SPECIAL COURT FOR SIERRA LEONE
OUTREACH AND PUBLIC AFFAIRS OFFICE

Appeals Chamber judges at last week's oral arguments in Charles Taylor's case.

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:
Monday, 28 January 2013

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

Local News

International News

The Exclusive
Monday, 28 January 2013

RUF Depended On Taylor

Sierra Leone's rebels depended on logistics provided by Liberian ex-President Charles Taylor to kill, rape and mutilate thousands during the West African nation's savage civil war, prosecutors said on past Wednesday at his appeal hearing.

The Revolutionary United Front "relied on Taylor's logistical assistance", Nicholas Koumjian told Sierra Leone's UN-backed special court, where the former warlord is appealing a 50-year prison sentence.

"Without this support, thousands would not have been killed, would not have been amputated, would not have been taken as sex slaves," he told a second day of the appeals hearing, held at the court's headquarters in Leidschendam just outside The Hague.

Dressed in a grey suit, white shirt and dark tie, with rimless round glasses perched on his nose; Taylor frowned often as he listened intently to the prosecution's arguments.

The Special Court for Sierra Leone (SCSL) in April last year convicted Taylor, 64, for aiding and abetting the RUF and its allies which waged a terror campaign during a civil war that claimed 120 000 lives between 1991 and 2001.

His sentence for "some of the most heinous crimes in human history" was widely welcomed around the world and was the first handed down by an international court against a former head of state since the Nazi trials at Nuremberg in 1946.

As neighboring Liberia's president from 1997 to 2003, Taylor gave rebels guns and ammunition in their fight against Freetown during the conflict, known for its mutilations, drugged child soldiers and sex slaves, trial judges found.

In return, trial judges found, Taylor was paid in "blood diamonds" mined by slave labor in areas kept under the control of ruthless Sierra Leonean rebels.

Court wrong

Taylor's lawyers however, argued on Tuesday that he could not be linked to weapons used by rebels to commit any crimes in Sierra Leone.

They said the court made legal mistakes in convicting the former strongman and asked appeals judges to reverse the conviction and quash the sentence.

Prosecutors argued Taylor's sentence was too light and asked, on appeal, for 80 years.

Taylor's trial, which ended in March 2011, saw a number of high-profile witnesses testify including British supermodel Naomi Campbell, who told the court she received a gift of "dirty diamonds", said to be from the flamboyant Taylor.

Appeals judges are expected to have a decision by September at the earliest.

If his appeal fails, Taylor will serve his sentence in a British jail.

The Exclusive
Monday, 28 January 2013

Charles Taylor Oral Appeal Hearings Held On Tuesday Jan. 22 and Wednesday Jan. 23 2012

THE APPEALSChamber of the Special Court for Sierra Leone heard the oral submissions from prosecution and defense lawyers in the Charles Taylor appeal on Tuesday January 22 and Wednesday January 23 2012. The hearings will commence on 10:00 AM each day.

The statement below was issued by the Public Information Section of the Court, explaining the issues that will be covered in the oral hearings, and the sequence in which the parties will address the Appeals Chamber.

1. The Parties shall be prepared to respond to oral questions posed by the Justices about issues raised in their Written Submissions; and

2. The Parties will otherwise be asked to limit their submissions to the following issues pursuant to Rule 114 of the Rules of Procedure and

Evidence:

(i)Whether the Trial Chamber correctly articulated the actus reus elements of aiding and abetting liability under customary international law.

(ii) The differences and similarities between aiding and abetting, instigation and ordering as forms of liability under Article 6(1) of the Statute.

Whether customary international law recognizes that certain forms of liability set forth in Article 6(1) of the Statute are more or less serious than other forms of liability for sentencing or other purposes.

(ii) Whether the Trial Chamber's findings meet the mens rea standard of purpose.

(iii) Whether acts of assistance not "specifically directed" to the perpetration of a crime can substantially contribute to the commission of the crime for aiding and abetting liability. Whether the Trial Chamber's findings meet the "specific direction" standard.

(iv) Whether acts of assistance not to the crime "as such" can substantially contribute to the commission of the crime for aiding and abetting liability. Whether the Trial Chamber's findings meet the "as such" standard.

(v) Whether the sources of law identified in Rule 72 bis (ii) and (iii) establish that uncorroborated hearsay cannot be relied upon as the sole basis for specific incriminating findings of fact.

(vi) How the Appeals Chamber should apply existing jurisprudence relating to adjudicated facts under Rule 94(B) in the context of a defence motion for the admission of adjudicated facts following the close of the prosecution case.

Subject to adjustments where appropriate, the timetable for the Appeal Hearing shall be as follows:

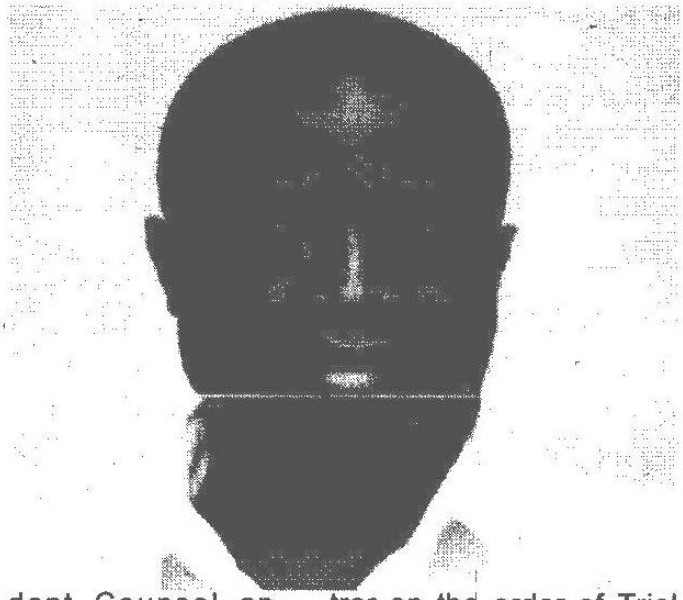
Tuesday 22 January 2013
Morning: Prosecutor's submission on the stated issues
Afternoon: Taylor's submissions on the stated issues

Wednesday 23 January 2013
Morning: Prosecutor's Response; Taylor's Response
Afternoon: Prosecutor's Reply; Taylor's Reply

Salone Times
Monday, 28 January 2013

Former Special Court Investigator Convicted of Interference With Witnesses

Prince Taylor, a former Defence investigator with the Special Court, was convicted on Friday on five contempt counts for interfering with witnesses who had testified in the trial of former Liberian President Charles Taylor.



Four of the counts for which he was convicted related to attempts by Taylor to induce former Prosecution witnesses, through Eric Koi Senessie, to recant testimony they had given before the Court. The fifth count related to "instructing and otherwise persuading Eric Senessie to give false information to the Independent Counsel appointed by the Registrar on the order of Trial Chamber II" at a time when he was a potential Prosecution witness.

Senessie, a former RUF member who was convicted in June 2012 on eight counts of interference with the same witnesses, gave testimony against Prince Taylor at his trial.

Taylor was acquitted on four counts of offering a bribe to witnesses to induce them to recant their testimony.

A sentencing judgement will be scheduled at a later date.

Awareness Times
Monday, 28 January 2013

Special Court Wraps Up On Taylor

The Special Court is reported to have concluded the Appeals hearing on the former Liberian President, Charles Taylor, past Friday. Meanwhile, the Appeals Chamber has reportedly retired as it prepares to come out with the final judgement on the matter. The judgement, according to report, is expected on the 23 of September 2013.

Sierra Express Media
Friday, 25 January 2013

Former Special Court Investigator Convicted of Interference With Witnesses

By: SEM Contributor

Freetown, Sierra Leone, 25 January 2013 – Prince Taylor, a former Defence investigator with the Special Court, was convicted on Friday on five contempt counts for interfering with witnesses who had testified in the trial of former Liberian President Charles Taylor. *(Photo: Prince Taylor)*

Four of the counts for which he was convicted related to attempts by Taylor to induce former Prosecution witnesses, through Eric Koi Senessie, to recant testimony they had given before the Court. The fifth count related to "instructing and otherwise persuading Eric Senessie to give false information to the Independent Counsel appointed by the Registrar on the order of Trial Chamber II" at a time when he was a potential Prosecution witness.

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A sentencing judgement will be scheduled at a later date.

BBC
Friday, 25 January 2013

Charles Taylor trial: Investigator guilty of contempt

Prince Taylor was a court investigator working on Charles Taylor's defence

A former defence investigator with the UN-backed Special Court for Sierra Leone has been convicted of interfering with witnesses in the trial of Charles Taylor, Liberia's jailed ex-president.

Prince Taylor was found guilty on five counts of contempt, the court said.

He is accused of attempting to persuade prosecution witnesses to recant their testimony through a former Sierra Leone rebel, Eric Koi Senessie.

Charles Taylor is currently appealing against his sentence at The Hague.

He was sentenced to 50 years in prison last May for war crimes by providing arms and support to the Revolutionary United Front (RUF) rebels in neighbouring Sierra Leone during its bloody 1991-2002 civil war.

Defence lawyers have called the verdict a "miscarriage of justice" and want the conviction to be quashed.

'Heinous crimes'

Prince Taylor was found guilty on four courts of trying to persuade former witnesses to recant their testimony through Senessie, a member of the RUF.

Taylor timeline

• 1989: Launches rebellion in Liberia

• 1991: RUF rebellion starts in Sierra Leone

• 1997: Elected president after a 1995 peace deal

• 1999: Liberia's Lurd rebels start an insurrection to oust Taylor

• June 2003: Arrest warrant issued; two months later he steps down and goes into exile to Nigeria

• March 2006: Arrested after a failed escape bid and sent to Sierra Leone

• June 2007: His trial opens - hosted in The Hague for security reasons

• April 2012: Convicted of aiding and abetting the commission of war crimes

• May 2012: Sentenced to 50 years in jail

• June 2012: His lawyers say he will appeal against his conviction

He was also found guilty of "instructing and otherwise persuading Senessie to give false information to the independent counsel appointed by the registrar".

Mr Senessie was convicted by the Special Court last June on eight counts of interference with the same witnesses and sentenced to two years in prison the following month.

He gave evidence against Prince Taylor at his trial.

Prince Taylor was acquitted of four counts of trying to bribe witnesses to alter their testimony. He is due to be sentenced by the Special Court at a later date.

Charles Taylor became the first former head of state to be convicted of war crimes by an international court since the Nuremberg trials after World War II.

He was found guilty on 11 counts of war crimes, relating to atrocities that included rape and murder and described by one of the judges as "some of the most heinous crimes in human history".

In return for so-called blood diamonds, Taylor provided arms and both logistical and moral support to the RUF, prolonging the conflict and the suffering of the people of Sierra Leone, prosecutors said.

Taylor started Liberia's civil war as a warlord in 1989, and was elected president in 1997. He governed for six years before being forced into exile in southern Nigeria. He was arrested in 2006 while trying to flee Nigeria.

The Perspective
Friday, 25 January 2013
http://www.theperspective.org/2012/0125201301.html

We the Victims: Why Liberians Must Demand a War Crimes Tribunal For the Prosecution of Crimes Against Humanity

By: Charles Kwalonue Sunwabe, Jr., Esq.

With the recent conviction of former Liberian President Charles Taylor by the UN-backed Special Court for Sierra Leone (SCSL), attention is again focused on the need to establish a war crimes court for the victims of Liberia's greed-driven civil war. This noble quest for justice is being resisted by some biased Liberian politicians - notably, Bong County's senior senator and former Liberian first lady, Honorable Jowell Howard Taylor. Senator Prince Johnson, a notorious warlord who stands accused of committing some of the worst atrocities against Liberian humanity is also one of the leading voices of opposition to the call for justice in Liberia.

Senator Johnson, a disreputable war criminal, has vowed to kill any legislation that seeks to establish a war crimes' court in Liberia. Another terrible Liberian warlord, Alhaji G.V. Kromah, a Liberian trained lawyer who is infamous for the decapitation of innocent civilians has registered his vehement opposition to the establishment of a war crimes court for Liberia as well. In addition to his infamy for overseeing the decapitation of innocent civilians, Kromah is equally notorious for using human intestines as tollbooths. Warlord Kromah, an ally of Liberian president Ellen Johnson-Sirleaf, was recently elevated to a top diplomatic position, where he is using his position to thwart his victims' plea for justice. It has been warlord Kromah's position that the Cotonou Accord of 1994 granted him and Liberia's other evil Warlords amnesty for crimes that they committed individually and collectively against the Liberian masses during our monstrous civil calamity.

Liberia's anti-war crimes court sentiment is not limited to the warlords alone. Recently, some rogue Liberian-trained attorneys who are mostly naïve and misinformed about the international criminal law practice have joined the opposition calling for inclusive justice in Liberia. These legal charlatans, sycophants, and opportunists have argued, rather ineptly, that President Sirleaf's Liberia has the authority to pardon crimes against humanity committed in Liberia. Their in-artful legal position amounts to a grubby legal fiction—it is devoid of serious legal analysis and amounts to an entirely untenable and unsupported legal position. These hired henchmen of former Liberian warlords have mounted repugnant attacks on the Liberian Truth and Reconciliation Commission's (TRC) recommendation calling for a war crimes court for Liberia. According to these Liberian warlords' emissaries, the TRC recommended court would run contrary to a provision of the Liberian Constitution, which posits that all subordinate and parallel courts in Liberia be established pursuant to the Liberian Constitution.

In writing this article, I advocate a position consistent with both the Liberian Constitution and the prevailing norms of international criminal law—a position that stands in stark contrast to the self-serving position of the warlords and their associates. In so doing, this article makes the following central arguments: (1) crimes against humanity have been committed on Liberian territory; (2) Liberia is obligated under international criminal law to bring to justice those individuals who are responsible for such crimes; and (3) crimes against humanity cannot be amnestied or pardoned. This article also argues that a hybrid international court for Liberia would be complementary, and not violative, of the Liberian Constitution.

1) Crimes Against Humanity Have Been Committed On Liberian Territory.

In the debate on the need for a war crimes court for Liberia, little if any time has been devoted to the nature and definition of crimes committed against the Liberian masses. That may be because it cannot seriously be questioned that such crimes occurred. Nevertheless, there is no more essential starting point in the conversation regarding whether an international court is needed than whether international crimes were in fact perpetrated.

The U.S. Military Tribunal at Nuremberg defined international crime as: “such act universally recognized as criminal, which is considered a grave matter of international concern and for some valid reasons cannot be left within the exclusive jurisdiction of the state that would have control over it under ordinary circumstances.” See specifically Ahmed et al. Additionally, according to the UN, crimes that shocked the conscience of humanity and can be easily characterized as a “threat to world peace” or a “breach of peace,” have the effect of making a conflict a concern of the international community—the resulting crimes such as genocide, ethnic cleansing, rape, forced conscription, piracy, and slavery are the prerogative of the international community. Although such crimes may have occurred within the borders of a particular country, by their very nature, they defy boundaries in a unique way: their pain, sorrow, and dehumanizing effect fall within a global heritage of pain. In this vein, they constitute crimes committed against all of humanity and can only be pardoned if everyone, everywhere in the world, agrees to pardon the perpetrators—an impossible and never before heard of undertaking.

It is an irrefutable fact that crimes classified as crimes against humanity were committed on Liberian territory by the various warlords and their stooges—innocent men, women, and children were killed on account of their ethnicity. Even the passage of time cannot erase the painful refrain of the warring factions: “cut his throat.” In places like Bakadou, Lofa County; St. Peter Lutheran Church, Montserrado County; Duport Road, Montserrado County; and Po River Bridge, Gbarnga, Bong County; scores of innocent men, women, and children were slaughtered.

Elsewhere in Liberia, the killing spree was the same: Grand Bassa County, 1990-1999; Greenville, Sinoe County, 1990-2003; Nimba County, 1990-2003; Grand Gedeh County, 1990-2003; Margibi County, 1990-2003; Lofa County, 1990 – 2003 and literally the entire country – saw the atrocities of murder and rape, as well as unimaginable cruelty and unceasing brutality, which were committed by warlords and their accessories. In monstrous fashion, warring factions ripped pregnant women while they were alive and extracted their fetuses, so that the sex of the fetuses could be determined. These innocent women died of agonizing and unrelieved pain, while the perpetrators celebrated with songs and laughter. It was routine to see the skulls and intestines of innocent victims displayed as tollbooths by the factions. Two of the warlords, Major Charles Taylor and aforementioned Kromah (a self-anointed “General”), collected the blood of their innocent victims for voodoo purposes. Kromah later boasted that he could turn into a snake and elude his enemies. Taylor, on the other hand, claimed that he could vanish whenever it was necessary. General Prince Johnson, a deranged psychopath, had a live scorpion sitting on his shoulder which he featured as a battle prowess; he maintained that he derived powers from the scorpion when in battle. Combined, these men masterminded, commanded, and slaughtered countless innocent Liberians. Collectively, it is beyond question that their atrocities amounted to crimes against humanity.

2) Crimes Against Humanity Cannot Be Pardoned or Amnestied.

In the domain of international criminal law, it is a foregone conclusion that crimes against humanity cannot be pardoned or amnestied. Granting pardons and amnesty to perpetrators of genocide, war crimes, ethnic cleansing, and other forms of crimes against humanity has been found to be legally objectionable and unconscionable. An international prosecutor charged with prosecuting crimes against humanity and genocide is not bound by any pardons or amnesty arrangements entered into by the UN, regional organizations, or sub-regional organizations. A long lists of rulings in international criminal proceedings have held that there exists a “crystallizing international norm” against impunity, which prohibits the granting of pardon for war crimes and crimes against humanity. See Leila Nadya Sadat, Exile, Amnesty and International Law, 81 Notre Dame L. Rev. 955, 975 (2006).

In the West African context, the hybrid UN-backed SCSL has held that an international prosecutor’s authority to prosecute grave crimes committed against humanity cannot be undermined by a claim of regional amnesty. Additionally, the SCSL’s appeals panel has ruled that a jurisdictional challenge raised by defendants facing serious war crimes charges was “legally wanting and nugatory.” See broadly Kallon v. Kamara, Case Nos. SCSL-15-AR72 (E), SCSL-16-AR72 (E). According to the SCSL’s rulings in the Kallon case, the Lome Accord of March 13, 2004 was simply an inducement offered to warlords, bandits, and other parties to the Sierra Leonean conflict by members of the Economic Community of West African States (ECOWAS). The primary goal of the inducement was to end the existing bloodbath and cement a sense of regional normalcy. Interestingly, the SCSL held that “due to the grave nature of the crimes committed against the innocent peoples of Sierra Leone, the pardons granted for these crimes could not be honored by the international community.” The SCSL further held that crimes against humanity that have attained the international status of jus cogens can never be amnestied. Indeed, a fundamental principle exists in international law that derogation from jus cogens crimes is per se impermissible. Therefore, as previously stated,

any arrangements purporting to immunize perpetrators of crimes against humanity from prosecution are non-binding and should not be honored by international criminal courts.

It is worth mentioning that Sierra Leone, like Liberia, is located in the western part of the African continent. Prior to the war, both countries were similarly situated—some would even argue that today both countries continue to face the same post-African civil war disease of systemic and ruinous acts of corruption that are masterminded by their reigning political elites. If truth be told, the Sierra Leonean civil war itself was an extension of the Liberian civil war. And like the Lome Accord, the Cotonou Accord was signed under the auspices of the West African regional organization, ECOWAS, principally to end the carnage then existing. Interestingly, the SCSL rejected the Lome Accord and its purported amnesty and went on to prosecute some of its noted beneficiaries. In the Liberian context, the SCSL's ruling in the Kallon case is the most relevant, and likely controlling, precedent. Thus, the Liberian warlords' self-serving and narcissistic regional amnesty cannot and would not be honored by the international community. Collectively and individually, the warlords and those civilian Liberians who bear the greatest responsibility for the crimes committed against Liberians and all of humanity would be punished under international criminal law.

Additional supporting evidence for the argument that amnesty cannot be granted for crimes committed against humanity can be found outside of Africa. In other conflict-prone regions, perhaps most notably Cambodia, the world has specifically rejected amnesties granted to warlords and regimented military vagabonds. In the Cambodian context, the government enacted an "outlawing law" in July 1994 that criminalized membership in political organizations and military forces associated with the Democratic Kampuchea Group. The law pointedly empowered the King of Cambodia to grant pardons and amnesties. When Ieng Sary, a high ranking member of the Khmer Rouge defected in 1996, he was pardoned and granted amnesty by the king of Cambodia from all current and future prosecutions. Yet, on October 27, 2004, the special prosecutor for the UN-sanctioned Khmer Rouge Tribunal (KRT) revoked Sary's amnesty. As the KRT stated in 2004, Sary's crimes "had reached jus cogens status in international law and could not be pardoned." The KRT further noted that even if the "pardon were deemed valid, the KRT being a specialized international tribunal was not bound" by the King's national pardon or amnesty. In reaching this decision, the pre-trial chamber of the KRT reviewed Sary's amnesty challenge, concluding that the application for the amnesty to Sary's present prosecution was "uncertain and it was not manifest or evident" that the amnesty or pardon would prevent his present conviction on genocide.

Viewing Liberia with the above-stated legal position in mind, it remains to be seen whether an independent international war crimes court for Liberia would uphold and respect the various amnesties granted to the parties involved in the Liberian civil war, including those granted by the Liberian TRC. However, to determine the validity of any such pardons, Liberia must be willing and made to grant to its victims and the international community the right to an impartial international judicial process—this is a matter of right under international law. The victims of this cruel war and the international community are entitled to international justice in this respect and Liberia has a treaty obligation to grant justice in this capacity.

3) Liberia Is Obligated Under International Criminal Law to Prosecute Crimes Against Humanity.

Although the principle that pardons and amnesties cannot be used to insulate individuals who commit crimes against humanity from prosecution is globally established, it should not be viewed as an assault on the cardinal norms of pardons and amnesties. Rather, the international community specifically encourages the use of amnesties and pardons as vital tools intended to end debilitating global conflicts and will generally respect them. They are not, however, a bar to prosecution for the most serious of crimes, crimes committed against humanity. And a nation-state's ability to grant pardons or amnesty must be viewed in concert with its obligation under international law.

Importantly, it must be acknowledged that Liberia, along with other states that are signatories to international conventions outlawing crimes against humanity, is obligated to prosecute crimes against humanity. Liberia signed the Geneva Convention of August 12, 1949, and the convention was subsequently ratified by the Liberian legislature. Liberia is also a signatory to multiple conventions that regulate and mandate punishments for crimes committed against humanity in times of wars. By signing these conventions, Liberia and the other signatories obligated themselves to enforce the provisions of such conventions. Thus, Liberia is obligated by treaty to promptly arrest, indict, and prosecute all persons found within its territories who are alleged to have committed serious crimes against humanity. Although Taylor, Kromah, and Prince Johnson may not agree with the treaties that Liberia

previously signed, it cannot be the case that contemporary Liberia has the authority and power to refuse to exercise its obligation under these conventions. Liberia must be made to honor its obligations: both the victims of this war and the international community must compel President Johnson- Sirleaf to enforce Liberia's obligation under the law.

As I have discussed above, pardons and amnesty granted for crimes against humanity are internationally unacceptable. While a nation-state may attempt to grant amnesty pursuant to the doctrine of "national sovereignty" - and may, in fact, pass pardon law as it pleases - a state limits its sovereignty and, thus, its ability to fully pardon certain crimes, when it signs an international treaty. That's because international treaties impose non-derogable obligations. Thus, for a state's grant of amnesty to be legitimate under international law, it must not contravene a state's obligation under any human rights treaty to which it is a party. As noted above, Liberia is a party to the Geneva Conventions and the Genocide Convention. Liberia is also a signatory to the Vienna Convention on the Laws of Treaties and several related conventions outlawing crimes against humanity. Liberia's obligation under these conventions renders it incompetent as a matter of international law to grant pardons and amnesty for crimes committed against humanity in Liberia. See broadly Ahmed, et al.

Equally importantly, Liberia is obligated to prosecute crimes against humanity. Article 4 of the Genocide Convention stipulates that "persons committing genocide . . . shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals." Article 5 mandates that states act affirmatively by enacting legislation "provid[ing] effective penalties for persons guilty of genocide." And one may argue convincingly that the mentioned provisions are equally applicable to ethnic cleansing and other crimes against humanity. Liberia has arguably complied with its obligations under international law to enact laws prohibiting genocide and other types of crimes against humanity. Where this consistency exists, there can be no argument against Liberia's duty to prosecute those who are in violation of laws prohibiting crimes against humanity.

But even where Liberia's internal criminal laws are not consistent with its international obligations, Liberia must comply with its treaty obligations. Article 26 of the Vienna Convention on Treaties states that a party "may not invoke the provisions of its internal law as justification for its failure to perform its obligation under this Convention." The concept enshrined in Article 26 is applicable to a state's domestic obligations to prosecute and punish under the Geneva Conventions, the Convention against Torture, and other pertinent conventions to which that given state is a signatory.

Moreover, with regard to Liberia specifically, the Comprehensive Peace Initiative Agreement (CPA) was signed between the Liberian warring factions and the international community. Indeed it was Liberia's war-time parliament, which was heavily dominated by warlords and other nefarious characters, which signed the CPA into law and subsequently passed its recommended Truth and Reconciliation Commission (TRC) Act. As noted above, when a state signs and ratifies a treaty, obligations arise and the treaty becomes the law of the state unless the treaty is in conflict with the state's constitution. In our current case, both the CPA and the TRC Act are the laws of Liberia. They both impose a duty to act. Thus, it cannot be the case that President Johnson-Sirleaf's Liberia can opt not to, or refuse to, implement all aspects of the CPA and the TRC recommendations.

It must be noted that President Johnson-Sirleaf and her disingenuous, rouge, and corrupt team of attorneys have argued that the portion of the TRC's recommendation that calls for a war crimes court cannot be implemented. No legal reasons have been offered in support of this position; rather, the President and her minions simply seek to promulgate a form of self-amnesty. Self-amnesties are a kind of amnesty promulgated by persons or regimes while in power, purporting to protect themselves from prosecution once they relinquish power. The current position of President Johnson-Sirleaf and her administration is informed and guided by individuals who previously participated in activities that were violative of both domestic and international laws but now seek to govern the affairs of post-conflict Liberia. Even President Johnson-Sirleaf herself fits into this category of persons. Generally, the international community frowns on self-amnesties and considers them an affront to the international principal that no one should benefit from one's own bad faith. Accordingly, President Johnson-Sirleaf's resistance to the establishment of a war crimes court for Liberia amounts to an extreme and sordid form of self-amnesty.

At this juncture, it is important to point out to President Johnson-Sirleaf's legal team that in a bicameral political system such as Liberia's, an act of the legislature that is signed into law is the law of the state. Moreover, the enacted law must be implemented in its entirety. It cannot be the case a sitting president can pick and choose which portions of constitutionally enacted legislative act will be acted upon. Viewed in this light, it is legally conceivable

that President Johnson-Sirleaf does not have the legal authority to refuse to implement all aspects of the TRC's recommendation. Selective application of TRC recommendation in this respect runs afoul of and violates the fundamental norms of bicameralism and presentation - this legal concept is enshrined in the Liberian Constitution. Please note that the TRC's recommendation is a natural extension of, or naturally flows from, an act of the Liberian legislature.

4) A Hybrid International Court for Liberia Would Be Consistent With, Not Violate, Liberia's Constitution.

This article would be meaningless if attention is not paid to the legality of a hybrid international-Liberian tribunal. Generally, hybrid tribunals are established pursuant to an agreement between the international community, the UN, and a country that has recently experienced genocide and other forms of crimes against humanity. The SCSL, the KRT, and the Rwanda Tribunal are prime examples of internationally sanctioned hybrid courts. Their establishments are not violative of any state's constitution - if anything, they are consistent with both the constitution and treaty obligations of affected states.

Although I am a victim of the Liberian civil war, I am not remotely interested in retribution. But neither am I interested in a reconciliation process that would shield warlords and bandits—men and women who materially prolonged human suffering in Liberia and benefited immensely from our civil catastrophe. Liberia has a treaty obligation to punish those who committed crimes against humanity in Liberia. The international community must act promptly to save Liberia and prevent another tragic West African melee. This will not be the case if we, the victims of the Liberian civil war, sit by idly and allow the culprits of our pain to decide and dictate the pace and process of national reconciliation. Toward this end, I am proposing the following specific and limited steps that, if acted upon, would begin the process of holding accountable those who bear the greatest responsibility for the Liberian Civil War:

1. We, the victims, must compel Liberia to honor her treaty obligations as a matter of both domestic and international law. This should and can be done by filing a writ of mandamus against the current attorney general of Liberia to compel Liberia to enforce the law prohibiting crimes against humanity. The international community must be put on notice; thus, a copy of the lawsuit should be presented to the UN. It is recognized that the Liberian court system is corrupt, but if a lawsuit of this magnitude is backed internationally, the corrupt court is likely to respond positively to international pressure.

2. We, the victims, must petition the UN directly for a war crimes court in Liberia. The international community has exhibited a strong tendency to side with the people of a nation when their own government fails abominably to give them justice. Libya, Tunisia, and Egypt are recent prime examples, in this regard. The international community does not sanction President Johnson-Sirleaf's self-serving approach to justice in Liberia. Claims by President Johnson-Sirleaf or others to the contrary are not correct and are not grounded in fact.

3. We, the victims, must inform ECOWAS about President Johnson-Sirleaf's failure to implement the TRC's report in its entirety. This information should be accompanied by a lawsuit against Liberia before the ECOWAS court. The ECOWAS court has jurisdiction over Liberia—its jurisdiction is extensive and covers international matters. Liberia must be sued before that court, and that lawsuit should be brought by you and me, the victims. ECOWAS should also be asked to revisit and help implement in its totality the Comprehensive Peace Agreement of 2003. Anything short of serious and sustained international pressure will not yield results and will work to the warlords' and President Johnson-Sirleaf's advantage.

Charles Kwalonue Sunwabe, Jr., Esq., is a 2009 graduate of Washburn University School of Law, where he was the Elisha Scott Scholar and earned a certificate in Business & Transactional Law. Sunwabe also holds a Master of Arts degree in International Politics from the School of Arts & Sciences at The Catholic University of America (2003), and a Bachelor of Arts degree in International Affairs & African Politics from the Eliot School of International Affairs at The George Washington University (2000). Sunwabe. is the founder and president of the Lift Africa Foundation (previously the Freedom & International Justice Foundation). He was an internally displaced child in the St. Peter Lutheran Church in 1990 where his mom, little brother, and sixteen cousins and relatives were brutally murdered by the Liberian government forces. His 92-year-old grandfather was executed by ULIMO-K rebel group when the rebel group captured Gbarnga, Bong County and surrounding villages from Charles Taylor's NPFL forces in 1994. Sunwabe arrived in the United States in 1993, and managed to educate himself at the mentioned institutions. Sunwabe advocates a war crimes court for all of Liberia's warlords and their surrogates.

Zambian Watchdog
Saturday, 26 January 2013

Professor Hansungule adds International dimension to debate on immunity of presidents

Posted by: Mwansa

Dear Editor,

May I just add one dimension to the excellent article on the above subject in your online paper of today found here. While I entirely agree with the conclusions drawn in this article, I would just like to add one aspect to it: the international dimension of the Head of State Immunity.

But before I do this, I must make one observation which is that many countries have this clause cited in your excellent article by their constitutions. As you will recall, this is the same clause that cheated the former Chilean dictator General Pinochet after he retired from office to continue performing public functions including undertaking that visit which took him to the United Kingdom where he was arrested on indictments issued against him in other European countries where his victims of his barbarous misrule lodged formal complaints. Save for merely mentioning it, Pinochet's case was in public domain and there will be no additional value repeating it here. On return home after British authorities by the narrowest of margins in the House of Lords set the arrest aside but not before he tested deprivation of liberty, his Parliament removed his immunity and he was prosecuted at home. The rest is history.

As indicated above, immunity clauses are widespread in many countries' constitutions. Their origins may have been genuine being designed not to confer decorum on the holder of the office of head of state as such but to genuinely protect him or her from actions criminal or civil which while innocently and in good faith he/she performed the office of head of state may have committed or omitted to do In simpler terms, the law recognized the reality that a holder of an office like that may inevitably 'step' on citizens' tolls and hence the latter's grievances which may end up in court. Therefore, the law came to act as some kind of shield to protect the head of state both while in and outside office.

South Africa stands in stark contrast to most jurisdictions in this regard. The South African constitution simply doesn't have any clause on immunity. Most of your readers will recall that it is on the basis of this that incumbent president Jacob Zuma is as we read this currently 'in' court dragged there by opposition Democratic Alliance (DA) who are boldly challenging the manner in which the previous Director of the National Prosecutions Authority Advocate Mpshe, now acting Judge of the High Court, dropped state charges of corruption leveled against president Jacob Zuma. On his part, president Zuma realizes the danger this case poses to his dignity and that of his political life and of course he did put several measures to counter any such prosecution most notably use of electorate on the ground to keep him in office because that way, he is practically protected even if the law is silent.

The point I wanted to share though on this particular aspect is that if you look at the international dimension of Head of State immunity, you soon realize that however cleverly these clauses may be crafted, they have no status in international law. In international, it has long been settled that anyone subject of allegations of committing international crimes whether head of state or not and whether in or out of office is amenable to prosecutions. There is a court ruling to this effect. The Sierra Leone Special Court of Sierra Leone (SCSL) has ruled in the Charles Taylor first case (not this one in The Hague in which he was slapped with a 50 year sentence anyway which he is currently appealing) that Head of State immunity does not attach to such an individual accused of perpetrating international crimes. Charles Taylor brought this case while still in office when his indictment and arrest warrant was opened and had

argued that the indictment and warrant so issued violated his Head of State Immunity. Unfortunately for him, the judges disagreed and we know where he is now.

Except it is in the genes of leaders not to learn, it is now a well settled law and practice that an individual who is suspected of perpetrating international crimes, namely, genocide, war crimes; and crimes against humanity simply cannot be allowed to hide under the statutory immunity clause in his or her countries' constitution or organic law.

Clearly, international law has advanced while local law of most jurisdictions remains static thereby creating this open lie. Citizens would understand that while Zambia has an immunity clause in the constitution which in any case is not absolute, the Zambia has ratified the Rome Statute of the International Criminal Court (ICC) against the background of renewed enthusiasm in the United Nations through the Security Council to establish ad hoc tribunals in Rwanda, former Yugoslavia, Sierra Leone already mentioned and in other countries.

Professor Michelo Hansungule

The Real News
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Palestinians Preparing to Take Israel to International Criminal Court

Transcript

JESSICA DESVARIEUX, TRNN: Welcome to The Real News Network. I'm Jessica Desvarieux in Baltimore.

The Palestinian foreign minister has threatened to take their disputes to the International Criminal Court. Here to discuss all this is Phyllis Bennis.

Phyllis is a fellow and the director of the New Internationalism Project at the Institute for Policy Studies in Washington, D.C. She's the author of the books Before and After: U.S. Foreign Policy and the War on Terrorism and Understanding the Palestinian-Israeli Conflict: A Primer.

Thank you for joining us, Phyllis.

PHYLLIS BENNIS, FELLOW, INSTITUTE FOR POLICY STUDIES: Great to be with you.

DESVARIEUX: So, Phyllis, give us an update. What do you make of this threat by the Palestinian foreign minister?

BENNIS: Well, it certainly is nothing new and different for Palestinians to talk about the need for Israeli accountability for potential violations of international law and war crimes. This has been on the agenda for some years now. And the question has been: when can Palestine become a member of the International Criminal Court so it can begin the process of trying to hold Israel accountable for those war crimes, for those violations?

The new position came from the foreign minister of the Palestinian Authority, Riyad Maliki, and it's significant because while there has been discussion by a lot of Palestinians in civil society organizations and elsewhere, there has not been so much discussion from the top levels of the PA itself.

The specific threat, if you want to call it a threat—I mean, saying that somebody should be accountable doesn't seem really like a threat, but okay. The most recent statement from the Palestinians was based on the idea that if Israel goes ahead with its threats to build new settlements in what is known as area E1 outside of Jerusalem in the occupied West Bank, that would be what Maliki called trespassing a red line and would result in the Palestinians going to the International Criminal Court.

I don't know exactly what red line he is referring to. The Israeli violations have been going on for many, many years, for many, many decades. But if they want to say that at this point it's enough that we would bring it to the International Criminal Court, that would be very good.

They can't simply announce that. They have to go through a number of processes, the most important one of which would be to apply for membership in the International Criminal Court to become a signatory to what's known as the Rome Treaty. That was the treaty that established the court back in 1995.

The issue has always been that Palestine is not a state. Any state can sign the treaty, and you don't have to be a member of the United Nations, but you do have to be a state. So the question was always: well, who decides what's a state? Palestine tried to join the court a couple of years ago, and the prosecutor and the

top officials of the court took it under consideration and ended up saying that it wasn't clear enough that Palestine was indeed a state.

But now, after the initiative last fall at the United Nations, when the Palestinians asked for and received a rousing endorsement from the General Assembly that Palestine is now considered a nonmember state at the United Nations—the membership is not relevant, but the state is very relevant—that is essentially a UN acknowledgement that Palestine is indeed a state on the territory occupied in 1967, meaning all of the West Bank, including where the settlements are, all of the Gaza Strip, and all of occupied East Jerusalem. So that is now recognized by the UN as a state. And as a state, there's no reason in the world why Palestine can't simply sign on to the Rome Treaty and become a member of the International Criminal Court.

DESVARIEUX: Okay. What do you make of the timing of this announcement, especially in the wake of Israeli election?

BENNIS: Well, I think that the timing was driven less by the elections—in fact, that gave Riyad Maliki and the PA a sort of excuse to delay further, to say, well, we'll wait and see what the new government does when the new government is formed. But it was kind of putting that new government, the potential new government that will still be led by Bibi Netanyahu, on notice of their intention to go to the International Criminal Court.

I think the real motivating factor in terms of timing had to do with the growing crisis in the West Bank in particular and the fact that the PA had lost so much of its authority and credibility in recent years but had reclaimed much of that through the UN initiative last fall. The fact that it succeeded in winning a recognition of statehood for Palestine at the UN was widely applauded by Palestinians, particularly in the occupied territories, but also those in the diaspora among Palestinian exiles and refugees. And one of the real reasons why was precisely this question of a way to bring Israel to account, to hold Israel to account in the International Criminal Court. So this is a way of maintaining that credibility by answering the demand of Palestinians themselves to move forward, to hold Israel accountable in a way that it's never been held accountable before.

DESVARIEUX: Well, thank you so much for joining us, Phyllis.

BENNIS: Thank you. It's been a pleasure.

DESVARIEUX: And thank you for joining us on The Real News Network.

Phyllis Bennis is a Fellow and the Director of the New Internationalism Project at the Institute for Policy Studies in Washington DC. She is the author of Before and After: US Foreign Policy and the September 11 Crisis , Ending the US War in Afghanistan: A Primer and Understanding the US-Iran Crisis: A Primer.