SPECIAL COURT FOR SIERRA LEONE
OUTREACH AND PUBLIC AFFAIRS OFFICE

Chief of Prosecutions Jim Johnson is leaving the Court in July after nine years with the Office of the Prosecutor.

PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office
as at:
Wednesday, 27 June 2012

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
Martin Royston-Wright
Ext 7217

International News

ISSUE N°2 APRIL-JUNE 2012

Q&A 15 Questions for Mr Morris Anyah, Lead Counsel for Charles Taylor before the SCSL

1. You have replaced Mr. Taylor's previous lead counsel, Mr. Griffiths QC, as Lead Counsel for the Appellate process. Could you provide please a brief resume of your career to date?

MA: I started my legal career in Chicago with summer clerkships in the Criminal Appeals Division and Night Narcotics Unit of the Cook County State's Attorney's Office. I tried my first felony case to a judge while still a law student during the night drug court clerkship. I worked for the same office as a state prosecutor after graduation and being called to the Bar, serving in the Criminal Appeals Division, the Juvenile Justice Bureau, and the Criminal Prosecutions Bureau. I handled all sorts of cases in that capacity, undertaking appellate oral arguments and both bench and jury criminal trials. I left domestic prosecutions after 3 years and joined the Office of the Prosecutor at the ICTY as a Legal Officer. My two-plus years in that office were evenly split between the Appeals and Trial sections. It was in that capacity that I argued cases from the Rwandan genocide before the Appeals Chamber of both the ICTY and ICTR. I went into solo legal practice in Atlanta, after the ICTY and served as a criminal defense lawyer and plaintiff's personal injury lawyer for 5 years. I tried various criminal cases to jury, including capital felonies, as well filed civil suits for monetary damages and recovered compensation for injured victims. I returned to international practice to work on the Charles Taylor trial defense team. I served as co-counsel during the trial phase and now serve as Lead Appeals Counsel for Mr. Taylor. I also currently serve as the Common Legal Representative to 229 victims in one of two Kenyan cases now before the ICC.

2. Your client, Mr. Taylor, has been sentenced to 50 years imprisonment for planning and aiding and abetting war crimes and crimes against Humanity? Having been a committed member of his defence team from the outset, what was your reaction to the judgment and sentence?

MA: The judgment, as most people might know, exceeds 2,500 pages in length. Seldom should any case warrant such a lengthy judgment; indeed, and as far as we have been able to determine, it is the longest judgment ever issued by any international court throughout history. That fact raises more questions than it answers certainly for me, and I suspect for others as well. Significantly, the more we dissect the judgment with reference to the evidence that was adduced at trial, the more we find a

rather convenient way in which the evidence has been viewed, including instances where, in our view, certain evidence has been entirely ignored, while other evidence have been over-emphasized at the expense -- more often than not -- of defense evidence. All of that will be brought in due course to the attention of the Appeals Chamber. As far as the sentence is concerned, it was clearly excessive, in my view, and the Trial Chamber committed error in electing not to accept any of the factors in mitigation the Defense put forward, save for Mr. Taylor's good behavior in detention. To be sure, there is some variation in the range of sentences which the ad hoc/ hybrid international tribunals have handed down for aiding and abetting, but "50 years" exceeds by far the appropriate range of sentences imposed thus far for that mode of criminal liability. We will be appealing the excessive nature of the sentence.

3. What are the principal challenges you have faced in your job so far? First as a Co-Counsel for Mr. Taylor and now as his Lead Counsel?

MA: The challenges are typical of those faced by other defense teams who represent war crimes accused. We have an up-hill battle in the court of public opinion representing clients who have been demonized to the point where witnesses with helpful information want nothing to do with us, while simultaneously, others without first-hand knowledge of what happened come running to the prosecution to volunteer information. This ⏩

» undoubtedly affects the quality of evidence produced and received in the courtroom, and this bad pre-trial publicity is exacerbated by other factors that arguably influence witnesses, notably "benefits" given by prosecutor offices to witnesses (e.g., access to medical care, housing, communications, and promises of relocation to Western countries, etc.) There is also the issue of significant funding disparities between prosecution and defense, with the frequent justification being that the prosecution has the burden of proof as opposed to the defense. The fact that Mr. Taylor was a former president brings a unique dimension to the experience, in the sense that he was perceived by many powerful nations as being too brash and ambitious as the ruler of a small West African nation and consequently there has been no shortage of enemies in powerful places. The Wikileaks code cables that we introduced into evidence at trial makes these facts plain for all to see.

4. How have you selected your team and who will assist you?

MA: I knew for a while that I would be serving as Lead Counsel on appeal and I consulted lawyers in the field whose views I valued for recommendations of suitable co-counsel and legal assistants. I also watched colleagues whenever we attended defense counsel seminars, and especially when we did exercises in the courtroom, to ascertain those with exceptional skill, professionalism, and collegiality. I did my research in the background for each prospective team member, contacting them only when I was virtually certain that they were the right person for the job. My co-counsel are Dr. Eugene O'Sullivan, Mr. Christopher Gosnell, and Ms. Kate Gibson. I am most pleased with the members of my team and they are, in my view, an exceptional group of lawyers that I feel privileged to lead.

5. After selecting your team, what happens next in the Appellate process?

MA: The typical starting point of the appeals process is to review the Judgment and Sentence, in light of the entire trial record and applicable standards of appellate review. The unusually lengthy judgment makes that exercise in this case a unique, very cumbersome and tedious experience. The familiarity one has with the standards of review on appeal and with the facts of the case neither obviates nor ameliorates the tedious and time-consuming exercise that must still be undertaken. That said, we have already commenced with a filing before the Appeals Chamber in relation to additional time for the filing of our Notice of Appeal. We have requested 5 weeks in addition to the 14 days that the Rules provide for, and the Prosecution has supported our request to the extent only of 3 additional weeks. Nonetheless, the Prosecution wishes to be afforded the same amount of time that we are afforded to file our Notice of Appeal, whether 5 or 3 additional weeks. A Status Conference is scheduled for the 18th of June to discuss our request and other matters relating to the briefing schedule.

6. How long do you expect the appellate process to last and when will the final judgment be rendered?

MA: I expect the appeals process to last between 6 to 9 months, and an additional 6 months for the final judgment on appeal. Should these estimates hold true, it would mean that a final judgment might not be forthcoming until around August – September 2013.

7. How will you define success in your current role?

MA: Success would mean leaving no stone unturned in our legal and factual challenges to the judgment, and exhibiting excellence in our written and oral submissions to the Appeals Chamber. We are not naïve of the political context in which the case began and continues to unfold, however, and we will remain vigilant for the possibility of unearthing additional disclosures, such as the Wikileaks documents during the trial phase of the case.

8. What are the benefits and challenges of working in a "hybrid" system such as the SCSL? Was this solution right for Sierra Leone, instead of having a purely national or international process?

MA: A key benefit of a "hybrid" system is that the affected peoples – Sierra Leoneans in the context of the SCSL -- probably have more of a sense of "ownership" of the dispensation of justice. The same cannot be said of the Balkans vis-à-vis the ICTY, for example. The removal of the Taylor case to The »

»» Hague has naturally diminished this sense of 'ownership' for Sierra Leoneans. However, a key drawback is the possibility of political interference with the national component of such systems, as has been alleged in the case of the ECCC. National legal processes for the gravest of crimes have either been a misnomer because officialdom is seldom without criminal responsibility for mass atrocities, or have had a mixed record in those instances where there is enough political will to charge and prosecute offenders. All-in-all, and save for the funding difficulties which have plagued the SCSL since its inception (due to its reliance on voluntary contributions), the hybrid system has been appropriate for Sierra Leone, in my view.

9. Is the court too expensive and has the tribunal secured funding for the remainder of the appellate process?

MA: I must give the SCSL credit for making every effort to provide adequate funding for my appeals team. The Court learned from the false-start that happened on 4 June 2007 with the commencement of the trial phase of the case when everything ground to a halt after repeated demands by the first defense team for adequate time and facilities for the preparation of Mr. Taylor's defense. Since then, successive Registrar's of the Court (and the current one, in particular) have paid particular attention to ensuring the smooth progression of the Taylor case, given its high visibility and the reality that delay occasioned by lack of adequate resources to the defense ultimately proves far more expensive than providing the defense with what resources are needed to effectively and competently defend Mr. Taylor.

10. There are some, especially the Defence, who argue that the Tribunal cannot deliver fair justice because of the limited jurisdiction of the court and the notoriety of the crimes that were committed in Sierra Leone?

MA: This is a complex question for many reasons. I often give every trier of fact the benefit of the doubt when a case starts, presuming that they are able to divorce themselves from the contextual matrix in which a case happened (political, social, ethnic, etc.) and the locale in which the court sits. But even the most disciplined and fair-minded trier of fact cannot overcome certain idiosyncrasies of these courts/ cases that dilute the quality of justice that can be dispensed even when everything works as it should. Those idiosyncrasies are systemic and include, the significant passage of time between when the crimes occurred and when the cases are tried (this causes unreliability of testimonial evidence), the large temporal and geographic scope of the cases, bad pre-trial publicity against the defense, the severely diluted nature of critical legal standards (such as "proof beyond reasonable doubt") which should otherwise be immutable across space and time, on account of specious logic – "if not so, then such cases would never be tried," the non-existence or the giving of short-shrift to other critical evidentiary principles, involving hearsay, authentication, and the best evidence rule, to name but a few. So these features are what the Defense often and rightly complains about because they render a "fair trial," in the truest sense of the phrase, very difficult. The SCSL is no different than other tribunals in these regards.

11. Every Accused at the SCSL has been convicted and sentenced to long prison sentences. None of the convicted person, including Mr. Taylor, received any reduction in their sentence as a result of mitigating factors. Is there any explanation for this? Does »» »»

the cost of an international trial have any relationship to its propensity to punish?

MA: The first question regarding excessive sentences and failure to consider factors in mitigation implicates an issue I have already said we will be appealing. It seems professionally prudent that I say no more about that, even in relation to sentences that were imposed on other SCSL convicts. The second question is an interesting one, but I know of no empirical studies -- qualitative or quantitative -- which have explicated a correlation between cost of an international trial, on the one hand, and propensity to punish, on the other hand. I would be speculating to suggest such a correlation. Indeed, the propensity to punish and the severity of the sentences could, in certain instances, be justified as much on the gravity of the crimes and culpable conduct in question, as on other factors in the overall scheme of things.

12. How do the Sierra Leonean and Liberian public perceive Mr. Taylor's conviction and sentence?

MA: I wish I had been in the region shortly after the judgment and sentence were pronounced to better gauge the sentiments of common folks. I suspect it has generated very mixed, diverse, and conflicting reactions in both countries. The name "Charles Taylor" is one that evokes passion and variegated feelings for particular folks and all that is certain is that what opinions people hold will be strongly held, in support of, or against, our client. What is equally certain is that contrary to media reports, Mr. Taylor is still well loved by a significant number of Liberians today.

13. What do you think the lasting legacy of the Tribunal will be? Does it set a precedent for an international response to similar crimes in the future?

MA: The lasting legacy of the SCSL will likely be its completion of all cases that were taken to trial and on appeal in a relatively timely manner, other tribunals considered. Whether or not it will set a precedent for international responses to similar crimes remains to be seen. However, there are certain species of international crimes which, in my view, lend themselves to specialized courts/ tribunals of an ad hoc nature, notwithstanding that the ICC remains the future. The Special Tribunal for Lebanon and the crime of terrorism is one such example.

14. You are presently also representing victims in the Kenyan case at the ICC. How do you feel about wearing these two hats – representing victims and doing defence work? How is it perceived in legal and social circles?

MA: To be sure, I am far from unique in our field when it comes to fulfilling both roles simultaneously. There have been many others who have taken a similar path as I have – starting first in prosecutions, then doing defense work and later representing victims. I thoroughly enjoy wearing both hats because it illustrates that things are not always "black and white" as most people would have it. I often tell people that trial lawyers are like surgeons and we welcome and try and save all comers as best as we can, making a living along the way but also believing that we are a necessary and indispensable part of a larger process that we as civilized peoples inherited and preferred. The key is to fight as hard as possible for whomever is your client – victim or defendant. My "two hats" are consequently easily understood by practicing lawyers, but can intuitively seem incongruous to common folk, in the absence of some reflection.

15. What is the most important lesson you have learned from your experience as an international criminal lawyer so far?

MA: Nobody comes out a winner more often than not. Victims are unlikely to be made "whole" emotionally, financially or otherwise by virtue of the criminal process (including any reparations phase because of limited resources), there is a danger of reducing complex matters to cases of "good" versus "evil," as far as offenders are concerned when, in reality, not only those who are in the dock could or should have been charged, and prosecutors and judges can earn no pat on the back when neither victim nor accused have received fundamental fairness.

Wayne Jordash

SCSL: Delayed Justice

As the celebration of Taylor's conviction is played out in the international media, the fact that the Trial Chamber, after nearly 14 months, has still to complete the drafting of the actual Judgment has received scant attention. As pointed out by Geoffrey Robertson QC on 16 April 2012 in Newsweek Magazine, one "disquieting feature of the case is the time the court has taken to deliver this judgment—thirteen months, no less, since the final speeches finished". Obviously, hurriedly completing a 44 page summary of the highlights of Taylor's guilt to ensure that the 26 April deadline was met is not the same as completing a carefully drafted judgment that can circulate within Chambers and be the focus of finely tuned deliberations and frank exchange of judicial views on the myriad of relevant detail.

Accordingly, the controversy arising from Justice Sow's stifled but poignant 'dissent' must be looked at in light of his forthright remarks that he would have acquitted Taylor and was unable to proffer his opinion prior to the hearing on the 26 April 2012 because "no serious deliberations" had taken place. Whilst rumours of the lack of, or serious impediments to, deliberations had been circulating for many months amongst insiders at the Special Court for Sierra Leone (SCSL), there is a good deal of difference between views quietly expressed in the living rooms and restaurants of the Hague and the view of an experienced judge, who, despite a questionable locus to intervene, felt sufficiently strongly about perceived irregularities, to risk bringing himself, the Taylor Judgment and the SCSL into disrepute on such a momentous occasion.

Equally disturbing was the attempt by the SCSL to remove all trace of Justice Sow's intervention from the court records. As reported here previously, as Justice Sow made this statement, the other three Judges walked out of the room, while the court technicians cut off an in-house video feed to reporters, turned off the Judge's microphone and closed the public gallery. Better for the cause of international justice, had we all heard what Justice Sow had in his mind after observing the Trial Chamber at work for the last 5 years or more? Aside from the old adage that justice should be done and seen to be done, Justice Sow's views are highly relevant for the inevitable appeals against conviction and sentence that will take place later this year. Underpinning the Statute, and the subject of several Rules of Procedure and Evidence, is the proposition that the Judges deliberate without fear or favour, affection or ill will and honestly, faithfully, impartially and conscientiously decide on the guilt or innocence of the Accused person. Therefore, whilst Judge Sow's views may well have been cut off in their prime, they make him a prime candidate as a key witness in the forthcoming appeals against conviction and sentence for the Prosecution and the Defence. The SCSL Appeal Chamber may well be advised, for the sake of the appearance of justice, as well as justice itself, to avoid the appearance of attempting to silence critics, especially one as well placed as Judge Sow in a trial as significant as Taylor's.

Finally, whatever the background to Justice Sow's intervention, the fact remains that Trial Chamber II have yet to finalise the Judgment, leaving the unfortunate parties struggling to prepare meaningful written submissions on the appropriate sentence, or making any early assessments on the merits of any appeal. Whilst the separate sentencing procedure at the SCSL was considered to be a welcome and overdue improvement on the situation that prevailed at the International Criminal Tribunal for Yugoslavia (ICTY) and Rwanda (ICTR), this situation places both the Prosecution and Defence into the arguably worse position of having to make submissions based on the generalised findings without any real knowledge of which evidence was accepted and why. Given, inter alia, ⏩

⏩ that the parties must address the Trial Chamber on an individualized and proportionate sentence, requiring a careful analysis of the gravity of the offence, as well as the form and degree of participation in the crimes, as well as an analysis of the mitigating factors that must be carefully weighed, it is difficult to see how the parties will be able to materially assist the Trial Chamber to the extent required to ensure fairness and justice. Perhaps, it was this kind of concrete prejudice that Geoffrey Robertson QC had in mind when he correctly pointed out that "it remains true that justice delayed is justice denied, especially in a court whose first president promised that 'our justice, whilst it may not be exquisite, will never be rough'."

Wayne Jordash, a barrister at Doughty St Chambers, specialises in international and humanitarian law, international criminal and human rights law and transitional justice.

Toronto Star
Tuesday, 26 June 2012

Correction

The war crimes trial and conviction against deposed Liberian president Charles Taylor was conducted by the Special Court for Sierra Leone, not the International Criminal Court as was mistakenly stated in a June 26 Opinion article about the international criminal justice system's dealings in Libya. In addition, the article said the Australian foreign minister went to Tripoli. In fact, it was the Australian ambassador. The article also stated that Luis Moreno Ocampo, chief prosecutor for the ICC was due to retire at the end of July. He retired on June 15.

ilawyerblog.com
Tuesday, 12 June 2012

The Sierra Leone Judiciary eight years after the Truth and Reconciliation Commission Report

by Anna Bonini

After a period of inactivity due to financial constraints, the website of the Sierra Leone Truth and Reconciliation Commission ('TRC') was re-launched on 29 May 2012. In a recent article appeared in Sierra Express Media, Sonkita Conteh emphasises the importance of this achievement.

The Sierra Leone TRC was established by the Lomé Peace Accord, signed on 7 July 1999 between the opposing factions in the civil war that gripped Sierra Leone for over a decade. The Commission was mandated to "create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone […], to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered." Following extensive investigations and public hearings between 2002 and 2004, the Commission issued its final report to the Sierra Leone Government, as well as the UN Security Council. This three-volume report includes detailed findings on the violations and abuses occurred during the civil war and the identity of their victims and perpetrators, as well as extensive recommendations for the Sierra Leonean Government moving forward.

TRC public hearings in Makeni on 29 May 2003 (Source: www.sierraleonetrc.org)

Sonkita Conteh explores the developments in Sierra Leone since the report was issued almost a decade ago, particularly with regard to the situation of the judiciary. In this respect, some important achievements must be noted: a few more court buildings have been erected, a code of conduct for judicial officers has

been adopted and legislation dealing with legal aid has been enacted. Nevertheless, the picture emerging from Sonkita Conteh's article is, overall, a gloomy one.

Corruption remains a widespread problem within the Sierra Leonean judiciary, as do the idiosyncrasies of the judicial system's hierarchical structure. On the one hand, the lack of central supervision means that many courts, particularly the lower and rural ones, remain "painfully shambolic and unproductive". On the other hand, senior judicial officers often interfere in court proceedings at the lower level, dictating the outcome of many Magistrates' Courts cases. The conduct of court hearing is an additional source of concern, as "magistrates fail to protect [litigants, witnesses and accused] from the coarse goading of lawyers who mask their inability to properly examine witnesses in insult. Regrettably, magistrates have been observed joining in ridiculing witnesses especially in sexual offences cases. Accused persons in detention, and without legal representation, fare worse."

Wide-ranging reform at most, if not all, levels of the Sierra Leone judicial system appears urgently needed. In this context, the resuscitated TRC website is a significant achievement and an opportunity for the people of Sierra Leone to be reminded of the country's troubled past and of the challenges still laying ahead, measuring present action in the hope that "things might so improve in the judiciary as to command a volte-face in public opinion".