

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



An aerial view of The Sierra Leone Grammar School

PRESS CLIPPINGS

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

as at:

Friday, 27 July 2012

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
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The Exclusive
Friday, 27 July 2012

Taylor Trial Sets Positive Example

Perspective

Sierra Leone Special Court Offers Lessons for Prosecuting Highest-Level Suspects

Sierra Leoneans sit in front of a television relaying images from the Special Court for Sierra Leone in The Hague on the day of the Taylor verdict, April 26, 2012. The Special Court Outreach and Public Affair section sponsored the outdoor event, which took place at the site of mass graves near the village of Mathiri in Port Loko district.

Taylor's trial shows that credible prosecutions of the highest-level suspects for the gravest crimes are achievable. It was a long road and there was room for improvement, yet the proceedings were relatively well-managed, more than 100 witnesses testified, and expert defense counsel strengthened the proceedings.

Annie Gell, international justice fellow

(Brussels) - The trial of the former Liberian President Charles Taylor for war crimes and crimes against humanity during Sierra Leone's armed conflict was a largely well-run proceeding, Human Rights Watch said in a report released today. The trial benefitted from a high-quality defense, sound handling of witnesses, and dynamic outreach to communities affected by the crimes. At the same time,

Human Rights Watch's analysis identified areas in which practice should be improved for future trials of the highest-level suspects before domestic, international, and hybrid war crimes tribunals.

The 55-page report, "Even a 'Big Man' Must Face Justice: Lessons from the Trial of Charles Taylor," analyzes the practice and impact of Taylor's trial by the United Nations-backed Special Court for Sierra Leone. The report examines the conduct of the trial, including issues related to efficiency, fairness, and witnesses and sources. It also examines the court's efforts to make its proceedings accessible to communities most affected by the crimes, and perceptions and initial impact of the trial in Sierra Leone and Liberia.

"Taylor's trial shows that credible prosecutions of the highest-level suspects for the gravest crimes are achievable," said Annie Gell, international justice fellow at Human Rights Watch and the author of the report. "It was a long road and there was room for improvement, yet the proceedings were relatively well-managed, more than 100 witnesses testified, and expert defense counsel strengthened the proceedings."

The report is based on research in Sierra Leone, Liberia, The Hague, London, and New York from September 2011 to June 2012.

The Taylor trial took place against a backdrop of criticism and concern over



the feasibility of trying national leaders before international or hybrid war crimes courts following the 2002-2006 trial of former Serbian President Slobodan Milosevic before the International Criminal Tribunal for the former Yugoslavia. That trial was notable for its sometimes-chaotic atmosphere and Milosevic's death before a judgment was issued.

The Taylor trial largely avoided major disruptions that could have marred the proceedings, Human Rights Watch said. Taylor's decision to be represented by counsel appears to have contributed to the generally respectful and organized tenor of the courtroom.

Human Rights Watch urged tribunals handling such trials in the future to take measures to enhance trial management. Notably, the judges in Taylor's trial adopted practices that sought to improve efficiency but sometimes contributed to delays, such as the ambitious courtroom calendar and inflexibility on parties meeting some deadlines. Other practices - such as the Trial Chamber's non-interventionist approach to witness testimony and the admission of evidence of the underlying crimes - lengthened the proceedings.

More active court efforts to address defense concerns prior to the trial's start could have encouraged smoother proceedings and improved fairness, Human Rights Watch said. Increased transparency and stronger guidelines for the prosecution's provision of funds to potential witnesses and sources during its investigation could also have been helpful.

Trials like Taylor's are significant beyond the events in the courtroom, Human Rights Watch said. One crucial objective is to convey a sense of accountability to communities most affected by the crimes so that justice

has local resonance and becomes meaningful.

"The court's dynamic outreach activities brought the trial to local communities in Sierra Leone and Liberia and helped to explain the proceedings," Gell said. "Trial impact is hard to judge but Sierra Leoneans and Liberians expressed greater expectations for justice and interest in promoting the rule of law in their countries."

Increased expectations for justice have also resulted in some frustration, though, over the absence of wider accountability in Sierra Leone and Liberia, Human Rights Watch said. A domestic amnesty for crimes committed during Sierra Leone's conflict remains in effect and Liberia has yet to investigate and prosecute serious crimes committed during its armed conflict.

"Domestic efforts to investigate serious crimes committed in Sierra Leone and Liberia beyond the Special Court's mandate are essential for more complete justice," Gell said. "The Sierra Leonean and Liberian governments should take concrete steps to pursue justice for serious crimes committed in their countries."

Background

Taylor was sworn in as president of Liberia on August 2, 1997, after leading an eight-year insurgency against the Liberian government. Taylor's presidency, which lasted until 2003, was characterized by widespread human rights abuses in Liberia. Taylor's forces also participated in armed conflicts and cross-border raids in neighboring Sierra Leone, Guinea, and Côte d'Ivoire, where they committed numerous abuses.

On March 7, 2003, the Special Court

for Sierra Leone indicted Taylor under seal for war crimes, crimes against humanity, and other serious violations of international humanitarian law during Sierra Leone's armed conflict.

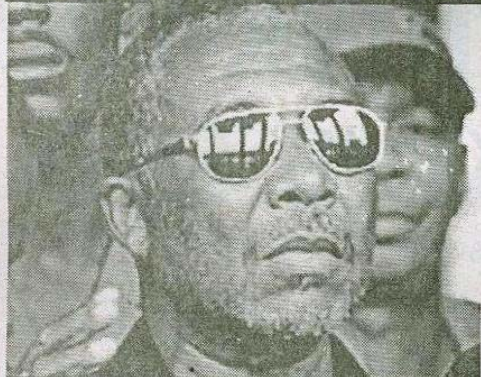
Taylor's repression in Liberia fueled a rebellion to unseat him. Following rebel incursions into Monrovia, the Liberian capital, and the unsealing of Taylor's indictment by the Special Court for Sierra Leone, Taylor stepped down as president, in August 2003. He was offered safe haven in Nigeria, where he stayed until his surrender to the Special Court.

Taylor was transferred to the custody of the Special Court on March 29, 2006. Because of concerns over regional stability in West Africa, the trial was moved from Freetown, the Sierra Leonean capital, to the Netherlands. The trial began on June 4, 2007, but was adjourned the same day when Taylor dismissed his legal team. New counsel was assigned the following month and proceedings resumed in January 2008. The trial phase officially closed on March 11, 2011. On April 26, 2012, Taylor became the first former head of state since the Nuremberg trials of Nazi leaders after World War II to face a verdict before an international or hybrid international-national court on charges of serious crimes committed in violation of international law.

Taylor was found guilty beyond a reasonable doubt on all 11 counts of the indictment on the theory that he aided and abetted the commission of the crimes and was therefore individually criminally responsible for them. He was also found guilty of planning attacks on the diamond-rich Kono district in eastern Sierra Leone and the town of Makeni, the economic center of northern Sierra Leone, in late 1998, and an attack on Freetown in early 1999, during which war crimes and crimes against humanity were committed.

On May 18, the court released its full written judgment, totaling over 2,500 pages. On May 30, Taylor was sentenced to 50 years in prison. Both prosecution and defense indicated they plan to appeal. Given the judgment's length and the complexity of the case, the court estimates the appeals process will take at least 15 months, with an appeal judgment expected no earlier than September 2013.

Sierra Leone Special Court offers lessons for prosecuting highest-level suspects



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The Satellite

Friday, 27 July 2012

SANCTIONS AGAINST TAYLOR'S LIBERIAN ALLIES LIFTED BY UN

The UN Security Council has lifted sanctions against 17 Liberians linked to former Liberian president and convicted war criminal Charles Taylor. The asset freezes and travel bans were imposed more than a decade ago in a bid to weaken Taylor while he was in power. Taylor was sentenced to 50 years in jail by a UN-backed court in May for fuelling Sierra Leone's civil war. Liberia's government welcomed the lifting of sanctions against the 17, who include two of Taylor's ex-wives. "The lifting of the travel ban is welcome news for the government of Liberia," AFP news agency quotes the Foreign Minister Augustine Naguafan as saying. More than 25 people remain on the sanctions list, including Taylor's son and arms trader Viktor Bout, the agency says. "If I had a chance I'll probably go to Israel and praise God" The BBC's Jonathan Paye-Layleh in the capital, Monrovia, says nearly all the people on the sanctions list were pleased with the decision, but the former chairman of Taylor's National Patriotic Party, Cyril Allen, struck a defiant and angry tone. He said the sanctions should have never been imposed and he never "begged" for them to be lifted, even though he could never travel abroad to see his children. Among those who no longer face UN restrictions are Taylor's ex-wives Agnes Reeves Taylor and Jewel Howard Taylor, former security adviser John Richardson and Adolphus Dolo, a key Taylor military ally who used the alias "General Peanut Butter", AFP reports.

Politico

Friday, 27 July 2012

Summary Judgment-Prosecutor V. Charles Taylor

The former Liberian President, Charles Ghankay Taylor, was tried and convicted by the Special Court for Sierra Leone (SCSL), for his role in the conflict in Sierra Leone. He was accused of assisting, directing and controlling two of the main rebel groups-the Revolutionary United Front (RUF) and the Armed Forces Revolutionary United Front (AFRC) involved in the war in Sierra Leone. He was also accused of planning, ordering and instigating attacks against civilians during the Sierra Leone conflict. The Sierra Leone conflict, lasted from March 1991 to January 2002, but Charles Taylor was charged for crimes committed from 30 November 1996 to 18 January 2002. He was charged with eleven counts of war crimes, crimes against humanity, and other serious violations of international humanitarian law. The specific counts were:

1. Terrorism
2. Murder
3. Violence to life, health and physical or mental wellbeing of persons, in particular murder.
4. Rape
5. Sexual slavery
6. Outrages upon personal dignity
7. Violence to life, health and physical or mental well-being of persons in particular cruel treatment
8. Other inhuman acts
9. Conscripting of enlisting child soldiers into the armed forces or using them in hostilities
10. Enslavement
11. Pillage

The Prosecution opened its case against Taylor in June 2007 but the trial itself started in January 2008 and ended in March 2011. Ninety-four (94) witnesses testified for the Prosecution while 21 witnesses testified for Taylor. Of the 94 Prosecution witnesses, 56 were crime base witnesses-mainly victims of the conflict in Sierra Leone who testified about the crimes that were committed by rebel forces, 34 were insider/linkage witnesses-mainly former Sierra Leonean and Liberian rebels who linked Taylor to the rebel groups and the crimes committed in Sierra Leone, and 4 were expert witnesses.

The Judges delivered their final judgments on 26 April 2012 and 30 May 2012. Taylor was sentenced to a jail term of 50 years. Taylor has said he will appeal the judgment against him.

FINDINGS OF THE TRIAL

CHAMBER ON CRIMES COMMITTED

The Trial Chamber found that the offences listed in the indictment(counts 1-11) were committed in Sierra Leone during the indictment period, that Taylor is guilty of aiding and abetting the commission of all crimes listed in the 11-count indictment, and that he is guilty of planning attacks on three specific towns in Sierra Leone-Kono, Makeni, and Freetown-inlate December 1998 and early January 1999. However, the judges held that Taylor was not in command and control of the RUF/AFRC, he was not involved in a joint criminal enterprise with the rebel forces, and he was not found to have ordered and instigated the commission of crimes in Sierra Leone.

Count 1: Terrorism. The Trial Chamber held that there was widespread destruction of civilian property in Kono district, Freetown, and the Western Area by burning from 30 November 1996 to 18 January 2002. The judges found that the RUF, AFRC, and Liberian fighters terrorized the civilian population of Sierra Leone through public executions and amputations, beheading people, displaying their hands and intestines at checkpoints, raping women and girls in public, and widespread burning of civilians alive in their homes, all in a bid to instill terror in the civilian population.

Counts 2 and 3: Murder and violence to life health and physical or mental well-being of persons, in particular murder. The Trial Chamber found that there were unlawful killings of civilians in Kenema District, Kono District, Kailahun District, Freetown, and the Western Area between 30 November 1996 and 18 January 2002.

Count 4: Rape. The Trial Chamber found that there were widespread acts of rape against women and girls in Kono district, Freetown, and the Western Area between 1 February 1998 and 28 February 1999.

Count 5: Sexual Slavery. The Trial Chamber found that there were widespread acts of sexual slavery against civilian women and girls in Kono District, Kailahun District, Freetown, and the Western Area between 30 November 1996 and 18 January 2002.

Count 6: Outrages upon personal dignity. The Trial Chamber found that there were widespread acts of outrages upon the personal dignity

of women and girls by undressing them in public and many were raped and sexually abused in the full view of the public in Kono District, Freetown, and in the Western Area between 1 February 1998 and 28 February 1999.

Counts 7 and 8: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment; and Other in human acts. The Trial Chamber found that there were widespread acts of physical violence against civilians such as forcing them to endure cruel treatment including words carved into their bodies, and amputations of limbs in Kono District, Freetown, and the Western Area between 1 February 1998 and 28 February 1999.

Count 9: Conscripting or enlisting child soldiers into the armed forces or using them in hostilities. The Chamber found that the RUF/AFRC conscripted and enlisted children under the age of 15 into their armed groups and used them actively in conflict to perform acts such as amputating limbs of civilians, serving as mine guards and bodyguards, and manning check points between 30 November 1996 and 18 January 2002, in Tonkolili District, Kenema District, Kailahun District, Freetown, and in the Western Area. Count 11: Pillage. The Trial Chamber found that there was unlawful taking of civilian property in a widespread manner in Kono District, Kailahun District, Freetown, and the Western Area between 30 November 1996 and 18 January 2002.

According to the judges, Taylor was guilty of aiding and abetting the commission of all of the crimes listed and explained above.

**FINDINGS OF THE TRIAL
CHAMBER ON MODES OF
LIABILITY
GUILTY BY:**

Aiding and Abetting

An accused person is said to be criminally responsible for aiding and abetting when he assists in the planning, preparation or execution of the crime. The necessary mental element here is that the accused had knowledge that his acts would help the preparation of a crime.

The Trial Chamber found that Taylor had the required knowledge and he continued to provide support to the RUF and AFRC forces during the period that crimes were being committed in Sierra Leone.

According to the Judges, Taylor provided various forms of assistance to

the RUF/AFRC. These are as follows:

" **Arms and ammunition:** The Trial Chamber held that Taylor gave arms and ammunition to the RUF/AFRC between 1997 and 2001. The use of such arms and ammunition had an immense effect on the perpetration of crimes by the RUF and AFRC.

" **Military personnel:** The Trial Chamber held that Taylor provided military personnel to the RUF/AFRC who were actively involved in attacks in Bombali district, Kono and Kenema districts, and the invasion of Freetown in late 1998 to early 1999. The assistance given by the said military personnel had an immense effect on the perpetration of crimes by the RUF/AFRC.

" **Operational support:** The Trial Chamber held that Taylor provided operational support to the RUF/AFRC by providing them with satellite phones and radio communication for use during the conflict. Taylor also provided financial support, a guesthouse used by the RUF to facilitate the transfer of arms and money in Liberia, and other forms of support. This support greatly assisted the commission of various crimes.

" **Encouragement and moral support:** The Trial Chamber held that Taylor gave encouragement and moral support in the form of advice and instructions to the RUF/AFRC, which had a great effect on the commission of crimes by the RUF/AFRC.

Planning:

The Trial Chamber held that Taylor is criminally responsible for planning the crimes committed by the RUF, AFRC, and the Liberian fighters in the attacks on Kono and Makeni, and the invasion of and retreat from Freetown between December 1998 and January 1999.

NOT GUILTY BY:

Joint Criminal Enterprise:

Joint criminal enterprise arises where the accused participated in a common plan, design or purpose that caused the alleged crimes or were the reasonably foreseeable result of such common plan, design or purpose. The Trial Chamber held that the prosecution failed to prove its case in this respect and therefore found that Taylor was not involved in said joint criminal enterprise with the RUF/AFRC.

Command Responsibility:

A person who holds a position of

Prosecutor V. Charles G. Taylor

From page 11

superior responsibility, command or control over subordinate members of an armed force or group bears responsibility for any crime committed by such subordinates if he had knowledge or ought to know that such crime was to be committed and failed to prevent its commission or to punish those responsible. The Trial Chamber held that the prosecution failed to prove that Taylor bore such command and control over the RUF/AFRC in Sierra Leone.

Ordering:

The Trial Chamber found that even though Taylor held a position of authority amongst the RUF and AFRC, the instructions and guidance he gave were said to be generally of an advisory nature. Therefore, the judges held that he is not guilty of ordering the commission of crimes in Sierra Leone.

Instigating:

The Trial Chamber found that even though Taylor was found to have aided and abetted the commission of the crimes in counts 1-11 of the indictment, it could not be proven that he instigated the commission

of those crimes.

SENTENCE:

Taylor was sentenced to 50 years imprisonment. He will get credit for the 6 years that he has served while in detention. He is therefore expected to serve a jail term of 44 years.

NEXT STEPS:

APPEALS:

Taylor has indicated that he will appeal the findings of the Trial Chamber against him. The appeal will be heard by a Chamber of 5 judges. The Appeals Chamber judges could agree or disagree with the findings of the Trial Chamber judges or could uphold, reduce or increase the sentence that has already been imposed on Taylor. Any decision of the Appeals Chamber will be final.

PREPARED BY: HUMAN RIGHTS CLINIC, FOURAH BAY COLLEGE AND CENTER FOR ACCOUNTABILITY AND RULE OF LAW SUPPORTED BY THE OPEN SOCIETY JUSTICE INITIATIVE (OSJI).

Peter Andersen gets Global Citizen Award

The spokesman of the UN-backed Special Court for Sierra Leone has been awarded the Charles J. Turck Global Citizen Award from Macalester College in the United States from where he graduated in 1977. The Award honors the legacy of Charles J. Turck, president of Macalester College from 1939 to 1958.

Lawyer, educator, social activist, internationalist, and churchman, Turck championed internationalism throughout his tenure.

This award recognizes an alumnus who has advanced the internationalist spirit and lived up to the exhortation, "to be a worthy son or daughter of Macalester, you must listen to your hopes and not your fears."

Andersen has come a long way from Maple Plain, Minn. - both figuratively and literally. And Macalester, he says, was the catalyst for that.

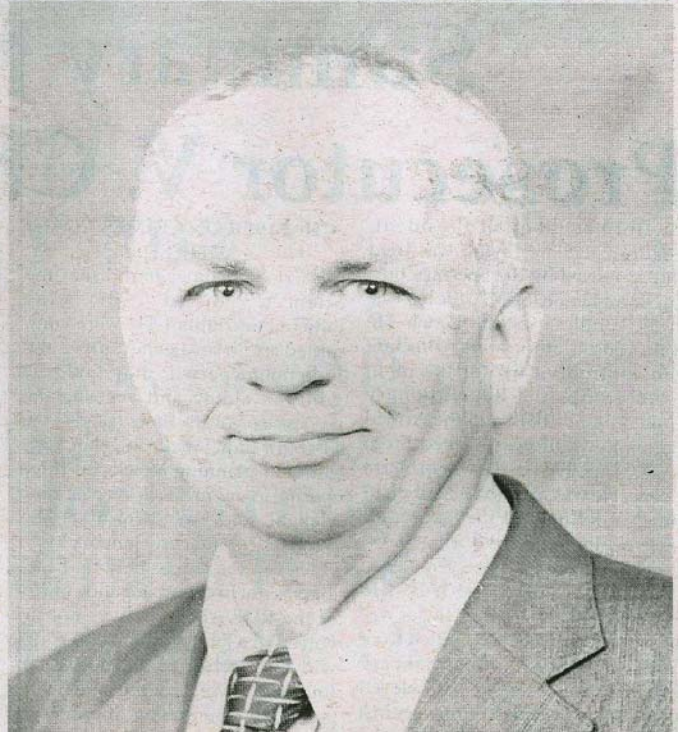
"It was the curriculum, the exposure to fellow students from many countries, and the opportunity to study abroad," that set him off on this path, he says.

Almost a decade ago, Andersen moved back to Sierra Leone, a country he'd grown to love while serving in the Peace Corps in the late '70s and early '80s.

He is not only married to a Sierra Leonean wife, but his website on Sierra Leone served as the most trusted and dedicated website on Sierra Leone. Up to present, it has the largest volume of documentation on the country.

What is Andersen proudest of? "When the people of Sierra Leone were in desperate circumstances, I did everything I could to help them, and to make sure that the world could not turn its back on them."

Andersen is the fourth Macalester graduate to receive the Charles J. Turck Global Citizen Award. It was previously given to Tonderai Chikuhwa '96, a Senior Adviser at the United Nations; Steven Laible '67, who, with his wife Nancy, began supporting girls in Bengali. In 2011, it was awarded to former United Nations Secretary-General Kofi Annan who graduated from Macalester in 1961.



Can There Be Lasting Peace Without Justice?

The Impact of the Special Court for Sierra Leone on Justice and Peace in Africa

By Eleanor Thompson

“Justice is a condition of peace....Peace and justice are indivisible.”- United Nations Secretary-General Ban Ki-Moon

Impunity breeds a perpetual cycle of violence. This has been no more apparent than in the conflicts on the African continent, many of which have raged on for years, or even decades, with perpetrators of serious crimes moving freely within countries or across porous borders to start or fuel conflicts in neighboring countries. How can this cycle of violence be stemmed to allow for peaceful, democratic societies to emerge, and how does justice factor into the equation? There has been an ongoing debate in the international community as to whether achieving peace or meting out justice

should come first in a situation of conflict. Whether and how to sequence peace and justice is context-specific, but it is clear that both peace and justice are necessary in countries transitioning from periods of violence.

The proceedings of the Special Court for Sierra Leone (SCSL) have taught us valuable lessons about the intersection of peace and justice. During the trial of former Liberian President, Charles Taylor, the Prosecution argued that Taylor’s involvement in the various peace negotiations between the Government of Sierra Leone and the RUF was a deliberate attempt to appear to the outside world as a peacemaker, thus providing a front for his continued clandestine activities of arming and financing the RUF and AFRC.

The SCSL Trial Chamber looked beyond the surface in order to issue a nuanced ruling that extensively details and considers Taylor’s involvement in the peace process. Although the Trial Chamber did not

find that Taylor was advising the RUF/AFRC during the peace negotiations, as contended by the Prosecution, the Chamber did find that Taylor was undermining the peace process by continuing to privately provide arms and ammunition to the RUF in contravention of a UN and ECOWAS arms embargo while he was publicly engaged in the peace negotiations in Lomé.

Views on the peace process and Taylor's role differ in Sierra Leone and Liberia, but without the justice mechanism – the SCSL – the entire picture of Taylor's involvement may not have emerged. The trial helped to give a full account of history, which is necessary for maintaining long-term peace because it brought out some stark realities about the conflict that will not be easy to repeat in the future. As the Trial Chamber judgment illustrates when it borrowed the Prosecution's term "two-headed Janus" to describe Taylor, a key player in the peace process could simultaneously undermine the peace process.

There are lessons here for African conflict situations being investigated by the permanent International Criminal Court (ICC), which celebrated its 10th anniversary on July 1st 2012. The Taylor trial and verdict does not mean that every leader involved in a peace process has an ulterior motive and is secretly continuing to fuel the conflict that he claims to be helping to bring to an end, but it sends an important message that even the supposed peacemakers will be held accountable for any crimes they commit. In short, no one is immune from prosecution for serious international crimes.

The Rome Statute, the founding treaty of the ICC, draws on the lessons of the ad hoc tribunals and internationalized courts like the Special Court for Sierra Leone to make clear that peace and justice mutually reinforce one another. In paragraph 3 of its preamble, the Rome Statute recognizes that the grave crimes being addressed by the ICC – genocide, war crimes, crimes against humanity, and the crime of aggression – "threaten the peace, security and well-being of the world." The Rome Statute also notes that by putting an end to impunity for the perpetrators of these crimes, states that are party to the Statute are determined to

"contribute to the prevention of such crimes". This is the essence of the Rome Statute's long-term contribution to consolidating peace throughout the world – its effect in deterring the future commission of grave crimes.

The precedents set by the international justice system are just as important as the verdicts handed down by the international criminal tribunals. The fact that the statutes of the ICC and the SCSL Statute both stipulate that not even a Head of State is immune from prosecution is vital to national and regional peace and security on the African continent. For example, the SCSL's arrest, trial, and conviction of Charles Taylor allowed many Sierra Leoneans to feel some measure of peace in knowing that the man who many believe was instrumental in destabilizing the entire West African sub-region was finally brought to book. In West Africa and the Great Lakes region of Africa, where conflicts spill over from one country into another, or persons in one country given financial and/or military backing to armed groups in another country, it is apparent that sub-regional peace efforts must go beyond the deployment of peacekeepers, but also address impunity so as to deter those who orchestrate, finance, and carry out crimes from wreaking havoc in neighboring countries.

Likewise, Sierra Leone's transitional justice process arguably helped to cement the international practice regarding amnesties. While it initially appeared as though the blanket amnesty conferred in the Lomé Peace Accord meant that justice would be sacrificed for the sake of peace, under international law, amnesty does not apply to war crimes, crimes against humanity, or serious violations of international humanitarian law. This formed the basis of the Special Court for Sierra Leone's ability to try perpetrators of those crimes. Nowadays, the global consensus is that amnesty is no longer an option for serious international crimes and the parties to the conflict should understand this during the peace negotiations.

In northern Uganda, for example, where a brutal conflict raged for over two decades, the ICC's issuing of arrest warrants for the top five commanders of the Lord's Resistance Army (LRA) is

seen as a catalyst in bringing the LRA to the table for peace talks in 2007, as well as the reason for the LRA not signing the final peace agreement. When it became clear to the LRA leaders that there was no way to escape a justice process, the government of Uganda informally tried to invoke the Rome Statute's complementarity principle to allay the fears of the LRA by agreeing to set up national justice processes. However, the patience of the parties waned over time as the establishment of these national justice processes were delayed, and the parties never signed a final peace agreement. Ultimately, even though the Government of Uganda and the LRA did not sign a final peace agreement, their signing of the Annexure on Accountability and Reconciliation during the peace process created an avenue for the government to establish the International Crimes Division of the High Court and begin to prosecute alleged perpetrators of atrocities committed in northern Uganda even though the conflict has not officially ended.

Ultimately, prosecutors must walk a fine line between understanding the political situation and basing his or her decision on political considerations when determining when to initiate investigations while peace processes are underway. One thing is clear; peace processes must include a justice component. The situation in Darfur, Sudan, which the United Nations Security Council referred to the ICC prosecutor in accordance with Article 13(b) of the Rome Statute, perhaps presents the starkest example of this. After the ICC issued an arrest warrant for Sudanese President Omar al-Bashir, the African Union (AU) expressed deep concern over the arrest warrant. The AU eventually requested the UN Security Council to exercise its power under Article 16 of the Rome Statute to suspend proceedings against President al-Bashir so that the ICC's investigations would not hinder the peace process in Darfur. The AU also constituted a High-Level Panel on Darfur, led by former South African President Thabo Mbeki, to examine the Darfur situation and make recommendations on how to achieve accountability and reconciliation. The Mbeki Panel's final report recognizes the AU position to prioritize over justice in Darfur, but nevertheless integrates justice mechanisms squarely into its recommendations. The report goes so far as

to say that domestic prosecutions should take place because "[Darfurians] have a right to justice, in their own country, on account of what they have suffered." As such, the Mbeki Panel called for the creation of a hybrid court for Darfur to try those bear responsibility for planning, organizing, and carrying out crimes and for national courts to try the majority of perpetrators.

A state cannot truly consolidate peace and bring about reconciliation if an impunity gap exists. Only prosecuting those who bear the greatest responsibility for serious crimes without also prosecuting middle-level commanders and foot soldiers who directly perpetrated crimes leaves victims feeling an incomplete sense of justice and sows seeds of bitterness among victims when they see the perpetrators walking free. In May 2012, the government of Uganda went one step further in attempting to close the impunity gap in Uganda by allowing Uganda's blanket amnesty law to lapse. This clears a number of constitutional and legal hurdles to the prosecution of middle- and high-level LRA commanders who will face trial for war crimes before the International Crimes Division of Uganda's High Court.

The government of Sierra Leone can take a cue from the Ugandan government and take two concrete actions: 1) present legislation to Parliament to repeal the blanket amnesty provided by the Lomé Peace Accord, and 2) present legislation to Parliament that incorporates war crimes, crimes against humanity, genocide, and the crimes of aggression into Sierra Leone law. These actions will ensure that perpetrators of these crimes can be prosecuted under Sierra Leonean law in Sierra Leonean courts, and send a message to future potential perpetrators that these crimes will not go unpunished.

It is a shame for Sierra Leone to have set a number of precedents at the international level that respond to the peace and justice debate, yet now lag behind in the fight against impunity for international crimes at the national level. As concerned citizens, lawyers, and human rights activists, we must work together to ensure that these issues remain on the government's justice sector and human rights protection agenda.

The Taylor Verdict: a Major Step Forward in Promoting Accountability for Sexual-based Crimes during Conflict

By Ibrahim Tommy

On July 4, the Gunda Werner Institute organized a public debate in Berlin, Germany regarding the implications of the Special Court jurisprudence, particularly with respect to the Charles Taylor trial and verdict, for combating impunity for gender and sexual-based crimes during conflict. The audience was drawn from the German civil society and other organizations working on international justice initiatives in Germany. My co-panelist at the event was Katherine Orlovsky of the Women's Initiatives for Gender Justice, a network of individuals and groups committed to helping women use international law as a means of providing women access to justice.

The main objectives of the debate were as follows: first, it was meant to examine the circumstances which led to the indictment and successful prosecution of Charles Taylor for the sexual and gender-based crimes committed during Sierra Leone's 11-year civil conflict. If those circumstances were not unique to Sierra Leone, how could other international criminal tribunals learn from the Sierra Leone experience? Secondly, it was meant to discuss whether Charles Taylor's trial and conviction has any implications for the ongoing reconciliation and peace consolidation processes in Sierra Leone and Liberia. To this end, panelists were asked to suggest any other measures and initiatives that need to be considered in order to help survivor victims of sexual-based crimes to come to terms with the past.

The discussions were quite enlightening, and Ms Orlovsky did a brilliant job of explaining how the developing international jurisprudence on sexual-based crimes during conflict would help promote justice for women. I spoke a bit about the Special Court, the implications of its jurisprudence, the

circumstances that helped the Special Court's prosecution of Taylor, and the implications of the Taylor verdict for Sierra Leone and Liberia. Of course, I made a point about the need for the Sierra Leone government to strengthen national accountability mechanisms as well as take the lead on helping the most affected victims of the conflict by providing financial, social and other material support to them.

Below is the statement I made at the event. I should point out, though, that it does not include the comments I made during the Question and Answer session.

Background:

The Special Court for Sierra Leone was set up to try those who bore the greatest responsibility for atrocities that occurred during the 11-year civil conflict in Sierra Leone. A total of 13 persons were indicted by the prosecutor, but only nine were ultimately tried and convicted. Unfortunately, the major Sierra Leonean players in the conflict, including the leader of the rebel group RUF Foday Sankoh, Sam Bockarie and leader of the CDF Sam Hinga Norman, died before their trials began or were concluded. In the end, of the nine indictees tried and convicted by the Court, Charles Taylor had the highest profile.

The Taylor trial and verdict:

Taylor was indicted on 11 counts of war crimes, crimes against humanity and serious violations of international law. He was transferred into the custody of the Special Court in 2006, but for security reasons, his trial was transferred to The Hague. The relocation of the trial certainly affected victims' access to the process, and therefore raised

questions about the legitimacy of the process. To partly address this gap, though, the Special Court provided live video streaming of the trial at the Court's facility in Freetown. Despite the Court's best efforts, most of the victims stayed away, and got regular updates either from the BBC World Service Trust-funded radio programmes or the Court's Outreach programme. My organization, the Centre for Accountability and Rule of Law (CARL) also followed the proceedings and published monthly analysis and update of the proceedings. CARL also discussed the Taylor trial during its regular media and community outreach events in the country.

A total of 91 witnesses testified on behalf of the prosecution, including 52 crime base witnesses, 31 insider (linkage) witnesses, four expert witnesses, and four witnesses of fact. The evidence of six other witnesses was submitted in the form of transcripts and expert reports. A total of 21 witnesses, including Charles Taylor himself, testified on behalf of the defence. On April 26, Charles Taylor was convicted of 11 counts of planning, aiding and abetting war crimes and crimes against humanity, including rape and sexual slavery. He was also convicted of the charge of enabling "outrages upon personal dignity", arising from incidents in which women and girls were forced to undress in public and then raped and sexually abused, "sometimes in full view of the public, and in full view of family members".

Undoubtedly, Taylor's trial and conviction has huge implications for the jurisprudence of international criminal justice and efforts at combating sexual and gender-based violence during conflict. During his trial, for instance, the Court ruled that immunity enjoyed by heads of state does not apply to the prosecution of international crimes such as those committed in Sierra Leone. Additionally, for the first time, an international court ruled that raping of women and girls in public was part of a deliberate campaign to terrorize the civilian population.

As Kelly Askin, Senior Legal Officer at the OSJI, put it: "There have now been many previous judgments in international war crimes tribunals in which the accused were found guilty of rape, sexual slavery, and other forms of sexual violence. But virtually all

were when the accused physically perpetrated the rape or was present, encouraging, ordering, or ignoring the crimes. The Taylor verdict represents a welcome and long overdue recognition that civilian or military leaders who are far from the battlefield but who support and encourage sexual violence, or make no attempt to prevent or punish it, can be held responsible for sex crimes".

As significant as the Taylor trial and verdict is, would it necessarily bring an end to the commission sexual-based crimes during conflict? Unfortunately, I don't think so. Although Taylor's trial and conviction represents a significant step forward, a lot more needs to be done to genuinely combat impunity for warlords and mid-level commanders who sanction and perpetrate gender and sexual-based violence. The trial of a single leader is not enough to stop the commission of sexual-based crimes during conflict. Therefore, the international community must step up efforts at ensuring that accountability mechanisms at the international level are strengthened and that no-one is shielded from justice.

At the domestic level, the Taylor verdict is critical in terms of helping victims to come to terms with the past. Beyond the verdict, however, concrete efforts must be made to strengthen law enforcement and justice institutions. This would include the establishment of effective witness and victims support services, strengthening the investigation and prosecution departments of the Sierra Leone Police (SLP), and increasing victims' access to justice throughout the country. It is only when vulnerable groups such as women and girls are assured that it will no longer be business as usual, and that they will receive justice for any violations they suffer, that they will begin to come to terms with the past. In Sierra Leone, for instance, of the 967 complaints of sexual and gender-based violence reported to the police in Bombali District in 2011, only 16 convictions were reached. This speaks volumes for the amount of efforts that are required to get the job done. Let me be clear about this: the justice and law enforcement institutions clearly face a number of challenges, but the successful prosecution of sexual and gender-based offences in Sierra Leone requires absolute support from the victims, the

community, and the victims' family. At the moment, this seems to be a critical missing link in efforts at combating sexual and gender-based crimes.

Beyond the need to strengthening accountability mechanisms, it is also important to focus on the social and economic needs of victims. The Sierra Leone government must support the reparations programme in order to provide a meaningful and sustainable response to the very serious social and economic needs of the most affected victims of the conflict, including the women and girls who were sexually abused. Really, victims who were disabled physically and emotionally by the conflict cannot move on, regardless of who is tried and convicted, if their social and economic needs are not addressed. Why was the prosecutor successful at prosecuting sexual and gender-based crimes?

The following is by no means an exhaustive response, but I believe the fact that the trials took place in the country where the crimes were committed helped the prosecutor's outreach and investigations. Through its regular outreach programme, the Office of the Prosecutor had a chance to visit every district in the country to present to his clients – the people of Sierra Leone – his case against the perpetrators or those who bore the greatest responsibility for the atrocities that occurred in Sierra Leone. That way, he was able to connect with the victims, who subsequently showed tremendous willingness to come forward and testify.

Also, the establishment of a very effective Witness and Victims' Support Services (WVS) unit created an enabling environment for victims to testify without holding any fear that they might be attacked. Again, if an effective WVS unit, which guarantees anonymity for victims of and witnesses to sexual-based crimes, is established at the national level, it would significantly contribute to efforts at

investigating and prosecuting perpetrators of sexual and gender-based crimes.

Furthermore, the Office of the Prosecutor received immense support from local police investigators and international humanitarian agencies during investigations. The knowledge and expertise of local investigators, who had lived in the country throughout the conflict, turned out to be extremely useful.

Finally, the Truth and Reconciliation Commission (TRC), which obtained statements from victims and witnesses and subsequently organized public hearings across the country, turned out to be very helpful to the prosecution's investigation efforts. While the OTP has never publicly admitted to have used the resources of the TRC, it is obvious that the testimony of witnesses who appeared before the Commission was very useful to the OTP.

In concluding, the Taylor verdict certainly provides a measure of justice to the victims of the conflict. However, it would remain incomplete justice if the social and economic needs of victims are not addressed in a meaningful and sustainable way through an effective reparations programme. Going forward, national accountability mechanisms need to be strengthened so that the international accountability mechanisms will remain an alternative rather than the first port of call.

On the question of the implication of the verdict for Liberia, I believe that the verdict does not present any threat to the peace consolidation efforts in the country. However, it will certainly undermine reconciliation efforts, particularly because the report/recommendations of its Truth Commission have not been implemented and there is no imminent sign of setting up a tribunal to bring to justice those who were responsible for the atrocities that took place in Liberia.

Centre for Accountability and the Rule of Law

July 2012 Newsletter

Justice for All? Forgotten Victims and Africa's Response

By Ibrahim Tommy

International criminal justice gained fresh impetus following the tragic events in Rwanda and the Balkans in the 1990s. From the ad hoc International Criminal Tribunals for Rwanda and the former Yugoslavia, to the Special Court for Sierra Leone to the International Criminal Court (ICC), the international community showed that where there is willingness to bring to justice the people responsible for heinous crimes, it can be done. While the verdicts in those trials cannot bring back those who were killed, the trials can help bring a sense of closure to their families.

Since it was established, the ICC has been active primarily in Africa, with all of its current suspects coming from the continent. The court is investigating situations in Central African Republic, Ivory Coast, Democratic Republic of Congo, Sudan, Libya, Uganda, and Kenya. This has led to complaints that it is pursuing justice on a selective basis. This perceived bias against Africans has clearly offended many, particularly African leaders.

It is a completely different story for victims of heinous crimes in Syria, the West Bank and Gaza, Bahrain, and other parts of the world. The world has watched while thousands of civilians have been killed and millions of others forced out of their homes. Yet, there have been no concrete steps to deliver justice to them. While the personal circumstances of victims or the degree of suffering may vary, each victim needs and deserves justice. Yet it smacks of a double standard to address the justice needs of victims of Africa, while neglecting those of victims in other parts of the world.

The majority of situations before the ICC are in fact a result of voluntary requests by the African governments of the countries where the crimes were committed or referrals by the UN Security Council.

But as the ICC celebrates its tenth anniversary this year, it is time for the Court and states to reflect more seriously on the crimes and injustice suffered by victims outside Africa. It is time to reposition the

justice trajectory to combat the scourge of impunity more consistently across the globe.

The AU's concerns with the ICC and the United Nations Security Council also include the perceived disrespectful manner in which the UN dealt with African states' application to defer the arrest warrant for President Omar al-Bashir of Sudan. AU concerns have led to the AU calling for its members not to cooperate with the ICC in arrests of sitting heads of state -- al-Bashir and Muammar Gaddafi of Libya, when he was still in power. The AU has suggested it might also broaden the mandate of the African Court of Justice and Human Rights (ACJHR) to include prosecution of war crimes, crimes against humanity, genocide, and other crimes prevalent on the African continent, such as mercenary activities.

Regardless of the merits of the AU's concerns, the AU and the UN Security Council perhaps could have managed the situation better. The Security Council could have taken African states' deferral requests more seriously by deliberating on them in formal sessions. The AU could have expressed its disappointment that the al-Bashir case was not deferred without passing sweeping resolutions not to cooperate in arresting African heads of state who were ICC suspects.

The AU's decision to expand the mandate of the African Court seems to be a clear result of its gripes against the UN Security Council and the ICC and raises important questions. Would it mean that African states would no longer feel the need to participate in the ICC and carry out their cooperation obligations under the Rome Statute that they have assumed? Would it mean that the current cases before the ICC involving situations in Africa would somehow be removed from the ICC's jurisdiction? Would it mean that all African states would no longer see the need for an ICC and thus not make any more referrals to the court?

It is time for the AU, ICC, and UN Security Council to reflect a bit more and take some practical steps forward. There is no point reinventing the wheel. The AU has genuine concerns that need addressing, but setting up an African Court with criminal

jurisdiction may not provide a "universal" remedy to impunity gaps.

African leaders should focus more on improving the human rights situation on the continent and promoting complementarity with the ICC, thereby encouraging states to carry out proceedings at the national level. Extending the jurisdiction of the African Court would be too expensive a distraction to afford – at least for now. African leaders should instead sustain efforts to strengthen national accountability mechanisms, while delivering on their human rights obligations under the African Charter on Human and Peoples' Rights. Ten years after the ICC was established as a permanent court, it should be sure to hear the voices of victims throughout the world. This can be done by pressing for more countries to join the ICC, and by insisting that the UN Security Council refer cases to the ICC whenever

the gravest crimes are committed -- irrespective of politics.

But African victims also deserve a justice mechanism that will work for them, not struggle to keep itself afloat and potentially be at the whim of African leaders who are responsible for the atrocities against the victims in the first place. The ICC provides that justice mechanism. Just ask victims of post-election violence in Kenya who may not otherwise have seen their leaders made to answer questions about their involvement in the post-election violence. The voices of those victims must also be heard.

Ibrahim Tommy is Executive Director of the Centre for Accountability and Rule of Law.

The New Dawn (Liberia)

Friday, 27 July 2012

Taylor Trial Sets Positive Example

The trial of former President Charles Taylor for war crimes and crimes against humanity during Sierra Leone's armed conflict was a largely well-run proceeding, Human Rights Watch said in a report released Thursday.

The 55-page report, "Even a 'Big Man' Must Face Justice": Lessons from the Trial of Charles Taylor, analyzes the practice and impact of the trial by the United Nations-backed Special Court for Sierra Leone.

It examines the conduct of the trial, including issues related to efficiency, fairness, and witnesses and sources. The report also examines the court's efforts to make its proceedings accessible to communities most affected by the crimes, and perceptions and initial impact of the trial in Sierra Leone and Liberia.

The report captured how the trial benefitted from a high-quality defense, sound handling of witnesses, and dynamic outreach to communities affected by the crimes.

At the same time, Human Rights Watch's analysis identified areas in which practice should be improved for future trials of the highest-level suspects before domestic, international, and hybrid war crimes tribunals.

"Taylor's trial shows that credible prosecutions of the highest-level suspects for the gravest crimes are achievable," said Annie Gell, international justice fellow at Human Rights Watch and the author of the report.

"It was a long road and there was room for improvement, yet the proceedings were relatively well-managed, more than 100 witnesses testified, and expert defense counsel strengthened the proceedings."

The report is based on research in Sierra Leone, Liberia, The Hague, London, and New York from September 2011 to June 2012.

The Taylor trial took place against a backdrop of criticism and concern over the feasibility of trying national leaders before international or hybrid war crimes courts following the 2002-2006 trial of former Serbian President Slobodan Milosevic before the International Criminal Tribunal for the former Yugoslavia.

That trial was notable for its sometimes-chaotic atmosphere and Milosevic's death before a judgment was issued.

The Taylor trial largely avoided major disruptions that could have marred the proceedings, Human Rights Watch said. Taylor's decision to be represented by counsel appears to have contributed to the generally respectful and organized tenor of the courtroom.

Human Rights Watch urged tribunals handling such trials in the future to take measures to enhance trial management. Notably, the judges in Taylor's trial adopted practices that sought to improve efficiency but sometimes contributed to delays, such as the ambitious courtroom calendar and inflexibility on parties meeting some deadlines.

Other practices - such as the Trial Chamber's non-interventionist approach to witness testimony and the admission of evidence of the underlying crimes - lengthened the proceedings.

More active court efforts to address defense concerns prior to the trial's start may have encouraged smoother proceedings and improved fairness, Human Rights Watch said. Increased transparency and stronger guidelines for the prosecution's provision of funds to potential witnesses and sources during its investigation may also have been helpful.

Trials like Taylor's are significant beyond the events in the courtroom, Human Rights Watch said. One crucial objective is to convey a sense of accountability to communities most affected by the crimes so that justice has local resonance and becomes meaningful.

"The court's dynamic outreach activities brought the trial to local communities in Sierra Leone and Liberia and helped to explain the proceedings," Gell said. "Trial impact is hard to judge but Sierra Leoneans and Liberians expressed greater expectations for justice and interest in promoting the rule of law in their countries."

Increased expectations for justice have also resulted in some frustration, though, over the absence of wider accountability in Sierra Leone, Human Rights Watch said. A domestic amnesty for crimes committed during Sierra Leone's conflict remains in effect and Liberia has yet to investigate and prosecute serious crimes committed during its armed conflict.

"Domestic efforts to investigate serious crimes committed in Sierra Leone and Liberia beyond the Special Court's mandate are essential for more complete justice," Gell said. "The Sierra Leonean and Liberian governments should take concrete steps to pursue justice for serious crimes committed in their countries."

[Note: The HRW press release was also reproduced in other Liberian media.]

United Press International

Thursday, 26 July 2012

Rights group praises Taylor trial

BRUSSELS, July 26 (UPI) -- Human Rights Watch said the trial of former Liberian President Charles Taylor for war crimes committed during Sierra Leone's civil war was well run.

Taylor was sentenced by the U.N. Special Court for Sierra Leone in May to 50 years in prison for aiding and abetting crimes against humanity committed by rebel forces in Sierra Leone. He was convicted on 11 counts of war crimes during civil war in the 1990s.

Human Rights Watch, in a 55-page report, said its analysis of the trial found the case was handled fairly and efficiently.

Annie Gell, an international justice fellow at Human Rights Watch, said Taylor's trial indicates prosecution of high-level suspects is possible.

"It was a long road and there was room for improvement, yet the proceedings were relatively well-managed, more than 100 witnesses testified, and expert defense counsel strengthened the proceedings," said Gell, who wrote the report, in a statement from Brussels.

An estimated 50,000 people were killed in the 11-year civil war in Sierra Leone. Taylor, who's issued an appeal, told the tribunal before his sentencing that "reconciliation and healing" should guide the court's principles.

The U.N. Security Council this week lifted sanctions against 17 Liberians linked to the former president, including two of his former wives.

The New Dawn (Liberia)

Friday, 27 July 2012

Freedom Restored - UN Lifts Sanction



Some former victims of a UN travel embargo here say their freedom and dignity have been restored by the lifting of the ban on Tuesday.

Montserrado District #6 Representative Edwin Snowe, a former son-in-law of Mr. Taylor who welcomed the news with joy said their freedom and dignity had been restored.

He described the ban as a stigma which prevented him as a senior government official from traveling.

The Liberian Government on Wednesday welcomed the lifting of UN sanctions against the 17 Liberians who were part of Mr. Taylor's regime.

"The lifting of the travel ban is welcome news for the government of Liberia ..." Foreign Minister Augustine Naguafan, said on state radio hours before the announcement was made by the UN in New York.

The decision by the Security Council's Liberia sanctions committee was announced in a brief statement that gave the names but no reasons for the move.

The asset freezes and travel bans were imposed over a period of years from 2001 in a bid to contain Taylor who is serving a 50-year jail term for war crimes in Sierra Leone's civil war.

The UN on Tuesday lifted sanction on 17 Liberians amongst them the ex-wives of former President Taylor: Agnes and Jewel out a list which once contained over 55 names, while husband Taylor and son Chuckie still on the list which includes more than 25 others.

Others removed from the travel ban and assets freeze listing are former Senator Adolphus Dolo, said to have been a key Taylor military ally, former minister Reginald Goodridge and Taylor's former economic advisor, Emmanuel Shaw, who was accused of organizing arms deliveries, had a travel ban and assets freeze lifted. John Richardson, a former security advisor, also had his travel ban removed.

Several other names were removed from the list due to death. But one of the individuals removed from the list, Chief Cyril Allan said he owes the UN no gratitude for his name removal saying he was wrongly punished without justification.

BBC

Thursday, 26 July 2012

Sanctions against Taylor's Liberian allies lifted by UN



Former Liberian President Charles Taylor attends his trial at the Special Court for Sierra Leone based in Leidschendam, outside The Hague, 16 May 2012 Charles Taylor was jailed for 50 years by the Special Court for Sierra Leone in May

The UN Security Council has lifted sanctions against 17 Liberians linked to former Liberian president and convicted war criminal Charles Taylor.

The asset freezes and travel bans were imposed more than a decade ago in a bid to weaken Taylor while he was in power.

Taylor was sentenced to 50 years in jail by a UN-backed court in May for fuelling Sierra Leone's civil war.

Liberia's government welcomed the lifting of sanctions against the 17, who include two of Taylor's ex-wives.

"The lifting of the travel ban is welcome news for the government of Liberia," AFP news agency quotes the Foreign Minister Augustine Naguafan as saying.

More than 25 people remain on the sanctions list, including Taylor's son and arms trader Viktor Bout, the agency says.

Fish in a Bowl

The BBC's Jonathan Paye-Layleh in the capital, Monrovia, says nearly all the people on the sanctions list were pleased with the decision, but the former chairman of Taylor's National Patriotic Party, Cyril Allen, struck a defiant and angry tone.

He said the sanctions should have never been imposed and he never "begged" for them to be lifted, even though he could never travel abroad to see his children.

Among those who no longer face UN restrictions are Taylor's ex-wives Agnes Reeves Taylor and Jewel Howard Taylor, former security adviser John Richardson and Adolphus Dolo, a key Taylor military ally who used the alias "General Peanut Butter", AFP reports.

Jewel Taylor told the BBC's Focus on Africa programme her international isolation meant she had to live like a "fish in a small bowl".

"It was quite difficult," she said.

"If I had a chance I'll probably go to Israel and praise God."

In April, the UN-backed Special Court for Sierra Leone found Taylor guilty of war crimes by backing rebels in diamond-rich Sierra Leone.

He became the first former head of state to be convicted of war crimes by an international court since the Nuremburg trials.

ICJ *Belgium v Senegal*: Temporal Issues and the Prosecution of Torture

By Anna Bonini

On Friday 21 July 2012, the ICJ issued its Judgment in the case brought by Belgium against Senegal on ‘Questions relating to the Obligation to Prosecute or Extradite’.

Belgium had instituted proceedings against Senegal to compel compliance with Senegal’s obligation to prosecute Mr. Hissène Habré, former President of the Republic of Chad, or to extradite him to Belgium for the purposes of criminal proceedings. Jurisdiction was based on the UN Convention against Torture (CAT).



There are several fascinating aspects of this Judgment, including the ICJ’s finding that Belgium, as a State party to the CAT, has standing to invoke the responsibility of Senegal for alleged breaches of its obligations under the Convention; the relevance (or not) of pronouncements regarding Hissène Habré by the UN CAT Committee, the African Union, and the ECOWAS Court of Justice; the ICJ’s recognition of the prohibition on torture as a *jus cogens* norm, and so on.

However, this post will focus on the ICJ’s findings on the temporal dimensions of obligations under CAT, an area that has not been previously explored in detail and is of relevance to all States Parties to CAT. The clear message is: delays will not be tolerated.

As regards the obligation in Article 5(2) of CAT to establish universal jurisdiction over the crime of torture, the Court observed that Senegal had not adopted the necessary legislation until 2007. It had become party to CAT in 1987. There is no express temporal requirement in Article 5(2) of CAT, but the ICJ observed that Senegal’s delay necessarily affected its compliance with other obligations (para 77). This should be taken as a warning to the numerous States parties that have not adopted national implementing legislation under CAT. It also sends an indirect message to the 121 ICC States Parties, less than half of which have implemented the Rome Statute in their domestic jurisdictions.

The Court then turned to Article 6(2), which provides that the State in whose territory a person alleged to have committed torture is present ‘shall immediately make a preliminary inquiry into the facts’. The temporal requirement is clear, and the Court interpreted it literally. The ICJ recognized that a State has a ‘choice of means’ for conducting the inquiry, but ‘steps must be taken as soon as the suspect is identified in the territory of the State’ (para 86). For Senegal, the establishment of the facts in Habré’s case became imperative since at least 2000, when a complaint was filed against him.

The most complicated temporal issues arose with respect to Article 7(1) of CAT, which provides for the obligation to prosecute (if the State does not extradite the person alleged to have committed torture). The Convention is silent as to a temporal requirement. CAT had entered into force for Senegal on 26 June 1987 and for Belgium on 25 June 1999. The ICJ held that the prohibition on torture is part of customary international law and has the status of *jus cogens*, but there is nothing in the CAT that reveals an intention to require a State party to prosecute acts that occurred before entry into force of the Convention for that State (para 100). The Court therefore held that Senegal’s obligation to prosecute under Article 7(1) did not apply to acts before 26 June 1987 (though there was nothing to prevent Senegal instituting proceedings for

acts committed before that date) (para 102). As for Belgium, the Court considered that it had been entitled from 25 July 1999 to request the Court to rule on Senegal's compliance with its obligation to prosecute (para 104). There is thus a 12-year gap between the existence of Senegal's obligation to prosecute and Belgium's right to engage Senegal's responsibility for the failure to fulfill that obligation. In the event, Belgium had only invoked Senegal's responsibility for conduct starting in 2000.



Importantly, the ICJ dismissed Senegal's excuses for its delay in submitting Habré's case for prosecution based on financial difficulties (para 112), the decision of the ECOWAS Court of Justice (para 111), the absence of relevant legislation, and its courts' findings of lack of jurisdiction (para 113). Although Article 7(1) does not specify a time frame, the ICJ held the obligation to prosecute must be 'undertaken without delay' (para 115).

The Judgment in *Belgium v Senegal* provides important guidance on the implementation of CAT obligations. Procrastination and diversion will not be accepted. The ICJ ordered Senegal to take the necessary measures to submit the case to its competent authorities for prosecution 'without further delay' (para 121).

Lawyers Weekly

Thursday, 26 July 2012

Staying safe: The ICC and staff protection

The detention of Australian lawyer Melinda Taylor and her colleagues shone a spotlight on the operations of the International Criminal Court. So what exactly is the court's purpose and what does it do to ensure the adequate security of its staff? Simon Levett reports.

International criminal law came about in the 20th century to bring an end to impunity for the perpetrators of the most heinous crimes – such as war crimes, crimes against humanity and genocide. The idea is still the same, though the site of the alleged crimes may shift.

The world watched with relief as the delegation of four staff members from the International Criminal Court (ICC), including Australian lawyer Melinda Taylor, were released from detention in Libya on the 2 July. The four had been detained in the north-western Libyan town of Zintan while meeting with Saif al-Islam, the son of former dictator Muammar Gaddafi.



National militia accused Ms Taylor of smuggling in documents during this meeting and threatening the national security of Libya. The Libyan Transitional National Council (TNC) in Tripoli was unwilling to intervene. International negotiations by governments – including Australia – helped to break the impasse and secure the release of the four staff members.

Ms Taylor represents the ICC, which is a permanent, treaty-based body that came into being in 2002 to exercise jurisdiction over international crimes. The UN Security Council, which was established by the UN Charter, created earlier tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

Cooperation between states and the ICC is essential to ensure that lawyers can talk to those involved, manage evidence and ensure that the human rights of the accused are being protected. International criminal lawyers regularly undertake field trips to places like Goma, Nairobi and Tripoli for court business dependant on the cooperation of the host state.

The detention of the four staff members prompted a united response from the ICC. “The ICC expresses its strong hope that the release of the four detained persons will take place with no delay, in the spirit of cooperation that has existed between the court and the Libya authorities.” Both the ICTY and the ICTR also issued statements condemning the detention of the four ICC staff members.

The UN Security Council Resolution 1970 obliges Libya to continue to cooperate with the ICC (the visit by the ICC staff members could not have taken place otherwise). However, the current crisis shows strains in the relationship between the TNC – a government struggling for legitimacy – and the international community. These challenges resurfaced during the riots in regional Libya during the recent elections on 7 July.

Although much of the impetus for establishment of a permanent court like the ICC came from member states who wanted to reduce the influence of the UN Security Council, old geopolitical structures like the

Security Council play a crucial role in the structure of the ICC, which lacks any mechanism such as international police to enforce its decisions.

Decisive action

The UN Security Council issued the following statement on 15 June. “The members of the Security Council express serious concern over the detention in Libya since 7 June 2012 of the International Criminal Court members, and urge Libyan authorities at all levels and all concerned to work towards immediate release of all the ICC staff members.”

Members of the international defence community see the role of the UN Security Council as vital. Slobodan Zecevic, counsel for defence for ICTY, former president of the ADC-ICTY (Association of Defence Counsel of the ICTY) and a former colleague of Melinda Taylor, stated at the time: “The United Nations and the Security Council should put maximum pressure on Libya, as this makes a precedent not only for a person who is representative of the defence but for any United Nations official. This is a decisive action that risks the life or well-being of many United Nations employees.”

Zecevic remarked: “At the ICTY, it was possible to report un-cooperation to the Trial Chamber, which would provide assistance according to 54bis [of the ICC Rules of Procedure and Evidence]. If a state then failed to adhere to the rules or take required action then such a state is reported to the UN Security Council for additional measures or condemnation, which is very embarrassing for the state. There was a case where a state was reported to the United Nations – the Kosovo case.”

Ultimately, it is an issue of the protection of basic human rights, Zecevic said. “Clients should be guaranteed a right to see counsel anywhere, even in Libya. They should be protected by the UN Charter – this is a protection that they are entitled to. It is not enough anymore. There is a need for a mechanism – how to conduct a legitimate job in the future.”

The resistance

The TNC insist that alleged international crimes should be tried on Libyan territory instead of by the ICC in The Hague, challenging the admissibility of the cases against Saif al-Islam (as well as intelligence chief Abudullah al-Senussi). According to the principle of complementarity in the ICC statute, the ICC can only exercise its jurisdiction when national courts are unwilling or unable to exercise their jurisdiction. Given the parlous state of the rule of law under the new TNC, there have been questions as to why ICC proceedings have been resisted at all.

Peter Robinson, legal advisor for Radovan Karadzic, former president of the Bosnian Serb Republic, at the ICTY, stated at the time: “The ICC itself needs to make it clear to Libya that the immunity of its staff must be honoured. If Libya cannot be counted on to honour such an elementary principle, its admissibility challenge should be dismissed as it cannot be counted on to respect basic principles of justice. The UN Security Council should then be asked to impose sanctions on Libya until it releases the ICC staff and turns over Saif al Islam to the ICC.”

The right of access by a lawyer to the accused is a right that should be protected under the rule of law. This is a right that can be restricted and controlled but not denied. Robinson described the importance of access by ICC staff members. “An accused held in a state cannot access the ICC except through a lawyer. His case would be a one-sided farce if only the prosecution could access the court and have his views considered.”

“Before he was before the court, the pre-trial chamber [of the ICC] decided that there was enough evidence to arrest Callixte Mbarushimana of FDLR [Democratic Forces for the Liberation of Rwanda] in Congo for war crimes. When his side of the story was heard with the assistance of a lawyer, the pre-trial

chamber decided there was not enough evidence to try him. That is one example that comes to mind at the ICC.”

Article 18 of the Agreement on the Privileges and Immunities of the ICC gives ICC Staff members all the privileges, immunities and facilities in the performance of their functions, including immunity from detention. The doctrine is not always respected in the field, according to Robinson. “Two years ago, a colleague of mine at the ICTR, Peter Erlinder, was arrested in Rwanda for negationism of genocide based in part on what he said in the ICTR when defending his client.”

A fair trial depends on human rights notions such as equality of arms in domestic systems. There is an evolution in the application of these principles in the international criminal courts.

The statutes of the Nuremburg and Tokyo tribunals provided a right to counsel. International criminal law entered another renaissance period decades later with the establishment of the ICTY and the ICTR. The influence of international human rights law – such as the International Covenant on Civil and Political Rights of 1966 – meant some procedural advances were made, yet there was no specific organ created in the statutes to institutionalise protection for defendants.

There has been a considerable improvement at the ICC, with the creation of an Office of Public Counsel for the Defence at the ICC resulting in increased resources and changes to the standing of the defence. The welcome release of the four ICC staff members will no doubt lead to further changes, especially where staff must travel outside The Hague on court business.

Simon Levett is a research assistant at the University of Technology, Sydney. He completed a Masters in Advanced Studies of International Humanitarian Law at the Geneva Academy of International Humanitarian Law and Human Rights.