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SCSL-03-01-T
(30999-31017)

30999

THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

Before: Justice Julia Sebutinde, Presiding
Justice Richard Lussick
Justice Teresa Doherty
Justice El Hadji Malick Sow, Alternate

Registrar: Ms. Binta Mansaray

Date: 15 November 2010

Case No.: SCSL-03-01-T

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC WITH ANNEX A

DEFENCE MOTION FOR RECONSIDERATION OF DECISION ON DEFENCE MOTION REQUESTING AN INVESTIGATION INTO CONTEMPT OF COURT BY THE OFFICE OF THE PROSECUTOR AND ITS INVESTIGATORS

Office of the Prosecutor:
Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. The Defence files this motion seeking reconsideration by the Trial Chamber of its Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators[1].
2. Reconsideration is being sought on the basis that the Decision is fundamentally hostile to the fair trial rights of the Accused and notions of fundamental fairness that go beyond Article 17 of the Statute[2]. More specifically, the Defence submits that clear errors in reasoning permeate the Decision and on their own warrant reconsideration, as does the avoidance of gross injustice to the Accused at bar.
3. The "clear errors in reasoning" and grounds necessitating the avoidance of injustice are several but collectively manifested in the Decision by (i) a failure to appreciate the inherent responsibility of the Court as the arbiter of justice to safeguard the Accused's rights and (ii) the application of disparate and unfair legal standards to Defence evidence in support of its allegations vis-à-vis Prosecution evidence in rebuttal to the allegations.
4. These issues are developed and considered sufficiently below to warrant, in the Defence's resolute view, reconsideration of the Decision.

II. PROCEDURAL POSTURE

5. The Defence motion that is the subject of the Decision was filed on 24 September 2010.[3] The Prosecution responded on 4 October 2010[4] and the Reply by the Defence

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[1] *Prosecutor v. Taylor,* SCSL-03-01-T-1118, Decision on Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, dated 11 November 2010 and filed 12 November 2010. The Decision was rendered orally in open court by the Trial Chamber on 22 October 2010 (see, Transcripts of Proceedings, 22 October 2010 page 48338) and the written decision was issued and filed, respectively on 11 and 12 November 2010 ("**Decision**").

[2] *Statute of the Special Court for Sierra Leone*, annexed to the *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, 16 January 2002, Article 17.

[3] *Prosecutor v. Taylor,* SCSL-03-01-T-1089, Public, with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 24 September 2010. A corrigendum was filed in relation to the Original Motion: *Prosecutor v. Taylor,* SCSL-03-01-T-1090, Public, with Confidential Annexes A-J and Public Annexes K-O Corrigendum to Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 27 September 2010 ("**Motion**").

[4] *Prosecutor v. Taylor,* SCSL-03-01-T-1097, Public with Confidential Annexes Prosecution Response to Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an

was filed on 11 October 2010.[5] The Decision was pronounced orally on 22 October 2010[6], and the Court on that same day ordered the Defence to close its case no later than 12 November 2010[7]. Written publication of the reasons behind the Decision was done on 12 November 2010,[8] the date on which the Defence rested its case pursuant to the Scheduling Order[9].

6. The Trial Chamber previously ordered the Defence to file "[a]ll its remaining motions" by 24 September 2010[10]. That deadline preceded the Decision with the obvious effect being that the present motion could not have been brought in advance of the Decision to which it takes exception. Indeed, and in relation to the said Decision, the Trial Chamber has explicitly stated that an application by the Defence for leave to appeal the Decision would not be barred by virtue of the 24 September deadline "in the interests of justice."[11] Likewise, and considering that there is no rule or jurisprudence preventing a Trial Chamber from reconsidering its earlier decisions at any time up until it renders Judgement, the Defence submits that it is in the interests of justice that this motion be entertained.

III. APPLICABLE LEGAL PRINCIPLES

7. Rule 54 of the Rules of Procedure and Evidence confers this Court with the authority to issue any order as may be necessary for purposes of an investigation, the preparation or conduct of the trial, whether on its own motion or at the request of a party[12].

Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 4 October 2010 ("**Response**").

[5] *Prosecutor v. Taylor,* SCSL-03-01-T-1102, Public, with Confidential Annex One Defence Reply to Prosecution Response to Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 11 October 2010 ("**Reply**").

[6] See, footnote 1 above.

[7] See, *Prosecutor v. Taylor,* SCSL-03-01-T-1105, Order Setting a Date for the Closure of the Defence Case and Dates for Filing of Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010 ("**Scheduling Order**"), page 2, paragraph 1.

[8] See, footnote 1 above.

[9] *Prosecutor v. Taylor,* SCSL-03-01-T, Transcripts of Proceedings, 12 November 2010, p. 49115, lines 17 through 24.

[10] *Prosecutor v. Taylor,* SCSL-03-01-T, Status Conference, Transcripts of Proceedings, 13 September 2010, p. 48323, lines 2 through 5.

[11] *Prosecutor v. Taylor,* SCSL-03-01-T, Transcripts of Proceedings, 12 November 2010, p. 49117, lines 20 through 23.

[12] *Rules of Procedure and Evidence of the Special Court for Sierra Leone*, as amended on 28 May 2010 ("Rules").

8. Embracing a principle that was articulated in *Prosecutor v. Ntagerura et al.*[13], the Appeals Chamber of the Special Court has confirmed that "it falls within the discretion of a Trial Chamber to reconsider a previous decision if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice."[14] This is consistent with the standard for reconsideration which has been adopted by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia.[15] Whether or not a Chamber elects to reconsider one of its previous decisions is discretionary.[16]

9. This Chamber has adopted and followed these jurisprudential principles in a previous decision in this case.[17] Additionally, Trial Chamber I of the Special Court has adopted the reasoning of Trial Chamber II of the ICTR in *Prosecutor v Renzaho*, where it was observed that circumstances allowing reconsideration include where "new material circumstances have arisen since the decision was issued."[18] Such reasoning is consistent with the pronouncements of the ICTY Appeals Chamber in Mucić et al[19] and has been embraced by this Chamber in a previous decision in this case.[20]

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[13] Case No. ICTR-99-46-A, Appeal Judgment, 7 July 2006, para. 55.
[14] *Prosecutor v. Brima, et al.*, SCSL-04-16-A, *Judgment*, dated 22 February 2008 and filed on 3 March 2008, para. 63, citing *Prosecutor v. Ntagerura, et al.* Case No. ICTR-99-46-A, Appeal Judgment, 7 July 2006, para. 55.
[15] See, *Prosecutor v. Galić*, IT-98-29-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2, and *Prosecutor v. Mucić, et al.*, IT-96-21A*bis*, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgment on Sentence Appeal, 8 April 2003, para. 49 ("**Mucić Judgment on Sentence Appeal**"). See, also, *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Decision on Defence Extremely Urgent Motion for Reconsideration of Decision Dated 16 December 2003, 19 December 2003, page 4.
[16] Mucić Judgment on Sentence Appeal, para. 49.
[17] *Prosecutor v. Taylor*, SCSL-03-01-T-595, Decision on Public with Confidential Annexes B and E Urgent Prosecution Application for Reconsideration of Oral Decision Regarding Protective Measures for Witness TF1-215 or in the Alternative Application for Leave to Appeal Oral Decision Regarding Protective Measures for Witness TF1-215, dated 15 September 2008 and filed 16 September 2008, page 4.
[18] *Prosecutor v. Norman et al.*, SCSL-04-14-507, Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, 7 December 2005, para. 14, quoting the ICTR case of *Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Decision on Renzaho's Motion to Reconsider the Decision on Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 9 November 2005, at para. 21.
[19] Mucić Judgment on Sentence Appeal, para. 49.
[20] *Prosecutor v. Taylor*, SCSL-03-01-T-226, Decision on Defence Motion Requesting Reconsideration of "Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence," Dated 23 January 2007, 25 April 2007, page 3.

10. The jurisprudential remedy of "reconsideration" is distinct from and independent of what remedies are available to an aggrieved party via the Rules and, as such, a party is not precluded from pursuing it simultaneously with, for example, an application for leave to appeal, pursuant to Rule 73(B).

IV. ARGUMENT

A. FAILURE TO APPRECIATE THE INHERENT RESPONSIBILITY OF THE COURT AS THE ARBITER OF JUSTICE TO SAFEGUARD THE ACCUSED'S RIGHTS

11. The Motion made clear the Defence's position that the issues at stake affect not only the integrity of the Prosecution, but also that of the entire judicial process.[21] Indeed, this Court has explicitly acknowledged that the Motion contained "serious allegations" of contempt of court.[22] Even others outside the theatre of the Court and the parties recognised, too, the significance of the allegations, with one commentator proclaiming that, "The Judges are apparently struggling with how to deal with the bribery allegations. *A decision,* which is expected in the next few days, *could result in the trial being taken back to square one*"[23] (emphasis added). But despite acknowledging the obvious, the Decision reveals an approach to reasoning and the application of legal standards that is overly focused on legal technicalities in the sacrifice of fundamental fairness to the Accused. Consequently, the Defence takes exception to the Decision in its entirety and submits that reconsideration is necessary to rectify fundamental injustice and to uphold the fair trial rights of the Accused.

(i) Undue Delay

12. The Court found that the Defence did not act with due diligence by failing to bring the alleged acts of contempt to its attention within a reasonable time and no

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[21] Motion, para. 29.

[22] Decision, para. 22. See, also, para. 12 (..."the Prosecution['s] approach... has corrupted its entire investigation and case in the courtroom") and para. 13 ("... the Prosecution's conduct casts doubt on the credibility of its entire evidence before this court").

[23] See, Der Spiegel Online, "Special Court for Sierra Leone: Is the Case against Charles Taylor Falling Apart," by Thomas Darnst□dt and Jan Puhl, 3 November 2010, page 3. Attached hereto as Annex A ("Der Spiegel"). See, also, http://www.spiegel.de/international/world/0,1518,726896,00.html.

satisfactory explanation has been provided by the Defence for the delay.[24] It concluded that "for [that] reason alone" the Motion should be dismissed.[25]

13. The Defence submits that this finding by the Court evidences several clear errors in reasoning and is fundamentally unfair to the Accused, resulting in an injustice that warrants reconsideration.

14. First, the Court found significant in finding "undue delay" that some of the alleged misconduct occurred at least two years ago and in some cases more than eight years ago.[26] The Court also recognised that contempt of court, as contemplated in Rule 77, is a criminal offence.[27] Having so recognised, the Court failed to consider the axiomatic fact that victims of criminal misconduct by a prosecutor's office would be unlikely to come forward with their allegations "without undue delay". Indeed, the power that reposes in the Office of the Prosecutor of this Court is of no small measure, juxtaposed especially in the geographical theatre of its operations in Sierra Leone and Liberia, where ordinary folks are concerned with daily survival in the recent aftermath of destabilising and bloody civil conflicts. Such reluctance by victims is understandably and should have been considered by the Court in the Decision. The failure to do so constitutes (in combination with other failures) a clear error in reasoning resulting in fundamental injustice to the Accused.

15. Second, the Court's reasoning regarding "undue delay" ignores the fact that the Prosecution's case against the Accused implicates crimes that are alleged to have occurred between 1996 and 2002.[28] The crimes which are alleged in the Indictment pre-date virtually all of the alleged criminal misconduct the Motion complains about, in many instances by several years. If the Court is competent to address and redress criminal allegations by the Prosecution that date back fourteen years to 1996,

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[24] Decision, para. 26.
[25] Id.
[26] Decision, para. 24.
[27] Decision, para. 23.
[28] *Prosecutor v. Taylor*, SCSL-03-01-PT-263, *Prosecution's Second Amended Indictment*, 29 May 2007 (hereinafter, "**Indictment**"). Indeed, and despite the fact that the temporal jurisdiction of the Court commences on 30 November 1996 per Article 1(1) of the Statute, the allegations against the Accused at bar include an alleged joint criminal enterprise that began in Libya as far back as 1988, some twenty-two (22) years ago. See, e.g., *Prosecutor v. Taylor*, SCSL-03-01-T-327, *Prosecution Notification of Filing of Amended Case Summary* with "Case Summary Accompanying the Second Amended Indictment," as Annex, 3 August 2007, paras. 1 and 42 through 44.4 ("**Amended Case Summary**").

questions of fairness clearly arise when the Court finds that the Defence has not acted with due diligence in bringing criminal conduct that occurred only two to eight years ago to its attention. The same rationale which undergirds the preference for bringing criminal allegations before a court without undue delay must apply with equal force to the Prosecution and the Defence, alike. One set of rules cannot apply to the Prosecution and a separate and more onerous set of rules to the Defence. The relevant inquiry should have been focused on *when* (emphasis added) the Defence learned of the criminal conduct and not how long ago they occurred. It was clear error for the Court to reason otherwise and that error (alone or in combination with others) has resulted in an injustice to the Accused.

16. Thirdly, the Court's reasoning leading up to its finding of "undue delay" finds averments in the Motion to be "erroneous and fundamentally flawed," in that the Motion alleged that the misconduct by the Prosecution arises from a consistent pattern of conduct and the culmination of separate incidents that, cumulatively, warrant an investigation.[29] The Defence stands by those averments and submits that the Court could have read and relied on them differently to this extent: the Defence was not suggesting that the disparate and separate incidents could not in their individual respects sustain a charge of contempt of court or that their characteristics changed over time; instead those averments stand for the self-evident propositions (i) that several criminal acts by employees and/ or agents of the same legal entity (the Office of the Prosecutor in this instance) can reflect a shared organizational culture and investigative *modus operandi* which is corruptive of the judicial process and infringes on an Accused's right to a fair trial; and significantly, (ii) that the totality of the circumstances which impel a motion for contempt may not become manifest until such period of time when the separate and distinct individual acts become so evident as disclose systemic and widespread misconduct by the offending party, especially one with a large number of employees and/ or agents, operating with the *de jure* cloak of secrecy and almost unfettered authority and discretion. It was, as such, clear error for the Court to find that the Defence's averments were flawed and untenable, and that finding joins several others in resulting in injustice to the Accused.

[29] Decision, para. 25; See, also, Reply, para. 9.

(ii) Ambit of Rule 77

17. The Trial Chamber concluded that the relief sought by the Motion effectively amounts to "a request for a general audit of the operations of the Prosecution" and therefore falls outside the scope of Rule 77 which, it observed, is concerned with the conduct of individuals and not the general operations of an office of a party.[30] The Court is essentially saying that although the Motion raises "serious allegations" of contempt of court, the Defence has not invoked the proper remedy through which the allegations might be redressed.

18. The Defence submits that is was clear error for the Trial Chamber to find, as such, and the said error derives from a narrow reading of the scope of Rule 77 and further, reflects a focus on technical rules of pleading at the expense of the Accused's fair trial rights and the inherent power and responsibility of the Court to do justice.

19. Firstly, and assuming, *arguendo*, that Rule 77's ambit extends no further than to individuals, the Defence submits that the Court retains a contempt power that is inherent in nature and independent of Rule 77 which could have been invoked to remedy the alleged misconduct. Indeed, the Appeals Chamber of the ICTY has confirmed the existence of such an inherent power of contempt in trial chambers, to be distinguished from that which is specified in ICTY Rule 77[31] – the counterpart of our Rule 77:

> The remedies available to the International Tribunal range from a general power to hold individuals in contempt of the International Tribunal (utilising the inherent contempt power rightly mentioned by the Trial Chamber...) to the specific contempt power provided for in Rule 77.[32]

20. It is thus clear that the Court could and should have exercised its discretion to entertain the Defence's allegations in the context of contempt of court, had it wanted to; that it did not do so reflects a focus on technical rules of pleadings that are

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[30] Decision, paras. 30 and 28.

[31] *Prosecutor v. Tihomir Blaskić*, Case No. IT-95-14, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, Appeals Chamber, 29 October 1997 ("**Croatia Subpoena Appeals Decision**"), para. 59. See, also, *Rules of Procedure and Evidence*, IT/32/Rev. 44, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, as amended on 10 December 2009, Rule 77.

[32] **Croatia Subpoena Appeals Decision**, para. 59.

counterproductive to the Court's inherent responsibility to do justice. It remains within the realm of possibilities that such an approach to the Motion might inspire comments not unlike that in *Der Spiegel* regarding which the Defence had no hand in – namely, that "some insiders in The Hague believe it is only a question of the judges' courage as to whether the trial will end with an acquittal.[33]"

21. The Defence submits that a clear error of reasoning warranting reconsideration has been demonstrated, to the extent that the Court's inherent power of contempt was not even considered or discussed in connection with the Motion.

22. Secondly, the Defence does not accept the notion that the scope of Rule 77 does not extend beyond the conduct of individuals to the conduct of entities that have a legal personality. Although the Rule speaks of "person" in sub-part (A), there is nothing in the language of the Rule that forecloses application of its provisions to offending organizations or other like entities. Accordingly, the Defence submits that it was clear error to severely circumscribe the ambit of the Rule as was done in the Decision and that error has resulted in injustice to the Accused.

23. Thirdly, and as was acknowledged in the Response[34], the Motion was concerned not only with contempt of court: it expressly implicated abuse of process and conduct that brings the administration of justice into serious disrepute. Both rules 46(C) and 95 were cited in the Motion as being relevant to the issues raised and as sources of possible sanction for unbecoming conduct by either party. This notwithstanding, the Decision in no wise considered these provisions or contemplated invoking either in lieu of Rule 77, in the face of the very serious complaints that the Motion lodged. It is submitted that the failure to consider and discuss the applicability of these rules to the allegations that are lodged by the Motion constituted clear error giving rise to injustice. Reconsideration is, therefore, necessary.

B. THE APPLICATION OF DISPARATE AND UNFAIR LEGAL STANDARDS TO DEFENCE EVIDENCE IN SUPPORT OF ITS ALLEGATIONS VIS-À-VIS PROSECUTION EVIDENCE IN REBUTTAL TO THE ALLEGATIONS

24. The Decision is simply put, unfair, insofar as the manner in which evidence put forth by the Defence to support the allegations was evaluated by the Court vis-à-vis how

[33] Der Spiegel, page 5.
[34] Response, para. 3. See, Motion, paras. 1 and 6.

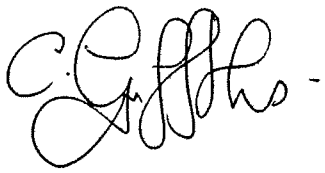
prosecution evidence in rebuttal was assessed by the Court. Illustrative of this is the reliance by the Court on confidential Annex 4 of the Response which contained unsworn, unsubscribed or signed factual assertions by the Prosecution under the heading "Note of Inaccuracies"[35]. The Trial Chamber relied on Annex 4 of the Response extensively in disregarding the serious allegations that were in all but one instance, conveyed through sworn affidavits by Defence witnesses who have either testified before the Court or had been considered to give testimonial evidence[36]. And yet, when considering the one and only unsworn "declaration" of a Defence witness, the Court noted in paragraph 71 of the Decision that DCT-097's "declaration" was neither witnessed nor sworn and therefore was improperly referred to as a "declaration".

25. It cannot be the case that Defence evidence is held to a higher standard than that applied to prosecution "evidence" and the Defence submits that the approach taken in the Decision resulted in clear error that warrants reconsideration in order to prevent injustice to the Accused.

V. CONCLUSION AND RELIEF REQUESTED

26. For all of the foregoing reasons, the Defence respectfully requests that the Court reconsider the Decision in the exercise of its discretion.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 15th Day of November 2010,
The Hague, The Netherlands

[35] See Response, Annex 4.
[36] See Decision, for example, paras. 89 ("the search was not carried out by members of the Prosecution; rather there were present as observers"); 98 (observing that Prosecution records show that DCT-130's younger brother was present for a meeting between the witness and the Prosecution and noting that that "fact" was "unchallenged by the Defence"); 121 ("the Prosecution has denied the allegation that it bought a house for Varmuyan Sherif in Kenema).

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ANNEX A

SPIEGEL ONLINE
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Special Court for Sierra Leone

Is the Case Against Charles Taylor Falling Apart?

By Thomas Darnstädt and Jan Puhl

Former Liberian President Charles Taylor has been on trial in The Hague for the last three years. The International Criminal Court accuses him of mass murder, rape and acts of terror. But the most promising prospect of using international law to punish a former dictator is threatening to fail.

The court is not spared anything, including this cross-examination on the subject of cannibalism.

Question: "How do you prepare a human being for a pot?" The witness: "We lay you down, slit your throat und butcher you and throw your head away, your intestines."

This is more than the court wants to hear. The audience turns away in disgust.

"With pepper and salt," the witness adds.

These are scenes from a nightmare that never seems to end. The trial of Charles Taylor, the former president of Liberia, before the Special Court for Sierra Leone in The Hague has been underway for more than three years -- without palpable results.

Crimes against humanity, mass murder, rape, mutilation, the blame for the massacres that took place during the civil war that raged in neighboring Sierra Leone between 1991 and 2002: the charges against the African politician are as massive as the prosecutors' ambition to force a murderous head of state to atone for his crimes for the first time in history. But the more unbearable the details of this bloody African conflict become in the neon-lit courtroom, the more agonizing is the game of guilt and atonement, and the more untouchable this former president, in his silver-gray tie, gray suit and white pocket handkerchief, becomes.

Nothing seems to stick to this defendant. Cannibalism? Taylor feigns disgust. What does he have to do with such atrocities, he asks?

More than 90 witnesses have already testified. The International Criminal Court in The Hague is currently in the process of hearing the last of the oral evidence, and the man who was almost certain of taking his place in history as the " Butcher of Monrovia" appears to be emerging as a winner, at least for now.

In Freetown, the devastated capital of Sierra Leone, where the ravages of the civil war continue to shape the misery of everyday life, and where the country's war crimes tribunal has its headquarters between NATO barbed fire fences, mutilated victims follow the Internet broadcasts from faraway The Hague with trepidation. Musa Mewa, a journalist, senses that a catastrophe is unfolding in Europe. If Taylor is not punished for the suffering that the people in his native West Africa still endure today, it will be "the end of justice," says Mewa.

Gangsters of World Politics

Peace through justice: Using a formula established in 1945 during the Nuremberg trials of the surviving perpetrators of Nazi atrocities, international courts have been trying for almost 20 years to make the worst gangsters of world politics, tyrants and war criminals alike, accountable for their crimes.

In 2006, the International Criminal Tribunal for the Former Yugoslavia failed in its attempt to convict former Serbian dictator Slobodan Milosevic. The defendant died of a heart attack before the court could fully process the completely overloaded indictment against him. The prospects of bringing Omar al-Bashir, the president of Sudan, before the International Criminal Court are also slim. Although the court has issued an arrest warrant against the tyrant, he remains untouchable in the Sudanese capital Khartoum, where he continues his dictatorial rule.

Now the Taylor trial, seen as the most promising of such cases to date, threatens to fall apart in The Hague. In the worst case, the Taylor trial could reveal to the world that it's impossible to measure national leaders by the yardstick of the law.

Stephen Rapp, the chief prosecutor in the Taylor trial until a year ago and now an advisor in the United States State Department, must already regret the bold statement he made after the defense had submitted its evidence: "It has been demonstrated that it is possible to prosecute a former chief of state in a trial that is fair and efficient, even where the indictment covers wide-ranging crimes."

Rapp's self-praise was "overstated and entirely premature," experts at the University of California, Berkeley, who have monitored and analyzed the trial for years, said recently. In a study, the international law experts accuse the judges and prosecutors in the case of making serious mistakes. They characterize the often insensitive treatment of victims who were willing to testify as "surprising and disappointing" and the prosecutors' financial payments to key witnesses as irritating.

According to the Berkeley study, the "excessive delay" of the apparently overwhelmed court in reaching important interim decisions can be attributed to the "apparent violation of the defendant's fair trial rights." The defendant as a victim of an overly zealous judiciary? The gray-haired man, wearing cufflinks in the shape of the African continent, can lean back and relax.

The prosecution's biggest challenge has not been to provide the court with evidence of the horrors of the civil war in Sierra Leone. No one doubts that the 1990s uprising by the "Revolutionary United Front" (RUF), under its bloodthirsty leader Foday Sankoh, claimed far more than 100,000 lives. The death squads that mowed down entire villages for the RUF referred to their operation as "No Living Thing." The gruesome details are collected in 42,000 pages of evidentiary material. They include accounts of children butchering their own parents on Sankoh's orders, mass rapes and ritual bloodbaths.

Amputees Living in Misery

The rebels chopped off the arms, legs or all the limbs of thousands of people. A population of amputees lives a life of misery in the slums of Freetown today. In a degrading procedure, some were even forced to parade their mutilations before the court in The Hague. Mothers broke down in tears when called upon to describe to the court how their children were murdered.

RUF ringleaders were convicted and imprisoned for these crimes in other trials in Freetown. Only the most important of the trials was moved to The Hague, for security reasons.

It is unsettling enough for the victims, after being put through the ordeals of traveling from the broken end of the world to the high-tech courtroom in the Netherlands, to arrive there and be told that the suffering they endured is not the central issue in this trial. In The Hague, far away from the scene of the crime, the unspeakable things that were done to the witnesses at home are reshaped into the cold, hard facts the legal experts call the "crime base."

In The Hague, all of this is nothing more than background noise for the "linkage," or establishment of a legal connection between the distant catastrophe and the ultimate responsibility being attributed to a polite man sitting in the corner who sometimes flips through *Newsweek* when he's bored.

Charles Taylor, who has been held at the tribunal's prison in The Hague's Scheveningen district for the last four years, was allegedly the mastermind of the carnage in neighboring Sierra Leone. After seizing power in Liberia with no less brutal means in 1996 and having himself elected president, he allegedly fueled the civil war in Sierra Leone with arms shipments. For years, politicians and legal experts alike were convinced all of this was done out of pure greed. Taylor, whose reputation as a swindler had already preceded him as a young man, was allegedly trying to gain control over the hugely productive diamond mines in Sierra Leone.

Taylor's lust for diamonds is the link prosecutors have tried to establish. So far, however, they have not managed to offer convincing proof of this crime story in public court hearings. The most important witness, former RUF commandant Foday Sankoh, one of Taylor's comrades from the wild days, died of a stroke years ago.

His successor in the RUF, Issa Sesay, testified as a witness for the defense in The Hague. Despite days of cross-examination Sesay, who has already been sentenced to a 52-year prison term and therefore has nothing to lose, continued to insist that Taylor had had nothing to do with the arms shipments to the RUF.

Now much will depend on whether the court believes the man telling the cannibal stories.

Prosecution's Problems

The witness, who goes by the nickname Zigzag, spent days describing the gruesome massacres and acts of torture in which he had been involved. He also insisted that Taylor had given the orders to commit these atrocities himself, and that he had had no choice but to obey. If he had refused, Zigzag claimed, Taylor would have had him and his family killed. "It is the truth. Before God and man, that is what I am telling you," he told the court.

It didn't take much effort for the defense attorney to expose Zigzag as a cynical blusterer who was unable to name specific numbers, dates and places. He had killed so many thousands of people, he said, that he could hardly be expected to remember the individual cases.

Zigzag's testimony was shaped primarily by the desire to save his own skin. The defense submitted investigative files that suggest that the prosecutors had used excessive pressure when describing the legal situation to the witness. If he did not assign the full blame for his crimes to former President Taylor, the files read, he could expect to receive the worst possible sentence.

If it was a ploy, it worked. Zigzag left the courtroom a free man, but not before his testimony had prompted the frustrated defense attorney to ask him whether he couldn't speak a sentence that didn't include the words "on the instructions of Charles Taylor."

"No, I can't," he replied.

With the exception of Zigzag, the prosecution was unable to call any witnesses publicly who could credibly confirm, based on their own experiences, that Taylor was in fact the source of the weapons that were supplied to the RUF in Sierra Leone. Zigzag is also the only one who claims that he brought home a diamond from Sierra Leone ("a large passport-sized shaped like a human head") and gave it to Taylor.

Dealing with Bribery Accusations

Other witnesses could only report indirectly on the diamond-weapons link to Taylor, but the credibility of some was damaged by the claim that they received payments from the prosecutors. "We have never paid a witness for his testimony," says Chief Prosecutor Brenda Hollis, noting that all funds were paid in the form of reparations.

But the defense believes that it can prove that the investigators in Sierra Leone and Liberia used substantial financial promises in an attempt to convince witnesses to make false statements. Only a few weeks ago, Taylor's attorneys presented the court with at least a dozen secret payment orders to potential witnesses, coupled with the spectacular motion that the prosecutors themselves should be prosecuted for "contempt of court."

The judges are apparently struggling with how to deal with the bribery accusations. A decision, which is expected in the next few days, could result in the trial being taken back to square one.

The difficulties the prosecution has had in finding credible witnesses are reflected in the attempt to turn the stuff of gossip columns into evidence. When Woody Allen's former partner Mia Farrow said that she remembered how British supermodel Naomi Campbell had told her about an uncut diamond Taylor had given her in South Africa in 1997, Campbell was summoned to appear in the courtroom in August.

But Campbell could not confirm that the messengers who had knocked on her door at night and given her the small bag containing the diamond were in fact coming from Taylor. "It is not abnormal for me to get gifts. I get gifts all the time. Sometimes in the middle of the night," Campbell said.

The prosecution was getting nowhere. With tears in his eyes, the former president complained about a web of "diabolical lies" against him. He told the court that this is what happens to the

leader of a "small country" who becomes trapped in the slander mills of international politics. He said that he had acted as a responsible president and had tried to promote peace in neighboring Sierra Leone. "We heard that people were being killed and women were being raped there," he said. "We couldn't understand it."

Hidden Assets

This angel of peace has always liked playing the desperado. The politician always wore a white suit with an ornate silver-plated walking stick as he strolled through the Liberian capital, Monrovia. If enough people were watching, he would sometimes throw himself into the dust and beg God to forgive him for his sins. He once declared Jesus Christ to be the ruler of Liberia.

Taylor, whose private fortune is estimated at up to $3 billion (€2.1 billion), even managed to plead poverty and collect legal aid. The prosecution deployed a task force to find Taylor's hidden assets.

The team managed to find one account with the Liberian Bank for Development and Investment. Some $24 million (€17.1 million) were deposited into the account between 2000 and 2003, but when the investigators discovered the account, it was empty. Millions in cash had been withdrawn a short time earlier.

The Taylor case shows that condemning a politician politically and doing so in a fair trial are two different things. Convicting someone "several levels above the direct perpetrator" of a crime, says prosecutor Hollis, requires "more time and more evidence. We have a very complex mix."

Many problems stem from the fact that the prosecution relied on the UN's political verdict. A 2000 UN report had drawn the investigators' attention to the Liberian president in the first place. According to the document from New York, there was "unequivocal and overwhelming evidence that Liberia has been actively supporting the RUF at all levels."

But there was actually no evidence. For example, the UN report cited, as evidence of Taylor's alleged personal involvement in the arms trade, the fact that weapons that were -- presumably -- bound for Sierra Leone had been flown to Liberia on a plane belonging to one of Taylor's business associates. This is certainly suspicious, but it isn't evidence.

The impression that the UN sometimes bases its case on dilettantes was reinforced when, in the courtroom, Taylor's lawyers quoted from an internal letter written by the UN special envoy for Sierra Leone, who complained to headquarters in New York about the "amateurish" research being done by UN investigators in the Taylor case. According to the letter, compiling "chatty cocktail gossip" about the president was downright "journalistic."

The prosecution made the problem even worse by declaring the story of the diamond-hungry warmonger Taylor disseminated worldwide by the UN to be the equivalent of a crime under international law. Taylor, according to the 2003 indictment, was the head of a "joint criminal enterprise" with the aim of gaining "political power and control over the territory of Sierra Leone, in particular the diamond mining areas."

But the lawyers became entangled in their attempt to define the savage bloodbath as a major political crime. The defense pointed to a hole in the prosecution's case: It is still not a crime under international law to seize the natural resources of another country. But what was Taylor's criminal objective? "This very important element has led to some confusion," Chief Prosecutor Hollis concedes.

Reinterpreting the Indictment

For almost a year, as the trial continued, the court pondered over how it should respond to the objection raised by the defense. Finally, in February 2009, the judges rescued the prosecution, after heated debate, with a creative reinterpretation: In a second indictment, written in 2007, the prosecutors also charged Taylor with having systematically terrorized the civilian population of Sierra Leone. The terror itself, the judges explained, and not the diamonds, was the objective for which Taylor was in fact being charged with a crime. One of the judges who was against his colleagues' sleight of hand called it "brain-twisting."

But if the issue was terror, not diamonds, what was to become of the charges that the president of Liberia had procured diamonds? And what was the purpose of the RUF's attempt, allegedly ordered by Taylor, to assume power in Freetown?

Several studies by British experts do not attribute the carnage to Taylor's influence as much as to the rage of young, violent fringe groups against the corrupt post-colonial regime in an African country with such abundant natural resources.

Introducing all of this information into the case is no longer possible. The taking of oral evidence was long complete by the time the court had decided to reinterpret the indictment. Prosecutor Hollis is trying to rescue the case from a verdict of a lack of fairness. "The defense was on notice of what they had to defend the defendant against," she says.

But some insiders in The Hague believe it is only a question of the judges' courage as to whether the trial will end with an acquittal.

Peace through justice? In the Liberian capital Monrovia, where there is now a democratic government, the many supporters of the former president now in detention in Europe still go into raptures over the thought that he could return to Liberia one day. Bars throughout West Africa still show the video that Taylor's revolutionaries made when they assumed power. It shows them cutting off the ears of Taylor's ousted predecessor, Samuel Doe. Taylor's former brother-in-arms Prince Johnson is also in the video, as he sits at a table covered with beer cans and gives the torturers instructions.

Johnson is back in the limelight in Monrovia, where he is running for president.

Translated from the German by Christopher Sultan

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