

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



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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

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SLBC Lunch Break

Tuesday, 21 May 2013

Transcript

The Office of the Prosecutor of the Special Court for Sierra Leone has concluded a two-day training for fifty police prosecutors at the Police Training School at Kingtom as part of ongoing effort to build capacity of the police. Criminal prosecutions in the Magistrates Courts are normally conducted by police officers and not lawyers, and if a failure to follow the proper procedures might result in cases being dismissed from the courts, which underlines the timeliness of this training. Well Mr. Mohamed A. Bangura is a trial lawyer at the Special Court for Sierra Leone and the lead facilitator at this training programme, and he is my studio guest this afternoon. Mr. Bangura, welcome to Lunchtime Break and thank you so much for joining us.

BANGURA: Thank you very much.

What is the importance of this training for police prosecutors?

BANGURA: Thank you. As you have already pointed out, the bulk of criminal cases conducted in our courts in Sierra Leone are at the Magistrates Court level, and they are largely handled by police officers, police prosecutors. We know that these officers are not trained in the law, and they often only get by with the experience that they gain as they get on with their job. Oftentimes there are difficulties that they face which could lead to cases being dismissed. The Special Court, having recognized that this could be an area that we can develop, help to develop capacity, help to build capacity, decided to focus its effort at training police prosecutors. I should point out that these are two-day events, mostly, and they are intended to build skills, intended to give the first-time prosecutor, for instance, a very good footing, but they do not give you everything that you need as a prosecutor of course.

Mr. Bockarie (sic.), what are areas you looked at during the training, specifically?

BANGURA: We looked at principally the process of conducting summary trials and preliminary investigations. Basically – I'll just dwell on those two first and then I'll tell you about the others – basically those two primarily are the hub of prosecutions in Magistrates Court. Most of the cases that come to the Magistrates Court would either be tried summarily – that is to say, the trial itself finishes at the Magistrates Court level, or there is the process which we call the preliminary investigation, meaning that the trial itself will be conducted at the High Court. And what happens at the Magistrates Court is that the magistrate conducts an investigation to ascertain whether there is sufficient evidence for this trial to go on, for this case to go on trial at the High Court. And these are usually the most serious cases – cases of rape, cases of murder, and so on. The less not so serious ones that do not carry very serious punishment are the summary ones. So we tried to ensure that they understand – the procedure basically is what we focused on, understanding the procedure enough, understanding the nature of the offences that could be tried summarily as against those that could be investigated – preliminary investigations, normally called a PI. So that's the basis. And we used the Criminal Procedure Act – most lawyers call it the bible of prosecutions – we used that as the primary document by which we delivered the training. We also looked at other matters, like case management skills, we looked at witness management. We also gave them some tips on how to conduct a proper investigation in criminal cases.

Okay Mr. Bangura, do these set of people, police prosecutors, have legal backgrounds?

BANGURA: As I pointed out earlier, they largely are not trained and qualified as lawyers, and oftentimes they are up against lawyers on the other side. And it creates a problem when a lawyer on the other side who is learned in the law, who has the training and the experience in these cases, they could apply that knowledge in many ways than one to ensure that they defend their clients well, which is their job. So

basically what we're trying to do is for a police prosecutor who hasn't got any amount of training, we try to give them what it takes, the basic skills, the basic understanding of the procedure...

But Mr. Bangura do you think they will be able actually to handle high-level cases when they lack the legal background?

BANGURA: You suddenly hit the point, but again as I pointed out earlier, there are two levels of cases that they handle at the Magistrates Court. There is the what we call the summary trial – cases that start at the Magistrates Court and are completed there. And so those ones, they are not as complex in some cases or they do not eventually lead to punishment – the nature of them, the gravity and seriousness of them is not as great as the ones that go on PI – preliminary investigation, which are eventually sent for trial at the High Court. When these matters go to the High Court for trial, the most serious ones, the prosecution is handled by lawyers from the Law Officers Department. These are obviously trained persons who...

You focused on other areas during the training, like you looked at the application of Larceny Act, 1916; the Domestic Violence Act, 2007; the Offences Against Persons Act, 1861; and the Sexual Offences Act, 2012. Why these particular areas – why have you decided to look at those particular areas?

BANGURA: The point is that the training itself, as I said, is focused on procedure, making them to understand procedure. And we thought that it would [not] be a complete process if we did apply, if we did not get them to apply certain substantive laws and see how those laws are applied in the process. So we decided to focus on a number of acts, laws, statutes, which create offences that are frequently occurring in our country. You talked about larceny. The incidence of theft, the incidence of stealing is common. So you're training people, you're helping to train people who haven't had much training or any training at all, or haven't had much skills. So basically you want to focus on the frequently occurring incidents, the frequently occurring crimes. So we chose them, larceny, the Offences Against Persons Act is an act that deals with offences against the person, the body, the person – offences like wounding, wounding with intent. There's so much violence in society these days, and it's so common to read in the papers or even if you went to court you see many of these cases come up.

Mr. Bangura, do you normally monitor them in the courts, in the application of this training that you normally offer to them as police prosecutors. Do you monitor them in the courts?

BANGURA: Personally I, before joining Special Court, I was practice (sic.) in the courts and some decisions we took at building capacity of police officers stemmed from my personal experience of being in cases where police are prosecuting and I am defending. And so I have personally had the experience of seeing them perform, and I think generally it is accepted within the profession and within the judicial sector that police need to be given the training that it takes to really be up to the task. In recent times I must say that I've not been fully resident in Sierra Leone and so I've not always been to the court, but when I can I do go there and observe. And the reason why we keep going on with this training, I must point out that we started in 2009, and if you want to put them in a series you would say that this is the fifth in that series that we have conducted. And the reason why we keep going back is because the police appreciate our efforts and we believe that it has helped their personnel in...

Has this training made a difference in terms of their prosecuting skills as police officers? Have you noticed that?

BANGURA: As I said, I've not been...

Your office.

BANGURA: The office, certainly, the fact that the police are always willing to have us give further training to their personnel is an indication of that. But let me also point out that within the police force, I

mean I think the personnel policy is such that people get moved around. So it's not always that the same prosecutors remain in the prosecution section. New ones get transferred to that section and they always need some training. They always need some training to help them get on their feet, and that in itself is an indication, a reason why we keep going on.

All right, thank you very much Mr. Mohamed Bangura, a trial lawyer at the Prosecutors' Office at the Special Court for Sierra Leone has just ended a two-day training for police prosecutors at Kingtom Training Centre on how to handle cases in the courts.

Office of the Prosecutor Trains Police Prosecutors

The Office of the Prosecutor (OTP) concluded a two-day training of fifty police prosecutors at Kingtom Police Barracks on Saturday, held as part of the OTP's ongoing effort to build capacity in Sierra Leone's judicial sector.

The training was led by Special Court trial lawyer Mohamed Bangura, who recently returned home to Freetown after participating in the prosecution of former Liberian President Charles Taylor in The Hague.

The OTP had previously conducted trainings of police prosecutors in the Northern, Eastern and Southern Provinces and in the Western Area of Sierra Leone as part of a legacy programme which first started in 2009.

Mr. Bangura noted that criminal prosecutions in the Magistrates Courts are normally conducted by police officers, not lawyers, and that a fail-

ure to follow the proper procedures might result in cases being dismissed from court.

"In our trainings we generally target police officers who are new to police prosecutions, since the longer-serving police prosecutors often have learnt the proper procedure through experience over the years," he said.

Topics covered in the training included the conducting of summary trials, preliminary investigations and tips in conducting proper investigations, case management and witness management.

The training also looked at the application of the Larceny Act, 1916; the Domestic Violence Act, 2007; the Offences Against Persons Act, 1861; and the Sexual Offences Act, 2012.

Standard Times
Wednesday, 22 May 2013

Sierra Leone's Terrible Period

Reflection

BY: ISSA B.M. KAMARA

It appears that the Johnny Paul Koroma is shrouded in some kind of a myth. Corporal Foday Sabana Sankoh died even before his trial ended; Charles Taylor is in Prison after the International Court's verdict; but the burning question now is Johnny Paul Koroma alive and where is he?

Has justice finally escaped him? As a political writer, many a time I am confronted with questions about this Junta Leader who was in Prison on a count of treason but removed and catapulted to the position of a junta head of State. All these culminated to that sad chapter of Sierra Leone's political history. A couple years ago I wrote this piece below but however if you have any views the questions above you can help this Author to probably be in a better position to answer questions on that issue.

"As you have gone through some of these pieces before, one thing for certain is that you will get a feel of what this country and its people have gone through. Some of the after effects of that war and military coup of Johnny Paul Koroma are still with us today. His coup was of a disastrous difference to other coups in Sierra Leone, because of the unholy marriage with the most inhuman bandits called the RUF rebels. That marriage resulted to the bitterest taste of the rebels, 'sobels' and junta boys in our capital city Freetown. January 6, 1999 (J-6) will hardly be forgotten so easily. The mayhem leashed out on innocent inhabitants will always remain vivid in the minds of the many who survived the onslaught of extreme brutality in the hands of insane and barbaric mortals. Killings, amputations, burning of houses and persons, looting with utmost impunity and massive infrastructural destruction were the events that characterized January 6, 1999 (J-6).

Today as we look back on those days, we cannot but accept the stark reality that war in whatever form is not good and there is hardly a winner. On both sides of the warring factions, human lives were cut short on this earth or in this world.

It is because of that sad experience one keeps reminding our society through these articles as to avert those things that led to our self destruction, because if it happens again, it is Sierra Leoneans more that will perish. We do have the strong conviction that that day (J-6) and the entire events of 1991 to 1996 will never again happen to us as a nation. To strengthen that belief, I would want you to be quite aware and knowledgeable on the events that took place; so go ahead and continue reading from where I stopped in the last article.

"On 23rd October 1994, reinforced by more soldiers and captured villagers, the rebels staged the most audacious attack on a convoy, killing over sixty civilians and soldiers. Many rebels were also killed. The survivors dispersed, and on 31st October having regrouped, attacked the gold mining towns of Kalmaroh and Mansumbirje. On Tuesday 1st November, they moved in on the old and historic town of Mabonto, whose inhabitants had fled the day before. on the same day, the prosperous and populous town of Bumbuna and site of the country's \$100 million hydroelectric project was invaded and several houses burnt.

The rebels then moved with lightning speed destroying the towns of Bendugu and Alkalia, and on the 7th November, they struck Kabala, the principal town of the northern Koinadugu district and home of the famed Tamaboroh warriors.

The rapidity with which the rebels had covered enormous territory all on foot was amazing. Between 31st October, when they attack Kalmaroh, and 7th November when they eventually hit Kabala in the far north, they had covered a distance of approximately 110 miles of very mountainous terrain.

But perhaps even more intriguing in the attacks on this region were certain salient facts.

Firstly, the insurgents had covered a large swathe of territory along open motor roads and familiar footpaths over a considerable distance without any opposition or interception by government forces. The latter had been kept fully informed of rebel movements along a well-defined route. The response to each attack always came a day or more after the rebels had left town. Secondly, a contingent of heavily-armed soldiers had been stationed rather irrelevantly in the junction town of Matham following the attack on Masanga Leprosy hospital town. The troops arrived days after the attacks and stayed for about a week.

They were eventually deployed in Mabonto, long after the rebels had struck Kabala and disappeared.

Thirdly, it had been observed by many in Kabala, that prior to the attack on the town, a military truck with heavily armed soldiers had passed through Kabala, ostensibly to interdict rebels in their northward advance. When the truck returned a day after, the soldiers were no longer on board. Two days later these same government soldiers were widely believed, by those who had seen them previously to be part of the rebel force that invaded Kabala.

More telling was the fact that a military officer already a familiar sight in Kabala was to give the signal for the attack on the town at 4.00pm.

Many houses burnt in several towns were often those of specifically targeted individuals or families. In Kabala the attack seemed more out of revenge against the Tamaboroh fighters, for which their leader Dembaso Samura was viciously stabbed and clubbed to death.

The course of the war, its intractable nature, the defiance of the insurgents and the apparent inability of government forces to bring them to heel, produced a mood of deep despair and confusion among many in the military. But among the civilian population who had primarily been the innocent victims of rebel atrocities, and occasionally those perpetrated by gov-

ernment troops, the mood was one of anger and lost confidence in the national army.

In most places affected by the conflict, educational and medical services were now totally non-existent, while several towns had been thoroughly looted or destroyed. In the nation's capital of Freetown which in 1991 had seemed remote and unaffected by the war, a mood of uncertainty about the nation's future stability slowly crept in, as refugees from the war zone began to trickle into the city. There were now the routine helicopter flights bringing slain Officers into the capital for burial.

It was a result of this deep frustration and a realization that even after two years of the coup, the primary goal of ending the war was still elusive, that the regime tried another solution. It was decided that since this was a rural insurrection, the chiefs who wielded local traditional authority should be formally involved in the war effort. A Conference of the nation's Chiefs was convened on 14th June 1994.

In his formal opening statement, the NPRC Chairman remarked that it was now obvious "that the war has taken an unpalatable twist that needed concerted efforts". Had lamented the dubious role of many citizens; "who knows that even in the Western Area and perhaps even in this very hall there may be rebels or rebel sympathizers."

In their candid response, the Chiefs expressed frustration at the army's apparent inability to end the war, and the dubious role of the soldiers in the field. In resolutions passed at the end of the deliberations, the Chiefs declared that:

- "The war should not be reduced to atrocities and feuds aimed at settling scores
- Ulimo soldiers should be withdrawn and check points manned by police and not soldiers.
- Discipline of soldiers in their fighting efforts should be enhanced.
- Chiefs should take active part in recruiting soldiers within their chiefdoms.
- Government should ensure that the army personnel at the war front be adequately catered for in order to avoid looting by soldiers."

The Chiefs also felt strongly that their personal involvement in the war especially in recruiting disciplined youths instead of thugs, could influence in a positive way the course of events. They stated that the fighting men were being neglected by their field commanders and the military authorities in Freetown. This was partially responsible for the unending looting by soldiers.

Ironically this fact had been the immediate rationale for the coup as the Junta Chairman on 30th April 1992 stated;

"Our soldiers continue to sacrifice their lives on the war front in spite of very poor logistics support provided by the government whose leadership is in Freetown enriching themselves by gross misappropriation of war funds."

If the Chief's Conference was impressive in organization, the result was hardly so, and the depressed mood of these traditional rulers was scarcely affected. Most Chiefs in war devastated areas were now themselves displaced citizens. Those in unaffected areas still lived in fear of both rebels and soldiers who behaved with equal banditry. But while many people concluded that only military force could overcome the rebels, others thought differently.

The idea of a diplomatic solution to the conflict had been proposed before but the government had initially rejected it, in a special commentary, the *New Citizen* reflected the views of the proponents for such a solution, saying that: "We must at all cost, using all our international contacts, identify these rebels and talk to them to see reason... In the name of peace we should talk to those people who have influence over Charles Taylor so that these rebels can tell us what their demands are so that we can come to a point of compromise.."

The article acknowledged that the main intention of the rebels was:

"to drain the country economically, create a reign of terror and in the process make the country ungovernable." For this reason an effort should be made "to locate the leadership of the Revolutionary United Front (RUF), and pass on a message to that leadership that we in Sierra Leone are tired of the destruction and that we need peace."

It was obvious that by mid 1993, very little in the way of concrete information was known about the whereabouts of the leadership of the RUF. And for over a year from late 1993 to all of 1994, the RUF Commander Foday Sankoh had stopped communicating with the BBC.

He was by this time variously rumoured to be dead, or had fled to Liberia or was being carried in a hammock due to paralysis. The insurgents were thus apparently lacking in an unidentifiable political leadership that could be contacted or even a central and unified military command structure. The killer commandos in the field often operated as independent units maintaining their links with rogue military officers.

By this time also, it was generally agreed that the Liberian rebels of the NPFL who had formed the bulwark of the initial invasion force were hardly any longer in Sierra Leone. The insurgents were now nationals, forcibly or willing inducted into rebel ranks. Charles Taylor therefore had little influence over the activities of these groups by this time.

What was even more significant was the fact that by late 1994, Charles Taylor himself was facing mounting military pressure in Liberia from the forces of the Liberian Peace Council and Ulimo.

The latter had laid a crippling siege on Taylor's headquarter at Gbanga, while his NPFL organization was experiencing several defections by former close and trusted companions like his long time Defence Minister Tom Woewiyu. Woewiyu not only abandoned Taylor, but challenged his leadership of the NPFL.

Taylor was fighting not only for the existence of his organization but even for his very life. The war in Sierra Leone which the NPFL had initiated was now of little interest to him."

The Star

Tuesday, 21 May 2013

Kenya: ICC Letter Is an Injustice to Kenyans and the Suspects

Opinion

Last week, the Permanent Mission of Kenya to the United Nations, headed by Ambassador Macharia Kamau, submitted a letter to the UN Security Council, asking for the "immediate termination" of the ICC cases against President Uhuru Kenyatta and Deputy President William Ruto, who are scheduled to soon begin trial for their alleged roles in perpetrating crimes against humanity against Kenyans in the aftermath of the 2007 election.

Much of the debate around the letter has focused on whether or not the pair authorized it, but there has been less attention on the messages contained therein. What is particularly alarming is Kamau's attempt to paint the ICC as an illegitimate and irrelevant arbiter in relation to Kenya, which he does by using the recently concluded (and contested) election as "proof" that Kenyans believe the suspects are innocent and amending the historical narrative to exclude Kenyan support for the Court.

Ironically, this line of attack actually works against the very Kenyans Kamau purports to represent, as it attempts to obstruct the victims' pathways to justice and undermine the creation of a truthful and representative national account of the 2007-08 violence, which are critical to a peaceful and democratic future.

Ambassador Kamau emphasized the importance of the 2013 election, stating that it was a testament to Kenyans' endorsement of the suspects' innocence. He goes as far as to say that Kenyatta and Ruto were "overwhelmingly" elected, thereby proving that Kenyans do not support the cases against them.

In addition to the fact that the 2013 election was fundamentally flawed, colored as it was by multiple, unverifiable voter registers; tallying forms laced with unauthorized changes and errors; and a breakdown of all checks on the manual counting system, there were over 6 million voters, representing essentially half the voting population, who cast their ballots for other candidates. Kenyatta only passed the 50 percent threshold with a little over 8,000 votes, representing just .07 percent of the total vote. This is hardly "overwhelming support."

The 86 percent voter turnout figure cited in the letter is also highly suspect. Not only is it based on problematic tallying forms and an unverifiable voter registry, it is fully 30 percentage points higher than the 2002 election and 17 percentage points higher than turnout in the 2007 election. Given that the 2002 election was arguably the most anticipated one in Kenyan history, the 2013 reported rate seems unlikely.

The letter also makes the claim that the ICC process undermines sovereignty in Kenya, painting the entire process as foreign interference in Kenyan affairs. What he seems to have forgotten, however, is that it was the Kenyan government that signed the Rome Statute in the first place. Furthermore, Ambassador Kamau states that the Kenyan case was taken up by the ICC prosecutor at his own behest and that he cherry-picked the individuals to investigate. This is patently untrue. The Kenyan delegation in Geneva agreed to allow ICC Prosecutor Luis Moreno Ocampo to start the preliminary investigations. Moreover, as has been widely reported, the individuals named for investigation were selected based on an investigation, which was itself led by the Kenyan Court of Appeals Judge Philip Waki. In fact, it was Waki who proposed the ICC as an option in the first place.

It was the Kenyan government that refused to establish a local tribunal to try the cases on two different occasions (February 2009; November 2009). It was also Kenyan politicians, including the very officials

who are now resisting the Court, who led the campaign to go to the Hague. Overall, the process seems to have proceeded entirely with the support of Kenyans. Perhaps most importantly, as of January 2013, 66 percent of Kenyans said they supported the ICC prosecutions. Surely, 66 percent support is far greater in significance than the .07 percent claimed by Kamau as evidence of "overwhelming" support.

The Kenyan Mission also tries to claim both that the cases are unnecessary on the grounds of peace and security and that peace in the entire region would be threatened by the absence of Kenyatta and Ruto. This latter statement is a most serious assertion, raising the specter of violence. It is also, however, difficult to understand.

Time and again, it is clear that publicly acknowledging and legitimizing the trauma inflicted on society is crucial to the process of achieving future stability. In 2012, former Liberian president Charles Taylor was sentenced to fifty years in prison for his role in atrocities committed in Sierra Leone back in the 1990s. Today, cases against perpetrators of the violence in the former Yugoslavia are still ongoing, more than a decade after the end of conflicts there. Yes, general stability may have returned to these former conflict zones, but ensuring the perpetrators of war crimes are brought to justice has been recognized as critical for these societies to be able to confront and resolve the past. Governments that fail to pursue justice send the message that they are not committed to the rule of law. This can intensify inter-group mistrust, hinder security and development goals and can even lead to the cyclical recurrence of violence in various forms.

In fact, undermining Kenyans' quest for justice is an insult to what they endured, and it is that which could be the real threat to long-term peace in Kenya. Indeed, there are already signs of unwillingness to confront the past in Kenya. The Kenyan Truth, Justice and Reconciliation Commission, which investigated the 2007-08 post-election violence, was statutorily bound to release its report on May 3 of this year. That report has yet to be released.

The letter asks the Security Council to give Kenya time to deal with the cases in a local context, stating that Kenya "has the capacity to offer a homegrown solution." To date, however, there is no Kenyan court which has the capacity to try crimes of this stature, including crimes against humanity. In fact, the closest manifestation of such a court would be the International Crimes Division of the Kenyan judiciary, which is still in the process of being created. Even then, however, the Attorney General and Supreme Court Chief Justice Willy Mutunga clearly stated that this division - even when it is established - will have no bearing on the cases in the Hague. Where, then, is this court?

And finally there is the issue of "moving on." Contrary to the message in the letter, moving on and seeking justice are not mutually exclusive. To move forward is not to forget. In fact, the quest for justice involves remembering the truth so that it can be used to prevent future atrocities. That act of remembering pays homage to the victims, acknowledges their stories and ensures that they are an integral part of the nation's collective memory. Moving forward implies a resolution of the past. Surely that resolution is predicated on justice for the victims and an understanding of what happened, in all its truth, for all Kenyans.

Dr. Seema Shah is a public policy researcher for the Africa Center for Open Governance.

The Star

Tuesday, 21 May 2013

Ruto beefs up ICC legal team

DEPUTY President William Ruto has beefed up his defence team at the International Criminal Court ahead of his trial which is now likely to start in November

Shyamala Alagendra, a Malaysian who once worked for the the Office of the Prosecutor at the ICC, and her sister Venkateswari Alagendra have joined Ruto as associate counsels.

Last week, the court's registry informed the trial judges that the two were joining the team shortly after Karim Khan took over as lead counsel. Ruto's team is now made up of Khan, Shyamala, Venkateswari, David Hooper and Kioko Kilukumi.

Khan and Shyamala worked together as the defence team representing former Head of Civil Service Francis Muthaura who was co-accused with President Uhuru Kenyatta's.

ICC Chief Prosecutor Fatou Bensouda withdrew the case again Muthaura in March this year after Witness No 4 recanted his testimony.

Venkateswari worked for the Muthaura team but outside the court. Ruto is charged with three counts of crimes against humanity - murder, forcible transfer of population and persecution.

The Deputy President's trial was supposed to kick off at the end of May but the court decided to consider a new date after Ruto asked for it to be postponed to November.

Ruto has also requested that he can skip some court sessions and attend others by video link so that he has time to conduct his state duties.

Last year, the team of Khan, Shyamala and Venkateswari secured the acquittal on all counts of war crimes of former Transport minister Fatmir Limaj at the war crimes court in Kosovo.

The prosecution claimed that Limaj was the commander of a detention facility where Serb soldiers were executed and other civilians tortured during the 1998-1999 armed conflict between the Kosovo Liberation Army and Serbia.

In 2011, Shyamala left the ICC and joined Muthaura's defence team just weeks after Essa Faal, a Gambian national, also resigned.

Before joining Muthaura, Shyamala was an ICC prosecutor for the Darfur cases including the one against Sudanese President Omar Al Bashir.

She had also prosecuted Charles Taylor who was convicted of war crimes by the UN-backed Special Court for Sierra Leone on April 26, 2012 .

The ICC have charged Uhuru, Ruto and former radio journalist Joshua Sang for their role in the 2008 post-election violence where than 1,300 people died, and nearly 600,000 were displaced.

The Litigation Daily

Wednesday, 15 May 2013

The Global Lawyer: Kiobel's Continental Cousins

By Michael D. Goldhaber

On the first day of spring—about a month before the U.S. Supreme Court issued its ruling in *Kiobel v. Royal Dutch Petroleum*—I told a European audience in Paris why the law of U.S. corporate alien tort was about to wither. I expected to hear at the conference, sponsored by the American Bar Association and the Conseil National des Barreaux, about civil actions for corporate accountability taking root on the Continent. But I soon learned that Europe's fresh shoots are mostly in the soilbox of criminal law.

Literally the day after the conference, the Versailles Court of Appeal rejected the possibility of a civil action based on international law, in a case that was initiated in 2007 by France-Palestine Solidarity Association against Alstom S.A. and Veolia Transport S.A. for building a tramway through East Jerusalem. At the conference, the French magistrate Simon Foreman argued that the Jerusalem tramway case would have stood a better chance had it been brought as a criminal case—but France only integrated international criminal law into the French criminal code in 2010, and formed a prosecutorial unit dedicated to those crimes in early 2012.

In the leading French criminal case, the Paris Court of Appeal ruled in January that an investigation should proceed against the Amesys unit of Bull S.A. over the resistance of the Paris prosecutors office. Amesys was charged with complicity in torture by the International Federation for Human Rights and Human Rights League after intrepid Wall Street Journal reporters found its snooping software in the Qaddafi spy headquarters during the fall of Tripoli. The same two NGOs have filed a similar complaint against Qosmos S.A. for supplying Syria's Assad regime with spyware. (Both firms deny the allegations. Bull has since sold the controversial program to one of its designers, and Qosmos has sued the NGOs for defamation.)

The Netherlands is experimenting with both public and private enforcement of corporate human rights. But Europe's most closely-watched private action—against our old friend Royal Dutch Shell plc—was a wash at the trial level. On Jan. 30, the District Court of the Hague in the Netherlands held Shell's Nigerian subsidiary liable for damage to the fishing ponds of plaintiff Friday Akpan in the village of Ikot Ada Udo because it failed to install a concrete plug to prevent sabotage of an abandoned oil well. However, Shell won on the vital issue of parental liability. In a statement, the plaintiff Friends of the Earth Netherlands complained that it had been denied access to internal company documents that would prove that the parent determines the daily affairs of its subsidiary. An appeal is pending.

The first Dutch attempts to prosecute corporate human rights criminally have also been mixed. On May 14, Dutch prosecutors declined to prosecute Lima Holding B.V., whose Israeli subsidiary operated under the brand of the Dutch manufacturer Riwal B.V. The Palestinian NGO Al-Haq had argued in its complaint that Lima should be liable for war crimes for leasing cranes to build the West Bank barrier, after the Riwal logo was spotted on a crane in a Dutch news report about the controversial Israeli wall. According to the Associated Press, the prosecutors stated that they would not investigate whether the conduct violated war crimes because Lima had taken "far-reaching steps to halt its activities in Israel and the occupied territories."

The Netherlands has so far used criminal law to greater effect against executives than against corporations. In 2009 the Dutch Supreme Court upheld a 17-year sentence for complicity in war crimes

for a private businessman, Frans Van Anraat, who supplied Saddam Hussein with chemical weapon materials and was foolish enough to speak about it on Dutch television. (He was acquitted of genocide.) The Dutch businessman Guus Kouwenhoven—prosecuted for supplying weapons to former Liberian president Charles Taylor—is being retried after his conviction for violating U.N. economic sanctions was overturned on procedural grounds. He was never convicted of war crimes.

In Germany, individual prosecution is the only option for corporate accountability, because corporations can't be prosecuted. Only three weeks ago, Global Witness and the European Center for Constitutional and Human Rights filed a criminal complaint against a German-based senior manager of the Swiss timber company Danzer Group. Intriguingly, they allege that he failed to prevent human rights offenses committed by Congolese police and military in the village of Bongulu, including rape, by failing to clearly instruct a Congolese subsidiary on dealing with Congolese security forces notorious for sexual violence during conflicts between loggers and local communities.

Can any tentative lessons be drawn from these assorted cases, other than that war criminals shouldn't go on Dutch TV, or leave spy software lying around?

My main takeaway from the Paris conference is that corporate accountability on the Continent seems more likely to be advanced through criminal than civil actions. Perhaps that's a matter of legal culture, or perhaps it's because European criminal law can empower NGOs while keeping the safety screen of prosecutorial discretion. I learned that criminal cases are easier to win against executives than businesses; that cases against executives are easier to win under war crimes than genocide; and that sanctions-busting cases are easier still. "Sanctions regimes are a valuable alternative to international crimes, which are very hard to prove," says Larissa van den Herik of Leiden University.

Can these lessons be applied in America? Arguably, they already have been.

U.S. war crimes ambassador Stephen Rapp declared in his Paris keynote address that, although it is not usually conceived as such, the November 2011 conviction of the arms dealer Viktor Bout was among the most important recent developments in the deterrence of gross human rights abuse. "The Viktor Bout prosecution matters too," he said. "We need to look at other ways and other modes of responsibility."

Bout was convicted, based on a weapons deal with Columbia's FARC rebels, of conspiring to kill U.S. nationals and U.S. officers and employees, to use anti-aircraft missiles, and to materially support terror. There may have been more direct ways to make a statement about human rights. (For instance, the War Crimes Act of 1996 makes it a U.S. crime for an individual to gravely breach the Geneva Conventions when either the perpetrator or victim is a U.S. national). And doubtless, the applicable U.S. criminal regimes could be sharpened, for instance by making war crimes applicable to corporations, or criminalizing the violation of U.N. economic sanctions. But when U.S. prosecutors are motivated, they have many tools at their disposal. And, even after *Kiobel*, they have significant extraterritorial reach.

Conference organizer Elise Groulx-Diggs, who was a pioneer of the international criminal defense bar, believes that in *Kiobel*'s aftermath criminal law will be invoked more by human rights activists, and ultimately by prosecutors on both sides of the Atlantic.

"The U.S. is the number one prosecutor for corruption, money laundering, and assisting terror," says Groulx-Diggs, who seeks to establish a human rights compliance and education practice at Washington D.C.'s Boyle Litigation firm. "Since the U.S. already has a record of going after corporations, it's only a matter of adopting a strong policy on human rights."

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Indonesia: Govt officially rejects Rome Statute on International Criminal Court

It is now official that Indonesia will not ratify the Rome Statute for the accession to the International Criminal Court (ICC) in the near future.

Defense Minister Purnomo Yusgiantoro issued a statement that effectively blocks the ratification of the statute, dashing the hope of rights activists, at home and abroad, who had called for its rapid ratification.

Indonesia declared its support for the adoption of the Rome Statute 14 years ago. Supporters of the ratification cited the lack of political will as the core problem in the years of discussion.

“There are many countries, including major democratic countries [such as the US] that have yet to ratify the Rome Statute, although there are equally a large number of countries that have adopted it. Each of them has their own interest in the decision. Therefore, we need more time to carefully and thoroughly review the pros and cons of the ratification,” said Purnomo on the sidelines of a hearing with the House Commission I overseeing information, defense and foreign affairs on Monday.

Purnomo said that he personally believed that the ratification was not urgent because Indonesia already had national legal instruments, such as the 1945 Constitution, the 1999 law on human rights and the 2000 law on rights tribunals, which according to him, were enough to serve as a foundation for human rights protection in the country.

“However, the decision [to ratify] should not be made by the Defense Ministry alone. It also involves the Law and Human Rights Ministry as well as the Foreign Ministry,” he said.

Earlier, government officials and politicians said that although adopting the Rome Statute would further uphold human rights protection, they believed that it was not urgent to accede to the statute.

After arguing that the ratification of the statute could be used to block the presidential bids of Great Indonesia Movement Party (Gerindra) chief patron Lt. Gen. (ret) Prabowo Subianto and People’s Conscience (Hanura) Party chairman Gen. (ret) Wiranto, who have been deemed responsible for the 1998 May riots by the National Commission on Human Rights (Komnas HAM), politicians alleged that there had been pressure on Indonesia to ratify the convention.

The Cabinet of then president Megawati Soekarnoputri adopted a National Plan of Action on Human Rights in 2004, which stated that Indonesia would ratify the Rome Statute in 2008. Former foreign minister Hassan Wirajuda confirmed this intention later in 2007.