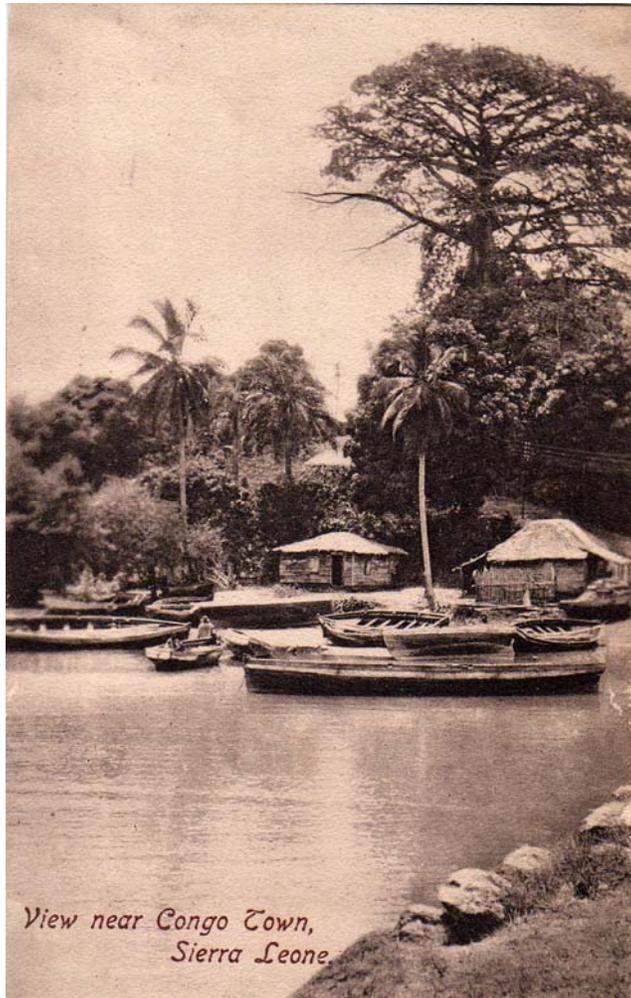


**SPECIAL COURT FOR SIERRA LEONE
OUTREACH AND PUBLIC AFFAIRS OFFICE**



PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office

as at:

Monday, 22 July 2013

Press clips are produced Monday through Friday.
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JOL Press

Sunday, 21 July 2013

Retour sur la condamnation de Charles Taylor en 2012: une première historique pour un chef de l'Etat

La condamnation de Charles Taylor par le Tribunal spécial pour la Sierra Leone (TSSL) le 30 mai 2012 est une première sans précédent. En effet, Charles Taylor a été condamné pour des faits commis en sa qualité d'ancien chef de l'Etat du Libéria, entre 1997 et 2003.



Charles Taylor prête serment devant le tribunal spécial pour la Sierra Leone (capture d'écran: CNN.com)

Un chef de l'Etat représente symboliquement la continuité et la légitimité de sa nation. Il est donc exceptionnel qu'il soit jugé et condamné. Les chefs d'Etat et la communauté internationale ont longtemps vécu dans l'idée que leur fonction politique leur conférait une sorte d'immunité absolue et donc d'impunité. Sans disparaître totalement, cette idée est en train d'être atténuée par des poursuites pénales plus fréquentes contre les chefs d'Etat devant les juridictions pénales internationales.

Principe de droit: l'immunité de juridiction du chef d'Etat en exercice

Certes, il existe toujours en droit international une règle de l'immunité de juridiction du chef d'Etat en exercice. Cette règle est valable devant les juridictions nationales. Toutefois, il est maintenant acquis que cette règle peut faire l'objet d'une exception lorsque des poursuites pénales sont engagées contre un chef d'Etat devant une juridiction internationale. Lorsqu'un chef d'Etat est soupçonné d'avoir commis un des grands crimes internationaux que sont le génocide, le crime contre l'humanité, le crime de guerre et le crime d'agression, quatre crimes relevant de la compétence de la Cour pénale internationale (CPI) créée en 2002, son statut ne lui confère plus de protection juridique particulière. Il peut alors être arrêté, placé en détention préventive, jugé et condamné. Mais le phénomène reste récent et surtout encore très rare.

Les précédents...

Près de 300 personnes ont été condamnées par la justice pénale internationale depuis 1945. Aucune ne l'avait été jusqu'en 2012 en sa qualité de chef d'Etat. Un rapide retour en arrière au XXème siècle (Voir

en ce sens, A.-Th. Lemasson, *La condamnation de Charles Taylor : une première historique pour un chef d'Etat*, Recueil Dalloz, 2012, p. 2191) permet de le constater :

- Philippe Pétain en 1945 et Saddam Hussein en 2006 ont été jugés devant des juridictions nationales sur le fondement du droit interne ;
- Le roi Guillaume II et l'empereur Hirohito ont échappé à des procès pour des raisons politiques ;
- Adolf Hitler s'est suicidé ;
- L'amiral Dönitz, président du III^{ème} Reich pendant vingt-trois jours après le suicide d'Hitler et de Goebbels, a été condamné par le tribunal de Nuremberg mais pour des actes commis antérieurement à sa nomination comme chef d'Etat, en tant que commandant en chef de la marine de guerre allemande ;
- Benito Mussolini, Nicolae Ceausescu et Mouammar Khadhafi (contre lequel la CPI avait émis un mandat d'arrêt pour crimes contre l'humanité en juin 2011) ont été exécutés sommairement ;
- Slobodan Milosevic, président de la Serbie de 1989 à 2000, est mort en 2006 dans sa prison au cours de son procès devant le Tribunal pénal international pour l'ex-Yougoslavie (TPIY) pour génocide, crimes contre l'humanité et crimes de guerre, sans avoir été condamné ;
- Milan Milutinovic, président de la Serbie de 1997 à 2002, a été acquitté par le TPIY en 2009 ;
- Laurent Gbagbo, ancien chef d'Etat de la République de Côte d'Ivoire, détenu à La Haye depuis 2012, attend actuellement le début de son procès devant la CPI ;
- Khieu Samphan, ancien chef d'Etat du Cambodge (à l'époque dénommé le Kampuchéa démocratique, entre 1976 et 1979) comparait depuis 2011 devant les chambres extraordinaires au sein des tribunaux cambodgiens et n'a pas encore été condamné ;
- Hissène Habré, ancien chef d'Etat du Tchad de 1982 à 1990, n'a toujours pas été jugé par les chambres africaines extraordinaires au sein des juridictions sénégalaises ;
- Deux mandats d'arrêt pour crimes de guerre, crimes contre l'humanité et génocide ont été délivrés en 2009 et 2010 par la CPI contre Omar Hassan Ahmed el-Béchir, le président en exercice du Soudan (en poste depuis 1993). Cette demande d'arrestation d'un président en fonction est également un précédent historique (Milosevic n'était plus en fonction lorsque le TPIY avait délivré un mandat d'arrêt contre lui). Mais elle n'a pas abouti à l'arrestation du président soudanais.
- le Tribunal pénal international pour le Rwanda (TPIR) a condamné bourgmestres, préfets, ministre et premiers ministres (Jean Kambanda) mais aucun président de la République ;
- aucun chef d'Etat n'a été condamné par le Tribunal spécial pour le Liban ou par les chambres mixtes extraordinaires au Kosovo et au Timor oriental ;
- Aucune procédure internationale n'a été engagée à ce jour contre le président syrien Bachar el-Assad pour les crimes commis durant guerre civile en Syrie ou contre le président israélien Shimon Perès pour les violations du droit international humanitaire commis au cours de différentes opérations militaires dans la bande de Gaza et au Liban.

La condamnation de Charles Taylor, un précédent

Charles Taylor n'était pas le premier chef d'Etat à comparaître en qualité d'accusé devant une juridiction pénale internationale. Miroslav Milosevic a été le premier chef d'Etat détenu en cette qualité et accusé devant le TPIY. Son arrestation puis sa présentation devant le TPIY en 2001 ont été un grand moment pour la justice internationale. Un mandat d'arrêt avait émis contre lui par le procureur du TPIY en 1999. Mais Charles Taylor a été le premier chef d'Etat à être condamné pénalement par une juridiction pénale internationale. Sa condamnation constitue bien un précédent unique, marquant une étape décisive dans l'avènement d'une nouvelle ère de la responsabilité pénale internationale. On doit sa condamnation au travail de longue haleine effectué par le TSSL, mais aussi certainement à la gravité des crimes reprochés et au fait qu'aucune grande puissance n'a tenté de le protéger : en exil au Nigéria, de juin 2003 à mars 2006, il a été extradé à cette date vers la Sierra Leone. Enfin, sa condamnation tient aussi à l'âge relativement jeune de l'accusé. Né en 1948, Charles Taylor est devenu chef d'Etat du Libéria, alors qu'il avait moins de cinquante ans. Cela donnait du temps à la justice internationale pour l'arrêter et le juger et le condamner. Or la justice internationale dispose rarement de temps, les anciens chefs d'Etat détenus étant souvent vieillissants, en mauvaise santé, et fréquemment portés au suicide.

La juridiction qui a condamné Charles Taylor, le TSSL, a été créée le 16 janvier 2002 en vertu d'un accord conclu entre les Nations Unies et l'Etat sierra-léonais. Il s'agissait de poursuivre pénalement les personnes qui portent la responsabilité la plus lourde dans les violations graves du droit international humanitaire et de droit sierra-léonais commises sur le territoire de la Sierra Leone depuis le 30 novembre 1996 (cette dernière date correspondant à celle de la signature d'un accord de paix signé à Abidjan entre le gouvernement et les rebelles). Le TSSL est une juridiction pénale internationale, dite hybride, en ce qu'elle comprend de larges apports nationaux (de droit national). Il siège normalement dans le pays où les crimes ont été commis, son siège étant fixé à Freetown, la capitale de la Sierra Leone. Elle n'est toutefois pas une juridiction mixte, comme les chambres extraordinaires au sein de tribunaux nationaux, en ce sens que seuls des procureurs et magistrats internationaux y travaillent. Depuis sa création, le TSSL a engagé des poursuites contre 13 personnes (dont 3 sont décédées depuis) et a prononcé des condamnations définitives contre 8 personnes. Charles Taylor était son neuvième accusé encore en vie. Pour des raisons de sécurité, son procès a été délocalisé et s'est tenu à La Haye, dans les locaux du Tribunal spécial pour le Liban. Les audiences se sont tenues de juin 2007 à mars 2011.

La condamnation de Charles Taylor a été prononcée par la chambre de première instance du TSSL en deux temps : le 18 mai 2012, il a été déclaré coupable de complicité de crimes de guerre (par terrorisme, violence, atteintes à la dignité, traitement cruel, actes inhumains et pillage, conscription et enrôlement d'enfants soldats) et de crimes contre l'humanité (par meurtre, viol, esclavage sexuel et asservissement). Le 30 mai 2012, alors que le procureur réclamait une peine de 80 ans de prison, le TSSL a prononcé contre Charles Taylor une peine de 50 ans d'emprisonnement pour les actes dont il a été déclaré coupable. L'ancien chef d'Etat du Libéria a fait appel de sa décision. Cette dernière n'est donc pas définitive. Le procès en appel se tient actuellement. La décision finale est attendue d'ici la fin de l'année 2013.

Rappel des faits

Charles Taylor a été un des protagonistes de la guerre civile au Libéria et a commis ou fait commettre dans son pays de nombreuses atrocités. Paradoxalement, sa condamnation ne porte sur les faits qu'il a commis au Libéria mais ceux dont il a été complice en Sierra Leone, alors qu'il était chef d'Etat de la République du Libéria entre 1997 et 2003. La guerre civile au Sierra Leone (1991-2002) a été d'une très grande violence. Elle a fait entre 100.000 et 200.000 morts. Elle a provoqué l'exode massif de plus de deux millions de personnes, soit un tiers de la population totale du pays. Elle s'est accompagnée d'un long

cortège d'actes criminels : recrutement et usage de mercenaires (notamment libériens), recrutement et utilisation d'enfants-soldats, attaques généralisées contre la population civile, exécutions sommaires, campagnes d'amputations, tortures, viols à grande échelle, destructions et pillage etc. L'un des épisodes les plus noirs de ce conflit a été la prise de la capitale Freetown par les rebelles entre décembre 1998 et février 1999 au cours de laquelle 6.000 habitants ont été tués, tandis que des dizaines de milliers de personnes ont du fuir. Cette guerre avait pour principale raison le contrôle des riches provinces diamantifères de la Sierra Leone, sur lesquelles le Liberia entendait étendre sa domination. L'objectif du Liberia n'était toutefois pas de contrôler son voisin politiquement. Entre 1997 et 2002, Charles Taylor a soutenu les rebelles sierra-léonais du Front révolutionnaire uni (RUF) et du Conseil des forces armées révolutionnaires (l'AFRC) ainsi que l'alliance AFRC/RUF politiquement, économiquement et militairement (en leur fournissant notamment armes, munitions, entraînement, logistique et moyens de communication) en échange de diamants. Un objectif mercantile qui a perdu Charles Taylor.

Translation

Back to the conviction of Charles Taylor in 2012: a historic first for a head of state

The conviction of Charles Taylor by the Special Court for Sierra Leone (SCSL) on May 30, 2012 is the first ever. Indeed, Taylor was convicted of offenses committed in his capacity as former Head of State of Liberia between 1997 and 2003.

Charles Taylor took the oath before the Special Court for Sierra Leone (screenshot: CNN.com)

A head of state symbolically represents the continuity and legitimacy of the nation. It is unique in that it is tried and convicted. The Heads of State and the international community have long lived with the idea that their political function conferred upon them a kind of absolute immunity and therefore impunity. Not disappear completely, this idea is being offset by more frequent prosecutions against heads of state before international criminal courts.

Principle of law: the immunity of the incumbent head of state

Certainly, there are still international law rule of immunity of the Head of State in office. This rule applies to the national courts. However, it is now accepted that this rule may be an exception when criminal proceedings are instituted against a head of state before an international court. When a head of state is suspected of having committed a major international crimes of genocide, crimes against humanity, war crimes and the crime of aggression, four crimes within the jurisdiction of the Court International Criminal Court (ICC) was established in 2002, its status makes it more special legal protection. It can then be arrested, remanded in custody, tried and sentenced. But the phenomenon is recent and mostly still very rare.

The precedents ...

Nearly 300 people have been condemned by the international criminal justice since 1945. None had been until 2012 in his capacity as head of state. A quick flashback to the twentieth century (see in this sense A.-Th. Lemasson *The conviction of Charles Taylor: A historic first for a head of state*, Recueil Dalloz, 2012, p 2191) can be seen :

- Philippe Petain in 1945 and Saddam Hussein in 2006 were tried before national courts on the basis of domestic law;
- King William II and Emperor Hirohito have escaped trial for political reasons;
- Adolf Hitler committed suicide;
- Admiral Dönitz, President of the Third Reich for twenty-three days after the suicide of Hitler and Goebbels, was condemned by the Nuremberg tribunal but for acts committed prior to his appointment as head of state, as the commander in chief of the German navy;
- Benito Mussolini, Nicolae Ceausescu and Muammar Qaddafi (against whom the ICC had issued an arrest warrant for crimes against humanity in June 2011) were summarily executed;
- Slobodan Milosevic, President of Serbia from 1989 to 2000, died in 2006 in prison during his trial at the International Criminal Tribunal for the former Yugoslavia (ICTY) for genocide, crimes against humanity and crimes war, without having been convicted;
- Milan Milutinovic, president of Serbia from 1997 to 2002, was acquitted by the ICTY in 2009;
- Laurent Gbagbo, former Head of State of the Republic of Côte d'Ivoire, held in The Hague since 2012, currently awaiting the start of his trial before the ICC;
- Khieu Samphan, former Head of State of Cambodia (then called Democratic Kampuchea between 1976 and 1979) since 2011 compared to the Extraordinary Chambers in the Courts of Cambodia and has not yet been sentenced;
- Habré, former Head of State of Chad from 1982 to 1990, has not been considered by African Extraordinary Chambers in the Senegalese courts;
- Two arrest warrants for war crimes, crimes against humanity and genocide were issued in 2009 and 2010 by the ICC against Omar Hassan Ahmed al-Bashir, the President of the Sudan (serving since 1993). This request for the arrest of a president in office is also a historical precedent (Milosevic was no longer in office when the ICTY issued an arrest warrant against him). But it has not resulted in the arrest of Sudanese President.
- The International Criminal Tribunal for Rwanda (ICTR) sentenced mayors, prefects, Minister and Premiers (Kambanda) but no president;
- No head of state has been convicted by the Special Tribunal for Lebanon or mixed Extraordinary Chambers in Kosovo and East Timor;
- No international procedure has been initiated to date against Syrian President Bashar al-Assad for the crimes committed during civil war in Syria against Israeli President Shimon Peres for violations of international humanitarian law committed during various military operations in the Gaza Strip and Lebanon.

The conviction of Charles Taylor, a precedent

Charles Taylor was not the first head of state to appear as a defendant before an international criminal court. Miroslav Milosevic was the first head of state held in that capacity and accused before the ICTY. His arrest and his appearance before the ICTY in 2001 was a great moment for international justice. An arrest warrant was issued against him by the ICTY Prosecutor in 1999. But Taylor was the first head of state to be criminally convicted by an international criminal court. His conviction constitutes a single precedent, marking a milestone in the advent of a new era of international criminal responsibility. It owes its conviction long-term work performed by the SCSL, but certainly to the seriousness of the crimes and the fact that no major power has tried to protect: in exile in Nigeria, from June 2003 to March 2006 He was extradited to that date to Sierra Leone. Finally, the sentence is also due to the relatively young age of the accused. Born in 1948, Charles Taylor became head of state of Liberia, when he was less than fifty years. This gave time to international justice and to stop judging and condemning. But international justice rarely has time, former heads of state prisoners are often older, in poor health, and often borne suicide.

The court that sentenced Charles Taylor, the SCSL was established on 16 January 2002 under an agreement between the United Nations and the Sierra Leonean government. It was to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996 (the latter corresponding to the date the signing of a peace agreement signed in Abidjan between the government and the rebels). The SCSL is an international criminal court, called hybrid, in that it includes large national contributions (national law). He usually sits in the country where the crimes were committed, his head being fixed in Freetown, the capital of Sierra Leone. However, it is not a mixed jurisdiction, as the Extraordinary Chambers in national courts, in the sense that only international prosecutors and judges work there. Since its inception, the SCSL has initiated proceedings against 13 people (including three have since died) and made of convictions against eight people. Charles Taylor was his ninth accused still alive. For safety reasons, the trial was relocated and held in The Hague, in the premises of the Special Tribunal for Lebanon. The hearings were held from June 2007 to March 2011.

The conviction of Charles Taylor was ordered by the Trial Chamber of the SCSL in two stages: May 18, 2012, he was convicted of complicity in war crimes (by terrorism, violence, outrages upon personal dignity, cruel, inhumane acts and looting, and conscription of child soldiers) and crimes against humanity (by murder, rape, sexual slavery and servitude). May 30, 2012, while the prosecutor demanded a sentence of 80 years in prison, the SCSL has pronounced against Charles Taylor sentenced to 50 years' imprisonment for acts of which he was convicted. The former head of state of Liberia has appealed the decision. The latter is not final. The appeal is being held. The final decision is expected by the end of 2013.

Background

Charles Taylor was one of the protagonists of the civil war in Liberia and has committed or is committing in his country many atrocities. Paradoxically, his conviction relates to the facts that he committed in Liberia but those that have been complicit in Sierra Leone when he was head of state of the Republic of Liberia between 1997 and 2003. The civil war in Sierra Leone (1991-2002) was an extremely violent. It has between 100,000 and 200,000 dead. It caused a mass exodus of more than two million people, or one third of the total population. It was accompanied by a long procession of Crime: recruitment and use of mercenaries (including Liberia), recruitment and use of child soldiers, widespread attacks against civilians, summary executions, amputations campaigns, torture , widespread rape, looting and destruction

etc.. One of the darkest episodes of this conflict was the capture of the capital Freetown by the rebels between December 1998 and February 1999 in which 6,000 people were killed, while tens of thousands of people to flee. This war was the primary reason for the control of diamond-rich provinces of Sierra Leone, Liberia on which intended to extend its domination. The objective of Liberia was not, however, monitor its neighbor politically. Between 1997 and 2002, Charles Taylor supported the Sierra Leonean Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC) and the alliance AFRC / RUF politically, economically and militarily (by providing including weapons, ammunition, training, logistics and communications) in exchange for diamonds. A mercantile objective lost Charles Taylor.

Leadership (Nigeria)

Friday, 19 July 2013

Nigeria Wants U.S., Others to Join ICC

Foreign Affairs Minister Olugbenga Ashiru on Friday in Abuja called on more countries, including the U.S. to accede to the Rome Statute, which established the International Criminal Court (ICC).

Ashiru made the call at a briefing session for members of the diplomatic corps in Nigeria.

The minister briefed the diplomatic community on the recent visit of President Omar Al-Bashir of Sudan to Abuja for an AU special summit, among other issues.

He defended Nigeria's decision not to arrest Al-Bashir, who is under an ICC arrest warrant for alleged crimes against humanity.

On ICC membership, Ashiru said, "Nigeria became a State Party to the Rome Statute out of its own independent and sovereign decision to demonstrate our total revulsion against impunity, war crimes and crimes against humanity.

"Nigeria will, therefore, not take any action to undermine respect for the rule of law and international criminal justice system.

"To ensure the effectiveness of the court, it is essential that more countries accede to the Rome Statute.

"I, therefore, call on all states who are not yet parties to join in the overall interest of international justice, peace and security."

The News Agency of Nigeria (NAN) reports that currently, 122 states are parties to the Statute of the Court, including half of the 54 countries in Africa.

The membership of the ICC includes all countries in South America, nearly all of Europe and most of Oceania.

A further 31 countries, including Russia, have also signed but have not ratified the Rome Statute.

The U.S., Israel and Sudan, who previously signed the statute, had indicated that they no longer intend to become state parties to the court.

On the other side, China and India are among the 41 UN member states that have neither signed nor ratified or acceded to the Rome Statute.

On Al-Bashir's visit, Ashiru explained that he was in the country on the invitation of the AU for the special summit on HIV and AIDS, TB and malaria.

"As it is the practice and tradition of the AU, member states do not require special invitation to attend summits convened by the authority.

"Indeed, standard host country agreements for such summits grant privileges and immunities to all foreign participants expected at the conference."

He added that host countries for such summits are obligated to "provide all necessary facilities for free entry and exit to participants."

The minister reiterated Nigeria's unflinching commitment to the success of the international criminal justice system.

He cited Nigeria's role in the arrest and hand over of Mr Charles Taylor of Liberia to UN to face charges on crimes committed by Sierra Leone rebel forces during the country's civil war.

He also referred to the peaceful and judicial resolution of the Bakassi border dispute with Cameroon as another key indicator of Nigeria's commitment to international criminal justice system.

Heritage (Liberia)

Thursday, 18 July 2013

Rights Group Criticizes GOL for Failure to Implement TRC Final Report

By Eugene K. Myers

The Regional Watch for Human Rights (RWHR) through its Regional Director, Mr. Tola T. Ade-Bayor, has criticized the Government of Liberia (GoL) for not implementing the final report of the erstwhile Truth and Reconciliation Commission (TRC).

It can be recalled that in December of 2009, the TRC presented its final report to the Liberian Legislature for implementation.

Among other things, the report contains major findings on the root causes of the conflict, the impact of the conflict on women, children and the generality of the Liberian society; responsibility for the massive commission of Gross Human Rights Violations (GHRV), and violations of International Humanitarian Law (IHL), International Human Rights Law (IHRL) as well as Egregious Domestic Law Violations (EDLV).

According to Mr. Ade-Bayor, the failure of the GoL to implement the final report of the TRC has caused lack of respect for the rule of law in post conflict Liberia, noting, "It remains a major obstacle to the attainment of peace and sustainable democracy and rule of law here."

Addressing a news conference on Wednesday, July 17, 2013 at the offices of the RWHR, in Central Matadi Monrovia, Mr. Ade-Bayor said the entire peace process is only on the surface and not affecting lives of the ordinary people.

The news conference was part of the RWHR activities to commemorating the World Day for International Justice, also referred to as Day of International Criminal Justice or International Justice Day.

The World Day for International Justice is celebrated throughout the world on July 17 as part of an effort to recognize the emerging system of international criminal justice. July 17 was chosen because it is the anniversary of the adoption of the Rome Statute, the treaty that created the International Criminal Court.

On 1 June 2010, at the Review Conference of the Rome Statute held in Kampala (Uganda), the Assembly of State Parties decided to celebrate 17 July as the Day of International Criminal Justice.

The RWHR regional director furthered that the country has nothing to celebrate because it continues to revert the course of justice by not establishing the International Criminal Tribunal as recommended in the TRC final report.

"We have nothing to celebrate as achievement as a country when it comes to compliance with International Criminal Justice," he said.

"Unlike Sierra Leone that implemented its TRC report, Liberia has brushed aside its own TRC report. Because of this, we have strong conviction that lasting peace and other dividends of democracy will remain elusive as long as Liberia stands obduracy to bringing those who committed heinous crimes during the almost two decades civil war," he added.

Rwanda Focus (Kigali)

Monday, 22 July 2013

ICC Anniversary - Africans Have Been Focus of the Court

By Daniel S. Ntwari

Justice Minister Johnston Busingye has said that while Rwanda supports the concept of international justice, he feels the International Criminal Tribunal (ICC) has unfairly targeted Africans. He added that the International Criminal Court only delivers selective justice, mostly targeting African leaders.

The Minister made the remarks during a VOA interview, which comes in the wake of the celebration of the 15th anniversary of the statute that established the ICC, on July 17, 1998, in Rome.

Currently, the case of Kenya leaders, President Uhuru Kenyatta and vice-President William Ruto takes center stage after the ICC summoned them for crimes against humanity during the 2007 Presidential elections which left hundreds dead in massive violence.

At the recent 21st Ordinary Session of the African Union, President Paul Kagame condemned the instrumentalization of international justice for political interests which continues to undermine peace processes as well as the sovereignty of African nations.

"We cannot support an ICC that condemns crimes committed by some and not others or imposes itself on democratic processes or the will of sovereign people. Such a court cannot facilitate reconciliation which is vital for peace," Kagame said.

President Kagame urged African nations to build capacity to address criminal justice and called for a united African stance in favor of the ICC dropping cases against Kenyan leaders.

"It is not in the interest of the ICC, the Security Council, the African continent and relationships between the three, to see further humiliation of African people and their leaders by an unfair criminal justice system. We should support a common African position and action on the matter at this Summit and subsequently at the UN General Assembly." Fifteen years ago today, the adoption of the Rome Statute of the International Criminal Court (Rome Statute) revolutionized the field of international criminal law by establishing the first permanent, treaty-based international tribunal armed with the power to prosecute the world's most grave atrocities.

Slate

Monday, 22 July 2013

Witness for the Prosecution

Nearly 40 years after Pol Pot's Killing Fields, will his henchmen never be punished for murdering 2 million people?

By Amy Kaslow

PHNOM PENH, Cambodia—On a steamy morning in a dusty outdoor area 10 miles from Phnom Penh, some 200 Cambodians sit around wood-topped tables under canopies shielding them from a punishing sun. Older women with shaved heads—a symbol of their widowhood—young couples with babies, teenagers, and men fill the chain-link fence enclosure. They have come from Cambodia's outlying provinces for a glimpse of justice inside the pale yellow building complex of the Extraordinary Chambers in the Courts of Cambodia (ECCC).



Buddhist nuns, survivors of the genocide, pray before an afternoon meal at a monastery in Kampong Chhang, built near the site of a former Khmer Rouge prison and execution ground. The women's shaved heads symbolize widowhood; their husbands were murdered by the Khmer Rouge.

Courtesy of Amy Kaslow

Almost daily, the government transports busloads of people to see this United Nations-backed war tribunal in session.

Since the ECCC began its work in 2007, more than 150,000 of Cambodia's 15 million people have watched the proceedings live. Today's group waits quietly, patiently, for the doors to open, until they are led single file into the viewing area. Behind a massive protective glass wall, Khmer Rouge founders, strategists, and operatives face charges of systematically starving and slaughtering nearly 2 million of their own citizens during the brutal 1975-1979 Communist regime. Staffed by seven jurists, a bevy of prosecutors, defense lawyers, translators, case investigators, and court reporters, this hybrid of local and global jurisprudence slowly sifts through documents and testimony detailing atrocities.

Piles of the Khmer Rouge's own meticulous records, photos, and video footage, along with victim and witness accounts, repeat the same story: After seizing control, Khmer Rouge leaders and the largely uneducated, impoverished rural masses they conscripted, methodically emptied every city and every town, force-marching urban residents to the countryside. To create their ideal—a self-sufficient, agrarian, and

egalitarian society based on Maoist principles—the Khmer Rouge destroyed all schools, hospitals, private industry, professionals, intellectuals, entrepreneurs, and family life. They tore children from parents, separated spouses from each other, and outlawed intimacy except for the express purpose of procreation to increase their numbers.



Chum Mey
Courtesy of Amy Kaslow

In the name of what they called Angkar—their feared organization—the Khmer Rouge tortured and killed anyone who demonstrated passion for anything other than work. They compelled marriages in “ceremonies” that matched hundreds of men and women simultaneously. In children’s houses, Angkar declared itself the “mother and the father” to redirect family loyalty to the state. The people became slave labor, while the Khmer Rouge exacted rice production quotas and moved all but a small fraction of the foodstuffs to Phnom Penh. Angkar failed to realize “utopia,” but it did meet much more tangible goals: the elimination of real and perceived opposition, minorities, and an array of other “enemies” by executing, starving, and working to death men, women, and children. To date, the lists are incomplete, but the death toll is somewhere between 1.7 million

and 2 million people out of Cambodia’s population of 7.3 million at the time.

Andrew Cayley, the court’s international prosecutor, collects evidence and testimony from eyewitnesses, victims, and perpetrators. It is overwhelming, he says. “No one, not even those born after the Khmer Rouge, escaped its impact.”

Among the witnesses is Mam Phaibon, whose account typifies what Cambodians from every social stratum, educational background, and income level experienced as they struggled to survive. “My 7-year-old sister was killed by Angkar because she stole one ear of corn to eat. She was hit with a hoe and buried near the corn farm. One afternoon, while I was walking the cows across the forest, I smelled a rotting corpse ... I found the body of my father, with his neck nearly cut off from his shoulders. Two months later, my 70-year-old grandmother ... was accused of stealing rice porridge from children and was clubbed to death. Her body was wrapped in a sack and buried. Several days later, my mother died of overwork and malnutrition.”

It was never the ECCC’s intention, nor is it even possible, to prosecute the vast volume of documented offenses. The court’s goal has been to adjudicate the highest-profile cases as representative justice. “The level of criminality here is larger than anything I’ve ever dealt with,” contends one of the tribunal’s highly skilled lawyers recruited for his experience in Bosnia, Rwanda, and other trouble spots where war criminals have stood trial. “This was a hugely, *hugely* traumatic period for this country. The social problems derived from the enormous amount of damage pale compared to any other court that I’ve worked in.”

Despite years of prodding from Cambodian survivors and international pressure, the tribunal only began hearing testimony in 2007. By that time, Pol Pot—Khmer Rouge architect and lead executioner—had been dead for nearly a decade. A royal pardon allowed his brother-in-law, Ieng Sary—co-founder of the Khmer Rouge and mastermind of torture and mass murder—to travel on a diplomatic passport and enjoy both a homestead in Pailin, the former bastion of Khmer Rouge leaders, and his lavish villa in Phnom Penh. Sary, the man Pol Pot called Brother No. 3, was apprehended in 2007 and died this past March while standing trial in Case 002 for crimes against humanity, war crimes, and genocide.

Today, just two defendants remain in custody: Nuon Chea, the chief Khmer Rouge propagandist and second in command, and Khieu Samphan, the former head of state. Both ailing octogenarians, the two men made measured apologies this June when they said they regretted the suffering imposed by the Khmer Rouge while distancing themselves from any decision-making authority.

Worries that these and other high-ranking Khmer Rouge leaders will die before the court can bring them to justice are well founded. So far, the court has tried and sentenced only one of the accused (Case 001): Kaing Guek Eav, known as Duch, the notorious warden of Tuol Sleng S-21 prison. It was at Tuol Sleng—an emptied Phnom Penh high school and one of 200 “security centers” across the country—that Duch tortured and slaughtered some 14,000 Cambodian inmates, sending the overflow to a nearby killing field, Choeng Ek. In 2012, Duch was sentenced to life in prison.

It is ironic that the survivors on record are relatively vital and their recollection strong, while the health and memory lapses of the accused continue to stall the court’s momentum. Transcripts reveal frequent, time-consuming efforts to extract information from defendants and witnesses who were allegedly at the epicenter of crimes yet claim to have forgotten their previously given testimony.

Chum Mey provides acute details. He is among the dozen or so survivors of S-21 prison and was a key witness at Duch’s trial. He can be found most days at the former torture and death center, a place that has been transformed yet again, this time, into the Tuol Sleng Genocide Museum. Sitting in an old detention chamber, his lean frame folded into the lines of a chair, he tells his story.

Chum Mey’s family’s forced exodus to the countryside proved too much for his 2-year-old child. When the little boy expired, Chum Mey placed him in a hastily dug roadside grave and marched on. The family was separated, and Chum Mey was sent back to Phnom Penh to repair the sewing machines that turned out the revolution’s signature black uniforms. His Khmer Rouge keepers kept him alive because he was a good mechanic. But suspicion soon trumped utility. Likely turned in by another Cambodian who was tortured until he named someone, *anyone*, as one of the “spies and enemies of the state,” Chum Mey landed at Tuol Sleng prison, S-21. Blindfolded, shackled, beaten, and shocked, he eventually met his captors’ demands by confessing to espionage ties with the United States and naming other “spies and enemies of the state.” He was simply part of the cycle of paranoia and death, he says. The circles of trust got smaller and smaller while the fallacies grew larger and larger. Soon, the Khmer Rouge would accuse and eliminate even its most loyal revolutionary members.

S-21 guards eventually force-marched Chum Mey to the provinces, where he chanced upon his wife, who was lined up in another march and holding the child she had been pregnant with the last time husband and wife were together. Terrified and relieved at once, he held his 2-month-old baby for the first time. As Chum Mey recounts this episode, he leans forward in his chair, raises his voice, and describes what quickly followed: Guards pushed the group into a remote area, and Chum Mey heard his wife call out a warning: “Run!” Sitting upright, Chum Mey brandishes his hand like a gun, purses his lips, and releases a series of staccato “Pop! Pop! Pop!” sounds. The S-21 guards machine-gunned both mother and child;

Chum Mey managed to escape. Now in his 80s, he is plagued by an unavoidably vivid image of the murder of his wife and baby. “I cry every night,” he says.

Establishing a tribunal in a country decimated by decades of civil war, where victims and perpetrators have lived side by side from youth to adulthood, has been a study in frustration. Every step of the judicial process has been agonizingly slow, due to “complex political, security and legal reasons” and “the destabilizing social effect of the battered and shocked generation of the war,” says David Scheffer, the U.N. secretary-general’s special expert on U.N. assistance to the Khmer Rouge trials and who is among the world’s leading legal minds on war crimes.



The Khmer Rouge turned Cambodia’s rice farms into killing fields.

Courtesy of Amy Kaslow

The Kingdom of Cambodia continues to invoke these reasons as it plays an overactive role in just who is tried and how. Prime Minister Hun Sen, in power for 30 years, first resisted international pressure to set up the tribunal, and, when it was inevitable, fought hard for a Cambodian-only court. While publicly supporting the tribunal, he pushes back against prosecuting surviving members of the Khmer Rouge regime, including some who are still in government posts. A recent editorial in the *Bangkok Post* tagged the ministers of defense, foreign affairs, interior, and finance as former Khmer Rouge officers, as well as thousands of government functionaries. Phnom Penh’s support of the tribunal’s work is a calculated risk: The wider the court casts its net, the closer it comes to those in positions of power.

At his grand office in the Council of Ministers, an imposing contemporary building along Phnom Penh’s Russian Federation Boulevard, Deputy Prime Minister and tribunal point-man Sok An sits at the center of a long conference table, flanked by dozens of deputies and aides. The man dubbed “the king of patronage” by the national press gives a rambling statement extolling the virtues of the tribunal and his government’s pivotal role in delivering it to the people. The court “demonstrate[s] Cambodia’s commitment to the rule

of law,” he says. “We have to make our younger generation remember.” As he speaks, his note takers tap away on their iPads, and the authorized television cameramen train their lenses on him.

Despite the government’s positive spin, the tribunal is a contentious issue in the run-up to Cambodia’s parliamentary elections on July 28. To deflect attention from his own trial, tribunal defendant Khieu Samphan has pointed to the prime minister, himself a former Khmer Rouge commander, who Samphan says had extensive knowledge of the regime’s tactics and actions. Angered by this and other challenges to his candidacy, Hun Sen emphatically warns that Cambodia risks a civil war if he loses the election and says he will “respond immediately” if anyone tries to apprehend him.

Indeed, to the government, the tribunal’s profile may be more important than its prosecution, as Hun Sen and Sok An seek to position the nation as a leader in social, economic, and political reforms. The government could hardly wait to broadcast this message regionally, when it hosted the latest nine-member Association of Southeast Asian Nations meeting. Among its bragging rights is that the country’s projected GDP growth is 6.7 percent in 2013. But like much government-sanctioned information, official data on hunger, jobs, and wages hardly reflect reality.



This provincial boy shares a discouraging statistic with other young Cambodians: The World Health Organization ranks the country’s child nutrition among the poorest in the world, and statisticians say it has been near rock-bottom since the 1980s.

NGOs and on-the-ground diplomats estimate that almost a third of Cambodians are malnourished and even more suffer from stunted growth. Poverty is rooted in rural areas where farmers struggle with pollution and water-borne diseases. (Countrywide, fewer than half of Cambodian households have clean water access, and only a third have toilets.) Lack of economic opportunity defines life for the vast majority of Cambodians. The best prospects for average high school graduates: low-skill work in factories where employers face few restrictions. Factory workers earn roughly \$70 a month. “If you’re a rock star,” says one diplomatic economic attaché, “you might work in an office and earn \$90 a month.” Farm workers can expect \$40 in monthly wages. To many, the lure of the sex industry’s dramatically higher pay proves irresistible, where anyone can earn as much as \$500 a month. Officially regulated but poorly monitored, the sex trade targets the vulnerable; untold numbers of Cambodian girls are enslaved by brothels that pay off inspectors and pocket the profits.

Near the top of Transparency International’s list of the world’s most corrupt nations, Cambodia has also earned the dubious distinction among human rights groups as one of the world’s worst abusers. Villagers fear the country’s judicial system, and bribes are the norm. Even the tribunal is not immune. Corruption allegations abound, starting with the Open Society Justice Initiative’s 2007 claim that Cambodia’s government demanded kickbacks in return for locals securing jobs, from support staff to judges.

Choeung Ek gained international notoriety in the 1984 film *The Killing Fields*. Ten miles south of Phnom Penh, the site is marked by an acrylic Buddhist stupa filled with thousands of human skulls. The Khmer Rouge massacred 17,000 people here and buried them in mass graves, and human bones still push through the powdery dirt. One of the country’s countless killing fields, Choeung Ek is among the top travel

attractions the government promotes. It is part of a much bigger plan to develop genocide tourism as a robust industry.

Along a well-trodden path, a wooden sign conveys a stark message:

The Chemical Substance Storage Room: Here was the place where chemical substances such as DDT were kept. Executioners scattered these substances over dead bodies ... after execution ... to eliminate the stench from the dead bodies that could raise suspicion among people working near by the killing fields and ... to kill off victims who were buried alive.

Nearby, in a cleared-out area, two men sit side by side on a semicircular bench curving around part of a large picnic table. Across the way is a building filled with skulls and skeletal remains found on the site, memorializing the thousands who disappeared in the killing fields. The two men are quietly focused on the crowd gathered to hear them speak. They are together to tell their stories, tragic and entwined.

Him Huy begins. Not on trial, his memory is clear. As a young farmer, he joined the Khmer Rouge and was soon dispatched to Tuol Sleng prison, S-21, where Duch, the hardened head of Khmer Rouge security, trained his hand-picked staff in brutality. Duch promoted the promising Him Huy to deputy chief of the prison's security guards. "I had more than 10 guards under me," Him Huy says with a measure of pride. Among his responsibilities: transporting prisoners to the killing fields, as many as 70 at a time. As Him Huy describes it, Duch tested the young deputy's loyalty by ordering him to kill a load of Cambodians trucked from S-21 to Cheong Ek. Him Huy complied, shouting at the prisoners to kneel along the edge of a freshly dug pit, while he swung a long metal bar and struck each person on the back of the neck. When he was finished, he had filled the hollowed-out earth with piles of limp bodies. Asked why he talks about this now, he says it makes him feel much better. "I thought the Khmer Rouge was a good movement." He hastens to add that Duch made all of the decisions; the guards just executed them. "I am a victim of the Khmer Rouge. Not just me. All of the S-21 guards."



S-21 deputy security guard chief Him Huy, left, and S-21 child survivor Norng Chan Phal are two of the many millions of Cambodians grappling with their memories of the Khmer Rouge genocide.

Norng Chan Phal places his hands on the picnic table and looks over at Him Huy. It is his turn to speak. As child prisoners at S-21, he and his brother saw their mother suffer the guards' savage assaults. Indeed, tribunal documents and testimonies detail the guards' prescribed responsibilities under the careful watch

of deputy chief Him Huy and others. When the Khmer Rouge frantically evacuated the prisoners from S-21 as Vietnamese invaders poured into Phnom Penh, Norng Chan Phal was 9 years old. He and his brother hid, undetected, under a pile of prisoners' clothes. When it was safe, they peeled back the clothing and went to look for their mother. Instead, they found battered corpses.

Outside the tribunal's chambers, 61-year-old Prak Sakhorn and her 5-year-old granddaughter are inside the enclosure, waiting to witness the trials. As for many, the morning's ride was their first time on a bus, or anything other than a bicycle or an animal-drawn cart.

Prak Sakhorn was in her 20s during the massacres. Asked about that period, she demurs and talks about her life today in a village where she earns a meager living and barter food for clothing and other essentials. Many Cambodians like her, mired in poverty, have little time or energy for coming to terms with their country's past.

Enter the ethereal. More than 95 percent Buddhist, Cambodia's population is culturally unfamiliar with openly acknowledging and analyzing human failures. Banned by the Khmer Rouge, the unofficial national religion is again an overt, celebrated part of everyday life, grounding Cambodians in daily moral prohibitions against killing, taking something not freely given, sexual misconduct, overindulgence, untrue speech, and intoxication. Cambodians find comfort in the overriding precept of karma that takes this painful accountability from the here and now and puts it into the next life.



The serene smile of Buddha at the Bayon Temple in Siem Reap, Cambodia. The Khmer Rouge defaced many of the country's millennia-old Buddhist temples, converting some into interrogation, torture, and killing centers.

With trauma defining so much of Cambodia's history, memory is a curious part of the collective consciousness. Layered underneath the daily hardships is the past that people shared. But beyond the corruption, the poverty, and the widely accepted Buddhist precepts, the government revises history to obscure its own culpability. And while documentarians work feverishly to ground the nation's history in facts, eyewitness accounts, and archival materials, there is no universal view about what happened, at least not on the surface.

A tribunal judge explains that the court is not addressing the victims so much as it is beating back myths and providing a "truthful narrative" to their children and grandchildren. "People thought it was legend, that it didn't [happen], that it couldn't have really happened. Many parents didn't ever want to talk about it."

The tribunal's most important legacy may be a civil society where citizens are attuned to their past, even if it is culturally difficult to engage in a national dialogue.

This is the life work of Youk Chhang, a child survivor of the killing fields. The country's caretaker of memory, the 52-year-old man with a warm, toothy smile is the peripatetic executive director of the Genocide Museum's Documentation Center of Cambodia.

With his archive-filled research center, Youk Chhang creates curricula and trains thousands of Cambodia's high school teachers. He must counter other versions of what transpired and just who is to blame, which are proffered by millions of former Khmer Rouge members and their offspring. Youk Chhang is intent on breaking down the treacherous societal schisms that these conflicting views form. If truth prevails, it will unify the country, he says. His focus is on the next generation.

Cradling copies of the first-ever Cambodian-written publication on the atrocities that he and his team compiled, Youk Chhang concedes that publishing accounts, posting pictures, and talking about the genocide is difficult for Cambodians who would much rather "put their painful memories behind them."

But "we cannot move forward," he continues, "unless we grasp what happened and *why* it happened."