

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



A train ferrying iron ore snakes through Bumbuna

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, 14 May 2012

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR

PRESS RELEASE

Freetown, 14 May 2012

Prosecutor Hollis applauds the people of Sierra Leone following Charles Taylor's Conviction

On a tour of five provinces throughout Sierra Leone, Prosecutor Brenda J. Hollis hailed the resilience and determination of all Sierra Leoneans in demanding justice and accountability for the crimes committed against them during the 11-year armed conflict.

Over 500 Sierra Leoneans gathered in the towns of Makeni, Koidu and Kenema, and the villages of Tikonko and Mathiri, to discuss the conviction of Charles Taylor with the Prosecutor. Hollis stated that “this conviction is for you, the people of Sierra Leone, who suffered so horribly from the crimes for which Mr. Taylor stands convicted”.

The Head Man in Mathiri, Sakoba Conteh, replied that when he heard the judgment, he was as happy as the day that the war was declared over. Hollis remarked on the importance of hearing first-hand from the people of Sierra Leone a confirmation of what Taylor's conviction means for them. Village elders, youth leaders, women's civil society representatives, officers from the military, the police and the prison service, villagers and townspeople, gathered to express relief and satisfaction with the conviction handed down by the judges.

In Makeni, Paramount Chief Kasangha spoke of the judgment as a reminder that no one is above the law. In Tikonko, Paramount Chief Makavoray spoke of the duties which befall a leader, and that with authority comes responsibility.

It was recalled that Mr. Taylor was convicted for two principal types of conduct. First, he was convicted on all 11 counts for planning with Sam Bockarie the attacks on Kono, Makeni and Freetown in December 1998 and January 1999 as part of an offensive aptly named “Operation No Living Thing”. The judges found that the crimes committed during these attacks were a direct result of that plan.

Second, Mr. Taylor was convicted on all 11 counts for aiding and abetting the AFRC and RUF rebels. Recalling the language used by the judges, Mr. Taylor was “instrumental” in obtaining the arms and ammunition which the rebels used during the attacks on Kono, Makeni and Freetown, and these arms and ammunition were “critical” to these attacks. Arms and ammunition provided by or through Mr. Taylor were “critical” to the operational strategy of the AFRC and RUF, which was characterized by a campaign of atrocities against the civilian population of Sierra Leone.

“This judgment confirms what you told us back in 2002, that Charles Taylor is one of those who bear greatest responsibility for the crimes committed against you”, said Hollis.

Over 1200 Sierra Leoneans attended the SCSL's premises in Freetown for the trial judgment on 26 April to watch a live broadcast of the proceedings from The Hague. This included 140 out of 149 Paramount Chiefs from across the country. Within the last year Prosecutor Hollis has engaged in 19 community outreach events in Sierra Leone. Other senior OTP staff members have engaged in an additional 20 community outreach events, all with the purpose of bringing the SCSL proceedings closer to the people of Sierra Leone, on whose behalf the Prosecution conducts its work.

The Special Court for Sierra Leone was established following a letter written by President Kabbah, the democratically-elected representative of the Sierra Leonean people, on 12 June 2000 to the UN Secretary General requesting that a court be created. The Sierra Leone legislature subsequently ratified the agreement creating the court.

#END

Produced by the
Office of the Prosecutor
Special Court for Sierra Leone
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Visit the Special Court's website at www.sc-sl.org

Awoko

Monday, 14 May 2012

Chief Prosecutor of Special Court ends visit to Kenema City

By Saffa Moriba

Brenda Hollis, Chief Prosecutor of the United Nations backed Special Court for Sierra Leone has ended her “acknowledgement and consultation tour” in the Eastern Regional City of Kenema.

The visit comes less than two weeks after a guilty verdict was slammed on former Liberian President Charles Taylor for aiding and abetting the decade-long brutal civil war in Sierra Leone.

She described the court’s conviction of Charles Ghankay Taylor for crimes against humanity and international humanitarian law “as a victory in the fight against global impunity”.

Speaking to her audience at the Kenema District Council hall, the Special Court Prosecutor said she was visiting the country to explain the status of the Taylor trial and public opinion on the matter, as victims of the war

which the convict Taylor aided and abetted ahead of his sentencing verdict slated for the 30th May 2012.

Brenda Hollis expressed optimism that the outcome of the matter “will go a long way in healing the wounds of the many thousands of Sierra Leoneans who suffered during the brutal civil war which Taylor and his agents helped to perpetuate on their innocent being.”

Madam Hollis told her audience that Mr. Taylor was indicted by the Special Court when he was seating Head of State of the Republic of Liberia, which makes him the first former Head of State to be convicted by an International Criminal Tribunal since the Nuremburg trials in 1946.

She informed the gathering that Charles Ghankay Taylor will be remanded until the sentence hearing in May this year.

Questions and answers from the audience formed the high point of the interactive meeting.

Taylor's Lawyers Angry

Defense lawyers for former Liberian President Charles Taylor said the recommendation by prosecutors that he be imprisoned for 80 years is vindictive and excessive, according to a document released Friday.

Taylor has been convicted of 11 counts of aiding and abetting murderous rebels in Sierra Leone's civil war. Prosecutor Brenda Hollis last week said the lengthy sentence would "reflect the essential role Mr. Taylor played in crimes of such extreme scope and gravity." The court does not have the death penalty.

Defense lawyers said the recommendation is "manifestly disproportionate and excessive" for Taylor, who is 64.

In its written submission before a sentencing hearing next Wednesday, the defense team argued that "an appropriate penalty would be a number of years which falls short of what would be in real terms a life sentence."

Taylor was convicted April 26 of providing key support, including arms and ammunition to rebels in Sierra Leone, in return for "blood diamonds" - gems

mined in conflict zones using slave labor. The rebels were notorious for hacking off hands or arms of their enemies to strike terror into communities.

His lawyers urged judges not to heap all the blame for Sierra Leone's deadly civil war on Taylor.

The 11-year conflict ended in 2002 with more than 50,000 dead and many more survivors mutilated.

Judges, Taylor's lawyers argued, should not support "attempts by the prosecution to provide the Sierra Leoneans with this external bogey man upon whom can be heaped the collective guilt of a nation for its predominantly self-inflicted wounds," the lawyers wrote.

Taylor denied the charges throughout his lengthy trial and cast himself as a peacemaker and statesman in the West African region.

The brief, which will be discussed in court next week, also makes clear that Taylor intends to appeal his convictions.

Judges are scheduled to pass sentence May 30. Taylor will serve his sentence in Britain.

Salone Times
Monday, 14 May 2012

Charles Taylor's Lawyers Say Proposed Sentence is Vindictive

Former Liberian President Charles Taylor looks down as he waits for the start of a hearing to deliver verdict in the court room of the Special Court for Sierra Leone in Leidschendam, near The Hague, Netherlands, April 26, 2012.

Lawyers for Charles Taylor are protesting the 80-year jail sentence being sought by prosecutors after Taylor's conviction for crimes against humanity.

Taylor's attorneys on Friday filed documents saying the proposed sentence is "vindictive" and places too much of the blame for Sierra Leone's wartime atrocities on the former Liberian president.

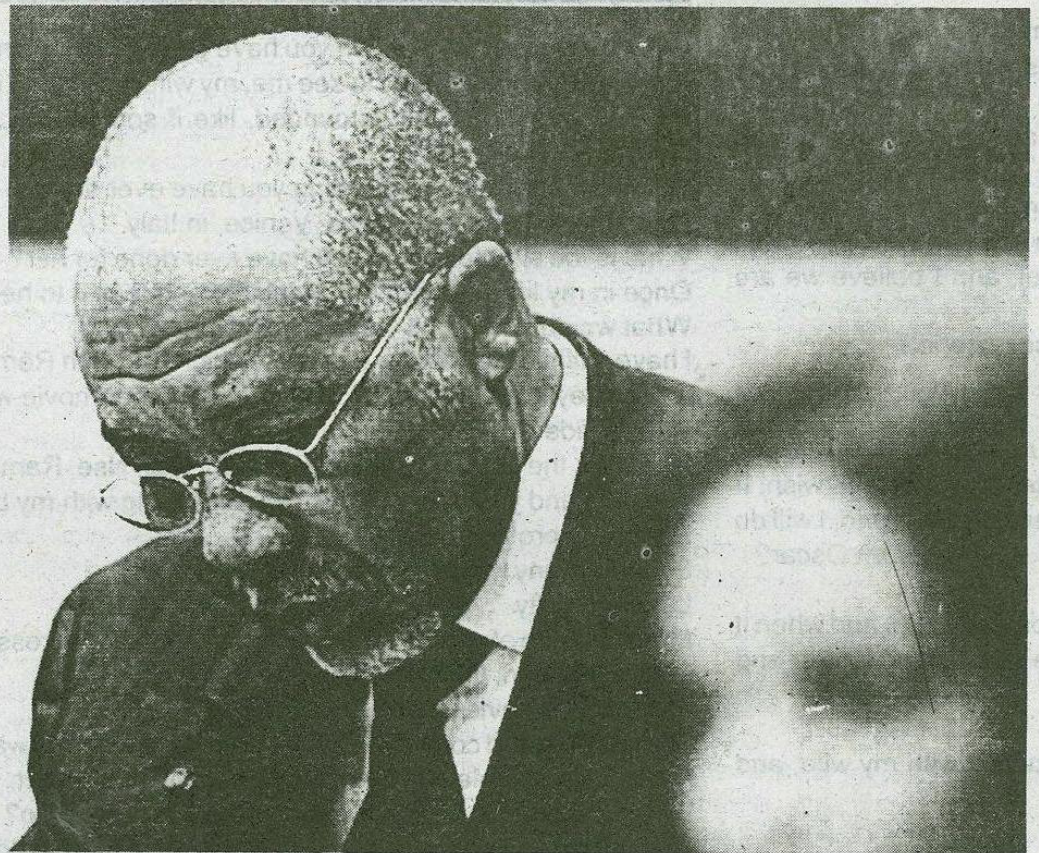
The former president's sentence is due to be set May 30.

Last month, the U.N.-backed Special Court for Sierra Leone found Taylor guilty on 11 counts of crimes against humanity, including acts of terrorism, murder, and rape.

Prosecutors said Taylor masterminded Sierra Leone's civil war in the 1990s, arming and assisting rebels in exchange for "blood diamonds" mined in eastern Sierra Leone.

The court found Taylor did not have command and control of the rebels, but was aware of their activities and provided them with weapons and other supplies.

Taylor was arrested and handed over to the court in 2006, three years after his indictment and subsequent resigna-



tion as president.

The trial, which opened in 2007, was transferred from Freetown to The Hague amid regional security concerns.

The tribunal was established to try the most serious cases of war crimes rising from the Sierra Leone conflict. The Taylor case is expected to be the court's last major trial.

EJIL

Friday, 11 May 2012

<http://www.ejiltalk.org>

The Verdict in the Charles Taylor Case and the Alternate Judge's "Dissenting Opinion"

Author: Charles Jalloh



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1. Introduction

On 26 April 2012, Trial Chamber II of the United Nations-backed Special Court for Sierra Leone (SCSL) sitting in The Hague, comprised of Judges Richard Lussick, presiding; Julia Sebutinde, and Teresa Doherty, gave their long awaited verdict in the case involving former Liberian President Charles Taylor.

As has been widely reported since, the judges unanimously found Taylor guilty of five counts of crimes against humanity, five counts of war crimes and one count of other serious violations of international humanitarian law perpetrated by the Revolutionary United Front (RUF) rebels acting in concert with the mutinying elements of the Sierra Leone Army known as the Armed Forces Revolutionary Council (AFRC) in the period between 30 November 1996 and 18 January 2002.

Taylor was convicted as a secondary perpetrator, i.e. as a *planner* and *aider and abettor*, of murder, rape, sexual slavery, enslavement, other inhumane acts, acts of terrorism, pillage, outrages upon personal dignity, violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment, and conscripting or enlisting children under 15 years into armed forces or groups or using them to participate actively in hostilities.

Although the Chamber has not yet issued its authoritative trial judgment setting out the full reasoning behind its conclusions, the judges made some significant factual and legal findings in the 44-page "summary" that Presiding Judge Lussick read out in open court for about two hours. Having convicted Taylor, they fixed 16 May 2012 for an oral sentencing hearing with each of the parties allocated one hour to address the Chamber. Taylor was offered up to half an hour to make a statement, should he so wish. The sentencing judgment will follow two weeks later (on 30 May 2012).

Taylor is the first former President to have been indicted, fully tried and now convicted in an international criminal tribunal since the immediate post-World War II trial of German Admiral Karl Doenitz at the Nuremberg International Military Tribunal. Not surprisingly, many thoughtful legal commentators have already weighed in on key issues raised by the verdict. These include the Chamber's findings on Joint Criminal Enterprise, Command Responsibility and Gender Crimes (see, for example, Bill Schabas, Diane Marie Amman, Jens Ohlin, Valerie Oosterveld, Kelly Askin).

2. An Omission and a Problem

Briefly mentioned by Kirsty Sutherland, Kevin Heller and Bill Schabas, but not as well discussed (with the exception of Jennifer Easterday and Sara Kendall), was the weighty decision of the alternate (fourth) judge in the Taylor Trial, El Hadji Malick Sow, to enter a “dissenting opinion” to Trial Chamber II’s unanimous judgment.

In this post, I examine Alternate Judge Sow’s views on the verdict. I argue that, while his statement gives cause for concern, and ultimately reflects the tension throughout the trial between him and the other three judges, expressing public views on the verdict was unfortunate because the effect might be to impugn the credibility and legitimacy of an otherwise fair trial that met the due process standards of the SCSL Statute and international human rights law.

3. The Provision for Alternate Judges at the SCSL

In providing for the composition of the Chambers in the Agreement between the UN and the Sierra Leone government on the Establishment of the SCSL, Article 2(2) anticipated the appointment of up to two alternate judges which, upon the request of the President of the SCSL, can be designated by the Presiding Judge of a trial chamber or the appeals chamber “to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting”. The same provision is repeated in Article 12(4) of the Statute of the SCSL.

The Rules of Procedure and Evidence (the Rules) shed further light on the role of the alternate judge. Under Rule 16 *bis* (A), they confirm that “an alternate judge designated in accordance with Article 12(4) of the Statute shall be present at each stage of the trial or appeal to which he or she has been designated”. Even though the alternate must always be present, under Rule 16 *bis* (B) to (D), the limited backup role that he is supposed to play is evident. His switch from reserve to active judge also requires a predicate decision by the Presiding Judge after consultation with the other judges.

4. The Appointment of Judge Sow as the Alternate Judge of Trial Chamber II

The above provisions of the UN-Sierra Leone agreement, the SCSL Statute and the Rules languished in desuetude until Judge Sow was appointed as the first alternate judge. This followed on a recommendation by the late Antonio Cassese, who in the context of a comprehensive expert report evaluating the functioning of the SCSL, observed that the Taylor case was of “central importance to the success” of that tribunal.

For this reason, given that that the case would start much later after the other SCSL trials had been completed and would extend the tribunal’s lifetime, he recommended the appointment of an alternate judge so that the Taylor Trial would “run smoothly and not falter”. Cassese rightly observed that the money spent on an alternate judge that would sit at each stage of the trial to replace a judge who is unable to continue sitting for whatever reason, consistent with Article 12(4) of the Statute of the SCSL, was worth the cost – even for the notoriously cash trapped Sierra Leone court. He warned that the consequences would be worse if the tribunal “gambled” with the continuity of “such an important case” so late in its expected lifespan.

The UN and Sierra Leone took on board the Cassese recommendation, and on 9 May 1997, about three weeks before the Taylor Trial was scheduled to open in The Hague, Judge Sow was sworn in. The press release on the swearing in ceremony at the seat of the tribunal in Freetown, the Sierra Leonean capital, affirmed that he had been appointed, pursuant to Article 12(4), so that he could replace a judge of the Trial Chamber if that judge is unable to continue sitting. Alternate Judge Sow has thus been present

throughout the Taylor case, from the prosecution's opening statement on 4 June 2007 to closing arguments on 11 March 2011.

5. Alternate Judge Sow's Verdict: "Dissenting Opinion" or Public Statement?

While it is not known when Trial Chamber II will make the official Judgment available, although this would likely have to be before or around the Sentencing Judgment on 30 May 2012, the unofficial 44-page summary Judge Lussick read on verdict day indicated that there was a "reasoned opinion in writing" but did not mention any separate opinions. What is certain is that, since the Chamber's verdict was "unanimous", there will be no "dissenting opinion" from any of its three judges.

Against this backdrop, it was therefore surprising that, after the Presiding Judge concluded delivery of the Chamber's verdict, Alternate Judge Sow tried to give his "dissenting opinion". Yet, the SCSL Rules, which are based on those of the International Criminal Tribunal for Rwanda, indicate that although the alternate judge must be present for deliberations, he "shall not be entitled to vote thereat" (see Rule 16 *bis*(C)). This makes sense since the idea is that the alternate should be able to step in at a moment's notice, whenever necessary, to ensure the continuity of the trial if, for whatever reason, one of the other three judges are unable to continue sitting. This, of course, was not the case in this instance.

Alternate Judge Sow essentially performs the judicial equivalent of the role of standby counsel in U.S. criminal trials where the accused chooses to exercise his Constitutional (Sixth Amendment) right to self-representation. Standby counsel will follow the trial and step in if the *pro se* defendant is unable to continue defending his case. In the international criminal tribunals, the provision for alternate judges is also not new and in fact dates back to the origins of International Criminal Law in the immediate post-World War II period. In recognition of the important reserve role that they play during the proceedings, the SCSL Rules permit the alternate judge to pose questions which are necessary for his understanding of the trial but must do so through the Presiding Judge. Alternate Judge Sow asked questions on a few occasions during the evidentiary phase of the Taylor case, but he always addressed the parties directly, rather than "through" the Presiding Judge.

Given the various limitations imposed by the SCSL Statute and Rules, Alternate Judge Sow's public remarks on the Trial Chamber's verdict amount to a public statement or commentary, and unlike his contention, does not have the legal character of a "dissenting opinion" – at least as that term is understood under the tribunal's instruments. True, under ordinary English usage of the term, it is a "dissent" (a term originating from Latin: *dissentire*, i.e. to 'differ in sentiment'), because as the *Concise Oxford English Dictionary* confirms, he expressed "disagreement with a prevailing view or official decision". While he is clearly entitled to formulate his private views on the sufficiency of the Prosecution evidence against Taylor, the public commentary he gave seems designed, if not in purpose but in effect, to undermine the public confidence in the credibility of the tribunal.

As it seems unlikely that the other judges were aware of Alternate Judge Sow's plan to "dissent" in court, concerns about propriety might have prompted them to hurriedly depart the courtroom at the same time that his microphone was reportedly cut off. Although the statement extracted below was captured by the Court stenographers, but apparently struck from the official version of the transcript, it was later widely circulated on the Internet:

The only moment where a Judge can express his opinion is during the deliberations or in the courtroom, and pursuant to the Rules, when there is *no serious deliberations*, the only place left for me in the courtroom. I won't get — because I think we have been sitting for too long but for me I have my *dissenting opinion* and I disagree with the findings and conclusions of the other Judges, because for me

under any mode of liability, under any accepted standard of proof the guilt of the accused from the evidence provided in this trial is not proved beyond reasonable doubt by the Prosecution. *And my only worry is that the whole system is not consistent with all the principles we know and love, and the system is not consistent with all the values of international criminal justice, and I'm afraid the whole system is under grave danger of just losing all credibility, and I'm afraid this whole thing is headed for failure.* Thank you for your attention. [Emphasis added].

The preliminary question arises whether Alternate Judge Sow was entitled to give views on Taylor's ultimate guilt or innocence in Chambers, let alone in public. Rule 16 *bis* (C) does specify that the alternate judge shall be present "during the deliberations of the Trial Chamber". At first blush, there is a measure of ambiguity in this provision because mere *presence* does not imply the right to participate, as an equal, in the deliberations. But the last part of Rule 16 *bis* (C) does remove that ambiguity because it explicitly says that the Alternate Judge "shall not be entitled to vote" during the deliberations. Consequently, even assuming *arguendo* that he had been asked during deliberations to offer his take on the evidence, say as a matter of judicial courtesy to a colleague, in the final analysis, he would have had to be content with sharing those views privately because he is not, at the level of principle, entitled to vote on the outcome. Otherwise, we contravene the statute and violate longstanding international criminal tribunal practice which only provides for three professional judges to adjudicate a case.

As an experienced and respected Senegalese jurist, Alternate Judge Sow must surely know that, under Rule 29, "the deliberations of the Chambers shall take place in private and shall remain secret". Nonetheless, in his above statement, he alleged that he never got the opportunity to express his views in Chambers because there were "no serious deliberations". Without more detail, and given that deliberations take place in secret, the full weight and implication of his allegation is hard to unpack. It seems obvious that he felt that he should have been given the chance to share his opinion on the prosecution's evidence against Taylor. That said, besides his own limited involvement presumably because of his statutorily limited mandate as an Alternate Judge, it would be a serious cause for concern if a group of three professional judges, who by the terms of the SCSL Statute must possess the qualifications required in their respective countries for appointment to the highest judicial offices, would convict – and soon sentence – a man for some of the worst crimes known to law without engaging in "serious deliberations", especially in a complex and historic trial like Taylors.

Yet, for the credibility and legitimacy of the SCSL's justice process, one should not ignore Alternate Judge Sow's public comment on the trial verdict because of the serious allegations it makes. For one thing, it is plausible that, fully aware of these limitations imposed by the governing provisions discussed earlier, he had become so concerned about the procedural irregularities and the outcome of the case that adherence to the constraints imposed by the Statute and Rules seemed unworthy at the level of principle. Although highly vague, and perhaps reflecting the best of good intentions, what he has succeeded in doing instead is to invite public speculation about his statement especially considering his remark that: "*And my only worry is that the whole system is not consistent with all the principles we know and love, and the system is not consistent with all the values of international criminal justice, and I'm afraid the whole system is under grave danger of just losing all credibility, and I'm afraid this whole thing is headed for failure.*"

All does not seem lost, however, since even Alternate Judge Sow acknowledged that there were *some* deliberations in the case. His main objection appears to be that they were not "serious" enough to justify the guilty verdict. Although, again, it should be clear that it is possible that there were many more deliberations of which he was simply unaware. Yet, that too does not resolve the alleged mischief because of the legal requirement that he had to be present under the relevant provisions. In any case, perhaps because of his recognition that the decision to speak out publicly about private judicial matters would be controversial, he suggested that he essentially was left no choice but to air his views in the last place possible: the courtroom.

6. A History of Confusion About the Proper Role of the Alternate Judge

Regrettably, this latest drama in the Taylor Trial regarding the reserve judge is not the exception. Throughout the trial, there appeared to be a fundamental misunderstanding of or even disagreement and discord among the Trial Chamber II judges regarding the function and place of the alternate judge. This does not seem farfetched, considering that Judges Lussick, Doherty and Sebutinde sat alone as Trial Chamber II for years, without any alternate judge, in another SCSL matter in Freetown: the three-accused AFRC Trial (which also happened to be the seminal first case to ever be completed by the SCSL).

On 9 February 2011, Judges Doherty and Lussick, in a majority decision, issued an order directing Courtenay Griffiths, QC, the lead counsel for Mr. Taylor, to appear before the Chamber to apologize for refusing to remain in court when he had been ordered to do so by the Presiding Judge or face the prospect of disciplinary sanction. One of the judges dissented from that directive.

On the date selected for the hearing, 25 February 2011, only Judges Doherty, then presiding, and Judge Lussick and Alternate Judge Sow attended court. Judge Sebutinde refused to show up, sending an explanatory note to her colleagues that morning instead, saying that she had absented herself from court for reasons of principle. This despite that disagreement with a majority decision does not constitute a valid legal reason for a judge to refuse to attend court. She later explained that she was opposed to any “side proceeding” against counsel that could distract the Court and potentially delay completion of the Taylor Case.

The question was how to proceed with the hearing. Presiding Judge Doherty asked counsel to address them on the issue. Defense counsel conferred for less than a minute and then suggested the obvious: the Chamber should invite Alternate Judge Sow, who was present, to participate so that the bench would be constituted of three regularly constituted judges. Judge Sow responded in a way that exposed both his understanding of his role as a reserve judge and the acrimony in chambers:

Let me make this very clear: This Bench is regularly composed with three judges sitting, as it shows. Two judges cannot sign decisions. When the Bench is sitting, it’s sitting with three judges, not two judges, and I don’t know what. I’m not here for decoration. I am a judge. This Bench is regularly composed, as everybody can see. I don’t know how people can think that two judges – I don’t know where in this world you will see two judges sitting. It’s not possible. This Bench is regularly composed with three judges. This is my comment. No matter how parties will look at it, it shows and it’s apparent that this Bench is composed with three judges. We are three judges sitting.

But, in a fluid move showing that Presiding Judge Doherty and Judge Lussick had discussed the matter before court but had foreclosed the possibility of Alternate Judge Sow serving, she did not respond directly. Rather, she immediately issued the Court’s ruling and then adjourned the hearing, as follows:

The Articles governing the composition of this Court and the Trial Chamber mandate that it is to be composed of three judges. This is not a situation where rule 16 applies. Accordingly, in our view, this Trial Chamber is not properly constituted and we consider we have no alternative but to adjourn this hearing today. The matter is adjourned for a date to be fixed. Please adjourn the Court.

This decision can be criticized on several grounds. A key one is that if, as the Chamber found, Rule 16, which spells out the regime applicable to judicial absences, resignations and alternate judges did not apply, then what rule would? The Court did not explain. It instead left the question open, leaving some

commentators to speculate what dispute was going on among the judges. And even if, for the sake of argument, we accept that there was a lacuna in the Rules, which as I will argue shortly there was none, could the Chamber not have invoked its inherent powers to regulate its proceedings to then invite Alternate Judge Sow to participate on the Bench so that it was regularly constituted of three instead of two members? Would anyone have faulted them, considering that the party most affected by the disciplinary issue under consideration had in fact proposed the alternate's involvement?

Be that as it may, under Rule 16 *bis* (D), the Presiding Judge could have plainly asked Alternate Judge Sow, following consultation with the other judge present, "to perform other such functions" that the Trial Chamber deemed necessary. This could include stepping in when a judge was voluntarily absent, for whatever reason. This argument would hold, despite the seeming difficulty that Rule 16 *bis* (D) had been adopted on 14 May 1997, exactly five days *after* Alternate Judge Sow had been sworn in as judicial alternate for Trial Chamber II.

On the other hand, by comparison, the SCSL Rule on the point is somewhat less clear than its functional equivalent in the Extraordinary Chambers in the Courts of Cambodia (ECCC). In the ECCC, Rule 77(8) more clearly sets out what to do in the scenario that Trial Chamber II found itself when it provided that:

In the absence of a sitting Judge, the President of the Chamber may, after consultation with the remaining judges, decide to adjourn the proceedings or designate a Reserve Judge to sit in place of the absent Judge to ensure that the proceedings can continue. Where, however, the replaced sitting Judge is able to attend, the Chamber may, after taking into consideration all factors relevant to the case and being satisfied that the sitting Judge has been fully informed of the evolution of the case during his/her absence, decide to replace the Reserve Judge by that sitting Judge.

Either way, whether under the SCSL or ECCC rules, the conclusion would have been the same. In fact, as the defense counsel later argued in a motion, the Chamber's "outright" and "abrupt dismissal" of Alternate Judge Sow's offer to step in was problematic at best, and at worst, raised questions about the proper exercise of their "discretion". Arguably, it was in fear of losing a judge's participation and disrupting the Taylor Trial and any ancillary matters arising from it that the President of the Tribunal had designated Alternate Judge Sow pursuant to Article 12(4) of the SCSL Statute. It would have been the same reason why all the SCSL's judges, sitting together in Plenary, would have adopted the amendment to give practical effect to that intention under Rule 16 *bis* only a few days after the alternate judge was sworn in.

7. Conclusion

In the end, lacking any legal value, Alternate Judge Sow's public condemnation of the unanimous Trial Chamber II verdict serves only as cannon fodder for the pro-Taylor camps in Liberia and Sierra Leone who have always contended that his trial, and since 26 April 2012 conviction, was politically machinated. It gives credence to a frequently alleged, but equally frequently unsubstantiated, conspiracy theory that the same Western States responsible for Taylor's fate today conspired to witch hunt other "strong" African leaders like Sudanese President Omar Al Bashir. Bashir stands indicted for genocide and crimes against humanity by the International Criminal Court, but partly because of this same argument and the lack of clarity in certain provisions of the Rome Statute, African States have collectively refused to turn him over to the ICC. What is often omitted out of this narrative is that it is also Africans that are the victims of the massive atrocity crimes committed by their own people, and also other Africans, who call for international support to ensure that the old culture of "big man" impunity is replaced with a new culture of judicial accountability. In this broader geopolitical context, the extrajudicial comments in the Taylor Case may serve only to undermine the positive legacy of accountability that President Ahmed Tejan Kabbah of Sierra Leone and UN Secretary-General Kofi Annan hoped the SCSL would bequeath to the people of Africa and the international community.

The Observer
Sunday, 13 May 2012

View Point: Arrest America's own Charles Taylors

Letters

Written by Our Readers

While former Liberian dictator Charles Taylor, who was recently convicted by the Special Court for Sierra Leone, must pay for his crimes, his trial underscores the racism that is rife in the international justice system.

It is evident that the UN Security Council, the International Criminal Court (ICC) and the international special tribunals were established to serve the imperialist interests of the West. Decisions in New York and prosecutions at The Hague have only consistently targeted African dictators and warlords whereas Western war criminals operate with impunity and are as free as butterflies.

Despite not being a party to the Rome Statute and its non-recognition of the jurisdiction thereof, the US continues to meddle in the work of the ICC to advance its neo-colonial interests.

As he prepared to start investigating crimes against humanity committed in the Kenyan post-election violence of 2007, ICC Chief Prosecutor, Luis Moreno Ocampo, was summoned to Washington and given State Department instructions on who to prosecute and who to let off the hook.

President Obama cannot be trusted to do the right thing when it comes to American war criminals like George W. Bush and Dick Cheney and, equally, when it comes to Washington's dictator friends in Africa and elsewhere in the Third World.

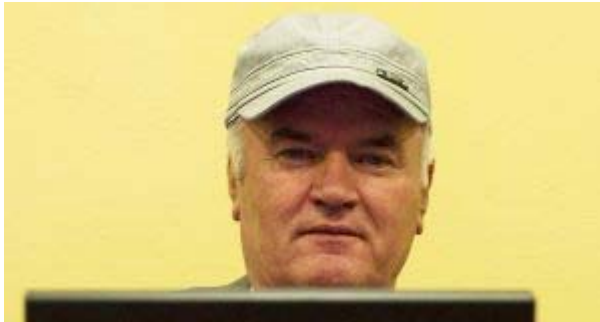
It is incumbent on The Hague to assert its independence from the US and the other neo-colonial powers by going after Bush, Cheney, Tony Blair and others without fear or favour.

Bosire Mosi,
Salt Lake City.

Irish Examiner
Monday, 14 May 2012

Mladic on trial for worst crimes since Second World War

By Thomas Escritt



Former Bosnian Serb army chief Ratko Mladic goes on trial this week in a case that will establish if he was responsible for some of the worst atrocities in Europe since Second World War.

Mladic, 70, was in charge of the Bosnian Serb army when, over two nights in July 1995, its fighters shot 8,000 Muslim men and boys in and around the town of Srebrenica in eastern Bosnia, burying most in mass graves. It was Europe's worst mass killing since the Holocaust.

Prosecutors at the International Criminal Tribunal for the former Yugoslavia (ICTY) accuse Mladic of genocide, murder, acts of terror and other crimes against humanity during the 1992-95 Bosnian war.

Mladic, one of the first big names from the wars that followed the break-up of Yugoslavia to be indicted by the court, is the last of them to go on trial, this Wednesday.

He was indicted in 1995 along with Radovan Karadzic, the Bosnian Serbs' political leader, although both remained free in former Yugoslavia for more than a decade before being arrested and passed to The Hague. Karadzic's trial is already under way.

Former Serbian president Slobodan Milosevic was indicted in 1999 and went on trial in The Hague in 2001, but died in 2006 before a verdict was reached.

Prosecutors say Mladic was part of a "joint criminal enterprise to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys... and forcibly removing the women, young children and some elderly men".

They say Bosnian Serb forces (BSF) attempted to hide the slaughter by dumping victims in remote unmarked graves.

"When it became apparent that despite these efforts the world had learned of the mass murder of Srebrenica's Muslim men, BSF implemented [an] ... operation designed to further conceal the bodies and the crimes," said a pre-trial brief.

"Thousands of corpses were dug up with excavators, moved in trucks and dumped in even more remote locations."

Bodies were later found strewn across 17 primary and 37 secondary mass graves.

Mladic is also held responsible for the siege and bombardment of the Bosnian capital Sarajevo, which killed 10,000 civilians. The prosecution described it as a plan to "spread terror among the civilian population".

The horrors of the siege, together with the Srebrenica massacre, eventually galvanised world opinion in support of the campaign of Western air strikes on Bosnian Serb targets that brought the conflict to an end shortly after.

Mladic lived openly in Belgrade in the early years after his indictment, going into hiding after Milosevic's fall in 2000.

Growing pressure for his capture from the European Union left him ever more isolated over the following decade, as Serbia moved towards EU membership.

In May 2011, he was arrested in a farmhouse in northern Serbia, penniless and in poor health.

He recently had an operation for what is believed to have been a hernia, and during pre-trial hearings his attention seemed to wander.

"I am pushing 70, I'm very old. Every day I'm more infirm and weaker. I'm speaking now about my health and ability to concentrate," he said last month.

"You must appreciate that, as an old man, I cannot follow this for 90 minutes during the day, five days a week."

Serge Brammertz, the ICTY's chief prosecutor, has dismissed concerns that Mladic will find it difficult to sit through a 200-hour prosecution case involving testimony from 411 witnesses. "He seems to feel better than he did when he arrived at the tribunal," Brammertz told reporters recently.

The prosecution has simplified its case at the request of judges to speed the trial, halving the number of individual crimes mentioned in the 11 counts against him.

Even if he is physically weaker, Mladic still has the bullish defiance of the Bosnian warlord of the 1990s. "You are a NATO court," he said at a pre-trial hearing. "You shouldn't try me or my people. NATO bombed my people the same way it is now bombing people in Africa and Asia. You are biased."

The ICTY was established in 1993 in response to the failure of diplomatic pressure to end the Yugoslav wars, during which Mladic's ethnic Serb army seized 70% of Bosnian territory, brutally killing its Muslims and ethnic Croats.

It was the first international war crimes court set up since the Nuremberg tribunals, and paved the way for others.

They include the Special Court for Sierra Leone, which last month convicted former Liberian leader Charles Taylor of aiding and abetting crimes against humanity.

A UN tribunal based in Arusha, Tanzania, has convicted dozens for crimes committed during the Rwandan genocide of 1994. A tribunal in Phnom Penh has put several leaders of the Khmer Rouge on trial for its mass killings in Cambodia in the late 1970s.

Over the past 19 years, the ICTY has managed to arrest all its 161 indictees.

"When I started here in 2008, few thought Mladic and Karadzic would be arrested. But they were," said Brammertz.

Read more: <http://www.irisht Examiner.com/world/mladic-on-trial-for-worst-crimes-since-second-world-war-193751.html#ixzz1uq2Ya8Lm>

World Policy Blog

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Above the Law: U.S. Crimes during The War on Terror

By Henry "Chip" Carey



International criminal tribunals, as well as domestic prosecutions for extraordinary crimes are on the rise. The conviction of former Liberian President Charles Taylor for war crimes and crimes against humanity in the Special Court for Sierra Leone on April 26 is the first international prosecution of a former head of state since the 1946 conviction of Admiral Karl Dönitz, the nominal German leader after Hitler's suicide, at the Nuremberg trials. In September 1998, the International Criminal Tribunal for Rwanda (ICTR) prosecuted Rwandan Prime Minister Jean Kabanda, who pled guilty for genocide.

The guilty verdict for Taylor sends a signal that the international community will no longer tolerate impunity for heads of state and governments who commit crimes. This marks a trend toward criminalizing acts that were previously viewed as political or military options such as: declaring war on other countries, torture, extrajudicial disappearances, executions, and systematic rape.

However, one must ask whether this is an exception to the rule of impunity and that the reason for Taylor's conviction had more to do with the politics of the powerful states that funded the Sierra Leone hybrid court and who arranged for his arrest at the Nigerian border and extradition from Liberia. The international community has shown no such resolve to punish other equally guilty leaders of great powers who have fit the Nuremberg precedent for prosecuting leaders based on actions like torture and indefinite detainment.

Most world leaders, however, who plan unjust wars and crimes against humanity have little to fear from this Taylor verdict, except possibly the heads of weak states who no longer serve great powers' national interests.

One example was the late Slobodan Milosevic, who was extradited and arrested six months after the 2000 revolution against his attempted presidential electoral fraud in Serbia and about one year after he had yielded in June 1999 to NATO's demand for Serbian withdrawal from Kosovo. His eventual trial at the International Criminal Tribunal Yugoslavia (ICTY) was terminated when he died about two and a half years into legal proceedings, which were marred by his forged documents, witness intimidation, and dilatory historical rants.

There are real concerns for encouraging credible peace negotiations based on amnesties in end-of-war or regime transitions—the high costs of litigation and the occasional illegitimacy of formal prosecutions in rural areas which have their own customary law. However, Milošević was no longer in power when the new prime minister of Serbia agreed to extradite him to the Hague for trial at the ICTY.

Countries such as Peru, Argentina, and Chile have been pioneers in the domestic prosecution of former leaders and security officials for murder and torture. These countries have systematically proceeded to enforce the law, often after courts and/or legislatures have declared any prior amnesties regarding crimes against humanity illegal. In Uruguay's case, there were two national plebiscites against ending the amnesty. But after that, the country joined its South American counterparts in ending its amnesty in 2011, although it has not yet established any truth commissions or prosecutions. In Argentina's case, it initially prosecuted its junta leaders soon after its regime

change in 1983. But the subsequent elected president, Carlos Menem, pardoned the junta leaders. However, in the past six years, Argentina has reversed the amnesty encouraged by Menem and has become a world leader in prosecuting hundreds of defendants suspected of crimes against humanity.

South Africa took a different approach. Those who committed atrocities in the ruling African National Congress regime were able to negotiate settlements and were granted amnesty by President Nelson Mandela. However, this was done only under the condition that the guilty parties would confess their crimes before a Truth and Reconciliation commission.

There is however a big contrast in how advanced democracies like the U.S., Israel, France, and India, have handled cases of alleged crimes against humanity. Few, if any, prosecutions of war crimes have taken place, gravely weakening the credibility of norms for punishing crimes against humanity.

The U.S. and Israel have routinely conducted acts of torture, from water-boarding, stress positions, sleep deprivations, shackling, sexual humiliation and beatings—all in violation of the Anti-Torture statute, which applies for actions outside U.S. territory. In Israel, the “Shabah” position is still used, despite being banned in a 1999 Israeli Supreme Court decision. Like the parsing of language during court interrogations, the Israel Security Agency, whose officials have never been prosecuted, simply alter the precise position used from past practices in order to avoid committing criminal acts—even though torture is still being used, as Israeli human rights groups like B’Tselem and the Public Committee against Torture in Israel (PCATI) have documented.

This problem is also demonstrated by the reckless 840-odd detentions at Guantánamo, where no more than 20 percent had committed a crime of any kind, according to studies by UC Berkeley School of Law and Seton Hall Law School in Newark. President Obama’s own Guantánamo Task Force in mid-2009 also concluded that only 100 out of the 850 detainees held there since 2002 needed to be detained. About 150 detainees still remain there and none of the hundreds of innocents who were unjustly detained and tortured have received reparations as required by the UN Convention against Torture and U.S. law.

Not one U.S. or Israeli official, other than low-ranking soldiers or police, have ever been prosecuted or held liable for complicity with torture.

Even though American constitutional rights, such as habeas corpus, date back to the Magna Carta, this oldest of rights has been denied to those the U.S. decides or suspects to be terrorists, whether or not they are U.S. citizens. Under President Obama, the U.S. continues rendering individuals to countries that torture, such as Egypt. Before, this was called “extraordinary rendition,” because the CIA made the decision to violate the Convention against Torture and the U.S. enabling legislation, both of which prohibit rendering someone to a country where it is likely he or she would be tortured. Obama ended the CIA’s role in this process, but now, the Justice Dept. can render anyone to Egypt for trial, which has no practical effect, since most or all prisoners suspected of terrorism or mere political dissent in Egypt are tortured. “Extraordinary rendition” under President Bush and “ordinary rendition to trial” under Obama has amounted to the same thing since Attorney General Holder’s view of the war on terrorism is the same as his predecessors, Michael Mukasey, Alberto Gonzales, and John Ashcroft.

One notable case of where this went wrong was with Maher Arrar. Following a tip from the Canadian government to American authorities, he was detained at JFK Airport in New York. He was then rendered to Syria where he was held and tortured for 10 months. He was able to negotiate a \$10 million settlement from the Canadian government, but American courts accepted the Obama administration’s argument that no civil or criminal trial could proceed because of U.S. national security claims.

Obama’s claim that he outlawed torture is similarly weak. Torture by U.S. government officials still happens under the Obama administration. The case of suspected Wikileaks leaker Bradley Manning is one such example. Even before Manning was charged with espionage for his alleged theft of classified documents given to Wikileaks, he was held for months, without clothes, under solitary confinement. What is more troubling is the increased deaths of Afghan civilians due to drone attacks by the U.S. Under Obama, drone air strikes have intensified, killing more civilians and creating more resentment from Afghan partners for the U.S. presence in the country. Recently, a U.S. airstrike killed 5 children and their mother. This war on terrorism on the cheap, is not only criminal and immoral, it is also counter-productive.

American courts accepted the Obama administration's argument that no civil or criminal trial could proceed because of U.S. national security claims. No victim of rendition has ever received an apology or acknowledgment in a U.S. court. For example, three British citizens known as the Tifton Three were arrested while touring Afghanistan and then tortured in Guantanamo, only to be told after their release that they could not sue because they were non-persons under U.S. law.

The lack of accountability in the U.S. and other Western states in reference to crimes against humanity such as torture, enforced disappearances, rendition to trial in torturing states, and the deaths of innocent civilians stands in direct contrast with the idea that only the rank and file are prosecuted or even identified. The risk of harming the innocent, as well as the use of prohibited methods, even against terrorists, is an ongoing reality.

Mark Danner, a journalist and UC Berkeley professor, describes this state of affairs as the “new normal.” U.S. officials continue to break the law with impunity excused by a “state of exception,” which the public tolerates or supports, even though democratic rights, the rule of law and constitutional democracy are eroding.

U.S. officials continue to say, a la President Bill Clinton’s dictum, “that depends on what the meaning of is, is.” The parsing of words by the chief of the National Security Agency (NSA), allows him to claim recently that there is no “intercepting” conversations of American citizens. But the NSA is continuing to listen to private conversations. It is just not “intercepting” them, because the word has been given a different definition from what we assume it means. Thus, there is a tremendous need, if not for prosecutions, then for a public inquiry or truth commission to detail what human rights violations are currently veiled in secrecy and lies—as well as clarifying what are the real, if any, counter-terrorism intelligence accruing from these ostensibly criminal acts.

Poland has just charged its Interior Minister of 2002-2004, Zbigniew Siemiatkowski, for allowing the CIA to torture the “high value detainees,” such as the waterboarding of Khalid Sheik Mohammed 183 times and Abu Zoubaydah 83 times. Romania has been exposed by the press for receiving many CIA detainees from Poland after the latter closed its prison and then housed them in Bucharest at 4 Mureş Street. The Council of Europe and the European Parliament, along with Germany, Italy, Spain, and the UK, are investigating the claims of torture by the U.S. government and military and extraordinary rendition on their territory.

The U.S. will not be able to fight wars against terrorism without its European allies. This issue of violent human rights violations by the U.S. government will not disappear, even if it refuses to cooperate with any of these investigations. In Argentina, it took 30 years of civil society lobbying before prosecutions occurred. In terms of scale, the U.S. was not responsible for 30,000 disappearances, as in Argentina. Still, we do not know what the U.S. has done to the innocent, nevermind the guilty, who were not allowed due process. Current policies are unexamined and will come back to haunt the United States because Obama has not yet authorized a commission to explain what occurred in these interrogations and what intelligence benefits, if any, ever accrued. To alter policies, it is necessary to show that these alleged crimes against humanity are hurting the country by straining relations with the developing world—whose leaders are prosecuted for the same crimes the United States is being accused of—and perhaps more importantly, by straining relations with its allies.

To defend democracy, a state cannot be hypocritical. To fight terrorism, democracies need to fight, in the words of Israeli Judge Ahron Barak in his 1999 Supreme Court judgment, “with one hand tied behind their back.” In this PCATI case, he wrote:

“This is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it. Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the Rule of Law and recognition of an individual's liberty constitutes an important component in its understanding of security. At the end of the day, they strengthen its spirit and its strength and allow it to overcome its difficulties.”

The U.S. can win the war on terrorism, and it can be fought as a war—but not by torturing and killing the innocent and failing to prosecute those who do. Our failure to prosecute is not only criminal; it will only continue this endless war by creating more terrorism and encourage other countries to follow our bad examples.

Henry "Chip" Carey is an associate professor of political science at Georgia State University. He is author of *Reaping What You Sow: A Comparative Examination of Torture Reform in the United States, France, Argentina, and Israel* and *Privatizing the Democratic Peace: Policy Dilemmas of NGO Peacebuilding (Rethinking Peace and Conflict Studies)*.