

Genocide Trial against the State of Israel Adjourned

Tribunal Dismisses Prosecution's Application to Recuse Judge Eric David.

By [Kuala Lumpur War Crimes Tribunal](#)

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KUALA LUMPUR, 21 August 2013 – The Kuala Lumpur War Crimes Tribunal, which commenced today to hear war crimes and genocide charges against the State of Israel and Amos Yaron, a retired Israeli army general hit a snag.

To begin with, the Prosecution made an application that, to preserve the sanctity of the tribunal, Judge Eric David be recused for his alleged possible connection with the Mossad, the intelligence agency of Israel.

There have been allegations including from US officials that the Peoples Mujahedin Organisation of Iran (PMOI) is supported by Mossad. The PMOI is listed as a terrorist organisation that has carried out terrorist activities against Iran. According to the prosecution, Judge Eric David had written a legal opinion that the PMOI be removed from the list of terrorist organisations.

Amicus curiae Jason Kay appointed under Article 15 of the Charter, raised the point that the allegations were not supported by clear evidence. And that perceived bias does not amount to actual bias. The Prosecution further argued that there must not even be any perceived bias on the part of any judge of the tribunal in deciding a case.

The Tribunal adjourned the hearing to deliberate further and later returned dismissing the prosecution's application to recuse Judge Eric David, as they felt there was no threat of real bias. However, the prosecution disagreed and the hearing was adjourned once again.

When the hearing resumed, the President of the Tribunal, Tan Sri Dato Lamin bin Haji Mohd Yunus Lamin, expressed the panel's disquiet of the breakdown of the forum stressing that once an objection had been overruled, it should be accepted and respected. He instructed the registrar to expunge all the allegations levelled against Judge Eric David from the records.

In their response, the prosecution accepted the panel's decision but conveyed the serious concerns of the witnesses who had come all the way from Palestine to have their day in court. The witnesses, through the Chief Prosecutor Prof Gurdial S Nijar made known their three points of concerns to the panel of judges.

One, the fact, that, they have come to the Tribunal seeking justice after literally years of being unheard. They have come for justice and are prepared for any decision but in the present situation, they are not comfortable to appear before a judge that may be biased. They want the process of obtaining justice untainted in any way. Otherwise, in their view, it

would be worthless. Secondly, they fear for their personal security in having come all the way to Kuala Lumpur to testify and thirdly, it is a matter of principle to them and if they lack confidence in the panel of judges, they would essentially be insecure and thus unable to tend evidence. As such, the Prosecution recommended that the hearing be adjourned Sine Die (indefinitely).

In that highly charged moment, and despite the prosecution's acceptance of the President of the Tribunal's decision of expunction of records and overruled objection, Judge Alfred Lambremont Webre chose to revisit the issue and rebuked the prosecution for falsely maligning a respected member of the tribunal, who he maintained is a highly respected member who had appeared in several Russell Tribunal proceedings previously. He expressed his annoyance and displeasure quite explicitly.

At that point, the President of the Tribunal, Tan Sri Dato Lamin bin Haji Mohd Yunus Lamin called for an adjournment and for the matter to be rightly taken into chambers. After further deliberation and a request that the prosecution consult the witnesses again, the judges called the legal teams into chambers and after a lengthy discussion, announced that the tribunal would resume the followed day.

Essentially, this is the first time war crime charges are being heard against the State of Israel and the retired general in compliance with the due legal process. In November last year, the Kuala Lumpur War Crimes Commission (KLWCC) heard the testimonies of nine complainants from Palestine (Gaza and West Bank) and the Sabra - Shatila refugee camps in Lebanon. The Commission proceeded to investigate these complaints, which resulted in the institution of formal charges on war crimes against the accused.

The trial, which is being held before the Kuala Lumpur War Crimes Tribunal constitutes of eminent persons with legal qualifications.

The judges of the Tribunal is headed by retired Malaysian Federal Court judge Tan Sri Dato Lamin bin Haji Mohd Yunus Lamin, who also served as an ad litem judge at the International Criminal Tribunal for the former Republic of Yugoslavia. The other judges in the Tribunal include notable names such as Mr Alfred Lambremont Webre, a Yale graduate, who authored several books on politics, Tunku Sofiah Jewa, practising lawyer and author of numerous publications on International Law, Prof Salleh Buang, former Federal Counsel in the Attorney-General Chambers and prominent author, Prof Emeritus Datuk Dr Shad Saleem Faruqi, prominent academic and professor of law, Michael Hourigan, an internationally renowned human rights lawyer and Prof Eric David, an International Humanitarian Law expert who was counsel at the International Court of Justice and the International Criminal Tribunal for Rwanda.

The trial is open to the public and will be held from August 21-24, 2013 at the premises of the Kuala Lumpur Foundation to Criminalise War (KLFCW) at 88, Jalan Perdana, Kuala Lumpur.

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