SPECIAL COURT FOR SIERRA LEONE

PRESS AND PUBLIC AFFAIRS OFFICE

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

Monday, February 07, 2005

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For the People

The Special Court Prosecutors' Unfair and Divide and Conquer Strategies

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"Experience over the early years of these (International Tribunals for the former Yugoslavia and Rwanda-ICTY and ICTR, respectively) Tribunals, in my judgment, leave an open question whether international courts, and those who serve them as judges and prosecutors, have the will to take the steps and make the sometimes unpopular choices required when justice and due process, rather than convictions, are the overarching goals." (Larry A. Hammond)

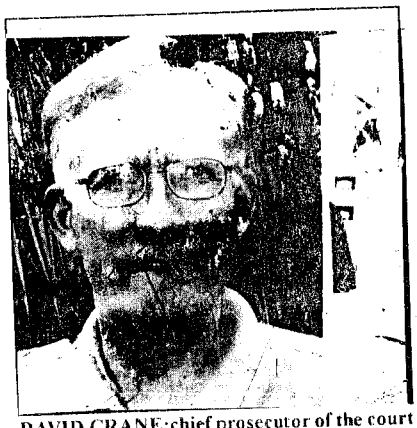
THE PRECEDING remark is contained in the concluding statement in a testimony presented before the (US) House International Relations Committee on February 28, 2002. In his testimony, Larry Hammond replaced the divine qualities generally assigned to International Tribunals with a more realistic image that calls into play human forces such as politics, urging desire to find someone culpable, and the general assumption that capability at whatever cost establishes justice.

In a world of mounting internal skirmishes, there is the further assumption that meting out convictions through any available measure establishes peace. Peace is definitely a state that is desired and leads to many positive qualities within any country. However, for a connection to exist between peace and justice in a post-conflict situation, justice has to be premised on a credible judicial process, and the integrity of the process must not be compromised at any point of its unfolding. Hammond served on an American Bar Association Task Force that was engaged in an effort to recommend rules to govern the prosecutions that might be brought at The Hague. He also served as Deputy Assistant Attorney General under Attorneys Griffin Bell and Benjamin Civiletti during the Carter Administration.

The urge to convict is tied to factors such as meeting the perceived expectations of funding sources, available funding, desire to establish swift justice, and the expectation that the conviction serves as a deterrent to future War Crimes. Funding sources generally would like to see results. In situations wherein there are documented cases of heinous human rights violations and war crimes, nothing takes the place of convictions to bring about the general feeling that "justice" had been carried out and perpetrators will face punishment for their crimes. No God fearing individual would ever want to see perpetrators of crimes set free even on technical grounds. However, the perfect world situation that equates conviction to justice does not exist in all circumstances. In the absences of instruments such as the Hyde Amendment, enacted in 1997 to protect individuals from being arbitrarily indicted and pushed through the United States judicial process, the very factors that create the urge to convict may introduce measures that will subordinate justice to a compelling urge to convict. These measures are often introduced in both the overall structure of the proceedings and in the form of abridgements in what is commonly referred to as "due process of the law." At the ICTR trial the court reversed itself after acquitting Barayagwiza, hence yielding to political pressure from the Rwandan Government that wanted Barayagwiza convicted. The trials of Kordic, Balaskic, Gotovina at the ICTY have created great concern within the legal profession over issues such as witness coaching, the rights of the accused against witness protection, withholding evidence from the defense, and whether the prosecutors and judges do actually retain independence from each other. Here, we make a cursory probe into the Sierra Leone Special Court (SC) for elements that suggest an urge to convict against the need to preserve the credibility and integrity of international tribunals. We also look at the impact that some of these elements may have on peace-building operation.

The SC, unlike the ICTR and ICTY, is not an organ of the United Nations. It is the product of a treaty between the Sierra Leone Government and the United Nations to "try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996." The Sierra Leone Constitution stipulates certain procedural requirements before a treaty can be ratified by parliament. Based on a case before the Sierra Leone Supreme Court, these procedures were greatly compromised and in some cases completely ignored. If the allegations of impropriety prove to be true, then the United Nations and the Sierra Leone Government would have succeeded in establishing an institution of justice, the Special Court, on an illegal foundation. Such an illegal precedence will weaken the powers of the Sierra Leone Constitution and negate the claim that the Special Court is designed to restore the rule of law. Total disregard for existing laws and disrespect for constitutional provisions, we must not forget, were contributory factors to the mayhem Sierra Leone experienced for ten years.

Human Rights Watch (HRW), in a recent report (prepared around July 30, 2004), expressed some serious concern that greatly undermined "the Special Court's ability to uphold fair trial rights." HRW's concern was centered around (1) inadequate logistical support available to defense teams, (2) lump sum payment structure for defense teams, (3) lack of suitable candidates to serve as investigators and delays in their appointment, (4) insufficient training of defense counsel and investigators, and (5) inconsistent translation." HRW officials aptly remarked that based on their belief, "these issues could contribute to a perception that rights of the accused are not protected and equality of arms is not adhered to by the Special Court."



DAVID CRANE: chief prosecutor of the court

All the points of concern highlighted by HRW directly affect the ability of the defense team to mount a formidable defense on behalf of the accused. This in turn enhances the prosecutors' chances of obtaining a conviction. In the area of logistical support, for example, HRW observed after extensive investigation that:

-"The facilities provided by the Defense Office for defense teams have suffered from a lack of resources, which have hampered case preparation. For example, as of March 2004, nine defense teams, including more than twenty defense attorneys, were provided with only three rooms in one "container" in which to work. The Defense Office includes two additional rooms, but they are designated for duty counsel and U.N. personnel. This set-up limits the ability of defense teams to conduct confidential meetings. While the Special Court will try nine defendants in three groups, the CDF, the RUF, and the AFRC cases, in addition to a possible trial of Charles Taylor, some defense strategies will undoubtedly involve implicating other defendants they are tried with, making the three room work space arrangement particularly problematic."

-"Storage and access to fax and photocopiers remains an ongoing problem. Each team is provided with one medium-sized filing cabinet to store all documents for their case and no shelving to store materials. Although a template for the legal services contract defense teams enter into with the principal defender and the Defense Office provides that defense counsel will be given "access to fax machines, photocopy machine, ink for printer, for the exclusive benefit of the Defense Teams," defense counsel in fact share use of one photocopier with other units of the court and there is no access to a fax machine. Defense counsel are provided with three computers per room to share among each other and, for a period of time around March 2004, there was no Internet access during business hours. Additionally, all defense teams are provided with only one vehicle to share among each other."

-"This is contrasted with resources available to the OTP. Human Rights Watch was told, for example, that OTP office space consists of five containers, each OTP staff member has access to a computer, and storage includes filing cabinets, along with a separate location for storing evidence. During crucial stages of investigations, OTP staff had availability to vehicles, although at the beginning of 2004, due to budgetary restrictions, this was considerably cut back as well. One Special Court staff member argued that because the Defense Office is located within the Registry, it "does not have the same voice as [the] OTP in requesting [the] budget" and explained that "maybe the [Defense Office] is not considered as seriously as the OTP because [the] standard of proof is different." One defense counsel suggested that there has been "no real consideration of [defense]; OTP got all the money, defence was an afterthought."

HRW further observed that the defense team is handicapped by "the lack of suitable candidates to serve as defense investigators and delays in their appointment." As of the preparation of the HRW report, the defense team had only one full-time investigator drawn from the Sierra Leone Police Force. The choice of a police investigator totally disregards the intricacies of the conflict and the adversarial relationship that existed between the police and some of the groups under indictment. Investigators for the prosecuting team, on the other hand, included both international and national investigators with years of experience in conducting investigation and collection of data.Under the current legal system, prosecutors are responsible for collecting information that is later used in leveling charges against individuals. With the approval of the judges, these are incorporated into the indictment document. The indictment document also contains a general description of environment within which the alleged crime occurred. During trial, the prosecutor is expected to mount an aggressive prosecution to obtain a conviction. It is not difficult to imagine the direction in which justice will be skewed if close alliance between judges and prosecutors exists as is reflective of the structure of both the ICTY and ICTR according to Hammond's testimony. The nature of the relationship between judges and prosecutors at the Special Court has to come from familiarity with the inner workings of the court. Hence, we will leave comments on this aspect of the Special Court to others with inner knowledge of the system. We will at this phase concentrate on one aspect of the system: that is, the indictment documents' impact on the peace-building process and

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Monday February 7, 2005

THE SPECIAL COURT

PROSECUTORS

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how it contributes to the urge to convict. Considering the fact that the indictment documents have gone through many rewritings, revisions, and changes before arriving at the Civil Defense Force (CDF) Consolidated Indictment, the indictment process warrants specific attention. We will, therefore, concentrate on what we consider to be the most disturbing aspect of the indictment-the insidious injection of "tribe" into the trial.

As Malcolm X stated over 40 years ago, "The greatest weapon the colonial powers have used in the past against our people has always been divide-and-conquer." This aspect has emerged as one of the Special Court prosecutors' strategies.

Tribalism or ethnic cleansing is the stereotypical factor behind all conflicts in Africa. Exploiting tribal differences proved to be a convenient system for the colonialists. Hence, we have the widely accepted phrases such as "divide and conquer" and "divide and rule." It is not immediately apparent how using the tribal factor could help the prosecution's position. However, let us consider the following.

The conflict in Sierra Leone contained no hint of tribal affiliations. The rebels, the renegade Sierra Leone Army, the loyal Sierra Leone Army, and the government sponsored Civil Defense Force; each had all the tribes of Sierra Leone among its ranks. The Civil Defense force consisted of indigenous Sierra Leoneans, who were recognized for the part they played in stopping the ravages of the rebels and the renegade army. The intrusive path of the rebels and the lack of will and ability of the existing government to repel the rebels forced individuals to organize themselves to protect their lives and properties. Hence, these forces were initially associated, primarily in name, with various localities. At this initial stage and more so after, it would be presumptuous to claim that these groups were homogeneous with respect to tribe. The threat posed by the rebels and renegade soldiers spared no tribe. The response from the citizens was also not based on tribal affiliations. Again, because of the invasion path, some areas were forced to organize at a very early stage under the banner of "Kamajors," the name for local hunters. Journalists, mainly foreign journalists, used the name "Kamajors" synonymously for all local forces that opposed the rebels and renegade soldiers. This practice continued even when the government decided to aid these local groups under the CDF, thereby increasing their range of operation beyond their respective localities. Realistically, credit given the CDF belongs to all the respective groups. In fame and infamy, it will be divisive to highlight only one group. This is precisely what the prosecutors have done. Sidelining other groups has alienated groups to a point wherein people have withheld their moral and material support for the accused. Visiting various Sierra Leone Internet discussion forums, it becomes easily apparent that prosecutors are gaining success in polarizing the country along tribal lines.

The accused were indicted based on their alleged position within the command structure of ir respective organizations. It is hard to determine t Norman, Kondewa, and Fofana were under indict nt for their role within the CDF. The CDF Consoli ed Indictment features Kamajors, the Mende loca rce, more than the CDF. It is hard to imagine th ithin the CDF, only the Kamajor unit committed e atroci-ties and that they were present in areas outside the region of the original Kamajor. We cannot attribute the selective use of Kamajors in the indictment to the synonymic error of the journalists. It was purposefully designed to "divide and gain conviction."

Indeed, our position is supported by the major finding of the scientifically rigorous study conducted by Macartan Humphreys of Columbia University and Jeremy Weinstein of Stanford University in partnership with the Post-conflict Reintegration Initiative for Development and Empowerment (PRIDE) in Sierra Leone, with the support of Earth Institute of the United States and Disarmament, Demobilization and Reintegration (DDR) Coordination Section of UNAMSIL. According to these investigators, "contrary to common perception, there were no large differences across factions along ethnic, regional, or religious lines, or in terms of political party affiliation." In essence, the Special Court prosecutors' strategy to inject "tribalism" into the trial seems to defy logic.

Hinga Norman gives conditions

By Abu Whyte Fofanah

The former Civil Defence Force (CDF) boss chief Hinga Sam Norman says he will appear in court on the 7th **February**, 2005 when the CDF trial resumes provided if the Special Court meets his demands.

Chief Norman has long since filed a letter of protest to the Special Court. Among other things he mentioned in his protest letter were; his indictment letter, summon letter and Special Court witnesses testifying against CDF not to get any protection.

According to Chief Norman those witnesses have already testified at the Truth and Reconciliation Commission (TRC) without protection. "I see no reason why those witnesses be protected if only we are to face real justice", Norman stated.

Chief Hinga Norman says he is willing to go to court because he doesn't want the public to go with the idea that he is afraid of the court. The special court prosecutor David Crane indicted Hinga Norman,

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Norman

Norman gives conditions

From front page

Monina Fofanah and Allie Kondowa for crimes against humanity and serious violation of international law.

Norman's protest against the court is to see all court proceedings starts afresh even though his defence counsels were advocating on his behalf.

Monina Fofanah and Allie Kondowa some time ago tendered letters to the Special Court for their defence counsels to continue their legal battle whilst they boycott court proceedings.

The Independent

Friday February 4, 2005

THE AGE
theage.com.au

Halloran verdict just days away

February 5, 2005

It's been a long wait in Sierra Leone for ex-Victorian policeman Peter Halloran, but his supporters believe he will be cleared on February 14, writes Martin Daly.

Peter Halloran walked from Sierra Leone's High Court as happy as he has been for the past eight months but now faces a tense, 10-day wait to see if his career as a Victoria Police officer ends on Monday week in a notorious west African jail, or if he goes home an exonerated man.

Friends in Melbourne have always talked about the party they will throw when, not if, he is cleared, as they maintain faith in his innocence on child sex abuse charges.

A guilty verdict will send him to jail for two years, but the reason for the relative improvement in Halloran's spirit since he was charged late last year with three counts relating to sex with a 13-year-old schoolgirl, is that the long wait is nearly over.

Judge Samuel Ademusu in the High Court ruled yesterday, that the controversial trial was over and that he would give his verdict on February 14.

Halloran, 56, who has strenuously denied the charges, won a major victory three weeks ago when the judge threw out two of the charges alleging he had carnal knowledge of the under-age girl, and procured her for sex.

But the judge ruled that there was a case to answer on the third charge of indecent assault, despite the fact the girl told the court that nothing had happened and that she had lied under inducement.

The girl's brother has been charged with procuring her for the alleged sexual escapade and another relative has been charged with perverting the course of justice. They say they are innocent, accusing police and justice officials of pressuring them to help with the case against Halloran.

Halloran's lawyer, Nicholas Browne-Market, said he could not comment until the judge handed down his sentence but told *The Age*: "We can say only that we are confident we produced the best defence."

The trial about the big, powerful white man who allegedly had sex with a little black girl became a talking point in the capital.

It also drew the attention of the Australian Government and foreign missions in Freetown because of perceived breaches in legal procedures that were said to be denying Halloran a fair trial.

The fact a middle-aged man would have sex with a child does not shock anyone in Sierra Leone.

There was a willingness, therefore, among some in Sierra Leone, including some of Halloran's colleagues, to accept that something may have happened.

The Halloran case was notorious because of the racial aspect and because one of his main accusers was a white woman, Mandy Cordwell, 37, a respected former Tasmanian police sergeant and housemate of Halloran in Freetown who, friends say, reported only what she had been told by the alleged victim.

Cordwell was Halloran's subordinate on a United Nations sponsored team of investigators probing war crimes allegations against some of the most powerful people in the country.

The trial was a prolonged affair. Halloran and his supporters hoped a system based on British law would be reasonably transparent and swift.

"But this is Africa," was the refrain from almost everyone locally when the trial was frequently delayed.

By Sierra Leone standards, the Halloran case was, nevertheless, a fast trial and that happened, critics say, only because of pressure from the Australian and other governments.

The case started after Cordwell saw the girl in Halloran's bedroom in a house they shared, along with Victorian Police officer Sharon Holt and former Canadian Mountie Ralph La Pierre in the city's upmarket Wilberforce district.

The girl allegedly told Cordwell she had been having sex with Halloran over two nights. The girl would make many statements over the next few weeks, all of them different. But finally she declared that nothing happened and that Cordwell and a Sierra Leone police officer, Janet Tommy, had persuaded her to make the allegation.

Members of the girl's family allegedly went from saying Halloran had deflowered the girl, to sending him a letter of apology. They said the claims had been put into the girl's mouth.

The girl told investigators that she insisted to Tommy and Cordwell that, "Peter did not assault me in any way. The two women began to prevail upon me, telling me to say that Peter played with my breast and sexually assaulted me, telling me that they would build a house for my family and take me to the United States for further studies. So I said if that's what you want me to say, then I agree, so I said it."

The Special Court held an inquiry in early June, within days of the allegation which gave a number of options that involved firing Halloran, not renewing his contract, or giving him the chance to resign.

But another inquiry castigated the first investigation and accused Cordwell of being unprofessional in the way she handled the matter and said Halloran had been ambushed and denied natural justice. The inquiry found there was no evidence for charges against Halloran, although it also said he may have touched the girl's breast. He was reinstated.

Justice Minister, A. M. Carew, and the prosecutor in the case, O. V. Robin-Mason, told The Age that Court officials may have perverted the course of justice by withholding important documents they wanted. They charged Halloran and he was denied bail and detained. He then got bail but was jailed again after the judge was told by the prosecution that some of their witnesses had been interfered with.

There were also allegations that friends of Halloran, some serving or former Victoria Police officers, were in Sierra Leone to help him escape or to bribe the victim to drop the charges.

Halloran was thrown into Pademba Road Jail for almost a month but was released on bail following the intervention of the Australian High Commission and then continued the treks to the High Court.

The process has worn Halloran down. His friends say he is angry at times, and sometimes dejected. He does not look well.

Cordwell, who was suspended with pay for allegedly talking with the media, was later suspended without pay for a period that went past the end of her contract. This was an effective dismissal.

Cordwell is reported to have formally resigned and returned to Australia.

But for all the expectations that the ordeal for Halloran will end on Monday week, there is a fear that the case might be again adjourned.

More news
- Crikey sells out
- Murder accused 'to deny sword'
- Fruit growers celebrate a peach of a deal

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Fourth Courtroom Under Construction

Hirondelle News Agency (Lausanne)
NEWS
February 4, 2005
Posted to the web February 4, 2005
Arusha

A fourth courtroom of the International Criminal Tribunal for Rwanda is under construction in a room rented to the International conference center of Arusha, and is expected to be operational by March 2005.

The spokesperson of the tribunal Roland Amoussouga told Hirondelle that the Norwegian Government had contributed $US 300,000 while the Great Britain and Northern Ireland gave $US 120,000 for the project. This amount will also provide for the installation of closed circuit television system and pay rental charges for 2005 to 2008.

The first phase, which involves construction of the room where judges, prosecutors, defence counsels and accused will sit will be complete by March.

The public gallery will be ready by April. The gallery will have a seating capacity of fifty people.

Amoussouga added that the additional courtroom is part of the tribunal's completion strategy. The tribunal is trying to speed up the trials in order to beat the UN Security Council deadline of 2008 for trials and 2010 for appeals. So far, eighteen accused persons are awaiting trials.

The room which is being re-designed to conform to the standards of the other ICTR courtrooms was initially for meetings and was known as Clinton room. It was named in honour of former American President Bill Clinton who visited Arusha in August 28th 2000 to witness the signing of Burundi peace agreement.

Gacaca Courts Roll-Out Across Rwanda

Hirondelle News Agency (Lausanne)
NEWS
February 3, 2005
Posted to the web February 4, 2005
Kigali

Over eight thousand semi-traditional genocide courts across Rwanda are currently working following the start of activities about two weeks ago, the Executive Secretary of the national department of Gacaca told Hirondelle News Agency on Wednesday.

"Everything is working according to schedule. All materials required for the process have been distributed and we haven't received reports of any security problems", Domitilla Mukantaganzwa said.

The government carried out an intensive sensitization campaign on security for the courts in the run-up to the opening. Authorities have warned of possible attacks on witnesses. The courts working at the moment are all in a pre-trial investigative stage.

Mukantaganzwa also reiterated that the start of the first trials by Gacaca courts would take place before the end of February 2005. "There shouldn't be anything delaying this process. All files are ready and the judges are only waiting to start", she said. These trials will be held in the 751 courts that started hearings before the nationwide opening. Over 90% of these have completed the pre-trial phase and are awaiting trial.

Gacaca courts were set up over three years ago. They are supposed to speed up trials of an estimated half a million suspects of crimes related to the 1994 genocide.

The Gacaca department estimates that all pre-trial activities going on now will be completed by the end of June. According to those estimates, the first trials in these courts would start in January 2006.

Gacaca hearings are scheduled to take between three and five years. However, observers say that the courts may take longer since the original estimates for suspects have more than doubled.

Dismissed Lawyer Granted Leave to Contact Former Client

Hirondelle News Agency (Lausanne)
NEWS
February 3, 2005
Posted to the web February 4, 2005
Arusha

A defence lawyer dismissed last year by the Registrar of the International Criminal tribunal for Rwanda (ICTR) was Wednesday granted permission to communicate with his former client, former chief of operations of the Rwandan army (Ex-FAR), Brigadier Gratien Kabiligi.

Jean Yaovi Degli from Togo was allowed to contact Kabiligi by telephone before transferring the case file to Paul Skolnik, the new assigned defence lawyer.

In October 2004, Degli was struck off the register of lawyers authorised to represent indigent suspects at the ICTR under the legal aid programme.

According to the Registrar of the ICTR, Adama Dieng, the lawyer was guilty of "swindling, dishonesty, fraud and deception" and of embezzling $US 300,000, a charge Degli denies.

The dismissal of Kabiligi's lead counsel virtually brought to a halt one of the most important trials ever conducted by the tribunal as both lawyer and client sought to reverse the Registrar's decision.

Kabiligi had argued that the Chamber's refusal to suspend the Registrar's decision to withdraw Mr. Degli had "compromised" the presentation of his evidence, putting him on "unequal footing with his three co-accused".

Apart from Kabiligi, this trial groups together Colonel Theoneste Bagosora whom the Prosecutor regards as having been the "mastermind" of the genocide, and two other senior officers of the Ex-FAR- Colonel Anatole Nsengiyumva and Major Aloys Ntabakuze.

Skolnik has been Bagosora's co-counsel; therefore he will not be a complete stranger to the case when it reopens March 30.