

REPORT

Trials in Argentina

by Robert-Jan Friele, Buenos Aires

ESMA trials to start

One of the most significant trials of former military personnel active during the 1976-83 Argentine dictatorship will start this Friday.

Nineteen officers are accused of human rights abuses at the Escuela Mecánica de la Armada, or ESMA, a former navy school and one of Latin-America's most notorious torture-centres.

When the Argentine army came to power, it decided to implement what it called a 'Process of National Reorganisation' and during the next seven years between 9,000 and 30,000 people were murdered or disappeared.

During the Process, the ESMA functioned as the biggest clandestine detention centre in the country. It served as a base for paramilitary units or 'task groups' who would kidnap people from their homes or on the streets. Most of those brought to the ESMA were severely tortured and later disappeared. Less than 200 Argentines are thought to have survived the ESMA.

'Mega trial'

Judge Sergio Torres is leading the ESMA prosecutions and has 900 documented cases of victims. Overall, some 5,000 Argentines are thought to have passed through the school, around 1,500 of whom were anaesthetized and thrown out of planes during so-called 'death flights'.

Because of the enormous number of victims and suspects, Argentine judges have divided the 'mega-trial' into segments. Two years ago, the first ESMA case came to court. Back then only one former military official, Héctor Febres, stood trial on charges of kidnapping and torture. But the day before the verdict, Febres was

found dead in his cell from apparent cyanide poisoning.

This Friday, 19 former military officials will stand trial on charges of torture, forced disappearance, murder and theft.

'Angel of death'

One of the suspects is Alfredo Astiz, also known as the 'blond angel of death'. Astiz infiltrated the Mothers of Plaza de Mayo organisation, pretending to be the brother of a disappeared man. In early December 1977, nine members of the organisation were arrested and consequently disappeared. Among them were founder Azucena Villaflor and French nuns Alice Domon and Léonie Renée Duquet.

Human rights organisations in Argentina have been looking forward to the trial. Some of the accused were prosecuted in the 1980s, but were acquitted after former president Raúl Alfonsín signed the controversial Due Obedience Law that barred the prosecution of lower-level military personnel.

In 2005, prosecution was resumed but because of a lack of capacity, many former military officers still haven't been prosecuted 26 years after democracy returned to the country.

However, says Patricia Tappatá de Valdez of the NGO Memoria Abierta, or Open Memory, "Argentina is one of the countries in the world that has advanced the most when it comes to confronting the past." According to the Center for Legal and Social Studies, Argentina's courts are dealing with over 1,300 cases of human rights violations, some of which have already been concluded.

Argentina

ESMA trials to start p.1

Khmer Rouge trial

Duch asks for acquittal p.2

ICC: Ocampo seeks Kenya probe p.3

Interview

Michael Reed, Colombia p.4

Dutch SS confesses

Dutch war criminal Heinrich Boere has made a full confession to the three murders for which he stands accused.

The 88-year old told a court in Aachen, Germany, that he had joined the Nazi SS during World War II and killed three Dutch citizens in reprisal for anti-Nazi attacks.

In 1949, two years after escaping from a Dutch prison, Boere was sentenced to death *in absentia* by a Dutch court for the three murders.

He reappeared in Germany in 1954. Because he had by then acquired German citizenship, he could not be extradited to the Netherlands. A Dutch request to have him serve time in a German prison was denied because his conviction was ruled invalid by a German court. Instead, the German justice ministry began its own case against Boere.

Before he made his confession, the court denied a defence motion to dismiss the case. The motion was filed last Monday, when the Treaty of Lisbon came into effect. The treaty states that a court in the European Union can not try or sentence an accused for the same crime more than once.

The court ruled that the ban on double jeopardy was insufficient grounds for dismissal, arguing that the rule does not apply if the accused flees the country where he was prosecuted in order to avoid serving prison time.

► **Rwanda: Gacaca courts near end**

The Rwandan Gacaca courts, initially scheduled to close in June 2009, will now have to finish their work by the end of this year.

The traditional courts were enlisted in 2001 to serve as a vehicle for truth, justice and reconciliation following the 1994 Rwandan genocide.

The age-old system was retooled to deal with overcrowded prisons holding up to 120,000 genocide suspects. Since 2005, more than 12,000 community juries have dealt with over a million files and secured over 70,000 convictions. Some 3,000 cases have not yet not been completed and their files will be sent to Rwanda's national courts.

Executive Secretary of the Gacaca Courts, Domitilla Mukantaganzwa, said the courts had been a success. "Gacaca has had a very big role in promoting the reconciliation process in Rwanda because it helped those who killed to come face to face with the survivors and through this process, genocide perpetrators have been able to seek forgiveness from survivors."

But not everyone has welcomed the traditional folk tribunals. Amnesty International said that the trials were compromised since the accused have no right to see their files or be legally represented. Amnesty also reported that judges and witnesses were frequently threatened and sometimes even murdered.

Richard Goldstone was the first Chief Prosecutor at the International Criminal Tribunal for Rwanda. He agrees that the Gacaca "is not a fair system by the international standards", but argues that in the case of Rwandan genocide – where there were as many perpetrators as victims – the Gacaca has served a useful purpose. "I have yet to hear any rational alternative which could be used by the Rwandan government to get tens of thousands of suspects out of prison."

FINAL PLEAS

Khmer Rouge trials

by *Thierry Cruvellier, Phnom Penh*

Duch trial ends with a twist

"Do I infer that the accused is seeking an acquittal?" asked Judge Cartwright.

"I did say that. Release means an acquittal," responded Cambodian defence counsel Kar Savuth.

These were the final words in the trial of Kaing Guek Eav, a.k.a. Duch, the former head of the Khmer Rouge detention and torture centre S-21. They signalled the implosion of Duch's defence team after an eight month trial during which it had appeared to be the most well-prepared and cohesive party by far.

At the last possible moment, during closing arguments last month, the Cambodian co-counsel asked for his client to be released, arguing that the Extraordinary Chambers in the Courts of Cambodia (ECCC) lacked jurisdiction to try Duch since he had never been a senior leader of the Khmer Rouge regime.

This was a complete reversal from what had been the defence line for more than two years under French co-counsel François Roux. Under Roux's guidance, Duch had pleaded guilty, apologized to his victims and said that he would accept the harshest sentence for his crimes.

But he is now asking to be acquitted, openly siding with his Cambodian lawyer against his French one. In a final twist, the defence team effectively destroyed itself, without any help from the prosecution.

"We were as surprised as everyone," said acting Chief Prosecutor William Smith at a press conference after the hearing.

"Throughout the case we have said that the accused's remorse and cooperation were limited. The fact that it ended [this way] reinforces my position that his remorse is limited."

Civil parties, who had consistently expressed their doubts about the sincerity of Duch's remorse and full cooperation, also felt vindicated by the accused's u-turn.

"This was a slap in the face of the victims of the regime," said one of their lawyers, Silke Studzinsky. "The

door is now closed," she added, while one of her colleagues said he still preferred that it "remained ajar."

Despite the actions of his Cambodian co-counsel, Roux has nevertheless remained on board - at least for the time being.

In an interview with online newspaper *Ka-Set*, Roux noted that his co-counsel's position echoed the Cambodian government's desire not to prosecute any suspects other than the four members of the Khmer Rouge leadership awaiting trial before the ECCC in 2011.

"The message [being sent] to the three Cambodian judges is far from neutral," he said.

"I may be wrong in my interpretation but I am not off the subject when I hear [Cambodian Prime Minister] Hun Sen say: 'I don't want more', when I know that [Cambodian prosecutor] Chea Leang does not want more and when Kar Savuth says 'There mustn't be more'...If this is what is meant to be acknowledged, then Duch is not involved," Roux said.

"To witness such collapse at the end of the Duch trial is to send a very strong message: 'Your tribunal is not ours'," Roux concluded.

Following the hearing, Smith told reporters that "the collaboration between Cambodians and non-Cambodians is one of the greatest successes of this court."

Roux, however, disagrees and says that it is precisely this peculiar feature of the ECCC - where at every level a Cambodian national shares responsibilities with an international counterpart - that led to such an undesirable situation.

"A detainee is always in his lawyers' hands. It is an impossible situation for him when he has two lawyers who say two different things."

For two months the international co-investigating judge has also been dealing with an uncomfortable conflict with his Cambodian colleague. Last week was the turn of the defence. Tomorrow, it may well be the turn of the trial judges.

► SCSL: Taylor's secret bank account revealed

Nicholas Koumjian, who has been leading the cross-examination of Charles Taylor at the Special Court for Sierra Leone, ended the last hearing of the year with a dramatic piece of evidence: a previously unseen statement from a personal bank account opened by the defendant in December 1999.

The former Liberian president is charged with 11 counts of war crimes and crimes against humanity relating to his role in Sierra Leone's civil war.

Taylor - who has always claimed that "no one, no human being has ever come up and said, 'Here is a bank account with a million dollars belonging to Mr Taylor'" - acknowledges the existence of the account at the Liberian Bank for Development and Investment, but rejects prosecutors' suggestions that he used it to hide illicit funds. It was a "covert account opened up by the Government of Liberia during this period, to fight our war", Taylor told the court.

The prosecution focused on two major deposits made in 2000: 2 million dollars from Natura Holdings, whose Dutch owner was accused and later acquitted of illegal arms sales; and 3.5 million dollars from the Taiwanese embassy in Monrovia.

"The total for nine months, Mr Taylor, is \$10,842,268.93", said Koumjian. "Why is it covert? Because it's going into your pocket?"

"No, Mr Koumjian. We were accumulating money. That's how we managed to pay for the arms that I have said that I ordered in 2001," Taylor replied. Arms paid "in cash" to Serbia, he added, but said he "can't remember" millions of dollars of transactions shown by the bank statement. "It was used for covert activities", admits Taylor.

Taylor's cross-examination will continue when the trial resumes in January.

REPORT

International Criminal Court

by Michael Kaloki, Nairobi

Annan: victims crave justice

On a visit to Nairobi this week, former UN Secretary General Kofi Annan welcomed the Kenyan government's assurance that it will cooperate fully with the International Criminal Court (ICC) on establishing a means to secure justice for victims of post-election violence in 2007.

Annan served as chief mediator during peace negotiations aimed at finding a solution to the crisis that had rocked the East African country. He said that the prosecution of the perpetrators - even powerful politicians - would not threaten the reconciliation process.

"We should encourage the law to take its course. We should think about the victims of the violence; they are craving justice. A nation does not collapse because of one man or several men," he said in a speech at the end of his six-day visit.

Investigations

Luis Moreno Ocampo, Chief Prosecutor of the ICC, announced last month that he has asked ICC judges to authorize a formal investigation into the violence.

There is a "reasonable basis to believe that crimes against humanity within the jurisdiction of the court were committed", Ocampo said, "in particular, crimes of murder, rape and other forms of sexual violence, deportation or forcible transfer of population and other inhumane acts."

In July, Ocampo received a sealed envelope from Kofi Annan containing the names of suspected perpetrators of the violence.

Annan brokered a power sharing deal in February 2008 between Mwai Kibaki and Raila Odinga. Kibaki would remain as president while Odinga would take the mantle of prime minister.

As part of the deal, the Commission of Inquiry on Post-Election Violence was set up. Commission members traversed the country gathering witness testimony and in October 2008 issued a 500-page report indicating that some of the attacks

were based on "ethnicity and political leanings".

The Commission then handed over a sealed list of alleged perpetrators to Annan. It was agreed that a local tribunal would be established to prosecute those behind the violence which left more than 1,300 people dead and forced 300,000 to leave their homes.

After the Kenyan government missed several deadlines to set up the tribunal, Annan gave the list to Ocampo.

During a visit to Kenya last month, Ocampo met with Kibaki and Odinga to discuss how those responsible for the 2007 violence could be brought to justice. Once back in The Hague, he requested official permission to investigate the situation.

Mixed signals

The Kenyan government has been giving mixed signals about the prospect of sending suspects for trial at the ICC.

Prominent politicians are suspected of having masterminded some of the violence, raising questions in the country about their willingness to see justice done.

There has also been a mixed reaction from members of the general public about how suspects of the post-election violence should be handled, particularly in light of concerns that tensions that led to the post-election violence are still lingering.

Edward Shihima lives in Kibera, Nairobi's largest slum district.

"Ocampo should continue with his work. Here in Kibera, during the post-election violence, many people were killed. That is why we are now supporting Ocampo. The post-election violence brought tribalism to Kibera. If the suspects are taken to The Hague, the tribalism will stop."

ICC judges will rule on Ocampo's submission early next year. If they approve his request, Ocampo has said investigations could start immediately.

► “Genocide banker” sentenced in Belgium

A Brussels court has sentenced Rwandan Ephrem Nkezabera to 30 years in prison on charges of violating international criminal law and war crimes committed during his country’s 1994 genocide.

Nkezabera was arrested in Belgium in 2004 under a warrant issued by the International Criminal Tribunal for Rwanda.

Dubbed “the genocide banker”, Nkezabera admitted to arming and financing the Hutu militia which spearheaded the three-month massacre, and acknowledged funding an extremist radio station.

The Court of Assizes also convicted him on an indeterminate number of murders and rapes, charges he had denied. This was the first time rape has counted as a war crime in Belgium.

The 57-year-old former director of the Commercial Bank of Rwanda is being treated for liver cancer and did not attend the December 1st sentencing or any of the proceedings. His request for his trial to be postponed due to health reasons was dismissed by the court.

Gilles Vanderbeck, who is representing Nkezabera, said “I am not really surprised by the sentence and will, of course, challenge it since we did not have the chance to participate in the trial.”

International Justice TRIBUNE

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

Assistant producer: Karl Dowling

Subscribe at

www.internationaljustice.nl/tribune

INTERVIEW

Michael Reed-Hurtado, ICTJ Colombia

by Franck Petit, Paris

“No political will” for JPL

In 2005 Colombia introduced the Justice and Peace Law (JPL) in an effort to combat the problem of paramilitary groups rampant in the country. The law offers fighters lenient penalties for human rights abuses in return for voluntary demobilisation.

Michael Reed-Hurtado is Head of Office at the International Center for Transitional Justice in Colombia. He spoke to the IJT’s Frank Petit about how the law is working.

How many trials have taken place since the JPL was introduced?

Only one trial took place, and it was annulled! There are ongoing depositions by 650 of the demobilized paramilitary that have not ended in a successful way. The Supreme Court, in both annulling the first trial and responding to an interlocutory appeal on a secondary case, has told the office of the prosecutor that they need to have a coherent and consistent approach to their investigation task in the JPL process. But to date, the balance is extremely negative.

For what reasons?

Multiple issues. First, the executive power provided a list of names to the office of the prosecutor in a very disorderly fashion. Initially 2,065, currently 3,854. It is a real structural issue that there isn’t a strategic decision on who the prosecutor should or should not prosecute. Secondly, in practice there is a lot of improvisation, largely because all the institutions of the criminal justice system were not at all ready to assume the mass nature of the crimes that were perpetrated.

How has the public reacted?

The confessions started in December 2006 and by now people are just tired of it. The newspapers are no longer covering much of what goes on. The country has been inundated by very graphic descriptions of how people got cut up and tortured but the problem is that the public in general is very confused as to whether they can expect something from these processes.

And the victims?

According to official statistics, 41,820 people have at one point participated. The other statistic that seems important is that at least 14,000 victims have been established. That means that a perpetrator has claimed that he killed the person. The information that is available is very poor and what it generates is more a sense of, wow, there are a lot of victims! But so far we have not provided a satisfactory answer to a very simple question: who organized these crimes?

Is there a lack of political will?

There is a lack of will to go to the bottom of all the issues. There is a lack of parallel investigations against the military lead, the political lead, the economic lead. The other issue was the extradition of the high level commanders within the paramilitary ranks that had the information and the capacity to link the leaders to the perpetration of crimes. 29 paramilitary commanders have been extradited to the US on drug charges. In September the Supreme Court blocked these extraditions, but that comes very late.

What can Colombia expect from the ICC?

The prosecutor continues to publicly state that he is very actively engaged in following up the Colombian case. But the bulk of his follow-up has been related to the JPL process.

Let’s assume that the JPL process works beautifully for the next two years and that all the 4,000 people that should be processed by JPL are processed. The question then has to be, have those most responsible been judged? And the answer is no. JPL explicitly excludes state sponsored violence.

[For the ICC], Colombia is a case where clearly, if it is stimulated properly, all its mechanisms can go into play and the large part of the perpetrators will be prosecuted and tried in the country. What is dangerous in Colombia is the lack of political will, and that requires very brave activity on behalf of the office of the prosecutor.