

TRIAL

ICTY

by *Sebastiaan Gottlieb, The Hague*

Victims outraged at Karadzic adjournment

ICTY: Karadzic trial	p.1
Uruguay confronts its past	p.2
Sarajevo: International judges victims of democracy	p.3
Interview: Mark Freeman on amnesties	p.4

Sierra Leone tribunal upholds sentences for RUF rebels

The Special Court for Sierra Leone (SCSL) Appeals Chamber upheld sentences for three former Revolutionary United Front (RUF) leaders Monday. It was the last ever judgement to be handed down in Freetown.

The five-judge panel confirmed the sentences of 52 years for Issa Hassan Sesay, 40 years for Morris Kallon and 25 years for Augustine Gbao. In total, the court dismissed 96 defence grounds for appeal.

The men were convicted in February for overseeing a spree of killings, mutilations and rapes during the country's civil war.

Monday's judgment upholds first-ever convictions by an international tribunal for forced marriage as a crime against humanity, and for attacks against United Nations peacekeepers.

The SCSL's only remaining case, the trial of former Liberian president Charles Taylor, is being held in The Hague.

Since 2004 the court has tried members of the three main factions in the war: the Civil Defence Forces (CDF), the Armed Forces Revolutionary Council (AFRC) and the RUF. However, the most notorious RUF frontman Foday Sankoh and CDF leader Sam Hinga Norman died in prison.

RUF commander Sam Bockarie was killed in Liberia. The AFRC's Johnny Paul Koroma is believed to be dead, although his indictment still stands.

Few people expected Radovan Karadzic to show up to the start of his trial on Monday. He had already announced his intention not to attend a few days earlier in a written submission to the International Criminal Tribunal for the former Yugoslavia (ICTY). The former President of the Serb Republic in Bosnia stayed away to protest the fact that he hadn't been given more time to prepare his case. His request for a 10-month postponement was rejected by the pre-trial and appeals chambers earlier this month.

As he opened the trial in Courtroom 1 of the ICTY, Presiding Judge O-Gon Kwon saw only empty seats where the defence team should be and quickly decided to adjourn the trial until the next day. "We will start with reading the opening statement," he said, "and we request Mr. Karadzic to attend, so that his trial is not further obstructed."

Judging by his gentle approach, Kwon is hoping to find a diplomatic solution to the conflict with Karadzic.

This could be because of what has been until now a cooperative relationship between Karadzic and the tribunal. This is in stark contrast to the earlier trials of the late Slobodan Milosevic and *enfant terrible* Vojislav Seselj, who made obstructing and frustrating the tribunal their primary business. Kwon's good faith in Karadzic may also come from a letter the defendant sent to the court stating that he "will never boycott his own trial" and hoping the court would find "a fair solution."

117 members of victims' rights

group the Mothers of Srebrenica attended the first day of trial in The Hague. They represent the families of the more than 7,000 Muslim men and boys killed during the Srebrenica genocide in 1995. They were shocked by the judge's soft approach and when Kwon announced the court's adjournment, they stood up in the public gallery and shouted with frustration.

"He should show himself"

Once they left the courtroom they expressed their anger to the international press that thronged to the first day of trial.

"I just don't understand why the court didn't force him to come," said one woman. "He was in hiding for 14 years, now he should finally show himself to us."

Trial watchers at the ICTY in The Hague see Karadzic's absence as a ritual contest between the court and the accused. Michael Wladimiroff who represented Duso Tadic, the first person to be convicted by the ICTY, said: "I expect Karadzic to turn up in the courtroom once the first witnesses are presented by the prosecution. He will not attend the opening statement because there is nothing to win there for him."

Wladimiroff has been right so far: Karadzic didn't attend the postponed opening of the trial on Tuesday when the charges against him were presented by the prosecution.

Whether Wladimiroff is also right that Karadzic will show up at a later time, remains to be seen.

Sweden released former Bosnian Serb President Biljana Plavsic on Tuesday, two-thirds into an 11-year jail term for war crimes.

She immediately left Sweden and returned home to Serbia.

“I don’t know what to think being free after eight years,” Plavsic told reporters after landing in Belgrade.

The International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, which convicted Plavsic in February 2003, consented last month to grant her early release.

79-year-old Plavsic was one of three members of the presidency of the Serbian Republic, headed by Radovan Karadzic. She was the only woman convicted by the ICTY of war crimes committed during the 1992-1995 Bosnian war.

Plavsic pleaded guilty to persecution on political, racial and religious grounds by “inviting paramilitaries from Serbia to assist Bosnian Serb forces in effecting ethnic separation by force”.

Charges of genocide, extermination and murder were dropped as part of a plea bargain.

Her release was celebrated by Bosnian Serbs, and Bosnian Serb Prime Minister Milorad Dodik was in Belgrade to welcome her back home.

“Nothing to do with justice”

But Muslim victims of the war voiced outrage at the decision to grant early release: “It might be in line with international law, but it has nothing to do with justice,” Murat Tahirovic, head of an association of Muslim and Croat war camp prisoners, told reporters.

“They don’t think about the blood of so many of our children, whom we are still digging out of mass graves,” said Kada Hotic, a mother still searching for a son who went missing in the 1995 Srebrenica genocide.

“Nobody feels sorry for them but they feel sorry for Plavsic, who spent her prison days very comfortably, writing books and memoirs,” Hotic said.

by Santiago O’Donnell & Carlos Montero, Montevideo

Uruguay confronts its past

A Uruguay court sentenced former military ruler Gregorio Alvarez to 25 years in prison for murder and human rights violations on Thursday. He was found guilty of 37 homicides committed during his time as army chief in the 1970s and later as president.

In the same case, former naval officer Juan Carlos Larcebeau was sentenced to 20 years in prison for his part in 29 murders.

Both sentences came hours before the Uruguayan Supreme Court declared unconstitutional an amnesty law approved by Congress in 1986 and ratified by a national referendum in 1989.

82-year-old Alvarez played a key role in the country’s 1973 coup before going on to become commander-in-chief of the army and ultimately president of Uruguay’s military junta from 1981 to 1985.

He was arrested in 2007 and in Thursday’s ruling, Judge Luis Charles found Alvarez guilty of the crime of “forceful disappearance” and “aggravated homicide” of 37 left-wing activists in 1978.

“Triumph for democracy”

“The Alvarez ruling is a triumph for democracy, since he was a symbol of the repression that occurred during the years of state terrorism,” said human rights activist Guillermo Paysee, director of Serpaj-Uruguay.

“But the struggle must continue and we won’t give up until we get rid of the amnesty law that is crippling our freedom and dignity,” he added.

Justice has been slow in coming to the small Latin American country but after 12 years of dictatorship and a quarter-century of democracy, history accelerated over the course of a few days.

The convictions of Alvarez and Larcebau highlighted Uruguay’s changing position regarding crimes

committed under the dictatorship. In March, eight former soldiers and police officers were convicted for their role in enforced disappearances.

Juan María Bordaberry, who ruled the country from 1973 to 1976, is also awaiting judgement on charges relating to the deaths of four people, including two members of Uruguay’s General Assembly.

Uruguay has been under democratic rule since 1985 and these recent developments are seen as bringing it closer to policies adopted by Argentina, which overturned an amnesty for crimes committed under its own 1976-1983 dictatorship. Chile is also prosecuting around 500 soldiers for crimes against humanity carried out during General Augusto Pinochet’s 1973-1990 rule. Uruguay’s first left-wing president, Tabare Vazquez, took office in 2005 and opened the door to prosecuting human rights violations committed under the dictatorship.

But cases concerning 231 other *desaparecidos* have still not come to court. Soldiers alleged to have played a role in their disappearance refused to respond to judges’ summonses because of a *de facto* amnesty.

The law in question - *Ley de Caducidad de la Pretencion Punitiva del Estado*, or Expiry Law – prevents the prosecution of police and military officials for crimes committed prior to 1985.

The cases against Alvarez and Larcebeau were not covered by the country’s amnesty law because the victims were kidnapped in Argentina and the law only refers to crimes committed in Uruguay.

Last week, in a case involving the murder of Nibia Sabalsagaray, a communist activist in a military garrison in 1974, the Uruguayan Supreme Court ruled that the *Ley de Caducidad* is unconstitutional.

A referendum to abolish the amnesty, however, was narrowly defeated on Sunday in Uruguay’s national election.

The International Criminal Court (ICC) has been hearing evidence against Bahr Idriss Abu Garda on three charges of war crimes for an attack on peacekeepers in Darfur in 2007.

The political commander of the United Resistance Front is the first person to openly cooperate with the court.

In asserting his innocence, Abu Garda said that appearing before the court is part of pushing forward the Sudanese peace process: "I came here because I believe in justice [...] If my presence here improves the situation in Sudan, and encourages others to come and cooperate with the ICC, then I will be satisfied."

Abu Garda is charged with commanding some 1,000 armed men to attack African Union Mission (AMIS) peacekeepers in Haskanita on November 29th, 2007.

Deputy Prosecutor Fatou Bensouda said "the evidence will show that this attack was planned and executed under the command of Mr. Abu Garda and other co-perpetrators."

The first prosecution witness told the court how he was shot in the back while seeking shelter in a trench but said he had never seen Abu Garda.

In court, Abu Garda offered his condolences to the victims. His lawyer, Karim Kahn added that "rather than condoning or encouraging the attack, [his client] went on record and roundly condemned it."

Kahn said the prosecutors fell into the trap of a "convenient" case, but one that "will not pass muster" when the judges look at it more carefully.

In a closed session on October 29th, Khan will question the ICC's lead investigator about the process of charging Abu Garda with crimes in Darfur.

All parties - including representatives for 78 AMIS personnel and their families - will discuss the evidence and present closing arguments on October 29th, leaving the judges to decide if Abu Garda should stand trial.

International judges victims of democracy

The International Criminal Tribunal for the Former Yugoslavia (ICTY) expressed "disappointment" at a decision by the Parliament of Bosnia and Herzegovina (BiH) to reject a proposal to extend the mandate of international personnel working with the War Crimes Chamber and Organized Crime Department in the country. The October 1st vote means that all international staff will have to leave by the end of the year. Although this was part of the court's original plan, representatives of the State Court warned that the decision threatens the "efficient operation of these institutions."

The War Crimes Chamber and Organized Crimes Department were established in 2002, within the State Court and the BiH Office of the Prosecutor respectively. They were set up by the Office of the High Representative, the chief civilian agency created by the 1995 Dayton peace agreements that brought an end to the Bosnian war. International judges and prosecutors have been part of these institutions since their creation, in order to guarantee their independence.

At the time, the ICTY was planning to complete all cases by 2008. But the tribunal is still ongoing and international staff thought their mandate in BiH could be just as easily extended. But they didn't take into account the fact that the foreign presence in BiH courts might be perceived as a breach of national sovereignty.

Parties from Republika Srpska led the revolt. Dusanka Majkic, member of parliament from the Alliance of Independent Social Democrats voted against the extension of the mandate. "Bosnia can not be called a sovereign state unless it has local judges and prosecutors at all levels", she said.

Beriz Belkic, a Bosniak from the Party for BiH, voted in favour of extending the mandate. "Unfortunately, it did not happen," he said, "and BiH will

be without significant international help and without a model that can prevent political influence over the State court and prosecution", Belkic said.

"Court will not be able to work"

Meddzida Kreso, the State Court's president, believes that the court is now more vulnerable, and is concerned that the State Parliament did not approve an increase of the court's budget. "If internationals leave, the state has to take responsibility for all financial matters of the court, including salaries for new judges. Currently, internationals are paid by their own governments. Soon we could have a lack of international, but also of local judges. That means that the court will not be able to work."

In the past, court and prosecution officials, as well as local media and NGOs had been critical of the work of the international personnel. Now, they seem more positive. "They helped us to learn how to implement international standards. They were a huge help in the organised crime department, working in some very complicated cases. But it was also significant to have them in order to raise public confidence for the prosecution", says prosecution spokesman Boris Grubestic.

Fahrija Karkin, a lawyer from Sarajevo, is more circumspect. "Definitely, I see some advantages. Like the way verdicts are written. With them, our judges did improve their work to a certain level. However, I believe Bosnia does have some qualified judges and prosecutors, and it is time for them to take over."

Mirko Prelec, directs the International Crisis Group in the Balkans and used to work for the State Court. He says that international influence is crucial. "Prosecuting war crimes is a hard job and local prosecutors did not have a chance to do that before."

► **Alleged *génocidaires* neither tried nor extradited**

Fifteen years after the Rwandan genocide, the situation regarding a dozen Rwandan suspects living in France remains deadlocked.

French courts refused to transfer suspected *génocidaires* to Rwanda following various rulings that suspects could not be guaranteed a fair trial.

Neither will Rwanda allow the French to carry out investigations on its territory. Diplomatic relations between the two countries soured after a French judge implicated President Paul Kagame in the assassination of former Rwandan president Juvénal Habyarimana.

Habyarimana's widow now lives in France. But on October 16th the country's highest legal authority refused to grant her asylum, saying that "presumptions exist" regarding her involvement in the massacres

Agathe Habyarimana could, therefore, be deported to Rwanda, or she could be tried in France under the principle of universal jurisdiction, if a judicial inquiry launched against her last year so concludes.

At the same time, a hospital in Northern France recently suspended medical doctor Eugene Rwamucyo after discovering he was wanted by Interpol in connection with the genocide.

But Rwamucyo is also unlikely to be extradited or tried anytime soon. At least not until relations between Paris and Kigali improve.

INTERVIEW

Mark Freeman, amnesties expert

by *Hermione Gee & Karl Dowling, Amsterdam*

To forgive and forget?

During Uruguay's national election Sunday, voters were also asked to decide whether to overturn an existing amnesty law that protects military and police personnel accused of crimes committed during the 1973-1985 military junta.

Although the measure failed to pass, Uruguay's amnesty law is an ongoing cause for controversy in the country and presidential candidate José Mujica has vowed to overturn the law if elected.

Mark Freeman is an expert on amnesty law and author of the forthcoming book, *Necessary Evils: Amnesties and the Search for Justice*. He spoke to the IJT's Hermione Gee about today's shifting attitudes towards amnesties.

How are amnesty laws applied?

Amnesty laws have always been a quite controversial topic, especially today in the era of the International Criminal Court (ICC). Historically, amnesty was used to actually draw a line in the sand in terms of the past, to basically say there were some terrible things that happened in the past but for the sake of our society's future we are not going to look back but look forward. But things have really shifted, in the past decade in particular. In fact it's almost a sea change, and today amnesties are generally considered - especially if they cover crimes against humanity, war crimes and genocide - to be unacceptable by, among others, the United Nations Secretariat.

And how would you account for that sea change?

It is two things I think: the community of international lawyers as well as the human rights movement. And those involved in international justice have been the primary movers of this change [...] along with the UN Secretariat. In the past the [Secretariat] has been much more willing to facilitate amnesties as part of reconciliation and transition processes in countries. But very shortly after the adoption of the

Rome Statute [it] completely shifted its approach. [However] there's a very large group in countries that are still mired in conflict or are ruled by dictators, that don't necessarily always share that view. In fact, there's been a tension because, while the [ICC] represents one kind of approach to dealing with major crimes that took place in the past, there's also been tension between that view [...] and the view that sometimes amnesty has a useful role when it's adopted as a sort of last resort.

Do you think the question of amnesty laws is a legal or political issue?

It's both. In terms of the law, it's not as black and white as it's often presented. But, whatever the law says, there's no question that amnesty is also a policy issue. It's about the price that an international community might be willing to pay in seeking to balance, on the one hand the collective interests at a national level in peace and democracy, [and] on the other hand the very real rights that victims have also under international law and usually under domestic law to have their day in court. In my mind it's always both, and I personally have always favoured a case by case basis to seek to balance the different moral, legal and policy considerations. There's huge numbers of human lives at stake either way you decide to go.

And do you think there are any crimes for which amnesty just shouldn't be considered?

I don't think that societies are well served by rigid rules that take amnesty off the table because, potentially, you can put a society in a situation to [subject] victims [to] ongoing victimisation as a result [of] saying we won't accept amnesty of this particular type. From a human rights perspective one ought to care as much about prevention as punishment.

Listen to the full interview with Mark Freeman on our website: www.internationaljustice.nl

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Radio Netherlands Worldwide

Witte Kruislaan 55
1217 AM Hilversum
PO box 222
1200 JG Hilversum
The Netherlands
telephone: + 31 35 6724533
e-mail: internationaljustice@rnw.nl

Managing editor: Arjen van Dijkhuizen

Arjen.vandijkhuizen@rnw.nl

Editorial advisor: Franck Petit

Editor: Hermione Gee
Hermione.gee@rnw.nl

Producer: Thijs Bouwknecht
Thijs.bouwknecht@rnw.nl

Intern: Karl Dowling

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