

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



The Special Court said good-bye to the auditors on Friday

**PRESS CLIPPINGS**

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

**Wednesday, 18 December 2013**

Press clips are produced Monday through Friday.  
Any omission, comment or suggestion, please contact  
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New Storm

Tuesday, 17 December 2013

# Johnny Paul Will Never Go Scot Free

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-RSC Chief Tells Managing Editor

# Johnny Paul Will Never Go Scot Free

*-RSC Chief Tells Managing Editor*

Dear Mr. Kanneh,

Regarding your article "Johnny Paul An APC Flag-Bearer" which appears in today's edition over a photograph that I took in 2001, you state that "the erstwhile junta leader is wanted for war crimes and crimes against humanity by the International Criminal Court at the Hague."

This is incorrect. Johnny Paul Koroma was indicted by the Special Court for Sierra Leone in Freetown, and until he either answers to the indictment or the indictment is withdrawn should it be proved that he is dead, it will remain in effect.

The Residual Special Court for Sierra Leone, the successor institution to the SCSL, has full competence to arrange for his trial. I refer you to Article 1(2) of the Residual Special Court for Sierra Leone Agreement (Ratification) Act, which states:

2. The jurisdiction of the Residual Special Court is limited to persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November, 1996. That is, the Residual Special Court shall have the power to prosecute the remaining fugitive special Court indictee if his case has not been referred to a competent national jurisdiction, and to prosecute any cases resulting from review of convictions and acquittals.

Regards,

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## The Island (Sri Lanka)

Tuesday, 17 December 2013

### **The road from New Delhi to Nanthikadal**

War Crimes charge: Urgent need for reappraisal of GoSL's response

By Shamindra Ferdinando

-SNIP-

Western powers welcomed the decision against Taylor.

Taylor was convicted in April 2012 on 11 counts for crimes committed during the neighboring Sierra Leone's decade-long civil war and subsequently sentenced to 50 years in prison.

The Prosecutor of the United Nations-backed Special Court for Sierra Leone (SCSL). Brenda J. Hollis applauded the court's decision to uphold the conviction of Taylor. SCSL's Appeals Chamber upholding the convictions and sentencing of Taylor, the first former head of State to be convicted for war crimes by an international criminal tribunal since Nuremberg in 1946.

Also welcoming the judgment was the UN Secretary-General's Special Representative for Children and Armed Conflict, Leila Zerrougui, who declared that the decision clearly affirmed that no one was above the law. "This verdict is a milestone for the accountability of those who use child soldiers, and another warning to warlords and military commanders that child recruitment will not go unpunished.

Ms. Zerrougui's office noted that the use of child soldiers was extensive in the conflict in Sierra Leone. "Children under the age of 15 had been used to actively engage in armed combat, and were also recruited and used to amputate limbs and to perform auxiliary duties such as manning checkpoints, guarding diamond mines, going on food-finding missions and acting as bodyguards," Zerrougui said in a statement.

-SNIP-

## New Vision (Uganda)

Wednesday, 18 December 2013

Opinion

### **ICC is essential for African victims**

By Douglas Lukoba Iga

There is need to have in place a strong institution that makes it possible to seek justice for victims for human rights violations.

More than 1000 individuals were killed in Kenya's post-election violence and hundreds of thousands displaced. Kenya's courts have failed to take steps to prosecute those who allegedly organised or financed this violence. The ICC's Trust fund for victims also brings assistance to victims in the Democratic Republic of Congo and Northern Uganda.

This visionary body came into force on July 1, 2002 with its seat in The Hague. The ICC is governed on three main principles and these include the principle of complementarity, universality and right to fair trial, through these principles, the ICC has managed to bring responsible parties to book for the crimes they committed against humanity and from its trust fund it provides their families with restitution, compensation and rehabilitation, the ICC court determines the scope of the damage, loss and injury to victims and to order the convicted person to make specific reparations.

From the so many crimes that have been committed against humanity, the court has fulfilled its mandate through the enforcement and realisation of its set goals and this has been evident on bringing to book all forms of human rights degradation by even going an extra mile to try sitting presidents like Uhuru Kenyatta and his deputy, William Ruto, and these, among others, the former president of Liberia Charles Taylor who was sentenced to a UK jail to serve his sentence. All these efforts by the ICC are a realisation of the UN Charter and the Geneva Convention on human rights and freedoms.

For countries in Africa where courts are manned and controlled by the military regimes, there has been massive interference with the judiciary "rape of the temple of justice" and with the help of an independent body like the ICC, victims of these crimes have been relieved of the burden of chasing after these seemingly stronger "untouchables" when the ICC is readily available to provide an internationally recognized redress.

*The writer is a lawyer with -Advocates for Public International Law Uganda (APILU)*

# World Politics Review

Tuesday, 17 December 2013

## **From Paper to Peace: The Role of Guarantees in Peace Agreements**

By Stefan Wolff

Conflict settlement is a process rather than a singular act. At its most basic, a peace process comprises three phases: the negotiation, implementation and operation of an agreement meant to enable the conflict parties to resolve their disputes by nonviolent, political means.

Yet the successful conclusion of a peace process is by no means a foregone conclusion—they can, and do, fail. Sometimes negotiations break down and no agreements are concluded, leading conflict parties back to violence. In other cases, disagreements about the meaning of particular provisions arise after an agreement has been reached. In the absence of effective dispute resolution mechanisms, one or more parties are then likely to defect from a negotiated deal, reopening armed conflict. In yet other cases, spoilers might torpedo the operation of an agreement, inciting another round of fighting, because they and their constituencies have been excluded from negotiations or have not seen the expected returns from an agreement they signed up to. Spoilers might also be external powers with their own stakes in a conflict and its settlement, at times using proxy forces to derail a deal.

Peace agreements are only one dimension of peace processes, yet they provide the crucial link between war and peace—they need to be negotiated, implemented and operated, often in conditions that are anything but conducive to sustainable peace. Ideally, peace agreements offer incentives to conflict parties that make a return to violence unattractive; by establishing institutions and processes, agreements give the parties a reasonable prospect of seeing their interests accommodated at lower costs than by recourse to violence. In that sense, a peace agreement will stick if the content of the actual settlement really addresses the grievances of the conflict parties.

While in one sense intuitive, the apparent simplicity of the link between the content of an agreement and its success obscures a more complex dynamic of negotiating, implementing and operating a peace agreement in conditions in which trust in the other party is lacking and confidence in any kind of political process has been eroded through years of violence.

Beyond addressing grievances, one of the most important sets of political and legal approaches to achieving sustainable peace is the use of guarantees as part of the settlement process. Credible guarantees can enable parties to bridge a gap in trust resulting from often years of violent conflict, stalled negotiations and broken commitments. Guarantees can then help create an environment in which conflict parties are willing to give agreements a real chance to prove their worth, in which opportunities exist to revisit and revise agreements without fear and in which the parties can develop greater confidence in each other's commitment to abide by an agreement. Guarantees are not an end themselves but have an instrumental value in conflict settlement processes—while they cannot replace agreements, guarantees can help parties to implement agreements and make them work.

The degree to which guarantees can fulfill their purpose of assisting with the implementation and operation of agreements is a measure of their effectiveness. Effective guarantees are those that are tied to specific settlement provisions, or even whole settlements, and combine proper mechanisms of oversight and verification with credible institutions and procedures of enforcement. In other words, guarantees work



best if they promote compliance with negotiated agreements or deter parties from noncompliance, while leaving options to impose sanctions for noncompliance by spoilers.

## **Types of Guarantees**

Guarantees exist to help create an environment in which conflict parties are willing and able to commit themselves to implementing and operating agreements on how to settle their conflict by nonviolent, political means. As such, they cover a range of different mechanisms to help avoid disputes and to resolve them through agreed procedures or referral to agreed institutions. Depending on the nature of the underlying conflict and its settlement process, guarantees can be domestic or international in their scope, involving permanent, temporary or ad hoc institutions and procedures, as well as mechanisms for monitoring and verification.

## **Informal and Formal Arrangements**

The main purpose of such arrangements, which are normally legally nonbinding, is to establish a common understanding between parties on specific issues, formally or informally. They can take the form of guidance notes, memorandums of understanding or concordats in which the parties agree on particular points of interpretation, determine the scope of specific provisions or define a certain issue. Such arrangements can also involve permanent or ad hoc consultation bodies or procedures for handling disagreements when they arise. The degree of formality of arrangements and whether they are legally binding can be determined by the parties in relation to how contested a particular issue is expected to be. For example, the memorandum of understanding governing devolution in the United Kingdom, does not “create legal obligations between the parties” and “is intended to be binding in honor only,” yet covers a range of issues from policy coordination to statistics and the creation of a permanent joint ministerial committee. The memorandum of understanding also includes a specific provision that it “will be reviewed by representatives of the administrations . . . at least annually and updated as necessary,” thus assuring all parties that while change is possible to the consensus they achieved, it will occur by agreement rather than unilaterally.

## **Guarantees in Domestic Law**

Guarantees in domestic law have the purpose of establishing a legally enforceable, yet adaptable framework for settlement implementation and operation. Guarantees in domestic law principally take two forms. Either the settlement as a whole takes the form of a single legal act, or different dimensions of a settlement are enshrined as laws. The underlying principle in both cases is that the settlement, or individual aspects thereof, acquires proper legal status and thus imposes a framework within which conflict parties have to operate or incur sanctions. This also means that alleged violations of a settlement thus legalized can be referred to the court system. Guarantees in domestic law thus provide guidance on how to comply while also deterring noncompliance, because any infringement could be challenged in the courts and would carry the possibility of enforcement.

Conflict parties in such cases normally agree to resolve their differences by jointly drafting a relevant normative act or set of acts to be passed by parliament or put to a referendum. This could apply to a law assigning self-governing status to a specific territorial entity, one that regulates the ownership, management and exploitation of natural resources, or one regulating specific security arrangements. For example, El Salvador’s 1992 Chapultepec peace agreement includes bills organizing the National Civil Police and the National Public Security Academy, both of which were agreed by the parties during the negotiations process. The 2001 Ohrid Framework Agreement on Macedonia, rather than providing the



text of actual bills, offers a list of relevant laws to be drafted and a timetable for their implementation, emphasizing a number of guiding principles for the drafters. Pertinent examples of domestic legal guarantees of entire settlements include Finland's Act on the Autonomy of Åland, Spain's Statute of Autonomy of Catalonia and Denmark's Greenland Home Rule Act.

To provide additional assurances, such a law could be given special status by mandating particular procedures for amendment or replacement. Amending the law might require qualified majorities in the legislative body, parallel consent of national and regional legislatures or approval in a local or national referendum. This is the case, for example, in Papua New Guinea's 2001 Bougainville Peace Agreement.

Another assurance of the parties' commitment can be established by further entrenching a peace agreement in domestic law through a specific reference in the constitution, noting a special territorial status or referring to a practice of resource ownership or management, even if the details are left to be specified in other legislation. This approach has been taken with respect to specific requirements for constitutional amendments in the comprehensive settlement proposal for Kosovo.

Finally, parties may demonstrate their commitment by agreeing to dispute resolution mechanisms. Such commitments frequently take the form of references to special domestic or mixed domestic-international dispute resolution bodies, such as the National Human Rights Commission foreseen in the 2006 Comprehensive Peace Agreement for Nepal or a constitutional court or equivalent judicial bodies, as provided for in the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina.

### **Guarantees in Constitutional Law**

Anchoring peace agreements in constitutions is both a symbolic recognition of the underlying issues and a strong guarantee against any infringements, which could be challenged in court. Moreover, constitutional entrenchment offers additional protection in that changes to the constitution normally require either qualified majorities in parliament or a referendum, both of which increase the level of consent required for changes to take effect.

Examples of constitutional guarantees include the Finnish Constitution's section covering the Åland Islands and the Italian Constitution's articles covering state and regional autonomy. While these two examples refer to overall guarantees of settlements, constitutions often also include provisions relevant for individual aspects of peace agreements, especially in relation to human and minority rights. Examples here are provisions in the constitutions of Spain and Macedonia on the use of languages.

In a number of cases, peace agreements also materialize as entirely new national constitutions, rather than merely constitutional amendments, reflecting the parties' desire to establish a new institutional framework for their relationship. Such settlements by definition are constitutionally entrenched, benefiting from whatever mechanisms parties have built into the constitution to protect it from arbitrary, unilateral change, such as qualified or concurrent majorities, veto rights and referendums. Examples of settlements as constitutions include Bosnia and Herzegovina's so-called Dayton Constitution and the 2005 constitution of Iraq.

### **International Guarantees**

When it comes to international guarantees, it is useful to distinguish between "soft" and "hard" guarantees. The former are not guarantees in a legal sense, but rather are used as devices to promote compliance and more generally to create norms or a culture of norms in which defecting from an

agreement, let alone a return to violence, carries at a minimum significant reputational costs. Soft guarantees can take the form of internationally mediated settlements; signature ceremonies in the presence of representatives of regional and international organizations or their particularly powerful member states; or co-signature of such third parties as observers, mediators or witnesses.

Soft guarantees also tend to be accompanied by declarations of intent by third parties to support agreements, often by commitments to hold a donor conference after the agreement is signed. Increasingly, such support is granted subject to certain conditions being met. While not, as such, an enforcement mechanism, this does nonetheless carry at least an implicit threat of sanctions in the case of noncompliance—the withholding or withdrawal of benefits. Such soft guarantees, therefore, have a useful role to play in helping parties implement and operate their settlements and in incentivizing the parties to remain true to their commitments.

Hard international guarantees are aimed at anchoring peace agreements in international law, including in bilateral and multilateral treaties or U.N. Security Council resolutions. As they properly legalize a conflict settlement, such guarantees become enforceable: Infringements can be referred to international courts or to the Security Council, and action can be taken against a noncompliant party. Of particular importance to settlements achieved after civil wars are international security guarantees, especially peacekeeping operations tasked to monitor cease-fires or verify weapons decommissioning and demobilization.

More specifically, one can distinguish between six different approaches to building international guarantees into peace agreements. These are mutually compatible and in practice often complement each other, further entrenching a particular settlement in international law.

Transitional authority, assumed or authorized by the United Nations, is the most comprehensive approach among these efforts. Not only does the Security Council in such cases guarantee an agreement, but it also establishes a mission for its implementation; that is, the Security Council provides security guarantees such as peacekeeping forces and civilian staff to carry out tasks related to institution building, economic reconstruction, transitional justice and other projects. Such missions can be open-ended or of limited duration, either predetermined or subject to the meeting of certain conditions or benchmarks in the implementation mission. The U.N. missions in Cambodia; Eastern Slavonia, Baranja and Western Sirmium in Croatia; East Timor; and Kosovo are examples of this practice.

Verification and monitoring missions are carried out by international or regional organizations with specific and often narrow mandates—including limited duration—and limited enforcement powers. Recent examples involve both the U.N. and regional organizations, including the European Union/ASEAN Aceh monitoring mission and the U.N. Verification Mission in Guatemala. Such missions can also involve the deployment of peacekeeping forces specifically tasked to provide security guarantees. In most cases, such missions are established following a Security Council resolution, as in the cases of the current U.N. missions in Cote d'Ivoire and Liberia. Beyond their frequent use to verify and monitor cease-fires, disarmament and demobilization, U.N. missions are also regularly used in relation to human rights provisions in peace agreements, such as in the 2006 Nepal peace agreement, and more broadly in the monitoring of agreement implementation, such as in the 1999 Lome Peace Agreement for Sierra Leone.

International dispute resolution mechanisms are specific provisions in peace agreements that delegate authority to resolve disputes over peace agreements to international bodies or mixed domestic-international bodies. This approach facilitates the continued involvement of international actors in a settlement process, thus increasing the process's credibility and raising the costs for the former conflict parties if they violate, or defect from, their agreement. Simultaneously, international dispute resolution

mechanisms add an element of independence and legitimacy to any dispute resolution process and its outcome.

International dispute resolution mechanisms can be set up with different scopes, from whole-of-settlement to specific issues, such as human rights or cease-fires. They also can have different mandates, principally conciliation, arbitration and adjudication. Scope and mandate will depend on the preferences of the conflict parties and the willingness of international actors to be involved. Examples of peace agreements that provide for international dispute resolution mechanisms include the 2003 Comprehensive Peace Agreement for Liberia and its reference to dispute settlement through mediation led by the Economic Community of West African States in collaboration with the African Union and U.N.

International and regional standards as guarantees for peace agreements take the form of provisions that require direct applicability, observance or incorporation into constitutional or other legislation of certain regionally or internationally agreed standards, commonly in relation to human or minority rights provisions. Depending on the nature of the standard, reference to it in a peace agreement may imply reporting requirements for the state concerned, fact-finding missions and complaints procedures, including access to supranational courts. Such standards include Council of Europe agreements protecting human rights and minority freedoms, as well as the so-called human dimension of the Helsinki Final Act in conjunction with the Vienna and Moscow mechanisms, under the Organization for Security and Cooperation in Europe, and the U.N. covenants on civil and political rights and on economic, social and cultural rights. Examples of settlements making use of such practices include the 2001 Ohrid Framework Agreement on Macedonia, the 2007 Comprehensive Proposal for the Kosovo Status Settlement and the peace agreements for Liberia and Nepal.

Bilateral or multilateral treaties or agreements can cover any range of issues between two sovereign states, and disputes arising from them can be referred by state parties to relevant international courts. Additionally, states can agree to specific mechanisms for resolving disputes, including submitting to arbitration, as Austria and Italy did in relation to the conflict settlement on South Tyrol. It is also possible that peace agreements form part of, or are appended to, such treaties, which would make those agreements subject to the same rules of enforcement as the treaty itself. A recent example of that practice is the 1998 Good Friday or Belfast Agreement for Northern Ireland, which forms an annex to an intergovernmental agreement between the U.K. and Ireland.

In some cases, nonstate parties are signatories to such treaties, while in others, patron states sign on their behalf. Both practices can be illustrated with the 1991 Paris Accords for Cambodia and the 1995 Dayton Peace Accords, as well as with the much earlier 1959 set of agreements on Cyprus.

Treaties of guarantee take the form of a comprehensive guarantee by states of a settlement agreement. Examples include the treaty of guarantee that was part of the 1959 Cyprus settlement and the similar agreement that is part of the 1991 Paris Accords on Cambodia.

### **Guarantees in Peace Agreements**

In most conflicts, parties are likely to require guarantees for different elements of the settlement, reflecting their distinct demands, concerns and past experiences. Peace agreements, therefore, differ vastly in terms of their content and the level of detail they provide. Nonetheless, there are a number of general parameters to consider, including the political institutions to be established or reformed; security sector reform and concomitant provisions for disarmament, demobilization and reintegration of former

combatants; repatriation and resettlement of refugees and internally displaced persons; and economic development and the management and sharing of natural resources.

Since guarantees are meant to bridge gaps in trust, negotiators and mediators must be careful not to dismiss parties' desires to have particular provisions guaranteed, or to have specific guarantees for certain provisions or an entire settlement. A refusal, especially by one of the negotiating teams, to consider a particular guarantee is all but certain to further breach, rather than bridge, an existing gap in trust. Where parties cannot agree on guarantee mechanisms or guarantors, mediators should seek to identify what lies behind parties' positions and offer effective alternatives. It is important to emphasize that "guarantee" is a somewhat misleading term: There is no other guarantee of successful implementation and operation of a settlement agreement than the parties' genuine commitment to do so. Hence, what follows is better considered a range of mechanisms that can assist conflict parties with the implementation and operation of their settlements, and promote compliance and deter noncompliance with the agreed terms.

Guarantees often also follow a whole-of-settlement approach, whereby in addition to, or instead of, specific guarantees for particular provisions, a settlement as a whole is guaranteed. This can take a variety of different forms and depends on the complexity of the underlying issues to be resolved.

This whole-of-settlement approach is relevant if a settlement as a whole consists of a number of individual agreements, negotiated either in parallel but separately, or sequentially. A framework document would then incorporate all these individual agreements and "declare" them part of a whole settlement. Any guarantee attached to the framework document would then automatically apply to all its component parts without negating any specific guarantees already built in. The Final Act of the 1991 Paris Conference settling Cambodia's conflict is an example of this, incorporating several agreements and including annexes on the mandate for a U.N. mission, military matters, elections, refugee and internally displaced persons return and principles for a new constitution. The 1992 General Peace Agreement for Mozambique and the 1995 Dayton Accords fulfill a similar framework function, as do the 1996 Guatemalan Agreement on a Firm and Lasting Peace and the 2001 Ohrid Framework Agreement. Any additional guarantees built into individual components of such a framework settlement would then have to be read in conjunction with the guarantees provided for the framework settlement.

A related guarantee mechanism, again in the sense of guarantees as provisions to encourage compliance and deter noncompliance, is the adoption by conflict parties of a detailed implementation plan in which each new step requires prior fulfillment of preceding implementation requirements. When properly "choreographed" and internationally monitored and verified, such implementation plans can be useful to incentivize the conflict parties to stick with their commitments: Parties can only benefit from the settlement agreement if they deliver, and nondelivery would suspend implementation and thus deprive the nondelivering party from reaping the benefits that further implementation by the other side would bring. An international monitoring or verification component can also handle any potential disputes between the parties. Such detailed implementation plans were, for example, part of the peace processes for Mindanao, Guatemala and Liberia.

An international monitoring or verification component in implementation plans has the added advantage of providing neutral assessment of compliance, which can limit the degree to which disarmament can be interpreted as defeat by either conflict party. This was the role the Independent International Commission on Decommissioning played in the Northern Ireland peace process, not dissimilar from that performed by the EU/ASEAN Aceh monitoring mission.

## **Conclusion**

Guarantees in and of peace agreements play a potentially vital role in helping agreements live up to their promise for establishing sustainable peace. They are thus part of a broader conflict settlement process. They enable parties to conclude agreements that are often considered risky by negotiators and those they represent, because guarantees can offer assurances where trust is limited.

Guarantees need to be negotiated as much as the provisions and agreements to which they are tied, and such negotiations can be as difficult and protracted. Neglecting guarantees, however, is not an option for negotiators and mediators, because guarantees not only enable parties to sign up to agreements but also facilitate the implementation and operation of peace agreements. They can ensure independent monitoring and verification of implementation; offer mechanisms to assist parties in resolving disputes over the interpretation and application of particular clauses in an agreement; and, by entrenching settlement provisions in domestic legal and constitutional frameworks, contribute to “socializing” new institutions in conflict-torn societies.

However, it is important to bear in mind what guarantees are not and what they cannot accomplish. They are not settlements in themselves, and they cannot ensure the survival of an agreement that is either poorly crafted and does not address the fundamental concerns of the conflict parties effectively, or one that is confronted with overwhelming and possibly violent resistance from those who were not part of the negotiation process by choice or design. In other words, guarantees cannot make up for a lack of genuine commitment among the conflict parties to resolve their differences by agreement. Where such commitments are absent, no agreements and no guarantees will bring peace and stability.

*Stefan Wolff is professor of international security at the University of Birmingham in the U.K. He holds a master's degree from the University of Cambridge and a doctorate from the London School of Economics and Political Science. His expertise lies in the areas of ethnic conflict and civil war, state building and international conflict management. He has authored 17 books, including “Ethnic Conflict: A Global Perspective” (Oxford University Press 2007), “Conflict Management in Divided Societies” (Routledge 2011) and “The European Union as a Global Conflict Manager” (Routledge 2012). He has been engaged in various stages of conflict settlement negotiations, including in Moldova, Iraq, Sudan and Yemen.*