

BLOOD DIAMONDS AND WAR CRIMES: THE CASE AGAINST CHARLES TAYLOR

KIRSTEN KEITH*

I INTRODUCTION

On 30 May 2012, Charles Taylor was sentenced to 50 years imprisonment by the Special Court for Sierra Leone ('SCSL') for his involvement in the Sierra Leone civil war.¹ The former Liberian President was convicted of planning and aiding and abetting the commission of war crimes, crimes against humanity and other serious violations of international humanitarian law.²

This judgement is the first case since the Nuremberg Trials in 1946 where a former Head of State has been convicted by an international court. It is also the first case where a Head of State has been indicted while encumbering such a position.³ In sentencing, Judge Lussick stressed that his unique status as Head of State should be reflected in his sentence and stated:

Leadership must be carried out by example, by the prosecution of crimes not the commission of crimes. [...] the Trial Chamber wishes to underscore the gravity it attaches to Mr Taylor's betrayal of public trust. In the Trial Chamber's view, this betrayal outweighs the distinctions that might otherwise pertain to the modes of liability [...]⁴

The trial against Charles Taylor was factually complex and lengthy, receiving little media attention except for when Naomi Campbell and Mia Farrow

* Kirsten MF Keith BA, LL.B, LL.M, Casual Academic at SCU, is a former Legal Officer for the Prosecution at the Special Court for Sierra Leone, where she worked on the *Charles Taylor Case*.

1 *Prosecutor v Charles Taylor*, (Sentencing Judgement) (Special Court for Sierra Leone, Case No 03-01-T, 30 May 2012), Disposition, p 40.

2 *Prosecutor v Charles Taylor*, (Summary Judgement) (Special Court for Sierra Leone, Case No 03-01-T, 26 April 2012). Although he was convicted on 26 April 2012, the sentence was delivered at a later date following submissions by both parties.

3 He was indicted on 7 March 2003. He resigned as Head of State in August 2003 and went into exile in Nigeria. On 29 March 2006, he was transferred to the custody of the SCSL. The subsequent challenges to his arrest warrant and indictment resulted in important jurisprudence on the issue of immunity from prosecution, with the SCSL upholding on appeal the principle that the sovereign equality of States does not prevent a Head of State from being prosecuted by an international criminal tribunal or court: *Prosecutor v Charles Taylor*, SCSL-03-01, Decision on Immunity from Jurisdiction, 31 May 2004, paras 52–53. This finding has been relied on by the ICC in relation to the Indictment against Sudanese President AL Bashir. See generally: *Prosecutor v Omar Hassan Ahmad Al Bashir*, Case No ICC-02/05-01/09.

4 *Prosecutor v Charles Taylor*, above n 2, paras 101–103.

testified. Spanning over four years⁵, 115 witnesses testified and 49,622 pages of transcript were recorded.⁶ The judgement, when it was finally issued, totals over an unprecedented 2500 pages.⁷

Given the volume of material involved, this article will briefly consider the background facts to the conflict and will focus on the Trial Chamber's findings on the crime of terrorising the civilian population and Charles Taylor's criminal responsibility. Focus is limited to this crime, listed under Count 1 of the Indictment, as it encompasses evidence relating to all other crimes charged in the Indictment in that those crimes were committed as part of a campaign to terrorise the civilian population.

II DIAMONDS AND THE SIERRA LEONE CONFLICT

The civil war in Sierra Leone was characterised by the use of child soldiers and the widespread amputation of civilians' limbs. Such acts of brutality were committed by all sides to the conflict, namely: the Revolutionary United Front ('RUF'), the Armed Forces Revolutionary Council ('AFRC'), which subsequently formed an alliance with the RUF referred to as the AFRC/RUF junta alliance,⁸ and the pro-government Civil Defence Force ('CDF').⁹ Members of all three groups have been tried before the SCSL.⁹

The conflict started in 1991 when the RUF, under the leadership of Foday Sankoh, attacked Sierra Leone from neighbouring Liberia. The RUF continued their attacks against the Sierra Leonean government throughout the nineties despite various peace talks and the involvement of ECOMOG.¹⁰ In May 1997, the Sierra Leone Army overthrew the democratically elected government and invited the RUF to join its Junta Government, the AFRC, which resulted in the AFRC/RUF junta alliance.¹¹ These forces continued their attacks until the war ended in January 2002.

5 The Trial formally commenced on 4 June 2007 but the proceedings were adjourned as a result of Charles Taylor dismissing his legal team. Proceedings reconvened with the start of Prosecution witness testimony on 8 January 2008 and closing arguments were heard in March 2011.

6 *Prosecutor v Charles Taylor*, above n 2, para 8.

7 A summary judgement was made available on the day the oral judgement was delivered (26 April 2012). The full judgement was not delivered until 18 May 2012, some 3 weeks later. On 30 May 2012, a Corrigendum was issued and a significantly revised version of the judgement was issued on 31 May 2012. However the revised version of the Judgement is not yet available on the SCSL website. Accordingly, this article primarily draws on the Summary Judgement.

8 *Prosecutor v Charles Taylor*, above n 2, para 4.

9 The trials against members of each party are: *Prosecutor v Fofana and Kondewa* (CDF case); *Prosecutor v Sesay, Kallon and Gbao* (RUF case) and *Prosecutor v Brima, Kamara and Kanu* (AFRC Case).

10 ECOMOG is the military observer Group of the Economic Community Group of West Africa States (ECOWAS).

11 *Prosecutor v Charles Taylor*, above n 2, para 4.

Spanning just over a decade, the conflict was based largely on control of Sierra Leone's diamond fields, as it is a country rich in alluvial diamonds that are higher in quality to the neighbouring Liberian diamonds.¹² Given their importance as a commodity, the RUF sought to control the diamond mines and in doing so used child soldiers and the forced labour of civilians to gather the diamonds. The Prosecution case theory, as accepted by the Trial Chamber, was that Charles Taylor routinely received diamonds from the RUF and AFRC/RUF in exchange for arms and ammunition.¹³

III THE CHARGES

Charles Taylor was charged with crimes allegedly committed by the RUF, AFRC, AFRC/RUF junta alliance and a small number of Liberian forces that were also involved in the conflict. These crimes include terrorising the civilian population, killings, sexual violence including rape and sexual slavery, physical violence, use of child soldiers, abductions, forced labour and looting;¹⁴ crimes enshrined as war crimes, crimes against humanity and other serious violations of international humanitarian under Articles 2 to 4 of the Statute.¹⁵

He was charged with various modes of individual responsibility under Article 6 (1), namely planning, instigating, ordering, committing, aiding and abetting and participating in a common plan involving the crimes allegedly committed, under the doctrine of joint criminal enterprise ('JCE')¹⁶. He was also charged with superior responsibility under Article 6 (3) on the basis that he was the alleged *de facto* superior of these groups.

IV FINDINGS ON TERRORISING THE CIVILIAN POPULATION

Terrorising the civilian population as a violation of Common Article 3 of the Geneva Conventions and of Additional Protocol II ('War Crimes') is a crime under Article 3 (d) of the SCSL Statute and has been applied in all 4 SCSL cases. The only other international tribunal where the crime of terror against a civilian population has been considered is the ICTY.¹⁷

12 *Prosecutor v Charles Taylor*, above n 2, para 107.

13 *Ibid* para 100.

14 *Prosecutor v Charles Taylor*, SCSL-03-01, Prosecutor's Second Amended Indictment, ('Indictment') 29 May 2007, Counts 1–11.

15 Statute of the SCSL, 14 August 2000.

16 Indictment, above n 14, para 33–34.

17 See notably the two cases relating to the siege of Sarajevo: *Prosecutor v Stanislav Galic* (Judgement) (International Criminal Tribunal for the Former Yugoslavia, Case No IT-98-29-T, 5 December 2003) paras 595–597 and *Prosecutor v Dragomir Milosevic* (Judgement) (International Criminal Tribunal for the Former Yugoslavia, Case No IT-98-29/1, 12 December 2007). See the summary judgement,

Charles Taylor was charged with acts of terrorism as a war crime as part of a campaign to terrorise the civilian population.¹⁸ The acts supporting the charge of terrorism are those listed in Counts 2 through 11 of the Indictment: killings, sexual violence, physical violence, abductions, forced labour, use of child soldiers and looting.¹⁹ The Prosecution maintained that purpose of this campaign was to forcibly control the territory of Sierra Leone and its population and to pillage its resources, notably its diamond fields.

In considering this crime, the Trial Chamber identified the following elements that must be proven in addition to the general *chapeau* requirements for violations of war crimes:

- acts or threats of violence;
- the offender wilfully made the civilian population or individual civilians not taking a direct part in the hostilities the object of those acts or threats of violence; and
- the acts or threats of violence were carried out with the specific intent of spreading terror among the civilian population.²⁰

The first element constitutes the *actus reus*. Although there is no defining list of acts or threats of violence that satisfy the *actus reus*, the Trial Chamber concurred with the approach taken by the ICTY Appeals Chamber. It found that the ‘actual infliction of death or serious bodily harm’ is not a required element of the crime.²¹ Rather it must be shown that the victim suffered grave consequences resulting from the acts or threats of violence, which include but are not limited to death or serious injury to body or health.²² The SCSL Appeals Chamber has held that the acts or threats of violence must be capable

p 4, available at: <http://www.icty.org/x/cases/dragomir_milosevic/tjug/en/071212_Milosevic_Dragan_summary_en.pdf> (as at 22 August 2012).

18 Indictment, above n 14, para 5.

19 The Trial Chamber held that that the Prosecution established beyond reasonable doubt that all the crimes charged in the Indictment were committed, namely: murder, rape, sexual slavery, outrages upon personal dignity, cruel treatment, other inhumane acts, conscripting or enlisting child soldiers into armed forces, enslavement, pillage and acts of terrorism. *Prosecutor v Charles Taylor*, above n 2, para 15.

20 The *chapeau* requirements for violations of Article 3 Common to the Geneva Conventions (‘war crimes’) are: i) there must have been an armed conflict at the time of the alleged violation; ii) a nexus existed between the alleged violation and the armed conflict; and iii) the victims were not taking a direct part in the hostilities at the time of the alleged violation. *Prosecutor v Charles Taylor*, (Judgement) (Special Court for Sierra Leone Case No 03-01-T, 18 May 2012), paras 562–568; See also, para 403; see also *Prosecutor v Fofana and Kondewa* (‘CDF’) (Appeal Judgement) (Special Court for Sierra Leone Case No 04-14-A, 28 May 2008), para 350; *Galic* Appeal Judgement, 30 November 2006, para 100, and *Prosecutor v Dragomir Milosevic* (Appeal Judgement) (International Criminal Tribunal for the Former Yugoslavia, 12 November 2009), para 31.

21 *Dragomir Milosevic*, Appeal Judgement, para 33, Taylor Judgement, para 407.

22 *Ibid.*

of spreading terror, which is to be understood as the ‘causing of extreme fear’²³ and that the acts of violence can be against persons but also buildings. It held that acts of violence can include acts of burning civilian property as it is capable of spreading terror.²⁴

The second and third elements relate to the mens rea of the crime. The second element requires that the perpetrator ‘wilfully’ made the civilian population or individual civilian the object of an act or threat of violence. Thus a perpetrator must act consciously and with intent or recklessness in making the victims an object of an act or threat of violence, negligence is not enough.²⁵

The third element requires specific intent. The Appeals Chamber has held that ‘the spreading of extreme fear’ must be specifically intended.²⁶ However, as noted by the Trial Chamber, ‘while spreading terror must be the primary purpose of the acts or threats of violence, it need not be the only purpose’.²⁷ Evidence of such intent may be inferred from various indicia, including the ‘nature, manner, time and duration’ of the acts or threats of violence.²⁸

Applying these elements to the evidence, the Trial Chamber held that the crimes of killing, sexual violence and physical violence, described in Counts 2 to 8 of the Indictment, were committed as part of a campaign of terror against the civilian population.²⁹ In making such a finding, it relied in part on evidence relating to a RUF military operation called ‘Operation No Living Things’ where the RUF were told by Charles Taylor to make an area of Sierra Leone ‘fearful’.³⁰ The RUF *modus operandi* of making an area ‘fearful’ was something that repeatedly came up during witness testimony and was a core element of the campaign of terror against the civilian population. Witnesses testified that a message to make an area fearful meant to ‘destroy, kill, amputate, destroy bridges, set road blocks’. The objective was to make the people living in an area afraid.³¹

23 CDF Appeal Judgement, above n 19, para 352.

24 Ibid para 352–359.

25 Ibid para 353–355.

26 Ibid para 356.

27 Ibid para 405.

28 Ibid para 405.

29 *Prosecutor v Charles Taylor*, above n 2, para 57.

30 Ibid para 71.

31 *Prosecutor v Charles Taylor* (Prosecutor’s Final Trial Brief) (Special Court for Sierra Leone, Case No 03-01-T, , 8 April 2011), para 711.

Other evidence the Trial Chamber relied for this finding included public executions and amputations, of persons being beheaded and their heads put on display at checkpoints.³² Amputations, particularly of hands and arms, were a lasting characteristic of the civil war and were often carried out by child soldiers in public places with other members of the family present. As one witness stated, the amputations were ‘a kind of message to the other civilians that they should fear us’.³³

During this terror campaign women and girls were raped in public and people were burnt alive in their homes.³⁴ The Trial Chamber found that the widespread burning of civilian property was done with the primary purpose of terrorising the civilian population.³⁵

Conversely, the Trial Chamber found that the acts of conscripting or enlisting child soldiers, enslavement and looting, as charged under counts 9 to 11, were not committed in furtherance of the campaign to terrorise the civilian population.³⁶ It found that the abduction and forced conscription of child soldiers by the RUF and AFRC/RUF alliance was primarily for the purpose of using them in the hostilities.³⁷ These children were typically abducted and given military training before receiving weapons and being assigned to frontline commanders.³⁸ Although some of these child soldiers had horrendous physical violence inflicted upon them, for instance some had the initials RUF branded on their faces or chests to prevent them escaping,³⁹ the primary purpose was to ensure the child soldiers actively participated in the hostilities.

The Trial Chamber also found that the enslavement of civilians in various regions of Sierra Leone was carried out for the purpose of using them for forced labour. Such labour included working in the diamond mines, carrying out domestic chores and also undergoing military training.⁴⁰ Again the Trial Chamber found that the primary purpose of enslavement was not ‘not to spread terror among the civilian population, but rather was primarily utilitarian or military in nature’.⁴¹ It considered the fact that the abduction of civilians from their homes, their continued detention and use as forced labour may have

32 *Prosecutor v Charles Taylor*, above n 2, para 57.

33 CDF Appeal Judgement, above n 19, para 1213.

34 *Prosecutor v Charles Taylor*, above n 2, para 57.

35 *Ibid* para 59.

36 *Ibid* para 58.

37 CDF Appeal Judgement, above n 19, para 1367 with regards to use of child soldiers at one particular location.

38 *Ibid* paras 1363, 1365.

39 *Ibid* para 1369.

40 *Ibid* para 1969.

41 *Ibid* para 1970.

spread terror among the civilian population. However it considered this a ‘side-effect’ of terror and consequently it failed to satisfy the requisite specific intent element.⁴²

In considering the charge of looting, the Trial Chamber considered that much of the looted property occurred during military advances and retreats for the maintenance of the troops.⁴³ The Prosecution presented evidence of an operation called ‘Operation Pay Yourself’ where soldiers looted civilian property. However the Trial Chamber found that this looting occurred because the soldiers were not being paid and a strategic decision was taken that soldiers would be responsible for feeding themselves.⁴⁴ Other evidence also suggested food, money and clothes were looted for personal gain. Again the primary purpose of the looting was not to spread terror although the Trial Chamber did recognise that such acts may have a possible ‘side effect’ of spreading terror among the civilian population.⁴⁵

V FINDINGS ON RESPONSIBILITY OF CHARLES TAYLOR

Taylor was charged with planning, instigating, ordering, committing, or aiding and abetting the commission of the crimes or of participating within a joint criminal enterprise (‘JCE’) that was responsible for the crimes under Article 6 (1) of the Statute. He was also charged with superior responsibility pursuant to Article 6 (3) of the Statute.⁴⁶

A *Individual Responsibility*

1 *Aiding and Abetting*

The Trial Chamber found that Charles Taylor was involved in providing substantial and significant support to the RUF, the AFRC/RUF alliance and others, often in exchange for diamonds.

The judgement is replete with examples of such support which included the provision of arms, ammunition, military personnel and military training, financial, medical and communications support.⁴⁷ In making such findings, the Trial Chamber relied on evidence provided by former RUF radio operators regarding the training and equipment they received from members of the National Patriotic Front of Liberia (‘NPFL’), who were under the authority

42 Ibid.

43 Ibid para 1975.

44 Ibid para 1973.

45 Ibid para 1976–1977.

46 Indictment, above n 14, para 34.

47 *Prosecutor v Charles Taylor*, above n 2, paras 76–99.

of Charles Taylor.⁴⁸ These witnesses provided key evidence linking Taylor to the crimes charged.

The Trial Chamber further found that Taylor provided the RUF with a guesthouse in Liberia that was used to facilitate the transfer of arms, ammunition and funds directly from himself to the RUF and for the RUF to transfer diamonds to Taylor.⁴⁹ It found on numerous occasions that Taylor received diamonds in exchange for the provision of arms and ammunition.⁵⁰

Considering the support Taylor gave to the RUF and other armed groups, the Trial Chamber held that:

the practical assistance, encouragement and moral support provided by the Accused had a substantial effect on the commission of crimes by the RUF/AFRC during the course of military operations in Sierra Leone.⁵¹

It found that Taylor gave such support knowing it would provide practical assistance, encouragement or moral support to the RUF and AFRC/RUF in the commission of crimes during the course of their military operations.⁵² On the basis of these findings, it held him responsible for aiding and abetting the commission of the crimes specified in the Indictment.

The Trial Chamber's finding on this mode of responsibility came as little surprise. The Prosecution presented an overwhelming amount of evidence regarding the support he gave to the RUF, AFRC and AFRC/RUF alliance. Witnesses testified as to personally receiving arms and ammunition from his subordinates or to delivering diamonds directly to Taylor.

2 *Planning*

The Trial Chamber found that in November 1998, Taylor together with the RUF leader Sam Bockarie planned attacks against two towns that would culminate in the invasion of the capital Freetown.⁵³ This plan was conveyed to RUF and AFRC commanders on the ground and was carried out, with the forces involved committing crimes charged in the Indictment. In furtherance of this plan, the Trial Chamber found that Taylor had instructed Bockarie to make the operation 'fearful'⁵⁴. Bockarie then named the operation 'Operation

48 Ibid paras 4, 77.

49 Ibid para 81.

50 Ibid para 92.

51 Ibid para 165.

52 Ibid para 167.

53 Ibid para 172–177.

54 Ibid para 173.

No Living Thing’ meaning that anything standing in their way should be eliminated.⁵⁵

This finding has been critically described as a ‘controversial conclusion’ on the basis that in the previous *RUF Case*, the Trial Chamber found that RUF forces were not engaged in the Freetown attack but that AFRC forces began the attack on Freetown.⁵⁶ Further, in the *AFRC Case*, the Trial Chamber found that the AFRC leader Gullit gave the order to attack Freetown and was the overall commander of the Freetown attack.⁵⁷ The suggested criticism is that the judgements in the RUF and AFRC cases refer to atrocities committed during the Freetown attack as being planned and implemented by the AFRC with no mention of Taylor’s plan.⁵⁸

However, the findings in the other cases neither detract from nor undermine the findings in the *Taylor Case*. Rather they suggest that the Prosecution during its investigations uncovered new evidence from insider witnesses that linked Taylor to the crimes committed in Freetown. Furthermore, it is difficult to compare the findings in the other cases as the focus of each case is different with different accused and different evidence.

The attack against Freetown was one of the worst and most intense periods of human rights violations in the war. During the three week occupation of the capital, thousands of civilians were killed, countless had hands and limbs hacked off and died as a result or other were burnt alive in their homes.⁵⁹ Taylor’s responsibility for jointly planning this attack is thus an important finding that will hopefully bring a sense of justice to the people of Freetown.

3 Acquittals

The Trial Chamber found that Taylor was not directly involved in the commission of the crimes. It held that Taylor’s position was one of authority as a Head of State that was advisory in nature; that the guidance and instructions he gave were likewise advisory and did not extend to the charge of ordering the commission of the crimes.⁶⁰

55 Ibid para 71.

56 S Kendall, *Causality and Responsibility in the Taylor Case*, 10 August 2012, at <<http://www.intlawgrl.com/2012/08/causality-and-responsibility-in-taylor.html>>; See, *Prosecutor v Sesay, Kallon and Gbao* (‘RUF’), SCSL-04-15-T, Judgement Summary, 25 February 2009, paras 43–44.

57 Ibid; See, RUF, Judgement Summary, paras 43–44.

58 Ibid.

59 Human Rights Watch reported that several thousand civilians were killed during the attack, while countless others were raped, mutilated and displaced from their homes as homes were routinely burnt; ‘Sierra Leone, Getting Away with Murder, Mutilation, Rape, New Testimony from Sierra Leone’ *Human Rights Watch* (July 1999) (11) 3 (A) at <<http://www.hrw.org/reports/1999/sierra/>>.

60 Above n 2, para 178.

It further held that having found him criminally responsible on the basis of aiding and abetting, it did not find that he also instigated the crimes.⁶¹ Although no reasons are given for this finding, the wording seems to suggest that the Trial Chamber either could not or would not enter a finding on instigation on the basis that it had already found him guilty under aiding and abetting. If this is the reasoning to be construed, then it is erroneous. Article 6 (1) of the Statute enumerates different modes of liability, each requiring proof of different elements. There is nothing to preclude the Trial Chamber from entering convictions on more than one mode of responsibility charged.⁶² This finding has been appealed by the Prosecution and it will be interesting to see what is finally decided.⁶³

The Trial Chamber also rejected the allegation that there was a joint criminal enterprise between Taylor and the leader of the RUF, Foday Sankoh. It held that the Prosecution had failed to establish that the meetings, where the common plan was allegedly established, ever took place.⁶⁴

B Findings on Superior Responsibility

The Trial Chamber found that Charles Taylor was not liable under the doctrine of superior responsibility as per Article 6 (3) of the Statute.

In order to establish superior responsibility, the Prosecution had to establish beyond any doubt the existence of a superior-subordinate relationship between Taylor as the superior and the perpetrators of the crimes as his subordinates. The test for establishing this is that of ‘effective control’; that is whether the accused had effective control over his subordinates. This test is defined as whether the accused has the material ability to prevent or punish the commission of the offence.⁶⁵ In this regard, the Trial Chamber found that while Taylor exerted substantial influence over the RUF, AFRC and RUF/AFRC alliance leadership, it did amount to effective control.⁶⁶

61 Ibid, para 179, Judgement, para 6978.

62 There are numerous cases heard before the other international tribunals where convictions have been entered for instigating and aiding and abetting. See for instance: *Prosecutor v Brdjanin*, Case No: IT-99-36-T, Judgement, 1 September 2004, paras 360, 369.

63 *Prosecutor v Charles Taylor* (Prosecution’s Notice of Appeal) (Special Court for Sierra Leone, Case No 03-01-A, 19 July 2012), paras 12–16.

64 Above n 2, para 143–144.

65 CDF Appeal Judgement, para 6984.

66 Ibid at para 6985.

VI CONCLUSION

The *Taylor* judgement is a clear victory for the victims of Sierra Leone's civil war. That the atrocities occurred was never beyond doubt⁶⁷ and the findings in relation to the crimes charged were to be expected. However, the key issue for the Prosecution was linking Charles Taylor, as President of neighbouring Liberia, to the crimes committed. Establishing such links can be difficult but in this case the Prosecution presented a number of insider witnesses who had direct dealings with Charles Taylor. Such evidence was thus instrumental in securing his conviction.

Taylor's responsibility for aiding and abetting is well grounded and should withstand any appeal. However the findings on planning the attack against Freetown may be more controversial and will be appealed by Defence. Another Defence ground of appeal is the length of sentence. Given the lack of precedent on sentencing former Heads of State, the appeal findings may establish important jurisprudence especially with regards to future cases against Heads of State, such as the Ivory Coast President Laurent Gbagbo, who is currently in detention at the ICC.

The *Taylor* judgement sends a clear message in the fight against impunity that perpetrators, including those in the highest positions of power, will be held accountable for war crimes and other international crimes. It makes patent that one does not have to be directly involved in a conflict to be held accountable for violations of the laws of war. To those dictators in other countries who profit from war at the expense of civilian lives, the message is clear: they are not above the law.

67 The Defence accepted that Crimes against Humanity and War Crimes were committed during the Indictment period. Above n 2, para 12.

