

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



Prosecutor Brenda Hollis on outreach yesterday in Port Loko District. Photo: Martin Royston-Wright

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

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## SCSL Registrar bids farewell to International Community- Thank you! Thank you!! Thank you!!!



**R**egistrar of the Special Court for Sierra Leone, Mrs Binta Mansaray has expressed profound thanks and appreciation to the International Community through their embassies in The Hague for their “tremendous support” to the court since its inception ten years ago.

Addressing diplomats in The Hague after the Appeals Chamber’s verdict affirming the earlier 50 years jail sentence on Charles Taylor, Mrs Mansaray stated that the success of the court would not have been possible without the support and commitment of the government and people of Sierra Leone, the United Nations and other friendly countries. She also recognised the support from

sister International tribunals like the Special Tribunal for Lebanon through the provision of space and a high tech courtroom in The Hague which enabled the SCSL to run trial proceedings 5 days a week.

**“But the support provided goes far beyond equipment and infrastructure. It also included essential staffing support in critical areas such as court support, information technology and general services”.**

Mrs Mansaray further commended the Appeals Chamber for its jurisprudential legacy on child soldiers, forced marriages, attacks on UN peacekeepers and acts of terror. **“The Appeals Chamber jurisprudence has properly recognised and held accountable**

**for the full range of atrocities committed during the war. For that the people of Sierra Leone and most especially the victims are grateful. I say thank you, thank you and thank you”.**

Mrs Mansaray said a special ceremony will be organised on December 2nd in Freetown to mark the final wrapping up of the SCSL and the commencement of the Residual court which will be based in Freetown.

The Prosecutor of the Special Court Brenda J. Hollis emphasised that the Residual court that will be based in Freetown is for the enforcement of sentences, maintenance of archives and protection of witnesses, adding that the court will robustly pursue any one who harasses the witnesses who had testified in the court proceedings.

Reacting on the decision of the Appeals Chamber to uphold the earlier ruling of the Trial Chamber, Madam Hollis remarked that **“this final decision affirms Mr. Taylor’s criminal responsibility for grave crimes which caused untold sufferings to many thousands; if not tens of thousands of victims in Sierra Leone. This judgement brings some measure of justice to those victims who suffered so horribly because of Charles Taylor”.**

She furthered that Charles Taylor is the first former Head of State to

be convicted for war crimes by an international criminal tribunal since Nuremberg in 1946. **“The Appeals Chamber today confirmed what the Trial Chamber made clear, that Heads of State will be held to account for war crimes and other international crimes. No person, no matter how powerful, is above the law. It affirms that with leadership, comes not just power and authority, but also responsibility and accountability... this sentence makes it clear that those responsible for criminal conduct on a massive scale will be severely punished. I commend those brave witnesses who came forward to testify. I also commend the people of Sierra Leone. Without their commitment to justice this trial would not have taken place, indeed this court would not have existed. Their resilience and courage gives us all great hope for a future of continued peace, justice and progress in Sierra Leone”.**

President of the SCSL, Hon. Justice George Gelaga King heaped praises on the Registrar of the court and her team for “a job well done” and further expressed thanks and appreciation to all contributors to the work of the court over the years.

*By Chernor Ojuku Sesay,  
Information Attache, Sierra  
Leone Embassy, Brussels/Eu.*

New Citizen  
Thursday, 3 October 2013

## 'Respect Prisoners' Rights'

By Sheikh Ahmed

- *Dep. Minister*

**D**eputy Minister of Internal Affairs Mr. Sheka Tarawally aka Shekito, has admonished prison officers in the country to treat inmates humanly.

'Prisoners are human beings and that no matter what crime they may be accused of, or convicted for, they are titled to malleable rights must not be taken for granted', he said.

Mr. Tarawally gave the admonished when he paid a working visit to the Pademba Road maximum prison in Freetown recently.

He said the promotion and protection of prisoner's rights while in custody was the foundation stone of prison management and should not be influence prison officers in the way they conduct their duties.

Some prisoners pleaded to the deputy minister for the government to allow them to register and exercise their franchise in future general elections by so doing they said they are participating in the political dispensation of the country.

Mr. Tarawally tasked the prison administration to set aside a day known as 'Prison Day' to create awareness of stakeholders and the public on the role of the prison in national development.



**Dep. Internal Affairs Minister, Sheka Tarawally**

The day, he noted could also be used to address the negative attitudes towards improving the condition of the prisons.

Mr. Tarawally indicated that the government would continue to support and assist the prison service in ensuring that programmes of inmates were geared towards reforming them to contribute towards national development.

He disclosed that govern-

ment in its efforts to solve the understaffing challenges bedevilling the prison service had given approval for the recruitment of more personnel to boost the staff strengthen. The government is aware of the challenges under which personnel of the prison service work and live, and is adopting measures to address logistics, transportation and accommodation challenges.

[Note: This article also appeared in Sierra Express.]



Aljazeera

Wednesday, 2 October 2013

### The impact of Charles Taylor's verdict

The ICTY appeal has set a precedent for impossible standards, writes author.



David Tolbert is the president of the International Center for Transitional Justice.



Charles Taylor is likely to spend the rest of his life in prison following the decision of the Special Court for Sierra Leone's (SCSL) appeal judges to affirm his 50-year sentence for aiding and abetting crimes against humanity committed by rebels in Sierra Leone's civil war. Although he avoided conviction for alleged crimes committed in his native Liberia, which he ruled from 1997 to 2003, the verdict will also be strongly felt in that country, and hopefully bring some measure of justice to his victims there as well.

The Special Court's final judgment established that Taylor bears criminal responsibility for supporting the Revolutionary United Front (RUF) and other rebel groups in their campaign to instill terror in the civilian population of Sierra Leone. Although the court rejected the prosecution's appeal to convict Taylor on the basis of his personal, individual responsibility for the campaign of murder, rape, sexual slavery and

amputations, he was found guilty of "aiding and abetting" the commission of these horrendous crimes by providing RUF with essential material support, including weapons and supplies.

This judgment marks the fitting end of Taylor's bizarre career as a brutal warlord, president, playboy, and, at one point, darling of the West. At the same time, it completes the work of the SCSL, the first so-called "hybrid" or mixed court - where international judges and staff worked alongside their Sierra Leonean colleagues - which is bound to leave a lasting legacy on the country, its judicial system, and its efforts to heal the scars of the civil war.

However, the significance of Taylor's judgment rendered few days ago in The Hague goes far beyond Taylor himself, or even the Special Court for Sierra Leone. This decision will be an unavoidable legal precedent in any future deliberation of the role played by leaders and states in crimes committed by forces they support in other countries. The SCSL's judgment in Taylor's case has very significant legal consequences, distinguishing itself from other recent decisions by another international court and adding fuel to an already intense debate regarding the criminal responsibility of those who provide indirect support to perpetrators of mass atrocities.

### **Flashback to ICTY**

To understand why this is so, we have to travel back to the 1990s, to a conflict thousands of miles from the coast of West Africa - the war in Bosnia and Herzegovina - and to another international court situated in the same Dutch town, only a few blocks from where the Taylor's verdict was read out.

The International Court for the former Yugoslavia (ICTY), the first international war crimes court established since the Nuremberg and Tokyo tribunals, recently issued a controversial final judgment in the case of Momcilo Perisic, the former commander of the Yugoslav Army under Slobodan Milosevic. Perisic was charged with aiding and abetting crimes committed in Bosnia by Bosnian Serb forces, including the genocide committed by Bosnian Serb forces in Srebrenica. Perisic and his underlings had provided arms, equipment and other support to those who planned and committed these crimes against literally thousands and thousands of Bosnians.

Following the initial trial, Perisic was convicted and sentenced to 27 years imprisonment. This was hardly a surprise given the Tribunal's jurisprudence and practice to date. There was no question that massive crimes had been committed in Bosnia by forces to which Perisic had supplied considerable material support, including large supplies of weapons and ammunition, without which these crimes may well not have happened or at least not on the same scale.

However, in the appeal decision that caused much surprise and generated great debate in international legal circles (as well as consternation and anger in Bosnia-Herzegovina), Perisic was acquitted of all charges and released. The ICTY appeal judges held that that in order for Perisic to have been legally responsible for crimes committed by the Bosnian Serb Army he actively supported, he must have intended that the material support he provided to these forces be used in the commission of those crimes. Or, in the



words of the court, the prosecution failed to prove that Perisic's provision of these weapons, support and materials was "specifically directed" toward the commission of crimes.

While legal scholars continue to argue about the Perisic case, on the practical level the decision meant that it would be extremely difficult to hold criminally responsible those who provide essential support, such as weapons and ammunition, to surrogate forces or allies that commit crimes. The "specific direction" standard is virtually impossible to satisfy because countries that provide aid to criminal groups will rarely give explicit directions about using the aid to further crimes, even though that is well understood by everyone involved.

### **The judicial decision heard around the world**

The Perisic decision reverberated loudly in the corridors of courts and law schools around the world, but also of military establishments involved in supporting various forces in several ongoing or recent conflicts. Moreover, it also provided an opening for Charles Taylor and his camp. Bearing in mind the SCSL's obligation to take into consideration the jurisprudence of the Yugoslav and Rwandan tribunals' for guidance, a number of observers expected that Taylor would now be acquitted given the difficulty of meeting the "specific direction" standard as set out by the ICTY's Perisic judgment.

However, the judges of the Special Court for Sierra Leone, after examining the precedents from international courts and customary international law did not follow the ICTY's interpretation of "aiding and abetting" in Perisic and upheld Taylor's conviction.

In the summary of the judgment, Judge Gelaga King explained their decision in no uncertain terms: "The Appeals Chamber was not persuaded by the recent ICTY Appeals Judgment in Perisi? that 'specific direction' is an element of aiding and abetting liability under customary international law. It noted that the ICTY's jurisprudence does not contain a clear, detailed analysis of the authorities supporting the conclusion that 'specific direction' is an element under customary international law."

The opinion of Judges Shireen Avis Fisher and Renate Winter went a step further in underscoring this approach. They flatly rejected Taylor's argument that without a standard of "specific direction" aiding and abetting liability would be overbroad and would criminalize the conduct of states assisting rebel movements in other countries, which might at the same time be supporting SCSL or other international courts. Judge Fisher was quite blunt: "Suggesting that the judges of this Court would be open to the argument that we should change the law or fashion our decisions in the interests of officials of States that provide support for this or any international criminal court is an affront to international criminal law and the judges who serve it."

The importance of this judgment can't be overstated. The SCSL's judgment has not only finally provided a measure of justice to Charles Taylor's many victims in Sierra Leone, it has provided a strong signal to those who want to commit horrific crimes through surrogates and puppets: they may not easily hide behind complicated legal constructs and are more certain to face the bar of justice. This a victory for justice everywhere and a warning to those who think that they can, like the Wizard of Oz, manipulate atrocities from afar and not face consequences.

*David Tolbert is president of the International Center for Transitional Justice. Previously he served as deputy chief prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), registrar of the Special Tribunal for Lebanon and assistant secretary-general and special expert to the United Nations secretary-general on United Nations Assistance to the Khmer Rouge Trials.*

## New Dawn (Liberia)

Thursday, 3 October 2013

### **NPP Splits Over Taylor**

By Winston W. Parley

The former ruling National Patriotic Party (NPP) of imprisoned ex-president Charles G. Taylor, is divided on deriving a response to Last week's ruling of the Appeal Court of the Special Court for Sierra Leone in The Hague, which has upheld Taylor's 50 years jail sentence.

In a statement issued Wednesday in Monrovia, the former ruling party said its response to the Charles Taylor's verdict has been delayed because the party is divided over what kind of response to release.

The statement, authorized by NPP Assistant Secretary for Press and Information Gus Knowlden, says one group of the party is supporting a strongly worded statement, while the other is considering a moderate position.

"The NPP's response to the Charles Taylor's verdict has been delayed because the party is divided over what kind of response to release, as one group is supporting a strongly worded statement, while the other is considering a moderate position," the statement said.

The party however it is drafting its response to the recent 50-year sentence passed by the Special Court for Sierra Leone against its first standard bearer, even though it did not say whether the division has been settled.

The Appeal Court on 26 September, 2013, upheld earlier judgment handed against Mr. Taylor in May 2012, convicting him of aiding and abetting RUF rebels during the civil war in neighboring Sierra Leone in exchange for diamonds.

Few days to the appeal judgment last month, Taylor's loyalists mixed with NPP members held a one-day intercessory prayer service in Monrovia on Saturday, 22 September, seeking God's intervention for his return to Liberia.

But the court dashed the loyalists' hopes for his return home, despite a prophetic sermon delivered by Bishop Isaac Winker of the Dominion Christian Fellowship Center, assuring that the convicted ex-president, 65, would return to drive through the streets of Liberia.



## Associated Press

Wednesday, 2 October 2013

### War Crimes Court Seeks Arrest of Kenyan

AMSTERDAM, By TOBY STERLING

The International Criminal Court has issued an arrest warrant for a man suspected of tampering with witnesses in the war crimes case against Kenya's Deputy President William Ruto — the first time the court has sought to prosecute someone for interfering with its legal process.

The target of the warrant, Kenyan journalist Walter Barasa, denied the allegation.

The Hague, Netherlands-based court said Wednesday that Judge Cuno Tarfusser had issued an arrest warrant for Barasa, 41, on suspicion of attempting to bribe a potential witness.

"The evidence collected so far indicates that there is a network of people who are trying to sabotage the case against Mr. Ruto ... by interfering with prosecution witnesses," Prosecutor Fatou Bensouda said in a statement. "Walter Barasa, against whom compelling evidence has been collected, has been part of this network, and his actions fit into this wider scheme that the (prosecutor's) office continues to investigate."

Barasa issued a statement in Nairobi saying he had been in contact with an ICC investigator named Paul Irani, acting as a go-between for Irani and a witness in the Ruto case. Barasa claimed that Irani and other prosecutors were trying to elicit false testimony from this woman and others to strengthen their case.

"They were carrying out armchair investigations in a hotel on the basis of information from people who were known gold diggers roaming the streets," Barasa said. He said he broke contact with the ICC investigators after they gave him an ultimatum last month to either depart Kenya for the Hague immediately to testify against Ruto or be charged with witness tampering.

"I am ready and prepared to defend myself against these allegations, which are false," he said. "I respect the court. I respect the rights of the accused persons to a fair hearing, and the victims' right to get justice. But I do not accept coercion and unorthodox means of implicating accused persons and conducting investigations to attain an unjust end."

Barasa said he recorded parts of a conversation he had with Irani on Sept. 15, that would prove the journalist's allegations and that he is prepared to produce them in court.

If Barasa is arrested by Kenyan authorities and turned over to the ICC, judges are expected to charge him with "corruptly influencing and attempting to corruptly influence a person he believed to be a prosecution witness."

If convicted, Barasa could face a prison sentence of up to five years.

Prosecutor Bensouda said she hopes Barasa's arrest warrant will serve as "a warning to others who may be involved in obstructing the course of justice through intimidating, harassing, bribing or attempting to bribe ICC witnesses." She said, "My office will continue to do everything it can to ensure that witnesses are able to present their evidence before the court without fear."

Ruto has pleaded not guilty to charges of crimes against humanity for allegedly orchestrating violence in the aftermath of Kenya's 2007 presidential election. His trial resumed Wednesday after a two-week recess granted for him to return to Kenya to assist in the crisis surrounding the terrorist attack and hostage-taking incident at the Westgate Mall in Nairobi.

Kenya's president, Uhuru Kenyatta, is also facing trial at the court for crimes against humanity, including murder, rape and deportation, for allegedly organizing attacks on supporters of his political rivals in the 2007 election. He denies all charges.

Deutsche Welle

Wednesday, 2 October 2013

### **Evenson: 'First time arrest warrant has been issued in Kenya case'**

The International Criminal Court has issued an arrest warrant for a Kenyan journalist. He is charged with trying to bribe witnesses to withdraw their testimony against Deputy President William Ruto.



DW spoke to Elizabeth Evenson, Senior Counsel in the International Justice Program at the rights groups Human Rights Watch.

*DW: How significant is the arrest warrant issued for the Kenyan journalist Walter Osapiri Barasa on suspicion of bribery and perverting the course of justice?*

Elizabeth Evenson: This is the first time that an arrest warrant has been issued in the Kenyan case. Other defendants are appearing voluntarily before the court, it's also the first time that the court has issued an arrest warrant for someone on charges of obstructing justice before the court. It's very significant. There had been persistent reports of witness interference, allegations that the ICC prosecutor has made about tampering with witnesses, this should send a signal that those who would seek to interfere with the witnesses before the court, whether there are for the prosecution or for the defense, that they could be held to account and that they could be made to answer for interfering with the court's ability to get on with its work.

*How is this likely to affect Ruto's trial?*

This essentially opens a separate case. Of course, the individual named in the arrest warrant is presumed innocent until proven guilty. He is entitled to the entire range of fair trial rights. What it means though, is

that a new case has been opened and this individual is now subject to arrest. It would be up to the Kenyan authorities to arrest him and once he has been arrested, to then surrender him to the ICC for the process against him to start. It will be a separate case to the one going on against Deputy President William Ruto and the journalist Joshua Arap Sang.

*Do you see Kenya extraditing him to The Hague?*

This is going to be a real test of the promises the Kenyan government has made to continue cooperating with the ICC. Even though there has been discussion in parliament about getting Kenya out of the ICC, Kenya still remains a state party to the Rome Statute. There have been no steps taken by the government itself to take Kenya out of the ICC and all its obligations remain in effect. If Mr. Barasa (the wanted suspect) is within Kenya that would mean executing this arrest warrant.

*Let's turn to Ruto's trial at the ICC, how has the Westgate attack affected the court's proceedings?*

The court did adjourn for a very limited amount of time, about a week and a half. All of the parties, the prosecution, the defense and also the lawyer representing the victims agreed that it would be appropriate to have an adjournment. This was to allow Deputy President Ruto to return to Kenya. That was extended by a couple of days, in order to allow the deputy president to attend a memorial service in Kenya. The trial is back on, as far as I am aware, testimonies continued today in private session. The judges have put in place protective measures for the first witness who is still testifying after her identity was leaked at the very beginning of the trial.

*How is the court going to recover the time lost - or don't they think in such terms?*

My sense is that they are thinking in such terms. I'm not sure if they have made any alterations to the schedule, but I did see that there was some discussion with the defense suggesting that the trial chamber extend the number of hours the case is heard per day, perhaps even having Saturday sessions, which would be exceptional but not entirely unheard of, in order to make up for this lost time. Certainly there is a sense of wanting to go forward with the case. One specific action that judges did take is that originally they was a recess on the trial scheduled for next week, they cancelled that recess, given that essentially they have just come off a recess.

*You are a legal expert from Human Rights Watch who has been closely following this case. Are the human rights of the defendants being properly respected?*

That is an absolutely important part for the ICC to do its job, for it to have a credible process, there has to be scrupulous respect for the fair trial rights of the defendants. I am not aware of any claims that the defendants have made so far, of course it's up to the judges to ensure respect for those fair trial rights. Another issue that can affect fair trial is the ability of the witnesses to come forward to testify without fear of reprisals. It is very significant that a different chamber of judges today has issued an arrest warrant for allegations of witness tampering.

*Elizabeth Evenson is a senior counsel in the International Justice Program at the Human Rights Watch.*

## Human Rights Watch

Thursday, 3 October 2013

Press Release

### **Côte d'Ivoire: ICC Seeking Militia Leader**

**Government Should Clarify Stance on Surrendering or Prosecuting Him**

(Johannesburg, October 3, 2013) – Côte d'Ivoire should either surrender a notorious militia leader to the International Criminal Court (ICC) or formally contest transferring him if it intends to try him domestically, Human Rights Watch said today.

On September 30, 2013, the ICC unsealed an arrest warrant against Charles Blé Goudé, a longtime militia leader associated with the country's former government, for his alleged role as an indirect co-perpetrator of four counts of crimes against humanity. Blé Goudé has since January been detained in Côte d'Ivoire, where he faces domestic charges for war crimes, murder, kidnapping, and economic crimes committed during the country's 2010-2011 post-election violence. Blé Goudé fled to Ghana, but was arrested by authorities there on January 17 and extradited to Côte d'Ivoire a day later.

"Victims and family members of people killed, tortured, and tormented by Blé Goudé's Young Patriots militia deserve justice," said Matt Wells, West Africa researcher at Human Rights Watch. "Now that the ICC warrant has been unsealed, the Ivorian government should waste no time in surrendering him to The Hague or in making the case to the ICC judges that they can and will move forward with a fair trial in Côte d'Ivoire."

The November 2010 presidential election triggered six months of grave human rights abuses after the former president, Laurent Gbagbo, refused to yield power when internationally-recognized results declared his opponent, Alassane Ouattara, the victor. During the period of violence, at least 3,000 people were killed and more than 150 women raped, often in targeted acts by forces on both sides along political, ethnic, and religious lines.

A report Human Rights Watch released in October 2011 detailed serious international crimes by both sides and implicated 13 military and civilian leaders as among those responsible, including Blé Goudé. A national commission of inquiry established by Ouattara, an international commission of inquiry established by the United Nations Human Rights Council, and international and Ivorian human rights groups have all released findings implicating both pro-Gbagbo and pro-Ouattara forces in war crimes and likely crimes against humanity.

The Ivorian government should make its position known on Blé Goudé as quickly as possible, including, if necessary, through what is known as an admissibility challenge to the ICC, Human Rights Watch said. In making the decision, the Ivorian government should examine whether its judicial system is equipped to oversee Blé Goudé's case in a way that would protect witnesses and ensure the defendant's full rights, consistent with Côte d'Ivoire's obligations under the International Covenant on Civil and Political Rights.

Human Rights Watch published a report in April 2013 that included specific recommendations to the Ivorian government aimed at strengthening the capacity of judges and prosecutors working on cases of serious crimes committed during the crisis.



Under the Rome Statute, which established the ICC, it is a court of last resort – intervening when national authorities are unable or unwilling to prosecute atrocity crimes. When the ICC issues an arrest warrant, national authorities must either surrender the suspect or submit an admissibility challenge to the ICC, demonstrating that they will effectively try the person domestically for substantively the same crimes. Côte d'Ivoire ratified the Rome Statute in February.

Blé Goudé is the second suspect subject to both an unsealed ICC arrest warrant and an ongoing investigation in Côte d'Ivoire for violent crimes. On September 20, Ivorian authorities announced that they would contest the transfer of the former first lady, Simone Gbagbo, in response to the warrant the ICC unsealed against her on November 22, 2012. The Ivorian government has since filed an admissibility challenge with the ICC registrar, stating its intention to try her in Côte d'Ivoire. Ivorian authorities have charged her with genocide and economic crimes, and began preliminary hearings for the case in November 2012.

The ICC judges will ultimately decide whether the Ivorian government has demonstrated the will and capacity to try Simone Gbagbo for substantially the same crimes as the ICC has charged her with. The judges will do the same for any other suspect whose transfer the Ivorian government challenges. If the judges reject the Ivorian government's admissibility challenge for Simone Gbagbo, the government must be ready to cooperate and surrender her to the Court, Human Rights Watch said.

On November 29, 2011, Laurent Gbagbo was the first person arrested and surrendered to the ICC for the crimes committed during Côte d'Ivoire's post-election violence, facing charges as an indirect co-perpetrator of four counts of crimes against humanity. He is the first former head of state in ICC custody. In June, the ICC Pre-Trial Chamber asked its Office of the Prosecutor to consider providing additional evidence before the judges decide whether to confirm the charges against Gbagbo.

The ICC prosecutor should also move expeditiously in investigating and, evidence permitting, bringing charges against those loyal to Ouattara who are implicated in serious international crimes during the post-election period, Human Rights Watch said.

The ICC has so far only focused on Gbagbo loyalists, with the court yet to issue arrest warrants against anyone from the Ouattara side. This is in large part because the ICC decided to pursue a "sequential" approach, investigating the Gbagbo side first and then the Ouattara side.

The ICC Office of the Prosecutor has repeatedly stressed the impartiality of its work and indicated that its investigations are ongoing. In meetings with Human Rights Watch, Ivorian civil society activists have raised concerns, however, that progress in prosecutions against only the Gbagbo camp feeds the perception that the ICC is "playing politics" in its investigations, which may stoke further tensions.

The ICC prosecutor's decision to pursue only one side at a time is particularly problematic in Côte d'Ivoire because it is perpetuating the appearance of one-sided justice within the country, Human Rights Watch said. National courts have a crucial role to play in holding perpetrators to account, and the Ouattara government has notably established a special investigative cell tasked with investigating post-election crimes and bringing those responsible to account through trials.

However, military and civilian prosecutors have so far charged no one from the pro-Ouattara forces with post-election crimes, while bringing charges against more than 150 people from the Gbagbo side, including at least 55 civilian and military leaders for serious violent crimes.

Investigations at the national level also appear disturbingly one-sided. The UN secretary general reported in July that only 3 of the 207 investigations opened following the national commission of inquiry report – which documented hundreds of summary executions by forces on both sides – relate to suspects from the pro-Ouattara forces. Key Ivorian officials have publicly cited the ICC’s sequential investigations as justification for following a similar approach.

Luis Moreno-Ocampo, then the ICC prosecutor, said publicly in December 2011 that a lack of funds threatened to impede the office’s investigations into crimes committed by pro-Ouattara forces. States parties to the ICC should support the prosecutor’s investigations with increased resources as needed, Human Rights Watch said.

“Victims of crimes committed by the pro-Ouattara forces have found no recourse to justice at home,” Wells said. “To maintain its credibility in Côte d’Ivoire, the ICC needs to step up and fill this gap, making clear that accountability for serious crimes is the same for the victors and as for the defeated.”

## Foreign Affairs

Wednesday, 2 October 2013

### Libya's Home Court Advantage

#### Why The ICC Should Drop Its Qaddafi Case



Maybe Saif al-Islam al-Qaddafi, the son of the Libyan dictator Muammar al-Qaddafi, will go on trial soon, as Libya's government has repeatedly promised. Then again, maybe not: This past week, the militia holding al-Islam refused to hand him over to the courts in Tripoli.

Legal justice is hardly assured in Libya these days, although the other, rougher kind sometimes is: Al-Islam's lawyers have warned that their client faces the death penalty or a lynch mob, with no due process either way. That is why they support the recent decision by the International Criminal Court (ICC) to continue its own case against him. And that is also why, despite protests from Libya, the Hague Court's decision might seem welcome, offering the chance of a real trial in a real court with a full range of procedural protections.

But it's not, and the reasons why should instruct us in the dangers of judicializing global politics, particularly for states and societies at risk.

Saif al-Islam, who spearheaded the violent resistance to revolution in 2011, was indicted after the UN Security Council referred his case to the ICC in the midst of the fighting that toppled his father's regime. He was captured by a militia based in the Libyan city of Zintan, where he has been held ever since,

beyond the reach of the Libyan state and The Hague. (He recently appeared before a Zintan court on unrelated charges, but that case was adjourned until December.)

The basis for the ICC's decision to continue with its own case was Libya's inability to try al-Islam. To be sure, the Libyan courts' lack of capacity is undeniable -- they almost surely meet the Hague Court's standard requiring a "total or substantial collapse or unavailability of [the] national judicial system" for a case to be admissible.

But is incapacity a good enough reason to take over Libya's case against al-Islam? Asking if al-Islam's case meets the technical requirements of ICC jurisdiction misses the point. If the country's legal system is so troubled -- and it is -- then the world should direct its attention to fixing Libya's courtrooms, prisons, and police stations, rather than look to a trial in The Hague that does nothing to address Libya's deeper problems.

## WILLING EXECUTIONERS

It is worth considering the court's reasons for keeping the case. They are an exercise in abstract internationalism: justice for The Hague's sake.

Much of the ICC's recent 91-page decision is dedicated to considering whether Libya's case against al-Islam is "substantially the same" as the ICC's. The ICC has complementary jurisdiction, which means it can step in only if a state is unable or unwilling to try someone. But once a case enters the ICC system, the court raises the bar. It essentially says to countries like Libya, "We now have a case, so if you want to take it back, yours must be substantially the same."

This is doctrine read through the looking glass. Lost in tests of similarity is the obvious proposition that the ICC was originally supposed to be a backstop for failed, fake, or nonexistent prosecutions. It is the ICC that needs to demonstrate the necessity of its interventions, not the other way around. But that is not how institutions reason once they have a case on the docket and the bit in their mouths.

The Libyan case differs for good reason: The ICC's charges cover only a limited range of war crimes and crimes against humanity committed after February 2011. Libya's case covers broader timescales and issues, such as "incitement to civil war" and financial crimes, in a trial that includes 37 other officials of the former regime. In focusing solely on how well the Libyan investigations fit with its own, the ICC misses the importance for Libyans of conducting a trial that vindicates the full range of damage wrought by the Qaddafi clan over 40 years. Instead, the ICC acts, and then looks to see if Libya has played copycat well enough.

The implication is that Libya must not only emulate the ICC trial but also reform its entire system to meet the ICC's standards. The court's decision, echoed in analyses from groups like Amnesty International and Human Rights Watch, is shot through with (accurate) critiques of procedural justice in Libya: difficulties securing counsel; accusations of torture, detailed in a new UN report; applications of sharia law that contradict human rights. In particular, the court seems fixated on the fact that Libya has not treated its victorious revolutionaries and former members of the defeated regime equally. And concerns about the death penalty run through the decision like a shudder.

But the possibility of Saif al-Islam receiving the death penalty hardly suggests that the Libyan state is not serious. Although shoddy procedures and harsh justice in Libya raise real human rights concerns, they also indicate that the new regime is actually very determined -- and able -- to punish the same people the

ICC wants to try, and more besides. Yet the ICC's decision does not even consider Libya's willingness to try al-Islam. Libya is unable to conduct a trial up to international standards, the thinking goes, and so further inquiry is unnecessary. But willingness should matter; it should matter that the Libyan people want to bring their own oppressors to justice, on their own terms.

## FROM DAMASCUS TO MOSCOW

A choice between two versions of justice -- Libya's and The Hague's -- is unavoidable. Given the almost geologic pace of international trials, Libyan justice would suffer an irreversible delay if Libya had to wait for the ICC to finish trying Saif al-Islam. Meanwhile, the fight over an ICC trial is itself a distraction: A legal and political system stretched as thin as Libya's could spend its sparse resources far better at home, rather than formulating briefs for The Hague or planning reforms designed to appease a foreign court.

But the strongest argument against the ICC points out what it cannot do. The court's decision was based on Libya's incapacity to try al-Islam, but a trial in The Hague would not do anything to solve the political instability causing that incapacity. It would not improve governance in Libya, stabilize Libyan society, or achieve any of the many, many things more necessary to Libya's progress than legal justice for its own sake. By ignoring Libya's willingness to try al-Islam, the ICC would do nothing to strengthen the same justice system that it criticizes as unfit, and may weaken it further.

All of this is happening because the UN Security Council referred the situation in Libya to an ICC prosecutor all too willing to make a case. The Libyan referral is a study in the risks of international judicialization, of a tool pulled out in a moment of crisis that cannot be put away. In theory, the court must be given autonomy to operate untainted by politics. But the court is not disinterested -- it wants this case -- and it is not outside politics, which pervaded the Security Council's decision to refer the case in the first place.

It is not even clear that the tool was useful when it was first used: Judicial stigmatization of the Qaddafi regime was not a prerequisite for military intervention but a symptom of the will to intervene. Had the United Nations not interposed the ICC into the crisis, we would not now be worrying about matching Tripoli's limited resources to the austere processes of a distant court. We would be focusing instead on helping Libyans get things right in Libya.

This is not a problem in Libya alone. The Arab Middle East is in the throes of a liberating and terrifying transformation, in which entrenching -- discovering, really -- the rule of law is critical. But that process must evolve authentically. A rigid judicialization of politics too often distracts from needed reforms and the give-and-take of negotiation. It can even complicate harder interventions when they are needed.

That lesson is readily apparent in Syria, from which the ICC has been largely absent: Prioritizing formal legal justice will not end that crisis, or do anything except harden the regime's resolve and narrow its options. Syrian President Bashar al-Assad may well deserve to go on trial for using chemical weapons, but what if the price of trial is another six months of war? There are lovely dachas outside Moscow; if the day comes when Assad is ready to board a plane, the world should not insist its destination be The Hague.

## THE COURT OF CAN'T

In the meantime, though, the ICC is tilting toward an incapacity standard, an ever-sliding scale giving itself more leeway to keep the cases it wants. In Libya, but also in Uganda and Kenya, the preference for national proceedings looks increasingly formalistic -- a false complementarity. So what can be done?



Quite simply, parties to the ICC, in addition to interested, influential non-parties such as the United States, should encourage the court to lean the other way.

On Libya, that means pressing the court to drop its case. The court will not do that spontaneously, but the rest of the world can apply quiet pressure until it does. The UN Security Council, which has the power to freeze ICC cases for a year at a time, would do well to remember that it authorized the trial in the first place, and that what it gave it can take away. The situation in Libya has changed dramatically since then:

More generally, it means making a sustained effort to reorient the ICC, making its polestar a state's unwillingness to try criminals, not its incapacity to do so. The ICC is hardly a strong institution -- as African states' recent threats of defection show, the court risks failure. If it is to succeed, the court needs to build its international credibility, which includes persuading the United States to join it. But just because the ICC is weak does not mean it should get a pass; indeed, clarifying the limits of its mandate will actually increase support for the court. Nor is the court's survival the world's only consideration: There is nothing gained from pitting a weak court against even weaker states like Libya.

A new and willing Libyan government should be given every chance, and every resource, to try al-Islam itself.

The ICC has a legitimate role to play in world politics, but within limits: A country's genuine willingness to investigate and try suspects should be the court's overriding consideration when it weighs judicial intervention. A state's inability to do so should be a rallying cry for international support, not an excuse for paternalistic jurisdiction-stripping. That would be a policy of deference and mutual support fit for an interconnected world. To think that our complex, globalized society requires, by some unyielding apollonian logic, a uniform international solution for every problem -- a judicial globoculture -- is to fail to recognize the plurality of ways justice can be served.

## Deseret News

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### **This week in history: Nazi criminals sentenced at Nuremberg**

By Cody Carlson



This is a general view of the War Crimes trial in Nuremberg, Germany in October of 1946, during the verdict phase of the trial. Prosecution is in the foreground and defense counsel is in front of the defendants.

Associated Press

On Oct. 1, 1946, sentences were passed upon 22 Nazi defendants at the Nuremberg War Crimes Tribunal in Germany, thus ending the proceedings. The trial had been the first major international effort to bring war criminals to justice and resulted in a new standard for international law and justice.

At the conclusion of World War II, Allied leaders favored an international tribunal to try Nazi criminals. U.S. President Harry Truman selected supreme court Justice Robert Jackson to head up the trial in Germany and act as the chief prosecutor for the United States.

Working with British, French and Soviet legal teams, Jackson crafted the central crimes to be tried in four counts: Count one charged the defendants with a conspiracy to commit a war of aggression; count two dealt with the actual waging of aggressive war; count three covered crimes committed during the course of the war, such as the unnecessary German bombing of Rotterdam, Holland, in 1940, and the massacre of POWs; and count four charged the defendants with crimes against humanity, namely the mass murder of Jews and other minority groups throughout Europe.

To many, the idea of an international tribunal seemed legally vague and logistically impossible. For instance, many asked, what right did an American or French prosecutor have to argue a case against a German before a British or Russian judge over events that occurred in Poland? Nevertheless, Jackson and his team, as well as British, French and Soviet lawyers, were determined to make this trial a new instrument for international justice and to see to it that Nazi crimes did not go unanswered.

The court was likewise presided over by four judges and four alternates from each of the four Allied nations.

In his opening statement to the court on Nov. 21, 1945, Jackson said: "May it please your honors, the privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating that civilization cannot tolerate their being ignored because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that power has ever paid to reason."

Though the court initially indicted 24 accused Nazi criminals, three did not see trial. Gustav Krupp, an industrialist of the Krupp steel firm in Essen, Germany, was judged too old and infirm to stand trial. Robert Ley, the head of Hitler's labor movement, managed to strangle himself in his cell several weeks before the trial began. Martin Bormann, Adolf Hitler's personal secretary, had disappeared at war's end and was thought to have escaped to South America, though he was tried in absentia.

Hitler; his chief propagandist, Josef Goebbels; and the head of the dreaded SS, Heinrich Himmler, had all committed suicide at the end of the war.

The remaining 21 defendants included a virtual who's who of the Third Reich, and were selected by the prosecutors because they appeared to represent the broad spectrum of Nazi criminality. The highest ranking Nazi was Herman Göring, the head of the German air force and Hitler's designated successor since 1939. Rudolf Hess had been the No. 3 man in the Reich, but had quit Hitler in 1941 and flown solo to Scotland in a half-baked "peace" mission. By now all were convinced that Hess was mad.

Others included Germany's foreign minister, Joachim von Ribbentrop; Hitler's lawyer and governor of occupied Poland, Hans Frank; governor of the occupied Netherlands, Arthur Seyss-Inquart; the leader of the Hitler Youth movement, Baldur von Schirach; and Hitler's architect and war production minister, Albert Speer. In addition, figures from the German military, Gestapo and industry were indicted.