

Gender and the Charles Taylor Case at the Special Court for Sierra Leone

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GENDER AND THE *CHARLES TAYLOR* CASE AT THE SPECIAL COURT FOR SIERRA LEONE

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INTRODUCTION

In a landmark trial judgment on April 26, 2012, the Special Court for Sierra Leone (SCSL) convicted Charles Taylor, former President of Liberia, of aiding and abetting and planning crimes against humanity and war crimes during the armed conflict in Sierra Leone.¹ He was subsequently sentenced to fifty years in prison.² Taylor's trial was high-profile given his status as a former head of state who had been indicted by the SCSL while he was still president.³ Among other

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1. The oral judgment was rendered on April 26, 2012, summarizing the convictions and the basis for convictions. See Press Release, Special Court for Sierra Leone, Outreach and Public Affairs Office, Charles Taylor Convicted on All 11 Counts; Sentencing Scheduled for 30 May (Apr. 26, 2012), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=by3HPDDiFTM%3D&tabid=53>. The full written judgment was subsequently issued on May 18, 2012. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement (May 18, 2012) (becoming one of the longest trial judgments ever issued by an international criminal tribunal at 2,532 pages).

2. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Sentencing Judgement, 40 (May 30, 2012).

3. See Press Release, Special Court for Sierra Leone, Office of the Prosecutor, Statement of David M. Crane, Chief Prosecutor, Special Court for Sierra Leone (June 5, 2003), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=R1tT4d8XW4A%3d&tabid=196> (last visited Nov. 6, 2012). The website of the Special Court for Sierra Leone provides background on the trial proceedings:

In August 2003 Charles Taylor resigned as president and went into exile in Nigeria. He was transferred to the Special Court on 29 March 2006. Due to concerns about regional security should the trial be held in Sierra Leone,

things, Taylor was accused of receiving “blood diamonds” from rebels in Sierra Leone in exchange for arms and ammunition.⁴ Less attention has been paid, however, to the gender-related charges against Taylor, despite the brutal and widespread nature of rape, sexual slavery, and forced marriage during the conflict.⁵ Taylor faced an eleven count indictment, including the crimes against humanity of rape and sexual slavery and the war crime of outrages upon personal dignity.⁶ He was also charged with the war crime of committing acts of terror, carried out by, *inter alia*, sexual violence.⁷ He was not accused of carrying out these crimes himself; rather, he was charged with assisting and encouraging, acting in concert with, directing, controlling and/or being the superior of the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC), the joint RUF-AFRC junta and/or Liberian fighters.⁸ On Taylor’s conviction, Prosecutor Brenda Hollis stated, “Sexual violence against women and girls was a key part of operations in Sierra Leone. Victims were savagely and repeatedly raped, and were then used as sex slaves, handed from owner to owner. The emotional and physical trauma suffered by these victims will continue for a lifetime.”⁹

This article will begin by exploring how the trial judgment dealt with the gender-related charges against Taylor: the crimes against

the Special Court arranged for the trial to be held at The Hague in the Netherlands. Charles Taylor was transferred to The Hague on 30 June 2006. . . . The Prosecution opened their case on 4 June 2007 The Defence . . . concluded on 12 November 2010

The Prosecutor vs. Charles Ghankay Taylor, THE SPECIAL COURT FOR SIERRA LEONE, <http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx> (last visited Nov. 6, 2012).

4. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Prosecution Final Trial Brief, ¶¶ 18–21, 341–82 (Apr. 8, 2011).

5. See, e.g., HUMAN RIGHTS WATCH, SIERRA LEONE: “WE’LL KILL YOU IF YOU CRY”: SEXUAL VIOLENCE IN THE SIERRA LEONE CONFLICT 25–27 (2003), available at <http://www.hrw.org/sites/default/files/reports/sierleon0103.pdf>. See also PHYSICIANS FOR HUMAN RIGHTS, WAR-RELATED SEXUAL VIOLENCE IN SIERRA LEONE: A POPULATION-BASED ASSESSMENT 36 (2002), available at http://s3.amazonaws.com/PHR_Reports/sierra-leone-sexual-violence-2002.pdf.

6. Prosecutor v. Taylor, Case No. SCSL-03-01-PT, Trial Chamber II, Prosecution’s Second Amended Indictment, 4 (May 29, 2007).

7. *Id.* at 2, 4.

8. *Id.* at 2. These groups were often referred to collectively as the rebels. E.g., Erna Sattler, *2nd Session: 63rd Prosecution Witness Describes AFRC/RUF Attacks and Atrocities Committed*, THE TRIAL OF CHARLES TAYLOR (Oct. 16, 2008), <http://www.charlestaylortrial.org/2008/10/16/2nd-session-63rd-prosecution-witness-describes-afrcruf-attacks-and-atrocities-committed/>.

9. Press Release, Special Court for Sierra Leone, Office of the Prosecutor, Prosecutor Hollis Hails the Historic Conviction of Charles Taylor, Special Court for Sierra Leone, (Apr. 26, 2012), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=hCajjMya09g%3d&tabid=196>.

humanity of rape and sexual slavery, the war crime of outrages upon personal dignity, and the war crime of committing acts of terror (including through sexual violence).¹⁰ The approach in the *Taylor* trial judgment will be compared and contrasted with the SCSL's approach in two earlier trial judgments: *Sesay, Kallon and Gbao* (RUF trial)¹¹ and *Brima, Kamara and Kanu* (AFRC trial).¹² Next, the article will explore how the Court viewed the issue of cumulative charges, especially with respect to rape and sexual slavery. Third, this article will discuss the modes of liability used to find Taylor guilty and their link to the gender-related crimes.

Finally, this article will conclude with an evaluation of what the *Taylor* trial judgment has added to international criminal law's understanding of gender-based crimes. For example, the judgment has shed additional light on the different ways in which "rape, sexual slavery, forced marriages, and outrages on personal dignity" are used in conflict by warring parties to assert power and control.¹³ It also assisted in solidifying the international legal definition of sexual slavery.¹⁴ It raised important questions about what had previously been termed "forced marriage" by the SCSL, finding that women and girls had not actually been forcibly *married* to RUF and AFRC fighters, but had been *enslaved* for the dual purposes of ongoing rape and forced domestic and other labor.¹⁵ It therefore proposed that the term "conjugal slavery" be used instead of "forced marriage."¹⁶ The *Taylor* trial judgment also helped to clarify that an individual may be subject to convictions for the crimes against humanity of rape and sexual slavery, as well as the war crimes of committing acts of terror and sexual violence.¹⁷ In sum, the *Taylor* trial judgment was a step forward in international gender jurisprudence.

I. GENDER-BASED CRIMES IN THE TAYLOR JUDGMENT

Charles Taylor faced a number of gender-related charges, namely the crimes against humanity of rape and sexual slavery and the war

10. Prosecutor v. Taylor, Case No. SCSL-03-01-PT, Trial Chamber II, Prosecution's Second Amended Indictment, 2, 4 (May 29, 2007).

11. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement (Mar. 2, 2009).

12. Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement (June 20, 2007).

13. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 2035 (May 18, 2012).

14. *Id.* ¶¶ 418–21.

15. *Id.* ¶¶ 425–26.

16. *Id.* ¶¶ 428–30.

17. *Id.* ¶¶ 6989–90.

crimes of outrages upon personal dignity and committing acts of terror (including through sexual violence).¹⁸ This section will explore each crime in turn, examining what the *Taylor* trial judgment added to international criminal law's understanding of those crimes. It is important to understand, however, that the *Taylor* trial judgment was the fourth trial judgment issued by the SCSL—after the *AFRC* trial, the Civil Defence Forces (CDF) case, and the *RUF* trial.¹⁹ The *Taylor* trial judgment therefore benefitted from the previous legal analysis undertaken in those cases, which allowed it to confirm, expand, and clarify international criminal law on gender-based crimes.²⁰

A. Rape

The *Taylor* trial was the third SCSL case to hear evidence of widespread rape during the conflict in Sierra Leone; the CDF case did not hear evidence of rape, as a majority of the Trial Chamber rejected a request by the Prosecutor to amend the CDF indictment to add this and other gender-based crimes.²¹ The first case, documenting atrocities committed by AFRC troops, discussed the use of gang rape as a tactic within the conflict.²² The second case considered the use of rape by the RUF, and concluded that the rebel group employed gang rape, multiple rapes, rape with weapons and other objects, rape in public, rape in which family members were forced to watch, and forced rape between family members or among captured civilians to accomplish its strategic goals.²³ The *Taylor* judgment expanded somewhat on these factual findings. It confirmed that the RUF and AFRC were both responsible for the rape of civilian women and girls, but it added that other affiliated fighters were also responsible.²⁴ The Trial Chamber

18. Prosecutor v. Taylor, Case No. SCSL-03-01-PT, Trial Chamber II, Prosecution's Second Amended Indictment, 4 (May 29, 2007).

19. *About the Special Court for Sierra Leone*, THE SPECIAL COURT FOR SIERRA LEONE, <http://www.sc-sl.org/ABOUT/tabid/70/Default.aspx> (last visited Nov. 6, 2012).

20. Kelly Askin, *Charles Taylor Judgment: A Victory for Gender Justice*, OPEN SOCIETY FOUNDATIONS (Apr. 26, 2012), <http://www.soros.org/voices/charles-taylor-judgment-victory-gender-justice>.

21. Prosecutor v. Norman, Fofana & Kondewa, Case No. SCSL-04-14-PT, Trial Chamber I, Decision on Prosecution Request for Leave to Amend the Indictment, ¶¶ 6, 87 (May 20, 2004). For a critique of this decision and its substantial after-effects, see Valerie Oosterveld, *The Special Court for Sierra Leone's Consideration of Gender-Based Violence: Contributing to Transitional Justice?*, 10 HUM. RTS. REV. 73 (2009).

22. See, e.g., Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶¶ 1031–35 (June 20, 2007).

23. See, e.g., Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶¶ 1181, 1185, 1193–94, 1205–07, 1289 (Mar. 2, 2009).

24. See, e.g., Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 913–14, 919, 930–32, 961, 966, 970–72, 980, 984, 992, 999, 1007, 1015–16 (May 18, 2012).

also added more detail, finding that no one was safe; young and old alike were subjected to abduction or capture and rape, and previous societal taboos were ignored, for example, in the targeting of breast-feeding mothers.²⁵ The *Taylor* judgment also confirmed that both groups used a variety of rape tactics, ranging from gang rape, to rape in public or in the midst of other civilian captives, to sexual mutilation (for example, with sticks), to rape accompanied by beating, including beating on the genitals.²⁶

As was the case in the *AFRC* and *RUF* trial judgments, the evidence in *Taylor* contained many illustrations of how rape did not occur in isolation; rather, it was often accompanied by a multitude of other violations.²⁷ Murder, abduction, mutilation (including sexual mutilation), forced nudity, sexual slavery, forced labor, forced marriage, and physical assault often occurred alongside rape.²⁸ For example, in 1998 a young girl named Finda Gbamanja was captured along with her family by an RUF soldier named Peppe in Baima Town.²⁹ When her parents tried to seek her release, Peppe beat her mother and killed her father.³⁰ He then took Gbamanja to Koidu Town, where he raped her.³¹ This caused her to bleed and become so weak that she could not stand.³² Subsequently, Peppe took Gbamanja to his sister, and his sister forced Gbamanja to work alongside other RUF “bush wives” (women and girls who were forcibly assigned as “wives” to fighters and were expected to submit to rape and provide forced labor).³³ One day, when she was harvesting pepper for Peppe’s sister, she was taken by another soldier named Sergeant Foday, who kept her as his “wife,” raping her every night.³⁴ The *Taylor* trial judgment also highlighted that rape by AFRC and RUF fighters was not accidental: it was inextricably linked to how these groups achieved their military and political objectives.³⁵

25. *See, e.g., id.* ¶¶ 894, 903, 980–81, 992.

26. *Id.* ¶¶ 895, 903, 927, 989.

27. *See, e.g.,* Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 896–97, 901, 903, 923–28, 1002–04 (May 18, 2012); Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶¶ 1195, 1205, 1208 (Mar. 2, 2009); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶¶ 989–1009 (June 20, 2007).

28. *See, e.g.,* Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 896–97, 901, 903, 923–28, 1002–04 (May 18, 2012).

29. *Id.* ¶ 889.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* ¶¶ 424, 890. *See also infra* Part I.B (exploring the “bush wife” phenomenon in the Sierra Leone conflict).

34. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 890 (May 18, 2012).

35. *Id.* ¶ 6787.

The legal analysis of rape in *Taylor* also helped to advance international criminal law. In line with its earlier approach in the *AFRC* trial judgment,³⁶ and with the approach of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Prosecutor v. Kunarac*,³⁷ the *Taylor* Trial Chamber adopted these elements of crime for rape:

- i. The non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator; and
- ii. The perpetrator must have the intent to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.³⁸

Interestingly, the SCSL's other Trial Chamber, Trial Chamber I, adopted slightly different and more detailed elements for rape in the *RUF* case based on a combination of the elements set out in the International Criminal Court's (ICC's) Elements of Crimes and the ICTY's *Kunarac* elements:

- i. The Accused invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the Accused with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body;
- ii. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or another person or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent;
- iii. The Accused intended to effect the sexual penetration or acted in the reasonable knowledge that this was likely to occur; and
- iv. The Accused knew or had reason to know that the victim did not consent.³⁹

The joint *Taylor/AFRC* approach is slightly narrower than the *RUF* approach. On the *actus reus* element, all of the approaches cover vaginal, oral, or anal penetration of a victim by a perpetrator, but the

36. *Prosecutor v. Brima, Kamara & Kanu*, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 693 (June 20, 2007).

37. *Prosecutor v. Kunarac*, Case No. IT-96-23, IT-96-23/1-A, Appeals Chamber, Judgement, ¶ 127 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002).

38. *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 415 (May 18, 2012).

39. *Prosecutor v. Sesay, Kallon & Gbao*, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶¶ 144–45 (Mar. 2, 2009).

RUF approach additionally covers situations in which a perpetrator uses a finger to effect penetration, or a male victim is forced to use his penis to penetrate (either vaginally, orally, or anally) a male or female perpetrator.⁴⁰ The *Taylor* trial judgment does not provide an explanation as to why it followed the slightly narrower *AFRC* approach rather than that of the *RUF*. That said, the *RUF* trial judgment also did not provide any explanation as to why it took a different approach from that in the earlier *AFRC* trial judgment. As Eriksson notes, it is perplexing as to why, in the discussions of the applicable law on rape, the two Trial Chambers did not acknowledge and address the differing approach of the other.⁴¹

The *Taylor* trial judgment also served a confirmatory role on the law with respect to rape. For example, the judgment noted, in agreement with the *AFRC* and *RUF* trial judgments, that the *actus reus* element for rape may require reliance on circumstantial evidence.⁴² This is so because of the context of rape on a large scale in an armed conflict and the fact that many of the victims of rape may suffer social stigma.⁴³ As well, the *Taylor* trial judgment, like the *RUF* trial judgment, recognized that certain individuals can never be said to have consented to sex due to age, disability, illness, or being under the influence of a substance.⁴⁴

40. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 415 (May 18, 2012); Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 145 (Mar. 2, 2009); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 693 (June 20, 2007). In the *Taylor/AFRC* elements, it is not clear that the term “object” includes a body part such as a finger, unlike the *RUF* approach, which refers to “any other part of the body.” Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 415 (May 18, 2012); Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 145 (Mar. 2, 2009); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 693 (June 20, 2007). Further, the *Taylor/AFRC* elements do not account for a male victim being forced to penetrate his perpetrator. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 415 (May 18, 2012); Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 145 (Mar. 2, 2009); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 693 (June 20, 2007).

41. MARIA ERIKSSON, DEFINING RAPE: EMERGING OBLIGATIONS FOR STATES UNDER INTERNATIONAL LAW? 398–403 (2011).

42. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 149 (Mar. 2, 2009); Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 416 (May 18, 2012); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 695 (June 20, 2007).

43. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 149 (Mar. 2, 2009); Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 416 (May 18, 2012); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 695 (June 20, 2007).

44. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 416 (May 18, 2012); Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 148 (Mar. 2, 2009).

One way in which the *Taylor* trial judgment was regressive, however, was in the decision of the judges (and, initially, the Prosecutor) to restrict the consideration of sexual violence crimes to those committed against women and girls.⁴⁵ The *Taylor* indictment referred specifically to “women and girls” as victims of the sexual violence crimes, and the Trial Chamber found that this restrictive reference could not be considered to have been subsequently corrected to include men and boys.⁴⁶ This was because the Prosecutor did not provide the accused with subsequent timely, clear, and consistent notice that the criminal acts charged included sexual violence directed against men and boys.⁴⁷ While this mirrored the decision made in the *AFRC* trial judgment by the same Trial Chamber,⁴⁸ it was the opposite of the decision taken by Trial Chamber I in the *RUF* trial judgment.⁴⁹ That Trial Chamber found that the Prosecutor had provided enough clear, timely, and consistent notice of sexual violence crimes directed against men and boys to cure the defect in the indictment.⁵⁰ As a result, the *RUF* trial judgment contained evidence of sexual violence directed against men and boys.⁵¹ It also recognized that rape directed against women and girls had effects on men and boys, disempowering the male members of the community by showing that they “were unable to protect their own wives, daughters, mothers, and sisters.”⁵² The *RUF* trial judgment, but not the *AFRC* trial judgment nor the *Taylor* trial judgment, helped to draw attention to a still-overlooked form of gender-based violence in conflict.⁵³

45. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 124–34 (May 18, 2012); Prosecutor v. Taylor, Case No. SCSL-03-01-PT, Trial Chamber II, Prosecution’s Second Amended Indictment, at 5 (May 29, 2007).

46. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 124–34 (May 18, 2012); Prosecutor v. Taylor, Case No. SCSL-03-01-PT, Trial Chamber II, Prosecution’s Second Amended Indictment, at 5 (May 29, 2007).

47. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 124–34 (May 18, 2012).

48. Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶¶ 968–69 (June 20, 2007).

49. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶¶ 1303–04 (Mar. 2, 2009). This discussion occurs in the section addressing outrages upon personal dignity, but is applied by the Trial Chamber more broadly. *See, e.g., id.* ¶ 1347 (discussing the use of sexual violence as a form of terror, and including sexual violence against men in the description).

50. *Id.* ¶¶ 1303–04.

51. *See, e.g., id.* ¶ 1302 (describing how rebels ordered a couple to have sexual intercourse in the presence of captured civilians, including their daughter, and then forced that daughter to wash her father’s penis). The *RUF* Trial Chamber found that this severely humiliated all of the victims involved. *Id.* ¶ 1305.

52. *Id.* ¶ 1350.

53. For further discussion, see Sandesh Sivakumaran, *Lost in Translation: UN Responses to Sexual Violence Against Men and Boys in Situations of Armed Conflict*, 92 INT’L REV. RED CROSS 259 (2010); Sandesh Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, 18 EUR. J. INT’L L. 253 (2007).

B. Sexual Slavery, Forced Marriage, and Conjugal Slavery

Some of the most significant gender-related developments in the *Taylor* case are found in the court's consideration of sexual slavery and, as part of that discussion, forced marriage or conjugal slavery. The *Taylor* trial judgment helped to solidify the international definition of sexual slavery, as well as contributed to defining the contours of the crime, for example, as a continuing crime.⁵⁴ It also provided analysis distinguishing between what had been called "forced marriage" and what it termed "conjugal slavery."⁵⁵ This discussion raises crucial questions about how best to capture the widespread practice during the Sierra Leone conflict in which rebels forcibly assigned girls and women to commanders and soldiers for the purposes of sexual slavery and forced domestic labor.

The SCSL entered the first-ever international criminal convictions for the crime against humanity of sexual slavery.⁵⁶ The *RUF* trial judgment was the first one to enter convictions in this respect, and the *Taylor* trial judgment was the second.⁵⁷ The *AFRC* trial judgment discussed sexual slavery but dismissed the sexual slavery charges for duplicity, and it therefore did not enter any convictions.⁵⁸ The *AFRC*, *RUF* and *Taylor* cases presented a united approach in the determination of the elements of the crime of sexual slavery, albeit in slightly different wording.⁵⁹ The *Taylor* approach defined sexual slavery as:

- i. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by

54. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 418–21 (May 18, 2012).

55. *Id.* ¶ 429.

56. Press Release, Special Court for Sierra Leone, Office of the Prosecutor, Prosecutor Welcomes Convictions in RUF Appeals Judgement (Oct. 26, 2009), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=ITUGDfoglFQ%3D&tabid=53>. Sexual slavery was first listed as a crime against humanity and a war crime in the Rome Statute of the ICC in 1998, then was incorporated as a crime against humanity into the SCSL Statute adopted in 2002. See Valerie Oosterveld, *Sexual Slavery and the International Criminal Court: Advancing International Law*, 25 MICH. J. INT'L L. 605, 607, 626 (2004). The ICTY had earlier considered enslavement carried out through sexual means in *Kunarac*. Prosecutor v. Kunarac, Case No. IT-96-23-T, IT-96-23/1-T, Trial Chamber, Judgement, ¶ 541 n.1333 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001).

57. See Press Release, *supra* note 56; Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 6994(a)(v), 6994(b)(v) (May 18, 2012).

58. Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 696 (June 20, 2007).

59. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 418 (May 18, 2012); Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 158 (Mar. 2, 2009); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 708 (June 20, 2007).

- purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty;
- ii. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature;
 - iii. The perpetrator intended to engage in the act of sexual slavery or acted with the reasonable knowledge that this was likely to occur.⁶⁰

The first two elements, representing the *actus reus*, are based on those for sexual slavery in the ICC's Elements of Crimes document.⁶¹ It is clear that the Prosecutor must prove, first, that the accused "exercised any or all of the powers attaching to the right of ownership over" a person or persons and, second, that the enslavement involved sexual acts.⁶² In *Taylor*, Trial Chamber II was careful to follow this order of determination by focusing initially on the enslavement and then on the sexual aspect.⁶³ Interestingly, the Trial Chamber observed that the sexual slavery system in Sierra Leone had a hierarchy of ownership,⁶⁴ thereby illustrating that the context of ownership may differ within—and not only between—situations.

There are other ways in which the *Taylor* trial judgment played a confirmatory role with respect to international law on the crime of sexual slavery. For example, like the *RUF* trial judgment, it adopted the detailed list of indicia of enslavement set out in the ICTY's *Kunarac* case: "control of the victim's movement, control of their physical environment, psychological control, measures taken to deter escape, use or threat of force or coercion against the victim, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour."⁶⁵ The *Taylor* trial judgment also confirmed that victims do not need to be physically confined in order to be considered enslaved; it suffices that the victims

60. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 418 (May 18, 2012).

61. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 419 (May 18, 2012); INT'L CRIMINAL COURT, ELEMENTS OF CRIMES 8 (2011), available at <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

62. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 418 (May 18, 2012).

63. See, e.g., *id.* ¶ 1144 ("[T]he perpetrators intentionally exercised powers of ownership over their victims . . . and in all of the cases the victims were forced to engage in acts of a sexual nature . . .").

64. *Id.* ¶ 2175 ("[T]he Trial Chamber has found that there was a recognized system of ownership and hierarchy among captured women in the rebel forces in Freetown and the Western Area . . .").

65. *Id.* ¶ 420; Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 160 (Mar. 2, 2009) (citing Prosecutor v. Kunarac, Case No. IT-96-23-T, IT-96-23/1-T, Trial Chamber, Judgement, ¶ 543 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001)).

remain under the control of their captors because they have nowhere to go and they fear for their lives.⁶⁶ In addition, it stated that payment or exchange (for example, of money) is not required to establish the exercise of powers attaching to the right of ownership,⁶⁷ thereby helping to settle a question that had arisen in the minds of some during the negotiations on the ICC's Elements of Crime.⁶⁸

The *Taylor* trial judgment considered the *mens rea* requirement for enslavement (which also applied to the subset of sexual slavery).⁶⁹ The Prosecutor had argued that the *mens rea* required that the accused "either intended enslavement or acted in the reasonable knowledge that it was likely to occur" ⁷⁰ The Trial Chamber disagreed, finding that this would represent an expansion of the required *mens rea*.⁷¹ The Trial Chamber's approach conforms to the elements adopted (which say "[t]he perpetrator exercised these powers intentionally")⁷² and ICTY jurisprudence,⁷³ but the Prosecutor's argument follows the jurisprudence of the ICC, perhaps because the elements for both enslavement and sexual slavery were borrowed from the ICC.⁷⁴ The Trial Chamber preferred the narrower view as making more legal sense: "[I]t is difficult to envisage what the requirement of 'acting in the reasonable knowledge that enslavement was likely to occur' would entail in the context of enslavement where the *actus reus* requires exercising the powers of ownership."⁷⁵ This discussion certainly raises the larger question of what role the jurisprudence of other international criminal tribunals should play within the SCSL.

Another development in the *Taylor* trial judgment included the recognition of sexual slavery as a continuing crime.⁷⁶ This recognition is significant because it reflects the reality of the crime. Sexual slavery is not made up of one discrete event; it comprises a number of actions that can stretch over a long period of time and in multiple geographic

66. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 420 (May 18, 2012).

67. *Id.*

68. See Oosterveld, *supra* note 56, at 608.

69. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 419–20 (May 18, 2012).

70. *Id.* ¶ 449.

71. *Id.* ¶ 450.

72. *Id.* ¶ 446.

73. Prosecutor v. Kunarac, Case No. IT-96-23, IT-96-23/1-A, Appeals Chamber, Judgement, ¶ 122 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002).

74. See, e.g., Prosecutor v. Katanga & Chui, Case No. ICC-01/04-01/07, Pre-Trial Chamber I, Decision on the Confirmation of Charges, ¶ 346 (Sept. 30, 2008) (stating that both intent and knowledge are required for the subjective elements of sexual slavery).

75. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 450 (May 18, 2012).

76. *Id.* ¶¶ 119, 1018.

locations.⁷⁷ The *Taylor* trial judgment observed that, in the context of the conflict in Sierra Leone, perpetrators of sexual slavery often moved between villages and districts as the war front shifted, taking their sexual slaves with them.⁷⁸ This recognition also had a very practical effect: the Trial Chamber stated that the Prosecutor cannot be expected to plead specific locations for this crime in the indictment.⁷⁹

Finally, perhaps the most contentious—though perhaps also the most groundbreaking—development came in the Trial Chamber’s discussion of the linkages between sexual slavery and what had been termed “forced marriage” in the *AFRC* and *RUF* judgments.⁸⁰ In the *AFRC* and *RUF* cases, the Prosecutor had brought charges under the crime against humanity of other inhumane acts to cover the “bush wife” phenomenon, in which captured or abducted civilian girls and women were forcibly assigned to RUF and AFRC commanders and soldiers and expected to submit to sexual intercourse whenever demanded, as well as expected to provide domestic and other services, such as cooking, cleaning, child-bearing and child-rearing.⁸¹ There was no actual marriage, even though these girls and women were called “wives.”⁸² These “wives” were often subjected to extreme violence.⁸³ It appears that the Prosecutor viewed forced marriage as encompassing two kinds of harm: first, the harm caused by the non-consensual conferral of the status of “marriage” on the victim and the resulting personal damage (especially societal stigmatization); and second, the physical and psychological harms associated with the rape, forced pregnancy, forced labor, and other duties associated with being a “wife.”⁸⁴

77. See U.N. Econ. & Soc. Council, CONTEMPORARY FORMS OF SLAVERY, ¶¶ 30, 47, U.N. Doc. E/CN.4/Sub.2/1998/13 (June 22, 1998) (noting that sexual slavery often involves forced marriages and labor which likely span longer periods of time, and highlighting jurisdictional concerns given the fact that sexual slavery often crosses geographic borders).

78. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 119 (May 18, 2012).

79. *Id.* ¶ 119, 1018.

80. *Id.* ¶¶ 425–30; Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 2307 (Mar. 2, 2009); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶¶ 703–04 (June 20, 2007).

81. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶¶ 152, 164 (Mar. 2, 2009); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶¶ 13–18 (June 20, 2007) (Sebutinde, J., concurring).

82. Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 701 (June 20, 2007). See also U.N. Econ. & Soc. Council, *supra* note 77, ¶¶ 8, 10, 30.

83. See, e.g., Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-2004-16-A, Appeals Chamber, Judgement, ¶¶ 190–91 (Feb. 22, 2008).

84. Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 701 (June 20, 2007).

A majority of the *AFRC* Trial Chamber did not accept the Prosecutor's categorization of forced marriage as an inhumane act.⁸⁵ Rather, it found that forced marriage was completely subsumed within the crime against humanity of sexual slavery, and it dismissed the forced marriage charge for redundancy.⁸⁶ It disagreed that two kinds of harm were captured within forced marriage: "Not one of the victims of sexual slavery gave evidence that the mere fact that a rebel had declared her to be his wife had caused her any particular trauma, whether physical or mental."⁸⁷ Even if there had been such evidence, the Trial Chamber stated that "it would not by itself have amounted to a crime against humanity, since it would not have been of similar gravity to the [other crimes against humanity in the SCSL Statute]."⁸⁸ These conclusions were, however, rejected on appeal.⁸⁹ The Appeals Chamber found that forced marriage was not subsumed within sexual slavery and appeared to accept the Prosecutor's two-pronged explanation of harm as the imposition of the label of "wife" (and resulting stigmatization) plus physical and psychological mistreatment as a "wife."⁹⁰ It defined forced marriage as:

a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim.⁹¹

It agreed with the Prosecutor's contention that forced marriage is correctly classified under the crime against humanity of inhumane acts,

85. *Id.* ¶ 713.

86. *Id.* This is partly the fault of the Prosecutor, who strongly focused on the sexual aspects of the forced marriages, including classifying the forced marriage charges under the heading "Sexual Violence" in the indictment and referring interchangeably to forced marriage and sexual slavery in the Final Trial Brief. Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-2004-16-PT, Further Amended Consolidated Indictment, ¶ 51 (Feb. 18, 2005); Prosecutor v. Brima, Kamara, & Kanu, Case No. SCSL-04-16-T, Prosecution Final Trial Brief, ¶¶ 1868–69, 1871 (Dec. 6, 2006).

87. Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 710 (June 20, 2007). This demonstrates that the Prosecutor likely did not ask all of the questions required of the victim-witnesses, especially with respect to stigmatization. However, the expert evidence pointed to this stigmatization. See *id.* ¶ 13 (Sebutinde, J., concurring). The Prosecutor should have better linked the harms identified by the expert to the harms experienced by the victim-witnesses. *Id.*

88. *Id.* ¶ 710.

89. See, e.g., Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-2004-16-A, Appeals Chamber, Judgement, ¶ 195 (Feb. 22, 2008).

90. *Id.*

91. *Id.* ¶ 196.

though it declined to enter fresh convictions.⁹² Trial Chamber I, in the *RUF* case, followed the approach of the SCSL's Appeals Chamber on forced marriage.⁹³

While Charles Taylor was not charged with forced marriage as an inhumane act, the Prosecutor did introduce evidence of the “bush wife” phenomenon to support the sexual slavery charges.⁹⁴ Since it was considering evidence of forced marriage, albeit as proof of sexual slavery, Trial Chamber II took the opportunity to express its views again on forced marriage.⁹⁵ It began by finding that the Prosecutor had erred in charging forced marriage under the crime against humanity of inhumane acts.⁹⁶ It (correctly) characterized the term “forced marriage” as a misnomer because there is no actual marriage: “The Trial Chamber does not consider the nomenclature of ‘marriage’ to be helpful in describing what happened to the victims of this forced conjugal association and finds it inappropriate to refer to their perpetrators as ‘husbands.’”⁹⁷ The Trial Chamber identified two harms that it felt were originally meant to be captured by the term “forced marriage”: sexual slavery and enslavement through forced domestic and other forms of labor.⁹⁸ It thus proposed the term “conjugal slavery” instead to capture these harms.⁹⁹ However, it stressed that conjugal slavery is not meant to be a new crime—it is merely two different forms of enslavement captured under one heading.¹⁰⁰

Even so, the Trial Chamber muddied its description as it tried to explain the parameters of conjugal slavery. It seems clear that conjugal slavery is composed of both sexual and non-sexual aspects, all of which qualify as enslavement.¹⁰¹ Conjugal slavery is not limited to

92. *Id.* ¶¶ 200, 202. The Appeals Chamber did not enter fresh convictions because it was:

convinced that society's disapproval of the forceful abduction and use of women and girls as forced conjugal partners as part of a widespread or systematic attack against the civilian population[] is adequately reflected by recognising that such conduct is criminal and that it constitutes an “Other Inhumane Act” capable of incurring individual criminal responsibility in international law.

Id. ¶ 202.

93. *See id.*; Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 1473 (Mar. 2, 2009).

94. *See, e.g.*, Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 422, 1101, 1700 (May 18, 2012).

95. *Id.* ¶ 424.

96. *Id.*

97. *Id.* ¶¶ 425–26.

98. *Id.* ¶ 424.

99. *Id.* ¶¶ 427–28.

100. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 430 (May 18, 2012).

101. *Id.* ¶ 427.

sexual slavery.¹⁰² However, the Trial Chamber then referred to the forced labor aspect as “a descriptive component of a distinctive form of sexual slavery,” as opposed to enslavement.¹⁰³ While the initial description of conjugal slavery seemed to bring both sexual slavery and enslavement through forced labor under one descriptor, this explanation seems to be trying to singularly slot the forced labor aspects into sexual slavery, an approach that had been rejected by the SCSL’s Appeals Chamber.¹⁰⁴ That said, the actual practice of the *Taylor* Trial Chamber in considering evidence of conjugal slavery reflects the clearer explanation of the “conjugal slavery = sexual slavery + forced labor” formula.¹⁰⁵ In attempting to be so thorough in its explanation (despite being confusing), the Trial Chamber may have been worried that others would interpret its identification of conjugal slavery as a new crime, or as straying outside of the charges, and therefore subject to challenge under the principle of legality.¹⁰⁶

With the *Taylor* trial judgment, there are now two different approaches within the SCSL on how to address the “bush wife” phenomenon, which therefore raises some questions as to which is the best approach. In some respects, the *Taylor* approach is better. One of the strongest criticisms of the forced marriage approach was that it misnamed and miscategorized the crime.¹⁰⁷ On misnaming, the main critique is that, while the name itself refers to marriage, no marriage, as defined by international human rights law or domestic Sierra Leonean law, was involved.¹⁰⁸ In Sellers’s view, the reference to marriage is “linguistic camouflage.”¹⁰⁹ On miscategorization, Sellers

102. *Id.* ¶ 428.

103. *Id.* ¶ 429. In this vein, the Trial Chamber continued:

The Trial Chamber considers that unlike the concept of “forced marriage,” as it was presented by the Prosecution in the AFRC and other cases before this Court, conjugal slavery is not a new crime with additional elements. Rather it is a practice with certain additional and distinctive features that relate to the conjugal aspects of the relationship between the perpetrator and the victim, such as the claim by the perpetrator to a particular victim as his “wife” and the exercise of exclusive sexual control over her, barring others from sexual access to the victim, as well as the compulsion of the victim to perform domestic work such as cooking and cleaning.

Id. ¶ 430.

104. *Id.*; Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-2004-16-A, Appeals Chamber, Judgement, ¶ 195 (Feb. 22, 2008).

105. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 427–28 (May 18, 2012) (considering the sexual evidence under sexual slavery and the forced labor evidence under enslavement).

106. *Id.* ¶¶ 429–30 (stressing that the Trial Chamber was not creating a new crime).

107. Jennifer Gong-Gershowitz, *Forced Marriage: A “New” Crime Against Humanity?*, 8 NW. J. INT’L HUM. RTS. 53, 65–66 (2009).

108. *Id.*

109. Patricia Viseur Sellers, *Wartime Female Slavery: Enslavement?*, 44 CORNELL INT’L L.J. 115, 130 n.97, 137, 142 (2011).

has convincingly argued that all of the evidence put forward about forced marriage in the SCSL cases fits the definition of the crime against humanity of enslavement.¹¹⁰ The *Taylor* approach comes close to this by splitting the classification of what had previously been termed forced marriage into evidence of the existing crimes (and charges) of sexual slavery and enslavement, thus satisfying *nullum crimen sine lege*.¹¹¹ In identifying two forms of enslavement as part of conjugal slavery, the Trial Chamber also avoided the miscategorization of the “bush wife” phenomenon as a purely or mainly sexual crime: clearly, it has both sexual and non-sexual components, both of which are important.¹¹² In fact, one of the most important outcomes of the Trial Chamber’s approach is that it draws attention to the fact that the category of gender-based crimes contains much more than just crimes of sexual violence. In Sierra Leone, women and girls were subjected to gender-based crimes by being forced into highly gendered labor roles; as “bush wives,” they fetched water, pounded rice, harvested palm oil, cooked meals, looked for food, carried loads, cleaned houses, fished, planted seeds, and weeded.¹¹³ In other words, the *Taylor* trial judgment recognizes that enslavement through forced labor can be a gendered crime. Thus, the term “conjugal slavery” may have some clear expressive benefits over the term “forced marriage.”¹¹⁴

On the other hand, the term “conjugal” may also not be ideal, depending on how it is interpreted in the future by other courts and tribunals. The SCSL Appeals Chambers described the different roles in the conjugal relationship: the “wife” was expected to provide sex on demand, domestic labor, childbearing and child care, while the “husband” was to provide food, clothing and protection, including protection from rape by other men.¹¹⁵ While this described the highly gendered roles within the “bush wife” scenario during the conflict in

110. *Id.* at 135.

111. For discussion on the opinion that the forced “marriage” approach did not satisfy *nullum crimen sine lege*, see Bridgette A. Toy-Cronin, *What Is Forced Marriage? Toward a Definition of Forced Marriage as a Crime Against Humanity*, 19 COLUM. J. GENDER & L. 539, 580–81 (2010); Nicholas A. Goodfellow, *The Miscategorization of ‘Forced Marriage’ as a Crime Against Humanity by the Special Court for Sierra Leone*, 11 INT’L. CRIM. L. REV. 831, 848–53 (2011).

112. Valerie Oosterveld, *The Special Court for Sierra Leone, Child Soldiers, and Forced Marriage: Providing Clarity or Confusion?*, 45 CAN. Y.B. INT’L L. 131, 155 (2007).

113. See *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 1697–99, 1704, 1766, 1799, 1810–11 (May 18, 2012).

114. As Cook and Cusack note, naming is an important expressive tool of the law, helping to authoritatively transform a previously legally unacknowledged experience into acknowledged wrongs. REBECCA COOK & SIMONE CUSACK, *GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES* 39 (2010).

115. *Prosecutor v. Brima, Kamara & Kanu*, Case No. SCSL-2004-16-A, Appeals Chamber, Judgement, ¶ 190 (Feb. 22, 2008).

Sierra Leone, there is a risk that this could also become the meaning of “conjugal” within international criminal law.¹¹⁶ It is important that the meaning of the term be kept both flexible and wide, so as to adapt to the context and to capture different scenarios: where a woman and a man are forced together into conjugal slavery (as was the situation under the Khmer Rouge in Cambodia);¹¹⁷ where two women or two men are forced together into conjugal slavery; where the victim and the perpetrator are the same sex; and where the perpetrator is female and the victim is male.¹¹⁸

Another concern about moving from an understanding of forced marriage to that of conjugal slavery is that it is not immediately obvious that the latter captures one part of the harm initially identified by the Prosecutor: the harm caused by the non-consensual conferral of a status of “wife” and the resulting damage, especially societal stigmatization.¹¹⁹ The argument is that the “wife”-victims suffered a unique harm caused by being “affiliated in such an intimate way with a member of one of the warring parties,” and it is for this reason that they are ostracized by many within Sierra Leone society as collaborators.¹²⁰ For some, this was the most important facet of forced marriage.¹²¹ The SCSL Appeals Chamber found that there was a distinction between the conferral of the label “bush wife” and the exercise of powers attaching to the right of ownership.¹²² Even so, it appears that this distinction does not necessarily mean that the conferral of the label “bush wife” can never amount to the exercise

116. See, e.g., Binaifer Nowrojee, *Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims*, 18 HARV. HUM. RTS. J. 85, 102 (2005) (“The Prosecutor and the court should take care that patriarchal gender stereotypes . . . are not inadvertently incorporated into jurisprudence . . .”).

117. See, e.g., Prosecutor v. Nuon, Ieng, Khieu & Ieng, Case No. 002/19-09-2007-ECCC-OCIJ, Closing Order, ¶¶ 842, 845, 848 (Sept. 15, 2010). The Extraordinary Chambers in the Court of Cambodia have similarly described forced marriage as a situation in which the victims were forced to enter into conjugal relationships in coercive circumstances. *Id.* ¶¶ 1442–47.

118. Nowrojee, *supra* note 116, at 102; Oosterveld, *supra* note 112, at 158–59; Toy-Cronin, *supra* note 111, at 579, 581; Michael P. Scharf & Suzanne Mattler, *Forced Marriage: Exploring the Viability of the Special Court for Sierra Leone's New Crime Against Humanity*, 23 (Case Research Paper in Legal Studies, Working Paper No. 05-35, 2005), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=824291.

119. Neha Jain, *Forced Marriage as a Crime Against Humanity: Problems of Definition and Prosecution*, 6 J. INT'L CRIM. JUST. 1013, 1031 (2008); Oosterveld, *supra* note 112, at 158; Beth Van Schaack, *Atrocity Crimes Litigation: 2008 Year-In-Review*, 7 NW. J. INT'L HUM. RTS. 170, 205 (2009).

120. Van Schaack, *supra* note 119, at 227; See also Hon. Teresa Doherty, *Developments in the Prosecution of Gender-Based Crimes—The Special Court for Sierra Leone Experience*, 17 AM. U. J. GENDER SOC. POL'Y & L. 327, 331 (2009); Nowrojee, *supra* note 116, at 102.

121. Toy-Cronin, *supra* note 111, at 576.

122. Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-2004-16-A, Appeals Chamber, Judgement, ¶ 190 (Feb. 22, 2008).

of ownership powers. However, what is not clear is whether the resulting stigmatization would also be considered part of the exercise of ownership powers.

The *Taylor* sentencing judgment described sexual slavery and rape as “particularly reprehensible.”¹²³ The *Taylor* trial judgment has made a solid contribution to international criminal law’s understanding of sexual slavery through its definition and consideration of sexual slavery as a continuing crime. In particular, it has raised some fundamental questions about the SCSL’s previous consideration of forced marriage, and has proposed a new category of conjugal slavery to jointly capture sexual slavery and strongly gendered forms of forced domestic labor.¹²⁴

C. Outrages Upon Personal Dignity

Taylor was charged with outrages upon personal dignity as a war crime.¹²⁵ The Trial Chamber defined the elements of that crime, adopting a similar approach to the earlier AFRC and RUF judgments and the ICC’s Elements of Crimes:

- i. The perpetrator humiliated, degraded or otherwise violated the personal dignity of the victim;
- ii. The humiliation, degradation or other violation was so serious as to be generally considered as an outrage upon personal dignity;
- iii. The perpetrator intentionally committed or participated in an act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity; and
- iv. The perpetrator knew that the act or omission could have such an effect.¹²⁶

By confirming the elements of crime in a manner consistent with earlier judgments, the *Taylor* trial judgment helped to solidify international criminal law’s approach to this war crime.

123. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Sentencing Judgement, ¶ 75 (May 30, 2012).

124. See Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 428 (May 18, 2012); Amy Palmer, Note, *An Evolutionary Analysis of Gender-Based War Crimes and the Continued Tolerance of “Forced Marriage,”* 7 NW. J. INT’L HUM. RTS., 133, 133–34 (2009).

125. Prosecutor v. Taylor, Case No. SCSL-03-01-PT, Trial Chamber II, Prosecution’s Second Amended Indictment, 4–5 (May 29, 2007).

126. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 431 (May 18, 2012); Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 175 (Mar. 2, 2009); Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 716 (June 20, 2007); INT’L CRIMINAL COURT, *supra* note 61, at art. 2(b)(xxi).

Outrages upon personal dignity include rape and sexual slavery, but they are not limited to those acts.¹²⁷ Other examples include forced nudity and threats of sexual mutilation.¹²⁸ The *Taylor* trial judgment helped to further define the parameters of this war crime by finding that these sorts of acts could be aggravated by adding a public or additionally humiliating or degrading aspect.¹²⁹ The Trial Chamber listed a number of examples of aggravated forms of outrages upon personal dignity: sexual mutilation through insertion of objects (such as wood) into a victim's vagina; forced undressing as a prelude to rape; and public humiliation combined with rape, such as rape where neighbors, community members or family members (including husbands and children) are forced to watch.¹³⁰ One illustration of the latter is found in evidence describing the rape of a victim in front of her child and other captured persons.¹³¹ By definition, outrages upon personal dignity humiliate, degrade, or violate the dignity of the victim.¹³² The *Taylor* trial judgment has added a welcome nuance to this war crime by highlighting ways in which that humiliation or degradation might be heightened, presumably a factor to take into account in sentencing.¹³³

D. Committing Acts of Terror

Charles Taylor was charged with the war crime of committing acts of terror.¹³⁴ While this war crime is not usually perceived to be

127. The SCSL Statute refers to "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault." Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 137 (entered into force Apr. 12, 2002). The Statute of the Special Court is annexed to this Agreement. *Essential Court Documents*, THE SPECIAL COURT FOR SIERRA LEONE, <http://www.sc-sl.org/DOCUMENTS/tabid/176/Default.aspx> (last visited Nov. 6, 2012).

128. Prosecutor v. Kunarac, Case No. IT-96-23, IT-96-23/1-A, Appeals Chamber, Judgement, ¶ 16 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002) (describing a victim who was forced to dance naked on a table); Prosecutor v. Furundzija, Case No. IT-95-17/1-T, Trial Chamber Judgement, ¶ 40 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998) (recalling how the accused's subordinate threatened to put his knife inside a victim's vagina).

129. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 1196 (May 18, 2012).

130. *Id.*

131. *Id.* ¶ 1200(iii).

132. *Id.* ¶ 431.

133. Note that this was not explicitly dealt with in the Taylor sentencing, though it was inherent in the list of factors. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Sentencing Judgement, ¶¶ 19–20 (May 30, 2012).

134. Prosecutor v. Taylor, Case No. SCSL-03-01-PT, Trial Chamber II, Prosecution's Second Amended Indictment, 2 (May 29, 2007).

a gendered crime, the SCSL's Prosecutor charged it as such, alleging that the way in which the acts of terror were perpetrated were through the other crimes charged in the indictment, including the sexual violence charges.¹³⁵ The Prosecutor therefore had to prove the underlying conduct and demonstrate that these underlying acts were carried out with the intent to spread fear.¹³⁶ In the *RUF* trial judgment, Trial Chamber I had carefully considered the role of sexual and gender-based violence in the RUF's military and political strategy.¹³⁷ It found that sexual and gender-based violence was a crucial part of the overarching war strategy of the RUF.¹³⁸ In particular, "acts [of sexual violence] were not intended merely for personal satisfaction or a means of sexual gratification for the fighter."¹³⁹ Instead, they were part of the RUF's plan, first to create "an atmosphere in which violence, oppression and lawlessness prevailed," and then to adopt a "calculated and concerted pattern" of sexual and gender-based violence, including many forms of rape, sexual slavery and forced marriage.¹⁴⁰ The RUF knew that in Sierra Leone victims of these crimes were likely to be severely stigmatized and ostracized from their communities.¹⁴¹ This isolated the victims, destroyed families, and unraveled "cultural values and relationships which held the societies together."¹⁴² The outcome of this violence was to effectively disempower the civilian population and to instill fear in entire communities.¹⁴³ The *RUF* Trial Chamber found that through these actions the accused had demonstrated the specific intent to terrorize the civilian population,¹⁴⁴ which was upheld on appeal.¹⁴⁵

The *Taylor* Trial Chamber took a similar approach. It began by acknowledging the *RUF* Trial Chamber's conclusions: "It is well established that rape, sexual slavery, forced marriages, and outrages on personal dignity, when committed against a civilian population

135. See, e.g., Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Prosecution Final Trial Brief, ¶ 716 (Apr. 8, 2011).

136. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 403 (May 18, 2012).

137. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 1348 (Mar. 2, 2009).

138. *Id.*

139. *Id.*

140. *Id.* ¶¶ 1347, 1351.

141. *Id.*

142. *Id.* ¶¶ 1348–49.

143. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶¶ 1348, 1351 (Mar. 2, 2009).

144. *Id.* ¶ 1125.

145. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-A, Appeals Chamber Judgement, ¶ 990 (Oct. 26, 2009).

with the specific intent to terrorise, amount to an act of terror.”¹⁴⁶ It also concluded that sexual violence committed by the RUF, AFRC, RUF-AFRC junta and affiliated fighting forces was “deliberately aimed at destroying the traditional family nucleus, thus undermining the cultural values and relationships which held society together.”¹⁴⁷ It found that sexual violence was not merely a means of sexual gratification; rather, it was a deliberate tactic on the part of the perpetrators to spread terror among the civilian population, which is why the violence often took place in public.¹⁴⁸ The “widespread and systematic use of women as sex slaves” also “instilled fear and a sense of insecurity among the civilian population”¹⁴⁹ However, in the Trial Chamber’s view, not all prohibited acts could be considered as tools of terror.¹⁵⁰ Some acts do not have the primary purpose of terrorizing, such as the recruitment and use of child soldiers, enslavement, and pillage.¹⁵¹ This is because the recruitment and use of child soldiers was primarily done to meet military needs; the enslavement of civilians was to meet utilitarian goals (such as to secure diamonds); and the pillaging was encouraged in order to maintain the forces (who were not otherwise paid).¹⁵²

The *RUF* and *Taylor* approaches to the war crime of committing acts of terror have set important precedent. They have uncovered the critical role of sexual and gender-based violence in the rebels’ pursuit of power, and they demonstrated that seemingly gender-neutral crimes can be carried out in a gender-specific manner or can have gendered outcomes.¹⁵³ However, it should be noted that the *AFRC* Trial Chamber had earlier come to the opposite conclusion, finding that sexual violence was not used to spread terror among civilians, but it was rather “committed by the AFRC troops to take advantage of the spoils of war, by treating women as property and using them to satisfy their sexual desires and to fulfil other conjugal needs.”¹⁵⁴ This explanation is disappointing. It is true that rape can be committed

146. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 2035 (May 18, 2012).

147. *Id.*

148. *Id.* ¶ 2035–38.

149. *Id.* ¶ 2053.

150. *Id.* ¶ 1967.

151. *Id.*

152. See Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 538, 1968, 1976 (May 18, 2012).

153. See, e.g., Valerie Oosterveld, *The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments*, 44 CORNELL INT’L L.J. 49, 71 (2011).

154. Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 1459 (June 20, 2007).

in conflict for many reasons, including for opportunistic reasons,¹⁵⁵ but it is also an expression of power: the categorization of rape as lust is outdated and inaccurate.¹⁵⁶ Since the same Trial Chamber decided the *AFRC* and *Taylor* judgments, it appears that the additional evidence put forward in the *Taylor* case helped to change its conclusion in this regard.

II. CUMULATIVE CHARGES

One of the issues considered by the *Taylor* Trial Chamber was whether it could enter convictions both for the crimes against humanity of rape and sexual slavery, or for the war crimes of committing acts of terror and sexual violence.¹⁵⁷ The underlying consideration was whether it could use essentially the same criminal conduct to convict Taylor of different crimes under the SCSL Statute.¹⁵⁸ These types of convictions are referred to as “cumulative convictions” and are permitted only when:

each statutory provision involved has a materially distinct element not contained in the other If an additional element is only required for one of the provisions and not for the other, then the Trial Chamber can only enter a conviction for the more specific offence, as it necessarily entails the commission of the less specific offence.¹⁵⁹

The question arose in connection to the crimes against humanity of rape and sexual slavery because sexual slavery often involves multiple rapes.¹⁶⁰ Trial Chamber I, in the *RUF* trial judgment, had previously concluded that the prohibited acts of rape and sexual slavery contain differing elements:

The offence of rape requires sexual penetration, whereas sexual slavery requires the exercise of powers attaching to the right of ownership and acts of sexual nature. As the acts of a sexual nature

155. Xabier A. Aranburu, *Sexual Violence Beyond Reasonable Doubt: Using Pattern Evidence and Analysis for International Cases*, 35 LAW & SOC. INQUIRY 855, 860 (2010).

156. CATHARINE A. MACKINNON, ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES 144–45 (2006).

157. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 6988 (May 18, 2012).

158. *Id.* ¶ 6987.

159. *Id.* This is also the approach of the International Criminal Tribunal for the Former Yugoslavia. See Prosecutor v. Krstić, Case No. IT-98-33-A, Appeals Chamber Judgement, ¶¶ 218, 223–27, 229 (Int'l Crim. Trib. for the Former Yugoslavia Apr. 19, 2004).

160. See Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 421, 6989 (May 18, 2012).

do not necessarily require sexual penetration, and rape does not require that the right to ownership is exercised, the Chamber finds that sexual slavery is distinct from rape.¹⁶¹

Nevertheless, it then went on to find that “[w]here the commission of sexual slavery, however, entails acts of rape, . . . the act of rape is subsumed by the act of sexual slavery. In such a case, a conviction on the same conduct is not permissible for rape and sexual slavery.”¹⁶² In other words, when sexual slavery is evidenced by rape, a conviction is permitted only on sexual slavery.¹⁶³

In the *Taylor* trial judgment, Trial Chamber II disagreed and found that it is permissible to enter convictions for the crimes against humanity of both sexual slavery and rape, regardless of whether the sexual slavery involved rape.¹⁶⁴ It adopted a wider reading of the distinct nature of the elements required for the prohibited acts:

While both are forms of sexual violence, each offence contains a distinct element not required by the other. The offence of rape requires non-consensual sexual penetration. The definition of rape does not require that the perpetrator exercise ongoing control or ownership over the victim, as is required by the crime of sexual slavery.¹⁶⁵

It therefore understood the distinction as complete, and not reliant on whether the sexual mode of slavery was carried out through rape. It was enough that the distinction rested on the slavery.¹⁶⁶ This makes legal sense for two reasons. First, it respects the fact that sexual slavery was meant to capture a cumulative harm that may include expression through multiple rapes but also includes a distinct overarching element of ownership, increasing and differentiating the egregious context of the rapes.¹⁶⁷ Second, if the *RUF* approach was adopted, it would not permit full acknowledgment of the wrongdoing of the accused.¹⁶⁸ Trial Chamber II did acknowledge that this

161. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 2305 (Mar. 2, 2009).

162. *Id.*

163. *Id.*

164. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 6989 (May 18, 2012).

165. *Id.*

166. *Id.*

167. Sexual slavery was included in the Rome Statute of the ICC and consequently the SCSL Statute in order to name this form of enslavement as a crime. See Oosterveld, *supra* note 56, at 626.

168. If the *RUF* approach was followed, then the harms caused by rape could never be distinguished from the harm caused by a combination of actions resulting in sexual slavery. Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Trial Chamber I, Judgement,

conclusion was inconsistent with that of Trial Chamber I, but it simply stated (correctly) that it “is not bound to follow this finding.”¹⁶⁹ The defense has appealed the Trial Chamber’s finding allowing cumulative convictions on rape and sexual slavery, based on the conclusions of Trial Chamber I in the *RUF* trial judgment.¹⁷⁰ It therefore appears that this matter will be considered and definitively decided by the Appeals Chamber.

Following similar reasoning, the *Taylor* Trial Chamber also held that cumulative convictions are permitted for the war crime of committing acts of terrorism and the war crime of outrages upon personal dignity, as well as crimes against humanity—including rape and sexual slavery.¹⁷¹ The essential element of committing acts of terror is the intent to spread fear, which distinguishes the offense from other war crimes which do not have this requirement, and from crimes against humanity, which require a widespread or systematic attack upon a civilian population (whereas war crimes require a nexus between the underlying act and an armed conflict).¹⁷² Again, this approach makes legal sense, as it helps to reflect the full culpability of the accused.

III. THE LINK BETWEEN GENDER-BASED CRIMES AND TAYLOR’S LIABILITY

Taylor was ultimately found responsible through the aiding and abetting and planning modes of liability.¹⁷³ Because he was found guilty of all charges, including the charges relating to sexual and gender-based violence, the Trial Chamber needed to establish a link between him and the commission of the crimes. It did so by finding that, as early as August 1997, when he became President of Liberia, Taylor was aware that the RUF, AFRC, RUF-AFRC junta and/or affiliated fighting forces were committing various forms of sexual and gender-based violence.¹⁷⁴ For example, he was given an ECOWAS report of the Committee of Four on the situation in Sierra Leone dated

¶ 2305 (Mar. 2, 2009). On the second point, the SCSL has already acknowledged that “multiple convictions . . . serve to describe[] the full culpability of a particular accused or provide a complete picture of his criminal conduct.” *Prosecutor v. Brima, Kamara & Kanu*, Case No. SCSL-04-16-T, Trial Chamber II, Judgement, ¶ 2102(i) (June 20, 2007).

169. *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 6989 n.15618 (May 18, 2012).

170. *Prosecutor v. Sesay, Kallon & Gbao*, Case No. SCSL-04-15-T, Trial Chamber I, Judgement, ¶ 2305 (Mar. 2, 2009); *Prosecutor v. Taylor*, Case No. SCSL-2003-01-A, Notice of Appeal of Charles Ghankay Taylor, Appeals Chamber, ¶¶ 118–19 (July 19, 2012).

171. *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 6988, 6990 (May 18, 2012).

172. *Id.*

173. *Id.* ¶¶ 6953, 6971.

174. *Id.* ¶ 6882.

August 26, 1997, describing the “massive looting of property, murder and rapes following the coup by the RUF and sections of the [Sierra Leone Army]” against the Sierra Leone government on May 25, 1997.¹⁷⁵ As well, the Trial Chamber found that he was aware of a speech to the nation on June 18, 1997, in which the RUF forces apologized for “the atrocities they [had] committed in Sierra Leone, including killings and rapes.”¹⁷⁶ The Trial Chamber concluded that

[t]he sole reasonable inference that can be drawn from this evidence is that as early as August 1997, the Accused, as President of Liberia and a member of the ECOWAS Committee of Five, was informed in detail of the crimes committed by the AFRC/RUF members during the Junta period, including murder, abduction of civilians including children, rape, amputation and looting.¹⁷⁷

In light of this, “[h]e would therefore have been aware of the likelihood that the AFRC/RUF would commit similar crimes in the future.”¹⁷⁸ Additionally, media and international coverage of AFRC and RUF crimes grew after August 1997, such that, at the time, it was public knowledge that these groups were committing sexual violence, among other crimes.¹⁷⁹ He was thus presumed to be aware of this public knowledge, as evidenced, for example, by a 1998 joint communiqué issued by Taylor and the President of Sierra Leone that “strongly condemned the continuing rebel activities in Sierra Leone, as well as the horrendous atrocities that had been committed there.”¹⁸⁰ The Trial Chamber concluded that, at the time, Taylor “knew of the AFRC/RUF’s operational strategy and intent to commit crimes,” and he knew this included rape.¹⁸¹ Because he knew of this operational strategy, the arms and ammunition he gave to the RUF, AFRC, RUF-AFRC junta and Liberian fighters constituted direct assistance to the commission of crimes, including sexual slavery, rape, and outrages upon personal dignity.¹⁸² As well, other forms of assistance similarly amounted to substantial assistance.¹⁸³

175. *Id.* ¶ 6880.

176. *Id.*

177. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶ 6882 (May 18, 2012).

178. *Id.*

179. *Id.* ¶ 6883, n.15477 (listing United Nations, non-governmental and other reports of sexual violence in Sierra Leone in 1998).

180. *Id.* ¶ 6884.

181. *Id.* ¶¶ 6885–86.

182. *Id.* ¶¶ 6911–12.

183. *See, e.g.*, Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Judgement, ¶¶ 6918–19, 6922–24, 6936–37, 6946, 6950, 6953 (May 18, 2012).

Taylor participated in a plan with the RUF's Sam Bockarie to invade Freetown, which included plans for other attacks.¹⁸⁴ Knowing of the operational strategies of the RUF and the other groups, Taylor either "intended that the crimes charged in Counts 1 to 11 of the Indictment be committed or was aware of the substantial likelihood that RUF/AFRC forces would commit such crimes as a result of executing the plan which he and Bockarie designed," including sexual violence.¹⁸⁵ In other words, public and ECOWAS reports of sexual violence provided Taylor—in Liberia—with knowledge of the actions of the RUF, AFRC, RUF-AFRC junta and other fighting forces in Sierra Leone, yet he still provided substantial assistance to and participated in planning crimes with these groups. Therefore, the Trial Chamber found that the necessary links were established between Taylor in Liberia and the crimes on the ground in Sierra Leone committed by the RUF, AFRC, RUF-AFRC junta and other fighting forces.¹⁸⁶ It is interesting to note the strong reliance on one ECOWAS and a number of international reports in establishing this link for the sexual violence crimes.¹⁸⁷

What lesson can be drawn from the way in which the Trial Chamber made the link between Taylor himself and the gender-based crimes? It clearly is difficult to link the head of one state with crimes committed on the ground in another state. The Trial Chamber therefore needed to rely on reports of gender-based violence: reports that Taylor received through ECOWAS as President of Liberia, reports that he was likely to have heard from his security personnel, and reports that were so widely known that they were public knowledge. It appears that such a high level linkage to sexual violence outside of the battlefield, and outside of the country in which the conflict occurred, is unlikely to be proven through insider witnesses, perhaps due to the "intimate" nature of the crime. This obviously makes contemporaneous reporting on sexual violence very important as a possible source of evidence.

CONCLUSIONS

The *Taylor* trial judgment has broken new ground, or reinforced old ground, on a number of key gender-related issues within international criminal law. In its consideration of rape as a crime against humanity, the Trial Chamber added helpful detail to the different,

184. *Id.* ¶¶ 6961–62, 6968.

185. *Id.* ¶ 6970.

186. *Id.* ¶¶ 6950, 6971.

187. *See, e.g., id.* ¶ 44, nn.176–77 & 179–80.

brutal forms of rape used by the RUF, AFRC, RUF-AFRC junta and other fighting forces to punish and control the civilian population. It also demonstrated that rape did not occur in the Sierra Leone conflict in a vacuum. Rape was usually accompanied by a multitude of other violations. On sexual slavery, the trial judgment helped to further confirm the definition of the crime and also ensured that it would be understood as a continuing crime, thereby reflecting the reality of the victims' lives. The *Taylor* trial judgment also raised some key questions in proposing that international criminal law turn away from forced marriage and turn to conjugal slavery (a combination of sexual slavery and gendered forms of forced labor through enslavement). With regard to rape and sexual slavery, the court concluded that it was permissible to enter cumulative convictions for these prohibited acts since they contain distinctly different elements.

The *Taylor* trial judgment also helped to further define the parameters of the war crime of outrages upon personal dignity by finding that acts such as rape could be aggravated by adding a public or additionally humiliating or degrading aspect. Indeed, this is exactly what the RUF, AFRC, RUF-AFRC junta and other fighting forces did in carrying out the war crime of committing acts of terror. The Trial Chamber found that gender-based violence, especially rape and sexual slavery, played a critical role in the rebels' military and political strategy of inflicting terror upon the civilian population. The court's analysis on this point was an excellent illustration of how seemingly gender-neutral crimes can be carried out in a gender-specific manner or have gendered outcomes. Another example of this occurred in the court's consideration of how women and girls had been enslaved to carry out highly gendered forms of domestic work.

Finally, the discussion of Charles Taylor's liability for gender-based violence demonstrated how difficult it is to link the head of one state with crimes committed on the ground in another state. The Trial Chamber relied heavily on reports—mainly open source reports. In such cases, this obviously raises the importance of ensuring that there is accurate, comprehensive and widespread contemporaneous reporting on gender-based crimes. Hopefully, the *Taylor* trial and judgment have made it possible for more top-ranking leaders to be held to account, including for gender-based crimes. The influence of the *Taylor* trial judgment should not stop there however; there is much in the judgment to inform all those engaged in the prosecution of crimes against humanity and war crimes from a gender-sensitive perspective.