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## “Even a ‘Big Man’ Must Face Justice”

Lessons from the Trial of Charles Taylor





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Lessons from the Trial of Charles Taylor

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Printed in the United States of America

ISBN: 1-56432-912-7

Cover design by Rafael Jimenez

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## Summary

*The indictment of Taylor showed law is powerful. It might be imperfect or uneven, but when engaged, it is powerful.*

–Civil society leader, Freetown, January 13, 2012

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.

It was a landmark moment for war victims in Sierra Leone—where Taylor was convicted of aiding and abetting crimes against humanity and war crimes during the country’s brutal armed conflict from 1991-2002—the West Africa sub-region, and international efforts to ensure perpetrators of the gravest crimes are held to account.<sup>1</sup>

The announcement of a judgment in the Taylor case was also a moment that some believed would never come. For nearly three years after the June 4, 2003 unsealing of Taylor’s indictment by the Special Court for Sierra Leone (SCSL, or “Special Court”), Taylor lived in comfortable exile in Nigeria, still a player in West African politics. After Taylor was arrested on March 29, 2006, six more years passed before the Special Court issued its verdict, with almost four years of trial proceedings during this period.

While it has been a long road, Taylor’s trial and the issuance of a judgment in a credible judicial process send a strong signal that the world has become a less hospitable place for the highest-level leaders accused of committing the most serious crimes. The Taylor trial reflects a major departure from the impunity that heads of state traditionally enjoyed when implicated in genocide, war crimes, and crimes against humanity, which are referred to throughout as “serious crimes.”

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<sup>1</sup> 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 court sentenced Taylor to 50 years in prison.

The Taylor trial has particular significance for West Africans. For decades, so-called “big men”—powerful individuals who either lead armed groups or wield significant political power—have been able to perpetrate abuses in the sub-region with seemingly no fear of being investigated or held accountable. The Taylor trial is the first time such an individual has been taken into custody and forced to answer for alleged international crimes at trial.

This report provides an analysis of the trial’s practice and impact. The report is not a chronological account of the Taylor trial, nor an examination of the various legal arguments.

Part One provides background on the Sierra Leone armed conflict, the Special Court for Sierra Leone, and Charles Taylor. Part Two examines the trial itself, including issues related to efficiency, fairness, and interaction with witnesses, potential witnesses, and sources. Part Three examines the trial’s impact, including the court’s efforts to make its work accessible to communities most affected by the crimes, perceptions of the trial in Sierra Leone and neighboring Liberia, and its effects on thinking and practice related to accountability and respect for human rights.

Our overarching aim is to draw lessons to promote the best possible trials in the future of high-level suspects who are implicated in genocide, war crimes, and crimes against humanity.

With regard to trial practice, trials of the highest-level leaders for serious crimes committed in violation of international law can be complex, lengthy, and fraught—particularly since there is limited jurisprudence and practice in the relatively nascent system of international criminal justice compared to more developed national judicial systems.

The Taylor trial progressed against a backdrop of criticism and concern over the viability of trying the highest-level leaders before international or hybrid war crimes courts following the 2002-2006 trial of former Serbian President Slobodan Milosevic before the International Criminal Tribunal for the former Yugoslavia (ICTY). That trial was notable for its sometimes-chaotic atmosphere and Milosevic’s death before a judgment could be issued almost seven years after his indictment.

Proving the guilt or mounting a defense of a senior official who is alleged to be legally responsible for crimes—but who was not near the locations of their commission—can be

difficult and time-consuming. The often-large breadth of alleged crimes, long time period, and wide geographic areas involved present further obstacles.

Judges face particular challenges in such trials. They are tasked with holding expeditious proceedings, ensuring respect for international fair trial standards, and avoiding manipulation of the trials, including by the accused to advance political interests. Coordinating the logistics and protection for a large number of witnesses—who often are not based where the trial takes place and may face security risks—presents additional difficulties for the court.

The Taylor trial largely avoided major disruptions that could have marred the proceedings. It is also notable for its generally professional atmosphere and relatively well-managed character.

The prosecutor's effort to craft an indictment unencumbered by excessive detail—along with the limited number of counts alleged, totaling 11—appears to have helped avoid some of the pitfalls of the Milosevic trial, although attention to ensuring that indictments have adequate information to provide sufficient notice to the accused remains vital. Taylor's representation by counsel also appears to have contributed positively to the generally respectful and organized tenor of the courtroom, and may have helped to avoid grandstanding or other distractions from the primary legal and factual issues of the case, as can occur with self-represented accused. Moreover, the trial involved a high-quality defense composed of experienced counsel.

In addition, the Taylor trial provides a strong model for other trials to draw from with regard to managing witnesses. The court handled complex logistics and sensitive arrangements for numerous witnesses who had never before left West Africa, insider witnesses who had admitted to extensive criminal activity, and victims who had suffered severe trauma. Psycho-social support was made available both on and off the stand for witnesses.

At the same time, lessons should be drawn to improve future practice in similar types of proceedings with regard to trial management, representation of the accused, and interaction with witnesses, potential witnesses, and sources.



Notably, the judges adopted practices that sought to prioritize efficiency but sometimes contributed to delays, such as the ambitious courtroom calendar in comparison to other tribunals and insistence on parties meeting certain deadlines.

Other practices—such as the Trial Chamber’s non-interventionist approach to witness testimony and the admission of extensive evidence of the underlying crimes (“crime-base evidence”)—lengthened proceedings, although they helped ensure that each party was satisfied with its opportunities to present its case. Judgment drafting—which took over one year, partly due to turnover of staff—also was a factor in the trial’s length.

More active efforts by the Trial Chamber and Registry to address defense concerns in the lead-up to the trial’s start may have encouraged smoother proceedings and enhanced promotion of fair trial rights. Taylor’s first defense team left the case due to concerns over inadequate resources and time to prepare, leading to the appointment of a second team and a hiatus in proceedings after the trial began. In addition, a delay in rendering a decision on the pleading of joint criminal enterprise raised potential implications for ensuring Taylor’s fair trial rights.

These challenges point to the difficulties judges face in managing the multiple, changing, and sometimes conflicting factors at play in trials of high-level suspects on charges of serious crimes and underscore the value of previous complex criminal trial experience among judges who adjudicate these cases. The three judges of Trial Chamber II, while experienced jurists, did not generally join the Special Court with extensive experience in managing complex criminal trials.

Finally, the provision of funds by the prosecution to potential witnesses and sources during investigations may be unavoidable, but was a contentious issue in the Taylor trial that should be managed more effectively in future proceedings.

Trials of highest-level leaders for serious crimes also are significant beyond the happenings within the courtroom. One crucial objective is to convey a sense of accountability to those communities most affected by the alleged crimes so that justice has local resonance and becomes a meaningful concept. The Taylor trial suggests important lessons for outreach to local populations to maximize the impact of future

proceedings, particularly those held far from the location of the crimes, as will typically be the case at the International Criminal Court (ICC).

The impact of the Taylor trial in Sierra Leone and Liberia should be understood within the particular context of the two countries. After devastating armed conflicts, both countries have sought to distance themselves from their violent past and a fragile peace currently exists. Even as neighbors such as Guinea and Côte d'Ivoire continue to face significant challenges across porous borders, Sierra Leone and Liberia are attempting to build rights-respecting democracies and advance prosperity. Yet the institutions that underpin the rule of law in both Sierra Leone and Liberia—including the police, the judiciary, prosecutors, and corrections—remain extremely weak and other persistent problems, such as corruption, risk undermining hard-won gains.

Consideration of the impact of the trial at this stage is constrained by at least three factors: first, the Trial Chamber only handed down its verdict in April 2012 and it could be years, if not decades, before the trial's full impact is realized; second, there are inherent challenges to isolating the trial's impact because, though significant, it is one factor of many in a complex social and political landscape; and third, analysis of the trial's impact in this report is based in large part on information drawn from individual interviews and informal focus groups with civil society members, former combatants, members of government, journalists, and war victims in Monrovia and Freetown rather than quantitative or large-scale surveys.

Despite these limitations, several noteworthy observations can be made. First, many people from affected communities are aware of the trial and have reflected on its significance. Since its inception, the Special Court has demonstrated a clear institutional commitment to conducting outreach within affected communities, and its outreach efforts provide a strong model for other courts. Among other activities, court staff created audio and video summaries of the trial in local languages for dissemination in Sierra Leone and Liberia, and facilitated visits to the court in The Hague by civil society members from these countries—who in turn disseminated their impressions of the proceedings to their communities.

Second, the trial is seen by affected communities as highly significant, and as having increased local understanding of the importance of accountability. Sierra Leoneans and

Liberians consistently told Human Rights Watch that Taylor's arrest and trial helped reveal the possibility for and value of justice in West Africa.

However, the trial is only one part of the much larger process of accountability. It has contributed to increased expectations for justice, but also to frustrations over the absence of greater advances to ensure wider accountability in the two countries. Sierra Leoneans and Liberians said they felt dejected that direct perpetrators, former field commanders, and Taylor allies live freely as regular citizens; some even hold governmental and other powerful posts.

Domestic efforts to investigate serious crimes committed in Sierra Leone and Liberia that are beyond the Special Court's mandate are essential for justice to be done more fully. Lack of political will on the part of the Sierra Leonean and Liberian governments to pursue these cases remains, among other factors, a major challenge.

Finally, Taylor's trial, and the court more generally, appear to have contributed to promoting long-term respect for human rights and the rule of law in the sub-region. Attempting to assess the Taylor trial's future impact on governments is a particularly complicated inquiry given the multiple factors involved. Yet nearly all those interviewed by Human Rights Watch said the Taylor trial has had some significant positive impact on human rights in West Africa. As one official put it:

[The trial has] helped ... change the historical concept that leaders are above the law and [challenge] the acceptance that leaders and elected officials can use war and violence as way[s] to carry out their personal agendas.

This arguably has contributed to an environment in which Sierra Leone and Liberia have held successful democratic elections and made some progress in improving basic human rights, addressing endemic corruption, and facilitating economic growth, although major difficulties persist for both countries.

## Lessons Learned

Charles Taylor's trial provides important lessons that may be useful for similar types of trials involving the highest-level suspects. These include:

- Appointing judges with substantial complex criminal trial experience could contribute significantly to effective courtroom management.
- Crafting indictments that are representative of the crimes committed but not burdened by an unmanageable number of charges or excessive detail is desirable, although ensuring that they contain adequate information to provide sufficient notice to the accused is vital.
- Measures aimed at increasing efficiency—such as a schedule that does not provide significant hours outside the courtroom—should be periodically assessed for their contribution to the desired outcome and amended as necessary.
- Active management of examinations by the bench and attempts to focus testimony may contribute to more expeditious proceedings without compromising international fair trial standards.
- Decisions on motions should be rendered in a timely manner to avoid inefficiency and negative implications for ensuring the fairness of proceedings.
- Active engagement by judges and Registry staff with defense regarding concerns about resources and time to prepare in the lead-up to trials may be important to avoid disruptions in proceedings and ensure the promotion of international fair trial rights.
- Transparent projection of accurate timelines and active consultation with key staff with substantive knowledge may promote greater staff retention during judgment drafting.
- Developing guidelines for the provision of funds by prosecution offices to potential witnesses and sources during investigations, and greater transparency regarding these payments, can help minimize concerns over potential inappropriate use of such funds.

- Providing adequate protection and support to witnesses requires high-quality and complex organization of witness logistics and should be a priority in trials concerning serious crimes, as was the case in the Taylor trial.
- When witnesses come forward to testify, often at great risk to themselves and their families, it is crucial that all court actors treat them with dignity and respect.
- Ensuring communities most affected by the crimes receive timely and accessible information about proceedings should be a priority for future trials, as the Taylor trial demonstrates.
- Transparency in decisions on the location of the trial, especially when it will be held far from the affected communities, can minimize misunderstanding and frustration.

In addition, to ensure justice for serious crimes in Liberia and the fuller realization of justice for serious crimes in Sierra Leone:

- The Sierra Leone government should overturn the amnesty in the 1999 Lomé Accord as it pertains to serious crimes, while civil society should press for legislators to overturn the amnesty if the courts do not declare it unconstitutional.<sup>2</sup>
- The Liberian government should take concrete steps to initiate fair, effective investigations and prosecutions of serious crimes committed in violation of international law in Liberia, with international assistance as necessary.
- The international community should encourage and support trials for serious crimes committed in Liberia and trials in Sierra Leone that are not within the Special Court’s mandate, whether in proceedings that are wholly domestic or that involve a mixture of domestic and international involvement.

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<sup>2</sup> The Lomé Peace Accord includes a broad amnesty before domestic courts for crimes committed during the armed conflict in Sierra Leone. Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, signed in Lomé, Togo, July 7, 1999.

## Methodology

Human Rights Watch has closely followed the Special Court for Sierra Leone since its inception in 2000.<sup>3</sup> To prepare for this report, Human Rights Watch interviewed over 70 individuals involved with Taylor's trial, including current and former prosecutors, defense attorneys, and Registry staff members, such as those in the Outreach and Public Affairs team, the Witness and Victims Section, and the Office of the Principal Defender. Human Rights Watch also interviewed Sierra Leonean and Liberian civil society activists, former combatants, members of government, journalists, war victims, and experts on West Africa.

The report does not cite names or positions of certain interviewees to avoid disclosing the identities of those who wished to remain anonymous.

Interviews were conducted in The Hague, London, and Washington, DC in November 2011; in Sierra Leone and Liberia in January 2012; and in New York and via phone and email from September 2011 to June 2012.

In addition to conducting interviews, Human Rights Watch reviewed expert commentary, trial transcripts, and daily reports produced by trial observers with the Open Society Justice Initiative and the War Crimes Studies Center at University of California, Berkeley. Human Rights Watch did not monitor the trial daily, and consideration of the court's written judgment, which was released on May 18, 2012, and totals over 2,500 pages, is limited in the report.

Finally, the analysis provided of the trial's initial impact in the region is drawn from interviews. No quantitative or large-scale surveys were conducted.

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<sup>3</sup> See, for example, Human Rights Watch, *Bringing Justice: the Special Court for Sierra Leone*, vol. 16, no. 8(A), September 2004, <http://www.hrw.org/reports/2004/09/08/bringing-justice-special-court-sierra-leone>; Human Rights Watch, *Justice in Motion: The Trial Phase of the Special Court for Sierra Leone*, vol. 17, no. 14(A), November 2005, <http://www.hrw.org/reports/2005/11/01/justice-motion-0>; Human Rights Watch, *Sierra Leone – Trying Charles Taylor in The Hague: Making Justice Accessible to Those Most Affected*, no. 2, June 2006, <http://www.hrw.org/reports/2006/06/21/trying-charles-taylor-hague>.

# I. Background

## The Sierra Leone Armed Conflict

The devastating 11-year armed conflict in Sierra Leone from 1991 to 2002 was characterized by extreme brutality and widespread human rights abuses against civilians. The rebel Revolutionary United Front (RUF) and the rebel Armed Forces Revolutionary Council (AFRC) were responsible for systematically hacking off the limbs, noses, and lips of adults and children with machetes, and subjecting women and girls to widespread sexual violence.

While the RUF and the AFRC were responsible for the most egregious violations, government armed forces and the government-backed Civil Defense Forces (CDF) militia were also responsible for numerous abuses, including killings, torture, rape, and using child soldiers. Tens of thousands of civilians were killed and up to half of the population was displaced.

A peace process that began in 1999, though marred by ceasefire violations and continuing human rights abuses, eventually led to the end of the armed conflict in January 2002.

## The Special Court for Sierra Leone

Following the end of conflict in Sierra Leone, the domestic justice system lacked the capacity to hold perpetrators of war-related crimes accountable. Prompted by a request from then-Sierra Leone President Tejan Kabbah to the United Nations, the government of Sierra Leone and the UN established the Special Court for Sierra Leone (SCSL, or “Special Court”) in 2002 to prosecute serious crimes committed during the war based on “international standards of justice, fairness, and due process of law.”<sup>4</sup>

The court is the first standalone international-national war crimes tribunal—often referred to as a “hybrid” or “mixed” tribunal—that is located in the country where the crimes occurred but is not a part of a domestic justice system.<sup>5</sup>

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<sup>4</sup> See Human Rights Watch, *Bringing Justice*, pp. 1, 10; United Nations, Letter from President of Sierra Leone to the Secretary-General (2000), Annex S/2000/786; United Nations, Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (2000), Annex S/2000/915; United Nations Security Council, Resolution 1315 (2000), S/RES/1315.

<sup>5</sup> For a more detailed discussion of types of tribunals, see Human Rights Watch, *Bringing Justice*, pp. 1-2.

The hybrid SCSL differs from earlier international war crimes or “ad hoc” tribunals—the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY)—in that it includes both Sierra Leonean and international staff, rather than an entirely international staff, and its statute includes both domestic and international crimes, instead of only international crimes.<sup>6</sup> The seats of the ad hoc tribunals were also outside the countries in which the crimes occurred.

The Special Court has jurisdiction over “serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996.”<sup>7</sup> The court’s jurisdiction notably excludes crimes committed during the first five years of Sierra Leone’s armed conflict.<sup>8</sup> Its mandate also is limited to prosecuting those who “bear the greatest responsibility” for the crimes.<sup>9</sup>

The Special Court consists of three organs: the Chambers (Trial Chamber I, Trial Chamber II, and the Appeals Chamber), the Registry (including the Office of the Principal Defender, Outreach and Public Affairs, and the Witness and Victim Section), and the Office of the Prosecutor.

The court was set up to be dependent on voluntary contributions.<sup>10</sup> This has caused financial instability that has weighed heavily on the court; key officials have devoted extensive time to securing resources, and staff recruitment and retention has faced difficulties.<sup>11</sup>

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<sup>6</sup> However, the individuals tried at the Special Court have been charged exclusively with international crimes. See Special Court for Sierra Leone, *Cases*, <http://www.sc-sl.org/CASES/tabid/71/Default.aspx> (accessed May 22, 2012).

<sup>7</sup> Statute of the Special Court for Sierra Leone (SCSL Statute), January 16, 2002, <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnd1MJeEw%3d&tabid=176>, art. 1(1).

<sup>8</sup> The secretary-general’s report indicated that creating jurisdiction from the beginning of the Sierra Leonean conflict in 1991 could over-burden the prosecution and the court. United Nations Security Council, Report of the Secretary-General on the Establishment of the Special Court for Sierra Leone, October 4, 2000, S/2000/915, paras. 25-26.

<sup>9</sup> This is in contrast to the mandates of the ad hoc tribunals, which allow prosecution of “persons responsible” for serious crimes. For a more detailed discussion of the SCSL’s limited mandate, see Human Rights Watch, *Bringing Justice*, pp. 2-3.

<sup>10</sup> According to the Special Court’s website, “The Special Court has received contributions in cash and in kind from over 40 states, representing all geographic areas of the world. Canada, the Netherlands, Nigeria, the United Kingdom and the United States have provided strong support. In 2004, 2011, and 2012, the Special Court has been funded by subventions from the United Nations.” See Special Court for Sierra Leone, <http://www.sc-sl.org/> (accessed June 20, 2012).

<sup>11</sup> Human Rights Watch interview with Registry staff, Leidschendam, November 9, 2011. See also Antonio Cassese, Report on the Special Court for Sierra Leone, December 12, 2006, p. 11. For a more detailed discussion of the court’s funding scheme, see Human Rights Watch, *Bringing Justice*, pp. 2, 4-5.



## Cases before the Special Court for Sierra Leone

In addition to Charles Taylor, the Special Court has indicted 12 individuals on charges of crimes against humanity, war crimes, and other serious violations of international humanitarian law committed during the second half of the Sierra Leone conflict. The cases were grouped into three trials according to the suspects' affiliation with the three main warring factions—the Revolutionary United Front, the Armed Forces Revolutionary Council, and the Civil Defense Forces—with a fourth trial for Taylor alone. No other indictments are expected and the court is in the process of winding down its operations.<sup>12</sup>

### *The Revolutionary United Front*

Five leaders of the RUF—Foday Sankoh, Sam Bockarie, Issa Sesay, Morris Kallon, and Augustine Gbao—were indicted for war crimes, crimes against humanity, and other serious violations of international humanitarian law.<sup>13</sup> Sankoh and Bockarie's indictments were withdrawn in December 2003 due to their deaths.<sup>14</sup> The trial of the remaining accused began in July 2004. In February 2009 the defendants were found guilty of war crimes, crimes against humanity, and other serious violations of international humanitarian law.<sup>15</sup> In October 2009, the Appeals Chamber sustained most, but not all, of the convictions, and upheld the prison sentences of 52 years for Sesay, 40 years for Kallon, and 25 years for Gbao.<sup>16</sup>

### *The Armed Forces Revolutionary Council*

Four AFRC leaders—Alex Tamba Brima, Ibrahim Bazy Kamara, Santigie Borbor Kanu, and Johnny Paul Koroma—were charged with war crimes, crimes against humanity, and other serious violations of international humanitarian law.<sup>17</sup> Koroma fled Freetown in January

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<sup>12</sup> Special Court for Sierra Leone, *Eighth Annual Report of the President of the Special Court for Sierra Leone: June 2010 to May 2011* ("SCSL Eighth Annual Report"), <http://www.sc-sl.org/LinkClick.aspx?fileticket=kK8RBeHGowQ%3d&tabid=176> (accessed May 4, 2012), pp. 5-7.

<sup>13</sup> *Prosecutor v. Sesay, Kallon, and Gbao*, Special Court for Sierra Leone, Case No. SCSL-2004-15-PT, Corrected Amended Consolidated Indictment, August 2, 2006. Sankoh, Bockarie, Sesay, and Kallon were indicted in March 2003. Gbao was indicted separately in April 2003.

<sup>14</sup> Foday Sankoh died in custody of natural causes in July 2003. Sam Bockarie was killed in Liberia in May 2003.

<sup>15</sup> *Prosecutor v. Sesay, Kallon, and Gbao*, Special Court for Sierra Leone, Case No. SCSL-2004-15-T, Judgment (Trial Chamber I), March 2, 2009.

<sup>16</sup> *Prosecutor v. Sesay, Kallon, and Gbao*, Special Court for Sierra Leone, Case No. SCSL-04-15-A, Judgment (Appeals Chamber), October 26, 2009.

<sup>17</sup> *Prosecutor v. Brima, Kamara, and Kanu*, Special Court for Sierra Leone, Case No. SCSL-2004-16-PT, Further Amended Consolidated Indictment, February 18, 2005. Brima and Koroma were indicted in March 2003, Kamara was indicted in May 2003, and Kanu was indicted in September 2003.

2003. His case remains open, but he is widely believed to be dead.<sup>18</sup> The AFRC trial began in March 2005. In June 2007, Brima, Kamara, and Kanu were found guilty of war crimes, crimes against humanity, and other serious violations of international humanitarian law.<sup>19</sup> In February 2008, the Appeals Chamber upheld the convictions and sentences ranging from 45 to 50 years.<sup>20</sup>

### *The Civil Defense Forces*

Three leaders of the CDF—Allieu Kondewa, Moinina Fofana, and Samuel Hinga Norman—were tried for war crimes, crimes against humanity, and other serious violations of international humanitarian law.<sup>21</sup> The trial started in June 2004. In February 2007 Norman died of natural causes before a judgment was issued. Fofana and Kondewa were found guilty of war crimes and Kondewa guilty of other serious violations of international law in August 2007.<sup>22</sup> In May 2008 the Appeals Chamber overturned part of the convictions, but also entered new convictions on some counts and increased the sentences.<sup>23</sup> Fofana is serving a 15-year prison sentence and Kondewa is serving a 20-year prison sentence.

## Charles Taylor

From 1989 to 1997 Taylor led a rebel group, the National Patriotic Front of Liberia (NPFL), which sought to unseat Liberia's then-president, Samuel Doe. Forces under Taylor's command were implicated in widespread abuses committed against civilians, including summary executions, numerous massacres, systematic rape, mutilation, torture, large-scale forced conscription, and the use of child soldiers.<sup>24</sup>

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<sup>18</sup> Koroma was widely reported to have been killed in June 2003, but as definitive evidence of his death has never been provided, his indictment has not been officially dropped. See "War Crimes Court Probes Death Reports," *BBC News*, June 16, 2003, <http://news.bbc.co.uk/2/hi/africa/2992462.stm> (accessed May 2, 2012).

<sup>19</sup> *Prosecutor v. Brima, Kamara, and Kanu*, Special Court for Sierra Leone, Case No. SCSL-04-16-T, Judgment (Trial Chamber II), June 20, 2007.

<sup>20</sup> *Prosecutor v. Brima, Kamara, and Kanu*, Special Court for Sierra Leone, Case No. SCSL-2004-16-A, Judgment (Appeals Chamber), February 22, 2008.

<sup>21</sup> *Prosecutor v. Norman, Fofana, and Kondewa*, Special Court for Sierra Leone, Case No. SCSL-03-14-I, Indictment, February 4, 2004. Norman was indicted in March 2003, and Fofana and Kondewa were indicted in June 2003.

<sup>22</sup> *Prosecutor v. Fofana and Kondewa*, Special Court for Sierra Leone, Case No. SCSL-04-14-T, Judgment (Trial Chamber I), August 2, 2007. The Trial Chamber ruled that the Prosecution had not proved the necessary elements to convict on crimes against humanity.

<sup>23</sup> *Prosecutor v. Fofana and Kondewa*, Special Court for Sierra Leone, Case No. SCSL-04-14-A, Judgment (Appeals Chamber), May 28, 2008.

<sup>24</sup> See, for example, Human Rights Watch, *Liberia – Emerging from Destruction*, November 17, 1997, <http://www.hrw.org/en/reports/1997/11/17/emerging-destruction>; Human Rights Watch, *Youth, Poverty and Blood: The*

The conflict ended on August 2, 1997, when Taylor was sworn in as president after elections that were held under an implicit threat that he would resume the war in Liberia unless elected.<sup>25</sup> Taylor's presidency, which lasted until 2003, was characterized by significant human rights violations in Liberia, including repressing civil society, journalists, and anyone deemed opposing his government.<sup>26</sup> By 1999, Taylor's widespread abuses had fueled a rebellion to unseat him.

During the armed conflict in neighboring Sierra Leone, Taylor supported the RUF and the RUF/AFRC alliance, whose fighters killed, raped, and cut off the limbs of tens of thousands of people, and forcibly recruited thousands of child soldiers. Among other methods of support, Taylor traded arms to the rebels for diamonds mined in Sierra Leone, allowing the groups to continue terrorizing civilians and prompting UN sanctions and embargoes on his government.<sup>27</sup> Taylor was also implicated in destabilizing the wider West African sub-region, including neighboring Guinea and Côte d'Ivoire.<sup>28</sup>

### *The Indictment*

On March 7, 2003, the Special Court issued a sealed indictment for Taylor for war crimes, crimes against humanity, and other serious violations of international humanitarian law committed during the second half of Sierra Leone's armed conflict.

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*Lethal Legacy of West Africa's Regional Warriors*, vol. 17, no. 5(A), March 2005, <http://www.hrw.org/sites/default/files/reports/westafrica0405.pdf>.

<sup>25</sup> Human Rights Watch, *Emerging from Destruction*. See also Helene Cooper, "Recalling Horrors in Liberia Wrought by Taylor," *New York Times*, April 26, 2012, [http://www.nytimes.com/2012/04/27/world/africa/recalling-horrors-in-liberia-wrought-by-taylor.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2012/04/27/world/africa/recalling-horrors-in-liberia-wrought-by-taylor.html?_r=1&pagewanted=all) (accessed May 2, 2012).

<sup>26</sup> "HRW Calls on Liberian President to Cease Harassment of Civil Society," Human Rights Watch news release, October 24, 1998, <http://www.hrw.org/news/1998/10/23/hrw-calls-liberian-president-cease-harassment-civil-society>; Letter from Human Rights Watch to Charles Taylor, President of Liberia, "Intimidation of Human Rights Defenders: Offices of the Centre for Democratic Empowerment Stormed," December 12, 2000, <http://www.hrw.org/news/2000/12/11/letter-liberian-president-charles-taylor-intimidation-human-rights-defenders>; "Leading Liberian Rights Lawyer Tortured by Police," Human Rights Watch news release, April 27, 2002, <http://www.hrw.org/news/2002/04/26/leading-liberian-rights-lawyer-tortured-police>.

<sup>27</sup> See United Nations Security Council, *Report of the Panel of Experts appointed pursuant to Security Council Resolution 1306*, December 2000, S/2000/1195, paras. 180-193. The UN imposed an embargo on the importation of Liberian diamonds and a travel ban on Taylor, his family, and members of his government in 2001. United Nations Security Council, Resolution 1343 (2001), S/RES/1343 (2001), paras. 6-7; *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-1-T, Judgment Summary (Trial Chamber II), April 26, 2012.

<sup>28</sup> "The Human Rights and Humanitarian Situation in the Mano River Union," Human Rights Watch news release, May 22, 2002, <http://www.hrw.org/news/2002/05/21/human-rights-and-humanitarian-situation-mano-river-union>; "Côte d'Ivoire: Liberian Fighters Attack Civilians," Human Rights Watch news release, April 15, 2003, <http://www.hrw.org/news/2003/04/14/c-te-d-ivoire-liberian-fighters-attack-civilians>.

Taylor was initially indicted on 17 counts, but an amended indictment approved in March 2006 reduced the counts to 11.<sup>29</sup> The underlying offenses constituting these crimes include murder, pillage, outrages upon personal dignity, cruel treatment, terrorizing civilians, mutilation, rape, enslavement, sexual slavery, and the use of child soldiers. The indictment covers a multitude of locations across Sierra Leone where crimes were committed over 5 years, involving 6 of Sierra Leone's 13 districts.

The indictment alleges that Taylor is individually criminally responsible for these crimes based on three theories:

- That Taylor “planned, instigated, ordered, committed or ... aided and abetted” in the “planning, preparation, or execution” of the crimes.<sup>30</sup>
- That he participated in a joint criminal enterprise involving the alleged crimes or in which the crimes were “a reasonably foreseeable consequence.”<sup>31</sup>
- That he held a position “of superior responsibility and exercis[ed] command and control over subordinate[s]” who directly committed the atrocities, namely the RUF, AFRC, RUF/AFRC alliance, and Liberian fighters.<sup>32</sup>

The indictment does not allege that Taylor entered Sierra Leone during the time in question, but rather that he is responsible for the crimes “from the outside ... through his participation, involvement, concerted action with and command over the criminal conduct.”<sup>33</sup> The indictment alleges that Taylor's support of the RUF and later RUF/AFRC alliance took many forms, including strategic instruction, direction, and guidance; provision of arms, ammunition, and manpower; training of fighters; the creation and maintenance of a communications network; the provision of a safe haven for fighters; financial support; and medical support.<sup>34</sup>

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<sup>29</sup> See *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-I-001, Indictment, March 7, 2003; *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-I-75, Amended Indictment, March 16, 2006. See also *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-PT, Second Amended Indictment, May 29, 2007.

<sup>30</sup> *Prosecutor v. Charles Ghankay Taylor*, Second Amended Indictment, paras. 33-34.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T, Prosecution Final Trial Brief, April 8, 2011, para. 48.

<sup>34</sup> *Ibid.*, para. 49.

## *Taylor's Surrender*

The surrender of Taylor was a fraught process that some people, especially within West African civil society, believed would never come.<sup>35</sup> The SCSL Office of the Prosecutor and many in the international and African human rights community spent nearly three years from the time the Special Court unsealed Taylor's indictment in 2003 building support for Taylor's surrender among Western governments, especially the United States and United Kingdom, West African governments, and members of the UN Security Council.<sup>36</sup>

The Special Court "unsealed" its indictment against Taylor, still president of Liberia, on June 4, 2003, while he was attending peace talks in Ghana with officials from rebel groups fighting to oust him from Liberia. The unsealing during peace talks generated controversy and criticism from African and international leaders.<sup>37</sup> The Ghanaian government declined to detain Taylor and lent him a presidential plane to return to Liberia.

The following month, Taylor submitted an application to the Special Court to quash his indictment and to set aside the warrant for his arrest on the grounds of sovereign immunity and extraterritoriality, while simultaneously refusing to surrender to the court.<sup>38</sup>

As rebel forces moved on the Liberian capital, Monrovia, in August 2003, Taylor stepped down as president and accepted an offer of safe haven in Nigeria.<sup>39</sup> The US, UK, African

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<sup>35</sup> Human Rights Watch interview with Tiawan Gongloe, civil society leader and former government official, Monrovia, January 10, 2012; Human Rights Watch interview with Paul James-Allen, program officer, Trocare, Monrovia, January 11, 2012; Human Rights Watch interview with John Caulker, director, Fambul Tok, Freetown, January 16, 2012; Human Rights Watch email correspondence with Ibrahim Tommy, executive director, Centre for Accountability and Rule of Law, Freetown, March 7, 2012.

<sup>36</sup> Human Rights Watch interview with Office of the Prosecutor former staff, New York, December 7, 2011; Human Rights Watch interview with Office of the Prosecutor former staff, New York, December 13, 2011. See also, for example, "Prosecutor Welcomes Resolution on Charles Taylor in U.S. Senate," Special Court for Sierra Leone Office of the Prosecutor press release, May 11, 2005, <http://www.sc-sl.org/LinkClick.aspx?fileticket=LNzyp3H%2fkQQ%3d&tabid=196> (accessed May 2, 2012); "Nigeria: Surrender Taylor to War Crimes Court," Human Rights Watch news release, April 12, 2005, <http://www.hrw.org/news/2005/08/11/nigeria-surrender-taylor-war-crimes-court>; Letter from Human Rights Watch to Liberian President Johnson-Sirleaf, "Urging Prompt Action to Ensure Taylor's Surrender," January 27, 2006, <http://www.hrw.org/news/2006/01/26/letter-liberian-president-johnson-sirleaf-urging-prompt-action-ensure-taylors-surrender>.

<sup>37</sup> For a more detailed discussion of reaction to the indictment, see Human Rights Watch, *Selling Justice Short: Why Accountability Matters for Peace*, July 7, 2009, <http://www.hrw.org/reports/2009/07/07/selling-justice-short>, pp. 20-22.

<sup>38</sup> See *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-I-059, Decision on Immunity from Jurisdiction (Appeals Chamber), May 31, 2004.

<sup>39</sup> The precise terms of Nigerian President Obasanjo's offer to Taylor have never been disclosed. See Human Rights Watch, *Trying Charles Taylor in The Hague*, p. 15; "Nigeria Would Shield Taylor from Trial," *CNN World*, July 9, 2003, [http://articles.cnn.com/2003-07-09/world/liberia\\_1\\_liberian-politics-charles-taylor-nigerian-president-olusegun-obasanjo?\\_s=PM:WORLD](http://articles.cnn.com/2003-07-09/world/liberia_1_liberian-politics-charles-taylor-nigerian-president-olusegun-obasanjo?_s=PM:WORLD) (accessed May 4, 2012).

Union, and then-South African President Thabo Mbeki were among the powerful players that supported Taylor's exit from Liberia and his move to Nigeria.<sup>40</sup>

On May 31, 2004, the Appeals Chamber of the Special Court dismissed Taylor's challenge to the indictment. It found that the Special Court was empowered to indict and try a head of state based on the principle "now established that the sovereign equality of states does not prevent a head of state from being prosecuted before an international criminal tribunal or court."<sup>41</sup>

In May 2005 then-President Olusegun Obasanjo of Nigeria said that he would consider supporting Taylor's extradition to Liberia if there was evidence that Taylor had interfered in regional politics or if a duly-elected Liberian government made a formal request.<sup>42</sup> Six months later, Ellen Johnson-Sirleaf was elected as the new president of Liberia in democratic elections. Although Johnson-Sirleaf initially suggested that Taylor's arrest was not a priority, in March 2006 she made a request to the Nigerian government that he be surrendered. She stated that her actions were "courageous but risky" and taken under significant international pressure in the face of a fragile peace and continued presence of Taylor loyalists and business interests in Liberia.<sup>43</sup> Multiple sources report that she was only willing to make the request on the condition that Taylor be tried outside West Africa given fears of renewed instability if Taylor was tried in the sub-region.<sup>44</sup>

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<sup>40</sup> Human Rights Watch, *Trying Charles Taylor in The Hague*, p. 15; "Background Briefing on President Bush's Visit to Nigeria," United States Office of the Press Secretary, July 12, 2003, <http://georgewbush-whitehouse.archives.gov/news/releases/2003/07/20030712-2.html> (accessed June 12, 2012); Human Rights Watch interview with Office of the Prosecutor former staff, December 7, 2011. See also "Nigeria Would Shield Taylor from Trial," *CNN World*.

<sup>41</sup> *Prosecutor v. Charles Ghankay Taylor*, Decision on Immunity from Jurisdiction (Appeals Chamber), para. 52. The exercise of this principle builds on the precedent of the Slobodan Milosevic trial, where, for the first time, a sitting head of state was indicted by an international criminal tribunal to answer for his alleged role in atrocities.

<sup>42</sup> Michael A. Fletcher, "Nigerian Leader Says He Won't Turn Taylor Over for Trial," *Washington Post*, May 6, 2005, <http://www.washingtonpost.com/wp-dyn/articles/A41485-2005May6.html> (accessed June 12, 2012); "Obasanjo Wants Elected Government to Handle Taylor's Case," *This Day (Lagos)*, May 17, 2005.

<sup>43</sup> Warren Hoge, "Liberian Seeks Extradition of Predecessor for Atrocities Trial," *New York Times*, March 18, 2006, [http://www.nytimes.com/2006/03/18/international/africa/18liberia.html?\\_r=1](http://www.nytimes.com/2006/03/18/international/africa/18liberia.html?_r=1) (accessed June 12, 2012); United Nations Security Council, The Situation in Liberia, 5389th meeting, S/PV.5389, March 17, 2006, <http://www.un.org/Depts/dhl/resguide/scact2006.htm> (accessed May 23, 2012), p. 3.

<sup>44</sup> Human Rights Watch interview with Office of the Prosecutor former staff, December 7, 2011; Human Rights Watch interview with civil society member, The Hague, November 7, 2011; Human Rights Watch interview with Office of the Prosecutor former staff, New York, December 7, 2011.

On March 25, 2006, President Obasanjo stated that Liberia was “free to take former President Charles Taylor into its custody,” but he remained at liberty in Nigeria.<sup>45</sup> Within 48 hours, Taylor disappeared. Obasanjo had been scheduled to meet with US President George W. Bush in Washington, DC that week, but upon hearing of Taylor’s disappearance on March 28, White House officials reportedly suggested that Bush would cancel the meeting unless Taylor was found.<sup>46</sup> On March 29 Nigerian police arrested and detained Taylor near the country’s border with Cameroon. He was then sent back to Liberia, where he was taken into UN custody and transferred to the Special Court in Freetown.<sup>47</sup>

### *The Taylor Trial’s Move to The Hague*

The day after Taylor surrendered, the president of the Special Court submitted requests to the Netherlands and the International Criminal Court that Taylor’s trial be relocated to The Hague, citing concerns about the stability of the West African sub-region if Taylor were tried in Freetown.<sup>48</sup>

The Dutch government indicated it was willing to host the trial if three conditions were met: a legal basis for the Special Court to conduct Taylor’s trial in the Netherlands was provided, an agreement for the use of appropriate facilities was secured from one of the international criminal courts based in the Netherlands, and another country agreed to accept Taylor if he faced a prison term following a conviction.<sup>49</sup>

The following month, the International Criminal Court (ICC) consented to the use of its facilities and the UN Security Council prepared Resolution 1688 providing the legal basis for Taylor’s transfer to The Hague.<sup>50</sup> Identifying a country willing to accept Taylor post-

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<sup>45</sup> “Statement by the Federal Government of Nigeria – Former President Taylor to be transferred to the custody of the Government of Liberia,” March 25, 2006, <http://jurist.law.pitt.edu/gazette/2006/03/charles-taylor-transfer-statement.php> (accessed December 16, 2011).

<sup>46</sup> “Ex-Liberian Leader’s Location Unknown,” Associated Press, March 29, 2006, [http://www.usatoday.com/news/world/2006-03-28-nigeria-taylor\\_x.htm](http://www.usatoday.com/news/world/2006-03-28-nigeria-taylor_x.htm) (accessed May 17, 2012).

<sup>47</sup> In November 2005, the UN peacekeeping force in Liberia had been given authority to detain and transfer Taylor to the Special Court for prosecution if he were to enter Liberian territory. United Nations Security Council, Resolution 1638 (2005), S/RES/1638, [http://www.un.org/Docs/sc/unsc\\_resolutionso5.htm](http://www.un.org/Docs/sc/unsc_resolutionso5.htm), para. 1.

<sup>48</sup> “Special Court President Requests Charles Taylor be Tried in The Hague,” Special Court for Sierra Leone Press Release, March 30, 2006, <http://www.sc-sl.org/LinkClick.aspx?fileticket=gR%2BYCtzTfKg%3D&tabid=111> (accessed January 25, 2011).

<sup>49</sup> United Nations, Letter from the Permanent Representative of the Netherlands to the President of the Security Council, Annex S/2006/207, March 31, 2006.

<sup>50</sup> United Nations Security Council, Resolution 1688 (2006), S/RES/1688, [http://www.un.org/Docs/sc/unsc\\_resolutionso6.htm](http://www.un.org/Docs/sc/unsc_resolutionso6.htm). The Taylor trial later relocated to the Special Tribunal for Lebanon, also in the Netherlands, on May 17, 2010. “Taylor Trial to Move

conviction was more challenging: no state initially offered. However, in June 2006 the UK agreed to provide detention facilities if Taylor was convicted.<sup>51</sup> Taylor was transferred to The Hague on June 30, 2006.<sup>52</sup>

### *The Trial*

During Taylor's trial the Trial Chamber heard 115 witnesses, admitted 1,522 exhibits into evidence, and issued 281 written decisions.<sup>53</sup> By the close of the case, there were almost 50,000 pages of trial records.<sup>54</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>55</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. 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

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to STL Courtroom," Special Court for Sierra Leone Press Release, May 13, 2010, <http://www.scsl.org/LinkClick.aspx?fileticket=xw3DmArRVNA%3D&tabid=53> (accessed January 25, 2012).

<sup>51</sup> "Britain Agrees to Imprison Taylor if Ex-Liberian Leader Is Convicted," *Online PBS Newshour*, June 15, 2006, [http://www.pbs.org/newshour/updates/africa/jan-june06/taylor\\_06-15.html](http://www.pbs.org/newshour/updates/africa/jan-june06/taylor_06-15.html) (accessed January 25, 2012).

<sup>52</sup> Special Court for Sierra Leone, *Cases*, "Prosecutor v. Charles Ghankay Taylor," <http://www.scsl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx> (accessed February 27, 2012).

<sup>53</sup> *The Prosecutor v. Charles Ghankay Taylor*, Judgment Summary, para. 8.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.* The Prosecutor's opening statement was delivered on June 4, 2007. The trial phase officially concluded on March 11, 2011.



international or hybrid trial.<sup>56</sup> Taylor's cross-examination lasted almost nine weeks, resulting in a total of approximately six months on the stand.

### *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>57</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>58</sup>

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<sup>56</sup> Human Rights Watch interview with member of prosecution team, New York, September 13, 2011; Human Rights Watch interview with former member of prosecution team, Washington, DC, November 2, 2011; Human Rights Watch interview with member of prosecution team, Leidschendam, November 8, 2011.

<sup>57</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.sc-sl.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>58</sup> Interview with Registry official, New York, June 5, 2012.

## II. The Trial

Trials of the highest-level leaders for serious crimes committed in violation of international law can be complex, lengthy, and fraught.<sup>59</sup> Proving the guilt or mounting a defense of a senior official who is allegedly legally responsible for crimes—but who was not near the locations of their commission—can be difficult and time-consuming. The often-large breadth of alleged crimes, long time period, and wide geographic areas involved present further obstacles.

Judges face particular challenges in such trials. They are tasked with holding expeditious proceedings, ensuring respect for international fair trial standards, and avoiding manipulation of the trials, such as by the accused to advance political interests. Coordinating the logistics and protection for a large number of witnesses, who often are not based where the trial takes place and may face security risks, presents additional difficulties for the court.

The trial of Charles Taylor was notable for its generally professional atmosphere and relatively well-managed character, high-quality defense, and due regard for witness protection. Taylor's representation by counsel instead of self-representation appears to have contributed in a significant positive way. Moreover, the trial involved a high-quality defense composed of experienced counsel, and provides a strong model for other trials to draw from with regard to managing complex witness logistics and protection.

Yet lessons should be drawn to improve future practice in similar types of proceedings with regard to trial management, representation of the accused, and interaction with witnesses, potential witnesses, and sources.

Notably, the judges adopted practices that sought to prioritize efficiency, but which sometimes actually contributed to delays, such as the ambitious courtroom calendar in comparison to other tribunals and insistence on parties meeting certain deadlines. Other practices—such as the Trial Chamber's non-interventionist approach to witness testimony and the admission of extensive crime-base evidence—helped ensure that the parties were

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<sup>59</sup> See Human Rights Watch, *Judging Dujail: The First Trial before the Iraqi High Tribunal*, November 2006. <http://www.hrw.org/reports/2006/11/19/judging-dujail-o>; Human Rights Watch, *The Balkans – Weighing the Evidence: Lessons from the Slobodan Milosevic Trial*, December 2006, <http://www.hrw.org/reports/2006/12/13/weighing-evidence-o>.

satisfied with their opportunities to present their case, but contributed to the length of proceedings. Judgment drafting—which took over one year—was also a factor in the trial’s length. These challenges point to the difficulties judges face in managing the multiple, changing, and sometimes-conflicting factors at play in trials of high-level suspects on charges of serious crimes and underscore the value of previous complex criminal trial experience among judges who adjudicate these cases.

In addition, the court’s lack of resolution of defense concerns regarding time and resources to prepare before the start of trial posed challenges for efficiency and promoting Taylor’s fair trial rights, as did delay in rendering a decision on the pleading of joint criminal enterprise. Finally, the provision of funds by the prosecution to potential witnesses and sources for their “safety ... support and ... assistance”<sup>60</sup> during investigations may be unavoidable, but was a contentious issue in the Taylor trial that should be managed more effectively in future proceedings.

## The Indictment: A Complicated Balance

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>61</sup>

The Milosevic trial showed the significant risks of highly detailed indictments that include a large number of charges and crimes scenes: the counts of the Milosevic indictments totaled 66 and referenced hundreds, if not thousands, of crime scenes. This contributed to a four-year-long, unfinished trial with numerous delays in the proceedings.<sup>62</sup>

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<sup>60</sup> SCSL Rules, Rule 39.

<sup>61</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>62</sup> Human Rights Watch, *Weighing the Evidence*, pp. 52-57.

The Taylor prosecution employed a different approach than that of Milosevic, using a technique called “notice pleading”—a short and plain statement of the charges to give the defendant notice, while omitting substantial detail.<sup>63</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.<sup>64</sup> The Taylor indictment also includes a limited list of charges—11 in all.<sup>65</sup>

The prosecutor’s efforts to provide an indictment in the Taylor case unencumbered by excessive details with a limited number of counts alleged appear to have contributed to avoiding some of the pitfalls of the Milosevic trial. Notice pleading had never been expressly used in international or hybrid tribunals prior to the Special Court.<sup>66</sup>

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.<sup>67</sup>

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.<sup>68</sup> Yet jurisprudence continues to evolve regarding the

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<sup>63</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>64</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.

<sup>65</sup> *Prosecutor v. Charles Ghankay Taylor*, Amended Indictment; *Prosecutor v. Charles Ghankay Taylor*, Second Amended Indictment.

<sup>66</sup> Human Rights Watch email correspondence with Office of the Prosecutor former staff, March 26, 2012; Human Rights Watch email correspondence with former SCSL defense counsel, The Hague, May 9, 2012. See also International Center for Transitional Justice, “The Special Court for Sierra Leone: The First Eighteen Months,” March 2004, <http://ictj.org/publication/special-court-sierra-leone-first-eighteen-months> (accessed May 21, 2012), p. 5. But see also Wayne Jordash and John Coughlin, “The Right to be Informed of the Nature and Cause of the Charges: A Potentially Formidable Jurisprudential Legacy,” *Judicial Creativity at the International Criminal Tribunals*, February 2010, which discusses the limited detail provided in early indictments at the ad hoc tribunals.

<sup>67</sup> Human Rights Watch interview with member of Taylor defense team, London, November 9, 2011; Human Rights Watch interview with member of Taylor defense team, London, November 10, 2011; Human Rights Watch telephone interview with SCSL former staff, November 28, 2011. See also *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T-775, Decision on “Defence Notice of Appeal and Submissions Regarding the Majority Decision Concerning the Pleading of JCE in the Second Amended Indictment” (Appeals Chamber), May 1, 2009, paras. 2-6.

<sup>68</sup> SCSL Rules, Rule 47; *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T-752, Decision on Public Urgent Defence Motion Regarding a Fatal Defect in the Prosecution’s Second Amended Indictment Relating to the Pleading of JCE (Trial Chamber II), February 27, 2009; *Prosecutor v. Charles Ghankay Taylor*, Decision on “Defence Notice of

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>69</sup>

Crafting indictments that are representative of the crimes committed but not burdened by an unmanageable number of charges or excessive detail is desirable. However, achieving expeditious and fair proceedings will necessitate carefully balancing considerations of efficiency and manageability with the imperative of providing sufficient information to ensure adequate notice to the accused.

## Trial Management

### *Taylor's Representation by Counsel*

Taylor agreed to be represented by counsel in the proceedings and was generally cooperative during the trial.<sup>70</sup> This is in stark contrast to Slobodan Milosevic, who refused representation and often obstructed proceedings during his trial.<sup>71</sup> Sources interviewed for this report were unanimous in their assessment that Taylor's representation by counsel contributed positively to the generally respectful and organized tenor of the courtroom.<sup>72</sup> In addition, it likely facilitated the court's focus on the key substantive legal work before it, including by helping to avoid grandstanding that can occur when self-representing accused seek to use the courtroom as a political platform. According to some observers, Milosevic's decision to represent himself was the single largest problem with his trial.<sup>73</sup>

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Appeal and Submissions Regarding the Majority Decision Concerning the Pleading of JCE in the Second Amended Indictment" (Appeals Chamber).

<sup>69</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>70</sup> At the opening of the trial, Taylor's first attorney, Karim Khan, told the court that Taylor had fired Khan and intended to represent himself. However, this decision was short-lived and by June 25, 2007, Taylor indicated to the principal defender that he would agree to court-appointed representation provided the team had adequate resources. *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-2003-01-T, trial transcript ("Taylor trial transcript"), June 25, 2007, pp. 344-345.

<sup>71</sup> Human Rights Watch, *Weighing the Evidence*, p. 70.

<sup>72</sup> These include Human Rights Watch interview with member of Taylor defense team, The Hague, November 7, 2011; Human Rights Watch interview with civil society member, The Hague, November 7, 2011; Human Rights Watch interview with Office of the Prosecutor former staff, November 10, 2011; Human Rights Watch interview with Registry staff, New York, December 6, 2011; Human Rights Watch interview with Office of the Principal Defender staff, Freetown, January 17, 2012.

<sup>73</sup> Human Rights Watch, *Weighing the Evidence*, p. 70. At the same time, the ICCPR provides that in the determination of any criminal charge against him, everyone has the right "to defend himself in person." ICCPR, art. 14(3)(d).

### *The Courtroom Calendar and Rulings on Motions*

The Trial Chamber set an ambitious trial calendar during the Taylor proceedings: it sat for consistently long hours and did not allow many breaks in comparison to other trials by the Special Court and other tribunals, and often compensated for lost time by re-convening earlier than scheduled and by sitting for extra sessions on Friday afternoons.<sup>74</sup> The long courtroom hours helped to keep the trial moving forward. However, they left little time for the Trial Chamber to deal with important matters outside the courtroom that also needed to be addressed, namely motions.

The Trial Chamber issued many rulings on motions in a relatively timely manner. However, a number of decisions took more than 90 days and at least 4 decisions took more than 180 days.<sup>75</sup> It is notable that the Trial Chamber became significantly faster at issuing decisions over time: from March 2009 until the recess for deliberations in March 2011, most, if not all, decisions were rendered in approximately two months or less. However, more timely rendering of decisions overall can make an important contribution to the efficiency of the process.

### *Delay in Decision on Pleading of Joint Criminal Enterprise*

Extended delays in delivering decisions on motions raise particular concerns when fair trial issues are implicated, such as the Trial Chamber's decision on the defense's motion challenging the pleading of joint criminal enterprise (JCE). The pleading of JCE in the Taylor trial was a highly contested issue: defense team members and trial observers have argued that the prosecution submitted an indictment that does not adequately identify the elements of the JCE, and then used a shifting conception of "common purpose," a key element, throughout its case.<sup>76</sup>

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<sup>74</sup> Human Rights Watch interview with member of Taylor defense team, November 7, 2011; Human Rights Watch interview with member of prosecution team, Leidschendam, November 9, 2011; Human Rights Watch telephone interview with SCSL former staff, November 28, 2011. See also Jennifer Easterday, *The Trial of Charles Taylor Part I: Prosecuting "Persons Who Bear the Greatest Responsibility"*, UC Berkeley War Crimes Study Center, June 2010, p. 30.

<sup>75</sup> Human Rights Watch conducted an informal review of the approximate time measured from the filing date of the last submission by parties to the issuance of a ruling on the motion for public decisions available on the court website for the Taylor trial as of March 2012. The analysis—which does not capture confidential motions or any other motions that were not posted on the court's website—is on file with Human Rights Watch.

<sup>76</sup> Human Rights Watch interview with civil society member, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, Leidschendam, November 8, 2011; Human Rights Watch interview with member of Taylor defense team, November 9, 2011; Human Rights Watch interview with member of Taylor defense team, November 10, 2011. See also Wayne Jordash and

The defense submitted a motion for clarification of the pleading of JCE before the start of the prosecution's case.<sup>77</sup> The Trial Chamber took over 10 months from the date of the parties' final submissions on the issue in April 2008 to deliver its decision dismissing the defense's motion and affirming the prosecution's pleading of JCE as sufficient, which it announced on the same day the Taylor prosecution rested.<sup>78</sup> The Appeals Chamber affirmed the Trial Chamber's decision.<sup>79</sup>

Defense team members claim that they did not have adequate notice of the charges they were defending against during the prosecution's case and suffered "irremediable prejudice" due to the Trial Chamber's delay in rendering a decision.<sup>80</sup> While the judges disagreed with their claim, allegations of prejudice to the accused might have been avoided if the Trial Chamber had rendered its decision in a more reasonable time.<sup>81</sup>

Though the Trial Chamber ultimately found Taylor not guilty of participating in a joint criminal enterprise, the prosecution is expected to appeal the not guilty verdict on the basis of joint criminal enterprise liability.<sup>82</sup>

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Penelope Van Tuyl, "Failure to Carry the Burden of Proof: How Joint Criminal Enterprise Lost Its Way at the Special Court for Sierra Leone," *Journal of International Criminal Justice*, vol. 8(2), May 2010, p. 2.

<sup>77</sup> Defense's motion was submitted December 14, 2007. See *Prosecutor v. Charles Ghankay Taylor*, Decision on Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE (Trial Chamber II), February 27, 2009. It was known at the time of the defense's submission that the SCSL Appeals Chamber would be deciding the same issue in the context of the AFRC case. Handing down its decision in late February 2008, the Appeals Chamber found that the prosecution's formulation of JCE, which mirrored that of the Taylor prosecution, was proper. *Prosecutor v. Brima, Kamara, and Kanu*, Judgment (Appeals Chamber), February 22, 2008, paras. 84-86. After the appellate decision, parties in the Taylor trial were permitted to submit responses to the Appellate Chamber's decision in the AFRC case.

<sup>78</sup> "Prosecution Response to the Defence's Consequential Submissions Regarding the Pleading of JCE" was filed on 10 April 2008 and "Defence Reply to the Prosecution Response to the Defence's Consequential Submission Regarding the Pleading of JCE" was filed on 15 April 2008. See *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T-752, Decision on Public Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE (Trial Chamber II), February 27, 2009.

<sup>79</sup> *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T-775, Decision on "Defence Notice of Appeal and Submissions Regarding the Majority Decision Concerning the Pleading of JCE in the Second Amended Indictment" (Appeals Chamber), May 1, 2009.

<sup>80</sup> Human Rights Watch interview with member of Taylor defense team, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, November 8, 2011; Human Rights Watch interview with member of Taylor defense team, November 9, 2011; Human Rights Watch interview with member of Taylor defense team, November 10, 2011; *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T, Defence Final Trial Brief, May 23, 2011, para. 52.

<sup>81</sup> *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-1-T-1281, Judgment (Trial Chamber II), May 18, 2012, paras. 141-147.

<sup>82</sup> Human Rights Watch informal discussion with former members of prosecution team, Leidschendam, April 26, 2012.

Timely rendering of decisions on motions should thus receive priority, both to avoid inefficiency and to ensure the real and perceived fairness of proceedings.

### *Two Major Confrontations Stalled Court Proceedings*

The Taylor trial was bracketed by two significant delays: the appointment and preparation of a new defense team after the first team ceased representation, and a dispute over the defense's submission of its final trial brief.

In both instances, the court seemed to prioritize the trial moving ahead over flexibility in engaging with defense requests. This approach potentially created longer delays than if the Trial Chamber had agreed to the defense's requests or than if the Trial Chamber had more actively sought compromise solutions. This reality points to the difficult balancing act judges must perform during proceedings to implement methods that should promote efficiency, while remaining flexible enough to amend practices where such methods prove counterproductive.

Taylor's first lead defense lawyer, Karim Khan, left the case after indicating on the opening day of the trial that Taylor had terminated his representation due to what both saw as insufficient resources to put forward a vigorous defense.<sup>83</sup> Khan had previously made requests to the court for a five-month postponement of the trial start date, additional staff, and increased legal support—requests the court denied.<sup>84</sup>

Sources suggest that the court's limited willingness to engage with the defense was at least partly due to a sense that any further postponements would create perceptions that the trial was not proceeding efficiently.<sup>85</sup> However, the approach actually led to a nine-month delay in proceedings while a new defense team was appointed and given time to prepare. The trial restarted on January 7, 2008.

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<sup>83</sup> *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, trial transcript, June 4, 2007, pp. 250, 259, 267.

<sup>84</sup> See *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-1-PT, Decision on Defence Application for Leave to Appeal "Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence" Dated 23 January 2007 (Trial Chamber II), February 15, 2007; Human Rights Watch interview with former member of Taylor defense team, The Hague, November 8, 2011; Human Rights Watch interview with former member of prosecution team, The Hague, November 8, 2011.

<sup>85</sup> Human Rights Watch interview with civil society member, November 7, 2011; Human Rights Watch interview with former member of Taylor defense team, November 8, 2011.



The Trial Chamber and the defense had a second major confrontation when the defense team filed a motion on January 10, 2011, for an extension of the January 14 deadline to submit its final trial brief.<sup>86</sup> The defense requested an extension of one month or until outstanding motions were resolved on the basis that they “significantly impacted on the Accused’s ability to present a conclusive and well-reasoned Final Trial brief.”<sup>87</sup> The Trial Chamber denied the request on January 12, but noted that it would entertain applications to subsequently supplement the final briefs.<sup>88</sup> Defense did not meet the deadline and sought to submit its brief on February 3, 2011, which the Trial Chamber declined to accept by a majority opinion.<sup>89</sup>

Defense appealed the decision and the Appeals Chamber ruled on March 3, 2011, that the Trial Chamber must accept the brief, stating that Taylor had not given an adequate waiver of his fundamental rights to be heard and to put on a defense.<sup>90</sup> In the end, the standoff between defense and the Trial Chamber created a two-month delay as opposed to the one-month delay the defense originally requested.

### *Witness Testimony: Largely Unlimited in Scope and Duration*

Under the SCSL Rules, the Trial Chamber “may admit any relevant evidence” but must balance this with the imperative to “avoid the wasting of time.”<sup>91</sup> In the Taylor trial, the Trial Chamber took a non-interventionist approach to witness testimony: the judges did not set limits on the length of witness testimony or actively interrupt prosecution or defense counsel during examinations except to clarify small details.<sup>92</sup>

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<sup>86</sup> *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T-1144, Urgent and Public Defence Motion for a Stay of Proceedings Pending Resolution of Outstanding Issues, January 10, 2011.

<sup>87</sup> *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T-1186, Confidential with Annexes A-C Defence Final Brief, February 3, 2011.

<sup>88</sup> *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-T-1154, Decision on Defence Request for a Status Conference Pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues (Trial Chamber II), January 12, 2011, pp. 3-4.

<sup>89</sup> *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T-1191, Decision on Late Filing of Defence Trial Brief (Trial Chamber II), February 7, 2011, p. 3.

<sup>90</sup> *Prosecutor v. Charles Ghankay Taylor*, Decision on Defence Notice of Appeal and Submissions Regarding the Decision on Late Filing of Defence Final Trial Brief (Appeals Chamber), SCSL-03-01-T-1223, March 3, 2011, paras. 48 & 65.

<sup>91</sup> SCSL Rules, Rule 89(C); SCSL Rules, Rule 90(F)(ii).

<sup>92</sup> Human Rights Watch interview with civil society member, November 7, 2011; Human Rights Watch interview with member of prosecution team, November 8, 2011; Human Rights Watch interview with member of Taylor defense team, November 9, 2011. See also U.C. Berkeley War Crimes Studies Center, “Charles Taylor on the Stand: An Overview of his Examination-In-Chief,” January 4, 2010, <http://www.charlestaylortrial.org/2010/01/04/charles-taylor-on-the-stand-an-overview-of-his-examination-in-chief-by-u-c-berkeley-monitors/> (accessed May 21, 2012).

The impact of the Trial Chamber’s approach was seen most significantly during Taylor’s direct testimony, which lasted 13 weeks. During the testimony, the Trial Chamber allowed Taylor to cover a range of topics that went beyond the court’s temporal and geographic jurisdiction, although they were arguably related. More specifically, observers noted that Taylor and his defense team used his time on the stand to discuss at length issues such as his rise to power, West African politics, his alleged support for the RUF, and his reaction to prosecution witnesses’ testimony.<sup>93</sup>

The prosecution also enjoyed latitude regarding the scope of the evidence it presented. As highlighted in the defense’s final trial brief, for example, prosecution witnesses testified to crimes perpetrated in areas not included in the indictment despite defense objections.<sup>94</sup>

This approach has its merits in that neither side is likely to claim that it was not given the time it needed in presenting its case.<sup>95</sup> However, more active management of examinations by the bench and attempts to focus testimony likely would have contributed to more expeditious proceedings without compromising international fair trial standards. Specifically, an interventionist style can make positive contributions by setting a tone of efficiency in which proceedings are pushed forward and counsel are held accountable.<sup>96</sup>

Some trials, including the Milosevic trial, have employed time limits on examinations.<sup>97</sup> However, strict time limits may not always be the most sensible or desirable option. In such instances, regular intervention by the judges during examinations to keep them as bounded and relevant as possible can serve as a valuable alternative by balancing the need for flexibility and a full hearing of the parties with the need for an efficient presentation of evidence.

### *Lengthy Presentation of Crime-Base Evidence*

To prove Taylor guilty of any of the counts alleged, the prosecution had the burden of demonstrating beyond a reasonable doubt two issues: first, the crimes alleged actually

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<sup>93</sup> U.C. Berkeley War Crimes Studies Center, “Charles Taylor on the Stand: An Overview of his Examination-In-Chief.”

<sup>94</sup> See, for example, Taylor trial transcript, April 18, 2008, p. 8054; Defence Final Trial Brief, para. 40.

<sup>95</sup> Human Rights Watch interview with civil society member, November 7, 2011; Human Rights Watch interview with member of prosecution team, November 8, 2011; Human Rights Watch interview with member of Taylor defense team, November 9, 2011; Human Rights Watch interview with member of prosecution team, November 9, 2011.

<sup>96</sup> See Human Rights Watch, *Justice in Motion*, p. 12.

<sup>97</sup> See Human Rights Watch, *Weighing the Evidence*, pp. 62-63.

occurred; and second, Taylor was linked to the crimes in such a way as to make him individually criminally responsible for them.

The defense in the Taylor trial repeatedly stated in court and elsewhere that it did not contest that widespread atrocities were committed in Sierra Leone during the war.<sup>98</sup> The RUF and AFRC trials at the SCSL also already extensively explored and established the underlying crimes of the armed conflict in Sierra Leone. This opened up the possibility that the prosecution's case would focus largely on evidence linking Taylor to the crimes ("linkage evidence").

The prosecution and defense engaged in negotiations on limiting the number of witnesses presenting evidence of the underlying crimes ("crime-base" evidence) given that the fact of the crimes' commission was in theory not at issue.<sup>99</sup> However, agreement on almost any facts related to the crime-base could not be found.<sup>100</sup> One reason for this was because the defense team concluded that many of the witnesses that the prosecution identified as crime-base witnesses might also present linkage evidence.<sup>101</sup>

Some presentation of crime-base evidence, even where the crimes themselves are not at issue, is important because one fundamental purpose of a trial is to provide a forum in which victims' voices can be heard. In addition, crime-base evidence could be a powerful tool for the prosecution to emphasize the gravity and extent of the underlying crimes, while the defense is under no obligation to stipulate to crime-base evidence. At the same time, the extent of presentation of crime-base evidence should be balanced with the need for an efficient proceeding in which the prosecution sufficiently focuses on key evidence to meet its burden of proof, which in the Taylor case was the linkage between an accused and the crimes.

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<sup>98</sup> Human Rights Watch interview with member of Taylor defense team, November 9, 2011; Taylor trial transcript, July 13, 2009, pp. 24295-24296.

<sup>99</sup> Human Rights Watch interview with member of prosecution team, September 13, 2011; Human Rights Watch interview with former member of prosecution team, November 2, 2011; Human Rights Watch interview with civil society member, November 7, 2011; Human Rights Watch interview with civil society member, November 7, 2011.

<sup>100</sup> *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-PT-227, Joint Filing by the Prosecution and Defence, Admitted Facts & Law, April 26, 2007.

<sup>101</sup> Human Rights Watch interview with civil society member, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, November 8, 2011; Human Rights Watch interview with member of prosecution team, November 8, 2011; Human Rights Watch interview with member of Taylor defense team, November 10, 2011.

Ultimately, 59 witnesses testified to the crime-base evidence, roughly twice as many as those who testified concerning Taylor’s alleged links to the crimes. The Trial Chamber, for its part, did not significantly intervene to narrow the number of witnesses, either through status conferences or its ability to take judicial notice of adjudicated facts or documentary evidence from previous SCSL trials.<sup>102</sup> Had it used such tools, the Trial Chamber might have helped promote further efficiencies without negative implications for fair trial rights. This should be considered for future proceedings.

### *A Delayed Judgment*

Over 13 months passed between the close of arguments on March 11, 2011, and the announcement of a verdict and judgment summary on April 26, 2012. During that time, the court formally and informally indicated an estimated date for the judgment’s release several times, only to reschedule it. In December 2011 a court staff member told media that the court had intended to deliver its verdict in September 2011. However, the court pushed the date to October 2011 and then December 2011. The staff member said that the verdict might be delivered in January 2012 but that there were no guarantees.<sup>103</sup>

One factor that undoubtedly contributed to the time taken to prepare the judgment was its length (more than 2,500 pages). Another was staff turnover, especially of legal officers in the Trial Chamber who had worked on the trial since its start.<sup>104</sup>

While no individual is irreplaceable, new staff can be expected to need far more time to perform tasks—especially sensitive responsibilities such as judgment drafting—than staff who had been at the court throughout the trial. Finding new legal officers who could take up such a difficult position on short notice was also resource-intensive.<sup>105</sup>

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<sup>102</sup> SCSL Rules, Rule 65 *bis*; SCSL Rules, Rule 94(b). International criminal law expert Patricia Wald has noted the need for judges to allow for summaries of evidence for the crime-base, limit the number of crime-base witnesses, or even have an investigative judge or truth and reconciliation commission make determinations on crime-base facts. Patricia Wald, *Tyrants on Trial: Keeping Order in the Courtroom*, Open Society Justice Initiative, 2009, pp. 25-26.

<sup>103</sup> The Eighth Annual Report of the Special Court covering the period ending May 2011 stated that the court’s latest completion strategy “envisaged that the Trial Judgment in the Charles Taylor case would be delivered in June 2011.” SCSL Eighth Annual Report, p. 5; Othello B. Garblah, “Taylor’s Verdict Due Next Month?,” *The New Dawn Liberia*, December 2, 2011, [http://www.thenewdawnliberia.com/index.php?option=com\\_content&view=article&id=4790:taylors-verdict-due-next-month&catid=25:politics&Itemid=59](http://www.thenewdawnliberia.com/index.php?option=com_content&view=article&id=4790:taylors-verdict-due-next-month&catid=25:politics&Itemid=59) (accessed May 4, 2012). On March 1, 2012, the Trial Chamber issued a scheduling order announcing that the verdict would be released on April 26, 2012.

<sup>104</sup> Human Rights Watch interview with Registry staff, November 9, 2011.

<sup>105</sup> *Ibid.*

The Special Court offered financial incentives for staff to stay through the judgment-writing phase.<sup>106</sup> However, greater efforts to communicate accurate projections of the court's timeline and greater consultation about adequate terms for continued employment may have enhanced the prospects for staff to remain in their posts.

As a tribunal with a limited mandate conducting its last anticipated trial, the Special Court has been winding down operations for some time. Staff who continued to work on the trial through the delivery of judgment could be expected to need to find new employment shortly thereafter. As a result, uncertainty over when the judgment would be issued may have fueled decisions by some staff to leave for positions that were available before the judgment was drafted, rather than risk a period of unemployment.

The issue of staff retention is likely to present an obstacle for all tribunals that have limited mandates—such as the ad hoc tribunals for the former Yugoslavia and Rwanda—during their final trials. Silver bullet solutions to this challenge are unlikely. However, greater clarity on timelines and active discussion with staff about possible ways to better ensure retention may make it more feasible for staff to remain until judgment drafting is completed.

### *A Challenge for the Judges*

The judges did not have an easy job at the Taylor trial. In the relatively nascent system of international criminal justice, there is limited jurisprudence and practice in comparison to more developed national judicial systems. Moreover, trials of the highest-level leaders are heavily scrutinized affairs involving a tremendous amount of evidence and complex charges. In addition, as is common at international and hybrid tribunals, the judges of the Special Court are drawn from various judicial traditions. This can create further challenges for effective operation.

Experience has shown that appointing judges with prior experience in complex criminal proceedings—whether as judges, prosecutors, or defense attorneys—can help maximize efficient trial management.<sup>107</sup> The judges of Trial Chamber II, while experienced jurists,

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<sup>106</sup> Ibid.

<sup>107</sup> See Human Rights Watch, *Courting History: The Landmark International Criminal Court's First Years*, July 12, 2008, <http://www.hrw.org/reports/2008/07/10/courting-history>, p. 10.

largely did not join the Special Court with extensive experience in managing complex criminal trials.<sup>108</sup>

Such experience would have likely proved valuable in helping judges to manage the multiple, changing, and sometimes-conflicting factors at play in the courtroom. As described throughout this section, these include using methods that generally promote efficiency, being flexible in making exceptions to these methods when it would improve efficiency, and allowing adequate opportunities for case presentation while encouraging efficiency by the parties.

Future recruitment and appointment processes for judges should make relevant criminal trial experience a priority. This will help ensure the best possible management of sensitive, complicated trials of the highest-level suspects for serious crimes.

## The Defense

### *Defense Teams*

A vigorous defense with adequate support is a key component to ensuring fair, credible judicial proceedings. As discussed above, assembling a defense team acceptable to Taylor was not without its hiccups.

On the opening day of the proceedings on June 4, 2007, Taylor boycotted the trial and his first defense lawyer, Karim Khan, told the court that Taylor had withdrawn permission to have Khan represent him.<sup>109</sup> Khan read a letter from Taylor in which Taylor stated that, due to inadequate time and facilities provided to his one court-appointed lawyer to prepare a case, he believed he would not receive a fair trial.<sup>110</sup> Despite Taylor's letter terminating Khan's representation, the court ordered Khan to stay and represent Taylor through the first day of the trial.<sup>111</sup> However, Khan said he no longer had Taylor's authority and left the courtroom.<sup>112</sup>

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<sup>108</sup> See biographies of Trial Chamber II judges, <http://www.sc-sl.org/ABOUT/CourtOrganization/Chambers/TrialChamberII/tabid/89/Default.aspx> (accessed May 17, 2012).

<sup>109</sup> Taylor trial transcript, June 4, 2007, p. 250.

<sup>110</sup> *Ibid.*, pp. 248-250; Letter from Charles Taylor to the Special Court for Sierra Leone, June 1, 2007, [http://charlestaylortrial.files.wordpress.com/2007/06/taylor\\_l.pdf](http://charlestaylortrial.files.wordpress.com/2007/06/taylor_l.pdf).

<sup>111</sup> Taylor trial transcript, June 4, 2007, p. 259.

<sup>112</sup> *Ibid.*, pp. 266-267.

Following Khan's firing and walk-out, the judges noted in court on June 25 that defense concerns over resources and time to prepare "ha[ve] been known to the Acting Registrar in general and the Principal Defender in particular since early March 2007 and nothing practical seems to have been done to address the problems."<sup>113</sup>

On July 6, 2007, the Registry almost doubled the defense budget to US\$70,000 per month.<sup>114</sup> With additional funds allocated for the senior investigator and office space for the defense team included, the revised budget for Taylor's defense team amounted to approximately \$100,000 per month.<sup>115</sup> In addition, the principal defender compiled a list of candidates and approved the hire of a second defense team of highly experienced lawyers, including what is referred to as a Queen's Counsel in the British legal system, and two eminent co-counselors. They began work on July 17.<sup>116</sup>

Taylor's firing of his first defense team drained time and resources. Greater efforts by the Registry and Trial Chamber to manage concerns raised by Taylor's first defense team would have been valuable to promote Taylor's fair trial rights and encourage smoother proceedings from the start of the trial, and should be given priority in future proceedings involving serious crimes.

### *Office of the Principal Defender*

When it was created, the SCSL's Office of the Principal Defender (OPD) within the Registry represented a potentially pioneering step towards promoting the rights of accused at an international or hybrid tribunal. In addition to administrative functions, such as paying counsel fees, the OPD has the authority to advocate on behalf of the interests of the accused vis-à-vis other court actors, such as the registrar or judges.<sup>117</sup> The rules also authorize the OPD to provide legal support to the accused.<sup>118</sup>

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<sup>113</sup> Taylor trial transcript, June 25, 2007, p. 382.

<sup>114</sup> Marlise Simons, "Liberian Ex-Leader's War Crimes Trial is Stalled," *New York Times*, August 27, 2007, <http://www.nytimes.com/2007/08/27/world/africa/27taylor.html?pagewanted=1&r=1&adxnnl=1&adxnnlx=1338394327-Bt7aa20FKHLqogLLqxEG1g> (accessed May 30, 2012).

<sup>115</sup> Eric Witte, "Acting Registrar Agrees to Increased Funding for Taylor Trial," Open Society Justice Initiative, July 6, 2007, <http://www.charlestaylortrial.org/2007/07/06/acting-registrar-agrees-to-increase-funding-for-taylor-trial/> (accessed May 4, 2012).

<sup>116</sup> See Eric Witte, "Principal Defender Assigns Taylor New Counsel," Open Society Justice Initiative, July 18, 2007, <http://www.charlestaylortrial.org/2007/07/18/principal-defender-assigns-taylor-new-counsel/> (accessed May 21, 2012).

<sup>117</sup> SCSL Rules, Rule 45; Special Court for Sierra Leone, "Directive on the Assignment of Counsel," adopted October 1, 2003.

<sup>118</sup> *Ibid.* However, the Special Court's rules and directives do not provide guidance on the extent to which the OPD should act independently of the Registry or on the relationship between the Office of the Principal Defender and the accused after the assignment of defense counsel, which appears to be a contributing factor to difficulties it has faced.

In practice, the OPD’s functioning at the SCSL has faced criticism.<sup>119</sup> In particular, several defense counsel—including those representing Taylor—have stated that the legal assistance the OPD provided defense teams was weak.<sup>120</sup> OPD staff also expressed the view that the OPD model is not suitable for providing legal support to semi-autonomous defense teams, partly due to confidentiality issues.<sup>121</sup> In the Taylor case, defense counsel indicated that they preferred to rely on their own team members to perform substantive legal work. They also suggested providing greater financial support directly to defense teams to conduct tasks such as legal research is preferable to an OPD with a dual administrative-legal assistance role.<sup>122</sup>

At the same time, the OPD made some important contributions, particularly during times of crisis or transition in the case. For example, after the first defense team was terminated, the principal defender and other OPD staff consulted with Taylor to advise him of his legal rights and the best course forward, spearheaded efforts to create a new defense team, and appeared in court on behalf of Taylor.<sup>123</sup> OPD staff also worked to ensure that the contracts of key defense team members were extended during the deliberations phase, enabling them to better prepare for potential sentencing and appeal briefs and to address any potential issues with Taylor’s detention during this period.<sup>124</sup>

## Witnesses and Sources

### *Protecting and Supporting Witnesses*

The Witness and Victims Section (WVS), which is located in the court’s Registry, did a commendable job handling the formidable challenges of witness protection and support for the more than 100 witnesses who testified. Witnesses testifying in the Taylor trial included individuals who had never left West Africa, insider witnesses who had admitted

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<sup>119</sup> For a more detailed discussion of the Office of the Principal Defender, see Human Rights Watch, *Bringing Justice*, pp. 21-28; Human Rights Watch, *Justice in Motion*, pp. 3-5, 14-16.

<sup>120</sup> Human Rights Watch interview with member of Taylor defense team, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, November 10, 2011; Human Rights Watch interview with former SCSL defense counsel, April 21, 2012.

<sup>121</sup> OPD staff stated that legal research tasks for Taylor’s defense would often necessarily involve sensitive and confidential issues related to defense strategy and therefore could not be performed by individuals outside of Taylor’s defense team. Human Rights Watch interview with Office of the Principal Defender staff, January 17, 2012.

<sup>122</sup> Human Rights Watch interview with member of Taylor defense team, November 10, 2011.

<sup>123</sup> Human Rights Watch interview with Office of the Principal Defender staff, January 17, 2012. See Taylor trial transcript, June 25, 2007; Taylor trial transcript, July 3, 2007; Eric Witte, “Principal Defender Assigns Taylor New Counsel,” Open Society Justice Initiative.

<sup>124</sup> Human Rights Watch telephone interview with Registry staff, May 4, 2012.



to extensive criminal activity, and victims who had suffered severe trauma. Many witnesses had to be transported from West Africa to the Netherlands, which involved complex logistics.<sup>125</sup> Witnesses also had to be kept safe and secure in both locations, requiring constant supervision of safe houses.<sup>126</sup> In addition, WVS provided psycho-social support to witnesses on and off the stand, allowing them to successfully testify.<sup>127</sup>

By various accounts, the bench, prosecution, and defense generally treated witnesses respectfully during their testimony. At the same time, there were isolated incidents where victim witnesses were treated harshly by the defense or bench, such as insensitive questioning of witnesses who testified to the atrocities they or their loved ones suffered. For example, defense counsel harshly questioned a prosecution witness about her continued allegiance to the RUF after her small child had been allegedly buried alive by an RUF commander.<sup>128</sup> In addition, the bench made witnesses who had suffered obvious injuries such as amputations display their injuries to the court.<sup>129</sup>

It is critical that when witnesses come forward to testify, often at great risk to themselves and their families, they are treated with dignity and respect. This is a matter of principle but also pragmatic, as ill-treatment of witnesses can have a chilling effect on witness cooperation with the court and undermines the very principles on which trials for serious crimes are pursued.

### *Prosecution's Provision of Funds to Potential Witnesses and Sources*

Under the SCSL rules, for the purpose of its investigation, the prosecution “may take ... special measures to provide for the safety, the support and the assistance of potential witnesses and sources.”<sup>130</sup> The Witness Management Unit (WMU), located within the Office of the Prosecutor, handles funds for such purposes. No such funds are available for the

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<sup>125</sup> Human Rights Watch interview with Witness and Victims Services former staff, Leidschendam, November 8, 2011; Human Rights Watch interview with Registry staff, November 9, 2011; Human Rights Watch interview with Registry staff, December 6, 2011; Human Rights Watch interview with Witness and Victims Services staff, Freetown, January 17, 2012.

<sup>126</sup> Human Rights Watch interview with Witness and Victims Services staff, January 17, 2012.

<sup>127</sup> Human Rights Watch interview with Witness and Victims Services former staff, November 8, 2011; Human Rights Watch interview with Registry staff, December 6, 2011; Human Rights Watch interview with Witness and Victims Services staff, January 17, 2012.

Taylor trial transcript, June 19, 2008, pp. 12302-12309. .

<sup>129</sup> Taylor trial transcript, October 17, 2008, pp. 18607-18608. See also Human Rights Watch interview with civil society member, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, November 10, 2011.

<sup>130</sup> SCSL Rules, Rule 39.

defense to use for potential witnesses and sources, partly because the prosecution bears the burden of proof.

The situation for potential witnesses and sources is different from witnesses who take the stand and receive assistance from the Registry via Witness and Victims Services (WVS).<sup>131</sup> WVS funds are available to both prosecution and defense witnesses. In addition, while the types and amount of support that the Registry provides to witnesses are determined based on guidelines, no public guidelines exist for the prosecution's provision of support to potential witnesses and sources.<sup>132</sup>

During the Taylor trial, the prosecution's support and assistance to potential witnesses and sources led to a number of disagreements between the parties. First, the defense alleged that payments to the prosecution's potential witnesses and sources created inappropriate incentives for those later selected as witnesses to give favorable testimony to the prosecution.<sup>133</sup> Second, the prosecution and defense disagreed over whether all payments and support provided by the WMU to individuals who were ultimately called to the stand rose to the level of "exculpatory evidence," which must be disclosed to the defense.<sup>134</sup>

Third, the parties disagreed over whether the prosecution's disclosure obligations extended to individuals who received funds from the prosecution in the course of its investigation, but who were ultimately called as defense witnesses. For example, defense made a motion for the disclosure of prosecution payments estimated at \$30,000 to witness DCT-097, which the prosecution opposed on the grounds that DCT-097 was called as a defense witness. The Trial Chamber ruled that the prosecution was obligated to

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<sup>131</sup> WVS provides support and assistance to witnesses in the form of monetary allowances, rehabilitation, and counseling, among others. SCSL Rules, Rule 34.

<sup>132</sup> "Practice Direction on Allowances for Witnesses and Expert Witnesses Testifying in The Hague," Special Court for Sierra Leone, adopted June 8, 2007.

<sup>133</sup> Human Rights Watch interview with civil society member, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, November 8, 2011; Human Rights Watch interview with member of Taylor defense team, November 9, 2011; Human Rights Watch interview with member of Taylor defense team, November 10, 2011.

<sup>134</sup> The SCSL rules state that the prosecution is required to disclose any evidence "which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence." SCSL Rules, Rule 68. Human Rights Watch interview with member of prosecution team, September 13, 2011; Human Rights Watch interview with former member of prosecution team, November 2, 2011; Human Rights Watch interview with member of prosecution team, November 8, 2011; Human Rights Watch interview with member of Taylor defense team, November 8, 2011; Human Rights Watch interview with member of Taylor defense team, November 9, 2011; Human Rights Watch interview with member of Taylor defense team, November 10, 2011.

disclose the payments because they qualified as potentially “exculpatory material” and the prosecution’s disclosure obligation exists “regardless of whether or not [the individual] was called by the Prosecution to testify.”<sup>135</sup>

Providing funds to witnesses, potential witnesses, and sources is a controversial issue for international and hybrid courts, especially when these institutions are engaging with impoverished and war-torn areas and where insiders—who are themselves implicated in crimes—may be crucial witnesses or sources.

The prosecution’s provision of funds to potential witnesses and sources may be unavoidable in conducting a criminal investigation and building a case. But increased transparency and clear guidelines for prosecution funds given to potential witnesses and sources may help to avoid distraction and unnecessary suspicion in future tribunals.

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<sup>135</sup> *Prosecutor v. Charles Ghankay Taylor*, Special Court for Sierra Leone, SCSL-03-01-T-1084, Decision on Defence Motion for Disclosure of Statements and Prosecution Payments to DCT-097 (Trial Chamber II), September 23, 2010, para. 11.

### III. The Trial's Impact in Sierra Leone and Liberia

Trials of high-level leaders for serious crimes are significant beyond events in the courtroom.

One crucial goal is to bring a sense of accountability to communities most affected by the alleged crimes so that justice has local resonance and meaning. The Taylor trial has important lessons for outreach to local populations to maximize the impact of future proceedings, particularly those held far from the location of the crimes, as will often be the case at the International Criminal Court (ICC).

After devastating armed conflicts, a fragile peace currently exists in both Sierra Leone and Liberia. The guns have been silent almost a decade, and both countries have sought to distance themselves from their violent past. Even as their neighbors, such as Guinea and Côte d'Ivoire, continue to face significant challenges across porous borders, Sierra Leone and Liberia are attempting to maintain stability and advance prosperity.<sup>136</sup> At the same time, the institutions that underpin the rule of law in both Sierra Leone and Liberia—including the police, the judiciary, prosecutors, and corrections—remain extremely weak and other persistent problems, such as corruption, endanger hard won gains.<sup>137</sup>

Against this backdrop, this section seeks to provide some discussion of the Taylor trial's initial impact in Sierra Leone and Liberia, organized around four main areas of inquiry. First, to what extent were people in the communities most affected by the crimes aware of the trial's purpose and proceedings? Second, how is the trial perceived in Sierra Leone and Liberia? Third, what is the trial's impact on thinking and practice related to justice for

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<sup>136</sup> Human Rights Watch telephone interview with Comfort Ero, director, International Crisis Group Africa, Nairobi, January 24, 2012. See Human Rights Watch, *World Report 2012* (New York: Human Rights Watch, 2012), Côte d'Ivoire chapter, <http://www.hrw.org/sites/default/files/reports/wr2012.pdf>; Human Rights Watch, *World Report 2012* (New York: Human Rights Watch, 2012), Guinea chapter, <http://www.hrw.org/sites/default/files/reports/wr2012.pdf>.

<sup>137</sup> Human Rights Watch interview with Oscar Bloh, journalist and director, Talking Drum Studios, Monrovia, January 9, 2012; Human Rights Watch interview with Liberian government minister, Monrovia, January 10, 2012; Human Rights Watch interview with Tiawan Gongloe, January 10, 2012; Human Rights Watch interview with Ezekiel Pajibo, project director with Trust Africa Liberia, Monrovia, January 10, 2012; Human Rights Watch interview with Peter Quaqua, journalist, Liberian Press Union, Monrovia, January 10, 2012; Human Rights Watch interview with Paul James-Allen, January 11, 2012; Human Rights Watch interview with Ibrahim Tommy, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, Freetown, January 13, 2012; Human Rights Watch interview with Suliaman Jabati and Alophonsus Gbanie, civil society leaders, Freetown, January 16, 2012; Human Rights Watch interview with John Caulker, January 16, 2012.

serious crimes in Sierra Leone and Liberia? And fourth, what can be said about the trial's effect on long-term respect for human rights and the rule of law in the sub-region?

It is important to note at the outset that any consideration of the impact of the trial at this stage is constrained by at least two major factors: first, the Trial Chamber only handed down its verdict in April 2012 and it could be years, if not decades, before the trial's full impact is realized; and second, there are inherent challenges to isolating the effect of the trial because, though significant, it is one of many factors in a complex social and political landscape. In addition, analysis in this section is based primarily on information drawn from individual interviews and focus groups with civil society leaders, war victims, members of government, journalists, and ex-combatants in Monrovia and Freetown. No quantitative or large-scale surveys were conducted.

Despite these limitations, several noteworthy observations are possible. Specifically, many people from affected communities are aware of the trial and have reflected on its significance. In addition, the trial is seen as highly significant and as having positively impacted affected communities by increasing understanding of the importance of justice.

At the same time, the trial is only one part of a much larger process of accountability, and there are frustrations over the absence of greater advances to ensure comprehensive justice. However, Taylor's trial, and the court more generally, appear to have helped to enhance long-term respect for human rights and the rule of law by disrupting the influence of a charismatic leader who sowed violence and chaos, allowing a more stable situation for the development of rights-respecting governments.

## **Awareness of the Taylor Trial in Sierra Leone and Liberia**

### *Outreach and Public Affairs Section*

Since its inception, the Special Court has demonstrated a clear institutional commitment to conducting outreach within affected communities. In response to concerns that the Taylor trial's relocation would hamper awareness of the trial in West Africa, the UN Security Council emphasized the importance of outreach for the Taylor trial in Resolution 1688 and directed the SCSL "to make the trial proceedings accessible to the people of the sub-region."<sup>138</sup>

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<sup>138</sup> UN Security Council Resolution 1688.

The court sought to fulfill this directive through a range of activities, which are outlined below.

From both the Freetown office and a sub-office in The Hague, which was opened in 2007 in anticipation of Taylor's transfer, staff of the Outreach and Public Affairs (OPA) section<sup>139</sup> worked with local and international media, civil society groups, and academics to disseminate information about the Taylor proceedings to the public.<sup>140</sup>

OPA created audio summaries of the trial that were played on the radio in West Africa, and video summaries that were screened at outreach events in locations throughout Sierra Leone and Liberia.<sup>141</sup> Many events in Sierra Leone were held in communities that had been the scene of wartime atrocities, including massacres, widespread sexual violence, and abduction.

OPA also engaged with hundreds of civil society activists: by 2009, more than 60 civil society groups were attending a monthly interactive forum with the Special Court at its headquarters in Sierra Leone and a coalition of 20 civil society groups—called the Outreach Secretariat of Liberia—were working with the OPA to provide information on the Special Court to people throughout Liberia.<sup>142</sup>

OPA also facilitated visits to The Hague by civil society members from Sierra Leone and Liberia, who in turn disseminated their impressions of the proceedings to their communities.<sup>143</sup> OPA brought Sierra Leonean civil society leaders to The Hague for the

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<sup>139</sup> The Outreach section and the Press and Public Affairs section merged into the Outreach and Public Affairs office in April 2008.

<sup>140</sup> Special Court for Sierra Leone, *Fourth Annual Report of the President of the Special Court for Sierra Leone: January 2006 to May 2007*, <http://www.sc-sl.org/LinkClick.aspx?fileticket=SaCsng9u8MzE%3d&tabid=176>, pp. 53-55.

<sup>141</sup> Human Rights Watch interview with Patrick Fatoma, Outreach and Public Affairs staff, Freetown, January 12, 2012. See also SCSL Eighth Annual Report, pp. 43-45; Special Court for Sierra Leone, *Seventh Annual Report of the President of the Special Court for Sierra Leone: June 2009 to May 2010* ("SCSL Seventh Annual Report"), <http://www.sc-sl.org/LinkClick.aspx?fileticket=33ryoRsKMjI%3d&tabid=176>, pp. 43-45; Special Court for Sierra Leone, *Sixth Annual Report of the President of the Special Court for Sierra Leone: June 2008 to May 2009* ("SCSL Sixth Annual Report"), <http://www.sc-sl.org/LinkClick.aspx?fileticket=%2ful3lqaO5Do%3d&tabid=176>, pp. 41-42; Special Court for Sierra Leone, *Fifth Annual Report of the President of the Special Court for Sierra Leone: June 2007 to May 2008* ("SCSL Fifth Annual Report"), <http://www.sc-sl.org/LinkClick.aspx?fileticket=hopZSuXjicg%3d&tabid=176>, pp. 52-53.

<sup>142</sup> SCSL Seventh Annual Report, p. 43.

<sup>143</sup> Human Rights Watch interview with Patrick Fatoma, January 12, 2012. See also SCSL Eighth Annual Report, p. 44; SCSL Seventh Annual Report, p. 45; SCSL Sixth Annual Report, p. 42; SCSL Fifth Annual Report, p. 52.

verdict’s delivery on April 26, 2012, and invited over one thousand Sierra Leoneans to watch the judges announce the verdict on screens outside court headquarters in Freetown.

Several attendees of outreach events said the sessions increased awareness of international law and underlying human rights principles.<sup>144</sup> As one war victim who participated in several outreach events said, “Because of my work with the outreach section, I developed a deep understanding of the ideas of command responsibility and greatest responsibility.”<sup>145</sup>

Outreach staff also found that “questions from Sierra Leonean and Liberian citizens evolved over time” to show growing understanding of the court’s contributions.<sup>146</sup> “Before, [outreach staff] were consistently asked why the SCSL was wasting money on the court that it should be giving to victims, like the amputees,” said OPA’s Patrick Fatoma. “Now we’re often asked if we can stay until after the elections [in case there is violence] and if the court will try more people.”<sup>147</sup>

Civil society members in both countries reported that they have increasingly incorporated the discourse of human rights into their work.<sup>148</sup> Both countries also have seen a proliferation of domestic organizations focused on international human rights and accountability. Several interviewees attributed these developments at least in part to the work of the SCSL.<sup>149</sup>

### *Media*

The British Broadcasting Corporation (BBC) World Service Trust, with administrative support from OPA, ran a significant project on the Taylor trial, which sent Sierra Leonean and Liberian journalists to The Hague to report on it.<sup>150</sup> The segments they produced

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<sup>144</sup> Human Rights Watch interview with Patrick Fatoma, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch interview with Al Haji Jusu Jarka, advisor to Amputee Association of Sierra Leone, Freetown, January 15, 2012.

<sup>145</sup> Human Rights Watch interview with Al Haji Jusu Jarka, January 15, 2012.

<sup>146</sup> Human Rights Watch interview with Patrick Fatoma, January 12, 2012.

<sup>147</sup> *Ibid.*

<sup>148</sup> Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch group interview with five Liberian civil society leaders, Monrovia, January 11, 2012.

<sup>149</sup> Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch interview with John Caulker, January 16, 2012. See also SCSL Eighth Annual Report, p. 44.

<sup>150</sup> Human Rights Watch interview with Peter Andersen, chief of Outreach and Public Affairs, Freetown, January 12, 2012; Human Rights Watch interview with Amara Bangura, journalist and producer, BBC World Service Trust, Freetown, January 16, 2012. See also SCSL Fifth Annual Report, pp. 35, 52.

reached a wide radio audience in Sierra Leone and Liberia, and the BBC radio reports were a regular source of information on the trial for many individuals in Sierra Leone and Liberia.<sup>151</sup> A Liberian journalist involved with the project stated, “Many Liberians did not have confidence in the court before the BBC World Trust project. But once we started reporting, people started to understand more and have more confidence in the process.”<sup>152</sup> Another Liberian journalist said, “The BBC project generated interest ... feedback, and reaction in Liberia.”<sup>153</sup>

Other domestic and international media coverage, as well as the work of nongovernmental organizations (NGOs), contributed to awareness of the trial. Local Sierra Leonean and Liberian papers and radio programs regularly covered developments in the Taylor trial, and an international NGO, the Open Society Justice Initiative, produced daily summaries and analysis of proceedings online. Some of these activities also provided forums for people to comment on the proceedings, fostering lively debates on the trial across West Africa.<sup>154</sup>

### *Challenges to Disseminating Information about the Taylor Trial*

Compared to earlier trials by the Special Court, the Outreach and Public Affairs section faced many challenges in conducting outreach for the Taylor trial. First, the Taylor trial was located thousands of miles from the affected communities; second, outreach not only took place in Sierra Leone, but also in Liberia; and third, the Taylor trial was long and had multiple breaks in proceedings. OPA also had to contend with all of the ordinary challenges it faced since the beginning of the SCSL, including limited infrastructure in West Africa and a variety of languages spoken by affected communities.<sup>155</sup> Furthermore, OPA did not receive funding from the Special Court’s core budget for programming; instead, private foundations and other funding sources supported its activities.<sup>156</sup>

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<sup>151</sup> Human Rights Watch interview with Alpha Sesay, legal officer, Open Society Justice Initiative, The Hague, November 7, 2011; Human Rights Watch interview with Oscar Bloh, January 9, 2012; Human Rights Watch interview with Peter Quaqua, January 10, 2012; Human Rights Watch interview with Joseph Cheeseman, journalist, Monrovia, January 11, 2012; Human Rights Watch interview with Jallah Grayfield, manager at Love FM, Monrovia, January 11, 2012; Human Rights Watch interview with Peter Andersen, January 12, 2012; Human Rights Watch interview with Amara Bangura, January 16, 2012.

<sup>152</sup> Human Rights Watch interview with Joseph Cheeseman, January 11, 2012.

<sup>153</sup> Human Rights Watch interview with Peter Quaqua, January 10, 2012.

<sup>154</sup> Human Rights Watch interview with Alpha Sesay, November 7, 2011; see Open Society Justice Initiative, “The Trial of Charles Taylor,” <http://www.charlestaylortrial.org/> (accessed May 18, 2012).

<sup>155</sup> Human Rights Watch interview with Registry staff, December 6, 2011; Human Rights Watch interview with Peter Andersen, January 12, 2012; Human Rights Watch interview with Ibrahim Tommy, January 12, 2012.

<sup>156</sup> Human Rights Watch interview with Solomon Moriba, Outreach and Public Affairs staff, The Hague, November 7, 2011; Human Rights Watch interview with Peter Andersen, January 12, 2012.



Some civil society leaders and court employees stated that the distance between affected communities and The Hague created a barrier to awareness, particularly when compared to the Special Court's other trials, which were conducted in Freetown.<sup>157</sup> Although the other trials were not well attended by members of the affected communities, their proximity to the victims and crime scenes was symbolically important and so increased attention paid to the trials.<sup>158</sup> 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 SCSL trials were for Sierra Leoneans."<sup>159</sup>

Some people interviewed by Human Rights Watch said that efforts to conduct outreach in Liberia were of lower quality and quantity than efforts in Sierra Leone. This was in part due to security concerns in Liberia.<sup>160</sup> In addition, Sierra Leone was understandably the priority of outreach activities as the Special Court's mandate does not cover crimes committed in Liberia.

The slow nature of trials and extended breaks in the Taylor proceedings also presented a challenge to engaging the communities most affected by the crimes. Jabati Mambu, executive member of the Amputee Association of Sierra Leone, noted that "in places like Sierra Leone and Liberia where daily survival is a concern for many," weeks or months of inaction in the proceedings meant "the Taylor trial would lose much of the public attention it had at its start."<sup>161</sup> Jallah Grayfield of Liberian radio station Love FM said "breaks in proceedings meant no fresh news to report on," which led to dwindling media attention.<sup>162</sup> Amara Bangura of the BBC World Service Trust noted that breaks also made funding for reporting projects by local journalists in The Hague more difficult to obtain.<sup>163</sup>

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<sup>157</sup> Human Rights Watch interview with Ibrahim Tommy, January 12, 2012; Human Rights Watch interview with Peter Andersen, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012.

<sup>158</sup> Human Rights Watch interview with Ibrahim Tommy, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch interview with Charles Mambu, director, Coalition of Civil Society and Human Rights Activists of Sierra Leone, Freetown, January 14, 2012; Human Rights Watch interview with Suliaman Jabati and Alophonsus Gbanie, January 16, 2012.

<sup>159</sup> Human Rights Watch interview with Witness and Victims Services former staff, November 8, 2011.

<sup>160</sup> Human Rights Watch interview with Solomon Moriba, November 7, 2011; Human Rights Watch interview with Oscar Bloh, January 9, 2012; Human Rights Watch interview with Peter Andersen, January 12, 2012.

<sup>161</sup> Human Rights Watch interview with Jabati Mambu, executive member of Amputee Association of Sierra Leone, Freetown, January 15, 2012.

<sup>162</sup> Human Rights Watch interview with Jallah Grayfield, January 11, 2012.

<sup>163</sup> Human Rights Watch interview with Amara Bangura, January 16, 2012.

## Reflections on the Taylor Trial

Not surprisingly, opinions of Sierra Leoneans and Liberians regarding the significance of Taylor's trial vary substantially between countries and within Liberia due to complex internal divisions. Nevertheless, some consistent themes emerged from Human Rights Watch's research: first, Taylor's arrest was shocking given the immensity of his perceived power in the sub-region; second, Taylor's arrest and removal from the region created controversy among some in Sierra Leone, but a sense of greater security in Liberia; third, Taylor's trial has altered the expectation of impunity in the sub-region, although there is disappointment over gaps in accountability.

### *Taylor's Arrest Stunned Many in Sierra Leone and Liberia*

Numerous civil society leaders in Sierra Leone and Liberia told Human Rights Watch that few believed Taylor would be called to account for his crimes due to the real and perceived political power he enjoyed.<sup>164</sup> Paul James-Allen, a Sierra Leonean working for a humanitarian organization in Liberia, said, "No one believed Charles Taylor would be arrested. Monrovia was shocked on the day of arrest."<sup>165</sup> Liberian civil society leader Tiawan Gongloe said, "Before Taylor's surrender, everyone felt Taylor was above the law. People did not think he could be caught."<sup>166</sup>

Sierra Leonean war victim Al Haji Jusu Jarka echoed these sentiments. "I never believed I would live to see Taylor put in handcuffs," he said.<sup>167</sup> Civil society leader Ibrahim Tommy said, "Many people [in Sierra Leone] did not believe that Taylor would be arrested and handed over to the court.... To many, the prospect became even more remote after he was granted asylum in Nigeria."<sup>168</sup> He recalled the scene of thousands of Sierra Leoneans celebrating as the helicopter carrying Taylor descended on the Special Court's landing pad in 2006. "I could see people singing and dancing in the streets."<sup>169</sup>

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<sup>164</sup> See also Paul Yeenie Harr, "Is This the Charles Ghankay Taylor of the Nation?," *The New Dawn* (Monrovia), April 26, 2012, <http://allafrica.com/stories/201204260591.html> (accessed June 8, 2012).

<sup>165</sup> Human Rights Watch interview with Paul James-Allen, January 11, 2012.

<sup>166</sup> Human Rights Watch interview with Tiawan Gongloe, January 10, 2012.

<sup>167</sup> Human Rights Watch interview with Al Haji Jusu Jarka, January 15, 2012.

<sup>168</sup> Human Rights Watch email correspondence with Ibrahim Tommy, March 7, 2012.

<sup>169</sup> Human Rights Watch email correspondence with Ibrahim Tommy, May 8, 2012.

### *The Trial's Transfer Caused Dissent, Also Relief*

A number of civil society leaders in Sierra Leone protested the move of the Taylor trial from Freetown to the Netherlands at the time, citing a lack of consultation with those most affected by the crimes.<sup>170</sup> Moreover, some questioned the extent of the security threat and argued that any concern over increased instability was outweighed by the symbolic importance of holding the trial in the country where the crimes occurred.<sup>171</sup>

Liberians tended to express a different opinion. A high-level official in the Liberian government said, “Many Liberians believed if Taylor was arrested and tried in West Africa, the country would be in chaos.”<sup>172</sup> Tiawan Gongloe stated that it was “important to deal with the fear of the people. We needed him far away if we were to build peace and stability.”<sup>173</sup> Ex-combatants and war victims in Liberia also expressed relief that the trial was taken out of the sub-region because of Taylor’s capacity to foment unrest.<sup>174</sup> A double amputee war victim in Liberia asserted that “it was a good thing the trial was moved” because “with Taylor’s money and power, there is no way his supporters would have allowed him to stay locked up” in West Africa.<sup>175</sup>

### *Mixed Views on the Justness of Taylor’s Trial*

In Sierra Leone, Human Rights Watch found a relatively consistent view that the SCSL calling Taylor to account for his crimes was just.<sup>176</sup>

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<sup>170</sup> Human Rights Watch interview with Solomon Moriba, November 7, 2011; Human Rights Watch interview with Ibrahim Tommy, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012. A number of Sierra Leonean civil society groups petitioned the SCSL in 2007 for permission to submit an amicus (“friend of the court”) brief that requested further public justification for the trial’s relocation. However, the court dismissed the request as moot after the SCSL president had ruled against a defense motion requesting reconsideration of the order changing venue. See *Prosecutor v. Charles Ghankay Taylor*, Decision of the President on Defence Motion for Reconsideration of the Order Changing Venue of the Proceedings, Special Court for Sierra Leone, SCSL-03-01-PT-202, March 12, 2007; Allieu Vandi Koroma, “The Transfer of Charles Taylor to The Hague: A Cause to Rethink,” Centre for Accountability and Rule of Law – Sierra Leone, March 26, 2007, <http://www.carl-sl.org/home/articles/121-the-transfer-of-charles-taylor-to-the-hague-a-cause-to-rethink> (accessed June 11, 2012).

<sup>171</sup> Human Rights Watch interview with Ibrahim Tommy, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch interview with Charles Mambu, January 14, 2012.

<sup>172</sup> Human Rights Watch interview with high-level Liberian government official, Monrovia, January 10, 2012.

<sup>173</sup> Human Rights Watch interview with Tiawan Gongloe, January 10, 2012.

<sup>174</sup> Human Rights Watch interview with six Liberian ex-combatants, Monrovia, January 11, 2012; Human Rights Watch interview with Al Haji Jusu Jarka, January 15, 2012.

<sup>175</sup> Human Rights Watch interview with Al Haji Jusu Jarka, January 15, 2012.

<sup>176</sup> Human Rights Watch interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch interview with Charles Mambu, January 14, 2012; Human Rights Watch interview with Jabati Mambu, January 15, 2012.

Liberians' views were more fractured; Tiawan Gongloe outlined three main opinions. "Some feel a sense of justice that Taylor was called to account even if not for his actions in Liberia," he said. "Others, Taylor loyalists, see a Western conspiracy to get rid of a West African leader. And others, mostly refugees and survivors, are simply afraid of Taylor returning."<sup>177</sup>

### *Taylor's Shadow Looms Large in Liberia*

Despite his arrest and trial, Taylor is still viewed as a powerful figure—especially in Liberia, where one former combatant who fought for Taylor-affiliated militias from when he was a boy referred to Taylor in mythical terms. "The devil can make you do things you didn't think you could do," he said.<sup>178</sup> Another former combatant said that although he believes Taylor is a "wicked man responsible for many atrocities," he would feel as though his "father had come back" if Taylor were to return.<sup>179</sup> "Don't let Taylor come back here," a third former combatant said. "He still has a lot of support here and if he comes back things will turn bad."<sup>180</sup>

A Liberian journalist pointed to another element of Taylor's power beyond the fear he creates: "Taylor has a significant capacity to foment violence, mainly due to financial networks."<sup>181</sup> A high-level Liberian official told Human Rights Watch, "Even when Taylor is 99-years-old, he will still pose a threat if he returns."<sup>182</sup>

### *Reaction to the Verdict*

Interviewees said the delivery of judgment over a year after trial proceedings closed and shifting dates for when it would be issued also impacted perceptions of the Taylor trial in Sierra Leone and Liberia.

Some suggested it gave the impression of inefficiency, while for others the delay has made the Taylor trial recede from their minds.<sup>183</sup> Liberian journalist Peter Quaqua facetiously told Human Rights Watch, "It has been so long, we in West Africa have forgotten about Charles

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<sup>177</sup> Human Rights Watch interview with Tiawan Gongloe, January 10, 2012.

<sup>178</sup> Human Rights Watch group interview with six Liberian ex-combatants, January 11, 2012.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> Human Rights Watch interview with Oscar Bloh, January 9, 2012.

<sup>182</sup> Human Rights Watch interview with Liberian judicial official, Monrovia, January 11, 2012.

<sup>183</sup> Human Rights Watch interview with Peter Quaqua, January 10, 2012; Human Rights Watch interview with Jabati Mambu, January 15, 2012; Human Rights Watch interview with Amara Bangura, January 16, 2012.

Taylor’s trial.”<sup>184</sup> However, Sierra Leonean war victim and advisor to the Amputee Association of Sierra Leone, Al Haji Jusu Jarka, said, “If the judgment is seen as fair and judicious, the length of time the court took will be forgotten.”<sup>185</sup>

The court’s announcement of Taylor’s conviction for planning and aiding and abetting all 11 counts of war crimes and crimes against humanity on April 26, 2012, was predictably quite positive in Sierra Leone and more mixed in Liberia, although the verdict did not generate intense public reactions in either country.<sup>186</sup> One civil society leader who was in a more rural area of Sierra Leone when the verdict was announced found that some people were “very much satisfied with the judgment,” but their assessment also was tempered by many war victims’ belief that the international community should do more to encourage reparations to victims.<sup>187</sup> Another Sierra Leone civil society leader noted that he “did not see any jubilation in the streets of Freetown after the verdict was announced [as there was around Taylor’s arrest], [which] may have been due to the fact that the ... verdict did not come as a surprise to most people.”<sup>188</sup>

A civil society leader in Liberia told Human Rights Watch, “The verdict was announced without any incident or confrontation.”<sup>189</sup> Some Liberians “gathered at street corner tea-drinking [shops to] debate the [verdict]” in Monrovia, but many “were not concerned” with it, especially outside the capital.<sup>190</sup>

## The Taylor Trial’s Impact on Broader Justice Issues

The impact of the Taylor trial on broader issues of justice in West Africa and the wider continent is difficult to assess. Several civil society leaders from the sub-region told Human Rights Watch that they believed removing Taylor was a necessary precondition for

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<sup>184</sup> Human Rights Watch interview with Peter Quaqua, January 10, 2012.

<sup>185</sup> Human Rights Watch interview with Al Haji Jusu Jarka, January 15, 2012.

<sup>186</sup> Human Rights Watch email correspondence with Ezekiel Pajibo, May 7, 2012; Human Rights Watch email correspondence with Aaron Weah, civil society leader, Monrovia, May 8, 2012; Human Rights Watch email correspondence with Ibrahim Tommy, May 8, 2012.

<sup>187</sup> Human Rights Watch email correspondence with Suliaman Jabati, May 7, 2012.

<sup>188</sup> Human Rights Watch email correspondence with Ibrahim Tommy, May 8, 2012.

<sup>189</sup> Human Rights Watch email correspondence with Aaron Weah, May 8, 2012.

<sup>190</sup> Human Rights Watch email correspondence with Ezekiel Pajibo, May 7, 2012; Human Rights Watch email correspondence with Aaron Weah, May 8, 2012.

ensuring accountability in West Africa.<sup>191</sup> Taylor’s trial also appears to have increased expectations for justice amongst the public in Sierra Leone and Liberia. At the same time, these expectations appear to have exceeded the realities of the Special Court’s limited mandate. Lack of domestic accountability for other perpetrators has created some disillusionment and underscores the need for domestic efforts to investigate serious crimes committed during the Sierra Leone and Liberia conflicts that are beyond the Special Court’s mandate.<sup>192</sup>

### *Combating Impunity in West Africa*

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.

A high-level government official in Liberia said, “Taylor’s trial is a strong signal to others that impunity is no longer the rule.”<sup>193</sup> A civil society leader in Freetown said, “The indictment of Taylor showed law is powerful. It might be imperfect or uneven, but when engaged, it is powerful.”<sup>194</sup> Another said, “It was revolutionary for Sierra Leoneans—the idea that if a powerful person does something bad, there is the possibility of consequences.”<sup>195</sup> A third Sierra Leonean civil society leader, considering the significance of the Taylor trial for the continent, said,

This trial is a symbol for Africa as a whole.... The fact that Taylor is on trial, with [former Ivorian leader Laurent] Gbagbo after him, must make [Sudan’s Omar al] Bashir uncomfortable.... This trial gave courage, gave hope for

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<sup>191</sup> Human Rights Watch interview with Ezekiel Pajibo, January 10, 2012; Human Rights Watch interview with Tiawan Gongloe, January 10, 2012.

<sup>192</sup> Human Rights Watch interview with Oscar Bloh, January 9, 2012; Human Rights Watch interview with Tiawan Gongloe, January 10, 2012; Human Rights Watch interview with Peter Quaqua, January 10, 2012; Human Rights Watch interview with Paul James-Allen, January 11, 2012; Human Rights Watch interview with six Liberian ex-combatants, January 11, 2012; Human Rights Watch interview with Ibrahim Tommy, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch interview with Suliaman Jabati and Alophonsus Gbanie, January 16, 2012.

<sup>193</sup> Human Rights Watch interview with high-level Liberian government official, January 10, 2012.

<sup>194</sup> Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012.

<sup>195</sup> Ibid.

justice. It planted the idea that in the future, people like Bashir and [Zimbabwe's Robert] Mugabe could face a similar fate.<sup>196</sup>

Accounts of Taylor's brief time in Liberia in March 2006 after his arrest in Nigeria gives some illustration of how his arrest and trial "punched a big hole in the big man syndrome."<sup>197</sup> Tiawan Gongloe, who had previously been tortured by Taylor's security forces, was solicitor general of Liberia at the time and represented the government when Taylor transited through Monrovia. He told Human Rights Watch that Taylor seemed "humiliated, shocked, seeing me in the government while he was in handcuffs. The look in his eyes told me he could not believe that we had ended up in this position."<sup>198</sup> This scene played out in front of "thousands of ordinary Liberian citizens [who] came to the airport" to witness the historic event.<sup>199</sup>

A number of interviewees highlighted that Taylor's arrest and trial has increased attention around the value of and need for justice.<sup>200</sup> Liberian journalist Joseph Cheeseman, for example, said that the Taylor trial "has emboldened some people to publicly address issues of impunity."<sup>201</sup> Tiawan Gongloe said, "Some people say of other guilty ones that their time will come. We would have never heard this before Taylor's arrest and trial."<sup>202</sup>

When Laurent Gbagbo, former president of Côte d'Ivoire, was transferred to the ICC in late 2011, a prominent Liberian newspaper proclaimed, "Ivory Coast Gbagbo Joins Taylor."<sup>203</sup> According to civil society leader Paul James-Allen, "It is on people's minds now that if someone is really bad, he could end up like Charles Taylor or Gbagbo."<sup>204</sup> He has heard

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<sup>196</sup> Human Rights Watch interview with John Caulker, January 16, 2012. 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>197</sup> Human Rights Watch interview with Tiawan Gongloe, January 10, 2012.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> See also "Liberia: Following the Sierra Leonean Example," *The New Dawn* (Monrovia), April 27, 2012, <http://allafrica.com/stories/201204270589.html> (accessed June 8, 2012); Paul Y. Harry, "Liberia: Where are the Voices Demanding Justice?" *The New Dawn* (Monrovia), May 15, 2012, <http://allafrica.com/stories/201205150417.html> (accessed June 8, 2012).

<sup>201</sup> Human Rights Watch interview with Joseph Cheeseman, January 11, 2012.

<sup>202</sup> Human Rights Watch interview with Tiawan Gongloe, January 10, 2012.

<sup>203</sup> "Ivory Coast Gbagbo Joins Taylor," *The New Dawn Liberia*, December 1, 2011, [http://www.thenewdawnliberia.com/index.php?option=com\\_content&view=article&id=4778:ivory-coast-gbagbo-joins-taylor&catid=25:politics&Itemid=59](http://www.thenewdawnliberia.com/index.php?option=com_content&view=article&id=4778:ivory-coast-gbagbo-joins-taylor&catid=25:politics&Itemid=59) (accessed June 11, 2012).

<sup>204</sup> Human Rights Watch interview with Paul James-Allen, January 11, 2012.

radio call-in participants in Liberia “mention the SCSL as a warning to people like [former warlord] Prince Johnson not to get involved in election violence.”<sup>205</sup> A civil society leader in Sierra Leone reported hearing a radio call-in program discussion about whether perpetrators of violence at a political rally could be brought to The Hague to face justice.<sup>206</sup>

### *Mandate of the Special Court, Expectations in Affected Communities*

While the Taylor trial, and the Special Court more broadly, increased expectations for justice, ongoing gaps in wider accountability also complicate how affected communities measure the impact of the SCSL and the Taylor trial. As one war victim told Human Rights Watch, “There is frustration that so much money was spent on the SCSL, yet justice and care for war victims have been so limited.”<sup>207</sup>

The SCSL was the first international or hybrid institution to have a mandate focused solely on those “who bear the greatest responsibility.”<sup>208</sup> While Taylor is recognized as an obvious choice within the mandate, some in the sub-region have questioned why other individuals for which there are strong arguments of bearing “greatest responsibility,” such as international financiers and other political leaders, were not also prosecuted.<sup>209</sup>

Whether or not there are individuals who bore “the greatest responsibility” but were not indicted does not mitigate the responsibility of those, like Taylor, who were indicted. However, perceived unevenness in selecting those to prosecute complicates the impact of the Taylor trial in the sub-region by providing fodder for the idea that Taylor is a scapegoat of international politics instead of a perpetrator of atrocities.<sup>210</sup>

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<sup>205</sup> Ibid.

<sup>206</sup> Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012. See also Human Rights Watch interview with Patrick Fatoma, January 12, 2012.

<sup>207</sup> Human Rights Watch interview with Jabati Mambu, January 15, 2012.

<sup>208</sup> SCSL Statute, art. 1(1). For a more detailed discussion on the limited mandate and how it was applied, see Human Rights Watch, *Bringing Justice*, pp. 19-21.

<sup>209</sup> Human Rights Watch interview with member of Taylor defense team, November 7, 2011; Human Rights Watch interview with member of Taylor defense team, November 9, 2011; Human Rights Watch interview with Oscar Bloh, January 9, 2012; Human Rights Watch interview with Peter Quaqua, January 10, 2012; Human Rights Watch interview with Ibrahim Tommy, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch interview with Suliaman Jabati and Alophonsus Gbanie, January 16, 2012.

<sup>210</sup> Human Rights Watch interview with Oscar Bloh, January 9, 2012; Human Rights Watch interview with Tiawan Gongloe, January 10, 2012; Human Rights Watch interview with Peter Quaqua, January 10, 2012; Human Rights Watch interview with Paul James-Allen, January 11, 2012; Human Rights Watch interview with six Liberian ex-combatants, January 11, 2012; Human Rights



A second challenge is the Special Court could only hear cases involving crimes in Sierra Leone.<sup>211</sup> “Many in Liberia thought that if Taylor was tried for crimes in Sierra Leone, it was only a matter of time until he would be tried for his crimes in Liberia,” a Liberian civil society leader told Human Rights Watch.<sup>212</sup> As one Liberian journalist put it, “Taylor committed more crimes in Liberia than in Sierra Leone. It is unjust he is tried for crimes in Sierra Leone and not here [in Liberia].”<sup>213</sup> “When is Liberia going to get a Special Court?” a member of a Liberian women’s group asked.<sup>214</sup>

Interviewees also said they wanted to see direct perpetrators of serious crimes face justice even if they clearly fall outside the SCSL’s mandate to prosecute those bearing the greatest responsibility. Sierra Leoneans and Liberians expressed disappointment that direct perpetrators, former field commanders, and Taylor allies live as regular citizens, and even hold governmental and other powerful positions.<sup>215</sup> “It is frustrating that those who directly committed the crimes, who cut off the hands of people like me, are not facing justice,” said activist and war victim Jabati Mambu.<sup>216</sup>

There are many reasons for the lack of more prosecutions. Both Sierra Leone and Liberia continue to face many challenges in addressing the long-standing inadequacies within their respective justice institutions—the police, the judiciary, prosecutors, and corrections. Moreover, political will to pursue domestic prosecutions for past atrocities in both Sierra Leone and Liberia is lacking,<sup>217</sup> in part because some of those in power have ties to or themselves have been identified as perpetrators of past crimes.<sup>218</sup> In Sierra Leone, the Lomé Peace Accord, which includes a broad amnesty before domestic courts, remains in

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Watch interview with Ibrahim Tommy, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch interview with Suliaman Jabati and Alophonsus Gbanie, January 16, 2012.

<sup>211</sup> SCSL Statute, art. 1.

<sup>212</sup> Human Rights Watch interview with Ezekiel Pajibo, January 10, 2012.

<sup>213</sup> Human Rights Watch interview with Liberian journalist, Monrovia, January 11, 2012.

<sup>214</sup> Human Rights Watch group interview with five Liberian civil society leaders, January 11, 2012.

<sup>215</sup> Human Rights Watch interview with Ezekiel Pajibo, January 10, 2012; Human Rights Watch interview with Tiawan Gongloe, January 10, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012; Human Rights Watch interview with Jabati Mambu, January 15, 2012.

<sup>216</sup> Human Rights Watch interview with Jabati Mambu, January 15, 2012.

<sup>217</sup> Human Rights Watch interview with Oscar Bloh, January 9, 2012; Human Rights Watch interview with Tiawan Gongloe, January 10, 2012; Human Rights Watch interview with Liberian government minister, January 10, 2012; Human Rights Watch interview with Paul James-Allen, January 11, 2012; Human Rights Watch interview with Ibrahim Tommy, January 12, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012.

<sup>218</sup> See Liberian Truth and Reconciliation Report; see Sierra Leonean Truth and Reconciliation Report.

effect.<sup>219</sup> Another factor is that the governments of Sierra Leone and Liberia have felt little pressure from civil society to ensure justice for victims by pursuing local investigations and prosecutions.<sup>220</sup>

## Promoting Respect for Human Rights and the Rule of Law

Attempting to assess the Taylor trial's effect on developing long-term respect for human rights and the rule of law in West Africa is particularly difficult given the many factors at play. At the same time, nearly all those whom Human Rights Watch interviewed said the Taylor trial would have some significant positive impact on human rights and the rule of law in the region.

Interviewees suggested that Taylor's indictment, arrest, and trial disrupted the influence of a charismatic leader who sowed violence and chaos, allowing a more stable situation for the development of rights-respecting governments.<sup>221</sup>

For others, the fact that Taylor was, in the words of one Liberian lawmaker,

[S]een by many to be treated fairly and given due process is positive for ... the sub-region. It sends a message to would-be warlords, troublemakers in the region that we have a commitment to justice and to the rule of law.<sup>222</sup>

According to a high-level Liberian official, the trial "has helped ... change the historical concept that leaders are above the law and [challenge] the acceptance that leaders and elected officials can use war and violence as [a] way to carry out their personal agendas."<sup>223</sup> This arguably has contributed to an environment in which Sierra Leone and Liberia have held successful democratic elections and made some progress in improving

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<sup>219</sup> Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, signed in Lomé, Togo, July 7, 1999.

<sup>220</sup> Human Rights Watch interview with Liberian government minister, January 10, 2012; Human Rights Watch interview with Tiawan Gongloe, January 10, 2012; Human Rights Watch interview with Ezekiel Pajibo, January 10, 2012; Human Rights Watch group interview with 10 Sierra Leonean civil society leaders, January 13, 2012.

<sup>221</sup> Human Rights Watch interview with Peter Quaqua, January 10, 2012; Human Rights Watch interview with Liberian government minister, January 10, 2012; Human Rights Watch interview with Tiawan Gongloe, January 10, 2012; Human Rights Watch telephone interview with Comfort Ero, January 24, 2012.

<sup>222</sup> Human Rights Watch interview with Liberian government minister, Monrovia, January 10, 2012.

<sup>223</sup> *Ibid.*

basic rights, strengthening the judiciary, addressing endemic corruption, and facilitating economic growth.

Still, the situation for both countries is fragile and fraught with complex and pre-existing divides that transcend the Special Court and Taylor trial's influence. Yet the hope that Taylor's trial has laid a foundation for improving long-term respect for human rights and building the rule of law is reflected in the words of Liberian civil society leader Tiawan Gongloe:

Taylor wasn't tried in Liberia, or for crimes against Liberians, but for us justice anywhere is justice for us even if it is done in Sierra Leone or The Hague.... His trial insists that those in power respect human dignity and negotiate their relationship with the community based on mutual respect instead of raw power. The [lessons from the] wars in Sierra Leone and Liberia together with Taylor's removal from the scene has made it easier for people to be more outspoken and made them more willing to demand their rights. Now we won't close our mouths! And that is a hopeful sign for peace, stability, and the emergence of democratic values in West Africa.<sup>224</sup>

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<sup>224</sup> Human Rights Watch interview with Tiawan Gongloe, January 10, 2012.

## Acknowledgements

Annie Gell, Leonard H. Sandler Fellow with the International Justice Program of Human Rights Watch, wrote this report. Annie Gell and Elise Keppler, senior counsel for the International Justice Program, conducted interviews for the report in the Netherlands, London, and New York from September to December 2011. Annie Gell and Corinne Dufka, Human Rights Watch's West Africa team leader, conducted interviews for the report in Monrovia, Liberia, and Freetown, Sierra Leone, in January 2012. Annie Gell conducted interviews for the report in New York from January to June 2012.

The report was edited by Elise Keppler, Corinne Dufka, and Richard Dicker, director of the International Justice Program. Additional guidance was provided by Elizabeth Evenson, senior counsel in the International Justice Program; Param-Preet Singh, senior counsel in the International Justice Program; and Sara Darehshori, senior counsel in the US Program. Rustum Nyquist, intern with the International Justice Program, provided assistance with desk research. Danielle Fritz, intern with the International Justice Program, provided assistance with proofreading and citations. The law firm Stroock & Stroock & Lavan LLP provided valuable pro bono assistance in the form of informal review of daily developments in the proceedings, especially during the first half of the trial.

James Ross, legal and policy director, provided legal review, and Danielle Haas, senior editor, provided program review. Scout Katovich, associate for the International Justice Program, provided assistance with proofreading, citations, and production. Grace Choi and Kathy Mills prepared the report for publication.



On April 26, 2012, Charles Taylor became the first former head of state since the Nuremberg trials after World War II to face a verdict before an international or hybrid international-national court on war crimes and crimes against humanity.

While it has been a long road, the issuance of a judgment after a credible judicial process sends a strong signal that the world has become a less hospitable place for highest-level leaders accused of committing the gravest crimes. It also has particular significance for the people of West Africa, representing the first time a truly “big man”—a powerful individual who either led armed groups or wielded significant political power—in the sub-region was taken into custody and tried for such crimes.

*“Even a ‘Big Man’ Must Face Justice”* draws lessons from the Taylor trial to promote the best possible trials in the future of highest-level suspects who are implicated in serious crimes in violation of international law.

Part One provides background on the Sierra Leone armed conflict, the Special Court for Sierra Leone, and Charles Taylor. Part Two examines the trial itself, including issues related to efficiency, fairness, and interaction with witnesses, potential witnesses, and sources. Part Three examines the trial’s impact, including the court’s efforts to make its work accessible to communities most affected by the crimes, perceptions of the trial in Sierra Leone and neighboring Liberia, and its effects on thinking and practice related to accountability and respect for human rights.

The report is based on interviews with over 70 individuals involved with or impacted by the Taylor trial, including current and former prosecutors, defense attorneys, Registry staff members, Sierra Leonean and Liberian civil society activists, former combatants, journalists, war victims, and experts on West Africa. Human Rights Watch also reviewed expert commentary, trial transcripts, and daily reports produced by trial observers.

*(above) UN troops escort Charles Taylor after his capture, March 2006.*

© 2006 UN PHOTO

*(front cover) Charles Taylor sits at the defendant’s table during his trial at the Special Court for Sierra Leone in The Hague, August 5, 2010.*

© 2010 Getty Images

*Sierra Leoneans sit in front of a television relaying images from the Special Court for Sierra Leone in The Hague on the day of the Taylor verdict, April 26, 2012. The Special Court Outreach and Public Affair section sponsored the outdoor event, which took place at the site of mass graves near the village of Mathiri in Port Loko district.*

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