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

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## Local News



## International News

Standard Times
Wednesday, 24 July 2013

# BEYOND THE TRC: THE CASE OF SIERRA LEONE

## Reflection

*Courtesy Professor George Carew,*
*Vice President for Academic Affairs,*
*United Methodist University*
*Monrovia, Liberia*

**PART ONE**

For quite some time I have been brooding over the relationship be tween the Truth and Reconciliation Commission and the Special Court since we had both in this Country.

I have been considering the Link between a TRC and any Special Court as being complimentary. And furthermore, whether it addressed the constitutional and political issues adequately that are so crucial in reconciliation and justice. Well Prof. George Carew, a Philosopher has thrown light on it using the case of Sierra Leone. Please read his piece in series under this column. Now Part One:

BEYOND THE TRC: THE CASE OF SIERRA LEONE

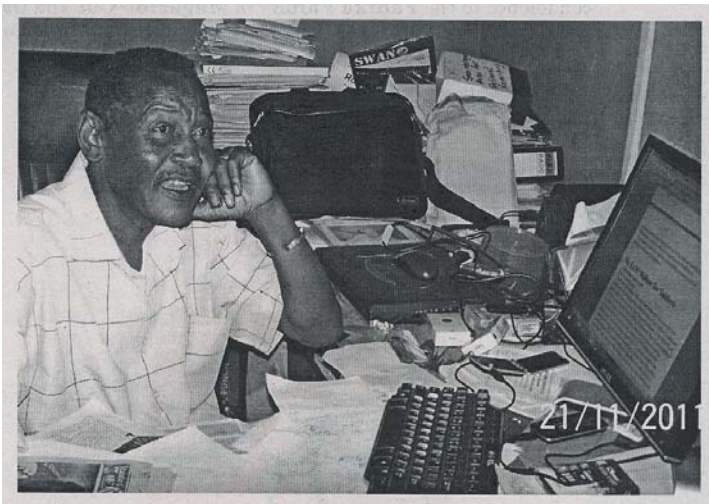
The Special Courts and TRC are often viewed as two distinct yet related projects. The Special Courts are committed to the pursuit of justice while the TRC pursues reconciliation as a means to social cohesion and political integration. The structural implications of the TRC claim are that societal practices and habits must be brought out clearly and examined in the context of the TRC. Ultimately, understanding social conflicts through its principal events and actors will permit the TRC to establish the foundation for addressing constitutional and political issues. Thus, the justification of TRC must ultimately rest not on its perceived opposition to justice as some critics have contended but rather in the way it promotes the goal of constitutional and political reforms.

I intend to adopt the structural approach in this paper to expose the fact that the TRC has overlooked important constitutional and political issues in post conflict Sierra Leone.

Furthermore, I shall also trace the dire consequences of this failure. I shall argue in my conclusion for a novel approach that relies on Civil Society to provide resources for the resolution of the constitutional and political crisis in Sierra Leone. But first, some clarification about the Truth and Reconciliation Commission and its relationship to the special courts are in order.

The TRC and the Elusive Quest for Justice

The assumption that TRC does not countenance justice is somewhat misleading. The way in which this has been portrayed obscures processes and situated interests in justice which must be understood in order to resolve existing social pathologies. Problems of domination and oppression inherent in weak states go unnoticed and un-redressed because the theory of TRC becomes too abstract and independent of concrete social reality. Recall the case of the TRC in South Africa. Did we get a sense from the South African TRC that the transition from apartheid to a democratic society free of racial, ethnic, religious and class tensions was the real goal? I think not. The testimonies of individuals as to what they had experienced as individuals dominated the proceedings of the South African Model of TRC. Representatives of racial, ethnic or class groups did not step up to the TRC to testify about how the structures of racism or classism or ethnicism might continue to oppress the citizens of that state. The distributive paradigm which




framed the discourse on how to categorize offenders and victims had failed to capture the structural and political constraints on freedom. Racism and classism continue to dominate the political and social landscape in a very real sense and the political repercussions are quite evident in the current political process.

As regards the TRC, the real problem is not that it is not grounded in justice, because it is. The real problem is to find the proper balance between the need to punish offenders on the one hand, and the necessity of addressing the root causes on the other hand. Although the two projects are different in focus, it does not follow that they contradict each other. Far from being fundamentally opposed, they are actually complimentary processes. If true this will offer a way out of the dilemma:

If corrective justice is backward looking and individualist and if constitutionalism is forward looking and systemic both have predictable effect on the way that the revolutionary citizenry defines itself over time. An emphasis on corrective justice will divide the citizenry into two groups: evil doers and innocent victims. An emphasis on constitutional writing invites citizens to contribute to a definition of the new order".

A balanced approach would require a principle that would explain how "a backward looking and individualist approach and a forward looking and systemic approach could be given a unified focus." The quest for coherence then is the reason for pursuing two legal targets simultaneously: corrective justice focuses on particular individuals while constitutionalism focuses on institutions and general principles. The role of TRC from this perspective is to lay the foundation for a new constitutional order that would restore the dignity and moral integrity of individuals. It will require the elimination eventually of structural impediments to social freedom to achieve this goal.

The major impediment to a unifying principle derives from the fact that contemporary theories of justice were rooted in a distributive paradigm. The emphasis in a distributive system is one the so called connection between the possession of material goods and the individual's place in the social hierarchy. It is essentially a meritocratic order in the sense that it holds that benefits and burdens should be distributed according to desert.

Individuals are supposed to get what they deserve and must deserve what they get. Thus even in the case of punishment, only those who have committed crimes 'deserve" to be punished.

"Politics in this sense concerns all aspects of institutional organization, public actions, societal practices and habits, and cultural meaning in so far as they are potentially subject to collective evaluation and decision making..."

But this abstract and limited view of justice as distribution, as Irish Young points out represents a failure to comprehend how state and institutional actors might be implicated in the creation and perpetuation of unjust structures and conditions that promote oppression and domination. Having assumed particular institutions and structures as given, the logic of distribution of material goods is extended to such phenomena as power. Power which is at the core of politics is given a positivist treatment, separating value and fact. It describes the nature of the relationship between rulers and ruled without making a value judgement about the justice of the practice. But according to Iris Young, the issue of institutional organization cannot escape normative evaluation.

"Politics in this sense concerns all aspects of institutional organization, public actions, societal practices and habits, and cultural meaning in so far as they are potentially subject to collective evaluation and decision making."

Thus, when "people say a rule or practice or cultural meaning is wrong, and should be changed, they are usually making a claim about social justice." This reformulated conception of social justice is the basis for a unified account of the activities of the Special Courts and the TRC. Since we need a

structural understanding of power and domination as processes to expose the fundamental flaw in the Sierra Leone state, I shall attempt a historical analysis of the social realities that produced a failed state phenomenon.

Theorizing the Sierra Leone State

In the opening paragraph of chapter 2, ("Historical roots of the Conflict") Daniel Rothenberg poses the question: "How did a peace-loving nation become engulfed, seemingly overnight in a decade-long cycle of violence and horror"? The mischaracterization of the independent Sierra Leone State as a peace-loving nation arguably ignored the genesis of the post colonial state. Postcolonial states were unique in the sense that in many respects they were unlike modern states in the old Westphalian order. The successor state to the colonial state inherited the structural weakness of the oppressive colonial state; consequently, it was weak, unstable and internally fragmented.

Thus, it was more suited to personal rule than democratic governance. Without a radical structural transformation, the weak post colonial state was destined to follow the path of a collapsed state.

The presumptive claim therefore that Sierra Leone was a peaceful nation state at independence cannot be supported by the historical analysis which followed Rothenberg's claim. Operating from a distributive understanding of politics, the actions of individuals were not explained by reference to institutional processes but rather on the basis of the personal choices that individuals made. For example, the greed and self- centred interests of the political class is considered the driving force behind the mismanagement of the state and its resources. Thus with respect to Sierra Leone, Rothenberg concludes that:

"The TRC found that political elites consistently pursued policies of self-interest at the expense of the general good. Pervasive corruption, greed and mismanagement led people to lose confidence in the government and helped create the social unrest of the late 1980s and early 1990s".

Throughout his historical survey, that spans the pre-colonial, the action of individuals were portrayed as self-motivated and interest driven. The weak state of Sierra Leone, Rothenberg concluded, was ultimately the product of the socio-economic forces that dominated the politics of Sierra Leone. I believe this understates the case. I shall argue, first that while it is undeniable that socio-economic reasons, such as corruption, ethnic competition, poverty and illiteracy were the immediate causes of the war, the actual root causes were of a structural nature, for example, the weak postcolonial Sierra Leone state. In making the case that the weak state status was rooted in colonialism, I call into question the claim that it was simply the product of socio-economic consequences. Second, I then explore how a structural understanding of the historical context of the state of Sierra Leone will provide valuable insights into the way power and oppression as processes pre-structured institutional domination and oppression.

Human Rights Watch
Monday, 22 July 2013

**Dispatches: Bashir's hasty departure – Did he feel the heat?**

On Sudan's president and ICC fugitive

The president of Sudan and fugitive of the International Criminal Court (ICC), Omar al-Bashir made a brief but memorable visit to Nigeria last week.

He was supposed to participate in a two-day African Union meeting on health issues, but according to media reports, in the middle of an official lunch on the first day, al-Bashir suddenly disappeared – and never returned to the conference. He missed his scheduled speech and left the country less than 24 hours after arrival.

Was he feeling the heat of the ICC arrest warrants against him?

Al-Bashir is sought by the ICC in connection with atrocities committed in Darfur, including genocide, crimes against humanity, and war crimes. As a member of the ICC, Nigeria is obligated to cooperate with the court in the surrender of fugitives, which it failed to do by welcoming al-Bashir without arrest.

A number of African countries – including South Africa, Malawi, Kenya, Zambia, Botswana, and Central African Republic – have made clear al-Bashir would be arrested if he entered their territory or avoided his visits by relocating conferences or insisting that other Sudanese officials attend instead.

Local activists in Nigeria were alarmed at the visit and stood with the victims of the Darfur conflict, voicing their outrage in the media. Prominent among them was the Nigerian Coalition for the ICC, which not only called for al-Bashir's immediate arrest and surrender to the ICC, but even filed a suit at the Federal High Court in Abuja to make it happen.

Soon after that court filing and as outcry over the visit emerged as a major news story, the Sudanese leader was safely on his jet. Perhaps he suddenly remembered the fate of Charles Taylor, the former Liberian president whom Nigeria handed over to a special court in Sierra Leone in 2006 – and who was convicted of war crimes in 2012.

Al-Bashir is a fugitive from justice who belongs in custody. Nigeria should be embarrassed that it welcomed him and should make clear he'll be arrested if he tries to return.

# ICC

Monday, 22 July 2013

**ICC Prosecutor: Attacks against peacekeepers may constitute war crimes**

The Prosecutor of the International Criminal Court (ICC) Fatou Bensouda condemns the killing of seven United Nations (UN) peacekeepers from Tanzania and the wounding of 17 military and police personnel of the African Union—United Nations Hybrid Operation in Darfur (UNAMID) on 13 July in South Darfur. The UNAMID joint patrol came under heavy fire from a large unidentified group. Following an extended firefight the patrol was eventually extracted after UNAMID reinforcement arrived. As the United Nations has emphasised, the incident was one of the most serious attacks against the AU-UN peacekeepers since their deployment, and the third in just the past three weeks.

The Prosecutor reminds all parties to the conflict that the International Criminal Court has jurisdiction in Darfur pursuant to Security Council Resolution 1593 and that the intentional directing of attacks against peacekeepers may constitute war crimes. The Office will not hesitate to investigate and prosecute those alleged to have committed such crimes should the national authorities fail to. The Prosecutor calls on the Government of Sudan to carry out a prompt and full investigation and to hold all those responsible to account. The latest incident brings the total number of UNAMID peacekeepers killed since 2007 to 54.

The Office of the Prosecutor is currently investigating and prosecuting crimes in the Democratic Republic of Congo, Uganda, Central African Republic, Darfur region of Sudan, Kenya, Libya, Ivory Coast and Mali. The Office is also conducting preliminary examinations analysing alleged crimes committed on the territories of Honduras, Korea, Afghanistan and Comoros; and assessing whether genuine national proceedings are being carried out in Guinea, Colombia, Nigeria and Georgia. In particular, the Office is currently prosecuting a case involving an attack against African Union peacekeepers in Haskanita, Darfur, in 2007, allegedly led by Abdallah Banda and Saleh Jerbo.

The trial is set to start in May 2014.

Tamilnet
Tuesday, 23 July 2013

**UN Sri Lanka tribunal will avoid ICC jurisdictional issues, says Boyle**

The United Nations General Assembly (GA) must immediately establish an International Criminal Tribunal for Sri Lanka (ICTSL) as a "subsidiary organ" under U.N. Charter Article 22, and organized along the lines of the International Criminal Tribunal for Yugoslavia (ICTY), which was established by the Security Council, said Professor Francis Boyle, an expert in International Law, while commenting on the appointment of Samantha Power as the U.S. Ambassador to the United Nations, and advocating that Ms Power should follow the leadership of Madeline Albright who spearheaded the setting up of the ICTY. This will avoid the jurisdictional hurdles in the ICC taking up criminal matters related to a non-signatory state, Boyle added.

**Albright on the establishment of ICTY**
The purpose of the ICTSL would be to investigate and prosecute Sri Lanka war crimes, crimes against humanity and genocide against the Peoples of Lebanon and Palestine--just as the ICTY did for the victims of international crimes committed by Serbia and the Milosevic Regime throughout the Balkans, Professor Boyle said.

According to Boyle, the establishment of ICTSL would provide some small degree of justice to the victims of Sri Lanka's war crimes, crimes against humanity and genocide against the Tamil people in NorthEast--just as the ICTY has done in the Balkans. Furthermore, the establishment of ICTSL by the U.N. General Assembly would serve as a deterrent effect upon Sri Lanka's polical leaders such as Sri Lanka's President Mahinda Rajapakse, his sibling and Defense Secretary, Gothabaya Rajapakse, another brother and minister for Development, Basil Rajapakse, Military Commander Sarath Fonseka and other top generals that they will be prosecuted for their further infliction of international crimes upon the Tamils from the NorthEast of Sri Lanka, Professor Boyle said.

**Behind the scenes of ICTY**
Tamil political activists agreed that without such a deterrent, Sri Lanka will likely continue the cultural genocide including forced colonization, grabing land from Tamil civilians, and militarization of day-to-day life and engaging the military in civilian affairs.

"For the U.N. General Assembly to establish ICTSL could stop the further development of this momentum towards a regional if not global catastrophe," Boyle added.

"People need to understand that Power could push for an International Criminal Tribunal for Sri Lanka on the basis of UN Charter article 22 to be set up by the UN General Assembly, thus avoiding the jurisdictional problems with the International Criminal Court since Sri Lanka is not a party and it appears that China would veto any referral by the Security Council to the ICC," Boyle further said.

"The UN General Assembly could take the Statute for the International Criminal Tribunal for Rwanda and transform it into the Statute for the International Criminal Tribunal for Sri Lanka," Professor Boyle said.

Francis A. Boyle is a graduate of the University of Chicago and Harvard Law School. He has advised numerous international bodies in the areas of human rights, war crimes, genocide, nuclear policy, and bio warfare. He received a PHD in political science from Harvard University.

Rudaw
Wednesday, 24 July 2013
http://rudaw.net/english/interview/24072013

**‘Saddam Had Rights and I Respected Them,’ Former Chief Trial Judge Remembers**

Rizgar Ameen, the former chief judge of the Iraqi Special Tribunal that tried Saddam Hussein, insists that for him the Iraqi dictator was just another defendant. “I viewed them as defendants in an ordinary case,” the Kurdish judge says about Saddam and his cohorts who were tried by the special court. Here is his interview with *Rudaw:*

**Rudaw:** Did the tribunal meet your expectations?

**Rizgar Ameen:** No, because from the very beginning of the establishment of the tribunal, I believed it should have functioned with Iraqi judges. When the law was passed, it assigned a new committee, new special law, special tribunal, and special appeal committee. I believed the decisions of the tribunal should have been sent to the Iraqi appeals court and handled within the Iraqi legal system. Therefore, I did not believe a tribunal outside of the Iraqi legal system should be established.

**Rudaw:** Was it difficult for a judge to enter a tribunal he had no faith in?

“ I did not believe a tribunal outside of the Iraqi legal system should be established. ”

**Rizgar Ameen:** The law was fine. The majority of the principles of the law were principles of The Hague tribunal. Most of them were an exact translation of the laws that the Security Council issued in Yugoslavia and Rwanda. They were compatible with international standards. However, when it comes to their application that is a different matter.

**Rudaw:** Is it true that the nomination of the judges was based upon a political consensus among the Shiites, Kurds, and Sunnis -- besides the American interference in the tribunal?

**Rizgar Ameen:** The Kurdistan political parties did not have their hand in the nominations. The tribunal was established in Baghdad. They sent a letter to the Kurdistan Regional Government (KRG). Back then, the KRG had two administrations, one in Sulaimani and the other in Erbil. I was the chair of the Sulaimani court. The Justice Minister of the KRG-Sulaimani administration contacted me and said that Baghdad has asked us to provide a number of judges. We were asked to provide two judges for the criminal court, one judge for the appeal court, four for the investigative court and two public prosecutors. The same demand was forwarded to the KRG-Erbil administration. Therefore, the judges had to be nominated from here. What were the details about my nomination? Now might not be a good time to talk about that.

**Rudaw:** When you were informed that you had been nominated for this major position, what was your feeling?

**Rizgar Ameen:** When doing your duty there is no happy or unhappy feeling. My name was nominated and I simply accepted it.

> I knew that one day the former Iraqi government's senior officials will be put on trial.

**Rudaw:** Had you ever imagined in your life that one day you will try Saddam Hussein?

**Rizgar Ameen:** I believe after the invasion of Kuwait the early signs of the collapse of the Iraqi government had appeared. In 2003, this became a reality. In such circumstances, as a judge, I did imagine myself in such a trial. I knew that one day the former Iraqi government's senior officials will be put on trial. It was also certainly obvious that Iraq was going to lose the war with America. When Iraq lost, America came into Iraq under the pretext of finding WMD (Weapons of Mass Destruction). When America failed to find WMDs, then the next best thing was to focus on the trial, in order to drive attention away from the search for WMDs.

**Rudaw:** Tell us about the first moment you met Saddam?

**Rizgar Ameen:** He appeared as a tired person. He was not alone. He had seven other persons with him. He came in last. When they came in, they appeared to be tired. They entered the court room in a mean mindset, until the trial started.

**Rudaw:** He was not tried for most of his crimes before he was executed. Was it because he was not guilty or the court decided to turn a blind eye to his other crimes?

**Rizgar Ameen:** After he was executed, that became the reality. He was executed before addressing every case. And legally all the cases were closed because he was no longer alive.

> He was executed before addressing every case.

**Rudaw:** Did you pity him?

**Rizgar Ameen:** Not emotionally. However, in a humanitarian mindset he had his rights and the court was to respect those rights. I viewed them as defendants in an ordinary case. I had no prejudgments against them. Even when I saw the first person entering the courtroom with handcuffs, I was upset to see handcuffs on him.

**Rudaw:** When they first entered the courtroom, did Saddam and his men respect you and the court?

**Rizgar Ameen:** I believe they expected to finish everything in the first session. Therefore, I believe they came in in an unstable mental situation. Later they saw the court order, a court that was abiding by court principles. Those of them who were wearing Arab headbands (agals) had them removed. They complained and said their agals were taken from them. They said the agal is a valuable symbol to us. I stopped the session and asked for the return of the agals. I had already instructed the staff that the defendants must be spared of any inappropriate treatment, like any other defendant.

**Rudaw:** But did they misuse your soft approach?

**Rizgar Ameen:** No. They had the right to respond to the claims that were being made against them. For example, sometimes the witnesses were giving differing accounts of the incidents. The witnesses were talking for hours. And also keep in mind, the tribunal had a political dimension. It was not just a legal tribunal. The trial was not a trial of an ordinary case in which one person has killed another. It was a trial

of a political issue. It was initially a problem of two political parties. A problem in which an attempt to assassinate the president of the republic was undertaken.

“ I had already instructed the staff that the defendants must be spared of any inappropriate treatment, like any other defendant. ”

**Rudaw:** Were Saddam and his companions convinced that they stood before a fair judge and a legitimate case?

**Rizgar Ameen:** Yes, from the very first session. In the first session, we assigned the solicitors. Some of the solicitors attended the first session, even though their paperwork was not completed yet.

**Rudaw:** What makes you certain that they were convinced?

**Rizgar Ameen:** They were convinced because they hired solicitors. They signed the papers for the solicitors in front of me. They verbally said that the tribunal -- or more specifically the judge -- was fair. This was important. I hope every judge and defendant behaves in a way that convinces the defendant that the trial and the judge are fair. This will add value to the decision that will be eventually made.

**Rudaw:** But you addressed Saddam as Mr Saddam, but Awad Bandar as Awad?!

**Rizgar Ameen:** No, never. I used the title Mr to refer to all of them. You cannot disrespect defendants.

**Rudaw:** But even the solicitors claimed that you had a special respect for Saddam Hussein. You did not have as much respect for his companions, even though they were all suspects and in the same trial?

**Rizgar Ameen:** No, that is not true. Maybe Saddam appeared more because he talked more and asked for more time to talk. The others spoke less. However, anyone who asked for a chance to speak was granted a chance to speak.

“They verbally said that the tribunal -- or more specifically the judge -- was fair. ”

In fact I was more worried about the defendants who chose not to speak. To me it was not a problem if the defendants were speaking. Their refusal to speak would have been a problem for the court. Therefore, when a witness talks for an hour and half, you have to give some time to the defendant to reply. Otherwise, why were we sitting there? Why did we have the defendant in the courtroom then? Is it not to have him listen and reply to the accusations?

**Rudaw:** Were you not worried about your safety or that of your family?

**Rizgar Ameen:** No, who would I have been afraid of? I had all the power in my hand. I started this profession in 1983, from criminal investigation. Ever since, I have been working with suspects and criminals. However, everything I have done has been legal and backed by documents. Therefore, I am sure if a judge avoids breaking the rules and is a fair judge, there is nothing to be afraid of. I would be afraid, I would be sad, if had been unfair.

**Rudaw:** When you saw Saddam in the chamber, what differences did you see between that Saddam and the one that was in power?

“ he had to be a normal person. He had run and administered this country for 30 years. ”

**Rizgar Ameen:** I did not see much difference. He appeared as a normal person. In fact he had to be a normal person. He had run and administered this country for 30 years.

**Rudaw:** What was most interesting about Saddam that you can remember?

**Rizgar Ameen:** His compliance with a number of rules and regulations of the court. He was abiding and a good listener to the witnesses.

**Rudaw:** What do you remember the most about him?

**Rizgar Ameen:** One thing was that, despite what had happened to him, he still wanted the court to be an Iraqi court. Second, he had much respect for the court if he was not provoked. If certain things were not provoked, or the public prosecutor or the witnesses did not speak in a mocking tone, he was a good listener to those who spoke against him.