An ill-fitting Taylor-made trial

Whether or not former Liberian president Charles Taylor will be found guilty of a campaign of terror in neighbouring Sierra Leone, Thursday’s verdict will leave a trail of questions about atrocities and his relations with Revolutionary United Front (RUF) rebels during Sierra Leone’s civil war in the nineties.

Taylor awaits the dubious honour of becoming the first former head of state to be judged before an international court. But the criminal case against him on eleven counts of war crimes and crimes against humanity is in no way crystal clear. His prosecution was straitjacketed by the trial’s limited time frame, leaving many stones unturned.

“Most definitely, Your Honour, I did not and could not have committed these acts against the sister Republic of Sierra Leone, […] so most definitely I am not guilty”, Taylor told the judges during his first appearance on April 3rd 2006 in Freetown. ‘Case SCSL-03-01’ - the first case file before the Special Court for Sierra Leone (SCSL) concerned Taylor, then president. The indictment was unveiled in June 2003, while he was in Accra for peace talks. This prompted the Ghanaian government to fly him back to Monrovia on a presidential plane. But it was only after three years of refuge in a luxurious villa at the invitation of former Nigerian president Olegun Obasanjo that the tribunal got hold of him.

Liberia’s “Big Man” spent three months in cell number 3 at the fortified SCSL compound before being sent off to The Hague, where his trial formally began in a borrowed ICC courtroom in June 2007. Taylor fired his first lawyer Karim Kahn but did not try to frustrate further proceedings, unlike his Yugoslav cellmates in the UN prison in Scheveningen. The court even allowed him to take the stand himself for over an unprecedented seven-month period, meticulously detailing West Africa’s history.

Dump the evidence

“Throw it in the bin. That is what we submit the court should do with this body of evidence: get rid of it”; said Taylor’s lead lawyer Courtenay Griffiths during closing arguments in March 2011. He argued that the conflict in Sierra Leone was not a Taylor-made catastrophe. On the contrary, he said, Taylor’s “role in Sierra Leone was entirely peaceful!”

Taylor’s ultimate crime, listed in count one of the charge sheet, echoes a post-9/11 American obsession: “acts of terrorism.” It burdened the prosecution with a complex challenge: proving that Taylor forged an illicit conspiracy with RUF leader Foday Sankoh in Libya in the late eighties to conquer West Africa. Their motive: enriching themselves with rough diamonds from Sierra Leone. Their modus operandi: a menacing campaign of terror. Taylor does not deny an orgy of atrocities took place. But he refutes the charge that he was at “the very centre of the web of these crimes.” American prosecutor Brenda Hollis continuously stressed that “the RUF was a terrorist army created, supported and directed by Charles Taylor who, in truth, is the person most responsible for the crimes charged.”

“All this suffering, all these atrocities to feed the greed and lust for power of Charles Taylor,” she proclaimed.

Since 2008, the judges have listened to live testimony on how RUF rebels sowed death and destruction, pillaging diamond mines. Mustapha Mansaray, a victim of amputation, testified in a wheelchair: “Why I was willing to testify? It was for one reason. Because there was a man they used to call Charles Taylor. At the time there was war in Liberia: he said […] we would taste the bitterness of that one in Sierra Leone. What he said was what came to pass.”

Former aides and enemies

In an effort to tie Taylor to the crimes in Sierra Leone, the prosecution flew 94 witnesses to the Netherlands. The only direct evidence connecting the massacres in Sierra Leone to Taylor comes from his own former aides and enemies. Some had strong reasons for testifying against their former political rival. Others were criminals, like Joseph Marzah, known as ‘Zigzag’. The former secret service agent confessed to displaying “heads on sticks and car bumpers,” killing babies, cutting open pregnant women and eating “Nigerians and white people,” during a chaotic three-day testimony in March 2008.

The prosecution’s main battle during the trial was against time and space, as the SCSL mandate only covers crimes committed in Sierra Leone from November 1996 onwards, a period during which Taylor was in Liberia. But the prosecution argues that “the indictment crimes did not happen overnight” and focused on the alleged long-standing relationship between Taylor and the RUF. It says this bond lasted throughout the 1990s and when Taylor became president in 1997, he continued to be the “father” and “godfather” of “his proxy forces the RUF and later the RUF/AFRC.”

Some 30 witnesses gave testimony about Taylor’s connection to the RUF and Foday Sankoh. One of them was a Gambian named Suwandi Camara
who testified about one of the meetings that allegedly took place in Burkina in February 2008. He said that Gambian rebel leader Kukua Sambasanja (known as Dr. Mani) and Foday Sankoh agreed to help Charles Taylor in his war. In return, he would also help them in their war “because at that time we were very powerless” said Camara.

**RUF connections**

“The RUF was in fact a creation of Charles Taylor,” insisted the prosecution. And former RUF commander Issac Mongor testified that Taylor “had command over the RUF” and that they “took it that the RUF belonged to him [Taylor], although he sent somebody to head the RUF […] that was Foday Sankoh. So the RUF was in the hands of Mt. Taylor,” he said. Zigzag testified in a similar vein: “We all took instructions from Charles Taylor. Have I made myself clear?”

The bond between Taylor and the RUF allegedly lasted throughout the indictment period and several of Taylor’s former aides indeed testified about regular communication between Taylor and other RUF commanders such as Sam Bockarie and the convicted Issa Sesay. The prosecution’s last linkage witness, radio operator Dauda Fornie – known as DAF - testified in December 2008 that after Sankoh was arrested there was regular communication between Taylor and the new RUF leadership, mainly Bockarie and Sesay.

“I never talked to Sankoh after May 1992”

“Complete lies”, answered Taylor. He admits to working with the RUF in the early 1990s but says it was to fight rival Liberian rebels operating on the border with Sierra Leone. “My relationship with Sankoh was a pure and simple security relationship to protect my border, that we would fight ULIMO [the United Liberation Movement of Liberia for Democracy] in Sierra Leone without having to fight them in Liberia.” But, he insisted: “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 Lamé. I did not.”

Producing almost 50,000 pages of transcript and over a thousand exhibits, the Taylor trial offers a unique insight into Liberian and Sierra Leonean history. And indeed two competing diametrically-opposed narratives about Taylor’s role in West Africa. In Taylor’s version, he is a peacemaker who is now left carrying the can for the international community, and 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. In the prosecution’s version, Taylor represents the dark corner of that world.

But the prosecution may only succeed in proving that Taylor - because of his position - “should have known” about the crimes and that he “did nothing to prevent them” while he may have been in a position to do so. The prosecutor claims he did everything to conceal his crimes and destroy evidence of links with the RUF rebels, accusing Taylor of killing his ‘favourite’ RUF general Sam Bockarie and AFRC junta leader Johnny Paul Koroma after they were also charged by the SCSL.

**No meeting in Libya**

Still, the bench seemed extremely compassionate towards the prosecution in allowing evidence falling outside the scope of the indictment. A lack of precision and proof were at the heart of the testimonies heard in court. And the relationship between Sankoh and Taylor in Libya – where the conspiracy was said to have started - still remains shrouded in mystery. Historian and expert witness Stephen Ellis could only relate that the two met “sometime between 1987 and 1989.” Moreover, prosecution witness Camara confirmed that he had seen Taylor twice in Libya, but that he never saw Taylor and Sankoh together.

The SCSL’s main shortcoming in this trial is that it could not deal with Taylor’s full role in West Africa’s history. Taylor’s role in Liberia’s back-to-back civil wars has been dealt with by historians and truth and reconciliation commissions in both Liberia and Sierra Leone. The Liberian TRC, in its recommendations, even drafted a statute for a Special Court for Liberia. It listed Taylor as number one suspect to be tried for alleged crimes committed in Liberia.

But even though the SCSL has delved deeply into this history, it can only make findings on established crimes in Sierra Leone committed after November 1996 - leaving an era of alleged atrocities in Liberia untouched.

(*) PhD researcher at the Netherlands Institute of War, Genocide and Holocaust studies (NIOD).

**Uwinkindi: ICTR “vote of confidence” for Rwanda**

The International Criminal Tribunal for Rwanda (ICTR) has transferred its first suspect to Kigali since its creation. A former pastor of the Pentecostal Church of Kayenzi in the former Kigali-Rural prefecture, Jean Uwinkindi, was handed over last Thursday. He is charged with the killing of Tutsi refugees during the 1994 genocide. “The National Public Prosecution Authority would like to thank the ICTR generally for the significant vote of confidence it has given to the Rwandan justice system, and for the smooth execution of this transfer,” spokesman Alain Mukurarinda said in a statement. A legitimate joy” for Kigali, but also “the fruit of the patience of our office,” adds a prosecution member at the UN tribunal.

The transfer of cases to national jurisdictions is part of the “completion strategy” of the Arusha tribunal, set now to close its doors in 2014 after its last appeal judgements. Before last week, the international judges always refused any transfer to Kigali, for fear suspects would not receive a fair trial. A concern Uwinkindi raised again in a last-minute request, two days before ICTR officials accompanied him on a commercial flight to his home country. According to his motion, there was “compelling evidence” that, in the trial of the opposition leader Victoire Ingabire before the Rwandan High Court, the national prosecuting authority “acted in a manner inconsistent with any respect for that defendant’s right to a fair trial.”

“Unlike other trials...”

Not surprisingly, the ICTR appeal chamber confirmed its own decision to grant the transfer. “Unlike other trials in Rwanda, Mr. Uwinkindi’s trial in Rwanda is subject to monitoring under the authority of the tribunal and to additional protections and guarantees under Rwandan laws […] and the referral of his case may be revoked” were the international judges’ farewell words two hours before the transfer. The monitoring, due to be supervised by the African Commission of Human and Peoples’ Rights, was the last bone of contention. The monitoring part of the ICTR decision sparked an exchange of strong written arguments between the African Commission, ICTR prosecutors and the tribunal’s registry, which allegedly tried to “sabotage” the transfer. The ICTR president decided not to wait. He nominated two interim ICTR legal officers, “who will commence monitoring proceedings in M. Uwinkindi’s case in Rwanda upon his transfer”. Infamous or not, the little pastor has become a symbol of the ICTR’s imminent closure, aspiring towards unexpected fame.
ARAB SPRING SERIES

One year after the Arab Spring, IJT looks at the state of justice in four key countries touched by the revolution wind. After Morocco and Egypt, we now turn to Bahrain.

3. Bahrain: a “modern” monarchy resisting to reform

by Fatima Bunafoor*, Washington

Although Bahrain's history is rich in dialogue directed towards a more empowered nation, the heart of the conflict lies in historic tensions between the ruling Sunni family and the Shia, which sparked opposition protests inspired by the pan-Arab movement during the ’70s. Worse clashes came during the ’90s at the start of King Hamad bin Isa Al-Khalifa's reign. It was anger over allegations of torture and the arbitrary use of force by police under the late Emir’s national security law that brought Islamists, Shia clerics joined by Sunnis, and secular nationalists onto the streets.

The parliament, the National Assembly of Bahrain, was established in 1973 based on the country’s first constitution, introduced by then ruler Emir Isa bin Salman Al-Khalifa, following independence from Britain in 1971. But that early welcome to democracy did not last long, due to conflict between the Emir and the main political opposition. Parliament was then dissolved for blocking the State Security Law proposed by the Emir in 1975, which would last until 2001.

Progressive constitution

What was hailed as the moment of reform came in 2002, when new King Hamad surprised the opposition by announcing a new constitution - one of the reforms promised in the National Action Charter in 2001. The Charter – the century’s most progressive resolution – was expected to usher in a new era of political freedom. It was approved by 98.4% of voters in a national referendum. But it was written behind closed doors without the public’s input. The opposition condemned the proposed charter as ambiguous amid concerns that it would introduce a bicameral parliament with limited powers. Hopes of a new democratic model were replaced by fears of a partial democracy with ultimate power in the king’s hands.

Bahrain is seen as an example of a modern nation because it relies on the 2002 Constitution, introducing a constitutional monarchy and abolishing the State Security Law, creating the system today. However, the king, as head of the government’s executive body, appoints judges. And although the members of the lower house of parliament are elected – albeit by absolute majority, the members of the upper house - the Shura Council - are appointed by King Hamad bin Isa Al-Khalifa himself. The hope was that, under the new Constitution the system would guarantee, at least on paper, the inclusion of civil society in the power-making process - a democratic ideal evident in successful models of similar constitutional monarchies like Kuwait and Denmark. But there are questions as to whether Bahrain's model can function if it fails to address major issues in the society such as police violence.

Sincere dialogue?

The crux came during the Arab Spring revolution. Bahraini ministers, amid a state of national security, were confronted by demands for investigation into allegations of torture, disappearance and murder. This provoked the king into taking a major step towards reform last June, calling for Bahraini society to take part in a ‘Bahrain National Dialogue’ (BND) in an effort to quell tensions. Several NGOs felt this form of dialogue lacked sincerity and transparency, claiming it was yet another bureaucratic step towards preserving the kingdom’s image in the eyes of the West.

“You cannot have dialogue in this kind of atmosphere where thousands of people are fired from their jobs and there is systematic torture,” said Nabeel Rajab, head of Bahrain Centre for Human Rights. The main Shia opposition party, the Al-Wefaq Islamic society also protested by withdrawing from the national dialogue because they were “vastly underrepresented and marginalised in the dialogue ... whose results have been determined in advance.”

ICC on the road to reparations

If it took 6 years to convict the Congolese rebel leader Thomas Lubanga, how long will it take the International Criminal Court (ICC) to decide on reparations for the victims? The Lubanga trial continues to be a trail blazer for the Rome Statute, as the court’s first conviction now leads to the first reparations proceedings. The ICC judges received submissions on reparations from parties including victims, prosecution and defence teams last Thursday. Every recruited child soldier who qualified as a victim and participated in the trial is entitled to individual reparations. Both prosecution and victims’ representatives insist that experts must be appointed to evaluate who is entitled to reparations and the level of damages to be considered.

“The case of Thomas Lubanga is particular in that victims are child soldiers and it is their family that was affected rather than a community,” Belgian lawyer for victims, Luc Walleyn told IJT. “There must be a solution between individual reparations and collective reparations,” he added. Reparations should be estimated, he states, based on the situation of a victim before he/ she was recruited and experts will evaluate psychological and physical damages. For instance, paying the price of a dowry of a former female child soldier to her family – a sum of 7 goats depending on traditions – could be an option. “They (girls) have in most cases been excluded from their communities and are unlikely to get married,” the victims’ motion argues.

“The Chamber must order Thomas Lubanga to apologise,” ICC prosecutor Luis Moreno Ocampo told the court. Other collective reparations could be awarded to groups of victims, says a victims’ motion, including those who were in the same camp, coming from the same area of battle or under orders from a particular commander. It was also submitted that the families who have former child soldiers who were injured or who have lost family members linked to the crimes are entitled to reparations. The defence argues that unless certain documents are disclosed it is unable to make submissions. “The defence only knows the identity of 1 person out of 85 applications,” reads the motion. “We need time to investigate these applications especially because the Chamber dismissed 9 victims and 10 prosecution witnesses,” it continues. But according to Luc Walleyn, it is essential to “identify what mechanism is suitable for reparations” first of all – as the first step on a long road towards compensating victims in Congo.

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A year after the Arab Spring upheavals, steps towards peace and reform include a government pledge to punish those responsible for torture. This followed a highly critical report by the Bahrain Independent Commission of Inquiry (BICI), commissioned by King Hamad and composed of international experts, which accused police of excessive force against protesters. The BICI report was released live on TV in November, in the presence of the royal family and high-ranking officials. Its recommendations include investigating allegations of torture by police, limiting the security forces’ powers of arrest, compensating victims and rebuilding demolished mosques.

**Torture: a state policy?**

Civil society in Bahrain today regards the BICI report on human rights violations as a failure because it ignores the political background to the uprising and falls short when it comes to accountability. “The situation now is Bahrain is not at all better than last year,” says Ahmed Al-Ghasra of the National Democratic Action Society (WAAD), Bahrain’s largest leftist secular political party. “More than 70 civilians have been killed by security forces either on the streets or in detention inside Bahraini prisons,” he claims.

The BICI report’s torture allegations, without naming those responsible, sparked alarm among human rights activists after the king recently challenged German daily Der Spiegel to provide names of political prisoners. “There are no political prisoners as such in Bahrain. People are not arrested because they express their views. We only have criminals,” said the king. But the opposition Al-Wefaq party is essentially pointing the finger at the judiciary - for helping to “protect those really responsible for crimes against humanity in Bahrain.” “Torture is not just systematic. It is now a policy of the state,” it said in a statement.

Besides the BICI and BND initiatives, there are calls for a third one to contribute to the dialogue among Bahrainis: the Manama Independent Commission for the Eve of Reconciliation (ICERE), which was formed in 2011 at the behest of the Bahraini government. It aims to bring in to the detention units. The ICERE’s recommendations in the coming weeks, led by chairman of the appointed Shura Council in the upper house of parliament, to provide names of political prisoners. The new committee said this implementation was in progress, in a report last month. But civil society complains it is more systematic than real reform.

For instance, that report states that the government has introduced laws against torture, and video cameras in detention facilities to monitor interrogations. Nonetheless, human rights organisations claim that people are tortured before being brought to the detention units.

Bahrain has ordered the public prosecutor to investigate death and torture cases implicating the police as part of efforts at political reconciliation, in line with the BICI’s recommendations. However, Amnesty International said last week that Bahrain had failed to deliver on promises of political reform. “The authorities are trying to portray the country as being on the road to reform, but we continue to receive reports of torture and the use of unnecessary and excessive force against protesters,” Amnesty’s Hassiba Hadj Sahraoui said, adding that so far, “reforms have only scratched the surface.”

**Threats of new protests**

The BICI commission found that security forces used excessive force against unarmed protesters and tortured detainees in one specific operation that left 35 people dead, including five from torture. The Amnesty report came just a day after the International Crisis Group warned of threats of new protests, urging the government in Manama to heed calls for real reform. According to Amnesty, “despite some institutional and other reforms, the government’s overall response has been inadequate.” Specifically, Amnesty says “no senior member of the security forces has been held to account... and scores of prisoners have not been released.”

Protests in the kingdom have intensified in recent days in support of prominent Shi’ite activist Abdulhadi al-Khawaja, who has been on hunger strike since February. The ICG said Khawaja’s health was a “time bomb” and warned that his death “would spark a serious intensification in anti-regime activism.”

**New cosmetic change**

The latest move in the steps towards democracy is a committee to monitor the implementation of the BICI report’s recommendations in the coming weeks, led by chairman of the appointed Shura Council in the upper house of parliament, to provide names of political prisoners. The new committee said this implementation was in progress, in a report last month. But civil society complains it is more cosmetic change than real reform.

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