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FEATURE ARTICLE

**NO LONGER A SAFE HAVEN
FOR TORTURERS: THE
UNITED STATES MAKES ITS
FIRST SUCCESSFUL
PROSECUTION UNDER THE
TORTURE STATUTE**

by MELISSA A. BECKMAN

"The only thing necessary for the persistence of evil is for enough good people to do nothing."

-Amnesty International saying, unknown origin

It is estimated that more than 400,000 survivors of politically motivated torture currently reside in the United States.¹ These survivors struggle every day to regain a sense of self-worth; self-worth that was brutally stolen from them in their home countries.² Estimates suggest that among these refugees and victims are thousands of human rights violators who also have taken shelter in the United States, including more than 1,000 with substantial responsibility for atrocious violence.³ Adding to the tension, the abusers and victims often live in the same immigrant communities, “causing extreme anxiety and undermining justice and accountability movements in the countries where the abuses occurred.”⁴

Shouldn't the United States be a refuge for those seeking to escape the atrocities of their home country and not for those seeking to escape justice?

IS THE UNITED STATES A SAFE HAVEN FOR TORTURERS?

Torturers have been labeled as *hostis humani generis*, enemies of all humanity.⁵ In *United States of America: A Safe Haven for Torturers*, Amnesty International states,

“When someone is tortured, it is an affront to human dignity. When torturers are not held accountable for their actions, it is an affront to justice. Impunity occurs when perpetrators of human rights abuses are not held accountable for their actions. It occurs when perpetrators refuse to acknowledge the wrongfulness of their conduct. It occurs when states refuse to accept responsibility for the acts of government agents. And it occurs when the international community allows perpetrators to go unpunished. Impunity is a problem in all countries, including the United States.”⁶

Since 1994 the United States has condemned torture and other human rights abuses committed abroad by criminalizing it in the U.S. Criminal Code, 18 U.S.C. §2340-2340A (Torture Statute).⁷ However, until October 30, 2008, the United States had failed to bring to justice any of the perpetrators of these horrific crimes.

All of this changed with the recent conviction of Charles “Chuckie” Taylor, the first person ever brought to justice under the Torture Statute. Taylor was convicted of torture, conspiracy to commit torture and other crimes.⁸ More specifically, trial testimony described Taylor's torture through the use of electric shocks on the genitals, burning victims with cigarettes and hot irons and

melting plastic, and rubbing salt into wounds of the victims.⁹ Several brave witnesses came forward and described the brutal torture they endured at the hands of Taylor.¹⁰

FATHER AND SON: WHO ARE CHARLES AND CHUCKIE TAYLOR?

Chuckie Taylor is the son of the former Liberian President, Charles Taylor.¹¹ Charles is currently being tried in the Union Nations Special Court for Sierra Leone at the International Criminal Court for the human rights abuses that occurred while he was in power.¹²

Liberia, a West African republic nation, has been embroiled in civil war since 1989.¹³ The majority of the country's 3.3 million people live in dire conditions.¹⁴ Most are starving or sick, and a third are homeless, the result of the continued fight over the natural resources in the country, including diamonds, rubber, iron ore and timber.¹⁵ Charles and his government were responsible for more than 200,000 deaths during his time in office.¹⁶

Charles Taylor was president of Liberia from 1997 to 2003.¹⁷ He created the paramilitary Anti-Terrorist Unit (ATU) shortly after his inauguration.¹⁸ Chuckie Taylor, a Boston born U.S. citizen, was recruited to Liberia by his estranged father to lead the ATU.¹⁹ The ATU was initially used to protect government buildings and the international airport and to provide security for the president and some foreign embassies.²⁰ However, following the emergence of an insurgency in 1999, the ATU's responsibilities were expanded to include combat and other war-related duties.²¹ According to Human Rights Watch, the ATU would systematically hunt down and detain local people who were suspected of supporting the insurgency, often including civilians.²² These local people would then be "beaten, tortured, or summarily executed, in some cases by being confined in houses that the soldiers set on fire, burning the victims to death."²³ Women and girls were often raped and forced to become wives to the soldiers, while young men were subjected to forced labor.²⁴ Villages were then systematically burned to the ground.²⁵

On September 15, 2008, the first trial for the federal crime of torture began in the U.S. District Court for the Southern District of Florida.²⁶ Chuckie was indicted for committing torture while he was head of the ATU.²⁷ Since the defendant was an official of a foreign government at the time the incidents

with which he was charged took place, and because the alleged crimes took place outside of the United States, the litigation of this trial involved intriguing and challenging issues of international and constitutional law.

According to David Crane, former chief prosecutor for a UN tribunal on Sierra Leone war crimes, “Chuckie Taylor was a monster who had no respect for the law and cared little about the Liberian people.”²⁸



Source: *Associated Press*, Government forces bristling with weapons speed through the “Irongate” checkpoint on their way to the frontline outside the Liberian capital, Monrovia, July 17, 2008.

INTRODUCTION TO THE LAWS AGAINST TORTURE

Torture is illegal under the law in virtually every country in the world as well as under the international law of human rights.²⁹ The Universal Declaration of Human Rights, adopted by the United Nations in 1948, states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”³⁰ On December 10, 1984, the United Nations General Assembly unanimously adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention).³¹ The Convention went into effect on June 26, 1987.³²

The Convention defines “torture” as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.³³

The Convention requires all ratifying states to extradite or prosecute any individuals found in their country who have committed acts of torture, regardless of where the acts occurred.³⁴ In compliance with Articles 4 and 5 of the Convention, the United States enacted the Torture Statute into its criminal code in 1994.³⁵

The Torture Statute states that “[w]hoever outside the United States commits or attempts to commit torture shall be fined . . . or imprisoned not more than 20 years, or both, and if death results . . . shall be punished by death or imprisoned for any term of years or for life.”³⁶ Federal courts have jurisdiction if “the alleged offender is a national of the United States; or the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.”³⁷

HOW THE UNITED STATES ACHIEVED SUCCESS

The pre-trial litigation raised questions regarding the extraterritorial jurisdiction of U.S. courts and the constitutional authority of Congress to criminalize acts committed abroad as well as the rights of the victim and the accused.³⁸

Extraterritorial Reach – Is it Constitutional?

Chuckie Taylor was arrested when he entered the United States in March 2006.³⁹ He arrived at Miami International Airport from Trinidad just days after his father was captured and arrested in Africa.⁴⁰ By definition, under the Torture Act, he satisfied the jurisdictional component of the relevant statute twice over; it applies to U.S. citizens and all who are present in the United States.⁴¹ But is the statute in and of itself constitutional?

Chuckie's defense filed several motions arguing that the case should be dismissed on the grounds that the Torture Statute is unconstitutional. The defense challenged the U.S. government's authority to enact a statute that seeks to oversee "the internal and wholly domestic actions of a foreign government."⁴²

The court, however, held that the Torture Statute was a proper exercise of Congressional authority to implement binding treaty obligations and to define offenses against the law of nations.⁴³ In its holding the court declared, "over a century ago, the Supreme Court stated that 'if the thing made punishable is one which the United States are required by their international obligations to use due diligence to prevent, it is an offense against the law of nations.'"⁴⁴

Vienna Colucci, Director of the International Justice Program, Amnesty International USA, says of universal jurisdiction that "some people take it as wild justice, international principles applied domestically, but what are the rights of the victims?"⁴⁵ The Chuckie Taylor trial is "enforcing international laws domestically on behalf of the international community."⁴⁶ According to Colucci, "the torturer is the modern day pirate – it is in everybody's interests [to capture and prosecute them]."⁴⁷

Victims Protection and Rights

One of the major concerns raised by Chuckie's case was the protection of rights, for both the victims and the accused. According to Theresa Harris, Deputy Director of the World Organization for Human Rights USA, "getting enough evidence to convince a jury that the events occurred beyond a reasonable doubt is the biggest obstacle. Witnesses are afraid for their lives and don't want to talk to anyone, especially foreign government officials."⁴⁸

Pamela Merchant, Executive Director of The Center for Justice & Accountability, says, "the biggest obstacle is getting people to come forward and testify and the challenge for our government is to protect the victims and witnesses."⁴⁹ These people are not guaranteed permanent residence in the United States, nor can they be in the witness protection program.⁵⁰ Finding translators has also been a big issue because of the dangers and threats to those that help bring the torturers to justice.⁵¹ Measures must be taken to protect the physical and mental well-being of these individuals.⁵²

A former prisoner, Rufus Kpadeh testified, "I want the world to know what happened to me so it will not happen again in the future," as he showed jurors scars on his arms from molten plastic which he said was dripped on him.⁵³

However, at the same time the rights of the accused cannot be compromised. Whether before international or national courts, it is critical that these trials abide by the national and international standards of fairness.⁵⁴

A LOOK TOWARD THE FUTURE

Until recently, torture was the only serious crime in which neither the accused nor the victim had to be an American citizen in order to be prosecuted in U.S. courts.⁵⁵ In December, 2007, the Genocide Accountability Act made it a federal crime for anyone in the United States or for any American citizen to commit genocide anywhere.⁵⁶ Similar legislation on recruitment of child soldiers was signed into law on October 3, 2008.⁵⁷

According to Elise Keppler, Senior Counsel for Human Rights Watch's International Justice Program, "prosecutions for human rights violations committed abroad can play a vital role in ensuring perpetrators of the worst crimes are held to account. [The] verdict is a signal to torturers around the world to beware."⁵⁸

One of Liberia's leading human rights activists, Aloysius Toe, Executive Director at the Foundation for Human Rights and Democracy, says, "it is a real triumph for justice and a triumph for addressing impunity in Liberia. This is the first time someone has been tried and convicted for crimes under international law committed in Liberia. It is truly exciting."⁵⁹

What impact will the Chuckie Taylor trial have on the future? We do not yet know the effects, however, the question that remains is, why are so many suspected human rights abusers finding a safe haven in the United States in the first place.⁶⁰

NOTES

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- 2 The Center for Justice & Accountability, *Testimony of Pamela Merchant*, June 24, 2008, available at http://www.cja.org/projects/policy/senate_testimony_jun08.shtml (last visited Oct. 30, 2008).
- 3 See generally, William J. Aceves, *United States of America: A Safe Haven for Torturers* at 4, Amnesty International USA, available at www.amnestyusa.org/stoptorture/safehaven.pdf (last visited Oct. 30, 2008).
- 4 U.S. Dep't of Health and Human Services, *supra* note 1.
- 5 Aceves, *supra* note 3.
- 6 *Id.* at 5.
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- 20 *Id.*
- 21 *Id.*
- 22 *Id.*
- 23 *Id.*
- 24 *Id.*
- 25 *Id.*
- 26 Dep't of Justice, *supra* note 7.
- 27 Human Rights Watch, *US: First Trial for Overseas Torture*, May 31, 2007, available at http://hrw.org/english/docs/2008/09/23/usdom19873_txt.htm (last visited Oct. 15, 2008).
- 28 Associated Press, *Boston-born Charles Taylor Jr.'s Torture Trial Set to Start*, Sept. 20, 2008, available at <http://www.bostonherald.com/news/national/south/view.bg?articleid=1120228> (last visited Oct. 31, 2008).
- 29 See generally, Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and the Geneva Conventions.
- 30 Universal Decl. of Human Rights, Dec. 10, 1948, U.N. Doc. A/810, art. 5

- 31 G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51 at 197, U.N. Doc. A/RES/39/46, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (Dec. 10, 1984) [hereinafter "Convention"].
- 32 *Id.*
- 33 *See* Convention, Article 1(1).
- 34 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter "Torture Convention"].
- 35 *See* Convention, Article 4 and 5; USC §2340A.
- 36 USC §2340A
- 37 *Id.*
- 38 USC, *supra* note 36.
- 39 *Id.*
- 40 Human Rights Watch, *supra* note 27.
- 41 *Id.*
- 42 *See*, Defendant's Motion to Dismiss The Indictment And Memorandum Of Law In Support Thereof, Based On The Unconstitutionality Of 18 U.S.C. 2340A, Both On Its Face And As Applied To The Allegations Of The Indictment, Belfast (S.D. Fla., filed Mar. 2, 2007) (No. 38-1), 1.
- 43 *Id.*
- 44 *Id.* at 17.
- 45 Telephone Interview with Vienna Colucci, Director of International Justice Program at Amnesty International USA (Sept. 29, 2008).
- 46 *Id.*
- 47 *Id.*
- 48 Telephone Interview with Theresa Harris, Deputy Director of the World Organization for Human Rights USA (Sept. 24, 2008).
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- 57 *Id.*
- 58 *Id.*
- 59 Email from Tania Bernath, Liberia and Sierra Leone Researcher, Amnesty International, to Aloysius Toe, Executive Director, Foundation for Human Rights and Democracy (Oct. 31, 2008, 02:01 PM).
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