

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



A rusting cannon guards the ruins of Bunce Island, the historic slave-trading fortress off the coast of Freetown. The site is badly in need of preservation. See more in today's *'Special Court Supplement'*.

PRESS CLIPPINGS

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

as at:

Tuesday, 28 August 2007

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

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Standard Times

Tuesday, 28 August 2007

An Examination of Joint Criminal Enterprise in The Special Court's Decision of the AFRC Trial

On 20 June 2007, Trial Chamber II of the Special Court for Sierra Leone handed down the Court's first judgment in the trial of the alleged leaders of the Armed Forces Revolution Council (AFRC), Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu. While the Trial Chamber found all three defenders guilty on eleven of the fourteen charges, it announced that "the Trial Chamber (would) not consider joint criminal enterprise as a mode of criminal responsibility" on the grounds that Prosecutor had "defectively pleaded" it.

The decision could prove significant in other Special Court cases where Prosecutor has similarly pleaded joint criminal enterprise (JCE) and the Prosecution case relies heavily on JCE as a mode of criminal responsibility. A close analysis of the decision however reveals that while it creates a high hurdle to establish JCE as pleaded, it still preserves the possibility that the Prosecutor may overcome that hurdle with the right evidence.

"Joint criminal enterprise" is a mode of criminal responsibility or way that a court may find an individual responsible for a crime. In a JCE, an accused is held responsible not based on his personally committing the crime, but based on his participation in a common plan that leads to the commission of that crime. This mode of criminal responsibility was first articulated in the International Criminal Tribunal for the former Yugoslavia Appeals Chamber decision in *Prosecutor v. Dusko Tadić*. The ICTY Appeals Chamber articulated the modes' element, or what the Prosecutor must prove in order to convict the accused using that mode of responsibility: 1) "(a) plurality of persons; 2) the existence of a common plan, design or purpose that involves the commission of a crime provided for in the Statute; and 3) the participation of the accused in the common plan involving the perpetration of the crime provided for in the Statute."

The Tadić Court also described three forms of JCE, named in the SCSL's AFRC decision: basic, systemic and extended. In the basic form, all members of the common criminal enterprise, including the accused, intend to commit a given crime and all are responsible for forming and carrying out the plan to commit that crime. The systemic form refers to so-called "concentration camp" cases;

under this form, an accused may be found guilty for participating in an institution where human rights abuses occur if he or she knew of abuse willingly participated in the institution and implicitly participated in the institution and implicitly or explicitly expressed the intent for the abuses to continue. Thus under this form of JCE, an administrator to continue. Thus under this form of JCE, an administrator at a concentration camp may be held criminally responsible for acts of torture that occurred there, even if he or she did not personally commit acts or torture provided he knew about them and continued to work there. Finally the extended form of JCE holds an accused responsible for crimes committed by another member of the enterprise that the accused did not intend but that were a foreseeable consequence of common criminal plan in which he willingly participated. Note that for the extended form the Prosecutor need not show that the accused intended the crime with which he is charged; the Prosecutor must only show that the crime was as a foreseeable consequence the common plan and that the accused willingly took part in that plan.

JCE has been subject to a number of criticisms.

First, it was not explicitly stated as a mode of criminal responsibility in the statutes for either the ICTY or the SCSL. The Chamber in Tadić asserted that the ICTY statute implied JCE as a mode of criminal responsibility because Article I extended ICTY jurisdiction to "all those responsible for serious violations of international humanitarian law" committed in the former Yugoslavia. Reasoning that holding criminally liable "only the person who materially performs the criminal act would disregard the role of co-perpetrators of all

those who in some way made it possible for the perpetrator physically to carry out the criminal act, the Court concluded that the Statute implicitly allowed joint criminal enterprise as a mode or responsibility that already existed in customary international law. Critics argue that this kind of "judicial creativity" overreaches. The Tadic decision has been further criticized on the ground that the Chamber cited to establish JCE was customary the most controversial aspects of contemporary joint criminal enterprise doctrine. In other words, JCE as articulated by the ICTY may not have been customary international law at all. Other critics argue that JCE effectively functions to find defendant defendants guilty by association or becomes a kind

of organization liability, where an individual is found criminally responsible for others' action simply because he associated with them.

Finally, the "extended" form has been criticized on the grounds that it does not require either a causal link between either the defendant's action or his intention and the resulting crime.

In the AFRC judgment, however, Trial Chamber II does not criticize in general, but only as pleaded in this particularly case. The Trial Chamber first asserts that a JCE must be "inherently criminal," usually because it has the aim of committing a substantive crime under the statute, and cites a series of ICTY cases as support. Paragraphs 33 and 34 of the AFRC indictment charge that the AFRC accused formed a common plan with the RUF "to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas." As the Trial Chamber point out, however, such a goal does not constitute a crime under international law."

Since the indictment fails to plead the necessary element that the common plan exist for the purpose of committing a crime under the Statute, the Trial Chamber reasons, the indictment is defective.

The Trial Chamber then, however, expand on the ways that a Prosecutor may charge that a common plan was criminal when it agrees with the Prosecution's assertion that "a JCE only needs to 'involve' the commission of the crime," rather than be formed with the goal of committing a crime. The Trial Chamber clarifies, however, that if the Prosecutor charges that a plan "involved" crimes, then the "fundamental question becomes" whether the agreement involved international crimes at the inception of JCE

because before it involved crimes it was, by definition, not JCE. Trial Chamber seems to mean that if the common plan "Involved crimes, presumably meaning that the commission of crimes constituted an agreed-upon action or was an inherent and inevitable result of the goal of the common plan, then the plan must have involved committing such crimes from the beginning of the agreement. This does not seem to logically follow because an initially lawful agreement may transform over time to "involve" crimes. In reasoning, the Trial Chamber may have anticipated its own further criticism of the Indictment: that it fails to specify the time period over which the alleged JCE existed.

Since the Prosecutor has asserted that accused were charged with a JCE at "all times relevant to the indictment," and the alleged JCE developed during the Indictment period, then the Prosecutor must show the JCE as inherently criminal from its inception. Ultimately the Trial Chamber concludes that the indictment is defective in part because "from the evidence"

presented in the case the Prosecutor has not established the alleged JCE was criminal from its inception.

While the Trial Chamber presents the issue as a defective pleading, it can be reframed as an evidentiary problem. While the Trial Chamber asserts that the indictment was pleaded incorrectly because it pleaded charges in way that that Prosecutor could not prove, one could instead present the problems as a lack of evidence to prove the charges in the Indictment. This distinction affect the judgment's implications for other Special Court cases, particularly those of Charles Taylor and the RUF accused, which rely heavily on JCE as a mode of criminal responsibility. Since the cases are being argued and the evidence presented separately, the Prosecutor could theoretically produce new or alternative evidence that proves beyond a reasonable doubt that the common plan "involved" crimes at its inception.

Thus while this case creates strict requirements for what the Prosecutor must prove beyond a reasonable doubt in the cases in order to use JCE as a mode of criminal responsibility, it has still left the door open for the Prosecutor to meet those requirements by presenting more or different evidence to establish that the agreement in question "involved" crimes from its inception.

If the Prosecutor were successful, however, it could create an odd situation in which for example, the RUF defendants are convicted of having formed a JCE with the AFRC, but the AFRC defendant had not received any finding about whether it formed a JCE with the AFRC. Indeed, this outcome is more than just a possibility; while Charles Taylor will be tried by Trial Chamber II in The Hague, Trial Chamber I will resume trying the RUF accused in September.

Since Trial Chamber II is not bound by Trial Chamber I's decision, and, indeed, had already concluded that JCE was not defectively pleaded in the AFRC case, it could draw its own, contradictory, conclusions about the pleading of JCE. Ultimately, this decision may not be settled unless it is appealed the issue is appealed and decided as a matter of law by the Appeals Chamber of the SCSL.

Awoko

Tuesday, 28 August 2007

Kabbah threatens State of Emergency

By Kelvin Lewis

President Tejan Kabbah has in a nationwide address threatened that he will impose a state of emergency if the spate of unrest does not cease.

The President recalled his address to the nation last week in which he admonished Sierra Leoneans to "refrain from violence"

He also reiterated that as President he was not going "to sit idly by and allow anyone to take the law into his own hands and destroy everything that we have achieved since the end of the war."

President Kabbah stated that he was "deeply distressed" by the events of the weekend where certain groups "went on the rampage in parts of the city of Freetown, Koidu Town and their environs, intimidating, threatening and molesting

peaceful citizens."

He warned that "Government will deal firmly and promptly with anyone bent on unleashing another round of mayhem on our country."

"These acts of provocation must stop now" he said adding that "Government will employ all legal and constitutional measures necessary in order to preserve and maintain law and order throughout the country."

The President further stated "as a final warning all those responsible for the violence and lawlessness should be prepared for the consequences" threatening that "as from henceforth Government shall not hesitate one moment to declare a state of public emergency if the current

spate of intimidation, molestation and violent acts is not stopped immediately."

President Kabbah called on the leaders of the APC and the SLPP to appeal to their followers "to respect the constitutional provisions for electing the President and Parliament in a safe and secure environment."

He ended with the hope that his government "will not be compelled to take drastic measures that may be necessary to protect the people from wanton activities of a group of self seeking, unpatriotic and power hungry individuals."

A lawyer speaking under condition of anonymity stated that if the President declares a state of emergency, the Elections will automatically be postponed. She indicated further the President may however need to summon Parliament.

BBC

Tuesday, 28 August 2007

Emergency threat in Sierra Leone

Sierra Leone President Ahmad Tejan Kabbah has threatened to impose a state of emergency if election violence between rival parties does not stop.

Two days of clashes have marred campaigning for the second round of Sierra Leone's presidential elections.

In a TV address, Mr Kabbah said the country - which endured a brutal civil war - had suffered too much to allow chaos and civil unrest again.

He urged the two rival candidates to call for calm among their supporters.

"All those responsible for the violence and lawlessness should be prepared for the consequences," President Kabbah warned.

"The government shall not hesitate for one moment to declare a state of public emergency if the current state of intimidation, molestation and violent acts is not stopped immediately."

Tension grows

Police have stepped up their patrols around the capital, Freetown, after firing tear gas to disperse rival supporters who clashed in the streets on Sunday and Monday.

They have also declared a dusk-to-dawn curfew in the diamond-rich eastern district of Kono after several people were injured when hundreds of rival supporters clashed.

BBC West Africa correspondent Will Ross says that should a state of emergency be declared it is possible that the presidential run-off election could be postponed or all campaigning banned.

The first round of landmark elections on 11 August was judged free and fair by observers.

The opposition APC candidate, Ernest Bai Koroma, took 44% of the vote in the first round, and the ruling SLPP candidate and Vice-President Solomon Berewa, polled 38%.

But tensions are high ahead of the 8 September second round, with opposition supporters confident of winning.

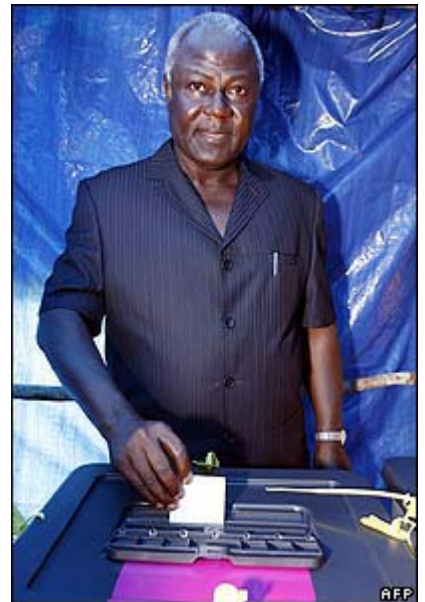
The APC won control of the national parliament and Mr Koroma has also secured the key support backing of the third placed candidate in the first round presidential poll, Charles Margai, who polled 14%.

Our reporter says that after a lengthy civil war it is vital that these elections pass off smoothly.

The violence is worrying not just for Sierra Leoneans but also for the neighbouring countries in this fragile region, he says.



Voters showed great enthusiasm for the poll



Ernest Bai Koroma topped the first round of the presidential poll

UN News Service (New York)

Monday, 27 August 2007

Security Council Applauds Successful First Round of Sierra Leonean Polls

The Security Council today welcomed the recent peaceful staging of the first round of Sierra Leone's presidential and parliamentary elections and called on the country's people to maintain their respect for independent national institutions and processes during the upcoming presidential run-off process.

In a statement to the press read out by Ambassador Pascal Gayama of the Republic of Congo, which holds the rotating Council presidency this month, the 15-member panel praised the "exemplary conduct" of Sierra Leoneans during the first round of the polls, held on 11 August.

Council members urged the public "to maintain the same sense of purpose, discipline and patience as the electoral process enters its final and decisive phase," the run-off in the presidential election on 8 September between Ernest Bai Koroma of the All People's Congress (APC) and incumbent Vice-President Solomon Berewa of the Sierra Leone People's Party (SLPP). The two men are vying to succeed Ahmad Tejan Kabbah.

The statement called on the West African country's political parties to continue to campaign within the code of conduct they have signed, to fully respect the independence of the National Election Commission and to resolve any dispute over the results only through legal and peaceful channels.

Mr. Gayama also commended the work of the National Election Commission and the security arrangements provided by Sierra Leonean authorities, including the national police, during the first-round of balloting, as well as the efforts of the international community, particularly those who served as election observers.

The press statement follows a similar statement earlier this month by a spokesperson for Secretary-General Ban Ki-moon, who also welcomed the peaceful atmosphere of the first round of voting but cautioned that the same atmosphere must prevail during the remainder of the election process.

The vote on 11 August was Sierra Leone's second since the end of the decade-long civil war in 2002, and the first since the withdrawal of the UN Mission in Sierra Leone (UNAMSIL) in December 2005.

United Nations  Nations Unies
United Nations Mission in Liberia (UNMIL)

UNMIL Public Information Office Media Summary 27 August 2007

[The media summaries and press clips do not necessarily represent the views of UNMIL.]

International Clips on Liberia

There were no relevant stories on Liberia in the international media today.

International Clips on West Africa

Sierra Leone police use tear gas to stop fight between rival party members

Source: English Politics News

Date: August 27, 2007

FREETOWN, Sierra Leone_Police used tear gas to disperse a rioting crowd after a fight broke out between supporters of rival political parties before next month's presidential run-off in Sierra Leone, a police official said Monday. The clash began after ruling party supporters emerged from a campaign meeting in eastern Freetown late Sunday and tore down the poster of the opposition candidate, Assistant Inspector General of Police Chris Charley told the U.N.-backed FM 103 radio station.

Local Media – Newspaper

Former Transitional Chairman Bryant Loses Petition

(Daily Observer, The Monitor, The Inquirer, Heritage, The Informer, New Democrat, The News, Public Agenda and Liberian Express)

- The Supreme Court of Liberia has denied a motion of prohibition filed by lawyers representing former Transitional Chairman, Gyude Bryant and has granted permission to the state to proceed with his prosecution.
- Handing down its ruling, the court said Mr. Bryant was not a sitting President of Liberia at the time he headed the Transitional Government and revealed that based on a resolution passed by the erstwhile National Transitional Legislative Assembly (NTLA) to investigate and audit all income and expenditures of the NTGL the motion was being denied.

Liberia, Nigeria Sign Military Pact

(Daily Observer, The Inquirer, The News, Public Agenda, Liberian Express and The Analyst)

- Speaking to journalist at the weekend in Monrovia, Defense Minister, Brownie Samukai disclosed that about 220 military personnel from the Armed Forces of Liberia (AFL) are to be trained by the Nigerian Army as part of a defense pact signed between the governments of the two countries last Thursday in Abuja.

UNMIL Gets New Deputy SRSG

(Daily Observer and Public Agenda)

- The Special Representative of the Secretary General (SRSG), Mr. Allan Doss has welcomed the appointment of Ms. Henrietta Mensa-Bonsu as the new Deputy Special Representative of the Secretary General with responsibility for the rule of Law in the United Nations Mission in Liberia.

- Ms. Mensa-Borsu whose appointment was announced by UN Secretary General at the UN Headquarters in New York is currently a Professor of Law at the University of Ghana, where she's also acting Dean of the Faculty of Law.

Ambassador Wallace Advances Suggestion to Reclaim Liberia's Future

(The Inquirer, The Informer, The News, National Chronicle and The Analyst)

- Serving as the orator of the 160th Flag Day celebration, the Outgoing Minister of Foreign Affairs, Ambassador George Wallace says in order for Liberia to reclaim the future, the youths of the country must be motivated and fully engaged into positive action that will guarantee a peaceful, secure and prosperous nation.
- Ambassador Wallace said the youths must be empowered as they were important in the reconstruction drive of the country and paid tribute to the Lone Star which he said fluttered at the most difficult time in the nation's history.

Local Media – Radio Veritas *(News monitored today at 9:45 am)*

Catholics Launch Intellectual Forum for Renowned Prelate

- Correspondents said that the launch of the second edition of the Archbishop Michael Kpakala Francis Intellectual Forum took place in Gbarnga, Bong County with the Regional Programme Officer of the
- Foundation for International Dignity saying that the move was part of effort to establish the lecture in 13 of the 15 Counties of Liberia.

(Also reported on Star and ELBC Radio)

Supreme Court Says Chairman Bryant Must be Prosecuted

(Also reported on Star and ELBC Radio)

Liberia and Nigeria sign Pact to Train New Army Recruits in Nigeria

(Also reported on Star and ELBC Radio)

Complete versions of the UNMIL International Press Clips, UNMIL Daily Liberian Radio Summary and UNMIL Liberian Newspapers Summary are posted each day on the UNMIL Bulletin Board. If you are unable to access the UNMIL Bulletin Board or would like further information on the content of the summaries, please contact Mr. Weah Karpeh at karpeh@un.org.

Special Court Supplement The Historic Slave-Trading Fort at Bunce Island



Heavily forested Bunce Island from the sea.



An ancient cannon, partly covered by water.



The ruins of the gate to the slave-holding area.



The slave-holding area was open to the elements.



Vines help to hold the fort ruins together.



The path which led to the slave ships.



The remains of a water well, long dry.



A line of cannons remains on the heights...



...looking out to sea.



Wall of the residential area.



The interior of the residence.



The residence had a fireplace without a chimney.



Trees now grow on top of the walls.



The inside of the ammunition magazine.



The door of the magazine, from inside.



The caretaker's stories are colourful...



...but not always historically accurate.



The cemetery, a short way through the forest.