

ANALYSIS

Special Court for Sierra Leone

by Thijs Bouwknecht, The Hague

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Taylor takes the stand p.1-2

Liberians gripped by Taylor trial p.3

US torture inquiry

An interview with Mark Danner p.4

Taylor takes the stand

For the last two months, former Liberian president Charles Taylor has been testifying in his own defence before the Special Court for Sierra Leone (SCSL). But after an initial flurry of coverage, the public gallery and pressroom have been virtually empty for most of that time. As the court heads for a three-week recess starting October 5th, the IJT takes a look at the defence strategy thus far.

“How could I have been micromanaging a conflict in neighbouring Sierra Leone as alleged when I, as newly elected President of the Republic of Liberia, had so much on my plate to deal with?”

That is what Charles Ghankay Taylor has been arguing before the SCSL where he is on trial for war crimes and crimes against humanity. Taylor has been on the stand since July 14th and has dismissed all allegations that he fomented war in Sierra Leone.

During the 1990s, Taylor went from revolutionary leader to President of Liberia. Now he is on trial in The Hague. Not for crimes committed in his homeland, or for any crimes he is alleged to have personally carried out, but for allegedly arming and supporting Sierra Leonean rebels - specifically the Revolutionary United Front (RUF) - during the country's bloody civil war. RUF rebels sowed death and destruction for over a decade, hacking off limbs, raping women and pillaging diamond mines.

Prosecutors at the SCSL allege that Taylor bears the “greatest responsibility” for this carnage. They say they can prove that he fuelled Sierra Leone's war, through gunrunning

and drug smuggling and by providing the RUF with money and weapons in exchange for diamonds.

As the trial opened in January 2008, prosecutors used witness testimony to show that Taylor and RUF leader Foday Sankoh established a relationship in Libya in the late 1980s, and designed a common plan to support each other's efforts to capture political power in their home countries.

The prosecution claims that this bond lasted throughout the 1990s, and when Taylor became president in 1997, he continued to provide support for the RUF and the Armed Forces Revolutionary Council military junta - even as these groups were committing atrocities in Sierra Leone.

Taylor admits to working with the RUF in the early 1990s but says it was to fight rival Liberian rebels operating on the border of Sierra Leone.

“My relationship with Sankoh was a pure and simple security relationship to protect my border, that we would fight ULIMO [United Liberation Movement of Liberia for Democracy] in Sierra Leone without having to fight them in Liberia.” But, he insists: “I say it to these judges: I, Charles Ghankay Taylor never talked to Sankoh after May of 1992 until I saw Sankoh in 1999 July in Lomé. I did not.”

Former Chief Prosecutor Stephen Rapp, however, says Taylor's involvement with the group ran much deeper. Rapp's team sought to highlight the atrocities committed by Sierra Leonean rebels and establish a relationship between Taylor and those responsible on the ground. One of their key witnesses was a Gambian named Suwandi Camara who testified

“Death flight” pilot held

An Argentine-Dutch pilot was arrested in Spain on September 22nd at the request of Argentina.

Julio Poch is alleged to have carried out “death flights” in Argentina during General Jorge Videla's dictatorship from 1976 to 1981. During these flights, opponents of the regime were drugged, stripped, and thrown from planes above the Southern Atlantic. According to the Argentinean authorities, around 11,000 political opponents of the dictator disappeared during the so-called Dirty War. Human rights groups say at least 30,000 people were murdered by the regime.

The Transavia pilot was arrested at Valencia airport just before takeoff on what was supposed to be his last flight before retirement. Commenting on the arrest, human rights researcher Vidal Martin of Spanish think-tank FRIDE, said that the arrest is a “consequence of the co-operation between Argentina and Spain in international jurisdiction and international law.”

In 2005, Argentina's Supreme Court struck down two amnesty laws that protected hundreds of people involved in human rights violations and war crimes during the dictatorship. Since then, a number of former security service personnel have been tried and jailed.

Poch is wanted for questioning in four investigations involving the deaths of more than 1,000 people, Spanish police said.

► ICTR: Genocide indictee arrives in Arusha

A former Rwandan politician indicted by the International Criminal Tribunal for Rwanda (ICTR) for his role in the 1994 genocide, was brought to Arusha on September 20th after being arrested in the neighbouring Democratic Republic of Congo (DRC). At his initial appearance before the court, he pleaded not guilty to all charges.

Gregoire Ndahimana, who was mayor of the Kivumu Municipality at the time of the mass-slaughter, is accused of the massacre of at least 2,000 Rwandan Tutsis in a church in Nyange. ICTR prosecutors believe almost all of Kivumu's 6,000 Tutsi residents had been killed by July 1994.

Ndahimana, alleged to be a high-level figure in the Forces Démocratiques de Libération du Rwanda (FDLR), was reportedly arrested in the village of Gashuga, in eastern DRC, by the Congolese army last August.

The tribunal had publicly criticized the DRC for refusing to hand over the former fugitive more quickly. Earlier this month, the ICTR threatened Kinshasa that the delay in transferring the suspect might force it to raise the matter with the UN Security Council. Before his transfer, it was rumoured that the DRC was trying to cash in on the US\$5m bounty the US offered under its 'Rewards for Justice' programme for information leading to his arrest.

Ndahimana was one of 13 fugitives still at large out of 81 people indicted by the ICTR. Many of the remaining fugitives are believed to be hiding within the FDLR, along with members of the Interahamwe militia who carried out the 1994 killings.

The FDLR, on its website, denies that Ndahimana was one of its members. "Mr. Gregoire Ndahimana is a simple Rwandan refugee living in eastern DRC [...]", they say, "and voluntarily surrendered to the ICTR."

in February:

"[Gambian rebel leader Dr. Mani] and Charles Taylor and Foday Sankoh, they made a meeting in Burkina that they will help him in his war. If he succeeds he will also help them in their war, because at that time we are very powerless," Camara told the court.

A major obstacle for prosecutors is the fact that there's no evidence that Taylor ever set foot in Sierra Leone. Indeed, Taylor's lawyer has submitted photographs of Taylor travelling abroad in an effort to show that he couldn't have been in Sierra Leone at the times alleged. The prosecution's case has therefore focused on highlighting a long-standing relationship between Taylor and the RUF. Witnesses testified to regular communications taking place between Taylor and other RUF commanders such as Sam Bockarie and Issa Sesay.

Taylor's version

Over the last two months, Taylor has been giving his own version of the events in Sierra Leone. Ever-eloquent, Taylor has taken the court through a concise history of 20th-century West African politics. And in his version, he is not a war criminal but a peacemaker who is now left carrying the can for the international community. He does not deny that crimes were committed in Sierra Leone, but argues that he would have had to be a "superman" to run his own war-torn country, while also planning and ordering the commission of crimes on the other side of the border.

"Mr Taylor, you are charged on an indictment containing 11 counts which alleges that you are everything from a terrorist to a rapist. What do you say about that?", Lead Defence Counsel Courtenay Griffiths asked Taylor on his first day of testimony.

"Very, very, very unfortunate that the prosecution, because of disinformation, misinformation, lies, rumours, would associate me with such titles or descriptions. I am none of those, have never been and will never be, whether they think so or not [...] I resent that characterisation of me, it is false, it is malicious and I stop there."

Vital to Taylor's defence is the claim that he was acting at the behest of both the Economic Community of

West African States (ECOWAS) and the UN, to broker peace between warring factions in Sierra Leone and negotiate with rebels to release abducted UN peacekeepers.

Taylor took on his peacekeeping role, he claims, as the head of the Committee of Five - a group set up by ECOWAS designed to bring calm to Sierra Leone. He says he was actively involved in efforts to get former President of Sierra Leone, Tejan Kabbah, and the RUF leadership to the negotiating table. The parties eventually signed a peace agreement in Lomé in June 1999.

"I spoke to the RUF many times by inviting the leadership to Liberia, by hosting them - everything with the knowledge and consent of the Committee and ECOWAS. Of course the United Nations knew because most of my discussions in Sierra Leone, I either spoke to Kofi Annan directly or through his special representative in Liberia, where I insisted on making sure that we had notice of communications. All of those are available to present to this court," Taylor said.

In trying to show that Taylor acted transparently in his dealings with the RUF, Griffiths has been taking the court through scores of cables and memoranda between Taylor, the UN and ECOWAS. Rapp says that's just a smokescreen. "There are obviously certain situations in which the international community - because they knew he...had control of the rebels - would go to him. [But] Taylor wants to make it look as if he was only involved with them because of the peace process. We say he's involved with the peace process to some extent to cover his tracks."

Taylor, meanwhile, counters that he's a victim of preconceptions. "They had made up their minds, it really did not matter whatever I did," Taylor told the judges when responding to a 2000 UN Expert Panel Report which forms the core of the prosecution case.

The SCSL has not investigated crimes committed in Liberia. However, Liberia's own Truth and Reconciliation Commission has called for an Extraordinary Criminal Court for Liberia to prosecute crimes committed during the back-to-back civil wars. And Taylor is number one on their list of people to be brought to the dock in Monrovia.

Liberia gripped by Taylor trial

The appeals chamber of the International Criminal Court (ICC) has rejected a claim by Congolese militia leader Germain Katanga that he should not be prosecuted before the ICC.

Katanga asked that the case be dismissed, arguing that the Democratic Republic of the Congo (DRC) was able to prosecute him, and that the ICC prosecutor failed to disclose documents indicating that he was under investigation in the DRC.

Katanga had challenged the admissibility of his case in February, but in June the appeals chamber upheld a decision by the trial chamber that the case should stand. It is the first time that the ICC has heard an admissibility challenge based on the complementarity principle, which states that the ICC should not step in unless states concerned are genuinely unable or unwilling to start proceedings.

In rendering the appeals decision, Judge Daniel David Ntanda Nsereko said that “at the time of the admissibility proceedings in the present case, there were no proceedings against Mr Katanga in the DRC, whether for the crimes with which he is charged before this court, or for other alleged crimes. On the contrary, the DRC has made it clear that it wished for him to be prosecuted before the ICC.”

A senior commander of the Force de Résistance Patriotique en Ituri, Katanga was transferred to The Hague in October 2007. He faces three counts of crimes against humanity and six counts of war crimes, relating to his alleged involvement in a 2003 attack on the village of Bogoro, in Ituri. About 200 people were killed in the assault and many women forced into sexual slavery. The trial, which is being held in conjunction with the case of Mathieu Ngudjolo Chui, is scheduled to start in late November.

The appearance of former Liberian president Charles Taylor before the United Nations backed Special Court for Sierra Leone (SCSL) in The Hague is generating huge interest and excitement in his home country.

Taylor's allegations regarding the involvement of current Liberian leaders in the instigation of the country's civil war have garnered the former president strong support across the nation.

Liberians monitor the trial through daily BBC updates syndicated to 20 Liberian broadcasters and a myriad of pro-Taylor support groups has formed since his arrest.

Discussions about Taylor's prosecution are also held on university campuses and street corners around the country, most of which condemn the trial as a witch-hunt by Western powers.

Taylor's proponents also accuse current Liberian president Ellen Johnson Sirleaf of abandoning her predecessor and handing him over to the SCSL in order to humiliate him. Eric Kennedy, a leading member of the Friends of Taylor, maintains that Sirleaf orchestrated his arrest. John T. Richardson, head of the Association for the Legal Defense of Charles Taylor has called it “an unpatriotic act by a sitting president”.

Sirleaf was “prime supporter”

In turn, Taylor's testimony about Sirleaf's involvement in the civil war has buoyed his supporters even further.

During his testimony, Taylor has alleged that Sirleaf supported his declaration of war on Liberia in 1989 and has called her “the prime supporter of my military adventurism in this country” - an allegation that has been partly confirmed by the findings of Liberia's Truth and Reconciliation Commission (TRC).

TRC Chairman Jerome Verdier

has told several radio and TV talk shows that his commission's findings are well substantiated and that Sirleaf's involvement in the brutal civil war in Liberia was confirmed by many witnesses who appeared before the TRC earlier this year.

Issued in July 2009, the TRC final report included President Johnson Sirleaf in a list of 50 people who should be “barred from holding public office” for “being associated with former warring factions”.

Taylor's supporters argue that Sirleaf should not have turned him over for trial since she was herself involved in the violence in the West African sub-region.

Taylor's family and members of his former regime are also standing behind him. His ex-wife and current member of Liberia's parliament, Jewel Howard Taylor; former Taylor political party Chairman Cyril Allen; and former Maritime Shipping Agency chief, Benoni Urey, are all speaking out in his support and regularly condemn the government for having turned him over for trial.

The government, however, denies any hand in the trial and points to the fact that Taylor is charged with crimes committed in neighbouring Sierra Leone.

Liberia's Minister of Information, Dr. Lawrence Bropleh, has dismissed the allegations as a ploy by former Taylor officials to undermine the Sirleaf government.

But the excitement that the trial is generating in Liberia is worrisome. Taylor's National Patriotic Front of Liberia had a huge following amongst the country's youth, who make up around 40% of the population.

Given the still fragile nature of Liberia's post-war peace and the increasing divisions between Taylor and Sirleaf supporters, Taylor's growing popularity could have serious consequences for the country.

The US Court of Appeals for the District of Columbia Circuit has reversed a lower level court's ruling that CACI International must face a lawsuit regarding alleged abuses at the Abu Ghraib prison in Iraq.

CACI International supplied interrogators to the prison, but on September 15th, the court ruled that they should be immune from prosecution as they were under the authority of the US military. According to the court, "allowance of such suits will surely hamper military flexibility and cost-effectiveness, as contractors may prove reluctant to expose their employees to litigation-prone combat situations."

The judgement comes as a great relief to CACI Chief Executive Officer Paul Cofoni who said on the company website: "No CACI personnel appeared in any of the notorious photographs at Abu Ghraib." He added, "we have said from day one that these lawsuits are completely without merit and [this] ruling vindicates that position."

Susan L. Burke, attorney for the Abu Ghraib detainees, told The Washington Post, "although we are disappointed, this is an anticipated setback in what will continue to be an ongoing battle against torture."

by *Hermione Gee & Karl Dowling, The Netherlands*

Mark Danner on US torture inquiry

When United States Attorney General Eric Holder last month appointed a special prosecutor to investigate allegations of CIA prisoner abuse, he must have known that he was opening a political can of worms. But, as US journalist Mark Danner argues, by choosing to investigate only those agents who operated outside the guidelines laid down in the notorious Bush administration "torture memos", Holder also risks setting some unwelcome legal precedents.

Danner's books include *Torture & Truth* and *Stripping Bare the Body*. He spoke to the IJT from Berkeley, California where he also teaches.

"Obama has declared from the beginning that he wants to look forward not back and this is a way to say that we're not looking at the decisions of the Bush administration, we're just looking at the actions of interrogators that went beyond the law, at that time.

The irony of it is that the decision has the back-handed effect of focusing on what was "illegal" and sort of agreeing with the Bush administration of what they had made "legal". It seems to suggest that the present administration will accept the definition of the Bush administration, that waterboarding is actually legal. That strikes me as [...] rather contradictory since the present Attorney General, the man who has now decided to appoint the special counsel, actually said explicitly in his confirmation hearings that waterboarding was illegal.

[That] won't get us out of this problem. It's not going to excise torture, people in the CIA will be angry, and people who made these decisions will get away scot-free. That's essentially what happened at Abu Ghraib. You had a few lower level soldiers who went to prison and they should have gone to prison, I'm not quarreling with that. What I'm quarreling with is the notion that they *alone* should have gone to

prison, and we're starting down the same path with respect to CIA torture."

What do you think Obama should have done?

"It's a fact that [he] inherited a terrible mess. What should have happened was at the beginning, the administration [...] should have appointed a prestigious high level commission [...] to investigate the general issue of interrogation under the Bush administration. And I think that such a commission should have been given subpoena power and the highest security clearances, and it should have taken its time [...] to go into these issues in depth.

To look at the supposedly secret information that the former Vice President Dick Cheney says justifies what they did and proves that it was worthwhile, and to look at everything and then to come out with a pronouncement on what was done, why it was done, whether it helped or hurt the country, on balance; and I think that any question of prosecutions would have followed such an inquiry.

The reason I believe this, is not because I don't think people should be prosecuted, I think they should, but because I think there's a major matter of politics to be settled first. First and foremost these questions are political problems not legal ones. They are legal problems - the law was broken - but first of all they are political problems."

Part of your concern seems to be that the US hasn't addressed the issue of whether, as a society, it approves of torture or not. Where would you say the country stands right now regarding that question?

"If you ask the question in the following terms, "Would you agree that torture is necessary and should be performed if it can protect the country from a terrorist attack?" In those terms you will get a very substantial majority saying yes. It's very much a minority view that there should be a commission and [...] prosecutions."

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