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RADIO NETHERLANDS WORLDWIDE

INTERVIEW

with Rosalind Shaw, Associate Professor of Anthropology at Tufts University, USA*

by Janet Anderson, The Hague

Beyond Taylor, "Where is our justice?"

Sierra Leone and Liberia experimented with very different paths to justice – restorative with truth commissions and retributive with the Special Court for Sierra Leone (SCSL) trials. How do local communities see this, following the conviction against former Liberian president Charles Taylor two weeks ago?

Concepts of justice shift a lot, depending especially on the security situation. I was working in Sierra Leone close to and after the end of the war. At that time probably the most important concern was security rather than justice. Within communities, justice meant being able to send their children to school, being able to feed themselves. And so they were terrified of the courts provoking some kind of retaliation, some kind of revenge by relatives of those who were prosecuted. Justice was very much entangled with peace.

So people had a sense that the courts could perpetuate a cycle of punishment and revenge?

Exactly. People regarded court cases as potentially violent things that create winners and losers in which the winner takes all. People saw them as potentially dangerous. Foday Sankoh, the leader of the Revolutionary United Front rebels had been imprisoned in Pademba road jail in Freetown in the 1970's. He never forgot it. People now remember this. So when they hear talk about how prosecutions combat impunity and prevent the recurrence of violence, they think about Foday Sankoh, who died during his trial at the Special Court in 2003 and think, "well it didn't happen then."

And how about Taylor's trial?

There is also the contrast between the view that we've prosecuted Charles Taylor, the big mastermind and the over-simplification that that tends to produce – that this was the blood diamond trial. And on the other hand, the broader social and economic injustice that formed one of the roots of the war, going back even before the war. This was due to both government corruption and an extremely gerontocratic and patriarchal rural society in which young people felt marginalised and from which they tried to escape. Young people played such a major part in the war – yes they were abducted, but many of them felt there was a political agenda that exploited their experience of marginalisation without offering real change. But that long-term structural violence before the war is ignored when the emphasis is on justice as a process of prosecution, specifically the prosecution of just a few individuals.

Were there other misunderstandings?

People also look at the cost of judging 10 individuals in the context of the country they live in, which comes regularly at the bottom of the UN's human development index. I think that Charles Taylor's trial cost around 200 million dollars. And people view justice in terms of economic justice and ask, "where's our justice?" Although the Sierra Leoneans I have spoken to are happy to have seen Taylor prosecuted, it's problematic to view this trial as now drawing a line under the conflict and say, "now we can all have closure."

What else has been happening on the ground?

There have been a number of interesting local level community-owned processes. One, called Fambul Tok (Family Talk), began in 2008 in Sierra Leone, that really focuses on relationships between victims and perpetrators within communities. This was an initiative of an extremely courageous and imaginative human rights activist John Caulker. He wanted to bring a different kind of justice than that which the Special Court offered with its multi-million dollar budget. Fambul Tok focuses on bringing together members of community and getting them to talk after several months of preparation. There's an event by the bonfire in which people are encouraged to come forward to tell their stories, confess and apologise. There's also a lot of follow-up afterwards, which was a missing feature in the Truth and Reconciliation Commission.

The Special Court targeted a few key leaders, leaving many individuals untouched. Are people still talking about justice within their communities?

It's ambivalent – the question of these lower level perpetrators. Most of the people I spoke to in northern Sierra Leone felt if you are going to prosecute anyone it's right to prosecute the big ones. But other people wanted not necessarily prosecution, but some kind of re-balancing process involving these lower level perpetrators. In particular, people did not want to see them integrated into the armed forces. What was especially horrifying was seeing someone who had tortured or killed others' family members once again in a position of militarised authority.

If the ending of the Charles Taylor trial and the ending of prosecutions doesn't bring closure in Sierra Leone, what now?

Looking back in order to look forward is important. The priority is to define justice more broadly, in terms of economic and social justice and to make sure Sierra Leone's youth and children are well served. Right now youth unemployment is something like 40% and that needs to be addressed. Otherwise the same conditions that contributed to the war will be perpetuated.

(*) Co-author of "Localising Transitional Justice", with Lars Waldorf and Pierre Hazan.

by Geraldine Coughlan, The Hague

Much remains to be done in Sierra Leone

"The purpose of the Residual Special Court (RSCL) is to carry out the functions of the Special Court for Sierra Leone that must continue after the closure of the Special Court," states the RSCSL Statute. But in the wake of the Taylor judgement and almost two years after the RSCSL agreement signed between Freetown and the UN, how much is actually in place today to ensure the Court's legacy?

The RSCSL is mandated to begin functioning only after the SCSL closes, following the appeal judgement in the case against former Liberian president Charles Taylor next year. However, the Court is already tasked with working on a 'coordinated transition' to the residual court. The first of the internationalised courts due to close, the Special Court is a hybrid set up by agreement between the UN and the government of Sierra Leone in 2002. Therefore, the RSCSL, also set up by agreement between the UN and the government in August 2010, ratified by parliament in December 2011, is based on a different type of strategy from that of the ad hoc courts (ICTY and ICTR).

No base

The "process of establishing the RSCSL will be a work-in-progress until the Court completes its mandate," says Daniel Eyre of the SCSL registry. "The Court, the members of its management committee, the governments of Sierra Leone, the Netherlands, the UN and other relevant actors are working to ensure all preparations are in place for a smooth transition to the RSCSL upon the completion of the Court's mandate. Some transition tasks already under way will not be complete until that time," said Eyre. The RSCSL will have its interim seat in The Hague and an office in Sierra Leone. One of the plans is to share an administrative platform with other institutions in both locations, but it is still uncertain whether this could be at the ICC in The Hague, according to Eyre.

The RSCSL will be headed by a president (chosen by RSCSL judges), a prosecutor and registrar – but these appointments are still to be announced. The residual court is due to be funded by voluntary contributions and the Court and its management committee of states are currently fundraising. Although no budget has been approved, the Court has a draft RSCSL budget, which it updates as it moves forward. It will be revised when the Court completes its mandate. "As a result, the RSCSL budget will remain a preliminary budget until that time," Eyre said.

But there are concerns over voluntary, rather than guaranteed funding for the residual court. Wayne Jordash, defence lawyer for former RUF commander Issa Sesay, who is serving the Court's highest sentence of 52 years, believes the voluntary contributions that were a constant worry to the SCSL during the trials, due to the voluntary funding arrangements, may well undermine the work of the RSCSL. "It is important that it has an amount of guaranteed funds to ensure this important work may also be guaranteed and effective," he said.

Sharing the Court's legacy is the aim of recent initiatives at the national level, such as the Sierra Leone Legal Information Institute (SierraLii) project, spearheaded by the Office of the Prosecutor (OTP). It came online last year with the aim of providing free access to the nation's case law, legislation and other legal materials and integrating SCSL jurisprudence into domestic law. "This means the citizens of Sierra Leone will not only have free access to their own laws but to those of other countries as well. This assists in promoting justice and the rule of law and demonstrates the solid steps that Sierra Leone has taken towards rebuilding its judicial and legal institutions," said Maria Warren of the OTP. "The plan is to hand over to the national entity by June or by year's end at the latest." However, "securing funding to sustain its operation will be crucial," she adds.

No triumphalism

Wayne Jordash urges caution in what he sees as the triumphalism that will accompany the closure of the ad hoc and hybrid courts. "A sober reflection on successes and failures and lessons learnt is needed to underpin the creation and implementation of the most effective and appropriate model for the residual mechanisms," he warns.

The Court's other legacy initiatives at the national level include the Sierra Leone Peace Museum and the national Witness Protection Unit. It is also funding an independent legacy survey to assess perceptions of the Court inside Sierra Leone by Brussels-based NGO, No Peace Without Justice.

White man's justice

However, the slow pace of progress on residual issues may prove fatal to the ultimate evaluation by many Sierra Leoneans of the institution as a whole. "Had legacy been part of the court from the inception, the perception of people with regards to the white man bringing his own thoughts on white man's justice would have been eroded long before now," laments former trial monitor for the Centre for Accountability and Rule of Law (CARL), Joseph Sesay. He says it is too soon to judge the successes of the Special Court. But with the wheels now turning towards kick-starting the RSCSL, the big question now for the Court is not just about perceptions of 'black' or 'white' man's justice. It is about how much remains to be done in one year for the RSCSL to avoid a possible failure and living up to popular expectations that it's time to see concrete signs of movement.

The international community must therefore 'get it right' - as the RSCSL will form part of the international justice framework for the next era. "The highest sentence at the SCSL is 52 years, and the relative youth of the convicted individuals may well mean that the residual mechanism is needed for at least half a century," says Kelly Askin of the Open Society Justice Initiative.

Arusha nine judges sworn in

- Nine judges elected to the International Residual Mechanism for Criminal Tribunals were sworn in on Monday in Arusha
- The mechanism will continue the work of the international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) after they close their doors in 2014
- The mechanism will be located in The Hague and Arusha, where the first branch will open within two months
- Established by the UN Security Council in December 2010, it is due to carry on the functions of the ad hoc courts, including the trial of fugitives and contempt cases, protection of witnesses, assistance to national authorities and management of archives
- Judge Theodor Meron and John Hocking were appointed as President and Registrar earlier this year

by Christopher Stephen, Tripoli

Zintani pledges to try Saïf-al Islam

The leaders of Libya's mountain town of Zintan say they will hold the war crimes trial of Saif al-Islam Gaddafi at home, posing a further complication to the tug-of-war over the suspect between Libya and the International Criminal Court (ICC).

The ICC last Wednesday threw out an appeal filed by Libya on April 6 against the court's demand that Muammar Gaddafi's jailed son be transferred to The Hague to face charges of crimes against humanity. "The Appeals Chamber … dismisses the appeal as inadmissible," judges said. Despite Libya's refusal to hand Gaddafi over to the ICC, there are signs the impasse could be resolved, after Libya's National Transitional Council submitted a formal request to the ICC to host the trial in Tripoli.

However, Zintan, which controls one of the most powerful militias in Libya, insists that any trial will be held on its territory. Town officials cite security concerns. "It is not safe in Tripoli," Zintan city council leader Dr Attaher Eturki told Radio Netherlands. "If you just sit down to think about it, the government is very weak, they can't control their country."

Zintan has almost completed work on rebuilding its courthouse, gutted in last year's civil war, and says it is happy for the trial to be conducted by government agencies. Dr Eturki said there was no constitutional obstacle to the trial being held in the town, 90 miles southwest of Tripoli. "Zintan is a part of Libya, so it doesn't matter where [the trial is held]," he said.

Following its declaration that it would submit to scrutiny from the ICC over its demands to hold Gaddafi's trial on home soil, Libya has hired high profile British lawyer Phillipe Sands to represent it. Zintan is one of a number of towns where militias accuse the central government of secrecy. The government, for its part, has failed to convince Libyans there to join a new state-controlled security force.

Zintan can boast of good security in its mountain town, where well-organised militias control all entry points - a vivid contrast to much of the rest of Libya, where sporadic tribal warfare continues. Tripoli sees nightly gunfire, and last week a local militia stole a US embassy vehicle at gunpoint in the east of the city. Libya's own handling of the Gaddafi case has come under further scrutiny after claims by the ICC's court-appointed defence lawyer that only female ICC staff were allowed to meet Gaddafi during an official visit in March.

"The ICC delegation would only be approved if it was composed of females," writes ICC principle defence council Xavier-Jean Keïta in a recent report to Hague judges. "They would only allow female representatives from Registry and OPCD (Office of the Public Council for the Defence). These were the final conditions, and if the ICC did not agree, the visit would not occur."

Keita, who last month called on The Hague to report Libya to the UN Security Council for non-compliance with the court, said he and the registry delegation agreed to send female representatives because the meeting was their "overarching objective." This report follows another by Keita in which he claims Libyan officials told him Gaddafi was being investigated not for war crimes, but for "failure to license two camels."

Fair trial?

Libya has made no comment on these reports. But if ICC judges take them into account, it may complicate Tripoli's application to try Gaddafi, given that The Hague must be satisfied that a fair trial can be guaranteed. Zintani officials made no mention of the ICC demands for Gaddafi to be handed over for trial, nor did they give a trial date, saying it would depend on justice officials in Tripoli.

Last month Libya's justice ministry said Gaddafi's trial would be completed before elections, expected by June 23, but the ICC will not issue a formal decision on any challenge in time for such a trial. The Libyan justice ministry has no press office and has not clarified what its position will now be.

Separately, Libya and the ICC are also calling on Mauritania to hand over a second Hague indictee, Libya's former intelligence chief Abdullah Sanussi, arrested there in March and also wanted by France, which has convicted him in absentia for the destruction of an airliner in 1989.

ICC: Kenya plans special unit to try 2008 crimes

Kenya's office of the Director of Public Prosecutions (DPP) is to set up a special unit to deal with the 2008 post-election violence cases. DPP Keriako Tobiko said last week the unit will be made up of local and international prosecutors assisted by the International Criminal Court (ICC) and the International Criminal Tribunal for Rwanda. Four Kenyans, including Deputy Prime Minister Uhuru Kenyatta, currently face charges of having the greatest responsibility for the violence before the ICC.

Tobiko dismissed speculation that Kenya could seek to pull out of the ICC as "either ignorance or political mischief" – as the ICC is part of the domestic judicial system as Kenya has enacted and ratified the Rome Statute. The "ICC is not a foreign judicial foreign process," he told Capital FM in Nairobi. "It is already domesticated and localised by the International Crimes Act of 2009 and given constitutional anchorage by Article 2 of the Constitution," he explained.

Tobiko also clarified that the efforts by the DPP are part of the government's obligation under the Rome Statute to bring justice to the victims who suffered at the hands of criminals after the disputed 2007 election. According to Tobiko, interrogating the 2008 post election violence will not only bring justice but also act as a warning as the country heads towards yet another general election.

East African Court of Justice?

Another move to prevent the four political leaders' trial in The Hague came from the East African Law Society. The East African Legislative Assembly (EALA) urged the East African Community (EAC) Council of Ministers last month, to request the transfer of the proceedings from the ICC to the East African Court of Justice.

But in a statement on 2 May, the regional bar association said the East African Court had neither the capacity nor the expertise or jurisdiction to handle the cases. "Neither does the Rome Statute provide an avenue for states or inter-governmental organisations to request relocation of cases after the confirmation of charges," the statement says.

The society's communications officer, Daniel Birungi, said if the EAC partner states insisted on relocating the cases to the regional court, "they must ensure a total review and restructuring of the court," according to the Daily Nation newspaper.

by Benoît Frances, Bujumbura

Still no timeline for truth in Burundi

The promise by President Pierre Nkurunziza for a truth commission in Burundi may well turn out to be an empty one. More than a decade after the Arusha Peace Agreement, which called for a special tribunal and a truth commission in the country, Nkurunziza renewed his pledge in his New Year's address. "This year will see the establishment of this Commission." He repeated his promise to the BBC in late February and it was bolstered by a visit by the UN Assistant Secretary General for Human Rights last week.

A draft law, published in October, is supposed to be presented to Parliament. It details conditions for the establishment of a Truth and Reconciliation Commission (TRC), which would be given a two-year mandate to examine the forty-six year period from Burundi's independence in 1962 to 4 December 2008 - "the date on which the last armed movement ceased hostile action." The mandate would be a broad one, to investigate "all serious acts of violence perpetrated during conflicts of a political and/or ethnic nature."

However, "the committee [charged with drafting the legislation] was put together overnight, by decree, behind closed doors. This political lockdown began with the naming of committee members," noted an independent expert familiar with the situation. The committee is headed by Foreign Minister Laurent Kavakure, and has no representatives from civil society. All its members were named by the president.

The committee's creation runs counter to national public consultations, surveyed in 2010. "The government could not control these consultations, as the UN and civil society laid down certain conditions," Eric Manirakiza, director of Radio RPA Burundi pointed out, recalling that Burundi's citizens "expressed their desire for a mixed tribunal and TRC [composed of Burundians and non-Burundians] and that its members not be named by the government."

According to the draft law, the TRC's eleven members would be Burundian nationals and named by the President following "broad consultation." In December, Amnesty International expressed doubt that the independence and impartiality of the TRC would be guaranteed.

Special Tribunal left hanging

Plans for the Special Tribunal, the second vehicle for transitional justice stipulated in the Arusha Peace Agreement, have been left hanging in the air. Its establishment has been postponed until after the TRC's mandate, as the commission might make recommendations for the criminal prosecution of certain cases. To many observers, this poses a threat. "Not putting other forms of transitional justice in place gives the TRC the force of a soap bubble," lamented Emmanuel Ntakarutimana, president of Burundi's National Independent Human Rights Commission.

The result will be, besides an "International Consultation Committee" with no real power, that "everything will play out within a single party," an NGO executive explained. The position of Burundi's ruling party, the CNDD-FDD is well known. In its manifestos in 2006 and 2007, it pledged to pursue "mutual forgiveness" and from there decide whether a tribunal is indeed "opportune." This raises the problem of "disguised amnesties," as one international civil servant calls them. Antoine Kaburahe, director of the newspaper *Iwacu*, is more direct. "The ruling party was implicated in crimes… it would like to protect itself."

The UN has kept a low profile. The government was provided with a brief review of "international standards and the necessity of respecting national public consultations," according to Julie Tétard of the Office of the High Commissioner for Human Rights (OHCHR) in Geneva. This was done via "confidential" memorandum. No waves. Nevertheless, Tétard refused to call this approach "laissez-faire". "We are not here to rubber stamp things."

Security has degenerated in Burundi since its contested presidential elections in June 2010, when incumbent Pierre Nkurunziza ran uncontested in the second round. In past weeks, members of the ruling party have been making the rounds of towns and villages to inform (and attempt to persuade) citizens about "their" TRC. All this with no great success - scepticism reigns.

ECCC: standoff continues

After encountering "serious irregularities, dysfunctions and violations" in his efforts to investigate two new cases at the Extraordinary Chambers in the Courts of Cambodia (ECCC), Swiss co-investigative judge Laurent Kasper-Ansermet resigned in March facing Cambodian government opposition. His resignation took effect last Friday, seven months after the resignation of his predecessor, Siegfried Blunk.

In his last public statement filed on Friday, the reserve international judge invited "Cambodia and the United Nations to take a clear and common stand concerning the future of Case 003 and 004 so as to restore the image and dignity of the ECCC and uphold international justice". Both cases involve former senior members of the Khmer Rouge military.

But the United Nations could not allow the judge's position to remain vacant without appearing to succumb to Phnom Penh's intransigence.

Last week, interviews began in New York to select new candidates. "The circumstances that have given rise to these two resignations remain worrying," said a statement issued by the spokesperson of the UN Secretary General on May 30. "The Secretary-General believes that it is essential that the judicial process in relation to cases 003 and 004 be brought back onto a positive course."

In the meantime, Ta An, a suspect placed under investigation in Case 004, has appointed two defence lawyers for the first time in those additional cases. "He accepted two lawyers - one Cambodian lawyer, Mam Luch, and one foreign British lawyer named Richard Rogers", his nephew revealed to the Cambodian Daily.

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