ways of kick-starting the

Liberian peace process, and Mr Taylor had been invited as the president of Liberia. We were not even aware that a warrant had been issued for his arrest. Incidentally, the African leadership had taken the initiative to convince Mr Taylor to resign and allow all the factions in Liberia to negotiate, and he had agreed to resign. It was when the presidents were leaving my office for the Conference Centre where Mr Taylor was expected to make a statement [about his resignation] that word came in that a warrant had been issued for his arrest. I really felt betrayed by the international community [and] I informed the United States of the embarrassment that the announcement caused.” Crane’s disrespect really hurt the Ghanaian president, and instead of arresting Taylor, a furious Kufuor put him on a Ghanaian presidential jet and flew him back to the Liberian capital, Monrovia. Strangely, nothing more than that was publicly articulated by the African leadership to show their disgust at the treatment meted out to a fellow African president, and to their own peace initiative.

Even when Taylor was finally arrested on 29 March 2006, after Nigeria had crumbled under intense American and Western pressure to give him up – in flagrant violation of an immunity-from-prosecution agreement reached with Taylor by Ecowas, the African Union and the UN (which was also approved and secured at the time by the American and British governments, an agreement that saw Taylor voluntarily relinquishing power in order to bring peace to Liberia) – Africa still did not raise a finger, not one, in Taylor’s defence and watched on meekly as he was led in chains to the ICC in The Hague. Fast-forward to 4 March 2009 and President Bashir’s indictment. And all of a sudden, Africa is in uproar! Is it because Africa feels disrespected by the ICC? Here, again, there is a homegrown African solution in progress in Sudan/Darfur. An indictment of Bashir at this sensitive stage will definitely scupper the African peace initiative. But Luis Moreno-Ocampo, the ICC chief prosecutor, like David Crane before him, apparently does not care about African sensibilities! And so, he goes ahead and indicts Bashir despite the vehement African protestations voiced beforehand.

But this time Africa would not take it lying down. And support has come from all around, including the Arab League. The current AU chairman, Muammar AlGathafi, called a press conference at AU headquarters in Addis Ababa, Ethiopia, on 29 March and likened the ICC action to “a practice of a new world terrorism that is not below the standard of the other terrorism”. According to the Libyan leader, “it is not fair that a head of state should be arrested. If we allow such a thing [then] we should also try those who killed hundreds of thousands of children in Iraq and in Gaza”, a quaint reference to the former American president George W. Bush, his British ally Tony Blair, and the former Israeli prime minister Ehud Olmert.

AlGathafi said the AU had argued that the prosecution of Bashir would jeopardise peace efforts in Sudan, and now African leaders were angry that the UN Security Council, which referred the Darfur case to the ICC, had ignored their request to defer the indictment.

“It is a known fact that all developing countries are opposed to the so-called ICC indictment,” the Libyan leader said, and promised that the AU would send a high-level delegation to New York to lobby the UN Security Council.

Cover Story

ICC AND AFRICA

The tough African stance has been enough to give Sudan's permanent representative to the UN, Dr Abdalmahmoud Abdalhaleem, the confidence to tell *New African* that, "no one will arrest President Bashir on the African continent". The ICC has no arresting powers and relies on signatory countries to arrest people it indicts. No wonder, soon after Dr Abdalhaleem's confident remarks, President Bashir visited Eritrea, Libya, Egypt, Somalia, and was greeted in Qatar by the leaders of the Arab League, and a few days later, went to Mecca. And no one arrested him!

The indictment

The ICC warrant against Bashir lists five counts of "individual criminal responsibility" for crimes against humanity – murder, extermination, forcible transfer, torture and rape. There are also two additional counts for war crimes, accusing Bashir of "pillaging, and intentionally directing attacks against a civilian population ... or against individual civilians not taking part in hostilities." According to the ICC, "Bashir's official capacity as a sitting head of state does not exclude his criminal responsibility, nor does it grant him immunity against prosecution".

Continuing, the ICC says it has "found that Omar al-Bashir, as the de jure and de facto president of Sudan and commander-in-chief of the Sudanese Armed Forces, is suspected of having coordinated the design and implementation of a counter-insurgency campaign [and] that there are reasonable grounds to believe that he was in control of all branches of the 'apparatus' of the State of Sudan, and used such control to secure the implementation of the counter-insurgency campaign".

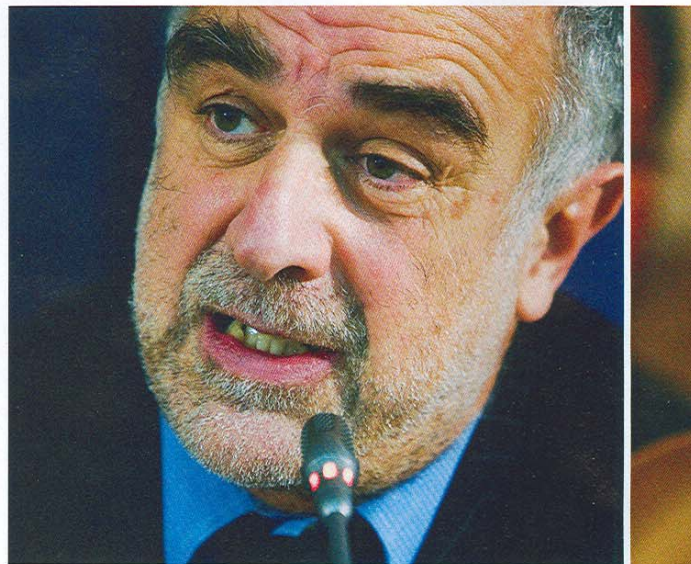
Many Africans hastened to highlight the inherent double standards of the ICC's decision. Citing the recent UN Special Rapporteur's report accusing the governments of the US and UK of kidnapping and torturing so-called terrorism suspects around the world, Joanne Mariner, the counter-terrorism expert of the US-based Human Rights Watch, called for the criminal prosecution of George W. Bush and Tony Blair.

Bush and Blair were the leaders of their respective countries when, according to the UN Special Rapporteur, the USA "created a comprehensive system of extraordinary renditions [kidnappings], prolonged and secret detention, and practices that violate the prohibition against torture and other forms of ill-treatment". The Special Rapporteur, Martin Scheinin, a Finnish diplomat, added that the US was able to maintain its global system of torture and kidnapping by working with the UK government under Blair.

Under Article 25(3)(a) of the Rome Statute which governs the ICC, Bush and Blair can be charged on the basis of their "individual criminal responsibility" and as indirect co-perpetrators for crimes against humanity, namely: murder – Article 7(t)(a); forcible transfer – Article 7(t)(d); and torture – Article 7(t)(f).

Both Bush and Blair, like Bashir, were commanders-in-chief of their countries' respective armed forces during the war in Iraq and the so-called "war on terror" when the kidnapping and torture of suspects occurred.

However, Joanne Mariner cautioned against expecting any indictments against Bush and Blair any time soon. "I don't foresee criminal prosecutions in the US," she said. According to her, given the veto power enjoyed by America and Britain



at the UN Security Council, there is "no way" the Security Council will refer Bush and Blair to the ICC for criminal prosecution.

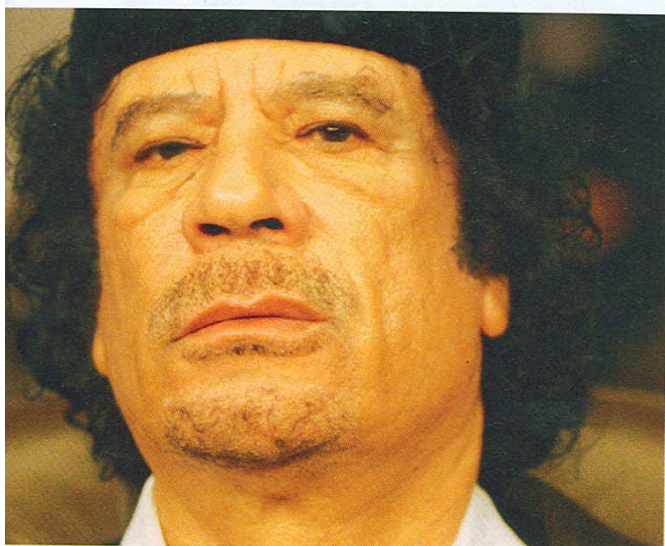
Some people around the world see this as a racist application of international justice. They point to the current prosecutions of Charles Taylor and other Africans from DR Congo and Rwanda by the ICC. Miguel d'Escoto Brockmann, president of the UN General Assembly, asserting that he speaks for the "immense majority" of UN member countries, criticised the ICC's action against Bashir as "racist". According to him, the indictment "deepened the perception that many people have voiced, that justice was being exercised on a racial basis".

Other voices are challenging the ICC's decision solely on its merit. The UN Special Envoy to DR Congo, Olusegun Obasanjo (Nigeria's former president), publicly disparaged Bashir's indictment during an interview on *BBC* television. According to him, the ICC has not provided any evidence to support its charge that Bashir personally directed attacks against civilians in Darfur.

Obasanjo's view is supported by many who point to a 3 March 2009 ICC press release which acknowledged the failure of its prosecution team to provide evidence to support the accusation that "the government of Sudan acted with specific intent to destroy, in whole or in part, the Fur, Masalit and Zaghawa" people of Darfur.

Many diplomats at the UN have said if there was no "specific intent" on the part of the Sudanese government to destroy the people of Darfur, then how could Bashir who, according to the ICC, was "in control of all branches" of the government apparatus, be "individually" responsible for the murder, rape, extermination, forcible transfer and torture of Darfurians? "Did he kill all these people?", one diplomat asked.

In a press statement, the AU recalled that it had asked the UN Security Council last year to defer the indictment of Bashir as it continued its pursuit of "lasting peace, reconciliation and democratic governance" in Sudan. Another AU request for deferral was made after the arrest warrant was issued. But



**Far Left: Luis Moreno-Ocampo, the ICC chief prosecutor, insouciantly ignored African efforts and requests, and indicted Bashir
Left: The AU chairman and Libyan leader, Muammar AlGathafi, has denounced the ICC indictment of President Bashir**

neither the UN Security Council nor the ICC has heeded Africa's call.

According to the former South African president, Thabo Mbeki, the AU's strategic framework in Sudan, since its involvement began in 2004, was based on two considerations: protecting the civilian population and finding an inclusive political solution. Within one year of arriving in Sudan, AU representatives negotiated a Declaration of Principles that they convinced the Sudanese government and all insurgent groups to sign. Having established a political basis for peace in the country, the AU was working assiduously to consolidate its gains when the ICC insouciantly ignored its efforts and indicted Bashir.

Miguel d'Escoto Brockmann, the UN General Assembly president, criticised the ICC's decision even further, calling it an affront to the AU. "It did not help [the situation in Sudan]," Brockmann said, "not to heed the request of the AU" to give peace a chance. Many African diplomats at the UN have also excoriated the ICC's decision for its lack of consensus. "It was a decision not fully agreed by all states," said one diplomat.

Power politics

The ICC lacks consensus because it is accountable only to the UN Security Council, which is controlled by its five permanent members – America, the UK, France, China and Russia. Incidentally, America, the UK and France are the countries clamouring the loudest for Bashir's arrest and the prosecution of other African leaders while being silent about the similar ICC-chargeable crimes committed by Bush and Blair, and others elsewhere in the world.

According to Mahmood Mamdani, a professor at Columbia University's School of International and Public Affairs in New York, "we need to hold accountable not only the violators of rights but those who enforce rights." If the enforcers of rights are not held accountable, Dr. Mamdani says "they can turn justice into their own personal vendetta" by ignoring certain crimes, as in the case of Bush and Blair, while prosecuting others, as in the case of the African leaders.

This view was broadly agreed by panelists at a conference organised in London on 27 March 2009, by the Royal United Services Institute and the Centre for Foreign Policy Analysis, under the theme: "Should sitting heads of state be liable to prosecution by international tribunals?" Jonathan Steele, a journalist at the *Guardian*, opened the proceedings with a stinging attack on the ICC indictment of Bashir. He said the indictment had been a "major setback" to peace negotiations, and called on the UN Security Council to suspend the warrant. "Politics," he said, "should trump law, since peace is more important than justice".

Steele was supported by Sir Geoffrey Nice, the former lead prosecutor in the trial of President Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia (ICTY). In recent months, Nice has been working with leaders of several Sudanese ethnic groups (said to be victims of genocide themselves) to persuade the ICC not to indict Bashir. He severely criticised international courts for "their potential for corruption and vulnerability to outside pressure; their rule-bending and relentless publicity-seeking; and the mediocrity of their personnel, chosen for political rather than meritocratic reasons".

Nice also attacked the "impertinence of Western lawyers and judges who assume superiority over those they prosecute". He said the ICTY, for which he was once lead prosecutor, "has no interest in the history, culture or even the humanity of the people it prosecutes".

Nice's remarks were broadly echoed by Lam Akol Ajawin, a Sudanese MP and former minister, who spoke for the Sudan People's Liberation Movement (SPLM), a group that waged war against Bashir's government for 16 years. Ajawin argued that regime change was the unstated agenda behind the ICC indictment of Bashir, and pointed out that the regime had already changed significantly since the 2005 Comprehensive Peace Agreement signed by Bashir's government and the SPLM that ended the civil war in South Sudan. According to Ajawin, outside intervention, as sought by the Darfur rebels, would only prolong conflict and instability.

Several other African speakers at the conference were robust in their rejection of the ICC decision. In appearing to target only African countries, the African speakers said, the ICC was being selective in its application of justice. "Give Africa a chance," said Silas Chekera, a defence lawyer at the Special Court for Sierra Leone. Chekera did not reject international tribunals outright, but simply called for them not to be imposed. A preferable route, he said, would be allowing African governments room to call on institutions such as the ICC if they wanted, but in other circumstances they should be free to choose a different route, such as a truth and reconciliation commission, an amnesty, or local dispute-resolution mechanisms.

But would the ICC and the masters who control its levers listen? ■ **NA**

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“Forget the rhetoric, this court is just another excuse for superpower bullying,” wrote Dr John Laughland in the British daily, *The Times*, on 29 August 2000. Robin Cook, the former British foreign secretary (now deceased), added for good measure: “If I may say so, this is not a court set up to bring to book prime ministers of the United Kingdom or presidents of the United States.” So what use is the ICC? **Millius Palayiwa**, registrar of Christ Church College, Oxford University, attempts an answer in this article. When it comes to international justice, he writes, it is important to know who is doing the indicting, who is being indicted, at whose behest, what the charges are, and the system of law in use.



What's the ICC up to?

IT WAS ALEXANDER MURDOCH MACKAY, THE SCOTTISH Presbyterian missionary to Uganda, who said in 1889: “In former years, the universal aim was to steal Africans from Africa. Today the determination of Europe is to steal Africa from the Africans.” Now here is a story of a case in Wales: A simple, clear, and straightforward case. On the evidence given, no jury could acquit the accused. The defence lawyer asked the trial judge if he could address the jury in Welsh. The judge agreed. The defence lawyer took three minutes. The jury retired and came back five minutes later with a “not guilty” verdict. The judge had no choice but to release the prisoner.

The judge was so surprised that he asked a Welsh-speaking usher, what the defence lawyer had said. “Well my Lord,” said the usher, “the defence lawyer said to the jury: ‘Look at the situation: the judge is an English man, the arresting police officer

is an English man, and the prosecutor is an English man. The accused is Welsh, you members of the jury are Welsh, and I the defence lawyer am Welsh. I rest my case.’”

I repeat this story because it illustrates where we are with the international indictments of African leaders. In addressing the issue, we have to first look at who is doing the indicting, who is being indicted, at whose behest, what the charges are, and the system of law in use. In the second place, we have to ask why an indictment is made at a particular point in the history of African conflicts, and more important, what the motives for intervention are? And *motive* is very important! It was Lord Palmer who said: “In international relations, there are no permanent friends or permanent enemies, only permanent interests.”

Then one has to ask the bigger question we are facing today: Why are the indictments mainly against African leaders and/



The ICC building in The Hague. "Forget the rhetoric, this court is just another excuse for superpower bullying"

"One has to ask the bigger question we are facing today: Why are the indictments mainly against African leaders and/or rebels? Africa does not have a monopoly on atrocities!"

or rebels? Africa does not have a monopoly on atrocities! The International Criminal Court (ICC) came into effect on 1 July 2002 and can only prosecute crimes committed on or after that date. There are 192 countries in the world, out of which 108, so far, are members of the Court. Forty countries have signed but not ratified the Rome Statute that set up the Court. The USA, China, Russia and India are very critical of the ICC and have not joined.

By October 2007, the ICC prosecutor, Luis Moreno-Ocampo, had received 2,889 communications about alleged war crimes and crimes against humanity in at least 139 countries, and yet by March 2009, the prosecutor had opened investigations into just four cases: Uganda, DR Congo, the Central African Republic, and Sudan/Darfur. All of them in Africa! Thirteen public warrants of arrest have been issued, all against Africans. Of the 13, only four

are in custody in The Hague, seven are still at large, and two have died. The jurisdiction of the court covers four groups of crimes that are referred to as the "most serious crimes of concern to the international community as a whole" – these being the crimes of genocide, crimes against humanity, war crimes, and crimes of aggression (Article 5).

It would appear, by implication, that the use of weapons of mass destruction is not a war crime. Terrorism is not included either, because there was no agreement on the definition of terrorism. There are good reasons for excluding these. Who is likely to use weapons of mass destruction? Who is hunting terrorists? The ICC will not impose the death penalty, and those powers hunting terrorists of course want them tried and executed!

Just a word about genocide: *Genocide* is a technical term coined by Raphael Lemkin in 1944. It comes from the Greek "*genos*"

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(tribe), and the Latin “*cide*” (killing). The word *genocide* was used for the first time in an international public document in 1945 in the indictment brought before the Nuremberg Tribunal. Article 2 of the Genocide Convention 1948 defines genocide as: “...acts committed with intent to destroy in whole or in part, a national, ethnic, racial or religious group.” Under this definition, it is now generally agreed that there have been three genocides in the 20th century: that of the Armenians by the Turks in 1915; that of the Jews and Gypsies by the Nazis from 1939 to 1944, and 50 years later, Rwanda in 1994. There is no mention of the genocide of the Herero and Nama in Namibia by the Germans in 1904–08.

So why are African leaders targeted by the ICC? If you pose that question, the standard answer you will get will be: “The fact that we have not investigated the 2,889 communications about war crimes from 139 countries, does not mean that we shouldn’t intervene elsewhere.” Fair enough, but did that *elsewhere* have to be *only* or *mainly* in Africa? International justice would be a good idea if it were applied equally to small and weak countries and to the superpowers! It is almost always the case that it is the losers who get dragged before such an international justice forum. In an article in the British daily, *The Times*, on 29 August 2000, Dr John Laughland wrote: “Forget the rhetoric, this court is just another excuse for superpower bullying.” It is important to know who is doing the judging, who is being judged, what the charges are, and what the system of law in use is.

The perception, rightly or wrongly, of organised and orchestrated double standards makes thinking people query the motives behind imposing international justice on the weak and defeated. The late British foreign secretary, Robin Cook, on being asked on the BBC’s *Newsnight* programme whether the invasion of Iraq might one day become the subject of an ICC investigation, replied: “If I may say so, this is not a court set up to bring to book prime ministers of the United Kingdom or presidents of the United States.” Dr Laughland went on to say, in the same article: “It [the ICC] will be another example, in the over-globalised world, of an institution that lends legitimacy to the Great Power bullying of weaker nation states.” And this is not an African writing.

Sierra Leone

Now to Sierra Leone. It is important to note that the Sierra Leone war crimes cases are not tried by the ICC, but by the Special Court for Sierra Leone (SCSL), an independent judicial body set up to “try those who bear the greatest responsibility for the war crimes and crimes against humanity committed” in Sierra Leone between 30 November 1996 and 18 January 2002.

The SCSL was established on 16 January 2002 by a signed agreement between the UN and the government of Sierra Leone. It has 25 articles. In March 2003, the SCSL brought its first indictments against 13 people for “war crimes, crimes against humanity and other violations of international humanitarian law”. Three indictments were later dropped because of the deaths of the inditees. Those indicted fell into four groups: the Civil Defence Forces (CDF or Kamajors), the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC), and one individual in his own category: Charles Taylor, former president of Liberia.

Taylor is a non-Sierra Leonean who never set foot in Sierra Leone during the relevant period of 30 November 1996 to 18 January

Right: Mathieu Ngudjolo, one of the Congolese dragged to the ICC. Inset: The American lawyer, Stephen Rapp, the current chief prosecutor of the Special Court for Sierra Leone

2002. 30 November was the signing of the Abidjan Peace Accord on Sierra Leone, which I attended as a consultant of International Alert, the then London-based conflict-resolution group, and 18 January 2002 was when the former Sierra Leonean president, Ahmad Tejan Kabbah, announced the end of the conflict in Sierra Leone, hence the time-span between those dates.

Taylor was indicted in 2003, but had asylum in Nigeria – an asylum arranged under an agreement of immunity approved and secured in August 2003 by Ecowas, the African Union, the United Nations and the governments of the USA and Britain. But Taylor was later arrested when he allegedly tried to escape from Nigeria on 29 March 2006, and was extradited to the SCSL at the request, not of the government of Sierra Leone, but of the Liberian government headed by President Ellen Johnson-Sirleaf. That is very important for that was the very government that had replaced the transitional government that took over from Taylor, and therefore Johnson-Sirleaf’s government did not want him back in Liberia by whatever means, be they through a conflict or his standing for election in the future.

The SCSL is based in Freetown, Sierra Leone. But Charles Taylor is not in Freetown. He is in The Hague in The Netherlands. Why? Because it was said that he still enjoyed considerable support in Liberia, that the region was not entirely stable and therefore a trial in Freetown was deemed undesirable for security reasons. That was to say, he might escape or be rescued by his supporters, so send him to The Hague but try him under the auspices of the Special Court for Sierra Leone.

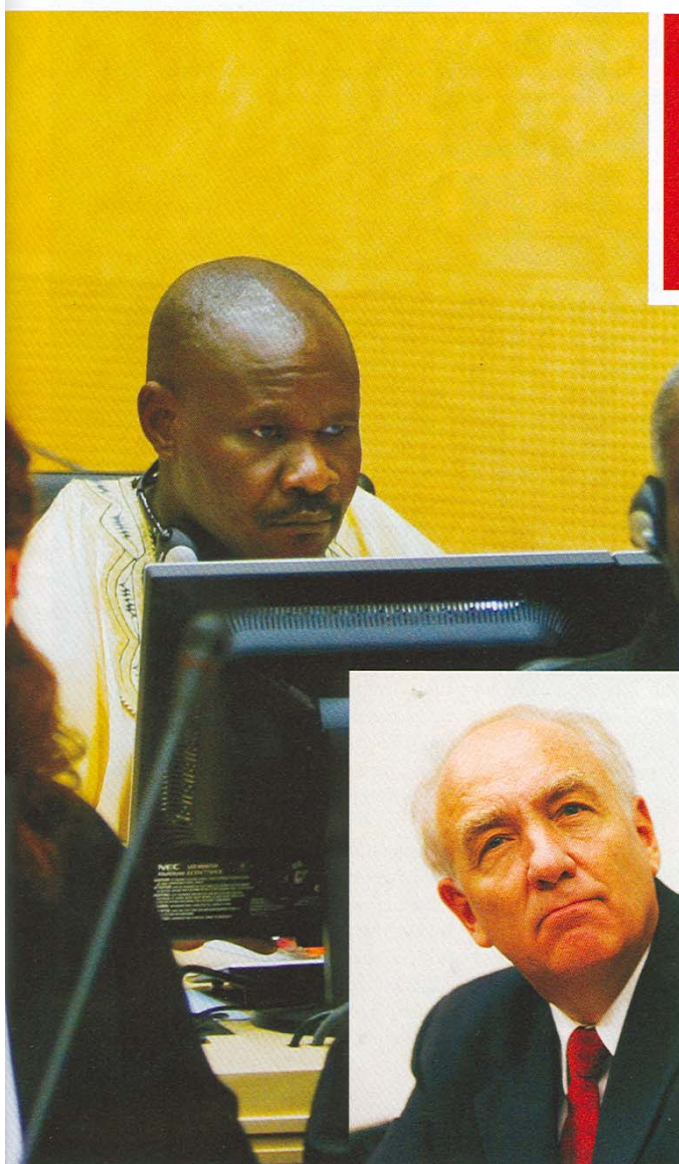
Facing an 11-count indictment, Taylor’s trial started in The Hague on 4 June 2007. After calling 91 witnesses, the prosecution concluded its testimony on 30 January 2009. Taylor is due to open his defence in July 2009. His associates and friends are still under a UN travel ban and their finances frozen! The scales are tilted against him.

What is Charles Taylor charged with? He is accused of being “responsible for the development and execution of a plan that caused the death and destruction of Sierra Leoneans”. The plan formulated by Taylor and others, it is said, “was to take political and physical control of Sierra Leone in order to exploit its abundant natural resources and to establish a friendly or subordinate government there to facilitate that exploitation.” I think this an insult to the intelligence of the people of Sierra Leone.

It is also said by the prosecution that Taylor’s “involvement in the crimes alleged in the indictments took a variety of forms – committing acts, planning, instigating, ordering, aiding and abetting, all in the commission of the alleged crimes, and otherwise participating in the execution of a common plan, design or purpose” ... that is to say “a joint criminal enterprise”.

He is further charged with aiding and abetting the intentional targeting of innocent civilians, that he had knowledge of such targeting and that he failed to stop it. It is alleged that he gave arms, money and refuge to those carrying out those atrocities. For those reasons, it is said, he is personally responsible as per Article





“What comes out of all this, is what most Africans see as organised hypocrisy, selective justice, orchestrated double standards, and a refusal by the Western world to see and treat Africans as equals and responsible.”

So why charge Charles Taylor and stop there? At the beginning, the Special Court for Sierra Leone thought that all sides should be prosecuted, hence the prosecution of members of the Civil Defence Force as well as the RUF. That caused an outrage, because the CDF said they fought on the side of the government of Sierra Leone, to bring back democracy. And who supported the CDF or knew what they were doing but failed to stop it – the government of Sierra Leone under President Tejan Kabbah! If you prosecute Charles Taylor for “knowledge and failure to stop”, why not prosecute those who armed and supported the CDF?

Most governments have got their hands dripping with blood. Like Lady Macbeth, most of them should be “washing” their hands. One could add: “Will all the waters of the oceans wash off the blood from the hands of the governments of the USA, the UK, Israel and even Rwanda and Uganda? Here I am thinking of Guantanamo Bay, Iraq, Afghanistan, Gaza and DR Congo. Is the “international community” going to seek justice for the perpetrators of Guantanamo Bay and rendition? For the merciless bombing of Iraq and Afghanistan? I very much doubt it.

What comes out of all this, is what most Africans see as organised hypocrisy, selective justice, orchestrated double standards, and a refusal by the Western world to see and treat Africans as equals and responsible. It is seen as an attempt to humiliate, patronise and dominate Africa. The humiliation of an African president is not just his; it is a humiliation of his family, ethnic group, country, region and the whole of Africa. If you look at some of the language used by the prosecutor in the Taylor case, it is nothing but pure humiliation. It is as if the West is saying “we are civilising Africa and teaching the savages how to behave”.

The SCSL and the ICC are seen as systems to eliminate opponents that a weak government has failed to defeat militarily, a way of eliminating and silencing political opponents who might come back in the future. Worst of all, the ICC and SCSL are used to instigate regime change. [Ed: That was what happened in Taylor’s case!].

So what chances do the defeated leaders have before the courts? Political trials by their very nature are never fair and just. We are in an *Alice in Wonderland* scenario here: Where the King says “Herald, read the accusation.” The herald does so and the King says to the jury: “Consider your verdict”, and the Queen says: “No, no, sentence first – verdict afterwards!” Which reminds me of what Robert H. Jackson, the American prosecutor at the Nuremberg trials, said in his article *The Rule of Law Among Nations*: “If you

6 of the SCSL statute. All the crimes are alleged to have been committed between 30 November 1996 and 18 January 2002.

Comparable cases

In every conflict, rebels have always been supported logistically or financially by either a neighbouring country or countries further afield. The Western powers have also supported rebel movements and dictatorships as long as they thought the movements or dictators would protect their interests. I am not aware of any African “dictator” who has not, at one time or another, had the support of the USA, some European country, Russia or China, and those foreign powers sometimes change sides from supporting the government to supporting the rebels and vice versa.

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are determined to execute a man in any case, there is no occasion for a trial; the world yields no respect to courts that are merely organised to convict.”

International justice is said to be about getting rid of the culture of impunity; it is about human rights and war crimes, and to show the world that no one is above the law. But as Robin Cook crudely pointed out: *“[The ICC] is not a court set up to bring to book prime ministers of the United Kingdom or presidents of the United States.”* So what impunity are we talking about?

Implications

Prosecuting presidents and rebels in Africa has huge implications for reconciliation, national stability and future peace. The SCSL and the ICC may not be compatible with reconciliation processes and amnesties for those accused of human rights abuses as part of peace agreements. Why would a dictator give up power if he knows that he will end up in The Hague? Why would rebel leaders come to roundtable talks if they think such talks might just be a trap to arrest them and send them to The Hague?

If members of a community in a conflict situation reach a peace agreement, and having weighed all the pros and cons of their situation, decide that for the sake of their country’s enduring peace with justice, they will go down the path of reconciliation and forgiveness, it is not up to the “international community” to insist on international justice. It is the case that sometimes the people crying loudest for retribution are the least affected by the conflict; it is what they call in Africa, “the visitors who mourn louder and longer than the bereaved”.

Yes, it may be all about human rights and the culture of impunity. But the local communities should decide, and if they require help from the international community, they should ask for it. All of us are aware of terrible situations not too far back in which the violation of human rights was so heinously evil and yet the international community did nothing. I am thinking here of apartheid South Africa, Ian Smith’s Rhodesia, Rwanda, Angola, Sierra Leone, Sudan, Sri Lanka, Nicaragua, etc. Where was the talk of human rights?

Traditional African society has ways of peacefully resolving conflicts through community elders. Unfortunately, this system of dispute settlement was not integrated into the modern state systems; except in Botswana where the ruling elite built on the tradition of the *kgotla*, a communal assembly to consult and mobilise public opinion and support before policies are implemented. The Kalanga people of Matabeleland (Zimbabwe) have a similar thing called *Nhangano*. The Zulus called theirs *Indaba*. The Greeks called it *demos* (people) and added *kratos* (rule), from which we get *democracy*.

In pre-colonial days, elders resolved disputes because of their standing in the community. Traditional African societies placed a high premium on the leadership of chiefs and elders who dominated the economy and controlled all important forms of collective action in the community. They were regarded as wise, and commanded the respect and confidence of their respective societies. They did not resort to methods of adjudication that were considered to be alien to African practices. They avoided apportioning blame in order to avoid bitter recriminations, they soothed jarred sensibilities and sought compromise, giving disputants the benefit of their wise and perceptive eldership, and

a stable environment for negotiation derived largely from the respect accorded to them as elders.

I wish to quote Sierra Leone’s former president, Ahmad Tejan Kabbah. I was at the signing of the Sierra Leone Peace Agreement, in Abidjan, Côte d’Ivoire, on 30 November 1996. He said that the signing of the Peace Agreement was the first step:

“This step must be quickly followed by a firm dedication to true national reconciliation... I however need to remind every Sierra Leonean that one of the surest ways to restore durable peace in our society is for those of us who have been aggrieved on account of this war to extend a hand of forgiveness and love to those to whom we attribute our suffering. This will not only strengthen our country in the face of many challenges confronting it, it will also strengthen us as individuals in our efforts to rehabilitate our lives.”

“On the other hand, craving for revenge or retribution will surely weaken our country further and almost certainly intensify our pain as individuals and probably generate another cycle of violence and suffering... Moreover, the government undertook to create positions of employment for members of the RUF, and I am sure the whole nation will benefit immensely from having all its citizens working together for the same purpose. Ex-combatants have nothing to fear and everything to look forward to, as my government will lose no opportunity to brighten their future by giving them and everyone else in this country the opportunity to realise their full potential.”

The capacity of Africans to forgive (but not forget) is incredibly huge. Consider how they have forgiven and continued to live with former colonisers and persecutors. Almost all the “fathers of Africa” at one time or another have spent time in prison and yet after independence have forgiven their former persecutors. The South African Truth and Reconciliation Commission was one such example.

Even in Sierra Leone, I understand that some of the amputee victims presented a petition to President Kabbah, the UN, Ecowas, and the AU stating clearly that as victims, they had forgiven their perpetrators and that their purpose was to use their deep sense of forgiveness to reconcile and heal the nation. They see no need for a Special Court and argue that the resources thus being expended should be better used to assist the victims and the nation. It is the forgiveness of the victims that is contributing to peace and stability in Sierra Leone.

The alternatives

So what should be in place instead of prosecuting presidents? The international community could genuinely and seriously start investing in conflict-preventive measures, conflict resolution, and peaceable post-conflict peace-building. Addressing systemic causes of conflict is a genuine role of the international community. Capacity building for Africa is foremost. The 40 states that have put money into the Special Court for Sierra Leone could have given that money towards strengthening the implementation of the Abidjan Peace Accord. In that case the 30 November 1996 to 16 January 2002 situation would never have arisen.

If in the end justice has to be dispensed, then it has to be done in Africa by Africans. To that end, I would call for an African Union Supreme Court to take over the jurisdiction of the ICC and any *ad hoc* courts in Africa such as the Rwanda and Sierra Leone special courts. It must be justice done in Africa by Africans. We need African solutions for African problems. ■NA

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On 8 February 2006, when Charles Taylor was still in exile in Nigeria and America was using its influence to get him handed over to the Special Court for Sierra Leone, David Crane, the former chief prosecutor of the Court, testified before the US Congressional Subcommittee On Africa, Global Human Rights and International Operations. Here are excerpts from his testimony.

David Crane in his own words

I APPRECIATE THE OPPORTUNITY TO COME before you and talk about the tenuous future of a struggling democracy, the Republic of Liberia. But before I do that, I want to recognise the tremendous, steadfast, and bipartisan support this Committee has given me professionally, politically, and personally during my tenure as the founding chief prosecutor of the world's first hybrid international war crimes tribunal in West Africa, the Special Court for Sierra Leone. For three years, we all worked together to face down impunity in West Africa and to seek justice for the murder, rape, maiming and mutilation of approximately 500,000 Sierra Leoneans ruined in a type of civil war over a period of 10 years of brutal and sadistic fighting on all sides.

I am here to tell you Mr Chairman [Christopher H. Smith], that you and your esteemed colleagues, to include Chairman [Henry] Hyde [of the House Committee On International Relations], and the ranking Democratic member Mr Lantos, as well as the bipartisan Human Rights Caucus of the House of Representatives, have made a difference in West Africa. From my heart, thank you all.

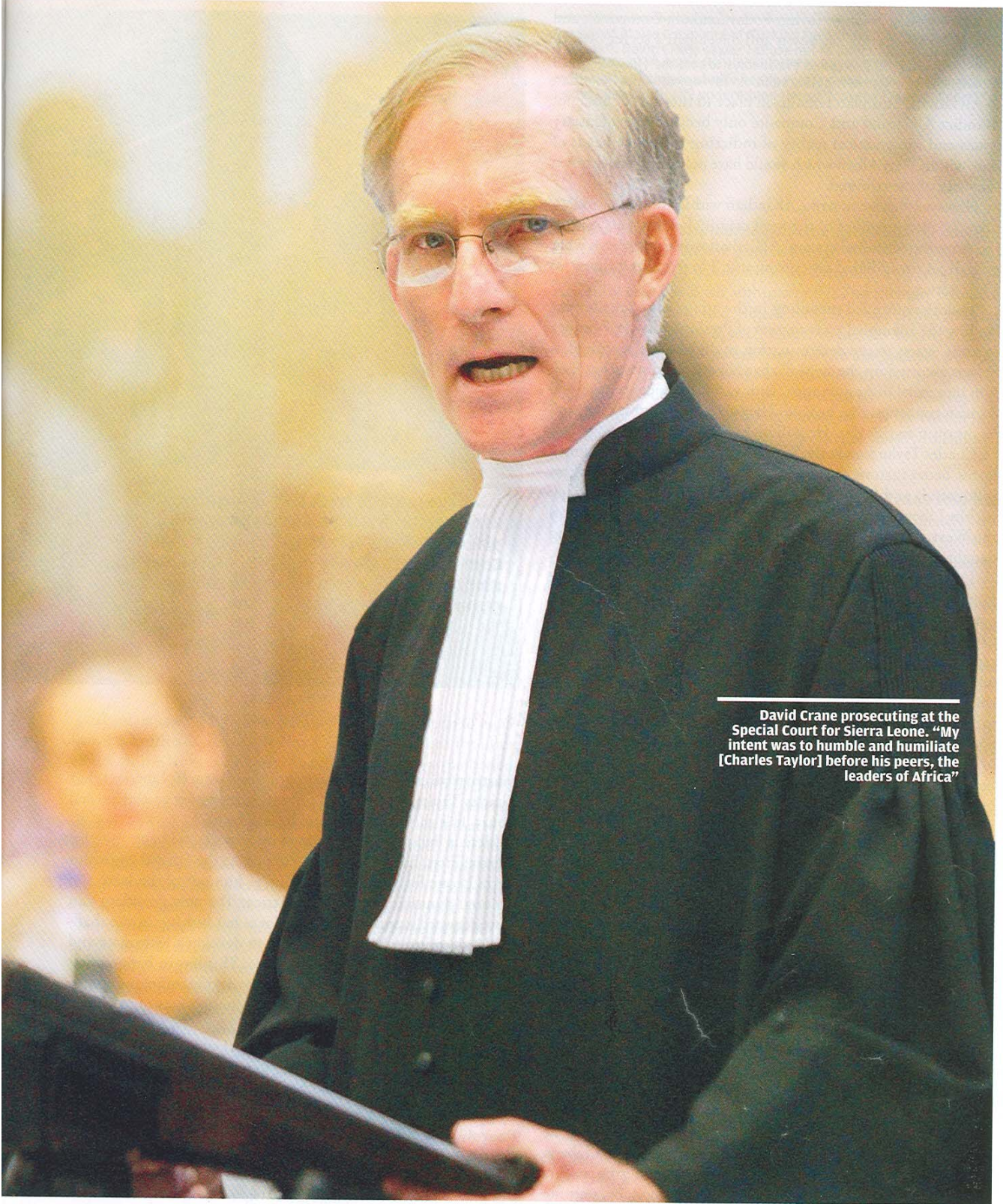
We can change the course of history, Mr Chairman. We have a chance to do this in West Africa. I believe the Special Court for Sierra Leone placed the international community on the correct path, a path of truth and justice. The opportunity presented to us today is to show the people of West Africa, all of Africa, in

large measure, that they matter, that we care, and that they are not alone. When I arrested six of the 13 individuals I indicted, in a textbook 55-minute arrest operation throughout Sierra Leone in Operation Justice [in] March 2003, to include the minister of interior at his desk, there was dancing in the streets. The people of Sierra Leone began to believe that no one was above the law.

And when I unsealed the 17-count indictment against President Charles Taylor [later reduced to 11 counts because of its lack of specificity] for the atrocities he committed on the people of West Africa; stripping the most powerful warlord in Africa of that power with the simple stroke of a pen, the people of this embattled region realised that the rule of law was more powerful than the rule of the gun.

For the first time in his life, Charles Taylor ran into an immovable object – the victims of this tragedy, who shouted never again and no more. Humbled and beaten, he fled to a type of political limbo in Calabar, Nigeria. Taylor has been a catalyst of most of the human tragedy and political instability in the region, backed by his compatriots, Colonel Muammar AlGathafi of Libya and President Blaise Compaoré of Burkina Faso, among other criminal elements. That relationship with these two heads of state and the resultant political instability still remains.

According to close sources who acted as lead witnesses during our investigation of Taylor and those involved in the joint criminal enterprise that destroyed two countries and threatened



David Crane prosecuting at the Special Court for Sierra Leone. "My intent was to humble and humiliate [Charles Taylor] before his peers, the leaders of Africa"

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a third – Côte d'Ivoire – Taylor, Foday Sankoh, Compaoré, and AlGathafi apparently sat down and developed a secret plan to undermine the current governments within West Africa and then replace them with surrogates, such as Taylor who was beholden to AlGathafi. This plan remains in place to this day. I chose not to indict AlGathafi and Compaoré only because of evidentiary issues and the practical reality of indicting two more heads of state within West Africa which would have politically undermined the work of the tribunal.

However, I chose to name AlGathafi within the Taylor indictment as a key member of the joint criminal enterprise. Within the American criminal system, AlGathafi would have been what we call an un-indicted co-conspirator. He remains a threat to West Africa.

Taylor's continued meddling in the affairs of the region, including the attempted assassination of President Conte of Guinea in 2005, attest to the determination to do what he promised as he was escorted up the steps of that Nigerian airliner [that took him into exile] in August 2003, with various presidents of several African countries, that he would be back. He meant it then, and he means it to this day. He will be back.

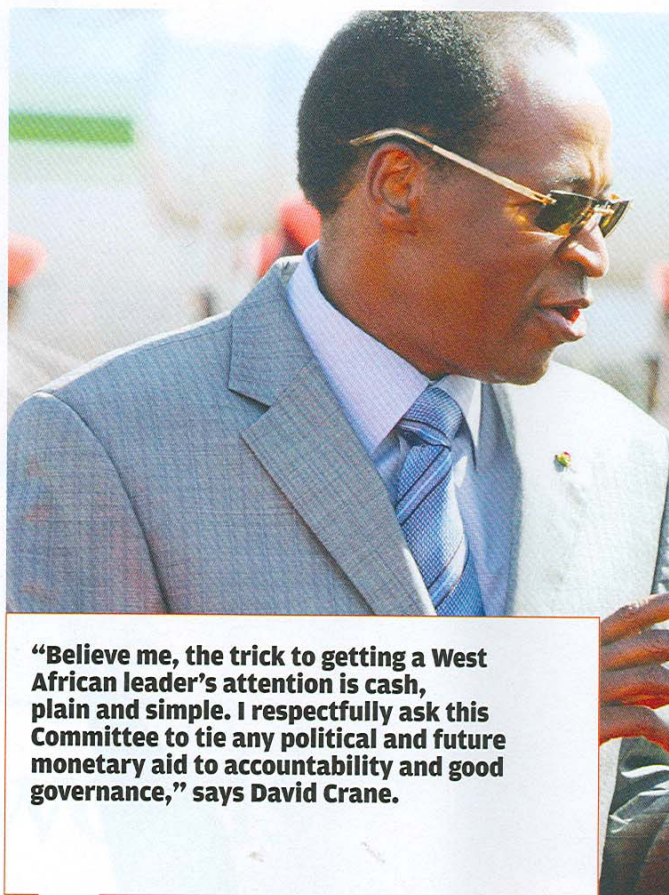
Charles Taylor knows the Western world, to include the United States, better than we do ourselves. He is relatively young, wealthy, influential, and has a supportive base, military and political, within Liberia and the Mano River region. Taylor knows that the West, particularly [the USA], will never send its sons and daughters to West Africa to stabilise a faltering Liberia...

I posit that five years from now when the international community is challenged by other crises, Taylor, in Calabar, under the protection of Nigeria, will make his move... President Olusegun Obasanjo was induced by the US, the UK, with the concurrence of the UN secretary general, Kofi Annan, to take Taylor out of Liberia and place him in Calabar. Initially, I supported this, even calling for his removal from Liberia, now that he was indicted. It was important that the peace process move forward and Liberia stabilise.

But it has now been over two years; peace is at hand with a new government [in Liberia], and it is now time for this handover by the Nigerian government. I only hope the president of Nigeria has the moral courage to do so, something lacking in many African leaders today. [Or] we will wake up one morning and watch on *CNN* as Taylor rides triumphantly down the main street in Monrovia to the Executive Mansion, daring all of us to come and get him. Unless he is handed over to the Special Court for Sierra Leone, this scenario is not out of the realm of possibility. More importantly, and I underscore more importantly, the people of West Africa know it all too well, that Taylor is a street fighter, a thug, and a survivor.

Liberia's future

How do we assure Liberia's future? Ultimately, what we do about Taylor in the next several weeks will determine the fate of Liberia and Ellen Johnson-Sirleaf's new administration. Charles Taylor hangs like a dark and ominous cloud over this ravaged country where he personally, for his own criminal gain, destroyed, as he did in Sierra Leone. There will be no prospect for peace in Liberia or the Mano River region as long as he remains outside the custody of the international tribunal in Freetown. In my opinion, nothing



“Believe me, the trick to getting a West African leader’s attention is cash, plain and simple. I respectfully ask this Committee to tie any political and future monetary aid to accountability and good governance,” says David Crane.

constructive can be developed in the long term in Liberia unless Charles Taylor is accounted for and turned over to the Special Court. It is that simple. Again, he will be back.

Here is my suggested roadmap for a successful beginning for Liberia: First, hand Charles Taylor over to the Special Court for Sierra Leone for a fair trial. This takes him out of the local and regional dynamic that is West Africa. The new president can move forward, confident that Taylor is not lurking in the shadows undermining her initial efforts to develop a legitimate and accountable government in Monrovia. This has to happen first and now, or the rest of my suggestions and recommendations, and the one you are considering for Liberia's future, will be a waste of time, money and effort.

Second, tie any financial and political support to good governance in Liberia... Make that government accountable to its people and its international backers. Believe me, the trick to getting a West African leader's attention is cash, plain and simple. I respectfully ask this Committee to tie any political and future monetary aid to accountability and good governance. This approach will allow proper expenditure of US taxpayers' hard-earned money.



President Blaise Compaoré of Burkina Faso (left) and Muammar AlGathafi. David Crane says: "I chose not to indict AlGathafi and Compaoré only because of evidentiary issues and the practical reality of indicting two more heads of state within West Africa which would have politically undermined the work of the [Special Court]"

Third, encourage the new administration in Liberia to establish the Truth and Reconciliation Commission called for in the earlier peace accords of 2003. The victims of any atrocity need to be able to tell their story officially. It is an important part of reconciliation for a country in transition from war to peace. It worked in Sierra Leone, and it can in Liberia. Recall that what took place in Liberia over a period of 10 years under the iron fist of Charles Taylor, caused the murder, rape, maiming, and mutilation of around 600,000 Liberians. The victims, their families, and towns need to tell the world what happened there. A truth commission can assist in this and allow them to begin to put the horror behind them.

Fourth, within the next few years or so, another hybrid war crimes tribunal needs to be established to account for the war crimes and crimes against humanity committed by Charles Taylor and his henchmen from 1990 to 2003 in Liberia. As most of these atrocities took place outside the jurisdiction of the ICC, an alternative model must be used. That model is the hybrid concept that proved to be so successful next door in Sierra Leone. The domestic court system in Liberia is incapable of accomplishing this task. Charles Taylor has destroyed two nations, not just one. He must be prosecuted for any crimes he is alleged to have committed in Liberia after he is tried for what he did in Sierra Leone. Couple both of these conflicts together, and Charles Taylor, sitting as a

free man in Nigeria, is individually criminally responsible for the destruction of 1.2 million human beings.

In conclusion, I would ask this Committee to continue to forcefully urge the Bush administration and the new president of Liberia to demand that Nigeria hand over war crimes indictee Charles Taylor to the Special Court to answer for his crimes. Nothing else that follows can happen with any assurance of success without it. In this period when we celebrate and recognise the principles laid down at Nuremberg 60 years ago, we must resolve, as human beings who care about humanity and the rule of law, that there cannot be an African exception to those principles.

Question and Answer

During the Question and Answer session, Crane told the Committee: I have personally sat down with approximately 70% of the regional leaders in West Africa. Privately, they will look you right in the eye and tell [you], and they did tell me, that Charles Taylor needs to be handed over to the Special Court. He is an embarrassment to them. He is a sea anchor to economic development and legitimacy. I think there is a real recognition that democracy is the way ahead. However, with Taylor out there, it is a problem for them. [But] they are not willing to embarrass the president of Nigeria who is a regional leader, and so they have chosen, other than three of them, not to publicly state that.

Is President Johnson-Sirleaf at risk? She is at risk now politically. It is a dangerous region... If Taylor is handed over and placed in an appropriate international detention facility, whatever support he has will eventually dry up because there is no more Charles Taylor. [He] will receive his fair trial, but I do want to tell you that we have a very strong case against him, and before I signed that indictment, I insisted that the charges be beyond a reasonable doubt because we could not make the mistake with any of these individuals to include Charles Taylor. He will get his fair trial, but the point is that his supporters will suddenly realise that he is not coming back, and they will look to other ways to ensure their own future. So I think it will be more secure for this new, innovative president [Johnson-Sirleaf] that [Taylor] is being fairly tried before a court of law than sitting in some type of political arrangement in Calabar.

I would like to underscore the cultural aspect of this. One of the things that we did in our strategic plan is to build cultural solutions to some of our prosecutorial strategy to ensure that we respected thousands of years of culture in that part of the world. And it is very, very important as an international community that we ask ourselves: "Is the justice we seek the justice they want?" And so when we are beginning to develop hybrid systems in the future, we have to ask ourselves that question to ensure that we inject that type of approach to it. ■NA

Cover Story

ICC AND AFRICA

'It is a political trial,' says Taylor's lawyer

"There is a much wider dimension to the trial of Charles Taylor. This trial is not about the law as such, it is about politics. There are important political considerations at stake", says Courtenay Griffiths, the lead counsel for Charles Taylor. According to him, "Western influence has much to do with Taylor being charged in the first place." Osei Boateng reports.

AFTER GOING THROUGH 91 PROSECUTION WITNESSES over a period of 13 months, the Special Court for Sierra Leone, sitting in the The Hague in the Netherlands, was told on 6 April 2009 by former President Charles Taylor's lawyers to acquit their client even before he opened his defence (likely to be in July), because the evidence adduced so far by the prosecution could not lead to a conviction, now or later. "May it please the court," said Taylor's co-counsel, Morris Anyah who submitted the oral motion, "we are here pursuant to Rule 98 of the Special Court Rules of Procedure and Evidence, and we are here to move the court ... to dismiss each and every count of the second amended indictment against the accused, Charles Ghankay Taylor.

"In sum and substance," Anyah continued, "our position is that the evidence presented to date, viewed by a reasonable trier of fact, viewed in an objective manner, does not support or is not sufficient or capable of supporting a conviction. Your Honours are well familiar with the standard of Rule 98, namely, is the evidence capable of supporting a conviction? Indeed, the rule states it in the form that there is no evidence capable of supporting a conviction."

For three-and-a-half hours, Anyah went through all the legal basis for conviction on the 11 counts that Taylor faces, and, in

conclusion, told the Court: "We have gone through the different modes of liability, and I again stress that this is a case about the degree of Charles Taylor's responsibility, his participation. It is not a case about what crimes occurred in Sierra Leone. It is not a case about the gravity of those crimes. It is a case of methodically and meticulously going crime by crime, element by element vis-à-vis each of the seven modes of liability: planning; instigating; ordering; committing; aiding and abetting in the planning, preparation and execution; joint criminal enterprise, [and] Article 6.3 superior responsibility. When you consider those modes of liability, each and every one of the counts in this indictment fails. It fails at this juncture of the case midway through, and assuming for the sake of argument the case proceeds beyond this point, it will fail."

Of course, the prosecution did not agree. In its counter-submission on 9 April, the prosecution insisted that it had made a convincing case for conviction and that the court should proceed and allow Taylor to open his defence. The Court was due to rule on the motion on 9 May.

Meanwhile, on 8 April, the Court's Trial Chamber I sitting in Freetown, Sierra Leone, sentenced three former rebel leaders of the Revolutionary United Front (RUF) to a total of 117 years for various





“The cruel reality is that impunity only becomes an issue if the perpetrator is a black African who does not enjoy the backing of the West, hence a Jonas Savimbi is safe”

war crimes and crimes against humanity. Issa Hassan Sesay was sentenced to 52 years, Morris Kalllon to 40 years, and Augustine Gbao to 25 years. The Court “concluded that the inherent gravity of the criminal acts for which Sesay, Kalllon and Gbao have been convicted is exceptionally high”.

On 29 March, Charles Taylor’s lead lawyer, Courtenay Griffiths, called a press conference in Accra, Ghana, to sensitise the people of West Africa, and indeed the world, to the proceedings going on in The Hague. He later appeared on Ghana’s *Metro TV* to amplify his message that “there is a much wider dimension to the trial of Charles Taylor” than the public had cared to notice. “This trial is not about the law as such, it is about politics. There are important political considerations at stake,” he said, add-

Former Liberian President Charles Taylor sits in the courtroom of the International Criminal Court prior to the hearing of witnesses in the trial against him

ing that “Western influence has much to do with Taylor being charged in the first place”. He pointed accusing fingers at the Americans and the British who, according to him, had spent “a lot of money and time” on ensuring that Taylor was convicted. He hoped that the Special Court judges would refuse to bow to external pressure, “and if they do maintain their independence and are willing to return a just verdict, it will be an acquittal for Mr Taylor”.

Earlier, at the press conference, Griffiths had said he had “come to the birthplace of Pan-Africanism, Ghana, in the hope that we can together rekindle that non-negotiable demand that Africans be treated equally on the global stage. Sadly, if the experiences of Charles Taylor and more recently President al-Bashir of Sudan provide a guide, then we must be prepared to re-engage with renewed vigour in that struggle. In both instances, the ‘international community’ – the code for Western interests – is promoting the idea that there can be no impunity for those who commit war crimes and crimes against humanity. It is somewhat curious then that no one is calling with equal ferocity for either former President George W. Bush or former Prime Minister Tony Blair to stand trial for the atrocities instigated by them in Iraq”.

Likewise, Griffiths said, “there is studied silence from that same international community when it comes to the crimes committed so recently by the state of Israel in Gaza. The cruel reality is that impunity only becomes an issue if the perpetrator is a black African who does not enjoy the backing of the West, hence a Jonas Savimbi is safe. This is an opportune moment to consider that debate. When Charles Taylor was arrested and dragged in chains to The Hague to stand trial, he warned, to borrow a phrase, that if they came for him in the morning, they would come for others that night. That vision has now come true as the president of Sudan can now testify, and watch out Robert Mugabe!”

Griffiths, a Queen’s Counsel (QC) in England, said it was time for Africans to take charge of their own destinies. “Taylor’s trial has received very little publicity here in Africa, yet it is the continent most affected by the outcome of those proceedings,” he pointed out. “Why did his trial not take place in Africa? Why has the African Union not established its own court to deal with issues that affect Africans in Africa? If a corporal in the American Army cannot be tried in the International Criminal Court for war crimes and crimes against humanity, how come an African president can?”

According to Griffiths, one reason that Taylor’s trial and the trials of other Africans were taken to The Hague was because it was easier to destroy the rights of a people when they were kept in the dark. “The majority of Africans have not got a clue about what is going on in The Hague,” he said. “It is time for us to shed some light on this misuse of international criminal law. That can only be done if we organise to ensure the rights of our African sons and daughters are given proper regard, and that international criminal law does not become a 21st century form of neo-colonialism. This is not just about Charles Taylor, but it is a useful place to start. We who defend him need your support.” ■ **NA**