

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



Rainstorm in northern Sierra Leone

**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**

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# Nigerian Tribune

Friday, 8 June 2012

## **Obasanjo and Charles Taylor's sentencing in The Hague**

It is a good development that former Liberian President, Charles Taylor, has been sentenced in The Hague for crimes committed while he reigned as a president of the tiny West African country.

This will go a long way in sounding a note of warning to despots in other parts of the world, especially those in Africa, that they will be accountable for whatever they do while in power.

Another leader that should be expecting nemesis to catch up with him soon is the Syrian President, Mr Bassar Al Assad, who has been allegedly killing innocent citizens in order to suppress their call for political change.

However, the essence of this write-up is not about Al Assad, but about former Nigerian President, Olusegun Obasanjo.

When Taylor was still Liberian president, Obasanjo had gone to his country to urge him to cede power so that there could be stability, Taylor was promised a safe haven in Nigeria. I know Taylor will be regretting his decision to trust Obasanjo today. He would have preferred death in action in Liberia to what he is currently facing, a 50-year jail term in a foreign jail.

Being somebody who is in his 60s, that literally translates to the fact that he may never be a free man alive.

While not saying what Taylor did in Liberia was good, but the fact that there was an assurance from Obasanjo that he would be protected in Nigeria was enough not to hand him over as Nigeria did.

This has set a bad precedent, and other despots like Bassar Al Assad of Syria will never accept a condition like that to surrender power.

I believe an agreement should be an agreement, and Obasanjo has shown he is not someone to be trusted, and that is also playing out in Nigeria's political environment.

Wilson Dominic,  
Wuse Zone 11, Abuja.

## Charles Taylor, Arms Dealers and Reparations

JURIST Guest Columnist Kenneth Gallant of the University of Arkansas at Little Rock William H. Bowen School of Law says that the sentencing of Charles Taylor should have included the provision of reparations for his victims, and that the prosecution ought to raise this issue on appeal...



The conviction of Charles Taylor, former president of Liberia, in the Special Court for Sierra Leone (SCSL) was historic and positive. His sentence, consisting solely of 50 years imprisonment, is disappointing. It is a missed opportunity to provide reparation to his victims and to use a financial penalty to deter crime.

### Arms Dealing as a Crime

Taylor was not convicted of ordering, commanding or committing mass killings, rapes and mutilations in Sierra Leone. He was convicted of "aiding and abetting" these crimes, and of participating in the "planning" of many of them. Ironically, this may turn out to be one of the most historic points about his case.

Taylor was convicted because he sold weapons for diamonds, along with doing many other things. The SCSL found [PDF] beyond a reasonable doubt that:

[T]he Accused knew that his support to the [Sierra Leone rebels] would provide practical assistance, encouragement or moral support to them in the commission of crimes during the course of their military operations in Sierra Leone.

So, Taylor was convicted for sending into Sierra Leone weapons that he knew would be used in perpetrating the murders, rapes and mutilations that occurred.

### Why is this significant?

In general, the international criminal courts and tribunals set up since 1993 (beginning with the International Criminal Tribunal for the Former Yugoslavia) have focused on prosecuting the perpetrators and commanders of these kinds of atrocities. Indeed, the SCSL has done so in several other cases as well, and this is appropriate. The Taylor verdict, however, says something more.

An arms dealer who sells weapons knowing (or intending) that they will be used to commit crimes against humanity and war crimes also commits a crime. Such persons are subject to prosecution and punishment as aiders and abettors of the killers, rapists and mutilators. Status as an outsider to a civil war does not grant immunity.

Taylor has made arguments that he never received any conflict diamonds, and that the witnesses

who claim otherwise are not credible. He may raise this argument on appeal. However, the statement of law above is correct, and I believe it will be upheld on appeal regardless of the decision on the specific facts of the case.

To repeat the effect of the SCSL Trial Chamber judgment against Taylor: arms dealers are criminals if they sell into civil wars, knowing their weapons will be used for mass crimes against civilians in violation of international law. That is an historic ruling.

### **Failure to Forfeit Proceeds of Crime**

According to the Statute of the Special Court of Sierra Leone [PDF], the SCSL has the authority to order the forfeiture of proceeds of crime:

In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Unfortunately, at Taylor's sentencing the Trial Chamber did not order forfeiture of the diamonds, the proceeds of the diamonds or any other proceeds of his crimes. Perhaps this is because the prosecution did not even ask for forfeiture in its sentencing brief [PDF].

This is an historic missed opportunity. Very few of those convicted of genocide, war crimes and crimes against humanity in the modern international criminal courts and tribunals have been wealthy people. Most convicts have had few or no resources to commit, even in some small way, to making good the harm they have caused.

Taylor might be different. The Trial Chamber found during sentencing [PDF] that:

[T]here was a continuous supply . . . of diamonds mined from areas in Sierra Leone to Mr. Taylor, often in exchange for arms and ammunition. Mr. Taylor repeatedly advised the AFRC/RUF [Armed Forces Revolutionary Council/Revolutionary United Front] to capture Kono, a diamondiferous area, and to hold Kono and to recapture Kono, so they would have access to diamonds which they could use to obtain from and through him the arms and ammunition that were used in military operations to target civilians in a campaign of widespread terror and destruction. Mr. Taylor benefited from this terror and destruction through a steady supply of diamonds from Sierra Leone. His exploitation of the conflict for financial gain is, in the view of the Trial Chamber, an aggravating factor.

In its sentencing judgment, the Trial Chamber also said, properly, that deterrence is a chief purpose of sentences in international criminal courts and tribunals. Taylor amassed personal wealth through his illegal trade. Forfeiture of all of these proceeds (not just the profit portion of them), as much as imprisonment, may help deter future arms dealers from selling into these conflicts.

For the first time in the history of modern international criminal prosecutions, we might also have seen a significant amount of ill-gotten gains being made available for reparations to victims of international crimes. The forfeiture of this property might have made it available to the slave laborers forced to mine the diamonds, and to the government of Sierra Leone to provide rehabilitation to those mutilated during the campaigns in which the diamond-bought weapons were

used.

The reparation provisions of the SCSL statute, like those of the Rwanda and Yugoslav tribunals, are much less thorough than those of the International Criminal Court (ICC). Nonetheless, a sentence of forfeiture here could have provided a reasonable starting point for the ICC to consider when it sentences a person who has significant resources — especially resources gained from the proven criminal conduct.

I know of nothing in the public record that explains the prosecution's failure to pursue forfeiture in its sentencing brief. I know of nothing in the public record (other than the prosecution's failure, which is significant) to explain the Trial Chamber's failure to use the forfeiture provisions in this case.

It would not have been easy to get money for reparations in this case. The proceeds are almost certainly hidden, converted into other property or otherwise made difficult to reach if, indeed, they still exist. And it would not have been easy to get the money used for making the victims whole. If it is given to the state of Sierra Leone, the court and the government might reach an agreement to use it for rehabilitation of survivors or education for the children of the murdered.

This error may or may not be correctable on appeal. According to the SCSL statute, the prosecution has the right to appeal on grounds of error of law or fact. However, it may be difficult to succeed on such an appeal because the Appeals Chamber may hold the issue waived by failure to raise it at the original sentencing hearing. If the appeal succeeds, it may result in a reduction of Taylor's fifty-year sentence of imprisonment (which was computed without considering forfeiture, a real penalty).

I hope that the prosecution will make an argument that forfeiture should be part of the penalty, as it is clearly available pursuant to the SCSL statute. Even a court decision that the prosecution has waived the argument might carry a strong statement that forfeiture of ill-gotten gains should generally be part of the sentences of those who have made such gains from war crimes and crimes against humanity. It will strengthen the message to arms dealers already sent by the Taylor verdict.

The decision to appeal will require a brave prosecutor who is willing to be criticized by the Appeals Chamber for what appears (from the public record) to have been an error made at sentencing. Being willing to take that heat may, however, make the Taylor case even more important and progressive than it already is.

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# The Phnom Penh Post

Friday, 8 June 2012

## Justice must be re-cast

Theary Seng



*Ta An, 79, deputy secretary of the Central Zone under the Khmer Rouge regime, rests at his home in Battambang last year. Photograph: May Titthara/Phnom Penh Post*

The Post's recent article "Investigation Flawed: 004 Suspect's Lawyers" deserves comment.

First, Ta An could not have a better lawyer representing him than Richard Rogers, who has deep experience not only in international law but also in Cambodia.

Rogers will ensure Ta An's right to a fair trial is protected — whatever that means at the ECCC or in the high-powered game of international criminal law.

Which brings me to my next comment: fair-trial rights in the politically high-stakes, professionally high-powered, institutionally high-priced, individually high-minded and self-righteous sphere of mass crimes and genocide are illusory at best, nonsensical at worst.

The international criminal law system is broken and in need of reform, beginning with how we employ fair-trial rights.

The fair-trial rights employed in the international sphere of mass crimes and genocide are imported wholesale from the national court system.

The first problem with this is one of rationale. In a domestic criminal-justice system, immense measures for the protection of the individual are marshalled to counterbalance the massive resources of the State.

The rationale is to shield the defending party (often an individual not versed in law) against potential abuse by the prosecuting party .

The *raison d'être* for each fair-trial right principle should be viewed through this lens of resource/power imbalance concerns.

The rationale for arming the individual with these substantial fair-trial rights in the domestic justice system is best reflected in William Blackstone's maxim: "The law holds that it is better that 10 guilty persons escape than one innocent suffer."

The second problem is that these rights may be reasonable in the national court system, but the wholesale import of them is a slap in the face of victims in cases of mass crimes and genocide.

These cases are of a different nature and scope not adequately addressed by the domestic fair-trial rights principles.

To illustrate the inadequacy and inappropriateness, let's look at a few fair-trial principles that have been accepted as articles of faith in international criminal law, within the context of the Extraordinary Chambers in the Courts of Cambodia.

In April last year in this newspaper, I raised the illusory relevance of the well-known presumption-of-innocence principle in the ECCC.

I had lodged a complaint alleging serious criminal charges against Meas Muth and Sou Met of Case 003 and Ta An, Ta Tith and Im Chaem in Case 004.

The problem with mass crimes is that they produce majority victims in the minority public with the right to speak publicly about their claims.

And their claims are based not only on personal experience but substantiated by the countless testimonies of other victims and innumerable, legitimate pieces of information.

The ECCC's public affairs officer — an international lawyer — accused me of “mere speculation” with “no basis”, and with violating the presumption-of-innocence principle.

Basically, he was asking me and other victims to suspend our reason, logic and knowledge of these materials relevant to our cases, as well as the substantiating testimony of other victims.

The problem with the wholesale import of the presumption-of-innocence principle from the domestic sphere into the international context is one of confusing the rights of mass victims with the obligations of court officials and the unaffected public.

This is not a simple murder in the neighbourhood by which the presumption-of-innocence principle is to be viewed through a very narrow local lens without incorporating the countless distinguishing factors associated with mass crimes of international renown.

The Equality of Arms principle states that defence counsel and the prosecutor should have equal status.

At the ECCC, serious allegations have been raised against the collusion (even if only the perception of it) between Judge Silvia Cartwright and international prosecutor Andrew Cayley in their ex-parte communication.

The right to an independent, impartial tribunal has been egregiously violated too persistently and consistently, and been so well documented and so frequently spoken about, that it's unnecessary to dwell on it here.

The right to legal counsel is glaringly violated in the cases of Meas Muth, Sou Met, Ta Tith and Im Chaem.

The right of the defence to call and examine witnesses has been ignored, despite its constant calls for political leaders to appear before the tribunal.

The vision and legal incorporation of victims as a party in the criminal proceeding is commendable, and should be retained for future international criminal proceedings. But it is greatly in need of restructuring and reform.

Since the Nuremberg trials, and the explosion of international law in the 1990s, we have gained enough experience and learned enough lessons to re-structure the international justice system to deal with mass crimes.

Theary Seng, an American-trained lawyer, is the founding president of CIVICUS: The Centre for Cambodian Civic Education, and the Association of Khmer Rouge Victims in Cambodia



# Institute for War & Peace Reporting

Thursday, 7 June 2012

## **Kenya: Cases Given Go-Ahead At ICC**

By Nzau Musau and Simon Jennings

### Analysis

The cases against four senior Kenyan figures before the International Criminal Court, ICC, cleared a major hurdle on May 24 when appeals judges rejected challenges which the defendants had filed over whether the court has jurisdiction to prosecute.

The cases now look set to go to trial in The Hague within a year, and the decision has been welcomed as a big step forward by rights groups and victims of the 2007-08 violence that followed a disputed presidential election in Kenya.

The parties will convene in The Hague on June 11-12 to discuss the next steps in the process, including a possible start date.

The appeals chamber did not rule on an important issue raised at previous hearings - how to define an "organisational policy" for the commission of grave crimes. Suspicion that such a policy existed is part of what gives the ICC jurisdiction to try a case. Instead, they deferred that decision until relevant evidence has been heard during the trial.

Kenya descended into violent chaos following the December 2007 election, leading to the deaths of more than 1,300 people and approximately 350,000 others being forcibly displaced.

Following court hearings during September and October 2011, the ICC confirmed charges of crimes against humanity against Kenya's deputy prime minister Uhuru Kenyatta, former civil service chief Francis Muthaura, former higher education minister, William Ruto, and radio journalist Joshua arap Sang.

On January 30, defence lawyers for all four defendants challenged the ICC's jurisdiction to try the cases, on the grounds that the crimes being prosecuted did not meet the necessary legal threshold of crimes against humanity and were therefore not serious enough to fall within the court's jurisdiction.

The five-judge appeals panel ruled that the defence's submissions did not amount to a jurisdictional challenge, but instead hinged on the prosecutor's evidence in the case, and should therefore be decided on the facts presented at trial.

According to the ICC's founding treaty, the Rome Statute, in order for an act to qualify as a crime against humanity and merit investigation by the international court, a key requirement is that it has been committed against a civilian population "pursuant to, or in furtherance of a state or organisational policy".

The defence teams in the Kenya case all argue that the prosecutor's evidence has not demonstrated an "organisational policy" on the part of the defendants, and that the case should therefore not be tried by the Hague court.

ICC judges were themselves divided on this point when issuing their decision to open an investigation into Kenya's post-election violence in March 2010, and again when confirming the charges in January this year.

In 2010, two judges ruled in favour of advancing the investigation in Kenya while the third, Judge Hans-Peter Kaul, disagreed. Kaul issued a dissenting opinion arguing that the evidence did not establish grounds for believing there was an organisational policy behind the crimes; and that the ICC therefore did not have jurisdiction over them.

In Kenya, supporters of the ICC process hailed last week's decision as an endorsement of the prosecutor's powers to investigate crimes on his own initiative.

The Kenyan investigation will be the first case that ICC Prosecutor Luis Moreno-Ocampo has initiated and successfully brought before the court, under the legal doctrine known as "proprio motu".

"By exercising his proprio motu powers and succeeding on it to this level, the prosecutor and the court have shown the zeal to punish international crimes," said James Gondi, the head of the International Centre for Transitional Justice in Nairobi.

Ocampo began investigations in Kenya after the government repeatedly failed to establish a local mechanism to prosecute alleged perpetrators of the post-election violence.

Priscilla Nyokabi, director of the legal aid organisation Kituo Cha Sheria in Nairobi, believes last week's decision will spur the prosecutor's imminent successor, Fatou Bensouda, to initiate further investigations elsewhere.

"[The decision] will undoubtedly embolden the incoming prosecutor to be more proactive," Nyokabi said.

Victims of the violence who are yet to see any senior figure brought to justice for the violence are also happy that the case is moving towards trial proceedings, although for many it will take more than a justice process to help them rebuild their lives.

"I want those who did this to me punished," said Eric Kioko who was a disc-jockey at the time of the post-election violence when he lost his hand in an attack on Mathare slums in the heart of Nairobi. "But above all, I want to be restored as near as possible to the position I was in before."

### **A Decision Deferred**

The May 24 decision has given no greater clarity to the question of "organisational policy", or to how the court should handle the legal issues raised by both Judge Kaul and by the defence teams.

In their January submission, defence lawyers did not explicitly ask the appeals judges to give their interpretation as to whether the prosecutor's evidence made the case that the defendants' alleged actions were underpinned by an "organisational policy".

At the 2010 hearing, the two pre-trial judges reached an understanding - which they repeated when confirming the charges in January 2012 - as to the required legal criteria for such an organisational policy, including the existence of a command structure, a hierarchy, and criminal intent. However, the appeals chamber did not rule on these criteria.

William Schabas, a professor of international law at Middlesex University in the UK, believes the appeals judges were right not to reach a decision at this stage.

"It's always wise to decide these things in light of a good factual framework," Schabas said. "I'm not surprised [judges took this route] and I think it is probably the right decision."

Other legal experts were surprised by the decision, and said it would have been useful for the appeals chamber to outline the legal standards for determining that an organisational policy existed.

"I am surprised that the appeals chamber did not confirm, one way or the other, the analysis of the organisational policy provided most recently by the pre-trial chamber in their January 2012 confirmation of charges decisions," Jens Ohlin of the Cornell Law School in New York said.

If the court had explicitly set out its views on what constitutes an organisational policy, then the parties in the case would be able to "go into trial knowing how to make their arguments", Ohlin said.

Some of the defendants have given notice that they intend to raise the matter early on in the trial.

"Fairness dictates that the accused know with clarity the precise contours of the charges against him," Sang argued in his filing.

The lack of clear legal parameters could mean that the parties are talking at cross-purposes when the case comes to trial.

"You're going to have litigants going into the trial making arguments when the law is still a little bit unsettled," Ohlin said.

Unless all four defendants are acquitted, appeals judges are likely to be asked to rule on the same point after the trial is over. If that happens, they could find that the factual information presented during the trial does not contain enough proof of the existence - or otherwise - of an organisational policy to inform their own decision on the matter.

Ohlin noted that the danger of this happening is precisely the reason why the court has in the past been willing to make key legal decisions in advance of a trial.

### **Definition could shape future ICC policies**

A definitive statement of the legal standard for "organisational policy" is not only crucial to the Kenyan trial, it also has implications for the ICC's future activities. It could restrict the prosecutor's authority so that he can investigate only the most serious cases of genocide, war crimes and crimes against humanity; or it could offer scope for broader investigations if the interpretation is more generous.

Either way, the final definition will be "hugely influential for many years to come", according to Schabas.

He noted that international courts have often started with a broad interpretation of crimes against humanity, allowing them to target lower-level suspects, before they establish themselves and are able to prosecute high-profile figures.

"I think the problem with international justice is you need to have a net with big holes in it, so the smaller fish you are not interested in can swim through," Schabas said. "I've never been interested in having a net that catches everything. Then you end up with a net full of garbage."

Schabas believes the ICC will have its hands full dealing with major alleged criminals, so pursuing lesser crimes and their perpetrators will only "clutter" the judicial process.

A final ruling on the matter will only come in several years' time when appeals judges define the standard for testing the existence of an "organisation policy" behind crimes against humanity, in this case in Kenya. A trial judgement is probably close to three years away, and appeals judges would still have to issue a ruling after that.

"There is going to be great uncertainty in the world community about what exactly the extent of the court's authority is in this area, so it is going to be a big mess," Ohlin said. "You're talking about years more of uncertainty on this."

Nzau Musau is an IWPR reporter in Nairobi. Simon Jennings is IWPR's Africa Editor.

## UN News Service

Thursday, 7 June 2012

### **Rwanda: UN Genocide Tribunal Transfers Former Rwandan Official to National Authorities**

The United Nations tribunal trying key suspects implicated in the 1994 genocide in Rwanda, has transferred to Rwandan authorities the case of Bernard Munyagishari, a former Government official charged with crimes against humanity.

Mr. Munyagishari is accused of recruiting, training and leading Interahamwe militiamen in mass killings and rapes of Tutsi women in the Gisenyi prefecture and beyond between April and July 1994 - and his transfer to Rwanda is the fifth by the UN International Criminal Tribunal for Rwanda (ICTR).

The previous four cases transferred were those Ladislas Ntagazwa, Jean Bosco Uwinkindi, Fulgence Kayishema, and Charles Sikubwabo.

On 25 May last year, Mr. Munyagishari was arrested in the Democratic Republic of Congo (DRC). He was transferred to the UN Detention Facility in the Tanzanian city of Arusha, where the ICTR is based, on 14 June 2011. He made his initial appearance on 20 June 2011 and pleaded not guilty to all charges.

In its ruling on Mr. Munyagishari's referral, the three-judge panel ordered that the prosecution of the case be referred to the authorities of Rwanda, who will in turn hand over the case to the Rwandan High Court.

The ruling also requested the appointment of an independent organization as monitor instead of, or in addition to, the ICTR legal staff, before the transfer of Mr. Munyagishari to Rwanda.

In addition, the ICTR asked that Rwanda provide the defence team with access to people, locations and documents throughout the country as required in order to effectively conduct the case of the defence.

The ICTR was set up after the Rwandan genocide, when at least 800,000 ethnic Tutsis and politically moderate Hutus were killed during three months of bloodletting that followed the death of then-president Juvenal Habyarimana, when his plane was brought down over the Rwandan capital of Kigali.

Reuters

Thursday, 7 June 2012

### **Ex-Ivory Coast leader seeks war crimes trial delay**

AMSTERDAM - Lawyers for former Ivory Coast president Laurent Gbagbo asked for his war crimes trial to be postponed on Thursday, saying he was unwell after being mistreated during detention in the West African nation.

Gbagbo, who refused to stand down as president after losing elections in 2010, is accused of committing crimes against humanity during the ensuing four-month civil war, in which about 3,000 people were killed and more than a million displaced.

In a brief filed to the International Criminal Court (ICC), his defence team said Gbagbo was ill after suffering cruel and inhumane treatment during the eight months he spent in detention in Ivory Coast before he was sent to The Hague.

Charges against him are due to be confirmed on June 18. The defence did not suggest a new date.

A medical expert said his detention in solitary confinement "should be considered a form of ill-treatment as serious as physical abuse and even torture," according to the defence.

When he arrived in The Hague in December, Gbagbo complained of being ill, saying he had been held in a windowless room in Ivory Coast.

The defence also said it needed more preparation time given the case's complexity and complained prosecutors had more money and manpower, which could prejudice the trial.

Gbagbo is the first former head of state brought before the 10-year-old ICC. However a special court in The Hague last month convicted former Liberian president Charles Taylor of war crimes, making him the first former head of state to be convicted for atrocities since the trials of Nazis after World War II. (Reporting By Thomas Escritt; Editing by Pravin Char)

Reuters

Friday, 8 June 2012

**On tyrants, justice for some, honors for others**



*Zimbabwe President Robert Mugabe is banned from the United States.*

The United Nations has a way of disappointing its backers and rising to the occasion in ways that confound its critics. Both tendencies have been on display in recent weeks.

Last week, former Liberian President Charles Taylor was found guilty of heinous crimes in a UN-backed war crimes court. The 64-year-old Taylor was sentenced to 50 years for providing arms to rebels in Sierra Leone in exchange for “blood diamonds” that made him very, very rich. Rape, murder, and conscription of child soldiers were among his offenses, which left 50,000 people dead. The tribunal was slow but thorough, and succeeded in bringing the weight of justice to one of the world’s most notorious criminals.

Meanwhile, Robert Mugabe, the brutal and corrupt president of Zimbabwe, has turned a once healthy African country into one of the world’s poorest nations. His violence alone has put him among a small group of leaders banned from the United States and European Union. But that didn’t stop the UN World Tourism Office from inviting Mugabe to become a global tourism ambassador, an offer made because the tourism office’s annual assembly meeting will be at Victoria Falls, which straddles Zimbabwe and Zambia. Meanwhile, the United States continues to advise Americans to avoid Mugabe’s nation for their own safety.

The United Nations is not always right or always wrong. Managing the interests of close to 200 countries results in policies that can be inspirational — or simply pathetic.