

Is the Sierra Leonean Amnesty Law Compatible with International Law?

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Der Autor diskutiert in seinem Aufsatz kritisch den Friedensvertrag von Lomé, der am 7. Juli 1999 offiziell den bewaffneten Konflikt in Sierra Leone beendete. Nach einer kurzen Zusammenfassung der allgemeinen Regelungen des Vertrags stellt der Autor die in Artikel 9 des Abkommens vorgesehene Generalamnestie den bindenden Grundsätzen des internationalen Rechts gegenüber.

Internationale Verbrechen, wie Völkermord, Kriegsverbrechen oder Folterung sind als Verstoß gegen *ius cogens*-Normen von allen Staaten zu verfolgen. Nach der Erörterung der betreffenden Konventionen, internationalen Abkommen und Fallentscheidungen des IGH, die diesen Grundsatz festschreiben, beschreibt er den - Friedensprozessen inhärenten - Konflikt, ein Gleichgewicht zwischen notwendiger Versöhnung und strafrechtlicher Verfolgung zu finden. Bei der Betrachtung des Fallrechts schließt Phenyo neuere Entscheidungen ein, wie die des britischen House of Lords im Fall Pinochet, die sowohl nationalen wie internationalen Gerichten das Recht auf Strafverfolgung internationaler Verbrechen zugestand.

Stellvertretend für die weite Kritik der Generalamnestie des Lomé-Abkommens zitiert der Autor den VN-Generalsekretär Kofi Annan, der die Generalamnestie als unvereinbar mit der Tätigkeit und Aufgabe der internationalen Straftribunale in Den Haag und Arusha sowie des zukünftigen Internationalen Strafgerichtshofes ansieht. Phenyo schließt sich mit seiner kurzen Analyse des Friedensabkommens der kritischen Haltung Annans an und sieht nur eine geringe Möglichkeit für die Durchsetzung der fraglichen Amnestie, deren Gültigkeit durch die wiederaufgeflamten Kämpfe in Sierra Leone auch faktisch in Frage gestellt worden sind. (*trai*)

I. Introduction

Since independence in 1961, Sierra Leone has been bedevilled by conflicts and internal strife.¹ The war between the government of President Alhaji Ahmad Tejan Kabbah and the Revolutionary United Front (RUF) has caused the lives of many innocent civilians especially women and children.² On 25 May 1997, the RUF with

the support of the AFRC overthrew the government of President Kabbah. During the nine months rule of the rebel regime, gross human rights violations were committed against ordinary civilians. In February 1998, the Nigerian led peace-keeping force, the Economic Community of West African States Monitoring Group (ECOMOG) forced the rebel movement out of power and reinstated President Kabbah.

II. The Lomé Cease Fire Agreement

With the help of the sub-region member states, ECOMOG and the United Nations, a cease fire agreement was brokered between the government and the RUF. On 7 July 1999, the warring parties signed a peace agreement in Lomé, Togo ("Lomé

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¹ Christopher Eyfe, *A History of Sierra Leone*, 1993.

² Abdul Tejan-Cole, *Human Rights under the Armed Forces Revolutionary Council (AFRC) in Sierra Leone*, in: 10 *African Journal on International & Comparative Law* (1998), 481.

Peace Agreement").³ In the Lomé Agreement, the parties committed to respect human rights by establishing a Human Rights Commission⁴ and a new independent Electoral Commission.

The cease fire agreement proposes measures geared to promote peace and reconciliation. The peace agreement proposes the creation of the Truth and Reconciliation Commission.⁵ The Commission shall address questions of impunity, deal with questions of human rights violations in Sierra Leone since the beginning of the conflict in 1991 and to recommend measures to be taken for the rehabilitation of victims of human rights violations. The agreement further proposes that the Commission shall be composed of Sierra Leonean nationals and will be expected to submit its report to the government in not less than 12 months after commencement of its work.⁶

III. Provisions on Amnesty

Article IX of the agreement provides that:

"In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foray Sankoh absolute and free pardon.

After the signing of the present Agreement, the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement.

To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of

*the RUF/SL, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration with a framework of full legality."*⁷

Undoubtedly, the Lomé agreement provides for blanket amnesty. Although the peace agreement proposes to combat impunity, on the one hand, on the other hand it adopts measures which directly promotes the cycle of impunity, that is, *blanket* amnesty. The amnesty proposed will not require accountability on the part of perpetrators of gross human rights violations.

What the proposed amnesty law seeks to do is to expunge responsibility for all offences including international crimes, otherwise known as *delict jus gentium* such as crimes against humanity, war crimes, genocide, torture and other serious violations of international humanitarian law. The proposed amnesty law is *ex facie* inconsistent with a number of international law instruments which calls for the investigation and prosecution of violations of humanitarian law and the prosecution of perpetrators thereof. For example, the 1949 Geneva Convention and the 1977 additional protocols,⁸ Convention on the Prevention and Punishment of Genocide,⁹ the

⁷ Emphasis added.

⁸ The four Geneva Conventions include (i) the Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field; (ii) the Geneva Convention for the Amelioration of the Condition of Wounded and Sick and Shipwrecked Members of Armed Forces at Sea; (iii) the Geneva Convention Relative to the Treatment of Prisoners of War and (iv) the Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

⁹ UN G/A Res. 260 A 9 December 1968 Article VI.

³ Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (hereinafter Lomé Agreement) S/1999/777.

⁴ Lomé Agreement, Part V, Article XXV.

⁵ Lomé Agreement, Article XXVI (2).

⁶ Lomé Agreement, Article XXVI (1) - (3).

Non-Applicability of Statutory Limitation to War Crimes and Crimes against Humanity,¹⁰ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.¹¹ In December 1992, the UN General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearances. Article 18(1) of the declaration provides that

“Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.”

The 1993 World Conference on Human Rights called on states to prosecute those responsible for gross human rights violations such as torture and other humanitarian violations.¹² Although the Rome Statute for the creation of a Permanent International Criminal Court (ICC)¹³ does not prohibit amnesties, it provides for the principle of ‘complementarity’, giving both national and international courts jurisdiction over international crimes such as crimes against humanity, war crimes, genocide, apartheid, torture and other international humanitarian violations.

The duty of states to prosecute perpetrators of human rights violations can also be found in regional and international case law. In the famous *Velasquez Rodriguez* case,¹⁴ the American Court of Human Rights held that the Honduras government

was under an obligation to investigate and prosecute perpetrators of gross human rights violations. The Inter-American Commission on Human Rights¹⁵ has held that amnesty laws in Argentina and Uruguay were incompatible with the American Convention on Human Rights. In *Prosecutor v Furundzija*¹⁶ the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) held that amnesties for torture were null and void and cannot be afforded international recognition. In the *Pinochet* case,¹⁷ the British House of Lords held in its landmark decision that the ex-Chilean dictator could be extradited to Spain to face charges of torture and crimes against humanity committed during his reign of power. More recently, the International Commission of Inquiry on East Timor established by the UN to investigate the violence in East Timor proposed the creation of “[...] an international human rights tribunal” to prosecute those responsible for the violation of international humanitarian law in East Timor.¹⁸

IV. International Response

It is therefore not surprising that the international response to the proposed amnesty process attracted criticisms from human rights organisations, civil societies and the United Nations.

¹⁰ UN G/A Res. 2391 (XXIII), 26 November 1968, Article 2& 3.

¹¹ UN Doc. A/ 39(1984).

¹² UN Doc. A (part 1) (“States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations thereby providing a firm basis for the rule of law”).

¹³ 37 ILM (1999).

¹⁴ Court of Human Rights (series C) no.4, para. 165 (1988).

¹⁵ Inter-American Commission on Human Rights, ReNo. 29/92 (Uruguay) 82 Session OEA/LV/11.82.Doc, 25 October 1992.

¹⁶ IT-95-17/1-T (10 December 1998).

¹⁷ *R v Bow Street Metropolitan Stipendiary Magistrate Ex Parte Pinochet* (1998) 3 WLR 1456 (HL).

¹⁸ See Report of the International Commission of Inquiry on East Timor to the Secretary-General, January 2000, UN G/A A/54/726, S72000/59 para. 153.

The UN Secretary-General, Kofi Annan, rejected in his report¹⁹ to the UN Security Council the proposed amnesty law out of hand. In his report he said

“As in other peace accords, many compromises were necessary in the Lomé Peace Agreement. As a result, some of the terms which this peace has been obtained, in particular the provisions on amnesty, are difficult to reconcile with the goal of ending the culture of impunity, which inspired the creation of the United Nations Tribunals for Rwanda and the Former Yugoslavia, and the future International Criminal Court. Hence the instruction to my Special Representative to enter a reservation when he signed the peace agreement stating that, for the United Nations, the amnesty cannot cover international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law [...].”

Some of the UN Security Council members, although being aware of the “need to promote peace and reconciliation” in Sierra Leone were opposed to the proposed blanket amnesty in the Lomé Agreement.²⁰ For example, Mr. Eldon, representative of the United Kingdom said

*“The Lomé Agreement is not perfect. The inclusion of a blanket amnesty for those who have committed appalling atrocities has rightly caused concern. But this was one of many hard choices that the Government and the people of Sierra Leone had to make in the interests of securing a workable agreement.”*²¹

Similarly, Mr. Jagne of The Gambia said

“Like most delegations, we are concerned about the blanket amnesty granted to the RUF. While this may not foster justice, we understand the circumstances under which it was granted. We also share the disclaimer entered by the Special

*Representative of the General Assembly on this matter.”*²²

In rejecting the Sierra Leonean amnesty, Peter Takirambudde, Executive Director for Africa at the Human Rights Watch office in New York said

*“ [...] experience has shown that peace accords built on impunity are shaky and do not hold. In Angola, for example, six amnesties have been granted as part of the peace process, and each served as little more than an invitation to further bloodshed and atrocities.”*²³

V. Conclusion

The problem with transitional justice is to balance the international duty to prosecute perpetrators of gross human rights violations with the constraints of national reconciliation. Hence, the prohibition of amnesties for crimes *jus gentium* in international law might oppose the process of national truth and reconciliation. Sierra Leonean rebels responsible for egregious violations of human rights risk being prosecuted by other foreign jurisdictions like shown in the Pinochet extradition case. Blanket amnesties, unlike political amnesties such as those in South Africa in which amnesty was not automatic, are unpopular and are likely to be rejected by the international community as is the case with Sierra Leone.

¹⁹ Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone S/1999/836, 30 July 1999. Para 55.

²⁰ UN SC. Res. 1260, 4035th Meeting, 20 August 1999.

²¹ UN Security Council 4035th Meeting, 20 August 1999, p. 4.

²² *Ibid* at 10.

²³ Peter Takirambudde, UN Must Clarify Position on Sierra Leonean Amnesty, New York, 12 July 1999 <http://www.hrw.org/press/199/juls10712.htm>.