

## Critical Analysis of decisions of International criminal tribunal: The case Trial and conviction of Charles Taylor

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### **Abstract**

*This article provides analysis of international criminal tribunal's decision taking Charles Taylor's specifically. The first paper provides bird's eye view on the background on the Sierra Leone armed conflict and Charles Taylor's involvement in fueling the conflict, establishment of the Special Court for Sierra Leone. Besides, this part explores jurisdictional issues and rule of procedures employed by the special court. Part two examines the trial itself, encompassing issue related to indictment and count of crime against the accused, preliminary objection and the ruling of the court. The special court has based its ruling based on well founded ground. Hence, our term paper will try to address point such as the ruling the court on the objections. This part has also allotted a portion to deal the finding of the court on different points with out over looking verdict and sentencing of the court. The last part examines the trial's impact and major short coming of Taylor trial. The trial has contributed a lot for the development of international justice system, including the court's efforts to make its work accessible to communities most affected by the crimes, ending impunity for gross violations human right and public awareness to the victims. There has been also some positive development legacy for Sierra Leon legal system as whole. This part ends after exploring major short coming of Taylor trial and that will be the end our discussion.*

**Key words:** Conviction, Conflict, Trial

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## 1.1 *Brief Historical Account of the Conflict*

Sierra Leone is a small West African Nation that occupied 17, 740 square kilometers b/n Guinea and Liberia. Although no census has been conducted recently, the population is a proximally 5 million with an under -five mortality rate of 284 per 1,000 and a life expectance of merely 34 years<sup>2</sup>. The country has exceptionally rich diamond mines in the eastern district of kono, Near the Liberian boarder. The Ethnic groups are descendants of the freed slaves the kirios (10%) based largely in Freetown, the temne (30%) based mostly in the North and the Mende (30%) based popularly in the south.<sup>3</sup> The country is predominantly Muslim but there are also some Christians and traditional religious belief. The territory was held as a British colony until 1961, then independence was declared and power was transferred to the Sierra Leone people. <sup>4</sup>

From 1971 to 1985, under the rule of president siaka Stevens, Sierra Leone Transformed from the relatively stable county which some referred to as the “Athens of west Africa”, in to a one party state of endemic of corruption.<sup>5</sup> During the 1980’s an increase number of reform oriented student at fourala bay college (university of sierra Leone) joined Underground networks aimed at challenging comp which aimed to overthrow existing regimes in West Africa. There was a speculation that such complain supported by former Libyan president Gadafi with the view to expand his power to West Africans region.

On March 23, 1991, about 100 fighters calling themselves the revolutionary united front (RUF) cross the border from Liberia in to Sierra Leone.<sup>6</sup>It was headed by Foday sankoh allegedly acted in concert with Charles Taylor, then war lord and later president of Liberia. There is a suggestion that Taylor backed the RUF financially to gain access to Sierra Leone’s Diamond reserves and destabilized the country.

The RUF’s populist pitch failed to generate support, probably because of its horrific campaign of terror, which was characterized by systematic violence against civilian and forced recruitment

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<sup>2</sup> International center for transitional justice: the special court of sierra Leone under scrutiny:T. perrielo and m.wierda ,march 2006 p.4

<sup>3</sup> Id.at p.5

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

for combatants. For the next decade, Sierra Leone was split in to various faction alignments, all of which engaged in systematic war crimes.<sup>7</sup> Within this the fighting group and the government of the country experienced the first multiparty election in 1996, the then president Ahmed Tajan kabbah sign with RUF in Abidjan peace accord.<sup>8</sup> However, violence escalated almost immediately and within a year the peace has collapsed completely.

In May 1997, kabbah was overthrown in an exceptionally violent coup by breakaway army officers who freed Corporal Johnny paut koroma (in prison for the attempt of court) installed him as a new leader, and made him recently formed armed force revaluation council (AFRC) leader. The council has close r/ship with the RUF and once the kormas act was to invite the RUF to come to Freetown and join his government. Since the new government is unpopular and unaccepted by the population and international community an attempt made to restore kabbah's government in the western area by the combination of Nigerian led ECOMOG troops and civilian militias.

The government formalized the citizen's militias, based loosely on traditionally hunting society in to the civilian defense force (CDF) which was put under the charge of Sam Hinga Norman<sup>9</sup> which the CDF committed fewer atrocities than the RUF.

However, by spring of 2000, the united nation mission in sierra Leone (UNAMSIL) has been established, and it was to become the longest peacekeeping force in the world, with 17, 000 personnel at its height and an actual budget proximately US 700million per year. The mandate was disarmament, demobilization and reintegration. With having such role on one side four month later, the country witnessed peaceful and relatively fair elections in which the kabbah's SLPP captured 70% of the vote and which the APC won 20%<sup>10</sup>.

While these developments raised hopes for lasting peace, security expends in the region noted that the root causes of the conflict remained. Charles Taylor remains power in Liberia with the same incentives to launch proxy wars, despite being hampered by international sanction and an internal war.

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<sup>7</sup> Id at page 6

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Ibid

After the official end of the civil war in 1996, Taylor runs for president in the 1999 general election. He famously campaigned on the slogan “he kill my man, he killed my pa, but i will vote for him.”<sup>11</sup> The election was overseen by the UN peace keeping mission, ‘United nation observer mission in Liberia along with the contingent from the economic community of west African state. Taylor won the election in a landslide garnering 75% of the vote, Taylor’s competitor; Ellon Jhonson sirleaf collected only 10% of the vote<sup>12</sup>.

Numerous allegations were leveled at Taylor during his presidency particularly regarding his involvement in the Sierra Leone civil war. He was accused of aiding the rebel revolutionary united front through weapon sales in exchange for blood diamonds.<sup>13</sup> Due to UN embargo against armed sales to Liberia at that time, those weapons were largely purchased on the black market. Furthermore, he changed with aiding and abetting RUF atrocities against civilian that many thousands dead or mutilated with unknown number of people abducted and tortured. Moreover, he was accused of assisting RUF in the recruitment of child soldiers.<sup>14</sup> In Addition to aiding the RUF in these acts, Taylor personally directed RUF operations in Sierra Leone. The act of resignation, exile, disappearance and Arrest, and finally trial and conviction has been done subsequently.

From 1989 to 1999 Taylor led a rebel group, the national patriotic front of Liberia (NPEL) which sought to unseat Liberia’s then president, Samuel Doe.<sup>15</sup> Forces under the Taylors command were implicated in widespread abuses committed against civilian including summary executions, numerous massacres, systematic rape, mutilation, torture, large scale forced conscription and the use of child soldiers. Even during his presidency lasted until 2003, was characterized by the significant human right violations in Liberia, including repressing civil society, journalists and any one deemed oppose his government.

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<sup>11</sup> From Wikipedi:The free encyclopedia: Special Court for Sierra Leone at page 3

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> human right watch “Even a ‘Big Man’ Must Face Justice” Lessons from the Trial of Charles Taylor July 2012 at page 12

## 1.2 *Establishment of the Special court for Sierra Leone*

### *A. Background*

On June 12, 2000 the president of Sierra Leone asked the United Nations Security Council to help his country establish a “strong and creditable court that will meet the objective of bringing justice and ensuring last peace<sup>16</sup>in Sierra Leone and West Africa region. Two months later the Security Council passed a resolution No. 1315 requesting the secretary- general to “negotiate an agreement with the government of sierra Leone to create an independent court.”The government and the united nation sign a special court agreement in January 2002, it was ratified by the parliament of Sierra Leone in March and the court began operations in July. The special court is therefore a treaty based institution and not a subsidiary organ of the United Nations securing council as is the tribunal for Yugoslavia and Rwanda.<sup>17</sup>

The organization of the court is the familiar three part structure of courts, prosecutor and registry, English is the official language of the court, but the court provides an interpreter for any suspect or witness who cannot speak or understand the language. The court regularly provides public service announcement in krio, the most common language in Sierra Leone.

Although the special court for Sierra Leone (SCSL) was created by drawing on the model of ICTY and ICTR, it has a number of very special features. Some of these special features are the following: <sup>18</sup>

1. As the court’s website notes, the sierra Leone court face unique difficulties in being the first tribunal for the prosecution of violations of international human rights law to be set up in the theatre where the conflict occurred. The location in the country has regaled the allocation of significant funds to security related matters.
2. The court blended Sierra Leone’s national law with international law for its bases of jurisprudence, not using the mix of international practice that characterized ICTY and ICTR.

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<sup>16</sup> Temporary Courts, Permanent Records By Trudy Huskamp Peterson at page 35

<sup>17</sup> Ibid

<sup>18</sup> <http://sc-sl.org/scsi-statute.html>, geoffery Roberson ”powerful enough to bring justice: setting up the special court for sierra Leone” un chronicle no 42003 p.74-75

3. Because the court was not set up under the Security Council chapter VII powers, the court has no legal basis to ask other, states to enforce its indictments and arrest warrants.
4. The national truth commission was operating at the same time as the court was undertaking prosecutions, and both bodies were taking statement hold hearing and conduct public opinion campaigns. To try to reduce the public's confusion about the respective roles of the court and the commission the court has actively produced public service educational audio and video production and summary of the trial proceedings.

Because of no suitable building for a court existed, the registers constructed the court offices and the detention facility. And finally because of the extreme difficulty of obtaining adequate defense counsels for the accused the court establish an "office of the principal defender" operating with the structure of the court itself. All of these are situations that the two earlier tribunals did not confront.

As of July 2005 thirteen people had been indicated, of whom two are dead and one is at large. Nine of the persons indicated and in custody are being tried in the three groups, while Charles Taylor is being tried separately in The Hague.

### ***B. Jurisdiction***

The agreement on the special court for Sierra Leone as concluded by Sierra Leone government and the UN was formally signed by both parties at a ceremony in Freetown on January 16, 2002. The most notable feature of the court is reference in its statute to investigating and trying only *those who bear the greatest responsibly* which has become a catchphrase of the public discourse in Sierra Leone.

As mentioned above, the secretariat initially wanted the court to have a jurisdiction to prosecute those most responsible, but the Security Council wanted the limit the courts scope and demanded a change.<sup>19</sup>

The aim was to focus the prosecution on key players, rather than lesser actors. This phrase has not been more clearly defined and opens the door to considerable prosecutorial direction. Under

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<sup>19</sup> Supra note 1 at page 15

Article 6(2), No official position, including that of head of state, exempts a person from criminal responsibility or punishment.

The statute of the special court for Sierra Leone contains 25 Articles which is established by the agreement b/n the UN and government of Sierra Leone pursuant to the Security Council resolution 1315/2000/ of 14 august 2000. Under Art (1) of the statute the special court has a power to prosecute persons who bears the greatest responsibility of or serious violation of international humanitarian law and sierra Leone law committed in the territory of sierra Leone since 30 November 1996 including those leaders who, in committing such crimes have threatened the establishment of and the implementation of peace process in sierra Leone.

The special court has jurisdiction over crimes against humanity,<sup>20</sup> series violations of Art 3 common to the Geneva conventions,<sup>21</sup> intentional direction of attacks against humanitarian or peace keeping personnel, conscription of children in to armed force or groups and a few selected of sierra Leone law relating with the abuse of girls and arson. The report of secretary general explains that genocide was not included because of lack of evidence that killing was perpetrated in Sierra Leone against on an identified national, ethnic, racial or religious group with intent to annihilate the group of such. Grave breach of the Geneva convention of 1948 is also excluded, largely because of the conflict was seen as domestic and grave breach apply only to international conflicts. Intentional direction of attacks against humanitarian or peace keeping personnel,<sup>22</sup> conscription of children in to armed force or groups and a few selected of sierra Leone law relating with the abuse of girls and arson.<sup>23</sup> The report of secretary general explains that genocide was not included because of lack of evidence that killing was perpetrated in Sierra Leone against on an identified national, ethnic, racial or religious group with intent to annihilate the group of such.<sup>24</sup> Grave breach of the Geneva convention of 1948 is also excluded, largely because of the conflict was seen as domestic and grave breach apply only to international conflicts.

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<sup>20</sup> The report of secretary general on the establishment of special court of sierra Leone un.doc.s/2000/915 oct.4/2000 at p.3

<sup>21</sup> Daniel J. Macaluso, "Absolute and Free Pardon: the Effect of the Amnesty Provision in the Lomé Peace Agreement on the Jurisdiction of the Special Court for Sierra Leone," *Brook. J. Int'l L.* 347, 2001–2002, at 362.

<sup>22</sup> *Id.* at p.363-366

<sup>23</sup> Special court statute art.1 and agreement art. 1

<sup>24</sup> Micaela Frulli, "The Special Court for Sierra Leone: Some Preliminary Comments," *EJIL*, Vol.11, 2000, at 859

The inclusion of Domestic crimes in the statute has been attributed to various factors in part it is an attempt to legitimize and revitalize the existing domestic legal system, which many seen as complex and inaccessible.<sup>25</sup> It has also been attributed to gaps in international criminal law regarding arson and crime against girls and an attempt to ground the court in the specific circumstance of Sierra Leone conflict<sup>26</sup> some suggested that the inclusion of domestic crimes was a diplomatic gesture to the Sierra Leone legal profession.

The territorial jurisdiction of the special court is limited to trying “crimes committed in the territory of sierra Leone.<sup>27</sup> But this has been interpreted to include acts planned or instigated outside Sierra Leone the effect of which left within the territorial jurisdiction.

Time wise jurisdiction the special court is limited to crime committed after 30 Noveber 1996, the date of the Abidjan peace accord. Even though the conflict began in 1991, some argue that it would be difficult for prosecution to produce solid evidence for decade old crimes and impossible for the court to complete its work in the schedule of the court. For the reason to lack to get evidence was that most of the crime was committed in the province and the conflict reached in Freetown in 1997.

The temporary jurisdiction includes periods of time covered by the amnesty of the Lome peace agreement, namely crime committed prior to July 1999. moreover there an express provision in the statute that asserting that amnesty not be a bar to prosecution with respect to international crime.<sup>28</sup> Here the domestic law provides amnesty in the case related with Lome agreement, but up to the prosecutor to choice the domestic or the special provision to prosecute.

The special court prosecute “any person who planned, instigate, ordered, committed or otherwise aided and abetted in the planning ,preparation, or the execution of the intentional crime

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<sup>25</sup> Supra note 22 art.6(1)

<sup>26</sup> Id...art 14

<sup>27</sup> Ibid

<sup>28</sup> Agreement on the establishment of special court art 2(1)

mentioned above.<sup>29</sup> Aiding and abetting in relation to financiers including diamond or arms dealers could face inducements under the special court. For example, the inducement against Charles Taylor involved charge including profiting from the war and allegations of command responsibility. However no one has been indicted only for financing the war.

### ***1.3 The Rule of Procedure and judges of the special court***

The applicable rules of procedure and evidence are based on those of the ICTR, with amendments that were over the judges subsequent plenary.<sup>30</sup> The statute specified that the judges may be guided in amendments of Sierra Leone criminal procedure acts of 1965<sup>31</sup>. But most of the amendments seem to have been motivated by a desire to expedite the procedure of ad hoc tribunals rather than being on domestic law. Since most of the judges were practiced the common law they cut out the civil law oriented practice. For instance, reliance on oral evidence than written evidence was prevalent.

The special court has originally composed of two chambers: trial chamber of three judges and an appellate chamber of five judges. A second trial chamber has been now established at the request of the president in accordance with the statute.<sup>32</sup> The trial chamber each composed two judges the trial chamber each composed two judges appointed by the secretary general and one is by government of Sierra Leone. The appellate chamber contains three judges appointed by secretary general and two of them by government of Sierra Leone. The judge hails from Sirilanka, UK, Nigeria, Cameron, Australia, Canada, Uganda, Samoa, northern Ireland and sierra Leone. the national and international appointee were hired at the level of under the secretary general of un for three years term and are provided with transportation and close protection officers.

Generally the SCSL had the jurisdiction to try any person who committed crime against humanity that includes murder, exterminate enslavement, deportation, imprisonment, torture,

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<sup>29</sup> Id...art 2(2)(a) ,2(2)(b)

<sup>30</sup>Supra note 24 art.14

<sup>31</sup> Ibid

<sup>32</sup> Supra note 27

rape, sexual slavery, forced prostitution or any other form of sexual violence, persecution on the basis of politics, race, ethnic group or religion and other in human acts. In addition the court had a jurisdiction to prosecute those who violate the Geneva Convention of 1949 as well as Sierra Leone's prevention of cruelty to children act 1996 for the abuse of girls and malicious damage act 1861. However the court does not have a jurisdiction over those under the age of 15. Further, it was superior to any court of Sierra Leone and could take precedence in case of possible conflicting jurisdiction. Previous amnesties contrary to the remit of the court would be invalid.

## ***1. The Trial of Charles Taylor***

### ***2.1 Indictments and counts of crime against Charles Taylor***

Human Rights Watch believes that having charges that are representative, but not exhaustive, of the most serious crimes committed should be a fundamental objective of a prosecutor in trials of the highest-level leaders. This reflects the balancing of two central goals: first, providing a thorough account of an individual's alleged role in the crimes; and second, encouraging a trial that can be concluded in a reasonable time period, especially taking into account the reality of limited resources. At the same time, indictments should be specific enough to provide sufficient notice of the nature and cause of the charges to protect the accused's fundamental rights.<sup>33</sup>

The Taylor prosecution employed a different approach called "notice pleading"—a short and plain statement of the charges to give the defendant notice, while omitting substantial detail.<sup>34</sup>

The indictment, and accompanying case summary, provides more general geographic areas and time periods of crimes rather than specific crime scenes and identification of individual victims.

The Taylor indictment also includes a limited list of charges—11 in all.<sup>35</sup>

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<sup>33</sup> The Statute of the SCSL enshrines the accused's fundamental right "to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her." SCSL Statute, art. 17(4)(a). See also International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 14.

<sup>34</sup> The SCSL Rules require that the indictment be accompanied by a case summary that should set forth allegations that, "if proven, amount to the crime or crimes as particularised in the indictment." Rules of Procedure and Evidence of the Special Court for Sierra Leone (SCSL Rules), amended May 28, 2010, Rule 47(E)(ii).

<sup>35</sup> Prosecutor v. Charles Ghankay Taylor, Amended Indictment; Prosecutor v. Charles Ghankay Taylor, Second Amended Indictment; Human Rights Watch email correspondence with Office of the Prosecutor former staff, New York, March 26, 2012.

However, defense counsel and some observers have questioned the adequacy of the notice provided in the indictment and accompanying case summary, arguing the lack of specificity in these materials meant that the indictment did not give the accused adequate notice.

The sufficiency of Taylor's indictment was affirmed by a designated judge as required by the Special Court Rules, and by the Trial and Appeals Chambers in more limited decisions on aspects of the pleadings. Yet jurisprudence continues to evolve regarding the requirements for indictments before international and hybrid tribunals. Notably, the ad hoc tribunals have over time required greater specificity in their indictments in order to ensure adequate notice to the accused.<sup>36</sup>

The Accused is charged with 11 Counts under the Indictment. Five of these counts charge the Accused with crimes against humanity punishable under Article 2 of the Statute, in particular: murder (Count 2), rape (Count 4), sexual slavery (Count 5), other inhumane acts (Count 8) and enslavement (Count 10). Five additional counts charge the Accused with violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of the Statute, in particular: acts of terrorism (Count 1), violence to life, health and physical or mental well-being of persons, in particular murder (Count 3); outrages upon personal dignity (Count 6); violence to life, health and physical or mental well-being of persons, in particular cruel treatment (Count 7); and pillage (Count 11). The remaining count charges the Accused with conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 9), a serious violation of international humanitarian law punishable under Article 4 of the Statute.<sup>37</sup>

The Indictment charges that the Accused is individually criminally responsible, under Article 6(1) and 6(3) of the Statute, for the crimes referred to above. 11.<sup>38</sup>

The Accused pleaded not guilty to each of the counts charged in the Indictment.

## ***2.2 The preliminary objections and the ruling of the court***

The preliminary objection raised by Charles Taylor revolves around two points. It is on the issues of state sovereign equality and personal immunity of Charles Taylor as an incumbent Head of State.

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<sup>36</sup> Human Rights Watch interview with former SCSL defense counsel, Pittsburgh, April 21, 2012; Human Rights Watch telephone interview with former SCSL staff, May 23, 2012.

<sup>37</sup> prosecutor v. Charles Ghankay Taylor, Special court For Sierra Leone, SCSL-03-1-T, "Judgment Summery"

<sup>38</sup> Ibid

## **A. On the point of State sovereignty**

In respect of the trial of Taylor, the defense maintained that: (a) [T]he principle of sovereign equality prohibits one state from exercising its authority on the territory of another. (b) Exceptionally, a state may prosecute acts committed on the territory of another state by a foreigner but only where the perpetrator is present on the territory of the prosecuting state. (c) The Special Court's attempt to serve the indictment and arrest warrant on Charles Taylor in Ghana was a violation of the principle of sovereign equality.<sup>39</sup>

The above arguments were countered by the prosecution side that: Charles Taylor has been indicted in accordance with article 1(1) of the Special Court Statute, for crimes committed in the territory of Sierra Leone and not the territory of another state. The transmission of documents to Ghanaian authorities could not violate the sovereignty of Ghana.<sup>40</sup>

The issue of sovereignty of state, the court found that the issue should properly be raised by Ghana rather than the Applicant and the forum which Ghana has for raising the issue, if it so decides, is not the Special Court which is a court of criminal proceedings against individuals. While a successful claim of sovereign immunity may lead to a claim by Liberia of a violation of its sovereignty, as the immunity attaches to the state concerned, it cannot attach to a third state whose only role was to receive the warrant. However, Liberia is not before this court and in any event we have held that this court is an international court rather than the court of another sovereign state.<sup>41</sup>

## **B. On the point of Personal Immunity**

On the question of a Head of state immunity from prosecution, the defense in the Taylor's trial argued that: "As an incumbent Head of State at the time of his indictment, Charles Taylor enjoyed absolute immunity from criminal prosecution... And that the indictment against Charles Taylor was invalid due to his personal immunity from criminal prosecution."<sup>42</sup>

The Special Court for Sierra Leone held that "since the Applicant [Charles Taylor] is subject of criminal proceedings before this court, processes issued in the course of, or for the purpose of, such proceedings against the Applicant cannot be vitiated by a claim of personal immunity". It

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<sup>39</sup> *Prosecutor v Charles Taylor, Decision on Immunity from Jurisdiction, op.cit*, paras 7 and 8, citing the *Lotus Case*, PCIJ; Series A, No.10 (1970).

<sup>40</sup> *Prosecutor v Charles Taylor, ibid*, para 10.

<sup>41</sup> *Ibid*

<sup>42</sup> *Prosecutor v Charles Taylor, op cit*, paras 6(a) and (d).

added that as Taylor had ceased to be a head of state the personal immunity had also ceased to attach to him.<sup>43</sup>

The Special Court reasoned in line with its Statute which states that: The official position of any accused persons, whether as Head of State or Government or as a responsible Government official, shall not relieve such a person of criminal responsibility nor mitigate punishment.<sup>44</sup>

Then, based on the points raised above by the court, the court have given this motion should be dismissed and rejected the preliminary objection raised by the defendant. Then order the prosecution to proceed with the case

### ***2.3 Evidence for the Accusation***

During Taylor's trial the Trial Chamber heard 115 witnesses, admitted 1,522 exhibits into evidence, and issued 281 written decisions.<sup>45</sup> By the close of the case, there were almost 50,000 pages of trial records.<sup>46</sup> The court sat for 420 days over the course of 3 years and 10 months from the prosecutor's opening statement to the closing arguments on final trial briefs.<sup>47</sup>

The prosecution's case began on June 4, 2007, closed on February 27, 2009, and reopened briefly in August 2010. In total, the prosecution presented testimony from 94 witnesses who fell into three categories: 3 experts, 59 crime-base witnesses (individuals who testified to the underlying crimes committed), and 32 linkage witnesses (individuals who testified to links between Taylor and the underlying crimes). The prosecution relied heavily on "insider" witnesses—themselves often suspected of, or having admitted to, committing serious crimes—in its attempt to adequately link Taylor to the perpetration of crimes.

The defense's case began on July 13, 2009, and closed on November 12, 2010.<sup>48</sup> Twenty-one witnesses testified for the defense, including Taylor and former leaders and fighters from the RUF and NPFL. Their testimony challenged the allegations that Taylor controlled, supported, or assisted the RUF or RUF/AFRC alliance. Taylor's examination-in-chief lasted approximately 13 weeks, an exceptionally long testimony by an accused before an international or hybrid trial.

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<sup>43</sup> Ibid, para 58 & 59

<sup>44</sup> Art 6(2) of the Statute of the Special Court for Sierra Leone.

<sup>45</sup> The Prosecutor v. Charles Ghankay Taylor, Judgment Summary, para. 8.

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Ibid, para 6

Taylor's cross-examination lasted almost nine weeks, resulting in a total of approximately six months on the stand.

## **2.4 Findings of the Court**

The Trial Chamber has examined the evidence presented in relation to the crimes that members of the RUF, AFRC, the AFRC/RUF Junta or alliance, and/or Liberian fighters allegedly committed in Sierra Leone between 30 November 1996 and about 18 January 2002. The Trial Chamber finds that the crimes charged in Counts 1 to 11 were committed.<sup>49</sup>

The prosecutor brought a claim based on article 6(1) and 6(3) of the statutes of the special court for Sierra Leone.<sup>50</sup> But the court finds the defendant personally criminally responsible only under article 6(1) for aiding and abetting the perpetrators.<sup>51</sup> The Trial Chamber has found that the crimes charged under Counts 1 to 11 of the Indictment were committed and now turns to the responsibility of the Accused for these crimes.

### **A. Responsibility Pursuant to Article 6(3) of the Statute**

The Indictment charges that the Accused is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in the Indictment by virtue of holding positions of superior responsibility and exercising command and control over subordinate members of the RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters. It is alleged that the Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and the Accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.<sup>52</sup>

The Accused denies criminal responsibility based on a superior/subordinate relationship with the perpetrators of the crimes.<sup>53</sup>

Article 6(3) holds a superior criminally responsible if the superior knew or had reason to know that his or her subordinate was about to commit crimes prohibited by the Statute or had done so, and the superior failed to take the necessary and reasonable measures to prevent or punish the

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<sup>49</sup> Ibid, para 15

<sup>50</sup> Ibid, para, 133

<sup>51</sup> Ibid, para. 149

<sup>52</sup> Ibid. para. 134

<sup>53</sup> Ibid, para. 135

perpetrators. It must thus be demonstrated that the superior had effective “command and control” over his subordinates – i.e. the material ability to prevent or punish the commission of the offence.<sup>54</sup>

The Trial Chamber is of the view that the Accused had substantial influence over the leadership of the RUF, and to a lesser extent that of the AFRC. However, that substantial influence over the conduct of others fell short of “effective command and control” as demonstrated by the evidence.<sup>55</sup>

The Trial Chamber finds that the Accused gave guidance, advice and direction to Bockarie and to his successor, Issa Sesay, but that the evidence does not establish that either of them was a subordinate of the Accused, nor that the Accused had effective command and control over the RUF during their respective tenures. Similarly, the Trial Chamber finds that the Accused gave guidance, advice and direction to Johnny Paul Koroma when he was leader of the AFRC/RUF Junta, but the evidence does not establish that he was a subordinate of the Accused, nor that the Accused had effective command and control over the AFRC/RUF Junta.<sup>56</sup>

With regard to Liberian fighters who were found to have participated in the commission of crimes, the Trial Chamber finds that even if they were sent to Sierra Leone by the Accused, there is insufficient evidence to find beyond a reasonable doubt that they remained under the effective command and control of the Accused once in Sierra Leone.<sup>57</sup>

The Trial Chamber accordingly finds that the Prosecution failed to prove beyond reasonable doubt that the Accused is individually criminally responsible under Article 6(3) for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in the Indictment. <sup>58</sup>

### ***B. Responsibility under Article 6(1) for Aiding and Abetting***

The Indictment charges that the Accused by his acts or omission, is individually criminally responsible pursuant to Article 6.1 of the Statute for (inter alia) aiding and abetting the planning, preparation or execution of the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in the Indictment.<sup>59</sup>

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<sup>54</sup> Ibid, para. 136

<sup>55</sup> Ibid, para. 137

<sup>56</sup> Ibid, para. 139

<sup>57</sup> Ibid, para. 140

<sup>58</sup> Ibid, para. 141

<sup>59</sup> Ibid, para 145

The Prosecution submits that in providing practical assistance, encouragement, or moral support, the Accused acts had a substantial effect on the perpetration of the crimes charged in the Indictment, and that he had a clear intent to act in support of those crimes.<sup>60</sup>

The Defence denies that the Accused is responsible for aiding and abetting the commission of any of the crimes charged in the Indictment.<sup>61</sup>

“Aiding and abetting” requires that the accused gave practical assistance, encouragement, or moral support which had a substantial effect on the perpetration of a crime.<sup>62</sup>

The Trial Chamber finds beyond reasonable doubt that the Accused provided arms and ammunition, military personnel, operational support, moral support and ongoing guidance to the RUF, AFRC, AFRC/RUF Junta or alliance, and Liberian fighters for military operations during the Indictment period.<sup>63</sup>

Therefore the court decides that the Accused is personally responsible for the crimes with which he charged under article 6(1) of the statutes.

The essential mental element required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. In cases of specific intent crimes, such as acts of terrorism, the accused must also be aware of the specific intent of the perpetrator.<sup>64</sup>

As discussed earlier, the Trial Chamber is satisfied that as of August 1997, the Accused knew of the atrocities being committed against civilians in Sierra Leone by the RUF/AFRC forces and of their propensity to commit crimes. Notwithstanding such knowledge, the Accused continued to provide support to the RUF and RUF/AFRC forces during the period that crimes were being committed in Sierra Leone. The Trial Chamber therefore finds beyond reasonable doubt that the Accused knew that his support to the RUF/AFRC would provide practical assistance, encouragement or moral support to them in the commission of crimes during the course of their military operations in Sierra Leone.<sup>65</sup>

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<sup>60</sup> Ibid, para 146

<sup>61</sup> Ibid, para 147

<sup>62</sup> Ibid, para 148

<sup>63</sup> Ibid, para 149

<sup>64</sup> Ibid, para 166

<sup>65</sup> Ibid, para 167

### ***C. Conclusion***

For the foregoing reasons, the Trial Chamber finds beyond reasonable doubt that the Accused is criminally responsible pursuant to Article 6(1) of the Statute for aiding and abetting the commission of the crimes set forth in Counts 1 to 11 of the Indictment.<sup>66</sup>

### ***2.5 Verdict and Sentencing***

On April 26, 2012, Taylor was found guilty beyond a reasonable doubt on all 11 counts of the indictment on the theory that he aided and abetted the commission of the crimes and was therefore individually criminally responsible for them. He was also found guilty of planning attacks on the diamond-rich Kono district in eastern Sierra Leone and the town of Makeni, the economic center of northern Sierra Leone, in late 1998 and the invasion of Freetown in early 1999, during which war crimes and crimes against humanity were committed.

The judges found that the prosecution failed to prove beyond a reasonable doubt that Taylor was individually criminally responsible on the theory that he held positions of superior responsibility or exercised command and control over subordinate fighters, or on the theory that he participated in a joint criminal enterprise.

On May 18, the court released the full written judgment, totaling over 2,500 pages. On May 30, Taylor was sentenced to 50 years in prison. Both prosecution and defense indicated they plan to appeal.<sup>67</sup> Given the judgment's length and the complexity of the case, the court estimates the appeals process could take 15 months, with an appeal judgment expected in September 2013 at the earliest.<sup>68</sup>

## ***2. The Impacts and short coming of Charles Taylor Trial***

### ***2.1 The Impact of Charles Taylor's case***

Trials of high-level leaders for serious crimes are significant beyond events in the courtroom. The same goes to the proceeding of Special Court of Sierra which represents a milestone in the history of international criminal justice system in many aspects. For one thing, Taylor becomes

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<sup>66</sup> Ibid, para 168

<sup>67</sup> "Morris Anyah Named Lead Defence Counsel for Taylor Appeal," Special Court for Sierra Leone Office of the Principal Defender press release, May 4, 2012, <http://www.scsl.org/LinkClick.aspx?fileticket=d%2fs%2ba5HqB9Q%3d&tabid=53> (accessed May 17, 2012); "Sierra Leone: Taylor's Appeal Judgment Due Next Year," Heritage (Monrovia), June 13, 2012, <http://allafrica.com/stories/201206130287.html> (accessed June 14, 2012).

<sup>68</sup> <http://www.hrw.org/sites/default/file/reports/SeirraLeone0712ForUpload.pdf> ACCESED ON 10/30/2012

the first head of state to be convicted after the end of Second World War<sup>69</sup> and this sent enormously important message to the heads of state around the world. On the other hand, verdict of the special court has contributed significant role to the new development of international criminal justice system.

Above and beyond, Human right advocacy group take a lesson from Taylor's case and have called the African Government to arrest Sudan's president Omar Al-Bashir who is wanted by Internationals criminal.<sup>70</sup> It planted the idea that in the future, people like Bashir and Zimbabwe's Robert Mugabe could face a similar fate<sup>71</sup>.

In sum, the impacts of Taylor trial are too many to discuss exhaustively. However, the following are principal impacts of the trial:

**A. Ending impunity for gross violations human right:** Charles Taylor's sentence is a remarkable achievement for international justice system and all states to work towards ending impunity for gross violations of human rights. In this regarded, the trial of Charles Taylor highlights the fact that rule of law and justice will always prevail irrespective of the status that the accused had held. *This* had been affirmed by a numerous civil society leaders in Sierra Leone and Liberia. Sierra Leoneans and Liberians consistently told Human Rights Watch that Taylor's arrest and trial revealed the possibility for justice in West Africa. For decades, so-called "big men"—powerful individuals who either lead armed groups or wield significant political power—have been allowed to perpetrate abuses with seemingly no fear of being investigated or held accountable by a credible judicial body .Later on, Taylor's trial is a strong signal to others that impunity is no longer the rule. Hence, when Taylor surrendered to justice, People who did not think he could be caught, felt Taylor was not above the law.<sup>72</sup>

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<sup>69</sup> The report of Uganda coalition on international court, 2004 report.

<sup>70</sup> Ibid, p,2

<sup>71</sup> Omar al-Bashir is the president of Sudan and the subject of an ICC arrest warrant for genocide, war crimes, and crimes against humanity. Robert Mugabe is the president of Zimbabwe where widespread human rights violations by his administration have been documented

<sup>72</sup> Even a big man must face justice, human right watch report an interview with Tiawan Gongloe , January 10, 20120.

- B. Cooperation:** The surrender and trial of Taylor further reaffirms the commitment of the international community to end impunity and hold accountable those who commit atrocities and violate international humanitarian law and human rights; no matter how rich, powerful or feared they might be.
- C. Novel development in international justice system criminal justice system:** For the first time in international criminal law, forced marriage was recognized by the Appeals Chamber of the Special Court for Sierra Leone as a distinct crime against humanity. A report undertaken by Physicians for Human Rights (PHR) indicates that as many as 64,000 woman and girls experienced sexual violence during the conflict in Sierra Leone<sup>73</sup>. As part of this gender-based violence, women and girls were frequently abducted by rebels and assigned ‘husbands’ in an arrangement known as ‘bush marriage.’<sup>74</sup> Setting it apart from other offences such as sexual slavery, the court acknowledged the gravity of the suffering caused to women and young girls by giving it a definition which captures the complexity and entirety of the criminal conduct i.e. crime against humanity. Hence, the trial introduced novel concept that forced marriage qualify crime against humanity.
- D. It puts limitation of state sovereignty and personal immunity:** Besides, the trial sets and emphasizes the precedent that the defenses of state sovereignty and head of state immunity can no longer exonerate the former or incumbent head of state from being prosecuted for grave breaches of human rights and international humanitarian law. Article 6(2) of the court’s statute provides the fact that No official position, including that of head of state, exempts a person from criminal responsibility or punishment.
- E. Records of Public Information and Outreach:** In this regard, the Special Court of sierra Leon was the first tribunal to put in place a comprehensive Outreach program, to link to the people most affected by the crimes committed during the conflict .The SCSL has made a significant effort to reach the citizens of Sierra Leone through its information and public outreach program. In addition to the usual press releases, newsletters, and

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<sup>73</sup> . Physicians for Human Rights, *War-Related Sexual Violence in Sierra Leone, A Population Based Assessment* 8June 2002.

<sup>74</sup> JAMES M. CLARK ,Forced Marriage: the Evolution of a New International  
<http://www.abdn.ac.uk/law/aslr/Volume3/ASLR2011-2012Issue>, p,3

photo sessions, the court's public outreach section has produced extensive public service radio announcements and video productions. The section in particular conducted training sessions for members of the local justice system, the Republic of Sierra Leone Armed Forces, and the Sierra Leone Police to inform them about ways in which the operations of the court could benefit the local administration of justice.<sup>75</sup>

Hence, beyond prosecuting the perpetrator, the special court created comprehensive outreach program so that the general public and the victims built trust on the rule of law.

**F. Legacy:** there has been also some positive development on legacy. Unlike the ad hoc tribunals of the International Criminal Tribunal for Rwanda and the international criminal tribunal for Yugoslavia whose mandates did not conceive of their contributions towards a national reform agenda, the Special Court has the chance to make an impact on judicial and legal reform in Sierra Leone that goes beyond its efforts to combat impunity.<sup>76</sup> Therefore, another accomplishment of the Special Court is that it has taken steps to tackle the issue of its legacy, i.e. the question of what the Court should contribute to Sierra Leone and the region after it completes its mandate. This is a notable achievement and is a model for the other international criminal tribunals which have not yet started.

### ***3.2 Major Shortcomings of Charles Taylor Trial***

In spite of its merits and achievements, the Special Court has been the object of some criticism.

**Firstly**, Taylor's arrest and trial is a breach of the spirit and intent of the Comprehensive Peace Agreement of Liberia. It should be noted that on 11 August 2003, Taylor relinquished power and went into exile in Nigeria, after an immunity-from-prosecution deal had been arranged and secured by the African Union, ECOWAS, the UN, UK and the US governments. The way Charles Taylor was arrested is representative of international deception at the highest level, which sends a signal that could make it difficult for national leaders in the future who will find themselves in the position as former President Taylor was, to accord international peace brokers the kind of co-operation needed to end conflicts. If Taylor knew of this trade, that the Nigerian

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<sup>76</sup> Interim report on the special court for Sierra Leon, war crime study center of California, Berkeley(April 2005), p,34

President, Olusegun Obasanjo would turn against him and dishonor his promise, he would not have resigned and accepted Obasanjo's offer of asylum.

**Secondly**, Charles Taylor charge lacks the Specificity- An indictment should be specific enough to allow the accused to defend him adequately. This legal principle exists in order to ensure that those falling under prohibitions of law are aware of exactly which behaviors are allowed and which are not. It requires criminal charge to be precise so as to make clear the elements of the actus reus and requisite mens rea of the crime. Coming to the case of Taylor, the accused faced difficulty in defending himself due to long list of count of crime and pieces of evidences. There were about 115 witnesses and more than 1,522, pieces of documentary evidence. All this made the charge complex and lengthy.

**Thirdly**, the distance between victims and The Hague that Charles Taylor was tried created many problems particularly when compared to the Special Court's of other trials, which were conducted in Freetown.<sup>77</sup> The transfer of the trial deprives the Special Court of one of its main features: its location in the territory where the crimes were perpetrated. The change of venue created a complicated—and expensive—logistical situation, requiring the establishment of a second Special Court office in The Hague, the redeployment of staff, the relocation of the Trial Chamber, the transfer of witnesses, and the establishment of an enhanced Special Court.

The trial's distance from West Africa also appeared to negatively impact the extent of domestic media coverage. A Sierra Leonean staff member at the court suggested that the European location gave affected communities the impression that "the Taylor trial was for the world, while the other the special court if Sierra Leon (SCSL) trials were for Sierra Leoneans."<sup>78</sup>

**Fourthly**, the Special Court could only hear cases involving crimes in Sierra Leone. From 1989 to 1999, however, Taylor led a rebel group, the national patriotic front of Liberia (NPEL) which sought to unseat Liberia's then president, Samuel Doe<sup>79</sup>. The forces under the Taylors command

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<sup>77</sup> Human right watch report ,ibid ,p 32

<sup>78</sup> Ibid

<sup>79</sup> Supra note at page, 4

were implicated in widespread abuses committed against civilian including summary executions, numerous massacres, systematic rape, mutilation, torture, large scale forced conscription and the use of child soldiers. Even during his presidency lasted until 2003, was characterized by the significant human right violations in Liberia, including repressing civil society, journalists and any one deemed oppose his government. Therefore, many Liberians asked the question when Liberia is going to get a Special Court on Charles Taylor.<sup>80</sup>

**Fifthly**, a reduced Sierra Leonean role has meant that the Court is perceived predominantly as international. This has posed questions regarding its local relevance and leaves the Court in danger of being perceived as a “spaceship phenomenon”; i.e., a Court that is perceived as an anomaly but not as a feature of permanent change on the domestic level. All these factors have implications for longer-term restoration of the rule of law, and establishment of trust in judicial mechanisms in Sierra Leone.<sup>81</sup>

**Sixthly**, the system of voluntary contributions for funding has placed the Special Court in a difficult position for most of its life. Its funding is based on voluntary contributions of States rather than on United Nations assessed contribution, which results in uncertainty in the Court’s budget and financial life. Unlike its predecessor, international criminal tribunal for Rwanda and Yugoslavia, the expense in special court of Sierra Leon were dispensed on voluntary contribution bases. This has created a threat to the proper functioning of the special courts of sierra Leon. In 2004 the Court was unable to procure the necessary funding and the United Nations General Assembly authorized a subvention grant of 16.7 million to supplement the financial resources of the Court from 1 July to 31 December 2004.<sup>82</sup> Many good professionals, particularly those having experience with international criminal tribunals, have not been attracted to the Court because of funding concerns. By the same token, retention of staff has proved difficult.<sup>83</sup>

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<sup>80</sup> Human Rights Watch interview with Liberian journalist, Monrovia, January 11, 2012

<sup>81</sup> The special court of Sierra Leon under scrutiny, international center for transnational justice, March 2006, p, 43.

<sup>82</sup> report on the special court of Sierra Leon submitted by independent expert, Antonio Cassese, <http://www.sc-l.org/LinkClick.aspx?fileticket=VTDHyrHasLc=>

<sup>83</sup> Ibid page, 63

**Lastly**, the initial insufficient reliance on existing know-how and knowledge from the ICTR and ICTY has caused delays and inefficiencies. As per the statute of the court, rule of procedure and production of evidence in trying Taylor were expected to be regulated on the bases of rules and procedure used in ICTR and ICTY<sup>84</sup>. However, both prosecution officer and judges were not well aware of the existing know how. This in turn has contributed a lot for the delays of the trial. It is notable that not only the Judges, but also the first Prosecutor, the first Deputy Prosecutor, and the first Registrar were chosen from among those who had never worked for either of the two ad hoc tribunals. Justice Hassan Jallow, one of the original Appeals Chamber Judges, had participated in a review of the ICTY and the ICTR and Justice Robertson had represented a journalist claiming testimonial privilege before the ICTY; however neither had judicial experience at these institutions.<sup>85</sup>

### **3. CONCLUDING REMARKS**

At the close of this term paper the following conclusions can be drawn. First, and most importantly, On April 26, 2012, former Liberian President Charles Taylor became the first former head of state since the Nuremberg trials of Nazi leaders after World War II to face a verdict before an international or hybrid international-national court on charges of serious crimes committed in violation of international law.

In terms of trial the special court took six year though it was expected to be finished within 18 months. During the trial a numbers issues were raised. At the beginning of the trail the accused raised state sovereignty and personal immunity to avail him of the allegation. But, the court had come up with the conclusion that the official position of individuals does not exempt them from individual responsibility for acts that are crimes under international law.

Taylor's trial and the issuance of a judgment is judicial process sent strong signal that the world has become a less hospitable place for the highest-level leaders accused of committing the most serious crimes and thereby ending impunity. The trial has achieved remarkable accomplishment in the development new of crimes such defining forced marriage as crime against humanity. It has also shown the fact that co-operation for an international crime is generally an obligation to the international community as a whole.

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<sup>84</sup> Article 14, the rule of procedure and evidence, the rule of procedure and evidence for international criminal tribunal for Rwanda obtaining at the time of establishment of special 15 court shall be applicable mutatis mutandis to the conduct of proceeding of the special court of Sierra Leon.

<sup>85</sup> Report on special court of Sierra Leon **Submitted by the Independent Expert Antonio Cassese** <http://www.sc-sl.org/LinkClick.aspx?fileticke>

In spite of its merits and achievements, the trial and conviction of Charles Taylor has also some experienced critics. In this regard, Taylor's arrest and trial is a breach of the spirit and intent of the Comprehensive Peace Agreement of Liberia. Besides, the system of voluntary contributions for funding has placed the Special Court in a difficult position for most of its life. Moreover, the effect transfer of venue from Sierra Leon to Hague plus lack of precision of the charges that causes delays of the trial did not get unnoticed.