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RSCSL-03-01-ES  
(12335-12343)

12335



**RESIDUAL SPECIAL COURT FOR SIERRA LEONE**

Before: The Honourable Justice Philip Waki, President  
Registrar: Ms. Binta Mansaray  
Date Filed: 16 February 2015  
Case No: SCSL-03-01-ES

In the matter of

**CHARLES GHANKAY TAYLOR**

**CONFIDENTIAL**

**PROSECUTOR'S SUBMISSIONS IN RESPONSE TO CHARLES TAYLOR'S  
APPLICATION FOR LEAVE TO APPEAL DECISION ON MOTION FOR  
TERMINATION OF ENFORCEMENT OF SENTENCE IN THE UNITED KINGDOM  
AND FOR THE TRANSFER TO RWANDA**

The Prosecutor's Office:  
Ms. Brenda J. Hollis  
Mr. Mohamed A. Bangura

Counsel for Charles Ghankay Taylor:  
Mr. Christopher Gosnell  
Mr. John Jones QC

RESIDUAL SPECIAL COURT FOR SIERRA LEONE	
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### I. Introduction

1. The Prosecutor opposes Charles Taylor's "Application for leave to Appeal Decision on Motion for Termination of Enforcement of Sentence in the United Kingdom and for the Transfer to Rwanda",<sup>1</sup> and requests that the President dismisses same for the reasons outlined in the argument below.
  
2. The Motion should be dismissed as it lacks any basis in law. The Motion once again willfully mischaracterizes the administrative character of this matter and consequently mischaracterizes the relief being sought. There is no decision from which to appeal, rather only conclusions of the Trial Chamber to assist the President in the exercise of his core administrative mandate to determine location of enforcement of sentence. What Prisoner Taylor is in fact submitting is a request for the President to disregard the conclusions of the Trial Chamber in making his determination on this matter, a request the President may of course allow if it contains additional arguments that could not have been set forth earlier or if it establishes legal or factual error by the Trial Chamber.
  
3. If the President is minded to allow the request and to consider the Motion it should nonetheless be dismissed and the original Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda<sup>2</sup> denied. The Motion consists only of disagreements with the conclusions of the Trial Chamber and reiteration of arguments that have been shown to be unfounded in fact and law. If one were to ignore the mischaracterization of this administrative matter, contrary to the clear language of the RSCSL Rules of Procedure and Evidence, and consider the Motion under the provisions of Rule 73(B)<sup>3</sup>, it fails to meet the two-pronged test under this rule, to wit: it does not sufficiently demonstrate that 'exceptional circumstances' exist for granting leave, and, it fails to show the 'irreparable prejudice' that Charles Taylor will suffer, if his present situation with regards enforcement of his sentence is not reviewed. An outcome contrary to

<sup>1</sup> *In the Matter of Charles Taylor*, RSCSL-03-01-ES-1425, Application for leave to Appeal Decision on Motion for Termination of Enforcement of Sentence in the United Kingdom and for the Transfer to Rwanda, 06 February 2015, (hereafter, 'The Motion').

<sup>2</sup> *In the Matter of Charles Taylor*, RSCSL-03-01-ES-1396, Public with Public and Confidential Annexes, Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 13 June 2014, (hereafter, 'Motion for Transfer').

<sup>3</sup> RSCSL Rules of Procedure and Evidence (RPE). It is clear from the language of this Rule that it is directed at Motions that arise in the course of the judicial proceedings in a case, not in the post appeal administrative designation of place of confinement, a duty within the mandate of the President of the Court.

Prisoner Taylor's wishes does not constitute either exceptional circumstances or irreparable prejudice. Prisoner Taylor has no right to endless litigation over this administrative matter simply because he does not like the conclusions that have been reached. Rather, the interests of justice are only served by the President fulfilling one of his core mandates and deciding the original Motion for Transfer, Prisoner Taylor having been given more than ample opportunity to present his arguments on the issue. The Prosecutor submits that decision should be to dismiss the Motion for Transfer.

## II. Arguments

*The Motion mischaracterizes the administrative nature of the matter and consequently the character of the relief requested*

4. Rule of Procedure 103 (B)<sup>4</sup> and the practice of the SCSL and other international criminal courts make clear that designation of the place of confinement is an administrative matter within the core mandate of the President of the Court. This Presidential administrative mandate is also clearly reflected in the SCSL Practice Direction for Designation of State of Enforcement<sup>5</sup> and Sentence Enforcement Agreements<sup>6</sup>, which necessarily follow the Rules.
  
5. Paragraph 5 of the SCSL Practice Direction clearly states that it is the President who determines place of confinement. Similarly, the Sentence Enforcement Agreements with Rwanda and the United Kingdom, in relevant parts, refer to the functions of the President in enforcing sentences with willing states. Articles 2, 6 and 8<sup>7</sup> speak specifically to the functions of the President, and clearly give an administrative context to these roles. As regards the 'Applicable Procedure', Article 2 provides that a request for enforcement of sentence shall be made by the Registrar, and approved by the President. Article 6 provides for the submission of a report to the President, following an inspection of the prison facility

<sup>4</sup> RSCSL RPE, Rule 103 (B): "The place of imprisonment for each convicted person shall be designated by the President".

<sup>5</sup> SCSL Practice Direction For Designation of State for Enforcement of Sentence, Para 5: "After the sentencing of a convicted person has become final, the President of the Special Court will on the basis of the submitted information and on any other inquiries he/she chooses to make, designate the State in which imprisonment shall be served ...".

**NOTE:** This Practice Direction applied to proceedings of the SCSL, and is yet to be specifically adopted/adapted for use by the RSCSL.

<sup>6</sup> Agreement between the Special Court for Sierra Leone and The Government of Finland on the Enforcement of Sentences of the Special Court for Sierra Leone, 29 June 2009; Agreement between the Special Court for Sierra Leone and The Government of Rwanda on the Enforcement of Sentences of the Special Court for Sierra Leone, 16 September 2009; Agreement between the Special Court for Sierra Leone and The Government of Sweden on the Enforcement of Sentences of the Special Court for Sierra Leone, 15 October 2004; Agreement between the Special Court for Sierra Leone and The Government of the United Kingdom of Great Britain and Northern Ireland on the Enforcement of Sentences of the Special Court for Sierra Leone, 10 July 2007.

<sup>7</sup> These clauses have the same numberings in both documents.

by the respectively named monitoring bodies,<sup>8</sup> and for the prison authorities to inform the President of changes in prison conditions, whenever decisions to that effect are made. Consistent with these other administrative powers and mandate. Article 8, provides for the President ultimately to determine whether any SCSL prisoner should benefit from early release, pardon or commutation.

6. These provisions make clear that the matter before the President is administrative in nature, not judicial, and within the core mandate of the President. The Prosecutor respectfully submits this is not a core function the President may delegate. To attempt to delegate this administrative matter and accord it the benefits of a judicial process would not only be contrary to the spirit of the Statute, the practice of the SCSL and the clear language of the Rules, SCSL Practice Direction and Sentence Enforcement Agreements, but would impose an onerous and unfounded precedent on future Presidents and on the resources of the RSCSL.
7. Given that designation of place of confinement is an administrative matter entirely within the mandate of the President of the Court, there is no "decision" from which to "appeal", as the President has yet to pronounce on the original Motion for Transfer appropriately submitted to him. The President's decision to convene a Trial Chamber to assist him does not change the administrative character of the matter or his duty to decide it.<sup>9</sup> The Trial Chamber's "Decision" is thus rather conclusions it has provided for him to consider so that he may properly discharge his duty in this matter.
8. Prisoner Taylor's submissions are in reality, a request that the President consider his comments on the "Decision". The Prosecutor suggests in considering these submissions he should disregard mere disagreements with the conclusions of the Trial Chamber and reiterations of arguments previously submitted. The Prosecutor further submits that the President should dismiss the Prisoner's submissions as without merit. Finally the Prosecutor submits the President should dismiss the Motion for Transfer.

<sup>8</sup> The ICRC, in the case of Rwanda, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), for the UK.

<sup>9</sup> *Prosecutor v Vidoje Blagojevic*, Case No. IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace his Defence Team, 7 December 2003, Para. 7; *Prosecutor v Krajisnik*, IT-00-39-A, Decision on "Motion Seeking Review of the Decisions of the Registry in Relation to Assignment of Counsel", 29 January 2007, p. 3. **Note:** These two ICTY appeal decisions concerned situations where the judicial process had yet to be completed and the cases were still before a panel of judges, let alone Prisoner Taylor's current situation where we are dealing with a post appeal purely administrative matter.

*Rule 73 (B) is inapplicable and the tests are not met*

9. Prisoner Taylor's reference to Rule 73 (B) flows from his fundamental mischaracterization of this matter as judicial. It is clear from the language of the Rule and its placement in the Rules that it refers to appeals during the course of judicial proceedings. The Rule is not applicable to this administrative matter. However, should Prisoner Taylor's motion be treated as falling within the provisions of Rule 73 (B), contrary to the clear meaning of that Rule, the Motion should be denied as it fails to meet that Rule's high threshold.<sup>10</sup> As stated by the Trial Chamber, "the overriding legal consideration in an application of this nature is that the applicant's case must reach a level nothing short of "exceptional circumstances" and "irreparable prejudice".<sup>11</sup> Even if taken at face value, and disregarding the Prosecutor's foregoing argument about mischaracterization, the Motion demonstrates no 'exceptional circumstances' or 'irreparable prejudice' to warrant the relief requested.
10. Prisoner Taylor's effort at meeting this conjunctive test is nothing more than a repeat of the Trial Chamber's conclusions, disagreement with those findings and a rehash of arguments shown to be unfounded, and should be disregarded. It is important to recall the consistent jurisprudence on the standards satisfying these requirements. The Chamber has variously held that the conjunctive conditions of exceptional circumstances and irreparable prejudice are not met 'where the applicant merely argued out the alleged errors of an impugned decision';<sup>12</sup> or where the applicant 'argued the merits of an appeal', and 'merely pointed to alleged errors in law and/or fact'.<sup>13</sup>

*No 'Exceptional Circumstances' shown*

11. The 'Exceptional Circumstances' standard is satisfied, "where the cause of justice may be interfered with", or "where issues of fundamental legal importance are raised".<sup>14</sup> The

<sup>10</sup> *Prosecutor v Charles Ghankay Taylor*, SCSL-03-01-T-1188, Decision on Defence Motion Seeking Leave To Appeal The Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 4 February, 2011

<sup>11</sup> *Ibid.*

<sup>12</sup> *Prosecutor v Charles Ghankay Taylor*, SCSL-03-01-T-764, Decision on Defence Application for Leave to Appeal the Decision on Urgent Defence Motion Regarding a Fatal defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE, 18 March 2009 (Justice Sebutinde's *Dissenting View*, p. 4).

<sup>13</sup> *Prosecutor v Charles Ghankay Taylor*, SCSL-03-01-T-1193, Decision on Defence Motion Seeking Leave to Appeal the Decision on Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber. The Prosecution and The Registry Based on leaked USG cables, 7 February 2011, p. 5.

<sup>14</sup> *Prosecutor v Charles Ghankay Taylor*, SCSL-03-01-T-1188, Decision on Defence Motion Seeking Leave To Appeal The Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 4 February, 2011.

Motion's arguments that Taylor's fundamental right to family life and the right to humane conditions of detention have been violated,<sup>15</sup> are without merit. based purely on previously submitted factual allegations that were thoroughly examined by the Trial Chamber and concluded to be non-existent or unfounded.<sup>16</sup> The Motion's reference to a third fundamental right – Equal Treatment, does not indicate the class of prisoners who are truly equal to Prisoner Taylor's circumstances and is also devoid of merit. The argument is simply a rehash of earlier submissions and without merit, as Prisoner Taylor described himself as "happy" with being held in a separate area in the prison,<sup>17</sup> and agreeing that as a "high security" prisoner he should in the interest of his own safety be placed in a separate area, where he would not integrate with the general prison population.<sup>18</sup> Disagreeing with the conclusions of the Trial Chamber and being unhappy with those conclusions do not constitute exceptional circumstances.

12. Saying something does not make it so. And so it is with Taylor's further argument that the issues raised relating to his fundamental human rights "are novel and are of general importance to International Law".<sup>19</sup> His argument is anything but novel, and would seem to contradict his earlier references to case law and reliance on decisions of the ECHR.<sup>20</sup>

*No demonstration Taylor will suffer 'irreparable prejudice'*

13. Taylor's single paragraph argument in the Prosecutor's view, purporting to satisfy the second limb of Rule 73(B), 'irreparable prejudice',<sup>21</sup> lacks any substance or reasoning worth considering and should be totally rejected.

### III. Conclusion

14. Prisoner Taylor's motion for Leave to appeal lacks any basis in law. It mischaracterizes this administrative process, seeking to be given unfounded and unwarranted judicial character to an administrative matter which must be determined by the President of the RSCSL, which judicial characterization would be contrary to the clear language of Rule 103 (B), the practice of the SCSL, the language of the SCSL Practice Direction, Sentence Enforcement

<sup>15</sup> Motion, para 7.

<sup>16</sup> *In the Matter of Charles Ghankay Taylor*, R SCSL-03-01-ES-1422, Decision on Public with Confidential Annexes Charles Ghankay Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 30 January 2015, paras. 90, 111, and 113.

<sup>17</sup> *Ibid.*, para. 98

<sup>18</sup> *Ibid.*, para. 99

<sup>19</sup> Motion, para 14

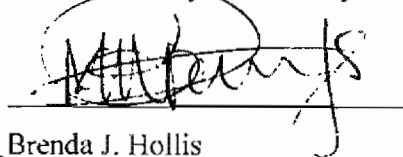
<sup>20</sup> Motion for Transfer - See List of Authorities

<sup>21</sup> Motion, para. 17

Agreements and the clear meaning and context of Rule 73 (B). To afford credence to this mischaracterization would not only be contrary to these authorities but would place an unwarranted burden on future Presidents and on the resources of the RSCSL. That mischaracterization carries over to the relief sought. As there has been no decision by the President, there is nothing to "appeal" from – not that there is appeal from such a Presidential decision. The only available relief at this point in this administrative procedure is to ask the President to consider Prisoner Taylor's submissions regarding the Trial Chamber's conclusions before making his decision on the Motion to Transfer. However, the Motion presents the President nothing new for his consideration and thus should also be dismissed for that reason.

15. Should the Motion nonetheless be treated as falling within Rule 73 (B), it should be dismissed as it does not meet the threshold requirements of that Rule, rather being only a disagreement with factual conclusions of the Trial Chamber and a rehash of arguments shown to have no basis in fact or law. Prisoner Taylor having had ample opportunity to advance all his arguments, the interests of justice favor finality. The Prosecutor requests the President dismiss this Motion. The Prosecutor further requests that the President dismiss the Motion for Transfer.

Filed the 16 day of February 2015



Brenda J. Hollis  
The Prosecutor

List of Authorities

**Authorities cited in the Prosecutor's submissions that fall under Article 7 (B) of the Practice Direction on the Filing of Documents before the Residual Special Court for Sierra Leone**

1. RSCSL Statute
2. RSCSL Rules of Procedure and Evidence.
3. SCSL Practice Direction For Designation of State for Enforcement of Sentence
4. Agreement between the Special Court for Sierra Leone and The Government of Finland on the Enforcement of Sentences of the Special Court for Sierra Leone, 29 June 2009.
5. Agreement between the Special Court for Sierra Leone and The Government of Rwanda on the Enforcement of Sentences of the Special Court for Sierra Leone, 16 September 2009.
6. Agreement between the Special Court for Sierra Leone and The Government of Sweden on the Enforcement of Sentences of the Special Court for Sierra Leone, 15 October 2004.
7. Agreement between the Special Court for Sierra Leone and The Government of the United Kingdom of Great Britain and Northern Ireland on the Enforcement of Sentences of the Special Court for Sierra Leone, 10 July 2007.
8. *In the Matter of Charles Taylor*, RSCSL-03-01-ES-1425, Application for leave to Appeal Decision on Motion for Termination of Enforcement of Sentence in the United Kingdom and for the Transfer to Rwanda, 06 February 2015.
9. *In the Matter of Charles Taylor*, RSCSL-03-01-ES-1396, Public with Public and Confidential Annexes, Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 13 June 2014.
10. *Prosecutor v Charles Ghankay Taylor*, SCSL-03-01-T-1188. Decision on Defence Motion Seeking Leave To Appeal The Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 4 February, 2011.
11. *Prosecutor v Charles Ghankay Taylor*, SCSL-03-01-T-764, Decision on Defence Application for Leave to Appeal the Decision on Urgent Defence Motion Regarding a Fatal defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE, 18 March 2009.
12. *Prosecutor v Charles Ghankay Taylor*, SCSL-03-01-T-1193, Decision on Defence Motion Seeking Leave to Appeal the Decision on Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, The Prosecution and The Registry Based on leaked USG cables, 7 February 2011.
13. *In the Matter of Charles Ghankay Taylor*, RSCSL-03-01-ES-1422, Decision on Public with Confidential Annexes Charles Ghankay Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 30 January 2015.



**Authorities cited in the Prosecutor's submissions that fall under Article 7 (D)(i) of the Practice Direction on the Filing of Documents before the Residual Special Court for Sierra Leone**

14. *Prosecutor v Vidoje Blagojevic*, Case No. IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace his Defence Team, 7 December 2003.  
[http://www.icty.org/x/cases/blagojevic\\_jokic/acdec/en/031107.pdf](http://www.icty.org/x/cases/blagojevic_jokic/acdec/en/031107.pdf)
15. *Prosecutor v Krajisnik*, IT-00-39-A, Decision on "Motion Seeking Review of the Decisions of the Registry in Relation to Assignment of Counsel", 29 January 2007.  
<http://www.icty.org/x/cases/krajisnik/acdec/en/070129.pdf>