

Special report

Charles Taylor trial

By Bram Posthumus, Liberia

And what if Taylor walks?

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Former Liberian president Charles Taylor, is in court to defend himself on 11 counts of war crimes and crimes against humanity he allegedly committed in Liberia's neighbour to the west, Sierra Leone. Liberian media cover the trial extensively but Liberians are, to all intents and purposes, mere spectators. This trial is not about them. Liberia lacks a war crimes tribunal. What it does have is a Truth and Reconciliation Commission which has been taking countless statements from war crimes victims and perpetrators and whose report is in the public domain.

The UN and the Sierra Leone government installed the Special Court for Sierra Leone (SCSL) in 2002. In June 2003, David Crane, its chief prosecutor, had Taylor indicted for war crimes allegedly committed in Sierra Leone. Two months later, Taylor left Liberia in the midst of chaos and bloody struggle as rebels pounded the capital Monrovia with mortars. His departure was the result of a deal struck principally between himself, the Economic Community for West African States and the African Union, the nub of it being that he would not be arrested and would stay out of Liberian politics. Taylor went to stay in Calabar, Nigeria.

By late March 2006 the world was treated to the bizarre spectacle of Taylor first "disappearing" from his villa, days before Nigerian president Olusegun Obasanjo was supposed to meet US president George W Bush, and then Nigerian security forces miraculously "finding" Taylor again near the border with Cameroon. A few days later, Taylor was in The Hague and Obasanjo had his meeting with Bush.

The prosecution at the SCSL has been presenting the world with victims: amputated limbs, rape victims, horror

stories. No one denies these things happened, but the question is: how hard is it to prove that Charles Taylor is personally responsible for these atrocities?

The spectacle of Ms Campbell at the SCSL gives you the answer: very hard. Current chief prosecutor Brenda Hollis has to work with the legacy left behind by a lawyer who scored a major political point and earned his place in history but did not appear too concerned about the consequences. Given the robust and professional defence Taylor enjoys, Crane's indictment may, in the end, facilitate the ex-president's return to Liberia. As he said himself, before he stepped on that plane to Nigeria in August 2003 in the driving rain: 'God willing...I'll be back'.

Will people vote for him if he stands? One Liberian banker puts it succinctly: 'At the end of the day, people don't care too much about human rights and rule of law. They want to eat!' Reggae musician and Bob Marley admirer, Lawrence Kotokpo, says he'll vote for Taylor if he stands. Why? 'This one,' he says while pointing at his stomach, 'is the boss.' He is not alone: rice was cheap during Taylor's reign.

The only thing standing in the way of Taylor's renewed bid for office is the recommendation from Liberia's own TRC, which says that anyone involved in the war should not hold public office for 30 years. However, this recommendation has already been royally ignored by the current president Ellen Johnson-Sirleaf, who was once a fundraiser for Mr Taylor.

To be fair: she has openly acknowledged this but has also decided this should not have consequences. She is standing for a second turn – which, incidentally, constitutes a broken promise. Only serious political horse-trading will stop Taylor's return.

New evidence Hariri murder

Hezbollah has handed over information allegedly implicating Israel in the murder of ex-Lebanese premier Rafiq Hariri in 2005. It follows a request by the prosecutor of the United Nations Special Tribunal for Lebanon (STL).

Hezbollah official Wafiq Safa gave the dossier to Lebanon's Prosecutor General Saeed Mirza who forwarded it on to the Beirut office of the tribunal's prosecutor Daniel Bellemare who is probing Hariri's killing.

The dossier is believed to contain Israeli surveillance footage of routes used by Hariri and the site of the assassination in west Beirut. Hezbollah claims the material points to Israel carrying out the bombing which killed the former prime minister and 22 others. The undated clips are alleged to have been intercepted from unmanned Israeli surveillance drones.

The footage was first shown a few weeks after Hezbollah chief Sayyed Hassan Nasrallah was told that the STL may indict some of the group's members over the killing. Hezbollah, which fought Israel in 2006, is determined to deflect any blame for the killing.

Nasrallah has strongly criticised the UN tribunal and described it as "an Israeli project." There are fears that if the tribunal indicts Hezbollah members, the national unity government formed by Hariri's son could collapse.

Prime minister Saad al-Hariri has called for calm. He said "dialogue cannot succeed with the accusations of treason and with repeated calls for tests of patriotism and nationalism."

Prosecutors demand tougher jail term for Duch

Prosecutors of the first Khmer Rouge commander to face a UN-backed trial have appealed against his prison sentence for being too lenient. They claim that “undue weight” was placed on mitigating circumstances.

Judges in the trial chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) found Kaing Guek Eav guilty of murder, torture, rape, crimes against humanity and other charges as chief of S-21 camp in the 1970s. The 67-year-old, also known as Comrade Duch, oversaw up to 14,000 deaths in Cambodia. In a statement prosecutors said:

“Prosecutors are of the view that the judgement gives insufficient weight to the gravity of Duch’s crimes and his role and his willing participation in those crimes.”

Duch was jailed for 35 years at the end of July, but he is likely to face just half of that as a result of time already served and compensation for a period of illegal detention by the Cambodian Military court between 1999 and 2007.

Between 1975 and 1979 around 1.7 million people went to their deaths in Cambodia’s notorious “killing fields.” Duch told the court that he had no choice but to carry out orders and “kill or be killed.”

But prosecutors insisted that he was “ideologically of the same mind” as the Khmer Rouge’s top leaders and that he did nothing to stop the rampant torture at his prison, also known as Tuol Sleng.

The joint UN-Cambodian court spent more than 78 million dollars over five years to bring the first of five indicted Khmer Rouge officials to trial.

In its verdict on July 26 the court decided against a sentence of life in prison because Duch had shown remorse and because of his “potential for rehabilitation”.

In a separate development, prosecutors have requested that the ECCC formally indicts four senior figures under the Khmer Rouge. Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith are accused of crimes of genocide, crimes against humanity, grave breaches of the Geneva Conventions and violations of the 1956 Cambodian penal code.

Truth and reconciliation at a price

In the next few weeks, Rwanda will complete the most comprehensive post-conflict justice programme attempted anywhere in the world. Since 2001, 11,000 community-based gacaca courts, overseen by locally-elected judges and barring any participation by lawyers, have prosecuted around 400,000 suspected perpetrators of the 1994 genocide.

Nearly every Rwandan adult has participated in gacaca in some way, either as a witness, defendant or by attending weekly hearings. Under gacaca’s plea-bargaining scheme, the vast majority of those convicted of genocide crimes have had their sentences commuted to community service. If they were among the 120,000 suspects imprisoned directly after the genocide, they have now been reintegrated into the same communities where they committed crimes and live side-by-side with genocide survivors and their families.

Over the last nine years, gacaca has proven remarkably successful at expediting the post-genocide justice process, delivering accountability for hundreds of thousands of génocidaires. In the process, it has commuted many convicted perpetrators’ sentences to overcome the problem of overcrowded prisons and facilitated the reintegration of most detainees into everyday society. Thus, the Rwandan government will soon have delivered on its promise of comprehensive prosecutions of those responsible for committing genocide crimes but without recreating the problem of overcrowded jails that necessitated gacaca in the first place.

Gacaca has also been critical in individualising the guilt of those responsible for the genocide, pursuing justice for each perpetrator regardless of their political or socio-economic status. Provincial governors, military officials and peasant farmers have been treated equally – a crucial recognition of the different levels of Rwandan society that participated in the genocide.

The Rwandan government has also completed the genocide caseload in the relatively short period of nine years at a cost of only \$40 million. Gacaca has therefore proven substantially cheaper

to run than more conventional justice institutions, especially when compared to the immense costs involved with the running of the UN International Criminal Tribunal for Rwanda, which to date has cost more than US\$1 billion.

Gacaca has established truth in the form of legal facts about the genocide and therapeutic truth in terms of allowing individuals to tell and hear personal narratives that allow them to deal emotionally and psychologically with the past. Testimony from 11,000 communities now provides a rich, diverse reservoir of historical material regarding genocide crimes. The recently created Gacaca Documentation Centre in Kigali constitutes the largest archive concerning a mass crime anywhere in the world and will provide an invaluable resource for everyday Rwandans, scholars and analysts for generations to come.

In interview, guilty suspects claim to have gained a sense of release from feelings of shame and social dislocation by confessing to, and apologising for, their crimes in front of their victims and the wider community at gacaca. Survivors, on the other hand, claim to have overcome feelings of loneliness by publicly describing the personal impact of genocide crimes and receiving communal acknowledgement of their pain.

However, survivors increasingly criticise the lenient sentences handed down to many convicted génocidaires. Community service is often seen as insufficient punishment, given the gravity of crimes committed during the genocide.

Survivors argue that convicted perpetrators have in the main benefited from the government’s need to rapidly empty the prisons and thus gacaca’s tendency toward moderate sentencing. Meanwhile, there is widespread anger among Hutu that gacaca has addressed only genocide crimes and not revenge killings against Hutu civilians committed by the Rwandan Patriotic Front, the rebel force that ended the genocide in July 1994 and today represents the ruling party in Rwanda. An attempt to clear the massive backlog of genocide cases has involved weekly hearings over nine years in many communities.

Judges at the UN war crimes tribunal have ordered an independent investigation following complaints from witnesses that they have been intimidated by prosecutors.

Although the probe was ordered in June, it only resurfaced when the matter was raised by a journalist.

The witnesses claim to have been threatened and intimidated by sleep deprivation, psychological pressure and other tactics. One witness claimed he was promised a good salary in the US and money in return for his statement.

The allegations concern witnesses who have testified in the case of Seselj, a Serbian politician accused of war crimes. They cite former Chief Prosecutor Del Ponte, who stepped down from the job in 2007, as well as prosecutors Urtz-Retzlaff and Saxon.

Spokesman Chartier said: “The chamber obviously took these allegations very seriously and decided that it would be wrong to leave any space for doubt”.

Former prosecutor Richard Goldstone told IJT he has no knowledge of the facts on which the claims are based. “The allegations are of a serious nature and deserve to be fully and independently investigated”, he said.

The special political advisor to the prosecutor, Frederick Swinnen said: “We don’t agree with the complaints. We think they are not grounded”.

He also emphasised that people should not lose the focus, which is to bring to justice those who are responsible for serious crimes.

Presiding Judge Antonetti announced that he would appoint ‘a friend of the court’ to look into the charges and report back within six months on whether there are grounds to launch a contempt case.

Justice interrupted

In a stately colonial building in central Dhaka, on 26 July 2010 Bangladesh’s International Crimes Tribunal granted the prosecutors’ request to issue arrest warrants for four individual suspects on charges of committing genocide, crimes against humanity and crimes against peace. A further case against a fifth individual was also opened.

The International Crimes Tribunal is a landmark effort to deal with the atrocities committed during the conflict that accompanied Bangladesh’s independence from Pakistan in 1947, when the partition of India created a single Pakistan out of two primarily Muslim territories. Many in Bengali East Pakistan resented the concentration of economic and political power in West Pakistan. In 1970, the Awami League (AL), led by Bengali nationalist leader Sheikh Mujibur Rahman (Sheikh Mujib), won an overwhelming victory in the Pakistan general elections. However, the West Pakistan-based leadership refused to hand over power. In March 1971, they arrested Sheikh Mujib and launched “Operation Searchlight” throughout East Pakistan.

Pakistani armed forces, aided by local and militia forces, conducted widely documented massacres, torture, forced displacement, destruction or confiscation of property, disappearances, and widespread sexual violence. Bengali nationalists were targeted, along with Hindu communities, students and Bengali intellectuals.

The Mukti Bahini, or “freedom fighters” conducted a guerrilla campaign along the Indian border. Ten million refugees fled to India. The bloodbath lasted until December 16, 1971, when India defeated the Pakistani forces. An unverified number of about 3 million people were killed in the so-called “Liberation War”. Justice was an immediate priority for Bangladesh’s post-independence government. In July 1973, the International Crimes (Tribunals) Act, 1973 was passed, primarily aimed at prosecuting 195 Pakistani military officers held by Indian forces as war prisoners (PoWs). The Act was meant “to provide for the detention, prosecution and punishment of persons for genocide,

crimes against humanity, war crimes, and other crimes under international law.” But Bangladesh’s new leaders soon agreed with Pakistan and India to release the 195 suspects, along with many thousands of civilians and PoWs. This paved the way for Pakistan’s recognition of Bangladesh’s independence.

By 1975, Sheikh Mujib had been assassinated, the collaborators law had been repealed and a policy of forgetting Bangladesh’s traumatic past prevailed. The International Crimes (Tribunals) Act lay dormant on the country’s books. In December 2008, Bangladesh’s general election saw the issue of justice for the 1971 victims resurface as a campaign promise by the Awami League. It gained a decisive victory under the leadership of Sheikh Mujib’s daughter Sheikh Hasina.

In March 2010 the government announced the establishment of the tribunal with the appointment of three judges, a Registrar, administrative staff and a team of prosecutors. To date, arrest warrants have been issued for five suspects. The tribunal has been the subject of bitter political debate within Bangladesh, with the political opposition denouncing it as a politicised attempt by the Awami League to delegitimise its opponents, particularly Jamaat-e-Islami, for its pro-Pakistan stance in 1971. All five suspects are senior figures in Jamaat. The question is whether the trials will be considered fair, nationally and internationally. Defence lawyers have already filed a constitutional challenge to the 1973 Act before Dhaka’s High Court.

The Act may have been ahead of its time in 1973. But the national parliament only adopted minimal amendments in 2009, despite national and international calls for a more comprehensive review of the 1973 Act. The possible application of the death penalty is another major obstacle for many would-be international supporters of the process.

The developments in Bangladesh illustrate the complexity of crafting effective national solutions to the legacy of mass atrocities. Questions about the process’ fairness and independence deserve urgent responses.

Caitlin Reiger is Director of International Policy Relations, ICTJ.

New ICRC database seeks protection for war victims

The International Committee of the Red Cross has launched a new legal database designed to be used as a reference in international and non-international armed conflicts.

It contains a study on customary international humanitarian law that governs armed conflict between nations, civil war combatants, conflicts between states and non-state actors.

A previous version published in 2005 has been used as a reference for conflicts in Israel, Lebanon, Iraq, Afghanistan and Sri Lanka.

The new database is almost twice the size as the previous one published in 2005 and features a more comprehensive list of 161 customary rules. It is intended to be used as a legal reference by researchers, tribunals and international organizations.

The ICRC's Head of Project Jean-Marie Henckaerts says respect for customary law reduces the human cost of conflict: "The majority of armed conflicts are non-international, and current treaty law doesn't regulate them in sufficient detail. Customary law therefore provides those caught up in such conflicts with essential protection."

The unwritten rules of customary law are often derived from common or general practice which is regarded as law. It is the basic standard of conduct in armed conflict accepted by the world community and is universally applicable.

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Taylor trial under spotlight

For more than a year Charles Taylor's trial has taken place in relative obscurity. But since fashion model Naomi Campbell and actress Mia Farrow were asked to give evidence about a diamond Mr Taylor was alleged to have given to Campbell that has all changed. The IJT asked lead defense counsel for Mr Taylor, Courtenay Griffiths, about the challenges of conducting such a case under the spotlight.

How do you prepare for cross-examination?

First, you put together as much material as possible that you have on a witness. Then you consider in which order you're going to deal with the various issues. With the three witnesses called by the prosecution in rebuttal, we anticipated that Naomi Campbell would not come and say that she received them from Charles Taylor.

But we knew that the other two witnesses would. So the strategy with Campbell was to use her to do as much damage to the other two, which is why I spent much of my time with Naomi Campbell putting to her the statement made by Carole White, so that by the time Carole White and Mia Farrow appeared there were already question marks about their accounts.

How is Mr Taylor holding up?

Mr Taylor is in robust health. He knows his case inside out. He can tell me details of witnesses which I don't remember because he goes home and does his homework every night. I guess being in custody, he has no distractions. You would expect that a former president and dictator would always be laying out the law and giving orders. Not a bit of it. I'm the one who gives him orders.

What is your main concern?

My main concern is that these judges are under considerable pressure to convict. A lot of money has been invested in these proceedings by the United States, the United Kingdom and other western countries. And the bottom line is: they haven't invested that money for nothing.

Look at it this way: if Mr Taylor is acquitted, as a Liberian citizen, he could return to Liberia. If he returned and stood in an election against Ellen Johnson

Sirleaf, he would win. Do you honestly think either the Americans or the British would allow that to happen?

The reality of the situation is that if Taylor is convicted, chances of having a fair hearing in front of the appeal committee are nil. I have more concern about the composition of the Appeals Chamber than I do of these judges because some of the decisions they've made lacked any legal merit whatsoever. Everyone put on trial before that Special Court for Sierra Leone has either died or been convicted.

Is that an inevitable part of the international criminal justice system?

The bottom line is that in international criminal law, politics plays a central role, which is why the ICC has currently five defendants awaiting trial, all of them from Africa. Politically, the ICC could not get away with indicting an Israeli minister or a general. In the same way, Bush or Blair would never be put on trial for the illegal war in Iraq.

What is the significance of this trial?

I think it's important for West Africa, but for all the wrong reasons. West Africa needs to realise that this kind of show trial does not really assist the supposed war on impunity. And it's one of the reasons that the African Union is now turning against the ICC. They realise the politics behind the ICC and the way the ICC appears to be focussing on Africa and ignoring crimes committed elsewhere in the world, like in Sri Lanka or Gaza.

I would like to see the African Union set up their own international criminal court in Africa. Africans really need to take charge of their own destiny on these matters. Because unless and until they see the importance of infusing life in Africa with a sense and a respect for human rights, it cannot be imposed from outside. That is something that has to develop organically in the African society. That's why I think the African Union should be the trailblazers on this, not the ICC.

The defence is due to call several more witnesses and then close its case. The case is expected to conclude by early October 2010.