SPECIAL COURT FOR SIERRA LEONE
OUTREACH AND PUBLIC AFFAIRS OFFICE

Jim Johnson of OTP addressing pupils of St. Edwards Secondary School,
during yesterday's outreach to the school. See more in today's Special Court *Supplement*.

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:
Wednesday, 21 March 2012

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
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Centre for Accountability and the Rule of Law (CARL)
January-February 2012

SCSL Trial Chamber Rejects Application by Taylor Defence to Re-open Case: Implications for Justice?

By Joseph A.K Sesay

Trial Chamber II of the Special Court for Sierra Leone (SCSL) on the 9th February 2012 rejected a defence application seeking to re-open the case for Charles Taylor. Taylor's defence in January filed a motion requesting to re-open its case by admitting a United Nations' Panel of Expert Report on Liberia. The Judges rejected the application mainly on the grounds that the report lacked the probative value required and that the defence failed to establish and justify why it should be granted permission to re-open its case.

The defence seeks to admit portions of the report pursuant to Rule 92 bis of the Rules of Procedure and Evidence (The Rules) of the SCSL, which provides for the Chamber to allow documents in lieu of oral testimony. The Rules of Procedure and Evidence does not specifically provide for a party to re-open its case. The Court has the discretionary power to re-open a case and has been flexible in allowing parties to re-open their case, thereby admitting evidence even when a party has closed its case.

Hon. Justice Teresa Doherty

To be granted this opportunity, the party seeking to reopen its case and admit further evidence must show that the evidence sought to be admitted could not, with reasonable diligence, be identified, obtained and presented during the presentation of their case, and that the evidence was only available after they have closed their case. Finally, once such evidence is available, a party must act in a timely manner to seek its admission, and that the probative value of the evidence is not substantially outweighed by the need for a fair trial.

In January 2012, the defence filed a motion to re-open their case following the publication of an expert report on Liberia submitted by the Chairman of the UN Security Council Committee in December 2011. Part of the report touches on Liberian mercenaries and their participation in the conflict in Sierra Leone, as well as Ivorian militias. According to the defence, this section of the report gives some description of mercenary activities in West Africa, giving credence to their theory of "private enterprise" which suggested that Liberian fighters in Sierra Leone were not under the direction or command of Taylor but rather they were here for personal gains. The defence thus requested the Trial Chamber to re-open the case of Taylor and admit as evidence this portion of the expert report which summarises the findings of the Committee and the activities of Liberian mercenaries and Ivorian Militias. They argued that the defence acted diligently in seeking leave to admit the report after obtaining same in December 2011. They noted that between December 2011 and end of January 2012, the team was in consultation with each other and the accused.

The defence team also urged the Chamber to admit the report as it will help them to appreciate the historical development of mercenary activities in West Africa, adding that it would not delay the final judgment. Furthermore, the report named among others, Ibrahim Bah, Benjamin Yeaten and Ziz Zag Marzah , as mercenaries acting as free agents in the Ivorian situation. While testifying as a prosection

witness in the Taylor, Ziz Zag Marzah told the court that he only acted on the instruction of Taylor. For the defence, the fact that the report concludes that Marzah acted as a free agent could impugn his credibility.

Naturally, the prosecution opposed the application and requested the Chamber to dismiss it, noting that it lacked merit and that the defence has not met the standard required to re-open a case as earlier set by the Trial Chamber. The prosecution further argued that the motion was untimely, and that it did not have any probative value. In fact, the prosecution notes that the finding only confirms the prosecution's evidence, and that even if it was of probative value, it could not be admitted under Rule 92 bis as it touches on the conduct of the accused. They argued that the defence did not fulfil the first arm of the test, in that they did not act with due diligence in requesting the Chamber to grant leave for the admission of the report, as the report was published on 7 December 2011 and defence only applied for its admission after eight weeks.

Secondly, the prosecution argued that it might not have a better opportunity to address issues in the report before the Chamber delivers its trial judgement, and this will outweigh their right to fair proceedings. Also, some parts of the report refer to Taylor's conduct, part of which the prosecution had already led evidence on, and as such cannot be admitted in lieu of oral evidence. Finally, the prosecution considered the Taylor trial to be at an advanced stage and that allowing a party to re-open its case might cause delay in reaching a final trial judgment.

The Trial Chamber, after considering submissions from both parties, dismissed the application, noting that the defence neglected its responsibility of acting diligently and seeking leave immediately the report was published. The Chamber further noted that allowing the defence to reopen its case at this advanced stage of the trial would result in undue delay and this would affect fair trial. Regarding the proposed probative value of the report, the Chamber ruled that it is not relevant to the issue before them as no nexus can be drawn from events which took place in Cote d' Ivoire between 2011 - 2012 and Sierra Leone during the indictment period, accordingly the defence failed to justify the re-opening of their case.

The rejection of this application would not necessarily militate against the defence, as they had completed, what in their view, represented a strong defence to rebut the prosecution's allegations. While the defence would have appreciated the opportunity to present corroborating evidence, no amount of defence evidence will be enough to exonerate an accused if the prosecution has diligently met its high burden of establishing the guilt of an accused. In effect, while the evidence of the defence can only create doubt in the minds of the judges, it is hardly used to acquit an accused, as the usual question to be answered is whether the prosecution has proved it case and not whether the defence has created doubt. In effect, if the prosecution succeeded in proving its case, no amount of defence evidence can free the accused.

Charles Taylor

The ruling placed an additional pressure on the Trial Chamber to expeditiously hand down judgment as it was part of their reason for denying the defence to reopen its case. A couple of weeks after the rejection of the defence application, a

Scheduling Order was issued stating that the judgement will be handed down on April 26.

Furthermore, it is likely that had the Trial Chamber allowed the admission of portions of the UN report, there would have been the need for some oral evidence to corroborate the document, which would have required additional time. While this remains mere speculation, a flexible discretion by the Trial Chamber should not essentially require the defence to give a concise explanation for their failure to file an application 8 weeks after the report was issued. Moreover, it is worth remembering that the prosecution had an opportunity to re-open its case and present additional witnesses. Whilst this cannot be the measuring rod, allowing the defence to file the report would have somewhat balanced things out in terms of giving them an opportunity to corroborate their rebuttals.

Time factor might not be a bar for fresh evidence. The interests of justice must always be sougth as Rule 115 of the Rules provides and guarantees the admission of additional evidence even on appeals, suggesting that evidence should be admitted at any time before final determination

AllAfrica.Com
Monday, 19 March 2012

Central African Republic: Fifth Day of Closed Session in Bemba Trial

By Wakabi Wairagala

Today, the 40th witness called by the prosecution in the trial of Jean-Pierre Bemba continued to testify before the International Criminal Court (ICC) in closed session. Going by the court-given name 'Witness 36,' he commenced his testimony last Tuesday and is testifying via video link from the Democratic Republic of Congo.

'Witness 36â-' is a former insider in the accused's private militia and is the last witness to testify before the prosecution closes its case in the trial that started on November 22, 2010. The prosecution has previously called four expert witnesses, 12 insider witnesses, and 23 individuals whom they said were victimized, witnessed the abuses, or could provide evidence on the elements of crimes committed.

Mr. Bemba, 49, is on trial at The Hague-based court over crimes of rape, murder, and pillaging allegedly committed by his troops during their deployment in an armed conflict in the Central African Republic (CAR). He has pleaded not guilty to three war crimes and two crimes against humanity, which prosecutors claim arose from his failure to control or discipline his rampaging Movement for the Liberation of Congo (MLC) soldiers.

The Congolese fighters were in the conflict country to help its then embattled president, Ange-Félix Patassé, beat off a coup attempt led by current president François Bozizé. In denying the charges against him, Mr. Bemba has stated that once his troops crossed the Congo-CAR border, they fell under the command of Central African authorities and not his. He further counters that besides the MLC, other forces active in the conflict could have committed the alleged crimes.

These groups included forces led by Colonel Abdoulaye Miskine that fell outside the regular army and reported directly to the president, the SCPS (la Société centrafricaine de protection et de surveillance), the presidential security group known as United Presidential Security (USP), Libyan forces, and troops from the 21-nation regional grouping, the Community of Saharan-Sahel State, or CEN-SAD, as well as ethnic militia groups and rebels led by Mr. Bozizé.

Most of the witnesses in the Bemba trial have testified with their identities protected in order to protect them from potential reprisal attacks. Up to six former insiders in the group led by the accused have given all their evidence in closed session.

The trial is scheduled to continue tomorrow morning

The Nation
Tuesday, 20 March 2012

The International Criminal Court's First Verdict Provokes Renewed Scrutiny

By the time the first verdict of the decade-old International Criminal Court was finally handed down on March 14, broader implications of this pioneering case were being recognized by human rights groups and international lawyers. In the courtroom, the judges found the Congolese warlord Thomas Lubanga Dyilo guilty of conscripting children under the age of 15 and sending them into a guerrilla war of extreme brutality. Will this conviction make a difference and what does the case say about the functioning of the court?

Lubanga, leader of the armed Patriotic Forces for the Liberation of Congo, operated in the northeastern Ituri region of the Democratic Republic of Congo, an area torn apart by ethnic conflicts complicated by a Ugandan military intervention and a deadly local free-for-all over the riches of gold mines and other resources. The story is replicated to one degree or another across much of eastern Congo, where thousands of civilians have been raped and butchered in power struggles and deliberate campaigns of intimidation over almost two decades.

The guilty verdict against Lubanga, who was given thirty days to appeal, took years to reach, as the new court and its prosecutor stumbled over missteps and unexpected challenges. Lubanga was turned over to the court by the Congolese government in 2006, the first person to be taken into custody by the ICC. His trial began in 2009 amid squabbles between the prosecutor and judges, internal fights over the gathering and sharing of evidence, stays of proceedings and one early attempt by the bench to free Lubanga on the ground that he could not get a fair trial, a ruling that was subsequently overturned.

Critics faulted the prosecutor, Luis Moreno-Ocampo of Argentina, for limiting the case to the use and abuse of child soldiers (some of them boys and girls younger than 12). Left off the charge sheet were numerous other war crimes allegedly committed by Lubanga and his co-accused, Bosco Ntaganda, another militia leader who is now a general in the Congolese army in the North Kivu area of eastern Congo.

Moreno-Ocampo, who has said that he wanted to see a trial through to conclusion before his term as prosecutor expires at the end of June, apparently focused narrowly in the Lubanga case on what could be proven beyond doubt in court. In that, he succeeded. He is seeking the maximum thirty-year jail sentence for Lubanga. The ICC does not condone the death penalty.

Géraldine Mattioli-Zeltner, the international advocacy director for Human Rights Watch, called the guilty verdict “a victory for the thousands of children forced to fight in Congo’s brutal wars.” In a statement, she added: “Military commanders in Congo and elsewhere should take notice of the ICC’s powerful message: using children as a weapon of war is a serious crime that can lead them to the dock.” Child soldiers are found in more than a dozen countries, most of them in Asia and Africa.

Coincidentally, the Lubanga ruling came as media interest in child soldiers soared after the release of the now controversial video “Kony 2012,” produced by the group Invisible Children. It tells the story of abuses by Joseph Kony, the leader of the insanely violent Lord’s Resistance Army in northern Uganda, which flared in the 1990s. Driven out of Uganda in 2004-2005 by the army (which is also accused by Ugandans of human rights abuses) the LRA now operates mostly in the Democratic Republic of Congo, the Central African Republic and southern Sudan.

An ICC warrant for the arrest of Kony and two of his co-leaders was issued by the ICC in 2005 but the case received little attention over the years, although the United States currently has military advisers in the region training Ugandan and other forces ostensibly trying to capture the LRA leader and turn him over to the court.

Two immediate outcomes of the Lubanga case are evident. First, the use of child soldiers is now firmly established by precedent as a war crime, just as rulings by the Rwanda war crimes tribunal first confirmed rape as an internationally recognized war crime.

Second, it is clear from the tangled process that finally brought Lubanga to justice that the multinational ICC, drawing on a multitude of cultural factors and legal systems, will have to work harder to streamline investigations and courtroom proceedings as a new prosecutor, Fatou Bensouda, a lawyer from Gambia, takes over in the summer.

Significant questions remain about the use of "contract" investigators who have augmented the overburdened prosecutorial staff. An unruly court bureaucracy needs discipline, outside observers say. Provisions for the protection of witnesses and compensation for victims, unique to this court, are only beginning to be tested. And, as the "Kony 2012" episode demonstrates, the court has failed to make a public impact if millions of people in social networks thought they were hearing the LRA story for the first time this year.

Bensouda, a low-keyed expert in international law who has been the court's deputy prosecutor under the more showman-like Moreno-Ocampo, faces important cases still to pursue. Four arrest warrants are outstanding for war crimes in the Darfur region of Sudan, among them one naming the Sudanese president, Omar Hassan Ahmad Al Bashir. Six Kenyans turned themselves in to the court voluntarily to be investigated for alleged involvement in political violence following a national election in December 2007.

Last year, Moreno-Ocampo, acting with UN Security Council authority, opened cases charging crimes against humanity against Muammar Qaddafi, his son Saif Al-Islam Qaddafi and Abdullah Al-Senussi, the Qaddafi regime's intelligence chief accused of instigating widespread repression. Charges against Muammar Al-Qaddafi were dropped following his death.

Saif Al-Islam Qaddafi remains in Libyan custody and is likely to be tried in that country, a risky course of action that is nonetheless allowed by the ICC. In a brief interview with me in January, Bensouda, who had recently returned from Libya, said that she accepted Libyan assurances that Saif Al-Islam is not in danger. She pledged that the ICC would assist the Libyans in insuring that he got a fair trial conducted under internationally recognized standards. On March 17, the Libyans announced that al-Senussi, Muammar Qaddafi's brother-in-law as well as a top aide, was arrested in Mauritania. The ICC will now have to devote resources to that case also.

Meanwhile preliminary investigations have begun on cases in Afghanistan, Georgia, Guinea, Colombia, Palestine, Honduras, Korea and Nigeria.

Should the ICC be asked at some future point to bring charges against President Bashar al-Assad of Syria or others in his circle, the court will find itself seriously overloaded, while moving into new geographical and political territory. A map designed by the New York–based Coalition for the International Criminal Court showing which countries have ratified the court's founding treaty and are therefore full participants in the institution's governance, leaves the Middle East and North Africa largely blank except for Tunisia and Jordan. That would indicate little regional support.

Few Asian nations are members of the court. Japan and South Korea have joined but China and India have not. Countries in almost all of sub-Saharan Africa, Western Europe and much of Eastern Europe are full members, but not Russia. In the Western Hemisphere, the only holdouts are the United States and a few small Caribbean and Central American nations.

With three of the Security Council's five permanent members opting out of full membership, the burden of reforming or strengthening the court would have to be shared by less powerful players, and at a time when there is universal grumbling about the cost and slow progress of not only the ICC but also of regional war crimes tribunals for the Balkans, Rwanda and Cambodia. The appointment of Fatou Bensouda offers the chance to look anew at the ICC. The Lubanga verdict—and the time it took to reach it—should be the trigger for a thorough review.

CNN
Tuesday, 20 March 2012

2nd international judge resigns from court trying Khmer Rouge crimes

By Jethro Mullen, CNN

An international judge has resigned from the special court set up in Cambodia to try people accused of committing atrocities under the Khmer Rouge in the 1970s, saying his Cambodian counterpart was obstructing efforts to investigate cases.

The resignation by Laurent Kasper-Ansermet, announced Monday, is the second departure of an international judge from the court in the past six months amid tensions with local officials.

His predecessor, Siegfried Blunk, resigned as international co-investigating judge in October, complaining that statements by Cambodian government ministers about two of the court's cases threatened to undermine proceedings.

Those same two cases, known as Cases 003 and 004, are at the heart of the dispute between Kasper-Ansermet and You Bunleng, the national co-investigating judge for the court.

"Judge You Bunleng's active opposition to investigations into Cases 003 and 004 has led to a dysfunctional situation," Kasper-Ansermet said in a statement attributed to him on the court's website.

Prosecutors for the court filed submissions in September 2009 asking the judges to begin investigating five people, whose names have not been disclosed publicly. The submissions were divided into Cases 003 and 004.

Based on a French concept, the two investigating judges of the court, one international and one Cambodian, are responsible for collecting evidence to decide whether people charged by prosecutors should be brought to trial.

Judge You Bunleng's active opposition to investigations into Cases 003 and 004 has led to a dysfunctional situation.
Laurent Kasper-Ansermet

Kasper-Ansermet, a Swiss citizen, said You Bunleng had "constantly contested" his authority to investigate the two cases. He said You Bunleng had refused to discuss the cases with him during an informal meeting and had also issued written orders to him demanding that he immediately cease his "unlawful activity."

Kasper-Ansermet "considers that the present circumstances no longer allow him to properly and freely perform his duties," according to the statement, which said his resignation will take effect May 4.

You Bunleng was not immediately available for comment on the matter.

The tribunal, known as the Extraordinary Chambers in the Courts of Cambodia, began its work in 2007 after a decade of on-and-off negotiations between the United Nations and Cambodia over the structure and functioning of the court.

In 2010, it issued its first verdict, convicting Kaing Guek Eav, commonly known by his alias, Duch, of war crimes, crimes against humanity, murder and torture.

At least 1.7 million people -- nearly a quarter of Cambodia's population -- died under the 1975-1979 Khmer Rouge regime from execution, disease, starvation and overwork, according to the Documentation Center of Cambodia.

Opening statements in the court's second trial, Case 002, began in November. In that trial, four former Khmer Rouge government ministers face charges of crimes against humanity and genocide.

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