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:

Tuesday, 16 October 2012
Press clips are produced Monday through Friday.
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Standard Times
Tuesday, 16 October 2012

Four Sentenced for Interference in the Administration of Justice

Four persons convicted last month of contempt for interfering with the administration of justice at the Special Court were sentenced today to terms of imprisonment ranging from 18 months to two years.

Ibrahim Bazzy Kamara and Santigie Borbor Kanu (aka "Five-Five"), who were each convicted on two counts of interfering with the administration of justice, were sentenced to prison sentences of two years on each count. Justice Teresa Doherty reduced their sentences by two weeks in consideration of their changed conditions of detention during the trial. The contempt convictions will be served concurrently, meaning they will each serve a total of one year and fifty weeks, in addition to the sentences they are currently serving at Mpanga Prison in Rwanda on convictions for war crimes and crimes against humanity.

Kamara was convicted on September 25 for attempting to induce a witness to recant (to state that he testified falsely) testimony given before the Special Court, and for disclosing the identity of a protected witness. Kanu was convicted of offering a bribe to a witness, and for otherwise attempting to induce a witness to recant testimony given in Special Court proceedings.

Hassan Papa Bangura (aka "Bomblast) was sentenced to two 18-month prison terms for his convictions on two counts of offering a bribe to a witness, and of otherwise attempting to induce a witness to recant testimony given before the court. The two sentences will run concurrent.

Samuel Kargbo (aka "Sammy Ragga") received two 18-month suspended sentences, meaning that he will serve no jail time as long as he remains of good behaviour for the next two years. Kargbo pleaded guilty at his initial appearance in July 2011 to offering a bribe to a witness and of otherwise attempting to induce a witness to recant his testimony. He subsequently testified for the prosecution.

During the four-month trial, the court held proceedings at the SCSL courthouse in Freetown and in an ICTR courtroom in Kigali, Rwanda. Bangura and Kargbo participated in their trial in Freetown, and Kamara and Kanu participated in Rwanda. The two courtrooms were connected by VTC video link.

Under the Special Court Rules which were in effect at the time the offences were committed, the court could have imposed a maximum sentence of seven years imprisonment, a fine of two million Leones (approximately $500), or both.

The Special Court is an independent tribunal established jointly by the United Nations and the Government of Sierra Leone. It is mandated to bring to justice those who bear the greatest responsibility for atrocities committed in Sierra Leone after 30 November 1996.

UN Women
Tuesday, 9 October 2012
Press Release

UN Women hails historic work done by Special Court for Sierra Leone strengthening women's access to justice

Calls for continued international support for international courts to complete mandates and document lessons learned

United Nations, New York—Today the leadership of the Special Court for Sierra Leone addressed the United Nations Security Council and briefed them on the progress made and the challenges that remain for ensuring justice in the country.

The work of the Special Court for Sierra Leone represents a critical landmark for international justice in prosecuting sexual and gender-based crimes committed during conflicts. The jurisprudence of the Special Court for Sierra Leone played an essential role in advancing the recognition in law for such crimes. The Revolutionary United Front trial judgment represented, for instance, the first-ever international convictions of forced marriage as a crime against humanity.

The Special Court of Sierra Leone is currently completing the trial phase of its mandate, with operational funding secured only through the end of November. UN Women has repeatedly called for support to international courts and tribunals to allow them to complete their mandates and consolidate the gains made in the course of their work as regards to gender justice. UN Women highlights the importance of documenting and sharing the lessons learned on the prosecution of gender-based crimes and innovative aspects to strengthen access to justice for women, such as the important outreach work done by the Special Court for Sierra Leone.

In Sierra Leone, UN Women has supported women's access to justice domestically to complement the efforts of the Special Court. UN Women also supported the Truth and Reconciliation Commission and programmes to support women testifying as well as a reparations programme for survivors of sexual violence.

"War harms women in multiple ways. From mass rapes to mass displacements, women are on the frontlines of conflict and they are demanding justice. This includes effective prosecutions of war crimes and adequate redress for women. The Special Court for Sierra Leone has served justice and contributed to peace consolidation and reconciliation within a country destroyed by a devastating civil war," said Executive Director UN Women, Michelle Bachelet. "It is now essential that the Court be given the means to complete its mandate and to document and share lessons learned in strengthening women's access to justice."

The women leaders at the helm of the Special Court are President of the Court Justice Shireen Avis Fisher, Prosecutor Brenda Hollis, Chief Defender Claire Carlton-Hanciles and Registrar Binta Mansaray. Their leadership furthers the mandate of the ground-breaking Security Council Resolution 1325 which calls for an increase in the number of women in all areas of post-conflict recovery, including judicial processes. The leadership of the Special Court is historic, with all of its four Principals being women—a first in the history of international tribunals.

A press conference will be held on Tuesday 9 October at 2 pm EDT in the Dag Hammarskjöld Library Auditorium with Under-Secretary-General and Executive Director of UN Women Michelle Bachelet, President of the Special Court for Sierra Leone Justice Shireen Avis Fisher, Registrar of the Special Court for Sierra Leone Binta Mansaray, and Ambassador of Guatemala to the United Nations, Gert Rosenthal, as Guatemala holds Presidency of the Security Council in October. The press conference will be webcast live at www.unwomen.org

The New Republic Liberia
Friday, 12 October 2012

Taylor's Case - More Questions Than Answers, As Legal Expert Wants an Independent Commission Set Up

Chambers of the UN-backed Special Court for Sierra Leone, few days after his "controversial guilty verdict." Controversial because it was without opposition as Alternate Judge El Hadj Malick Sow issued his own "dissenting opinion," which brings the integrity of the verdict and the entire trial into disrepute. With seemingly less substantial effort on the party of Trial Chambers ll to address Sow's concerns, the need for an Independent Commission is being stressed. The New Republic lifts a legal expert's contention in which he raises more questions that beg answers.

A professor of law is proposing the setting up of an Independent Commission by the UN-backed Special Court for Sierra Leone which tried, convicted and sentenced former President Charles Taylor to 50 years to address allegations raised by Alternate Judge El Hadj Malick.

Charles C. Jalloh, Assistant Professor, University of Pittsburgh School of Law, Pennsylvania, U.S.A is calling for independent probe of Sow's allegation because of the way in which Trial Chamber II reacted to Sow's decision to make a public statement on Taylor's trial.

According to Mr. Jalloh, a former legal advisor to the office of the principal defender of the Special Court for Sierra Leone, the exclusion of Sow's statement from the official transcript of the hearing and recent information suggesting irregularities in the SCSL discipline process all underscore the need for greater transparency

Malick who was duty counsel to former Liberian President Charles Taylor, argued in a legal opinion that "it is time for the SCSL to establish an independent, fact-finding commission with a narrowly framed and time-limited mandate to establish the truth, or falsity, of Sow's allegation that there were no (serious) deliberations by the three judges who convicted Taylor and sentenced him to 50 years imprisonment." Read full text of article on

Introduction

On April 26, 2012, after Presiding Judge Richard Lussick read out the summary of Trial Chamber II's long-awaited verdict in the case Prosecutor v. Charles Taylor at the Special Court for Sierra Leone (SCSL), Alternate Judge El Hadj Malick Sow controversially proceeded to issue his own "dissenting opinion."

The way in which Trial Chamber II reacted to Sow's decision to make a public statement on Taylor's trial, the exclusion of Sow's statement from the official transcript of the hearing and recent information suggesting irregularities in the SCSL discipline process all underscore the need for greater transparency.

This article argues that it is time for the SCSL to establish an independent, fact-finding commission with a narrowly framed and time-limited mandate to establish the truth, or falsity, of Sow's allegation that there were no (serious) deliberations by the three judges who convicted Taylor and sentenced him to 50 years imprisonment. Such a commission could also determine the extent to which, if any, Taylor's fundamental right to a fair trial under Article 17 of the Statute of the SCSL was impacted. The proposal for an ad hoc commission would demystify what happened during deliberations and can run concurrent with Taylor's appeal. It, therefore, would not delay the conclusion of the tribunal's work.

The Role of Alternate Judges in International Criminal Trials is Settled

In a previous article, I took up the question whether there was any legal basis for Sow to issue a "dissenting opinion" under the UN-Sierra Leone Agreement, its annexed statute and the tribunal's rules of procedure and evidence. I demonstrated that, even though the provisions guaranteed the alternate judge a right to be present for deliberations, they did not enfranchise him to vote on the outcome. Consequently, I argued that as a matter of both tribunal law and practice, Sow was not authorized to give a separate opinion, whether concurring or dissenting, on the outcome in the Taylor case. Otherwise, it would violate the SCSL statute and contradict the international criminal justice system which, to date, only provides for three professional judges to adjudicate the guilt or innocence of accused persons instead of four.

Although it follows that no legal value attaches to the conclusions of the alternate judge when the three-judge bench is regularly constituted, there appears to be some new information suggesting the need for greater transparency in the Alternate Judge Sow affair. The new information seems fundamental because, for one thing, the allegations that Sow levelled appear too grave to go unanswered. Furthermore, his decision to speak out publicly has predictably assumed a central role in Taylor's appeal. So, ignoring the issue will only serve to undermine the public perception of the fairness and credibility of that important trial and the SCSL itself.

Taking up the task of determining the veracity of Sow's allegation is one way the tribunal could reassure the accused, the victims, and the public about the integrity of its processes. It is also another way that it could curb the academic and public speculation that is bound to follow if the "black box" of deliberations in this case is not opened up for the world to see what is inside.

The Court Should Publish an Official Version of Alternate Judge Sow's Statement

The first reason why the SCSL cannot "let sleeping dogs lie" stems from two factors. Firstly, the unfortunate circumstances under which Sow made his statement. Secondly, the lack of an authoritative record of what he actually said. Taken together, the public might be left with the wrong perception that the SCSL was trying to silence him because he disagreed with the other three judges and dared to speak publicly about it. Since it is a truism that justice not only needs to be done, but also must be seen to be done, the SCSL should do everything within its power to correct any misapprehensions that may arise on this issue.

It is undisputed that Sow started to read from a prepared statement on Taylor verdict day. The other three Trial Chamber II judges (Lussick, Julia Sebutinde, and Teresa Doherty) allegedly did not know of his plans to speak. So, like everyone else, they were apparently caught off guard. Indeed, Presiding Judge Lussick adjourned the hearing, all three judges rose and everyone seemed to be ready to depart the courtroom when Sow started to speak. Through a combination of these extraordinary circumstances, and the kind of decorum we expect from an international tribunal courtroom, the whole episode came off as if the other judges walked out on a colleague while he was speaking.

The problem is that we do not know for how long Sow spoke. Rumors are circulating that his microphone was cut off. It also seems unclear whether he had finished his statement. Although some of what he said seems to have been transcribed by the SCSL stenographers, there is no record of Sow's statement in the official SCSL transcript. Presumably, this is because a hearing is typically deemed to have ended as soon as the presiding judge adjourns the proceedings. In the end, the result is that the public has no official way of verifying what Sow said.

A review of the April 26, 2012, hearing transcript confirms that all three of the regular Trial Chamber II judges, along with Alternate Judge Sow, were present. They entered the courtroom and were ready to deliver the judgment at the scheduled local time of 11:00

After taking the customary appearances of the parties, at 11:04 a.m., Lussick started reading out the judgment summary. He only finished at 1:17 p.m., two hours and 13 minutes later. The chamber had unanimously found Taylor guilty. So, the court fixed a date for the sentencing hearing. Lussick then declared the hearing closed.

It was then that Sow started to speak. But there are now two versions of his statement. The first version can be found in the legal blogosphere, as exemplified by Professor Bill Schabas' blog:

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 are no serious deliberations; the only place left for me is 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.

This statement is similar, but ultimately different from another version that has surfaced more recently in a defense filing before the SCSL Appeals Chamber. The difference lies in the first sentence of the second version which portrays what the alternate judge said as follows:

The only moment where a Judge can express his opinion is during deliberations or in the courtroom, and pursuant to the Rules, when there is no ^ deliberations, the only place left for me in the courtroom. [Emphasis added].

In contrast, the same (first) sentence in the blog version puts it this way:

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 are no serious deliberations, the only place left for me is the courtroom. [Emphasis added].

The substantive difference between the two versions is immediately apparent. Basically, although the mysterious character in the Defence appeal version seems intended to indicate a missing word ("serious"), if that is not the case, there is clearly a major difference in saying that there were "no deliberations" and saying that there were "no serious deliberations". Although it cannot be emphasized enough that there is no way of verifying this (which is why I call for an independent commission), if we assume for the sake of argument that the allegation is true, it would imply that Taylor's rights have been violated because it is the function of the chamber to deliberate on the evidence in his case. The regular, three-judge chamber is then obligated to render a public verdict by a majority, not unanimity, and to provide a reasoned opinion in writing. That reasoned opinion may include separate or dissenting opinions, both on issues of fact and law.

Although omitting Sow's statement from the official record seems problematic because it gives the impression that the tribunal has something to hide, there is a solid counterargument. In their September 13, 2012, decision, the SCSL Appeals Chamber ruled that the transcript was "accurate" and "transparent" given that the official hearing was formally closed when Lussick adjourned the court. It could not therefore subsequently include additional statements.

This is all probably true, in light of settled tribunal practice. But, given that the accused's fundamental rights and the legitimacy of the SCSL's processes are at stake, I beg to differ. To begin with, it is evident that the appellate judges did not concern themselves with the veracity of Sow's allegation. While in fairness the Appeals Chamber was not being asked to adjudicate the merits of that allegation, one would

have thought that the court would be cognizant of the negative public perception that the allegation entails for the outcome reached in the Taylor case. In defense of the appeals judges, one might say the issue regarding the statement had been resolved through the disciplinary process in plenary. But that would seem like a weak counter-argument because that process addressed the propriety of the alternate judge's public statement instead of the truth or falsity of its contents.

If this contention is correct, the question arises what should be done to establish whether deliberations took place or not. Despite the practical difficulties presented by this proposal - especially a financial one for the notoriously cash-strapped court - the SCSL should consider establishing an independent, ad hoc fact-finding commission comprised of respected former international tribunal judges and the public to establish the truth of what happened in chambers relative to Sow's allegation. The UN, Sierra Leone and the Management Committee of the tribunal should back this initiative.

One objection to this proposal would be the argument that such a process would infringe upon judicial independence. According to the SCSL statute, the judges are to be independent in the exercise of their functions, and are not to seek or accept instructions from any other source. Once the judges have given their reasoned opinion in writing, it is implied that they owe no additional explanation.

However, an independent fact finding commission would not undermine judicial independence. Moreover, it would not violate the SCSL statute because the commission would not seek to influence the verdict that has already been reached in Taylor's trial. The commission would solely examine the truth of the allegation relating to deliberations. In other words, its role would be for the anterior purpose of establishing whether the judges followed procedure consistent with the rights of the accused given the weighty allegation by the alternate judge, who was a close observer of that process. If they did, then it will legitimate the final outcome of the deliberations process. If they did not, then that too can be taken into account.

Besides laying this controversy to rest, under the latter scenario, any newly discovered facts could be folded into the review proceeding conducted by the Appeals Chamber during Taylor's appeal - but only if it could have been a decisive factor in the trial chamber's determination of Taylor's guilt as the SCSL statute requires. In such an instance, if the irregularities are not so fundamental as to invalidate the trial judgment, the appeals judges could exercise their sound discretion to reduce Taylor's sentence to remedy any violation of his rights that might have occurred at trial.

Misgivings About the Discipline Process Used Against Alternate Judge Sow

The first disciplinary step the Trial Chamber took was to remove Sow's name from the Taylor judgment. Sow also did not attend any subsequent hearings. These appear to be hastily adopted measures taken by the Chamber before Sow's discipline process was even completed. Under the circumstances, the judges were undoubtedly justified in taking some measures to address the matter. However, the SCSL should not leave the perception that disciplinary proceedings were initiated against Sow for political reasons, to punish him for holding different views or for the apparent infighting between him and his colleagues throughout the long trial. Most significantly, the tribunal should not leave the wrong perception that the disciplinary process which subsequently concluded Sow was "unfit" to serve as a judge was tainted because it did not comport with basic principles of natural justice.

Under Rule 15 bis of the SCSL Rules of Procedure and Evidence, an allegation that a judge is no longer fit to serve may be made to the president who may refer the matter to the Council of Judges. According to the recent appeals chamber decision, after the hearing on April 26, 2012, Lussick sent an email on behalf of Trial Chamber II to then President of the Tribunal Jon Kamanda. Kamanda treated that email as the formal complaint against Sow's alleged unfitness to serve. Kamanda exercised the option, as he is permitted, to refer the question to the Council of Judges.

Interestingly, although Rule 23(A) provides that the Council of Judges shall be comprised of the presiding judges of the Trial Chambers and the president, only one (the Taylor) trial chamber was operational at the time of the complaint against Sow. That seems important because the Council plays an initial screening role in that it first has to determine whether: (1) the allegation is of a serious nature, and (2) if there is substantial basis for the allegation. The Council then refers the issue to the Plenary of all the judges which considers the issue and, if necessary, recommends a course of action to the appointing authority.

It is implied that Sow's allegation was considered serious enough and that there was a basis for it to be passed to all the judges for consideration. But, in a single trial chamber court, if Presiding Judge Lussick did in fact participate in the president's decision to refer, that would be odd because he would effectively have been a judge in his own cause for the predicate findings of the seriousness of the allegation and the subsequent decision to refer it to the plenary. One might retort that once he filed the complaint, Lussick stepped outside of that role as a regular judge of the trial chamber and into the role of a member of the Council of Judges. That might be true and is one way to justify his wearing of two hats. By the same token, if Lussick participated in the second decision - an admittedly speculative conclusion at this stage - it would seem highly problematic for the complainant judge to also participate in the decision on what do with the complaint.

Whatever the case, Rule 15 bis guarantees the judge that is challenged as unfit a right of response. The resolution from the Plenary, read into the record by Lussick on May 16, 2012, fourteen working days from the date of the complaint, implied that this protocol was followed. That is how it ought to be, and was very reassuring.

Yet, in the separate opinion of Appeals Chamber Judge George King issued two weeks ago, he revealed new information alleging procedural irregularities which led him to conclude that Sow's right to be heard had been denied. Additional information hitherto unknown to the public also emerged. Even though the record of the complaint alleging unfitness to sit had been "filed" on April 26, 2012, and the alternate judge responded to it on May 1, 2012, it appears that a further "six-page statement" was prepared by Sebutinde which purported to be the formal complaint against Sow. That document, in King's words, contained "new" and "scurrilous" allegations against Sow. If true, this is highly disappointing conduct, especially for a judge that after the Taylor verdict went on to take up a position on the bench of the International Court of Justice.

Sow was apparently not notified of this additional complaint in the Plenary. Nor did he partake in that meeting. It is uncertain whether he was even invited to attend or whether he had the option to send a legal representative to the meeting to respond to the new complaint. This is not insignificant given that King raised the alarm about the impropriety of not respecting Sow's right of response. This "perversion of justice", as King called it, led the appeals chamber judge to walk out of the Plenary. He, therefore, did not endorse the formal resolution finding Sow unfit to sit and distanced himself from the decision.

Although King's position is laudable, the new information that he has revealed has raised more questions than answers about the tribunal's private handling of the Sow affair. Even more disturbing is that King insinuated that efforts were subsequently made to erase Sebutinde's statement from the plenary record. He did not say by whom but, reading between the lines, it seems likely that Sebutinde and, worse, the other judges might have been involved. If this hunch is correct, then that too is even more troubling behavior from the bench of an international criminal tribunal.

Ultimately, there are questions about the validity of the disciplinary resolution since it appears uncertain how many judges voted in its favor, against it or abstained. It is also unclear whether the decision comports with procedural rules since the only thing the Plenary could do is recommend to the appointing authority (i.e. the UN secretary-general and the government of Sierra Leone) a course of action.

In the end, it is difficult to understand how the plenary could determine he was unfit to serve as a judge and prevent him from further participating in the Taylor Trial because he spoke when he was not allowed to without first resolving the predicate factual question of whether he told the truth, which might then (retroactively) justify the making of the statement, or alternatively, that his allegation about the absence of deliberations was a simple case of sour grapes from a bitter judge who then deserved the weighty sanction of "unfit to sit" that could have effectively killed his international judicial career. In any event, the appointing authorities are free to accept or reject the plenary recommendation. Yet, we do not have any information in the public domain confirming the UN and Sierra Leone adopted their view that Sow was unfit and should therefore be removed.

Conclusion

Unfortunately, this type of controversy is not new to international criminal law. At the International Military Tribunal for the Far East (IMTFE) in the aftermath of World War II, an early agreement to refrain from dissents in the final judgment fell apart before the proceedings even concluded. The result was that although the IMTFE charter did not formally provide for separate opinions by the judges as modern tribunals do, there were two dissents from Judges Radhabinod Pal and Henri Bernard and a partial dissent by Judge Bernard Roling.

The most famous dissent was Pal's. He not only disagreed with his colleagues on the law, but also on the facts, based upon which he would have acquitted the 25 accused on all of the charges. According to Neil Boister and Robert Cryer: "Pal countered the majority's factual perspective by providing a colossal factual recapitulation of his own but drawing entirely contradictory inferences, specifically that there was at no time a conspiracy amongst Japanese leaders to commit aggression." (See Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgements at lxxx).

Similarly, Bernard issued a dissenting opinion from the majority explaining that he was doing so "both on questions of law and fact" as it was necessary "in fairness to the Accused" and to clarify the extent to which his view differed from that of the majority. (See Dissenting Judgment of the Member from France, ibid., at p. 664). Also, while Roling's partial dissent endorsed the majority judgment's restatement of Japan's factual history, he still found it "necessary to dissent on some issues, where a different interpretation should be given to the facts laid before the Tribunal" although he did this "only where it might have direct bearing on the question of criminal liability" under the Charter. (See Opinion of the Member for the Netherlands, ibid., at 709).

In other words, although the Taylor verdict controversy differs in involving a non-voting alternate instead of regular voting judges like those at the IMTFE, history teaches that the SCSL is not unique. Indeed, contrary to the suggestions of some commentators, the SCSL is in good company with the International Criminal Tribunal for the Former Yugoslavia where also regular (not alternate) judges have been known to dissent wholly or partially on factual or legal findings from their judicial colleagues during trial judgments in cases such as Simic and Galic.

As the tribunal considers this unique proposal for the establishment of an admittedly unprecedented, fact-finding commission to shed light on the veracity of Sow's allegation, it seems befitting to conclude with a quote from Pal, who in his voluminous dissenting opinion said the following of the IMTFE that could just as well be said about the SCSL and the verdict in Taylor's case: "As a judicial tribunal, we cannot behave in any manner which may justify the feeling that the setting up of the tribunal was only for the attainment of an objective which was essentially political, though cloaked by a judicial appearance."

If the SCSL does not act creatively to address what Trial Chamber II itself characterized as an "extraordinary situation" by showing the world that it has nothing to hide, history will be forced to judge it. However, history might be more generous to it than the IMTFE if the SCSL established transparency

regarding what exactly happened in the chambers deliberations over the guilt or innocence of former Liberian President Charles Taylor.

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Institute for War and Peace Reporting
Wednesday, 10 October 2012

Making Reparations Work in Congo

ICC supports inclusive approach to reparations, but how wide can its reach be?

A landmark decision by the International Criminal Court, ICC, will see damages paid to the victims of convicted Congolese warlord Thomas Lubanga Dyilo. Given the complexity of deciding who is eligible, judges have given considerable latitude to the body responsible to define how the reparations programme should work.

The August 7 ruling followed on from the conviction of Lubanga in March 2012 for conscripting, enlisting and using child soldiers under the age of 15 to participate in hostilities in the east of the Democratic Republic of Congo. He was sentenced in July.

As this was the ICC's first conviction, it is also the first time the court is exercising its powers to order payment of reparations to people who suffered as a result of criminal actions.

A special body called the Trust Fund for Victims, TFV, works alongside the court in order to implement any reparations programme that is put in place.

Individuals convicted by the ICC can be required to contribute to reparations if they have sufficient funds, but during sentencing in July, judges found that Lubanga was not in a position to do so.

In their August decision, judges set out general principles on how the process should be implemented, but left it up to the TFV to carry out an assessment of the harm suffered in eastern DRC and to decide what form reparations should take.

On October 3, Lubanga's lawyers launched an appeal against his conviction and sentence. They also plan to contest some of the points in the reparations judgement.

DEFINING THE SCOPE OF REPARATIONS

The TFV will not launch a reparations programme until all appeal processes have been completed, but it is already considering how it should proceed.

Issues around the scope and purpose of reparations - who can claim them, and whether payments should go mainly to individuals or to communities - have vexed experts on international justice.

According to the ICC's founding treaty, the Rome Statute, only those victims who suffered from the crimes of which Lubanga was convicted will be eligible for compensation. In the strictest interpretation, this would be only those child soldiers who were forcibly conscripted into his Union of Congolese Patriots and used as combatants during fighting in 2002-2003.

However, judges have decided that the process should encompass "direct and indirect victims", a category that includes "family members of direct victims, along with individuals who intervened to help the victims or to prevent the commission of these crimes".

Earlier this year, IWPR interviewed some who argued that such a broad-based, even-handed approach would be much more effective in healing the scars left by conflict and extensive human rights abuses.

Phil Clark, a research fellow at Oxford University and expert on international justice, says the TFV will have to play "a very careful diplomatic game" to make sure that reparations do not become divisive by appearing to benefit one set of victims over another. He believes the lack of money available for reparations is likely to be a limiting factor, and will mean that not all victims can be reached by the TFV's programmes.

ENGAGING DRC GOVERNMENT

Some observers argue that the Congolese government has a role to play in making sure the TFV's reparations programme runs smoothly.

Although it is unclear to what extent the authorities can and should assist in the process, given that Lubanga was a rebel fighter, ICC judges stress the importance for the TFV to establish "close cooperation" with the national government. De Baan confirms that the TFV will be engaging with the government in a bid to persuade it of the value of a reparations programme.

"Cooperation by the DRC government should be extremely important, for instance in terms of access to information and to ensure that the implementation of reparations awards will take place under the best possible safety conditions," he said.

For the moment, the political leadership in Kinshasa appears reluctant to move on the issue, arguing that it cannot undertake obligations stemming from the crimes of one convicted individual.

"The most important contribution from the DRC is to have arrested Lubanga and sent him to the ICC," said government spokesman Lambert Mendé. "Now, if reparations are indispensable, I think it is for the person who is guilty of the crimes to take responsibility... Our ministry of humanitarian affairs has always been there for all the victims, [but] Lubanga was at war against the republic; he was not employed by the DRC. I don't see why we should be concerned with reparations."

De Baan would not be drawn on whether he would expect Kinshasa to contribute financially to a process for which judges have said "there are very limited financial resources available".

Ruben Carranza, director of the reparative justice programme at the International Centre for Transitional Justice, ICTJ, points out that the government could contribute in ways that do not involve payouts.

"The government could cooperate in order to preserve the records and names of victims, including those that have been identified but are not part of the Lubanga case," Carranza said. "They could also turn sites where violations took place into memorials, in order to acknowledge the suffering of victims."

Guidelines agreed by the United Nations in 2005 stress that all victims of human rights abuses must be able to access some form of reparations. Carranza argues that this places an obligation to act on the DRC government.

"The universal right to reparations is based on victimisation, and not individual criminal responsibility," he said. "This is why it's important to go beyond the Rome Statute [ICC's founding treaty] and look at what role other actors, including the state, can play in recognising the harm that victims have suffered."

Experts on post-conflict justice say that if the government shows itself unwilling to get behind the TFV's work, it could undermine the key purpose of reparations - to provide recognition of the harm that victims have suffered. The experience of similar programmes elsewhere may serve as a warning.

A reparations programme was launched in Sierra Leone in 2009 to help victims recover from a decade of bloody civil war. The conflict officially ended in 2002, leaving thousands dead and countless others maimed, often with limbs deliberately amputated.

At present, most of the money for reparations is channelled through the United Nations' peacekeeping mission in Sierra Leone. But Ibrahim Tommy, executive director of the Centre for Accountability and Rule of Law, points out that this might not last forever.

"There is a clear lack of willingness on the part of the political leadership to roll out an effective, meaningful and sustainable reparations programme," he said. "If you're going to rely on the UN and other international bodies, then at some point, the focus will change and move to other countries. The government must be made to start taking responsibility and honour its obligation to provide reparations for those victims most affected by the war."

John Caulker, the head of Fambul Tok, a peacebuilding initiative in Sierra Leone, thinks a large part of the problem is a lack of understanding within government about the purpose of reparations.

"The government doesn't see the need for reparations, given that there is an ongoing programme of development in the country," he said. "We have had to argue quite insistently that reparations are trying to do something different. Reparations aren't just about monetary compensation - they are about the restoration of victims' dignity and the acknowledgment that they were wronged."

In Cambodia, victims have struggled to get reparations from the tribunal set up to try Khmer Rouge leaders for the mass atrocities of the 1970s. Like the Sierra Leone court, this tribunal is a joint venture between the UN and the national government.

The Cambodian court has received more than 4,000 applications for compensation from victims, of which just over half have been declared admissible.

According to lawyer Kim Suon Hong, one of the reasons why the Cambodian government is reluctant to take part is its belief that convicted individuals rather than the state should pay. Yet many of those convicted or on trial do not have sufficient assets to pay reparations.

"The way that human rights work is that when someone loses everything or has no way to support their life, the government must be responsible for their wellbeing. This is exactly the same as if it had been the government that directly caused the problems for the victims," Hong said. "But the government doesn't see things like this. The government always says it is the responsibility of the accused. But if the accused has no money, what can they do?"

The ICC is the first international court to adopt a reparations policy applicable to every individual it convicts. But as it seeks to deliver reparations in its case, observers fear difficulties similar to those seen elsewhere.

"The Rome Statute enables the TFV to address some of the needs of [Lubanga's] victims, but we need to look at how we go beyond that," Carranza said. "It's the state that should have the primary responsibility to recognise the victims of violations committed by state agents or violations committed by non-state actors that the state could have prevented."

BEYOND REPARATIONS

There is an important distinction to be made between judicial reparations and development aid. Reparations are intended to provide recognition for the harm that victims have suffered, whilst development aid is a continuous process to help communities climb out of poverty.

Clark from Oxford University cautions that the distinction between reparations and development aid must be made very clear, so that compensation for victims is not seen as a substitute for aid.

"Victims need compensation for the crimes that they have suffered, but they also need development aid by virtue of being citizens of the Congo," he said. "There is a danger that reparations, funded by the international community, might become a substitute for the development that people would ordinarily expect anyway."

Whilst the reparations process is necessarily limited, TFV director De Baan hopes that the reparations process will encourage broader efforts by others, with a longer-term impact.

"The TFV will not be operating in the region permanently, and so it is very important that the reparation measures put in place continue to benefit victims and affected communities even when the TFV is no longer there," he told IWPR. "These measures should function as an incubator, inspiring initiatives by other donors and the [DRC] government to eventually use the approach and methods in a way that is not constrained by the legal boundaries of the ICC's judicial reparations."

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