

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



PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office

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Press clips are produced Monday through Friday.
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Local News

Charles Taylor: How He Reached His Waterloo / <i>Standard Times</i>	Page 3
Pope Johnny Pauli to Resurface After Closure of Special Court / <i>The New Storm</i>	Page 4
How Johnny Paul Koroma Was Gradually Implicated / <i>Stand Firm</i>	Page 5
ICC To Unveil New Investigation Strategy / <i>New Vision</i>	Pages 6-7

International News

Lenaola Appointed Judge In Sierra Leone Special Court / <i>Citizen News</i>	Page 8
Internationalizing the War Crimes Tribunal of Bangladesh / <i>Saudi Gazette</i>	Pages 9-10
Is There an African Alternative to the International Criminal Court? / <i>Daily Maverick</i>	Pages 11-13
Govt Seeks Review of Legal Fees On Transferred Cases / <i>The New Times</i>	Pages 14-15

SOCIETY

CHARLES TAYLOR: HOW HE REACHED HIS WATERLOO

(PART I)
BY GEORGES S. KHORYAMA

A sage once said "most wars fought begin with a little man's quarrel magnified a thousand times." Let us take for example Charles Taylor's war against his own Liberian people that he extended to the people of Sierra Leone.

Charles Taylor was Director-General of the General Services Agency (GSA) in the government of his friend-turned enemy, the late President Samuel Kanyon Doe. The position of Director-General Services Agency carried with it a cabinet minister's status and was indeed a very envious position in the Liberian government at the time. The office of the GSA was responsible for the procurement, supply and maintenance of all Liberian government properties and logistics—housing, vehicles, furniture, petroleum products and stationeries among others.

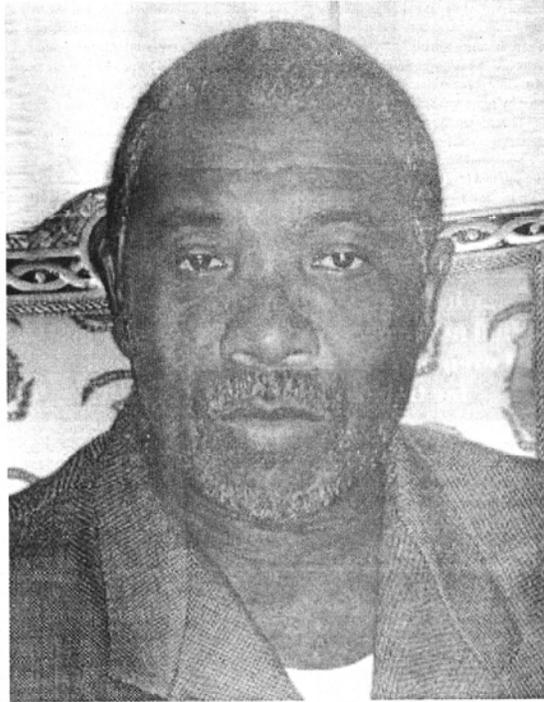
The late President Doe offered Taylor the plumb job as compensation for the role he played as President of the Liberian Students Union in the United States of America that helped to discredit the government of the late President William R. Tolbert, who was eventually assassinated in a bloody military coup in 1980. At the time this author was Chief Reporter on the government-owned New Liberian newspaper and he covered most of Charles Taylor's activities any time he visited Liberia.

As Director General of GSA Taylor lived a fulfilled life – fashionable, expensive and elegant. He basked in flamboyance and extravagance. He fancied Italian shoes and procured a lot of pairs that cost no less than US\$1,000 a pair. He spotted the latest and most valuable French and tuxedo suits, dark goggles and often chewed at Havana cigars. As custodian of government properties and logistics, Taylor was chauffeur driven in sleek model vehicles that were unique. He introduced the use of tinted car glasses in Liberia that became fashionable; sometimes he dressed like a Mafia don. Taylor had great admiration for Liberia's longest serving president, the late President William V.S. Tubman whom he imitated in so many ways.

US\$900,000

The conspicuous life style of the red-skin man invoked considerable curiosity at the Executive Mansion and other high places in the country, and was subsequently unceremoniously removed from the GSA and transferred to the Ministry of Trade and Industry, this time round in an unenviable position as Deputy Minister.

Taylor's successor at the GSA, Clarence Momolu no sooner he took office than he unraveled the secret that was behind the boisterous man's conspicuous consumption. Momolu through an audit report uncovered that Taylor had robbed the Liberian tax payers hundreds of thousands of dollars out of the GSA funds. It was further discovered that Taylor had secretly diverted a huge sum of US\$900,000 meant for the procurement of government logistics into his foreign account in the United States of America.



Investigation into the theft had hardly begun when Taylor the rat, smelling the cat in the long arm of the law that was about to devour him, took to his heels and fled the country. He went to the USA where the long arm of the Liberian law sought and locked him up pending his extradition to Liberia to face criminal charges. Miraculously, Taylor broke the American jail and disappeared into the wide world. That was in 1988.

RAIN

Most rumours have some, if not the whole truth in them. Throughout the month of December 1989, there was a rumour doing the rounds in Liberia to the effect that on Christmas day that month there would be a downpour of rain which upon contact with the human body would burn like a rash on the raw nerves. The rumour spread like fire in the stubble.

It was at the time of that rumour that this author lost his 19-year old daughter, Florence Khoryama on December 12, 1989. (May her soul rest in perfect peace). Immediately the funeral I left for home at Manowa, Kailahun district, Republic of Sierra Leone for vacation.

It was while at Manowa that we heard about the 1989 Christmas Eve rebel attack on Butuo, a border town in Nimba County in Liberia. Ask the author's late father George J. Khoryama who was in August 1989 whisked from his sick bed by Charles Taylor's rebel and battered to death: "Son, are you still returning to Liberia with all the

news about rebel war in that country?" I told dad that Monrovia where I lived and worked was far removed from the area of the rebel attack and therefore, there was no cause for worry. Two weeks later I returned to Liberia with my family.

Brooding over the news of the rebel attack on our way back to Liberia it only dawned on me that it was in fact what was shrouded in that Christmas day yellow rain rumour.

FUGITIVE

The news of rebel attack on Butuo featured the name of a man who had been declared by both the Liberian and USA governments as a fugitive to be the rebel leader. That man was Charles Taylor. After a year on the run Charles Taylor startled the Liberian people in that maiden BBC interview on Focus On Africa following the showdown at Butuo that he was leading the rebels to come and unseat President Samuel Kanyon Doe because according to him, Doe was corrupt.

BATTLELINE

Doe upon hearing Taylor's bellicosity did not only call him a fugitive, but also defied him to ever mess with his presidency. Taylor barked back and called on Doe to either resign or face the storm.

Already Doe as Commander-In-Chief of the Armed Forces of Liberia had opened the floodgate of the nation's stock-pile of weapons of all categories and dimensions and detailed his military to Nimba County in order to teach Taylor a bitter lesson. The troops however encountered formidable resistance posed by

the marauding rebels who were armed to the teeth. The war raged on fiercely and in less than three months, Taylor's rebels had covered considerable ground from government troops, capturing several major towns in Nimba County such as Tapitta, Saclepea, Ganta, Saniquellie and the Lamco Iron Ore Mining Company at Yekepa.

Meanwhile, President Doe continued to change his army Commanding Generals one after another for poorly executing the war. In fact at some point he decided to lead the army to the war front himself only to stop at Ganta, returned to Monrovia and again changed the Commanding General and invited Taylor to come down to Monrovia for the real fight.

GOODTIME

Meanwhile, business was as usual all over the country except in Nimba County where the battle was raging. As horrible report of atrocities and mass destruction came filtering in from Nimba County along with exodus of war victims, Liberians elsewhere continued to indulge in good times in their homes, bars, parties and in other pleasures that they could fancy. Many treated the war as if it was outlandish. In the homes, bars, offices, night clubs, street corners and other places, Liberians discussed the war with careless abandon.

To compound matters the congenial hatred between the Krahn tribe of President Doe and the Mano-Gio tribes of Nimba County boiled over with consequences that were fatal to the three tribes and the nation as a whole. The Krahn tribe who were in the majority in the army and police took advantage of their power and shopped out the Mano and Gio tribal people and eliminated them en masse.

As smart as Charles Taylor was, he seized advantage of the tribal hatred between the three tribes and recruited thousands of Gio and Mano tribes into his rebel outfit as he overran Nimba County. Most of the recruits were in their teens and had witnessed the ghastly scenes where and when their parents, wives, husbands, children and relatives were being slaughtered by the military. These recruits were bitter, hardened and settled for nothing less than vengeance.

The war raged on in Nimba County. Occasionally government forces fought gallantly and repelled the rebels from their strongholds. However, when the rebels launched their counter attacks they were more often than not, more deadly for the government forces to withstand. The latter retreated from time to time until the entire Nimba County fell to the rebels and Charles Taylor began to reign supreme.

With that initial success, Charles Taylor and his National Patriotic Front of Liberia (NPFL) rebels were well on their way to overrunning the entire country. The good time in Monrovia and other places still went full blast; it dawned on only few people that no sooner than later life would not be the same again for a long time to come. They went to work, to football games, to schools, to night clubs, to beaches, etc; the privileged few still went abroad for vacation and leisure with their families and sweet hearts and returned. Some even started to idolize Taylor calling him 'Charlie Boy'. They wished him to finish the job sooner.

MADINGOS

But there was one tribe that never took chances. They were the Madingos. The rebels singled them out for the worst punishment for allegedly aiding and abetting the government troops in Nimba County. The Madingos who survived the carnage in Nimba County and others elsewhere in the country began to leave town in droves. They happy-go-lucky Liberians waved them goodbye and condemned them as being cowardice.

POPE JOHNNY PAULI TO RE-SURFACE AFTER CLOSURE OF SPECIAL COURT



JPK: the Fake Angel

He is expected to re-surface, any time in the near FUTURE. We are talking here about the leader of that murderous

AFRC junta, JPK [the ANGEL]. The man has been a FUGITIVE since 2004, when he was indicted by the Special Court and was presumed dead, for the better part of that period.

Now, WHAT'S UP knows "the ANGEL" is lurking somewhere, waiting to bounce back, now that that USELESS Special Court has folded up. But, what will JPK be doing once he is BACK? Let's find out...

1. He'll be made COMMANDER of those ex-junta KILLERS, now working as Close-Protection Bodyguards, to Prezo and his ministers. That way, the rule of Orwai Orsai would be GUARANTEED uninterrupted. Plus, they know how to AMPUTATE and dismember opponents of the shit-stem; so why not bring back their former BOSS?

2. After the Lome PEACE Accord

was signed in 1999, Pa Kabba made him Chairman of the Commission for the Consolidation of Peace [CCP]. Now that peace has been "consolidated", why not bring him back and make him CHAIRMAN for the Consolidation of Tribalism, Regionalism and NEPOTISM [CCTRN]? You know, of course, where he HAILS from.

3. His AFRC knew how to deal with STUBBORN journalists. Ask SLAJ boss Kelvin, media analyst Ojukutu Macauley and even JONATHAN Leigh [whom you have detained.] The AFRC beat them up and had them locked in containers, with soldiers and REBELS urinating on them routinely. Frankly, you'll save time, with JPK here, on how to DEAL ruthlessly, with perceived opposition JOURNALISTS

4. We are sensing rising TENSION

in the country: Govment versus civil society, Govment versus journalists, the PEOPLE versus angrien hardship, etc. JPK "the Angel" is always there to SAVE the day. Remember in May 2000, when Foday Sanks' RUF butchers held the whole nation to SEIGE? JPK just mobilized all and sundry, to chant JESUS...and Sanks the Beast and his RUF were humbled and PACIFIED. Well, let's have him once again...to holler JESUS and save our country...And finally...

5. Remember the symbol of his Peoples LIBERATION Party [PLP], in the 2002 elections? It was an angel and DOVES. Now, the man is coming from HEAVEN, to admonish our thieving and DIVISIVE politicians, to change their WAYS... or face the wrath of GOD.

Stand Firm

Thursday, 24 October 2013

REVEALED!!

How Johnny Paul Koroma was gradually implicated

THE REAL REBELS AND TORMENTORS

{Our eleven years old war - {the orchestrators and beneficiaries} After the rebels had been repelled, the following morning, I heard an announcement over the radio that the Chief of Staff Brigadier Kelly Conteh had been sacked. That was a surprise to us and we kept wondering as to what was going on in this country. This man was here yesterday giving instructions that if the orders were carried out the rebels would have entered Freetown without fail. Because of the wise decision taken by Johnny Paul Koroma in refusing to move and his bold action in stopping them from entering Freetown that would have been the beginning of trouble in the country. People should have read between the lines and made their own conclusions.

During the operation at Waterloo - Newton Johnny Paul Koroma was promoted to the rank of Major. He was then posted as Commanding Officer at that time.

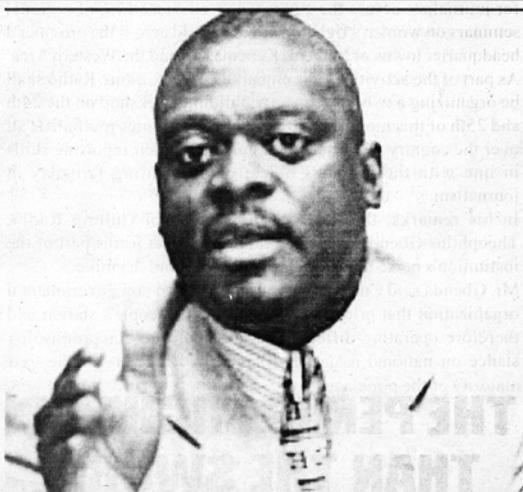
As Commanding Officer at 7 battalion, your first duty in your new battalion is to inspect every fortnight. This is necessary so that the authorities may know your good work. Johnny Paul Koroma received an impromptu message from the Army Headquarters that the Commander at Cockerill Colonel Mondeh was heading to his Battalion for an inspection. The Colonel came with his team and inspected everywhere and finally promised the Battalion Commander and his troops a longer period to do another inspection.

The 7th Battalion Commander was surprised to receive a message for another inspection. His entire troop was in doubt because this has never happened in the past. This was a witch hunt in the making. Johnny Paul Koroma obeyed the last order whether harmful or not. He was also given an additional responsibility. He had the task of providing security for the Peninsular, Guma Valley Water and the pending General Elections of 1996.

Johnny Paul Koroma thought that time was not on their side, so he was always on his toes. He decided to suspend most engagements till his battalion was inspected.

He waited up to 3pm according to military standards; they were supposed to be inspected by 9am. In this regard, he was fully satisfied that his battalion was well organized. He delegated part of his duties to his Second In Command to wait for their arrival.

As Johnny Paul Koroma was moving towards Milton Margai College of Education, he heard from his handset radio that they were approaching his battalion and that if he was not present in his battalion, he was going to be charged "indicted" in the army. By the time he turned his official vehicle around, he heard on the radio again that he should appear at the Army Headquarters at Cockerill for orders. Johnny Paul heard all the charges levied against him on his radio. This was a deliberate witch hunt meant to tarnish his inspection and that Johnny Paul Koroma should appear for orders that same night. It was this very man Col. Mondeh who was so instrumental in ordering charges and also the high court judge. Col. Mondeh took the orders and awarded six months loss of superiority "cannot be promoted until they are pleased". Johnny Paul Koroma was further posted to 22nd Battalion at Mokañji as Second In



seasoned officer as a Brigadie Major.

The Commanding Officer had to release him in keeping with the momentum. Johnny Paul Koroma was in Bo as Brigade Major for a period of four months. What I saw and noticed as Commanding Officer of 22nd Battalion. I was able to get a first hand report a few months after the SLPP won the elections. The Kamajors shifted their loyalty to the government. They were exposed in displaying their double standards for the past years. The Sierra Leone Army took care of them. The Army fed them, assisted medically and financially as well. As soon as former President Kabbah was sworn in, the Kamajors got on the offensive. They started beating soldiers on their way out of Mokañji and also on their return to their battalion. This was more often a routine under taken. The beating of soldiers did not stop despite a strong message was sent as a warning. The Kamajors knew they had a savior, the then Deputy Defense Minister in the person of Samuel Hingo Norman. Their attitude was hastily increased by the mounting of road blocks and also attacks on sub unit deployments. The Kamajors finally interfered with vehicular movements in our main supply routes. I reported this development and no action or reply was received. I acted by sending a robust patrol and the attacks stopped. We were immediately deployed to protect not only ourselves but civilians who were being brutalized by some kamajors.

One fateful morning, the kamajors attacked our deployment area and killed five soldiers. I conducted a patrol with the help of civilians and was able to arrest fifteen of the kamajors. The main supply route was the base of a notorious Kamajor leader called Kondowa now in jail convicted by the International Criminal Court. ICC!

{To be continued next edition} More intriguing details.

New Vision
Thursday, 24 October 2013

ICC To Unveil New Investigation Strategy

By Bernard Momanyi, Blake Evans-Pritchard, and Simon Jennings
Observers say lessons urgently need to be learnt from prosecution failings. Experts say a new investigation strategy due to be adopted by the International Criminal Court (ICC) needs to address longstanding issues about evidence-gathering that have left multiple trials on an uncertain footing.

Full details of the guidelines, sent to the ICC's 122 member states last week, have yet to be released, but they focus on ways to ensure that the Office of the Prosecutor (OTP) can present a watertight case at trial.

Key elements include plans for prosecutors to ensure that cases are ready at an earlier stage of proceedings, and for court investigators to corroborate evidence that is collected by third parties. The need to safeguard the security of both investigators and witnesses also remains a serious challenge.

In its first 11 years of operation, the ICC has often struggled to gather sufficiently convincing evidence against suspects.

The conviction of Congolese warlord Thomas Lubanga Dyila in 2012 - the prosecution's only success to date - was a milestone for the court. But judges on the case were scathing about the way the OTP handled the investigation, particularly its reliance on intermediaries and its failure to properly probe evidence that later turned out to be false.

The Lubanga judgement also highlighted a tendency for investigators to rely too much on third-party information such as reports from human rights groups and academics.

Similar flaws in the ICC's investigative procedures have been uncovered elsewhere.

When Callixte Mbarushimana, a senior figure in the Democratic Forces for the Liberation of Rwanda or FDLR, came before the ICC in 2011 for alleged human rights abuses in the eastern Democratic Republic of Congo (DRC), judges ruled there was not enough evidence to send the case to trial.

More recently, judges at the ICC declined to confirm charges against the former president of Ivory Coast, Laurent Gbagbo, after the OTP failed to present compelling evidence linking him to crimes on the ground.

Gbagbo remains in custody while the prosecution appeals against this decision.

In the court's investigations in Kenya, prosecutors were forced to drop their case against former civil service chief Francis Muthaura after it emerged that one key witness had lied to investigators.

Since Prosecutor Fatou Bensouda made that decision in March, it has emerged that several witnesses have withdrawn from the cases against Kenyan president Uhuru Kenyatta and deputy president William Ruto since charges were confirmed in January 2012.

Bensouda has repeatedly highlighted "unprecedented levels" of interference in her cases in Kenya. On October 2, judges unsealed an arrest warrant against a former journalist who is accused of bribing witnesses.

The succession of setbacks has prompted widespread concern over how the OTP conducts its investigations and why it has found it so hard to gather enough evidence to secure convictions.

RUSH TO CONFIRM CHARGES

One former investigator who spoke to IWPR on condition of anonymity said his colleagues were under a lot of pressure to get cases under way, and to come up with a piece of evidence for the OTP to build its case. This often meant they overlooked other information that might have been useful at a later date.

Montserrat Carboni, permanent representative to the ICC for the International Federation for Human Rights, told IWPR that the OTP had a tendency to gather just enough evidence to secure an arrest warrant. This would then be built on to confirm the charges, and then worked on again in order to clear the next hurdle in the case.

"If investigators are gathering evidence in stages, then there is a strong likelihood that they will overlook vital information," Carboni said.

The ICC acknowledges that this kind of approach is a concern. Michel De Smedt, the head of investigations at the court, said his office had addressed the problem in its new strategy.

De Smedt told IWPR that investigators were moving away from excessively focused investigations where they collected a limited amount of evidence, selecting incidents and perpetrators early on in the process in order to build a case around them.

Instead, he said, his office was moving towards "more open-ended, in-depth investigations, where we gather a broader range of evidence and don't seek a confirmation of charges until we are ready".

This is the reason why the court's investigation into crimes in Mali, which that country's government referred to the court in July 2012, has not yet generated requests for arrest warrants or led to evidence being placed before ICC judges.

The ICC launched a formal investigation into Mali at the start of this

year at a time when large parts of the north of the country were still in the hands of Islamic extremists.

French troops regained control of the north's main town, Timbuktu, by the end of January, but other areas remained unstable. Despite this, investigators arrived in the country in early June. According to De Smedt, this was swift given the circumstances.

Although investigators moved quickly, De Smedt said great care had been taken to make sure that the evidence would stand up to scrutiny by ICC judges before arrest warrants were requested, and before any hearing to have charges confirmed.

The Mali case is expected to be ready by the end of this year or in early 2014.

While the OTP acknowledges that it has sometimes rushed to bring cases before the judges, there have been times when there has been good reason to press ahead before amassing all the necessary evidence.

When the indicted former vice-president of Congo, Jean-Pierre Bemba, visited Belgium in 2008, the authorities there were ready to cooperate with the court and the ICC knew that it had to move fast to secure his arrest.

At the time, the ICC lacked enough evidence to bring the case to trial, but the then prosecutor, Luis Moreno-Ocampo, made a decision to go with what they had and try to gather more at a later date.

Moreno-Ocampo also took the decision to move early on in his investigations in Kenya, arguing that in doing so he could isolate alleged perpetrators and prevent further violence at the next election.

"The fact that the court is in its early days is also seen as a motivation for making arrests and getting charges confirmed quickly."

Alex Whiting, a law professor at Harvard Law School who recently left the ICC's investigation team, said such pressure was understandable within an institution that was set up in 2002 and that has been trying to establish itself as a force in the world.

"At all of the tribunals - the ad hoc tribunals and the ICC - it is normal that there is pressure in the early years to bring cases, to show that the court can be effective," Whiting said.

De Smedt recognises that there may be legitimate reasons for proceeding with a case before all the evidence is available, but he insists that the overarching consideration must be securing a conviction.

"The discussion has sometimes been framed as 'do we want to have an impact on the ground or an impact in court?'" De Smedt said. "The thing is, by achieving the second, we can often realise the first."

De Smedt did not rule out the option of proceeding with a case before all the evidence has been accumulated, but he added that his office would only now do so if it was going to be possible to gather more at a later date.

"If it is determined that we should move early, before we have all the evidence that we need, then the question we must be able to answer is 'do we have the prospect of gathering further evidence in the near future to allow us to be trial-ready'? If we do not, then we shouldn't proceed, even if we lose the possibility of an arrest," he said.

LENGTHY INVESTIGATIONS PROCESS

Another serious problem facing the OTP is the lengthy period that it takes to build a case and the impact that the passage of time has on the evidence presented to judges during trial.

In eastern DRC, the ICC opened its investigation in 2004, Lubanga was arrested in early 2006, and his trial started in January 2009.

Lord Justice Adrian Fulford, a member of the Court of Appeal in the UK who presided over the Lubanga trial, says cases have often suffered because witnesses testify years after they are first asked to provide evidence to the court's investigators.

"It makes the job of the prosecution and of the defence more difficult because the witnesses are giving their statements at one point in time and their accounts are not tested until a long time afterwards," he said. "Sometimes years go by before there is a proper process of evaluating whether or not what they say is reliable and credible."

Lord Justice Fulford described the conventional model of bringing witnesses to court in order to testify in front of judges as a sometimes "time-consuming and laborious means" of establishing the truth. He instead advocates a system where field testimony would be filmed in the presence of a judge or a trained, qualified legal officer. The prosecution and either the defence or a lawyer from the Office of Public Counsel for the Defence would then test the evidence, with the possibility of putting further questions to the witness on discrete issues later, for instance following full disclosure of their evidence and the complete instructions of the accused.

"It would enable cases to be built in an informed way, or a more informed way than they are now," Lord Justice Fulford said.

This approach would help bring greater efficiency and clarity to the case by ensuring that evidence remained essentially the same at all stages of the process.

"The OTP has tended to prepare and present one case at the pre-trial stage and then later put forward a different case at trial, particularly in terms of the witnesses that are relied on," Lord Justice Fulford said. "This way, if the prosecution has collected the evidence and it has been tested in a comprehensive way before the confirmation of charges, the OTP can then make an informed decision as to

whether it is prima facie reliable and credible and fit to be presented at trial."

Lord Justice Fulford said that if evidence was collected in this way, the cases would in essence be ready for trial at the confirmation stage.

"The prosecution would be presenting witnesses who it was considered had been tried and tested, and worthy of being called," he said.

He argues that such a system would also be fairer to the defence.

"You reduce the risk of asking the judges to consider evidence that is, on examination, unreliable," he said.

Testing witnesses while their memories are still fresh and the events in question are reasonably contemporaneous is far better than asking them to be accurate about incidents that happened a long time ago. Supplementary questions can if necessary be put at a later stage, once issues have crystallised.

Lord Justice Fulford noted that collecting all or most of the testimony in the field, rather than doing so years later in the courtroom, would reduce the risk of witnesses being identified and intimidated. Once evidence has been gathered, tested and recorded, there is no longer any point in attempting to influence a witness.

STANDARD OF EVIDENCE TOO HIGH?

The burden on the prosecution to meet high standards of evidentiary proof is rightly an important part of safeguarding the rights of defendants brought before the ICC. But some legal experts say that compared with the practise at other international courts, judges at the ICC sometimes set the bar too high.

"In some cases, the ICC judges may have had unrealistic expectations about the kinds of evidence that will be available in these sorts of cases," Whiting said. "In the early years of the ad hoc tribunals, the judges were often more forgiving of the prosecution's efforts, and often gave the prosecution more time to develop their cases, even after [suspects] were charged and even after trial began, while in later years, the judges at the ad hoc tribunals became more demanding."

"But at the ICC, from the very start the judges strictly applied a more demanding set of procedures," Whiting said.

Judges dismissed the case against Mbarushimana because although the prosecution showed that crimes took place in the DRC, it did not clearly link the suspect to those crimes.

A similar tumbling-block has emerged in the Gbagbo case. Judges have declined to confirm the charges until the prosecution proves a link between the accused and crimes committed on the ground.

One of the grounds for the prosecution's appeal against the Gbagbo decision is the argument that there should be a distinction between proving a widespread and systematic pattern of abuse and proving that a specific incident took place.

The prosecution argues that judges looked at each piece of evidence in isolation rather than assessing the evidence cumulatively, which made it difficult to establish a link between actions taken by Gbagbo and crimes that were taking place in Ivory Coast.

BOOTS ON THE GROUND

Failures to meet the evidentiary threshold set by the judges has prompted criticism that ICC investigators place too much emphasis on third-party sources like NGO and media reports, rather than on collecting evidence.

War crimes expert Cherif Bassiouni, who has chaired five separate United Nations investigations into post-conflict situations, thinks this is a huge problem and wonders whether in some cases the ICC might be being too cautious.

"How can you build an effective case if you are sitting in The Hague and the only thing you have is a few witnesses with insufficient corroborating evidence because you have not been in the field?" he asked.

Bassiouni's most recent investigation was into crimes allegedly committed during the 2011 uprising in Libya. He said that when he began the investigation, he contacted Prosecutor Moreno-Ocampo and invited him to send in some investigators, but the ICC's security advisors said that the situation was not safe enough.

The problem with relying on a third party's report is that proof of criminal guilt is based on the work of academics or NGO whose research did not have this purpose.

"The real skill in being an investigator is not just to collect information, but to make sure that this information can be used as evidence in a courtroom," said John Ralston, former head of investigations at the International Criminal Tribunal for the former Yugoslavia. "If the information has been collected by others - NGO reports, for example - then it is important for investigators to go and gather the evidence themselves, to verify its reliability and make sure it meets the evidentiary threshold of the court."

Ken Warula, a human rights activist from Eldoret in the Rift Valley region of Kenya, complained that when the ICC opened its investigation into the country in 2010, investigators spent too long in Nairobi and not enough time in other areas where the violence took place.

"I think the ICC really missed an opportunity to engage directly with all the interlocutors in the [Eldoret] region - with the witnesses and the victims - which could have made [their] case very strong," Warula said.

Warula argued that if investigators had come to Eldoret earlier and engaged more with victims, this could have helped them build a stronger case. Warula said that he did not meet investigators until early 2011.

De Smedt argues that there is a legitimate purpose in using secondary sources, particularly when prosecutors need to demonstrate the background to the crimes charged.

"Next to forensic evidence, we will always have to also rely on witness testimony or first-hand sources to prove that crimes took place in the first place," said De Smedt. "But in order to demonstrate a pattern behind the crimes, then we should be allowed to rely on other evidence, such as third-party reports if they are based on a proper methodology and independent from each other."

The OTP is often forced to rely on evidence gathered by a third party because of the need to protect witnesses, as well as providing security for its own staff.

For De Smedt, witness safety is a far bigger worry than staff security, and is the key reason that the ICC has chosen to tread softly in some areas.

"We can manage staff security, and there have been very few serious threats against [ICC] staff," said De Smedt. "Witness security, on the other hand, is far harder to deal with. We have a duty to protect witnesses under the [ICC's treaty] Rome Statute. Investigators can always leave, but witnesses and their families are caught up in the country. We shouldn't risk the lives of people to build a case. It is much better to lose a case than the life of a witness."

Witness protection is also a matter of credibility for the court.

"If witnesses are put in severe danger in one case, then we may face difficulties in getting witnesses to testify for another one," De Smedt said.

Bassiouni accepts such concerns, but underscores the importance of getting investigators on the ground as early as possible, since key pieces of evidence can disappear over time.

"Injuries may heal or they may take on a different form," he said. "If people have been put in a mass grave, then the bodies might decompose and the trace of the bullet may not be so evident."

In response to such concerns, the ICC is looking at establishing a permanent field presence in certain countries. But it does not have the luxury of being welcomed everywhere it needs to work.

"Of course this depends on two crucial things - security and state cooperation - so wouldn't be possible everywhere," De Smedt said. "In Mali, I am mindful that we are dealing with terrorist organisations which could be a real threat to investigators. In Sudan, it seems unlikely that the government will ever let us have an office in Darfur."

NEED FOR INTERNATIONAL ASSISTANCE

Experts are generally in agreement that an effective investigation strategy does not depend on the court alone, the international community also has a huge role to play. Evidence from other international tribunals would seem to support this.

"Remember that the ICTY succeeded in part because the United States and the European Union conditioned aid and acceptance into the EU on cooperation with the court, which allowed the ICTY to have access to witnesses, documents, and accused persons," Whiting said. "Unfortunately, the ICC will have to be more realistic about whether countries - situation countries or other influential countries - will really help the court when there is a case. Sometimes they will, but sometimes they won't."

In countries where the ICC launches investigations, there are often few political incentives to ensure that required level of cooperation is forthcoming. This is an area where states committed to international justice can provide meaningful support.

"Governments need to provide real and practical assistance that isn't loaded in favour of or against particular individuals, groups or factions," Lord Justice Fulford said. "Witnesses frequently require relocation and protection, and generally substantive help is necessary for the process of gathering evidence in complex and sometimes dangerous situations."

"This inevitably involves money, manpower and diplomacy. These investigations are so vast and complicated that it is very difficult for the court to do it all by itself."

As well as cooperation and diplomatic backing, the ICC also needs resources. The OTP says a larger budget from member states would help it collect evidence more quickly and develop the court's forensic capacity. De Smedt says that there are plans to double the number of in-house forensic experts from four to eight.

Member states will meet in The Hague in November to discuss whether to increase the court's budget. The proposal currently on the table is to increase the budget from 115 million to 126 million euro, with an additional 7.5 million going to the OTP. This would put the OTP's budget at just under 36 million euro.

The international community has often been accused of failing to back the ICC fully, both with funding and on broader issues. De Smedt accepts that the actions of member states are often governed by national considerations rather than their obligations under the Rome Statute. But he believes their full support is essential if the court is to have a meaningful and lasting impact.

"If the international community is not willing to stand up for justice, then justice will not happen," he said.

Blake Evans-Pritchard is an IWPR contributor in The Hague. Simon Jennings is IWPR's Africa Editor in London.

Citizen News (Kenya)
Wednesday, 23 October 2013

Lenaola Appointed Judge In Sierra Leone Special Court

High Court Judge Isaack Lenaola has landed himself a job as a Judge in a Special Court for Sierra Leone.

Lenaola was appointed Judge by the United Nations Secretary General Ban Ki Moon.



The appointment follows the establishment of a Residual Special Court for Sierra Leone by the UN in conjunction with the Government of Sierra Leone.

Lenaola will serve alongside other Judges in the roster of Judges for the Residual Court.

The High Court Judge will serve for a 6-year term and a possible re-appointment upon the expiry of the term.

The court is mandated to prosecute persons who bear greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30th November 1996.

The court was set up to carry out the functions of the Special Court for Sierra Leone that must continue after the closure of the Special Court.

By Daniel Korir

Saudi Gazette

Wednesday, 23 October 2013

OPINION

Internationalizing the War Crimes Tribunal of Bangladesh

Dr. Ali Al-Ghamdi



I have borrowed the title of this article from a working paper prepared by Sir Desmond de Silva, former Chief Prosecutor of the Special Court for Sierra Leone. In it, De Silva speaks about Bangladesh, saying that the country was born in violence, as those who wanted the country to remain as East Pakistan fought against those who sought independence. According to many estimates, the Liberation War, as it is now known, left nearly three million dead, a death toll higher than the Rwandan Genocide, the Yugoslav wars of the 1990s and the Sierra Leonean and Liberian civil wars all put together.

As it is beyond doubt, De Silva says, that crimes were committed on a massive scale in Bangladesh and as many of the victims as well as perpetrators of serious crimes are still alive, it is still possible to bring to justice those from both sides accused of committing atrocities during the conflict. He continued: "As for the trial of Charles Taylor, former President of Liberia, by the Special Court for Sierra Leone for which I was Chief Prosecutor, it underlines the need to ensure that the hammer of international justice is brought down on those who commit the most egregious crimes by means of trials by impartial and independent judges."

The well-known prosecutor indicated that in 2010, he was approached by Stephen Rapp, the US government's Ambassador for War Crimes and the colleague who succeeded him as Chief Prosecutor in Sierra Leone, to enquire if he would assist the efforts to learn whether a new, locally formed "International Crimes Tribunal" in Bangladesh met international standards or not. "After reviewing the laws and regulations of this new court, I declined," he said.

According to De Silva, what was clear then, and is even clearer now, is that Bangladesh does not have the independent judicial and investigative capacity to conduct trials of international crimes. The rules and procedures of the court are simply not consistent with international standards as followed by the Special Court for Sierra Leone and similar bodies. Far from this being a personal view, many others, including international legal and human rights organizations have reached the same conclusion. Human Rights Watch, to take but one example, has described the tribunal as "riddled with questions about the independence and impartiality of the judges and fairness of the process." This is a deeply disturbing assessment, de Silva pointed out.

He noted that the current government of Bangladesh led by Prime Minister Sheikh Hasina and her Awami League party are the heirs of those who fought for the independence of Bangladesh while those on trial opposed independence. Therefore, it is evident from these trials that the victors of the Liberation War are attempting to crush those who lost the conflict. For such a process to be considered just, it must be aimed at independently and impartially bringing to justice all those who are individually responsible for the crime, irrespective of their nationality, ethnicity or affiliation. Nothing less will suffice. Justice can only be served for victims and survivors of the atrocities of 1971 if perpetrators from all sides are brought to trial.

De Silva also emphasized that it is clear to many people inside and outside the country that the government of Bangladesh is not attempting to use the tribunal to deliver justice for victims, as was their election pledge, but to target its political rivals that it repeatedly labels as anti-liberation.

To emphasize this point, he also quoted the report published by the British magazine *The Economist* last December. The magazine published articles based on intercepted Skype calls which revealed collusion between Bangladeshi judges, ministers and their legal advisers over sentencing suspects even before the trials had finished. Despite the international criticism these reports triggered, the tribunal has now handed out death sentences to three suspects and life imprisonment for several others.

De Silva stressed the need for removing passion and politics from this issue so that fair justice can be delivered. For this reason, world powers such as the US and UK— the biggest aid donors to Bangladesh – as well as the UN, should seek to pressure Bangladesh’s leaders to commit to internationalizing the trials. The Bangladesh International Crimes Tribunal should be reformed and those cases already heard should be reviewed. If necessary, retrials should be ordered in an international arena. Given the severity of the atrocities committed and the importance of the closure of this chapter for the people of Bangladesh, a stand-alone international tribunal similar to those set up for the former Yugoslavia, Sierra Leone and Rwanda might be the most appropriate, he suggested.

Whichever route is taken, De Silva stressed, it is only through internationalization of this tribunal - with international legal standards assured, reliable investigations conducted, and credible evidence presented - that both sides of the political divide will see justice delivered. If this is not done, the current politicized International Crimes Tribunal will only have the effect of creating further violence and division without the reconciliation the people of Bangladesh deserve. If the nation of Bangladesh is to heal, both sides need to see justice done and move on from their painful history to a brighter future where impartial justice will prove to be the cornerstone of a real peace, De Silva cautioned.

I have deliberately quoted these observations of the international legal expert De Silva to draw attention to the serious anomalies in the war crimes trials being conducted in Bangladesh. The same observations and criticisms have been articulated by international human rights organizations, as well as criminal law experts and specialist international lawyers. I have pointed out all these factors in previous articles published in this newspaper, and these articles included an appeal addressed to Bangladesh Prime Minister Sheikh Hasina, by virtue of my knowledge of her and her father Sheikh Mujibur Rahman, father of the nation. In the appeal, I asked her to reconsider the issue of the trials as no one sees credibility in them, and as it is clear that they will not help achieve justice.

I also mentioned that her father had rolled up the page of the past and looked to the future by issuing a general amnesty as he was fully aware of the difficulty of achieving justice under the conditions that prevailed at that time and that still prevail.

I hope that Sheikh Hasina will listen to those whose only concern is the best interests of herself and the people and judiciary of Bangladesh because history will neither forget such things nor show mercy for those doing them.

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Daily Maverick

Thursday, 24 October 2013

Is there an African alternative to the International Criminal Court?

Last June, the African Union moved its summit to Ethiopia. Malawi, the planned host, had refused entry to Omar al-Bashir, Sudan's president, who has been indicted by the International Criminal Court (ICC). Africans have often accused the ICC of targeting African leaders excessively and unfairly. SIMON ALLISON examines whether a new court formed by Africans for Africans will bring about impartial justice on the continent.

Africa and the ICC do not get along very well. This is a problem for the ICC considering that all their investigations are centred on African countries and all their suspects are African men. It is even more of a pity for Africa, because let us face it: there are many warlords and leaders on our troubled continent who deserve a stern dose of criminal justice.

The African Union (AU) is tired of grappling against the ICC's perceived racial and colonial biases, of ignoring ICC arrest warrants that are not politically expedient and of losing all control of the judicial process. Perhaps scared of whom the ICC intends to try next, it is looking for an alternative, an African alternative, naturally.

They think they have found one. In May this year, a group of legal experts convened by the continental body discussed ways to broaden the remit of the African Court on Human and Peoples' Rights, better known as the African Human Rights Court. The idea was to add an international justice section to the court with the explicit intention of making the ICC superfluous.

Their discussions were followed a week later by a meeting of justice ministers who incorporated the legal experts' recommendations into a draft protocol combining the African Human Rights Court with the African Court of Justice. This new court, to be called the African Court of Justice and Human Rights, would have the broadest of jurisdictions, overseeing everything from individual war crimes to state responsibility for human rights violations.

There are a few problems with this protocol: the African Court of Justice does not exist, except in theory. The merged court, therefore, would be merely an extension of the African Human Rights Court—a court that does exist, although it has yet to overcome its teething issues.

The African Human Rights Court is the only continental court that exists in Africa today. Established in 2004 with its base in Arusha, Tanzania—which is developing into a legal capital along the lines of The Hague—the court's first bench of 11 judges began hearing cases in 2006.

Like any court, the African Human Rights Court is dependent on cases being referred to it. Mostly, cases are passed along by the African Human Rights Commission, when the commission feels unable to deal with the matter satisfactorily. Alternatively, five countries have made optional declarations allowing their citizens to approach the court directly: Burkina Faso, Ghana, Malawi, Mali and Tanzania.

When it does reach a verdict, the court has a limited range of options available to it. Most significantly, the court can determine state responsibility for human rights violations and order states to pay compensation or amend legislation. Alternatively, it can order a state to investigate and prosecute a particular incident or individual. The court does not have the authority to prosecute individuals itself.

According to Professor Magnus Killander, a legal expert with the University of Pretoria's Centre for Human Rights, the human rights court has yet to make a real impact. It has been slow to pass judgments, spending more time and resources on sensitisation visits designed to increase its profile. Many of the court's rulings have been on inconsequential issues usually dealt with by a court registrar. Other rulings have been against countries that have not ratified the court (28 of 54 AU member states), making them legally unenforceable. Finally, the court is hamstrung because the commission (which has plenty of its own problems) has been very slow in referring important cases.

It is on this wobbly foundation that the AU's draft protocol envisages this home-grown alternative to the ICC. The new court, however, would be fraught with legal, diplomatic, political and most significantly, financial problems that, far from improving the continental judiciary, could destroy the fragile progress made already.

Legally, there is no precedent for an international court that deals with both state and individual criminal responsibility. "There are good reasons why such distinct functions have never before been merged into a single judicial entity or organ at the international level," writes Professor Frans Viljoen, director of the South Africa-based Centre for Human Rights. One such reason is that different evidentiary standards are used for each function: a determination of individual guilt requires proof beyond reasonable doubt, while state responsibility cases are judged on a balance of probabilities. More generally, the two functions are just different, requiring completely different approaches, evidence and procedure; combining both would create a schizophrenic court with judges constantly changing roles.

Diplomatically, there is the ratification problem. It has been a long, tough process to get the protocol for the African Human Rights Court ratified by just 26 states. That process would probably have to be started all over again. Except this time the AU would be asking states to agree to submit to even more judicial oversight, which could potentially implicate important individuals. Worse, it would give states that have ratified the existing protocol the chance to invalidate this and backtrack from their existing human rights commitments.

Politically, issues of international justice are always charged, and—as the ICC has discovered—it is very difficult to prevent courts from becoming politicised. A good example is the Southern African Development Community (SADC) Tribunal, which was suspended in 2010 after loud complaints from Zimbabwe about rulings that had gone against the country. At its most recent summit in Mozambique last August, the SADC agreed to "negotiate the protocol" of its tribunal and restrict its jurisdiction to disputes between member states, thereby banning complaints from individuals.

Once the current African Human Rights Court does hand down a controversial ruling, it is bound to face a similar reaction. One can imagine an even more severe outcry to a new court attempting to try and sentence the likes of: Charles Taylor, former Liberian president sentenced by the Sierra Leone Special Court to 50 years last May; Laurent Gbagbo, former president of Côte d'Ivoire now in custody in The Hague; or Mr al-Bashir, wanted for atrocities in Sudan's Darfur region.

Financially, international criminal justice investigations are simply too expensive for any African court to pursue. The budget for the African Human Rights Court was \$6m in 2011. By contrast, just two years (2006–2007) of running the International Criminal Tribunal on Rwanda—exactly the type of thing the new, merged court intends to replace—cost \$270m. The ICC operates with an annual budget of \$140m. A ten-year expenditure of nearly a billion dollars has yielded only one verdict. The new court would require

these kinds of sums, and would therefore need donors to fund it. But what donors would cough up the money to create an African court that will duplicate what the ICC is already doing?

The financial considerations swayed the heads of state at the most recent AU summit last July in Addis Ababa, Ethiopia. They decided not to adopt the draft protocol for the new court because they could not afford it. Nor could they give it any serious attention amidst the chaos of electing a new chairperson.

Effectively, the issue was shelved. Not dismissed was the anger and frustration with the ICC, making it very likely that the draft protocol—or some variation of it—will be revisited every time an ICC arrest warrant is issued or international figures criticise the recalcitrance of African states to comply with international arrest warrants.

Do not be fooled by the high-minded rhetoric about colonial injustice and African solutions to African problems that is inevitably raised on such occasions. Africa is in no position to administer its own criminal justice against war criminals and human rights violators. The African Human Rights Court, still in its infancy, might one day be able to hold states accountable in practice as well as in law, but individuals are another matter entirely. Right now, there is no African alternative to the ICC, and there will not be one for the foreseeable future. If we want the continent's criminals and warlords tried and convicted, our leaders might have to start playing a little more nicely with the court from The Hague. DM

This article was first published in *Africa in Fact*, the journal of Good Governance Africa.

Photo: International Criminal Court (ICC) prosecutor Fatou Bensouda looks on during a news conference at Hotel Pullman in Abidjan July 20, 2013. The ICC has started their investigations in Ivory Coast for additional information to build up their case against former Ivory Coast President Laurent Gbagbo, Bensouda said on Friday. REUTERS/Luc Gnago

The New Times

Thursday, 24 October 2013

Rwanda: Govt Seeks Review of Legal Fees On Transferred Cases

By Edwin Musoni

The Ministry of Justice is in talks with the Kigali Bar Association, the professional body of lawyers in the country, to review the legal fees for lawyers representing suspects transferred to Rwanda from other jurisdictions.

So far former Pentecostal priest Jean Uwinkindi, a transferee of the International Criminal Tribunal for Rwanda (ICTR) is the only such suspect whose defence fees are covered by the taxpayer.

The standard hourly fee for a lawyer is Rwf30, 000 and it applies both during court proceedings and separate sessions with the defendant. The suspects who qualify for this facility are either juveniles or adults who were proven to be indigents.

Under the special law that paved the way for the transfer of Genocide suspects from the ICTR and other foreign jurisdictions to Rwanda, government is required to meet the cost of legal representation for suspects who are unable to pay for legal fees. In the event that such a transferee qualifies for this assistance (upon request), the Ministry of Justice engages the bar association which then provides counsel for the suspect.

Previously, the law on these referral/transferred cases was ambiguous on whether such suspects were entitled to just one or more legal representatives, but this was rectified in June, with the law now restricting the number to one attorney.

Uwinkindi, who was transferred from the ICTR in April, last year, has two lawyers who were assigned long before the amendment of the special law.

The two attorneys, namely Gatera Gashabana and Jean Baptiste Niyibizi, have since cost the taxpayer tens of millions of Rwandan Francs in legal fees. The lawyers have already received Rwf30 million between themselves for the services offered between May and October, last year. At the moment, the government owes them duo Rwf10 million.

Prosecution recently accused Uwinkindi's defence team of deliberately prolonging pre-trial phase as a tactic to make more money, a charge the latter rejected. These are astronomical figures especially since Uwinkindi's case is yet to start in substance, according to senior officials at the Ministry of Justice.

At Rwf40 million for a case that's still in its pretrial stage, it's clear that this arrangement is not sustainable considering that more transferees might qualify for the same service, sources said. The law does not determine how much lawyers representing suspects transferred from foreign or international jurisdictions would be paid. That means the fee is open to negotiation.

The New Times also understands that Leon Mugesera (deported from Canada) and Bernard Munyagishari (ICTR transferee) are some of the other high-profile Genocide suspects who have claimed to be indigent and have since asked government to meet their legal fees.

Flat fee favoured:

The other transferred Genocide suspect Charles Bandora (from Norway) has not made such a request, according to sources. Normally, the Ministry of Justice sets aside Rwf140 million each fiscal year to facilitate lawyers who provide pro bono services to juvenile and indigent suspects.

Now officials reckon that this facility is under threat should government continue to pay the standard legal fees in cases involving Genocide cases from the ICTR and other jurisdictions. The Minister of Justice, Johnston Busingye, confirmed the government wanted a change in the arrangement, saying they were in favour of a flat rate, other than the standard hourly fee of Rwf30, 000.

"Our primary objective is to ensure that the accused is accorded proper justice but we also have a responsibility to ensure proper management of state funds. We need to strike a balance through negotiations," said Busingye, who doubles as the Attorney General. But the minister hastened to add that the matter will be settled amicably. "No case will be taken back. We will definitely find a solution to any issues that may arise."

The executive secretary of Kigali Bar Association, Victor Mugabe, confirmed to The New Times that the learned friends body was indeed in talks with government over the charges, saying they were open to the latter's proposal. He said discussions centered on the need to come up with a flat fee, as opposed to the current hourly charges.

"Whatever we will agree upon will be captured in the contracts the government signs with the individual lawyers representing the suspects," he said. Analysts say a flat fee for an entire case might not only cut back on the overall bill but would also help expedite the cases in this category.

Niyibizi, one of Uwinkindi's lawyers, said they were aware of the ongoing talks between the Ministry of Justice and the bar association, adding that they were not against it. "We have heard there is a suggestion for a lump sum fee and we are not against the idea," he told The New Times yesterday.

Uwinkindi, a former pastor in the Kanzenze area in Bugesera District, is charged with genocide, conspiracy to commit genocide, extermination and crimes against humanity. The law related to the cases transferred from ICTR and other jurisdictions generally provides for special treatment of such suspects, including the requirement that they will appear before a special High Court chamber on first instance, and will be detained in a special facility.