

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



PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Press and Public Affairs Office as at:

Friday, 14 July 2006

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The Monitor
Friday, 14 July 2006

A Brief of the Decision by the Special Court on the Issuance of Subpoena *Ad Testificandum*
to the President of Sierra Leone

By Krishanu Sengupta

I. The Facts

A. Material: Moinina Fofana and Sam Hinga Norman of the Civil Defense Forces (CDF) filed separate motions with The Trial Chamber I of the Special Court on 15 and 16 December 2005 respectively for the issuance of a subpoena *ad testificandum* to H.E.

Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone. Maintaining that President Kabbah met with CDF officials but refused to testify, the motions filed were intended for the Chamber to compel the President to testify after he earlier refused to do so. After receiving responses from the Prosecutor and Attorney General, who represents the interests of the

President and would deliver the subpoena to him if it was issued, the Special Court announced its decision.

Moinina Fofanah and Sam Hinga Norman, were charged by the Special Court of Sierra Leone with war crimes, crimes against humanity, other serious offences of international humanitarian law, and violations of Articles 2, 3, and 4 of the Statute of the Special Court for Sierra Leone (SCSL).

Legal and Procedures: Moinina Fofana and Sam Hinga Norman were top military commanders of the CDF. Fofana stated that President Kabbah, as Minister of Defence and commander and supporter of the CDF, has information that could clarify Fofana's charges of involvement in planning war crimes and engaging in a joint criminal enterprise. The President's knowledge of the command structure of the CDF would identify who bore the greatest responsibility. Hinga Norman similarly stated that President Kabbah supported and instructed CDF commanders and specifically appointed him Coordinator of the CDF, so the President could testify to the innocence of the CDF. The accused stated that subpoenaing the President to testify was the only way for the information he has to be revealed.

The applicants based their right to issue a subpoena to the President on Rule 54 of the Rules of Procedure and Evidence of the Special Court. According to the Defence, the rule has two tests which must be passed for a subpoena to be granted: 1. A court-ordered subpoena must be the necessary means for the defendants to obtain the information they want. This means the voluntary cooperation of the subject of the subpoena must have already been pursued. The Prosecution referred to the International Criminal Tribunal for Yugoslavia's (ICTY) standards and identified this requirement as the 'last resort' test used in the case against ICTY's *Krstic* case-- the Defence must have attempted to acquire the information in other ways and thus the subpoena is the last resort. 2. The information requested must also be relevant to the case. The Defence's preparation for their case must be aided by the requested information. The Prosecution again referred to the *Krstic* case's standards and stated that the 'legitimate forensic purpose requirement' test must be passed, which requires the evidence to

be of "substantial or considerable assistance" to the Defence with respect to a "clearly identified issue that is relevant to the trial." The Attorney General of Sierra Leone adopted the Prosecution's standards for these two tests as well.

With respect to the first test, the defendants believed their efforts to enlist the President's testimony had been rejected at first and then ignored. Thus, they were forced to resort to subpoenaing him. The Prosecution stated that the Defence's ambiguity as to which specific issues the President's testimony would clarify meant that the Court could not determine if the 'last resort' standard had been met and if his testimony was necessary. The Attorney General added that the relevance of the information the Defence hoped to acquire had not been stated and, furthermore, the subpoena was meant only to embarrass the President.

Regarding the second test, the defendants referred to the President's control and support of the CDF leadership during the time period the accused were charged with perpetrating crimes as evidence of his ability to clarify their degrees of liability. President Kabbah's knowledge of who bore the greatest responsibility for the crimes in question was central to the charges [Article 1(1) of the SCSL's Statute] leveled at the accused by the Special Court. The Prosecution responded that the Defence did not specify how the information given by the President would affect the Court's ruling on their guilt, while the Attorney General stated that the President was outside of the country during the time period in question and thus his testimony would have no relevance to the guilt of the accused.

Finally, the Defence, Prosecution, and Attorney General differed on the ability of the Court to even subpoena the President. The Defence submitted that Section 20 and Rule 8 of the Ratification Act of the SCSL allowed the Court to enforce its orders just as the domestic courts would. Thus, if an individual failed to heed the Court's request, he would be in contempt of the Court. Additionally, the *Krstic* Appeal Decision of the ICTY stated that a Head of State subpoenaed to give evidence before an international criminal tribunal enjoyed no

immunity. The Sierra Leone Constitution did not grant the President immunity from testifying and, even if it did, Section 29 of the SCSL's Ratification Act waived the immunity clause of the Sierra Leone Constitution for its purposes. The Prosecution responded that the Court could use its discretion on the matter just as the ICTY did, but the issue was a moot one since the two aforementioned standards under Rule 54 were not satisfied. The Attorney General cited the *Blaskic* Appeal Decision of the ICTY to show that the President could not be compelled to testify since no penalties could be enforced against him as Head of State if he refused the subpoena's orders. The Constitution for Sierra Leone also forbid the President from being brought before a Sierra Leonean court unless charged with an offence; however, if the Court decided to issue the subpoena, he would deliver it to the President.

Legal Issues

The important legal questions involved in the Defence's request for a subpoena *ad testificandum* are: 1. What standards need to be met for the Court to issue a subpoena? 2. Can the Special Court compel a head of state to testify?

III. The Holding

The Court dismissed the motions of both defendants and found that President Kabbah did not have to meet with the Defence for a pre-testimony interview and then testify at their trials.

IV. Legal Rationale

Regarding the relevant standards for assessing the Defence's motion for a subpoena, the Court used Rule 54, guided by the provisions and decisions of the two ad hoc international criminal tribunals. Because of the ICTY and International Criminal Tribunal for Rwanda's (ICTR) similar provisions to Rule 54, the two tribunals' decisions and Appeals Chambers' rulings, specifically the *Krstic* and *Halilovic* cases of the ICTY, would guide the Court's decisions. Thus, the relevant standards would be: 1. the necessity of the Defence's request 2. The subpoena must help the Defence in its investigation of preparation for trial. The 'legitimate forensic purpose' the Prosecution referred to must be met, so

the information requested must be in relation to "clearly identified issues" in the upcoming trial.

The Court found that the two standards were not met by the Defence. 1. The necessity of issuing a subpoena to the President to obtain information on who bore the greatest responsibility for the crimes of the accused was found to be lacking. Specifically, the President's knowledge of the command structure of the CDF could be ascertained in other ways. 2. The relevance of the President himself bearing the greatest responsibility would not clear Fofana of also bearing the greatest responsibility. Also, though the President did meet with the CDF leaders, he did not know what was going on "on the ground" and so could not verify or negate the charges against the accused. The specifics of how the President could absolve Fofana of being involved in planning the crimes or engaging in a joint criminal enterprise were not provided by the Defence. Fofana alluded to being given direct orders by the President but did not expressly state it; even if the President was found to have given these orders, that evidence would only be mitigating evidence at the sentencing stage. Even if the CDF was fighting to restore President Kabbah, Fofana's extreme measures in achieving that ends would still find him guilty of the Court's charges. The ambiguity of the information Fofana hoped to acquire by the President's testimony indicated that his request was tantamount to being enabled to engage in a 'fishing expedition', as the Attorney General warned.

The same lack of specificity in how the President's testimony would rebut the Consolidated Indictment against Norman was stated by the Court. Even if the President and Norman were in contact and the President in charge of the CDF during the period of the accused's charges, this would not clear Norman of the crimes he was charged with. The Consolidated Indictment's charges of Norman's knowledge of his subordinates intention to commit crimes was not shown to be affected by the President's testimony, since Norman did not accuse the President of notifying or failing to notify him that these crimes were about to be committed. Lastly, the President's supposed knowledge of the command

were about to be committed. Lastly, the President's supposed knowledge of the command structure of the CDF was itself negated by Norman's testimony that the CDF was under the control of a "coalition of organizations."

Significantly, the Court stated that both defendants seemed to desire the President to testify so the Court could rectify its decision of not charging him with any crimes. This indirect goal of both defendants was found to be irrelevant to clearing them of any liability for their crimes and, coupled with the ambiguity of the relevance of the President's testimony to clearing them of their charges, a possible ulterior motive for their issuances for subpoena.

V. Questions

One question that the dissenting opinion written by Justice Bankole Thompson posed was whether Rule 89 of the Special Court governing the admission of evidence allowed an assessment—here the legitimate forensic purpose and last resort standards presented by the Prosecution and used by the Court—until all of the evidence had been presented. The relevant question and standards were whether the Special Court was allowed to issue subpoenas to anyone in Sierra Leone, and then if the subpoena would help the investigation or

conduct of the Court's trial. Determining whether or not the testimony of the subject of the subpoena would help or hurt the Defence's case would be premature at this stage. Since the testimony of

President Kabbah is necessary for the purposes of an investigation or trial, he should be subpoenaed. The Majority Decision has confused the distinction between admissibility of evidence and the probative value of the evidence. Rule 54, as the controlling principle in determining who can be subpoenaed, does not require overwhelming or convincing evidence that the subpoena is necessary for the trial. As long as the Defence has given *prima facie* evidence that the subpoena is necessary for the trial or an investigation, the subpoena should be issued.

What was troubling about the concurring opinion of Justice Benjamin Mutanga Itoe was the use of the 'absurdity' principle to come to the decision that the President was immune to be subpoenaed to testify. This conclusion was reached not through interpreting any statutory language, but instead by reasoning that because the President is immune under the Sierra Leone Constitution from prosecution, it should follow that he is immune from the less powerful force of a subpoena to testify. Justice Itoe went on to say the basis of Presidential immunity was that the State would be interested in protecting itself and its Head of State from information damaging to its foreign policy, domestic interests, or national security. Further, stating that the President's testimony may reveal classified foreign policy information, Justice Itoe ruled that President Kabbah should be granted a plea of privilege if he were called to testify. As "The Princes' who govern us", Heads of States are given immunity because they occupy the highest position in their country and need to preserve the dignity of the nation.

Independent Observer

Friday, 14 July 2006

Taylor's Son Pleads Not Guilty

Charles Taylor's son pleaded not guilty when he made his second court appearance in the USA on allegations of flouting immigration laws. He was not granted bail and remained in custody.

"Chuckie" Taylor was taken into U.S. Custody on March 30, after attempting to enter the United States at Miami International Airport. He is appearing before Judge Robert Dube in the Southern District of Florida in

Courtroom VII of the Dyer Building in Miami.

He also led the elite Anti-Terrorist Unit (ATU) during the presidency of his father, Charles Taylor, when it allegedly committed torture, such as various violent assaults, rape, beating people to death and burning civilians alive. Information collected by **Human Rights Watch** suggests that the ATU, a pro-government military unit, also

committed war crimes during Liberia's armed conflict from 1999 to 2003. In the years that "Chuckie" Taylor headed the unit, these war crimes included extrajudicial killing of civilians and prisoners, rape and other torture, abduction, and the recruitment of child soldiers.

United Nations



Nations Unies

United Nations Mission in Liberia (UNMIL)

UNMIL Public Information Office Media Summary 13 July 2006

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

International Clips on Liberia

Editorial: **The Arkansas Democrat Gazette**, 10 July 2006

One more arrest Warlord to get his year in court

So many atrocities, so little time . . . or attention to spare. No wonder the world reacts with little more than a polite yawn. But for once, there's cause for something other than cynicism. Charles Taylor, the warlord and former president of Liberia, has been transferred to The Hague, where he'll stand trial under the auspices of the United Nations, which apparently is still good for something. The charges? That he supported the killing, mutilation and rapes of hundreds of thousands in West Africa during his days in power.

International Clips on West Africa

AP July 13, 2006

Ivory Coast: crucial national identification program delayed

By FRANZ WILD

ABIDJAN, Ivory Coast _ A rebel-demanded program to begin issuing identity documents ahead of elections later this year failed to start on schedule Thursday, officials said. The delay was the latest in a stalled peace process that has left the world's top cocoa producer split between a rebel-held north and a loyalist south for the last four years.

Supporters of Ivory Coast President Laurent Gbagbo fear rebels who control the north and opposition parties will use the identity program to claim citizenship for millions of immigrants working here _ something that could potentially secure millions of extra votes for Gbagbo's rivals in presidential elections slated by October.

Rebels, opposition leaders and residents with roots in the north have long accused authorities of discrimination, denying them national identity papers and treating them as foreigners in their own country.

Local Media – Newspapers

Security Concerns Overwhelm Donor Conference on Liberia

(The News, The Inquirer, The Analyst and Heritage)

- A donor conference on Liberia's reconstruction and debt relief opened in Monrovia on Wednesday with President Ellen Johnson-Sirleaf describing security needs in the country as troubling. The Liberian leader told a gathering of donor representatives that while the country may appear calm, there were troubling security signals that needed to be addressed appropriately if everything else was to proceed as scheduled.

President Johnson-Sirleaf Admits Liberia's Inability to Settle Its Debts

(Daily Observer)

- President Ellen Johnson-Sirleaf on Wednesday admitted the inability of Liberia to settle its huge debts to the international community. "With an 800 percent debt stock to GDP and 3000 percent to export earnings, there is no way to pay this debt," she said.

UNMIL Dispels Rumours of Attack on Ganta

(The News, The Inquirer, The Analyst and The Monitor)

- Addressing a regular press briefing on Wednesday, the Chief of Staff of the United Nations Mission in Liberia (UNMIL), Brigadier General John Forkuo, dispelled rumours that unidentified persons are planning to launch an attack on the provincial city of Ganta on 26 July. Brigadier General Forkuo however said that UNMIL is not taking these rumours for granted and has increased its presence and is carrying out constant security patrol in Ganta.

Former Liberian War-Lord Arrested on Immigration-Related Charges

(The Informer and The Monitor)

- A former Liberian rebel leader, George Boley, was arrested on Tuesday in Clarkson, New York, on Federal criminal immigration-related charges. According to a criminal complaint by ICE Special Assistant Matthew Meyer, Boley was supposed to turn in his green card in 1988 after he abandoned his lawful resident status in the United States. However, he continued to travel on the green card.
- Mr. Boley, head of the defunct Liberian Peace Council, is scheduled to return to federal court on 5 September this year, but will remain free without bail until then.

Deactivated Police Officers Dissatisfied with Severance Benefits

(Liberian Express and New Vision)

- Several deactivated police officers gathered at the National Legislature on Tuesday to express dissatisfaction and seek redress over the allotment of their severance benefits. The deactivated police officers claimed that they were underpaid from the US\$3.9 million provided by the British government.

World Bank Gives US\$60 Million for Liberia's Recovery

(New Vision)

- The World Bank has provided a grant of US\$60 million for Liberia's recovery. Max Karlsson, Country Director of the World Bank overseeing Ghana, Liberia and Sierra Leone, told journalists at the start of the donor conference in Monrovia Wednesday that half of the money will be used for basic social services such as water, electricity, transportation and other infrastructural projects.

Government to Introduce Finger Print System to Identify its Employees

(New Vision)

- The Liberian government has announced that it will shortly introduce the biometric system as a measure of identifying government employees through finger prints.
- Dr. C. William Allan, Director-General of the Civil Servants Agency, made the disclosure in Monrovia last Friday and said that the biometric system will cost the government US\$600,000 compared to the US\$2 million loss annually from ghost names on the government's payroll.

Local Media – Radio Veritas *(News monitored yesterday at 18:45 pm)*

UNMIL Steps Up Security in Ganta

(Also reported on ELBS Radio and Star Radio)

STAR RADIO (*News culled from website today at 09:00 am*)

President Says Robbers and Rapists Possess Small Arms

Margibi Health Team Investigates Outbreak of Diarrhea

- Health authorities in Margibi County have dispatched a team of officials to Quekeh Town on the Lakayta highway to ascertain possible outbreak of diarrhea in the area. Residents blamed the diarrhea cases on the lack of wells and hand pumps in the town.

Security Measures Put in Place to Curb Criminal Activities in Southeastern County

- Reports from Grand Gedeh County say security measures have been put in place to curtail criminal activities in the south-eastern county. As part of the measures, Superintendent Christopher Bailey called for hunters in Grand Gedeh to register their firearms with government. Mr. Bailey also said he was working along with the UN mission to organize a vigilante group.

Voice of America

Thursday, 13 July 2006

Uganda's Minister for Security is at the Hague to Discuss LRA Peace Talks

Uganda's Minister for Security Amama Mbabazi is at the Hague, Netherlands to speak about Uganda's offer of amnesty to the leader of the Lord's Resistance Army, Jospheh Kony. Mr. Kony is under indictment by the International Criminal Court. Recently, President Yoweri Museveni's offered Kony amnesty if he were to renounce violence. The ICC says Kony and his four commanders should be prosecuted for war crimes and crimes against humanity. However, the LRA has refused requests to send Kony, and his deputy, Vincent Otti, to talks that were scheduled to begin yesterday.

Kirunda Kivajinja is Uganda's minister of information. He spoke with Voice of America reporter Peter Clottey about the uncertain state of the peace talks. "We've been suffering under the hands of these resistance army for the last twenty years. One of the reasons why they have taken so long was exactly because we never had reliable partners in the region to handle such a situation. They were using our neighbors Sudan as their real base. Now with the region change and Southern Sudan attaining virtual autonomy, then they found out that they could no longer operate freely. So this is a chance now that he is completely defeated we give him (Kony) an offer that if he denounces terrorism and accept to come out of the bush with the rebels remnants, that will mark a historical end to the sufferings of our people for good. And it is because of that possibility that's why the president decided that for such historical sake we can afford to grant him amnesty."

Kivajinja says the government hopes the offer of amnesty will have a significant impact on the peace talks. "We are not in direct touch with them, we are through a third party. And this is also another historical development because we've never had a third party. Now with the third party we have given the mediator the option that tell them that we are even prepared to give them amnesty unconditionally if at all they end rebellion. And this becomes the last act of ever rising up to terrorize our people."

The Ugandan official says "You have to understand that Kony was committing all these atrocities when the international criminal court was also around. And it is we who alerted it that by the way you are talking about terrorism everywhere but we've been terrorized for the last twenty years. It was at that time that they realized that there was a terrorist called Kony. They investigated and found that our allegation were true. And then issued the criminal warrant for his arrest. Now the question is, that having been done the International Criminal Court was not in a position to arrest because Kony was not anywhere in our territory. He was in Sudan government then and they could not be able to reach him."

Daily Monitor (Uganda).

Thursday, 13 July 2006.

Kony Refuses to Send Otti to Juba

THE rebel Lord's Resistance Army has declined to send its top leaders to the Southern Sudanese City of Juba for peace talks -hours after the UPDF captured one of his top commanders Col. Lapaico.

The army said yesterday that Lapaico, together with his bodyguard, were in Pader after a shoot out.

The LRA rebels refused requests to send their Leader Joseph Kony, and his deputy, Vincent Otti, to the talks which had been scheduled to begin Wednesday.

And Kony himself snubbed chief mediator Riek Machar, the vice president of the autonomous region of southern Sudan. Kony declined to meet Machar, who had gone to his country's remote border with the Democratic Republic of Congo to make the case to the rebels in person.

Instead, Otti told Machar the LRA would send two colonels -- Bwone Lobwa and Santo Alit -- to join the rebel delegation to the talks in Juba, the provisional capital of south Sudan, according to an AFP correspondent at the scene.

The negotiations are now expected to begin Friday. It was not immediately clear if the new composition of the LRA team would affect that start date, as the Ugandan government had been clear it wanted the rebels to send a top-level team.

In a meeting with Otti in a jungle clearing at an undisclosed location on the Sudan-DRC border, Machar expressed clear dismay at the LRA stance, which he said jeopardized his own government's credibility.

"We defied the whole world so you could have a chance to come and say your viewpoints," Machar told Otti, referring to south Sudan's offer to mediate in the talks despite international war crimes indictments against Kony and four top aides.

Otti said neither he nor Kony could attend the Juba talks, at least at first, due to security concerns. They are considered fugitives from justice in the eyes of the International Criminal Court (ICC), which issued the war crimes indictments against them last year.

"I cannot come at this time. Can I risk myself going to Juba?" Otti said.

That drew a firm rebuke from Machar. "Yes, you can if you love your country," the mediator said. "What stops you from coming to Juba?"

"I will come later," Otti said, prompting another rejoinder from Machar, who reminded the LRA's number two that Kony had to be present to sign any peace accord that was agreed.

"If there is a peace agreement, you know Joseph must sign it," Machar said.

Otti replied that Kony would sign a deal if one was reached.

"The time will come," he said. "A year or a month. But Joseph Kony will sign or there is no peace."

Uganda has been pushing for top LRA leaders, including possibly Kony and Otti, to attend the peace talks, arguing they are the only ones with the authority to negotiate a deal. But the rebels have resisted due to the ICC indictments and international arrest warrants against their top commanders.

Meanwhile, the Minister for Security, Mr Amama Mbabazi who is in The Hague met the ICC chief prosecutor Mr Luis Moreno-Ocampo yesterday. Amama in a statement issued by the Media Centre yesterday said; “The ICC supports the peace process aimed at achieving a lasting and comprehensive end to the suffering of the people of Northern Uganda and other areas in the region.” He said its not true that Uganda has requested the ICC to withdraw the warrants of arrest against Kony and his indicted commanders.

He said the process is at the very early stages. “ If the peace talks succeed, as we all hope they will do, the ICC and the Uganda Government, taking into account that new situation, will engage in a discussion on how to deal with it (arrest warrants) in the interests of peace and justice,” he said.

The UPDF 5th Division Commander Brig. George Etyang, told Daily Monitor on phone that the captured Col. Lapaico was followed for a week. He said the army caught up with him on Wednesday morning.