



**Trying Charles Taylor in The Hague:
Making Justice Accessible to Those Most Affected**

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I. Introduction

On March 29, 2006 former Liberian President Charles Taylor was surrendered to the U.N.-backed Special Court for Sierra Leone. Taylor’s surrender for trial provides an extraordinary opportunity for the people of Sierra Leone and West Africa to see justice done for atrocities committed during Sierra Leone’s armed conflict since 1996. Taylor is indicted by the Special Court on war crimes, crimes against humanity, and other serious violations of international humanitarian law primarily for his role in supporting the main rebel group in Sierra Leone, the Revolutionary United Front, during the conflict.

The same day Taylor was surrendered, the Special Court president submitted requests to the Netherlands and the International Criminal Court that Taylor’s trial be relocated to The Hague. The request to move the trial cited concerns over security if the trial is held in Freetown, Sierra Leone, where the court is based.

The Netherlands immediately agreed to host the trial, but only if several conditions could be met, including that another country would provide detention facilities if Taylor is convicted. Within a week or so, the International Criminal Court (ICC) also consented to the use of its facilities. Despite a very troubling delay of many weeks, when no country was prepared to offer to detain Taylor if he is convicted, the British government announced in a welcome move on June 15, 2006 that it has agreed to provide such facilities.

The next day, the U.N. Security Council passed a resolution to provide a legal basis for the relocation, meeting the only outstanding condition set forth by the Dutch government. With the passage of the resolution, the relocation of the trial is expected to proceed.

Moving Taylor's trial from the Special Court's base in Freetown has serious implications. The most significant of these is that it will make the justice process less accessible to the communities most affected by the crimes. This briefing paper provides discussion of:

- The security rationale for moving the trial;
- Legal and procedural aspects relating to conducting Taylor's trial at the facilities of the International Criminal Court in The Hague;
- Implications of moving Taylor's trial outside of Sierra Leone; and
- Recommendations to the Special Court, its donors, and the Netherlands, as the host state, in relation to Taylor's trial being held in The Hague.

An annex at the end of this paper provides background on the Special Court for Sierra Leone and Charles Taylor's alleged crimes.

II. Security Rationale for Moving the Trial

The Special Court announced on March 30, 2006 that the previous day its president submitted a request to the Dutch government and the ICC president for Taylor's trial be transferred to the facilities of the International Criminal Court in The Hague.¹ The request sent to the Netherlands cites security concerns as the basis for the relocation: "It has become apparent to me that security and issues related to the stability in the region would make it impossible for Charles Taylor, the accused...to be tried in Freetown by the Special Court for Sierra Leone."²

Public comments by Special Court officials have echoed the reasons for the request cited by the Special Court president to relocate the trial. The Special Court prosecutor made comments to the media on the reasons for the request including: "If the security and peace of Liberia is imperiled, it could well spill over into Sierra Leone and thereupon all trials would come to an end."³ He also stated in a meeting with Sierra Leonean civil society on March 31, 2006:

[V]ery shortly after that we received [Taylor]...we heard voices saying again that you can't try him in Sierra Leone because it's going to destabilise the country, it'll destabilise the region. What am I supposed to do? ... There is one person without whom I could not have got him here, and that is President Ellen Johnson-Sirleaf, the newly-elected, very respectable president of Liberia. ... And then, 48 hours ago, this great lady said 'Please,

¹ "Special Court President Requests Charles Taylor be Tried in The Hague," Special Court for Sierra Leone Press Release, March 30, 2006 [online], <http://www.sc-sl.org/Press/pressrelease-033006.pdf> (retrieved April 9, 2006).

² Letter dated 31 March 2006 from the Permanent Representative of the Netherlands to the United Nations addressed to the President of the Security Council, April 3, 2006, Annex II, S/2006/207.

³ Michelle Faul, "Prosecutor: Escape-Savvy Taylor Secure," Associated Press, March 31, 2006.

don't try him in Sierra Leone' – she went public – 'because it will destabilise my country.' So what do we do? Here is this lady without whom we couldn't have achieved what we have achieved, really pleading for her own people.⁴

Liberian President Ellen Johnson-Sirleaf also has expressed considerable concern over security in Liberia in relation to Taylor, including when she briefed the Security Council in March 2006, shortly prior to Taylor's arrest and held a press conference after the briefing.⁵ The presence of former Taylor associates and supporters in Liberia, including some who hold positions in the government, reinforces her view.

The situation of Charles Taylor also has a number of unique elements. Consistent reports over the past two years have suggested that while in Nigeria, Taylor continued to maintain contacts with supporters in Liberia and may have been involved in other destabilizing activities in the region.⁶ Taylor's disappearance from his residence in Calabar and attempted flight from Nigeria to Cameroon once Nigeria announced Liberia could take him into custody further underscore the threat Taylor could pose. Another aspect concerns the Nigerian president's insistence that in order to consider surrendering Taylor, he would need a request from a duly-elected government in Liberia.⁷ While this condition was unnecessary, it led to newly-elected President Johnson-Sirleaf requesting Taylor's surrender early in her tenure. She herself characterized this move as "courageous" and "risky" and taken under "serious pressure" during what remains a fragile period in Liberia.⁸

Legitimate concerns, particularly related to security, may make a change in where the court sits for Taylor's trial necessary and appropriate. For example, changing the location could be needed if the safety of witnesses, judges and court staff, defense counsel, and the accused cannot be adequately ensured given the security situation. Changing the location could also be needed if holding the trial in West Africa creates serious risks to civilians in the sub-region by contributing to destabilization.

Human Rights Watch takes concerns over security seriously. We are not in the position to determine the extent of the security risks posed by conducting the trial in Sierra Leone,

⁴ See "The Prosecutor's Meeting with Civil Society of Sierra Leone, 31 March 2006," Special Court for Sierra Leone Press Release, April 12, 2006 [online], <http://www.sc-sl.org/Press/prosecutor-041206.pdf> (retrieved April 12, 2006).

⁵ See U.N. Security Council, The Situation in Liberia, 5389th meeting, March 17, 2006, p. 3, S/PV.5389.

⁶ See U.N. Security Council Resolution 1579 (2004), S/RES/1579, preambular para. 7; U.N. Security Council Resolution 1607 (2005), S/RES/1607, preambular para. 7; Report of the Secretary-General pursuant to Security Council Resolution 1579 regarding Liberia (2005), S/2005/376, paras. 38-39. See also Human Rights Watch, "Bringing Justice: The Special Court for Sierra Leone; Accomplishments, Shortcomings, and Needed Support," *A Human Rights Watch Report*, vol. 16, no. 8 (A), September 2004, pp. 39-40 (hereinafter "Bringing Justice").

⁷ See, for example, Josephine Lohor, "Obasanjo Wants Elected Govt to Handle Taylor's Case," *This Day* (Lagos), May 17, 2005; Michael A. Fletcher, "Nigerian Leader Says He Won't Turn Taylor Over for Trial," *The Washington Post*, May 6, 2005.

⁸ Warren Hoge, "Liberian Seeks Extradition of Predecessor for Atrocities Trial," *The New York Times*, March 18, 2006; "Liberia: Ellen Caught in Whirlwind - Opts for Development Efforts, Not Taylor," *The Analyst* (Monrovia), March 20, 2006; William M. Reilly, "Analysis: Liberia at the U.N.," *United Press International* (UPI), March 20, 2006. See also U.N. Security Council, The Situation in Liberia, 5389th meeting, March 17, 2006, p. 3, S/PV.5389.

particularly for Liberia. Alternative arrangements such as conducting Taylor's trial in Freetown, but enhancing security for the Special Court and Liberia to address security risks might have been preferable. However, the feasibility of this option, both from a logistical and political standpoint, cannot be assessed.

Some government officials and non-governmental organizations have suggested that if the trial cannot be held in Sierra Leone, it should be held elsewhere in Africa to strengthen the notion of the Special Court as an African court addressing crimes against Africans and the idea that Africa has the capacity to hold such trials.⁹ The International Criminal Tribunal for Rwanda (ICTR) based in Arusha, Tanzania was explored as a possible location, but the institution apparently declined due to limited capacity and the need to adhere to its completion strategy.¹⁰ It is not clear whether other possible venues in Africa were explored. Having the trial elsewhere in Africa might hold a certain degree of symbolic value. However, such a move would pose similar if not greater technical and logistical challenges to making the proceedings accessible to Sierra Leoneans and West Africans than holding the trial in The Hague.

III. Legal and Procedural Aspects Related to the Change in Location

The change in location requested by the Special Court involves court judges and staff conducting Taylor's trial according to their statute and rules of procedure and evidence, but using the facilities of the International Criminal Court (ICC) in The Hague.

The Special Court's founding documents permit proceedings to be conducted outside of Sierra Leone. The agreement setting up the Special Court states that the seat of the court shall be in Sierra Leone, but "the Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions, and may be relocated outside Sierra Leone, if circumstances so require, and subject to the conclusion of a Headquarters Agreement between the Secretary-General of the United Nations and the Government of Sierra Leone, on the one hand, and the Government of the alternative seat, on the other."¹¹ The Special Court rules of procedure and evidence further delineate a process under which the court may conduct proceedings outside of Freetown.¹²

In response to the request from the Special Court, the Dutch government indicated that it was willing to host Taylor's trial assuming three conditions could be met:

⁹ Human Rights Watch telephone conversations with U.N. sources, New York, April 3-6, 2006. See also "Special Court for Sierra Leone: Issues for consideration regarding the location of the trial of Charles Taylor," *Amnesty International*, AI Index No. AFR 51/005/2006, April 5, 2006 [online], <http://web.amnesty.org/library/index/engaf510052006?open&of=ENG-385> (retrieved April 9, 2006).

¹⁰ See Revised draft Security Council resolution regarding the Netherlands hosting the trial of Charles Taylor by the Special Court for Sierra Leone, April 6, 2006, on file with Human Rights Watch; Human Rights Watch telephone conversations with U.N. sources, New York, April 3-6, 2006.

¹¹ Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, January 16, 2002, art. 10.

¹² Rules of Procedure and Evidence, Special Court for Sierra Leone, amended May 2005, Rule 4 ("A Chamber or a Judge may exercise their functions away from the Seat of the Special Court, if so authorized by the President. In so doing, audio or video-link technology, e-mail or other available electronic instruments may be used if authorised by the President or Presiding Judge").

- The legal basis for the Special Court to detain and conduct Taylor's trial in the Netherlands is provided, namely a Chapter VII U.N. Security Council resolution;
- Arrangements for Taylor to leave the Netherlands after the trial are made, i.e. a third country agrees to accept Taylor following his conviction or acquittal; and
- An agreement for the use of appropriate facilities is secured from one of the international criminal courts in the Netherlands which are the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia.¹³

Two out of the three conditions set out by the Dutch Government were ready to be satisfied within a few weeks of the Special Court president's request for the trial to be relocated. First, the ICC consented to the use of its facilities. The ICC statute and rules of procedure and evidence do not specifically provide a process for responding to a request for use of its facilities. In this instance, the ICC president took the decision, after consultation with other relevant court officials, to approve the request. This decision was made after all states parties to the ICC were notified of the request and no states objected, and the ICC determined that hosting Taylor's trial is feasible, at this stage in the development of the institution.¹⁴ Second, Security Council members prepared a draft resolution to provide the legal basis for Taylor's trial by the Special Court to take place in the Netherlands. We understand that the draft resolution had wide support on the council.

However, a very regrettable delay then occurred when no country stepped forward to assist in satisfying the condition set out by the Dutch government that required a state to offer detention facilities for Taylor in the event he is convicted. States cited a number of obstacles to making such an offer, including: legal barriers such as lack of necessary parliamentary approval, financial constraints, or the fact that they have shown a commitment to international justice in other ways.

Human Rights Watch believes that the failure of states to have resolved this issue promptly is troubling. This is particularly the case given that the relocation request was made on the basis of security concerns. A number of states, including the United States and European Union members, played a strong role in pressing for Taylor's surrender. While offering detention facilities to persons convicted by international criminal tribunals may be one of the less appealing aspects of international justice, it is vitally necessary to its success. The situation highlights the need for states to take a more pro-active approach to ensuring detention facilities are available for persons convicted by international tribunals.

Approximately two and a half months after the Special Court president initially made the relocation request, the United Kingdom announced on June 15, 2006 that it will provide detention facilities for Taylor if he is convicted. This offer is subject to parliamentary approval. Human Rights Watch welcomes this offer by the United Kingdom which reflects their commitment to international justice.

¹³ Letter dated 31 March 2006 from the Permanent Representative of the Netherlands to the United Nations addressed to the President of the Security Council, April 3, 2006, Annex I, S/2006/207.

¹⁴ Human Rights Watch telephone conversations with U.N. sources and ICC staff, Brussels, New York, and The Hague, April 3-11, 2006.

One day later, the Security Council passed a resolution providing a legal basis for the relocation meeting the last outstanding condition set forth by the Dutch government. The resolution provides that the Special Court shall “retain exclusive jurisdiction over former President Taylor during his transfer to and presence in the Netherlands” absent “express agreement” with the Special Court.¹⁵ Despite initial opposition by some Security Council members, the council uses its Chapter VII powers in the resolution. The government of the Netherlands required this condition in order to ensure the resolution’s binding authority in its domestic courts.¹⁶

The resolution also addresses a number of other elements related to the relocation. In order to provide a basis for Charles Taylor, who is under a U.N. Security Council-imposed travel ban, and any witnesses who may also be under the ban to travel to The Hague for the trial, the resolution exempts these persons from the ban for this purpose.¹⁷ With regard to the issue of costs, which have been an ongoing challenge for the Special Court (see Section V), the resolution provides that the costs of the trial are those of the Special Court and will not be borne by any other party without their consent. The resolution, however, encourages states to continue to provide financial support to the Special Court.¹⁸

On the issue of accessibility to the communities most affected by the crimes (see Sections IV and V for an in-depth discussion of this issue), the Security Council explicitly “[r]equests the Special Court, with the assistance of the Secretary-General and relevant States, to make the trial proceedings accessible to the people of the sub-region, including through video link.”¹⁹

The also resolution incorporates the following references to the ICC:

- “*Taking note also* of the Memorandum of Understanding between the Special Court and the International Criminal Court dated 13 April 2006;” and
- “*Takes note* of the willingness of the International Criminal Court, as requested by the Special Court [] to allow the use of its premises for the detention and trial of former President Taylor by the Special Court, including any appeal.”²⁰

In the initial draft of the Security Council resolution, no explicit reference was made to the ICC, although the court’s facilities were the only ones under consideration to host the trial at that time. We understand that this was done in part to pacify United States concerns about the ICC.²¹ The United States has strongly opposed the International Criminal Court, although it supports the change in location for Taylor’s trial and accepts that the proceedings will be conducted at the ICC.

¹⁵ U.N. Security Council Resolution 1688 (2006), S/RES/1688, operative para. 7.

¹⁶ Human Rights Watch telephone conversations with U.N. sources, New York, April 3-6, 11, 2006. See also “Update Report No. 1: Charles Taylor,” Security Council Report, April 7, 2006 [online], <http://www.securitycouncilreport.org> (retrieved April 12, 2006).

¹⁷ U.N. Security Council Resolution 1688 (2006), S/RES/1688, operative para. 9.

¹⁸ *Ibid.*, operative paras. 10-11.

¹⁹ *Ibid.*, operative para. 6.

²⁰ U.N. Security Council Resolution 1688 (2006), S/RES/1688, preambular para. 13 and operative para. 3.

²¹ Human Rights Watch telephone conversations with U.N. sources, New York, April 3-6, 11, 2006.

Human Rights Watch strongly believes that the ICC must be referenced when appropriate in Security Council resolutions and other U.N. instruments and documents. In this case, such a reference was necessary given the unique role of the ICC as an independent judicial institution lending its facilities for the trial in question. This is underscored by the fact that all other major stakeholders involved in moving the trial, the Sierra Leone Special Court, the government of the Netherlands, and the United Nations were all referenced in the text of the resolution.²²

IV. The Implications of Moving Taylor's trial to The Hague

Moving Taylor's trial from Freetown to The Hague brings with it some major disadvantages, most significantly the possibility of severely limiting the accessibility of the proceedings to Sierra Leoneans and West Africans.

The success of the Special Court, and international justice mechanisms more generally, is dependent on their ability to maximize the impact of a limited number of fair and expedient trials. This involves conveying a sense that justice has been done, building respect for the rule of law, and promoting stability in the country where the crimes occurred by enhancing the potential deterrent effect of the trials and the capacity of the domestic justice system.

In order to maximize impact, it is critical to make the proceedings accessible to the communities most affected by the crimes. The Special Court's location in-country combined with its robust outreach and communications activities have made a major contribution to ensure that the people of Sierra Leone and West Africa are aware of the court's work.²³ Indeed, the Special Court has had one of the most successful outreach and communications programs of any international or mixed national-international court to date, and may be considered a model for other such courts.

Having the Special Court sit in The Hague to conduct Taylor's trial creates significant challenges to maintaining the accessibility of the proceedings. The distance between Sierra Leone and the Netherlands risks contributing to a perception that the justice process is far removed and of limited significance to Sierra Leoneans and West Africans. The ICTR and the International Criminal Tribunal for the Former Yugoslavia (ICTY) have faced serious difficulties in demonstrating the relevance of their operations to the communities most affected by the crimes. These institutions are not located in the countries where the crimes they try were committed and had limited outreach programs during the first years of their operations.²⁴ It will also be difficult, if not impossible, for many Sierra Leoneans to attend proceedings in The Hague.

²² Draft resolution regarding the Netherlands hosting the trial of Charles Taylor by the Special Court for Sierra Leone, April 4, 2006, on file with Human Rights Watch.

²³ For further information, see "Bringing Justice," pp. 32-35; "Justice in Motion: The Trial Phase of the Special Court for Sierra Leone," *A Human Rights Watch Report*, vol. 17, no. 14(A), October 2005, pp. 27-39 (hereinafter "Justice in Motion").

²⁴ See, for example, Lal C. Vohrah and Jon Cina, "The Outreach Programme," in *Essays on ICTY Procedure and Evidence*, Richard May, David Tolbert, John Hocking et al., eds. (Kluwer Law International, 2001), p. 551; Victor Peskin, "Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme," *Journal of International Criminal Justice*, vol. 3 (2005), pp. 950-961.

The effect which these limitations on the accessibility of Taylor's trial to people in Sierra Leone and West Africa may have must not be underestimated. Taylor is widely seen as the "biggest fish" of all the Special Court's living indictees and Sierra Leoneans have attached enormous importance to his surrender and trial.²⁵ Particularly if held in Freetown, this trial could be expected to galvanize new and intensified interest and media coverage of the Special Court. This could in turn promote increased discussion among the general public in Sierra Leone and West Africa about the Special Court's work and expand general knowledge about the court. Secondly, the trial could also be expected to result in increased physical attendance in the Special Court gallery in Freetown by ordinary citizens to observe proceedings, which has tended to be fairly minimal to date.

Other negative implications of holding the trial in The Hague include increased costs of conducting the trial, potential complications related to witnesses traveling outside Sierra Leone, and a risk of confusion about whether the Special Court or the International Criminal Court is trying Charles Taylor.

V. Recommendations

Given the serious implications of conducting Taylor's trial outside Sierra Leone, this move required careful consideration. A number of steps are now crucial for the Special Court, the Netherlands as the host state, and the court's donors to ensure that the work of the Special Court remains accessible to the communities most affected by the crimes.

To the Special Court (in summary):

- be as transparent as possible about its assessment in seeking to move Taylor's trial; and
- take significant efforts to make the proceedings accessible to the people of Sierra Leone and West Africa.

Transparency

There are undoubtedly limits to the amount of detail that may be disclosed about the factors that led to the Special Court's request to conduct Taylor's trial in The Hague. However, Human Rights Watch strongly believes that it is important for the Special Court to share as much information as possible on the basis for moving the trial. This will help to ensure that the communities most affected by the crimes and others have some understanding as to why this development was necessary. This will help to minimize frustration, misunderstanding and other negative ramifications due to the change in location.

Following the request for the change in location, Special Court staff held meetings in Freetown with representatives of Sierra Leonean civil society organizations and responded to inquiries by West African journalists as to the reasons for requesting to move Taylor's trial outside Sierra Leone. More limited information concerning the reasons the Special Court requested moving the trial is available on the court's website and through audio summaries

²⁵ Human Rights Watch observations of meetings between representatives of Sierra Leonean civil society and Special Court officials in March 2004 and April 2005; Human Rights Watch interviews with representatives of Sierra Leonean civil society in March 2004 and April 2005.

produced by the Special Court. We have been told that plans are also underway to prepare materials for wider dissemination in Sierra Leone.²⁶

We welcome steps to inform the public about these developments. We urge the Special Court to intensify these steps and take a pro-active, high-profile approach to sharing information as to why it seeks to hold Taylor's trial in The Hague. As a matter of priority, we urge that as much information as possible be:

- Posted on the Special Court website;
- Issued as press statements available to both African and international press;
- Broadcast on the radio, perhaps as part of audio summaries on proceedings; and
- Discussed with various sectors of society in Sierra Leone through town hall-type meetings around the country.

Accessibility

The location of Taylor's trial in The Hague significantly intensifies the need for sustained and robust outreach and communications activities. These activities must provide relevant information and some form of access to the Sierra Leonean public to the proceedings.

The priority the court has given throughout its life to outreach and communications is particularly commendable. These represent one of the most difficult areas for any international justice institution. Restrictions on funding for outreach from the court's core budget by the Special Court Management Committee also created challenges.²⁷

To ensure accessibility of Taylor's trial, the Special Court must maintain its prioritization of outreach and communications in its initiatives around Taylor's trial in The Hague. The Outreach and Public Affairs Units in the Registry should continue and adapt the range of activities it currently implements to meet the challenge of making a trial in The Hague accessible to the people of Sierra Leone and West Africa.

We understand that discussions within the Special Court on efforts to ensure the accessibility of Taylor's trial are ongoing. Some initiatives that are being explored are streaming video of the proceedings in The Hague to the Special Court premises in Freetown; preparing video and audio summaries of court proceedings; and facilitating observation of the proceedings in The Hague by several West African journalists. Court staff are also considering how a previously begun initiative to establish an independent radio station focused on justice and human rights issues could be leveraged to promote the accessibility of Taylor's trial with Sierra Leoneans.²⁸

²⁶ Human Rights Watch telephone conversation with Special Court staff, Freetown, April 10, 2006. See also "The Prosecutor's Meeting with Civil Society of Sierra Leone, 31 March 2006."

²⁷ This was on the basis that such activity was seen as non-essential and fundable from sources other than the court's core budget. See "Bringing Justice," p. 34.

²⁸ Human Rights Watch telephone conversation with Special Court staff, Freetown, June 12, 2006; Human Rights Watch discussion with Special Court staff, New York, June 2, 2006.

Human Rights Watch sees a number of the components currently under discussion as important to ensuring the accessibility of Taylor's trial. We believe it will be crucial that court staff develop and implement – and donors fund – the following outreach and communications efforts in relation to Taylor's trial:

- **Preparing video and audio summaries of Taylor's trial for dissemination throughout Sierra Leone.** As most Sierra Leoneans are unable to observe court proceedings even when held in Freetown, these summaries have played a crucial role in providing visual and audio images of the proceedings to the local population. Discussions Human Rights Watch has had with civil society groups and ordinary citizens in Sierra Leone suggest anecdotally that the local population appreciates these summaries and follows developments at the court through them.²⁹ Preparing summaries will undoubtedly require securing the same equipment used to obtain video and audio footage of proceedings in Freetown for the courtroom where Taylor's trial is held in The Hague. The same editing and other equipment currently used to produce the summaries once the footage is provided could hopefully still be used.
- **Facilitating local media covering the trial.** Local media coverage of the Special Court's work, which has been substantial, is another important aspect of ensuring accessibility of the proceedings. It will be important that coverage of Taylor's trial not be limited to international media. This will require journalists from Sierra Leone and the rest of West Africa to be able to observe proceedings and have access to sources involved in the trial. As such, the Special Court should facilitate attendance of Sierra Leonean and West African journalists to cover the proceedings in The Hague. This will be expensive and the number of journalists for which it could be made possible undoubtedly will be limited. Within this context, journalists and the Special Court could consider creating an agreement for journalists to share certain information they obtain with other journalists in the sub-region and to utilize a rotation among journalists to attend the proceedings.
- **Facilitate monitoring of the trial by Sierra Leonean civil society.** Monitoring of the trials by civil society volunteers with the Special Court and also by at least one local monitoring organization, the Sierra Leone Court Monitoring Programme, is another important aspect of making the proceedings accessible. Monitoring has helped to ensure that information about the proceedings is disseminated and the outreach section is able to adequately respond to developments in the courtroom. Again recognizing that costs will make it difficult to have a comprehensive monitoring program by Sierra Leoneans in The Hague, we believe that at least one to two representatives of Sierra Leonean civil society must be brought to The Hague on an ongoing basis to observe and report back on proceedings. Perhaps this could involve a rotation amongst several civil society representatives.
- **Facilitate observation of the trial by various sectors of the Sierra Leonean population.** The Special Court has undertaken significant programming targeted at particular sectors of society such as students and paramount chiefs. The court should

²⁹ For more in-depth discussion on this, see "Justice in Motion," pp. 28-35.

seek to facilitate representatives of certain sectors to travel to The Hague to observe the proceedings and report back on them in Sierra Leone.

- **Broadcast live video coverage of the proceedings at the court premises in Freetown.** Live video coverage of the proceedings in The Hague should be broadcast at the premises of the court in Freetown so that the public in Sierra Leone could observe the trial in real time. We recognize that such equipment may be expensive, but believe it is essential to accessibility. It will facilitate access to the public, local media covering the trial, and monitors to assess the proceedings. It will also help combat a perception that the proceedings are far removed from the people of Sierra Leone.

The fact that the seat of the Special Court remains in Freetown regardless of where Taylor's trial is conducted will contribute to facilitating efforts to ensure the accessibility of proceedings. A number of the creative methods utilized by court staff to date can continue to inform the people of Sierra Leone about Taylor's trial. These include hand delivering press releases to journalists, convening meetings with Sierra Leonean civil society, and traveling around the country to screen video summaries.

To the Netherlands as the host state:

- Conclude as quickly as possible a Headquarters Agreement with the Special Court that will adequately address the following issues:
 - Facilitating efforts by the Special Court to make the proceedings accessible to the people of Sierra Leone and West Africa by assisting in ensuring access for West African journalists, monitors, civil society, and other sectors in Sierra Leone, including through the provision of visas;
 - Facilitating transport of witnesses; and
 - Overcoming other logistical and technical challenges of holding the trial in The Hague, including the court obtaining appropriate office space.

We welcome the willingness of the Netherlands to respond favorably to the request made by the Special Court president on the basis of security concerns to host Taylor's trial. We hope that the Netherlands will now take the necessary steps to ensure that this trial is accessible to the communities most affected by the crimes in Sierra Leone.

To Donors (including the United States, United Kingdom, the Netherlands, Canada, and the United Nations):

- With regard to Taylor's trial in The Hague, ensure the court has adequate funding to:
 - Cover all expenses entailed by the trial, including travel of Special Court staff and witnesses to The Hague, office space in The Hague, etc.; and
 - Conduct effective outreach and communications activities to make Taylor's trial accessible to the communities most affected by the crimes;
- With regard to all other Special Court trials and operations, ensure the court has adequate funding to:
 - Complete all operations successfully, namely by ensuring fair and expedient proceedings with adequate witness protection and support and outreach and communications programming;

- Perform necessary activities during the post-completion phase, such as witness protection.

In order for the Special Court to meet the needs of making Taylor's trial in The Hague accessible and meaningful to Sierra Leoneans and West Africans, the international community must ensure adequate funding to perform these activities. Donors must also ensure that all other costs associated with holding Taylor's trial in The Hague, including costs related to logistical, technical, and witness issues, are provided. Donors must further ensure that the rest of the court's work in Freetown does not suffer due to the costs of holding Taylor's trial in The Hague.

Initially forced to rely exclusively on voluntary contributions, the Special Court has faced constant financial shortfalls. Following a request by the U.N. Secretary-General in March 2004 for a U.S.\$40 million subvention to help address the court's financial difficulties, the U.N. General Assembly has assisted the court enormously by granting it up to U.S.\$33 million to help fund operations through the end of 2005.³⁰ However, this assistance does not cover the court's budget for its final period of operations nor during its post-completion phase.

Human Rights Watch welcomes pledges made by donors at a funding conference for the Special Court in late September 2005. However, the nearly \$10 million that was donated is insufficient to cover the cost of the Special Court's operations for 2006, which will undoubtedly increase with Charles Taylor's trial.³¹ Substantial additional contributions are needed. Initiatives by the Secretary-General in the past and more recently following the request to move Taylor's trial to The Hague to encourage funding for the court are welcome in this regard.³² The United Nations should also provide funding to the court to address outstanding shortfalls and encourage voluntary contributions by states.

VI. Annex

This Annex provides a basic overview of the Special Court for Sierra Leone and information concerning the alleged crimes committed by Charles Taylor during Sierra Leone's armed conflict.

³⁰ U.N. General Assembly, Resolution adopted by the General Assembly, Special subjects and questions relating to the programme budget for the biennium 2004-2005 (2005), A/RES/59/294, paras. 7-14; Resolution adopted by the General Assembly, Questions relating to the programme budget for the biennium 2004-2005 (2005), A/RES/59/276, section VII, paras. 16-20; Estimates in respect of special political missions, good offices and other political initiatives authorized by the General Assembly and/or Security Council (2005), A/59/569/Add.4, paras. 15-26; Request for a subvention to the Special Court for Sierra Leone, Report of the Secretary-General (2004), A/58/733.

³¹ "UN member states pledge nearly \$10 million for Special Court for Sierra Leone, far short of estimated requirements," U.N. Department of Public Information, September 30, 2005 [online], <http://www.un.org/News/Press/docs/2005/13092.doc.htm> (retrieved April 14, 2006); "Sierra Leone: Donors pledge less than half funds needed for war crimes court," IRIN News, October 3, 2005 [online], http://www.irinnews.org/report.asp?ReportID=49346&SelectRegion=West_Africa&SelectCountry=SIERRA_LEONE (retrieved April 14, 2006).

³² See, for example, U.N. General Assembly, Request for a subvention, A/58/733.

Basic Overview of the Special Court for Sierra Leone³³

The Special Court is a U.N.-backed court charged with bringing to justice those who bear the greatest responsibility for war crimes, crimes against humanity, other serious violations of international humanitarian law, and certain violations of Sierra Leonean law committed during the civil war in Sierra Leone since November 1996.³⁴

The Special Court came out of an initiative by Sierra Leone President Ahmad Tejan Kabbah, who asked for U.N. assistance in establishing a national-international court to try “members of the R[evolutionary] U[nited] F[ront] and their accomplices.”³⁵ In August 2000, the Security Council authorized the U.N. secretary-general to enter into negotiations to establish such a court, and in January 2002, the United Nations and the Sierra Leone government signed an agreement creating the framework for the court.³⁶

The Special Court has indicted thirteen individuals from three warring factions – the government-backed Civil Defense Forces and rebel forces, the RUF and the Armed Forces Revolutionary Council (AFRC). The indictees are charged with war crimes, crimes against humanity, and other serious violations of humanitarian law for crimes including murder, rape, extermination, acts of terror, enslavement, looting and burning, sexual slavery, conscription of children into an armed force, and attacks on peacekeepers and humanitarian assistance workers.

Until Taylor’s surrender, nine accused were currently facing trial. Two other indictees, Foday Sankoh and Sam “Mosquito” Bockarie, died in 2003, after which their indictments were withdrawn. The whereabouts of the remaining indictee, Johnny Paul Koroma, is uncertain; he is believed to be dead or missing.

The Special Court represents a significant new model of international justice, often referred to as a “mixed” or “hybrid” tribunal. Unlike the so-called ad hoc tribunals, the ICTR and ICTY, the Special Court:

- is staffed by internationals and Sierra Leoneans, rather than only international staff;
- has a statute that includes both domestic and international crimes, as opposed to only international crimes; and
- is seated in the capital of Sierra Leone, Freetown, rather than outside the country where the crimes occurred.

Another difference is that the Special Court is set up to be “leaner and meaner” than the ad hoc tribunals, partly in response to criticisms that they are too costly and slow. The Special Court has operated at lesser expense for three years than one year of operations at the ICTY

³³ For more detailed discussion of the work of the Special Court, see “Bringing Justice” and “Justice in Motion.”

³⁴ Statute of the Special Court for Sierra Leone, art. 1.1.

³⁵ United Nations, Letter from President of Sierra Leone to the Secretary-General (2000), Annex S/2000/786.

³⁶ U.N. Security Council Resolution 1315 (2000), S/RES/1315; Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, January 16, 2002.

and the ICTR in recent years.³⁷ The Special Court was further set up to be dependent on voluntary contributions, instead of on funding through U.N. assessed contributions,³⁸ and is expected to function for less time than the ad hoc tribunals.³⁹

The Special Court's mandate is also limited to prosecuting those who "bear the greatest responsibility" as opposed to "persons responsible" and has indicted many less individuals than the ad hoc tribunals.⁴⁰

Each of the existing international justice mechanisms has been tailored to a particular situation and is defined by the historical circumstances and negotiations under which it was created. Each model also has advantages and challenges. The Special Court model provides the benefits of enabling the accountability process to be accessible to the population most affected by the crimes and to leave a legacy with this population, while remaining insulated from deficiencies which may characterize a local justice system.

Taylor's alleged crimes and surrender to the Special Court

The Special Court has indicted Taylor for war crimes (murder, pillage, outrages upon personal dignity, cruel treatment, terrorizing civilians); crimes against humanity (murder, mutilation, rape, enslavement, sexual slavery); and other serious violations of international humanitarian law (use of child soldiers) in the course of Sierra Leone's armed conflict.⁴¹ Taylor is charged with, as president of Liberia, providing training and financing to the main rebel group in Sierra Leone, the RUF. The indictment also alleges that members of the rebel alliance made up of the RUF and the AFRC, who committed war crimes, crimes against humanity, and serious violations of international law, were assisted by, acted in concert with, were under the direction or control of, or were subordinate to Taylor.⁴²

³⁷ ICTY, "General Information: Regular Budget," n.d. [online], <http://www.un.org/icty/glance/index.htm> (retrieved August 5, 2004); ICTR, "General Information: Budget and Staff," n.d. [online], <http://www.ict.org/default.htm> (retrieved August 5, 2004).

³⁸ United Nations, Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (2000), Annex S/2000/915.

³⁹ The ad hoc tribunals were not created with any predetermined expectations with regard to their length and functioned for about a decade each, only in the past few years developing a "completion strategy" that provides for phasing out operations by 2010. See United Nations Security Council, Resolution 1503 (2003), S/RES/1503. Since its creation, however, there has been a widely held expectation that the Special Court would operate for a short period of time, possibly as short as three years, although this is not explicitly stated in the court's founding documents.

⁴⁰ Statute of the Special Court for Sierra Leone, art. 1; Statute of the ICTR, art. 1; Statute of the ICTY, art. 1. The ICTR has indicted over seventy individuals, while the list of indictees at the ICTY tops one hundred and sixty. ICTY, "Key Figures of ICTY Cases," Updated April 13, 2006 [online], <http://www.un.org/icty/glance-e/index.htm> (retrieved April 14, 2006); ICTR, "Status of Detainees," March 24, 2006, <http://69.94.11.53/ENGLISH/factsheets/detainee.htm> (retrieved April 14, 2006).

⁴¹ Taylor was initially indicted on seventeen counts, but an amended indictment was approved in March 2006 which reduces them to eleven counts. This change was made according to the Special Court prosecutor in order to better ensure a "more focused and speedier trial" while maintaining "the gravity" of the allegations in the original 17 count indictment. See *The Prosecutor against Charles Ghankay Taylor*, Indictment, Special Court for Sierra Leone, March 7, 2003; Amended Indictment, Special Court for Sierra Leone, March 16, 2006. See also "The Prosecutor's Meeting with Civil Society of Sierra Leone, 31 March 2006.

⁴² *The Prosecutor against Charles Ghankay Taylor*, Amended Indictment.

Taylor's support for the RUF allegedly contributed to the deaths, rapes and mutilations of thousands of civilians in Sierra Leone, prompting U.N. sanctions on his regime. The eleven-year war in Sierra Leone claimed the lives of tens of thousands, and left many more wounded and mutilated. In 2002, the two rebel factions signed a peace treaty with the government and the war officially ended.

Elected president of Liberia in 1997 after a seven-year war that ousted former President Samuel Doe, Charles Taylor gained notoriety for the brutal abuses against civilians committed by his forces in Liberia. His presidency from 1997 to 2003 was characterized by serious human rights abuses, including the repression of civil society, journalists and anyone opposing his government. Taylor's forces have also been implicated in conflicts in neighboring Guinea and Cote d'Ivoire.

A rebel incursion beginning in July 2000 prompted another conflict in Liberia.⁴³ On June 4, 2003, the Special Court for Sierra Leone "unsealed" its indictment against Taylor while he was attending peace talks in Ghana, after which Taylor promptly returned to Liberia. In August 2003, as rebels moved on the Liberian capital, Monrovia, Taylor left Liberia for Nigeria. Taylor accepted an offer of asylum from the Nigerian government, which was made with the support of the United States, the African Union and other international actors as a temporary measure to end the bloodshed in Liberia and secure a peaceful transition to a new government.

Taylor settled into exile in Calabar, Nigeria, until March 2006, when the Nigerian government agreed to a request from Liberia's newly-elected government that he be surrendered to the Special Court. On March 25, 2006, President Obasanjo informed President Johnson-Sirleaf that Liberia was "free to take former President Charles Taylor into its custody," although Nigeria did not arrest Taylor at that time.⁴⁴ Within forty-eight hours, Taylor had disappeared.⁴⁵ However, on March 29, Taylor was detained by Nigerian police near Nigeria's border with Cameroon. He was then sent back to Liberia, where he was taken into U.N. custody and transferred to the Special Court in Freetown. In November 2005, the U.N. peacekeeping force in Liberia had been given authority to detain and transfer Taylor to the Special Court for prosecution if he were to enter Liberian territory.⁴⁶

⁴³ Human Rights Watch, "Back to the Brink: War crimes by Liberian government and rebels," *A Human Rights Watch Report*, vol. 14, no. 4(A), May 2002 [online], <http://www.hrw.org/reports/2002/liberia>.

⁴⁴ "Statement by the Federal Government of Nigeria - Former President Charles Taylor to be transferred to the custody of the Government of Liberia," March 25, 2006 [online], http://www.nigeriafirst.org/article_5687.shtml (retrieved April 14, 2006).

⁴⁵ Lydia Polgreen, "Nigeria Says Ex-President of Liberia Has Disappeared," *The New York Times*, March 29, 2006; "Liberia: Nigeria reacts to Charles Taylor's Disappearance," *Nigeria First*, March 28, 2006 [online], <http://allafrica.com/stories/200603280707.html> (retrieved April 10, 2006).

⁴⁶ U.N. Security Council Resolution 1638 (2005), S/RES/1638.