

THE SPECIAL COURT FOR SIERRA LEONE**CASE No. SCSL-03-01-PT****IN THE TRIAL CHAMBER**

Before: Hon. Justice Richard Lussick, Presiding
 Hon. Justice Teresa Doherty
 Hon Justice Julia Sebutinde

Registrar: Mr. Lovemore G. Munlo, SC

Date Filed: 06 April 2006

THE PROSECUTOR
 -v-
CHARLES GHANKAY TAYLOR

PUBLIC

URGENT

DEFENCE MOTION FOR AN ORDER THAT NO CHANGE OF VENUE FROM THE SEAT OF THE COURT IN FREETOWN BE ORDERED WITHOUT THE DEFENCE BEING HEARD ON THE ISSUE AND MOTION THAT THE TRIAL CHAMBER REQUEST THE PRESIDENT OF THE SPECIAL COURT TO WITHDRAW THE REQUESTS REPORTEDLY MADE TO (1) THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS TO PERMIT THAT THE TRIAL OF CHARLES GHANKAY TAYLOR BE CONDUCTED ON ITS TERRITORY & (2) TO THE PRESIDENT OF THE ICC FOR USE OF THE ICC BUILDING AND FACILITIES IN THE NETHERLANDS DURING THE PROPOSED TRIAL OF CHARLES GHANKAY TAYLOR.

Office of the Prosecutor:

Mr. James C. Johnson
 Ms. Brenda Hollis
 Ms. Nina Jorgensen

Counsel for Mr. Charles Taylor:

Mr. Karim A. A. Khan

Parties to be served:

1. The President of the International Criminal Court
2. The Dutch Foreign Minister

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
= 7 APR 2006	
NAME	MAUREEN EDWARDS
SIGN	<i>MAUREEN EDWARDS</i>
TIME	09-40

BACKGROUND

1. On the 30th March 2006, the Press and Public Affairs Office of the Special Court of Sierra Leone issued a Press Release (Annex A) which reported that the President of the Special Court, Justice Raja N. Fernando had, on 29th March 2006, formally “made a request to the Government of the Netherlands and the President of the International Criminal Court to facilitate the conduct of the trial of former Liberian President Charles Taylor by the Special Court in the Hague.”
2. The Defence submit that such requests are premature and raise a real risk of the appearance of unfairness in that the Accused in this case has not been afforded a right to be heard on the important issue of venue. Moreover, it has not been judicially determined that such a change of venue is necessary in the interests of justice.
3. For the reasons detailed in this Motion, the Defence seek an order from the Trial Chamber that no change of venue for the proposed trial of Charles Ghankay Taylor be made without first giving the Defence an opportunity to be heard on this important issue. In addition, given that there has been no argument from the parties involved in this case and no *judicial* finding that such a change of venue is necessary in the interests of justice, the Defence submit that the Trial Chamber request the President of the Special Court to withdraw the Requests reportedly made to the Government of the Kingdom of the Netherlands and to the President of the ICC (and to any other entities or organisations that may have been contacted) without the Trial Chamber or the President finding , after full arguments from the parties, that such a change of venue is necessary and merited.

THE LAW:

4. The Statute of the Special Court is silent on the issue of change of venue or proceedings away from the seat of the Court. In Resolution 1315 (2000), however, the Security Council charged the Secretary General of the United Nations to, *inter alia*, look for “a possible alternative host State, should it be

necessary to convene the special court outside the seat of the court in Sierra Leone, if circumstances so require.” (SC 1315, sub para 8)

5. In his subsequent Report (UN doc S2000/915), dated 05 October 2000, the Secretary General noted that “the Government of Sierra Leone and other interested Member States” were focused on establishing the Court in Sierra Leone. (Secretary-General’s Report, para 51). It is submitted that such a decision reflected international opinion, a presumption as to the location of trials and a practical understanding of the trial process and the importance of keeping trials close to the victims of crimes so as to foster peace and reconciliation and in order to leave behind a legacy of the importance of the Rule of Law. As the Secretary-General himself noted:

“In the choice of an alternative seat for the Special Court, the following considerations should be taken into account: the proximity to the place where the crimes were committed and easy access to victims, witnesses and accused. ...During the negotiations, the Government expressed a preference for a West African alternative seat, in an English speaking country sharing a common law system.”

[Secretary-General’s Report, para 54]

6. Article 10 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone provides:

“The Special Court shall have its seat in Sierra Leone. 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.”

7. Article 10 seems to provide flexibility for the Special Court to meet away from Freetown “if it considers it necessary for the efficient exercise of its functions” such as meeting to hold a plenary to discuss drafting or revising

Rules, or to take live evidence from witnesses who are unable to attend the seat of the Special Court in Freetown and for whom live video evidence is considered undesirable or unfair in the interests of justice. The provision of “relocation outside Sierra Leone if the circumstances so require” appears to relate to the whole court, rather than to a portion of it such as a Trial Chamber.

8. Rule 4 of the Special Courts Rules of Procedure and Evidence, however, explicitly provide for sitting away from the seat of the Special Court:

“A Chamber or a Judge may exercise their functions away from the Seat of the Special Court, if so authorized by the President. In doing so, audio or video-link technology, e-mail or other available electronic instruments may be used if authorised by the President.”

SUBMISSIONS

9. The Requests purportedly made by the President of the Special Court to the Government of the Kingdom of the Netherlands and the President of the ICC were apparently based upon Rule 4 of Rules of Procedure and Evidence. The Defence have not been provided with, or otherwise seen, the Requests sent out by the President. Moreover, it is not clear who moved the President for the change in venue sought or the arguments advanced in support thereof, or if the President purportedly made such a requests *suo moto*.
10. In any event, it is submitted that the Defence have a right to be heard on such important matters and that the Press Release issued by the Special Court on 30 March 2006 seems to prejudge and prejudice the issue by implying that a decision to change the venue of the trial of Mr. Charles Taylor away from Freetown and to Europe has already been made by the President.
11. It is submitted that there has been no showing of good cause for the Special Court to try Mr. Charles Taylor away from Freetown, but to continue to try all other cases before the Special Court in Freetown. The change in venue proposed would appear, *prima facie*, to be discriminatory absent a showing why Mr Taylor should be treated differently held in different premises and in a different country, and much further from the witnesses he will be required to

call in his defence from all other accused persons. Without such a showing of good cause, it is submitted that the change of venue proposed is contrary to the Rights of the Accused enshrined in Article 17(1) of the Statute providing that “All Accused shall be equal before the Special Court.”

12. Secondly, it is submitted that, even in the unlikely event that cogent reasons are advanced justifying a finding that venue should be changed, there must be a discussion of the new proposed venue. At the very least, it is submitted that there must be justification to depart from the clear preference stated in the Secretary General’s Report that any alternative seat of the court be another West African Country. (Secretary-General’s report, para 54). No such reasons have been provided to the Defence at this stage.
13. In determining whether a change of venue is necessary, the Defence submit that the Trial Chamber have a paramount and critical role to ensure that the accused is provided with a fair and public trial. (See, Article 17(2) of the Statute). The Trial Chamber will be vigilant to ensure that one accused is not treated differently from other accused without good reason.
14. In determining the procedure to be adopted when a change of venue is proposed, it is submitted that regard may be had to the provisions and Rules of the International Criminal Court. Article 62 of the Rome Statute provides that “Unless otherwise decided, the place of the trial shall be the seat of the Court.” Rule 100 of the ICC Rules of Procedure and Evidence further provides that:

“1. in a particular case, where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host state”

2. An application or recommendation changing the place where the Court sits may be filed at any time after the initiation of an investigation, either by the Prosecution, the defence or by a majority of the judges of the Court. Such an application or recommendation shall be addressed to the Presidency. It shall be made in writing and specify

in which State the Court would sit. The Presidency shall satisfy itself of the views of the relevant Chamber.”

15. From this it is clear that the presumption is that the place of trial be the seat of the court. (Article 62). Secondly, that such a change should only be ordered if the Court considers it to be “in the interests of justice”. (Rule 100(1)). Thirdly, by requiring the application or recommendation to be filed, the International Criminal Court has ensured that its decisions will be open, informed and transparent. It is submitted that the procedures which the Special Court adopts before deciding a change of venue be no less open or fair than provided for in the ICC.
16. It is clear that under the ICC regime, a party can request a change in venue at any time after the initiation of the investigation. (ICC Rule 100(2)). There is nothing in the Special Courts Statute or Rules which would have prevented the Prosecution or a Trial Chamber proposing a change of venue before Mr. Taylor was brought to Freetown. It is, perhaps, notable that no such request was made by any organ of the Special Court for such a change in venue whilst Mr. Taylor was residing in Liberia or, later, in Nigeria.
17. In determining whether the venue of Mr. Taylor’s proposed trial be moved from the Special Court in Freetown to a third location, it is submitted that the Trial Chamber will need to hear argument on the merits. In his commentary to Article 62 of the Rome Statute, Professor Otto Triffterer writes:

“Even though not provided for in the Statute, the Prosecutor and either the accused or his or her legal representative will have to be heard before the Trial Chamber makes such a decision in order to ensure that the rights to equality of arms and a fair trial are not compromised. If one of them opposes, it may be at least advisable to give them, in cases of doubt, an additional hearing before the Presidency decides, especially when issues are raised questioning the practicability of such dislocation from the point of view of the rights of the two parties during trial. If against such motion the Court changes the location of the trial, it may result in a ground of appeal, if the process of finding

the truth is thereby influenced in a negative way.” (Otto Triffterer in O. Triffterer (ed) Commentary on the Rome Statute of the International Criminal Court, Baden-Baden, article 62, p 799)

18. For the reasons advanced above, it is submitted that the issue regarding change of venue is a matter related to trial on indictment that is of great importance to the accused and which has consequences to the trial itself. It is submitted that fairness requires that the Accused be heard on this issue before any decision is made. In the event that the reported press release of the Special Court is correct (Annex A) it is submitted that it creates an appearance of unfairness in that a decision has been made unilaterally by the President without the benefit of argument from the accused. Accordingly, the Trial Chamber is asked to order that no change of venue be made in the case of Charles Taylor without disclosing grounds for any proposed change of venue and only after hearing the accused on the issue.
19. In addition, given the appearance of unfairness caused by the Press Release, the Defence move the Trial Chamber to Request the President to withdraw any Requests he may have made for the transfer of the trial of Mr. Taylor to the Netherlands or elsewhere as published in the Special Court’s Press Release dated 30 March 2006. There appears to be no good reason to inconvenience the Government of the Kingdom of the Netherlands or the ICC President with Requests which may be wholly unnecessary.

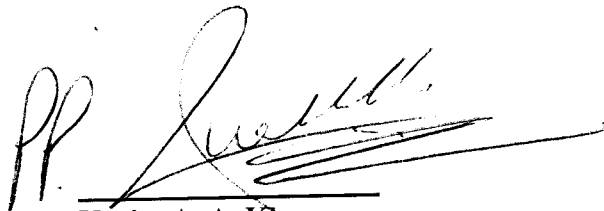
RELIEF SOUGHT

20. For the reasons detailed above, and pursuant to Rule 73 of the Special Court’s Rules of Procedure and Evidence, the following relief is sought:
- (i) That the Trial Chamber orders that no change of venue from the seat of the court in Freetown to a third location be made without affording the Defence for Mr. Taylor a right to be heard on the issue;
 - (ii) That the Trial Chamber request the President of the Special Court to withdraw the Requests reportedly made on behalf of the Special Court to (i) the Government of the Kingdom of the Netherlands to permit the

trial of Charles Ghankay Taylor be conducted on its territory and (ii) to the President of the International Criminal Court for the use of the ICC building and facilities in the Netherlands during such proposed trial.

- (iii) In the alternative, clarification that such Requests have not been issued by the President of the Special Court and / or that a decision to transfer Charles Ghankay Taylor to the Netherlands for trial has not already been made by the Special Court.

Respectfully submitted,



Karim A. A. Khan
(Counsel for Charles Taylor)

ANNEX A



Special Court for Sierra Leone Press and Public Affairs Office

PRESS RELEASE

Freetown, Sierra Leone, 30 March 2006

Special Court President Requests Charles Taylor be Tried in The Hague

The President of the Special Court for Sierra Leone, Justice A. Raja N. Fernando, yesterday made a request to the Government of The Netherlands and the President of the International Criminal Court (ICC) to facilitate the conduct of the trial of former Liberian President Charles Taylor by the Special Court in The Hague.

Under Rule 4 of the Special Court's Rules of Procedure and Evidence, the President of the Special Court is empowered to authorise a Trial Chamber to exercise its functions away from the seat of the Court in Freetown.

The trial would thus be held by a Trial Chamber of the Special Court for Sierra Leone, sitting in the Hague.

Justice Fernando's letter referred to concerns about the stability in the region should Taylor be tried in Freetown.

A Headquarters Agreement would need to be secured to allow a chamber of the Special Court to sit outside of Freetown. A United Nations Security Council Resolution would also be required by the Government of the Netherlands to provide the legal basis for the Court to sit within its national jurisdiction.

#END

The Special Court is an independent tribunal established jointly by the United Nations and the Government of Sierra Leone. It is mandated to bring to justice those who bear the greatest responsibility for atrocities committed in Sierra Leone after 30 November 1996. To date, the Prosecutor has indicted eleven persons on various charges of war crimes, crimes against humanity, and other serious violations of international humanitarian law. Ten indictees are currently in the custody of the Court.

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