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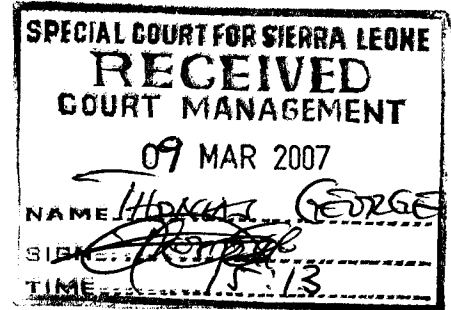
THE SPECIAL COURT FOR SIERRA LEONE

Before: Justice George Gelaga King, President

Registrar: Mr. Lovemore G. Munlo, SC

Date: 9 March 2007

Case No.: SCSL-2003-01-PT



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**CIVIL SOCIETY *AMICUS CURIAE* BRIEF REGARDING
CHANGE OF VENUE OF TAYLOR TRIAL
BACK TO FREETOWN**

Office of the Prosecution

Mr. Stephen Rapp
Ms. Brenda Hollis
Ms. Wendy van Tongeren
Ms. Shyamala Alagendra
Mr. Alain Werner
Ms. Leigh Lawrie

Counsel for Charles Taylor

Mr. Karim A. A. Khan
Mr. Roger Sahota

I. Introduction

1. Mr. Charles Taylor was arrested and transferred to the United Nations backed Special Court for Sierra Leone for war crimes, crimes against humanity, and other serious violations of international humanitarian law he allegedly committed against the people of Sierra Leone through his support for the rebels of the Revolutionary United Front (RUF) during the civil war. Prior to his arrest, civil society organisations both within and without the country advocated vociferously to see Mr. Taylor put on trial before the Court in Freetown.¹ Still today, civil society wants to see Mr. Taylor's trial held in Freetown.² As such, civil society's position has remained consistent, irregardless of whether the Prosecution or the Defence is raising the issue.
2. However, a day after Mr. Taylor's initial transfer to the Court, the then President of the Court, Judge Raja N. Fernando, sent a letter to the Government of the Netherlands and the President of the International Criminal Court asking them to facilitate the Taylor trial in The Hague. Judge Fernando's letter cited concerns about security in the region as his justification of the transfer of the Taylor case to the Netherlands.³ Soon thereafter, Security Council Resolution 1688 provided a legal basis for transfer. The Special Court Registrar explained that the Resolution was necessary before the Special Court "could make a determination on whether Charles Taylor should be tried in The Hague."⁴ Yet the Court hardly consulted with civil society organisations in the country to know their views on the decision to transfer the Taylor trial to The Hague.
3. Consequently, the decision by the President to move the trial from the seat of the Court in Freetown has had serious implications. The most important of these has been the difficulty encountered by people in communities most affected by the conflict in accessing information about the pre-trial stages of Mr. Taylor's case. In other words, the

¹ See Annex A, Global Policy Forum, 200 African Civil Society Groups Insist on Taylor's Trial, 29 June 2005; Annex B, Amnesty International Press Release, Sierra Leone: African and International Civil Society Groups in Fourteen Capitals Call on African Union Leadership to Ensure Charles Taylor Faces Justice, 30 June 2005.

² See Annex C, BBC News, Your Views, Charles Taylor's trial.

³ See Annex D, Charles Jalloh, ASIL Insight: Special Court for Sierra Leone Dismisses Taylor Motion Against Change of Venue, 15 June 2006.

⁴ See Annex E, SCSL Press Release, Special Court Registrar Welcomes United Nations Security Council Resolution, 16 June 2006.

people, in whose name the Court is said to be rendering justice, are denied the opportunity to monitor and participate in the process. It is against this backdrop that we as civil society organisations are requesting that you reconsider the changing of the trial venue of Charles Taylor. We submitted our “Application for Civil Society *Amicus Curiae* Brief Regarding Change of Venue of Taylor Trial Back to Freetown” on 7 March 2007, and we now submit the actual *amicus curiae* brief to the President for consideration in the event that our application is approved.⁵

II. Hybrid Nature of Special Court Suggests that Civil Society Should Be Heard

4. It should be noted that civil society organisations represent people from all walks of life throughout Sierra Leone. These people lived through the conflict and want to be part of the process of bringing to book the alleged perpetrators of those who bear the greatest responsibility of war crimes and crimes against humanity. Additionally, because the outcome of the Taylor trial impacts most directly on the lives of the people of Sierra Leone and the sub-region, the concerns of civil society groups in regard to the location of the trial should be given great weight. Human Rights Watch has concluded, “In order to maximize impact [of the Special Court], it is critical to make the proceedings accessible to the communities most affected by the crimes.”⁶
5. The Special Court is unique among international criminal tribunals because it is situated in the country where the atrocities occurred. For Charles Taylor to be taken away and tried in The Hague to a large extent dissipates the hybrid nature of the Court⁷ and would likely reduce the impact of the legacy of the Court to the people in West Africa in particular. Since the Court was established not only to address impunity but also to benefit the people of Sierra Leone and the sub region, it is only fair that their concerns are

⁵ *Prosecutor v. Taylor*, SCSL-03-01-PT-199, Application for Civil Society *Amicus Curiae* Brief Regarding Change of Venue of Taylor Trial Back to Freetown, 7 March 2007.

⁶ See Human Rights Watch, *Trying Charles Taylor in The Hague: Making Justice Accessible to Those Most Affected*, June 2006, pg. 7. Available online at: <http://hrw.org/backgrounders/ij/ij0606/index.htm>.

⁷ See First Annual Report of the President of the Special Court for Sierra Leone, for the Period 2 December 2002 – 1 December 2003, pg. 31 (“There have been very obvious advantages and disadvantages in establishing a Court in a country where the conflict under scrutiny took place. The advantage has been the opportunity to connect and interact with the civilian population in explaining the purpose of the Court and identifying their expectations of it”). Available online at: <http://scsl-server/sc-sl/new/specialcourtannualreport2002-2003.pdf>.

treated with the seriousness they deserve.⁸ Thus, to relegate them to the margins of the trial process so crucial as that of the former President of Liberia will be tantamount to denying the people of Sierra Leone and the sub region the right to see, first hand, justice being administered.

III. Need to Monitor and Protect the Rights of the Accused

6. As civil society organisations concerned about human rights issues, it is our moral responsibility to monitor the trial process and also to protect the rights of the accused. Local monitors have been present throughout the trials of the other nine detainees and have reported faithfully to the Sierra Leonean people. We must have the same opportunity for the Taylor trial.
7. Premised on the fact that persons indicted should be presumed innocent until proven guilty by the Court, Mr. Taylor's trial should be transparent, fair, just and equitable, both in reality and as perceived. It should be noted that Mr. Taylor, compared to other Special Court detainees, has been complaining about his rights to a fair trial while in detention in The Hague. His Defence have filed a number of motions among others alleging that their client is not treated equally like other Special Court detainees⁹ and that Mr. Taylor's privileged lawyer-client consultations have been subjected to video surveillance such that his attorneys have had to suspend all consultations with him.¹⁰ Civil society is concerned about the fair trial implications of having the bulk of the witnesses against Mr. Taylor

⁸ See Second Annual Report of the President of the Special Court for Sierra Leone, for the Period 1 January 2004 – 17 January 2005, pg. 23. Available online at: <http://scsl-server/sc-sl/new/specialcourtannualreport2004-2005.pdf>. Civil society organizations appreciate the opportunity to participate in Outreach activities such as the monthly Special Court Interactive Forum (SCIF) with the Registrar. The SCIF meetings provide some civil society organizations the opportunity to ask questions about the Court and give senior staff feedback on the Court's performance. However, civil society often questions whether these meetings are just briefings about what the Court is doing, and not an earnest attempt to seriously consider and implement the views of civil society in regard to Court policy.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-PT-146, Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 14 December 2006.

¹⁰ *Prosecutor v. Taylor*, SCSL-03-01-PT-197, Notification of Suspension of Legally Privileged Attorney-Client Consultations with Mr. Charles Taylor, 5 March 2007.

testify via video-link, as the Prosecution has recently proposed.¹¹ These complaints are not small matters and must be taken seriously. If Mr. Taylor was detained in Freetown, local press and activists would more easily understand the concerns and be able to advocate on his behalf.

8. The Outreach section of the Court has admitted various “challenges in informing Sierra Leoneans beyond Freetown about the work of the Court generally, and the trial process in particular.”¹² Civil society is concerned that problems of communication will only increase as the distance between the trial and the people of Sierra Leone increases. Without adequate communication regarding what is happening in the trial, civil society cannot effectively advocate to ensure the rights of the accused.
9. Civil society is well aware of the attempt the Outreach Section of the Court is making to allow two people at a time to observe the Taylor trial in The Hague each month that trial is in session.¹³ However, this is a second best option; the best option being to have the trial in Freetown, accessible to more than just two people at a time. Under this proposal, the number of monitors in the case, for the highest-profile accused before the Court, will be too small. In light of the above, it is necessary for many civil society groups to physically monitor the trial and duly inform the public vis-à-vis Mr. Taylor’s right to a fair trial to ensure transparency of the proceedings. We can only make the process of justice accessible to all if the trial is conducted here in Freetown.

IV. Right of Victims to Be Involved in the Reconciliation Process

10. The war was fought in Sierra Leone and the alleged atrocities were committed mainly against the people of Sierra Leone. Mr. Richard Dicker, director of Human Rights Watch’s International Justice Program, expressed concern about access to the trial for

¹¹ *Prosecution v. Taylor*, SCSL-03-01-PT-178, Prosecution Motion to Allow Witnesses to Give Testimony by Video-Link, 12 February 2007.

¹² See Second Annual Report, pg. 33.

¹³ See Annex F, Sierra Leone Court Monitoring Programme, *The Monitor*, Vol. 19, Dec. 2006, pgs. 9-12.

victims, stating, “Now that Taylor is in The Hague, there is a real risk that his trial will feel distant and less meaningful to the people most affected by the crimes.”¹⁴

11. The conflict had serious negative impacts on the people of this country and even now some are still suffering from post traumatic stress disorder. Since the alleged carnage took place here in Sierra Leone, it would be but only proper for the trial to take place in the country. That way, victims of the alleged crimes will have the opportunity to be involved in the process of reconciliation. If the case is conducted in name and on behalf of the people of Sierra Leone, it should be easily accessible; victims should be able to witness the trial live on a daily basis, as it would help relieve the trauma of the conflict. These victims have experienced the past and have lived with the memories all these years. Therefore, they should be actively involved in the dispensation of justice for a secure and stable future.

12. The Truth and Reconciliation Commission (TRC) has played a vital role in allowing victims to be involved in the reconciliation process, but as Mr. Taylor was not (and could not be)¹⁵ a part of the TRC, those who feel victimized by him have not had the opportunity to confront him and come to some resolution. As the TRC report explained, “Individual reconciliation requires that the victim and perpetrator meet. It is not imperative either for the victim to forgive the perpetrator or for the perpetrator to express remorse.”¹⁶ The closest most victims could come to “meet” Mr. Taylor is to see him live in a courtroom in Freetown. But even this opportunity is denied to them if his trial remains located at The Hague.

¹⁴ See Annex G, Human Rights Watch, Charles Taylor: Hague Trial Must be Accessible to West Africans, Former Liberian President Arrives in the Netherlands for War Crimes Trial, 21 June 2006.

¹⁵ Truth and Reconciliation Commission Report, Vol. 2, Ch. 2, Findings, pg. 110, para. 581 (“The Commission finds that the decision by the Special Court for Sierra Leone to deny its detainees the right to appear before the Commission and the nation in an open and transparent manner denied the right of Sierra Leoneans to see the process of truth and reconciliation done in relation to the detainees”). Available online at: <http://www.trcsierraleone.org/drwebsite/publish/index.shtml>.

¹⁶ Truth and Reconciliation Commission Report, Vol. 2, Ch. 1, Executive Summary, pg. 19, para. 77. Available online at: <http://www.trcsierraleone.org/drwebsite/publish/index.shtml>.

V. No Valid Security Concerns, Especially if Trial Begins After the Elections

13. We as civil society organisations are not oblivious of the fact that the issue of security has always been a priority to the operations of the Court. This concern was cited to justify the transfer of Mr. Taylor to The Hague following his arrest in March last year. It was noted among others that his presence in the sub region would be a threat to the peace in both Sierra Leone and Liberia. What is worthy of consideration, however, is that when Mr. Taylor left office as President of Liberia in August 2003, he resided in Nigeria, a country in the sub region as a 'free man' with no public evidence produced so far justifying his threat to security in West Africa.
14. Besides that, the executive and legislative branches of government in Sierra Leone, as well as civil society groups argued vehemently to have his trial here in Freetown. As far as Sierra Leoneans are concerned, the indicted former Internal Affairs Minister, late Sam Hinga Norman, who wielded so much power as Coordinator of the Civil Defence Forces, posed greater threat to the security of this country than that of Charles Taylor. Nonetheless, from the time of his arrest up to the time of death, there was no reported evidence linking him with any move to cause instability in any part of the country. The same is expected of Mr. Taylor if he is incarcerated here in Freetown.
15. Civil society urges the President to consult, in a transparent fashion, the Government of Sierra Leone and the United Nations Integrated Office in Sierra Leone in regard to the present security situation. Circumstances could be different now than when Mr. Taylor was initially taken away. Whatever the determination may be, civil society respectfully requests that it be given a detailed, open and honest appraisal of the security situation.
16. Additionally, even if security concerns are valid right now, civil society feels that these concerns would be minimized if the trial is delayed slightly and Mr. Taylor is brought back after the July 28th elections this year.

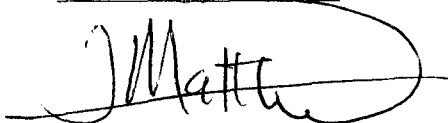
VI. Conclusion

17. We appreciate the opportunity to address the President of the Special Court on this matter. We look forward to reading the responses to our brief from the Prosecution and the Defence.
18. For reasons of ensuring a fair trial and of allowing victims access to the proceedings as part of their reconciliation process, transferring the trial of Mr. Taylor back to Freetown is of utmost importance to civil society organizations throughout the country and West Africa. Civil society pledges to remain engaged in monitoring the trial, no matter the venue, but ideally we will have the opportunity to watch Mr. Taylor in person in Freetown. Thank you for your consideration.

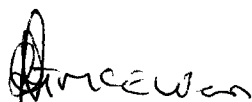
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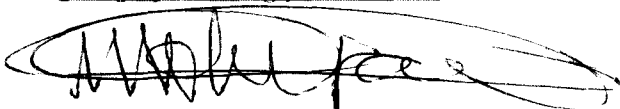
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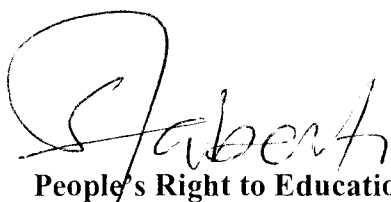
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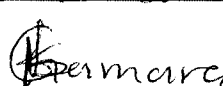
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Table of Authorities

Taylor Cases

- *Prosecutor v. Taylor*, SCSL-03-01-PT-146, Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 14 December 2006
- *Prosecution v. Taylor*, SCSL-03-01-PT-178, Prosecution Motion to Allow Witnesses to Give Testimony by Video-Link, 12 February 2007
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- *Prosecutor v. Taylor*, SCSL-03-01-PT-199, Application for Civil Society *Amicus Curiae* Brief Regarding Change of Venue of Taylor Trial Back to Freetown, 7 March 2007

Other Materials

- First Annual Report of the President of the Special Court for Sierra Leone, for the Period 2 December 2002 – 1 December 2003. Available online at: <http://scsl-server/sc-sl/new/specialcourtannualreport2002-2003.pdf>
- Second Annual Report of the President of the Special Court for Sierra Leone, for the Period 1 January 2004 – 17 January 2005. Available online at: <http://scsl-server/sc-sl/new/specialcourtannualreport2004-2005.pdf>.
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Annex A

**Global Policy Forum, 200 African Civil Society Groups
Insist on Taylor's Trial, 29 June 2005**

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200 African Civil Society Groups Insist on Taylor's Trial

By Eze Anaba

Vanguard
June 29, 2005

An unprecedented coalition of two hundred civil society groups in Africa has drafted a declaration seeking the transfer of exiled former Liberian war lord Charles Taylor to Sierra Leone for trial at the special court for Sierra Leone. The coalition was put together by Amnesty International and Abuja-based Open Society Justice Initiative. The groups are from Sierra Leone, South Africa, Mali, Botswana, Togo, Benin, Cote d'Voire, Burkina Faso, Kenya, Zambia, Ghana, Liberia, Zambia, and Ghana. The highest number of groups came from Cote d'Voire and Sierra Leone that suffered most from Taylor's brutality when he was in power in Liberia.

Although the groups were aware that the African Union was appreciative of Nigeria's gesture to accommodate Charles Taylor so that he would not have any influence in Liberia, they believe that if the problem of Charles Taylor is not solved now it would pose difficult to resolve similar problems in future. Charles Taylor faces a 17- count indictment for war crimes and crimes against humanity committed during the conflict in Sierra Leone. The charges include terrorising the civilian population, unlawful killings, sexual violence, physical violence, forced conscription of child soldiers, abductions, forced labour, looting and burning, and attacks on UN peacekeeping personnel.

The former Prosecutor David M. Craine indicted Charles Taylor on March 3, 2003 and unsealed the indictment on June 4, 2003. Official copies of the indictment and warrant of arrest were delivered to the Nigerian government by the court Registry on November 27, 2003 and the International Police Organisation (INTERPOL) issued a "Red Notice" for Charles Taylor on December 3, 2003. On May 31, 2004 the Appeal Chambers of the Special Count for Sierra Leone rejected a motion filed by Attorneys for Taylor who sought to have the charges against him thrown out on the grounds that Taylor was a sitting head of

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state at the time of the indictment. The prosecutor that succeeded David Craine, Desmond de Silva on assumption of office vowed to bring Charles Taylor to trial. "I make a pledge to the people of Sierra Leone that I will strain every nerve and sinew to see that the monster of evil, Charles Taylor is put in the dock."

Nigeria offered asylum to Taylor in 2003 to induce him to step down as president of Liberia amid a deadly siege of his capital Monrovia by rebels. One term of Taylor's exile agreement is that he won't be handed to Sierra Leone. The Special Court, international community and NGOs in Africa believe that he has violated the terms of his asylum and should be handed over for trial. Besides, the belief is that trying Charles Taylor would be the beginning of the campaign to end impunity in Africa.

Bafile Ezenge head of Amnesty International in Boswana who is co-ordinating the campaign insisted that the African Union is an African organisation and must listen to what the mass of the people of Africa are saying. He said that the only time peace could return to Liberia is if people like Taylor are brought to trial.

His view was echoed by Iyef Traore of Burkina Faso who is the co-ordinator of the campaign there. He said "Those of us in Africa have witnessed closely the atrocities in Liberia. What we are talking about is a fundamental problem. I have a little girl who was amputated during the war in Liberia. She can only get justice if those who amputated her are brought to justice...In Cote D'Ivoire there is a situation of impunity. Dead squads are all over the place. If we don't respond now how are we going to respond in future? We need to realise that we are talking about a universality of justice and that should concern us all."

Francis Dako who is co-ordinating the campaign in Benin Republic dismissed the motion that the campaign against Taylor is being fueled by America. He said it is just a campaign to end impunity in Africa. Komive Hotowossi who is leading 18 organisations said "we believe that the campaign against Taylor is a campaign against impunity. He disagreed with the motion that Taylor's exile in Nigeria has brought peace in Liberia. "This issue of peace in Liberia is false. People have been killed. No justice has been given to the victims.

Olajobi Makinwa who is the head of Amnesty in South Africa said the groups that have agreed to join are bent on ending impunity in Africa. We have to let despots know that there is no room for them. Even if the AU does not force Nigeria now it would eventually do so." Saloun Traore of Mali said the question of justice outweighs any other consideration Nigeria might have for harbouring Charles Taylor.

Jimmy Mowoh head of Amnesty in Sierra Leone believes that Taylor's trial would spur the quest for justice for those who suffered during the war in Liberia. He said the awareness is high in Sierra Leone. "There is great expectation...Charles Taylor must be put on trial...At least 35 NGOs are in support of that movement" he said. With this determination Charles Taylor must be uncomfortable in Calabar.

[**More Information on International Justice**](#)
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More Information on NGOs and International/Regional Institutions

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Annex B

**Amnesty International Press Release,
Sierra Leone: African and International Civil Society Groups
in Fourteen Capitals Call on African Union Leadership
to Ensure Charles Taylor Faces Justice, 30 June 2005**

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Previous

AMNESTY INTERNATIONAL PRESS RELEASE

AI Index: AFR 51/006/2005 (Public)
News Service No: 178
30 June 2005

Sierra Leone: African and international civil society groups in fourteen capitals call on African Union leadership to ensure Charles Taylor faces justice

African and international civil society groups are today launching a campaign urging the African Union (AU) Assembly to demonstrate its human rights commitment when it meets in Libya next week by ensuring that Charles Taylor faces justice for the crimes that he committed against African men, women and children.

"It is now time for the African Union to join ranks with other key nations and international bodies in calling for Charles Taylor to face trial for these serious crimes," said Kolawole Olaniyan, Africa Program Director at Amnesty International. "Taking a stand will not only bring justice to the countless victims of Charles Taylor and their families but also show that the AU is serious about combating the disastrous cycle of impunity in West Africa."

Charles Taylor, former President of Liberia, has been accused of 17 counts of war crimes and crimes against humanity against the people of Sierra Leone. These crimes include killings, mutilations, rape and other forms of sexual violence, sexual slavery, the recruitment and use of child soldiers, abduction, and the use of forced labour by Sierra Leonean armed opposition groups, which Taylor actively supported. In 2003, Charles Taylor sought refuge in Nigeria, where he currently resides.

A coalition of up to 300 African and international civil society groups, including Amnesty International, Human Rights Watch, and Open Society Justice Initiative (OSJI), have sent a declaration to the AU demanding that Nigeria surrenders Charles Taylor to the Special Court for Sierra Leone. Press conferences are being held in fourteen countries throughout Africa today to ensure that this message is heard loud and clear.

The AU has publicly expressed commitment to protect and promote human rights in Africa and one of the fundamental objectives of the AU under its Constitutive Act of 2000 is "condemnation and rejection of impunity."

"The failure of the AU Assembly to publicly support the hand-over and trial of Charles Taylor before the Special Court would be inconsistent and incompatible with the organization's principles and objectives," said Kolawole Olaniyan. "The AU must discourage its members, including Nigeria, from shielding Taylor from prosecution before the Special Court."

"As long as Nigeria continues to shield Charles Taylor from trial, his victims will not receive justice and West Africa will continue to be insecure and unstable. As long as the AU Assembly fails to act, African leaders must accept responsibility for this instability," said Chidi Odinkalu, Africa Director of the Open Society Justice Initiative.

"Ensuring that Taylor faces justice is key to maintaining peace and stability in the sub-region," said Richard Dicker, Director of the International Justice Program at Human Rights Watch. "President Obasanjo, as the chair of the African Union, must provide the necessary leadership to achieve this."

"Supporting the international and regional efforts to bring Charles Taylor to justice will show that the AU cares about the well being of Africans. It will also demonstrate that the AU is totally different from its predecessor, the Organization of African Unity (OAU), whose interest was to protect African presidents rather than the human rights of individuals," added Kolawole Olaniyan.

To arrange an interview, please contact:

Richard Dicker, Human Rights Watch -- tel: +1 212 216 1248 or mobile: +1 917 747 6731
Chidi Odinkalu, Open Society Justice Initiative -- tel: + 234 803 419 0668
Eliane Drakopoulos, Amnesty International -- tel: +44 (0)207 413 5564

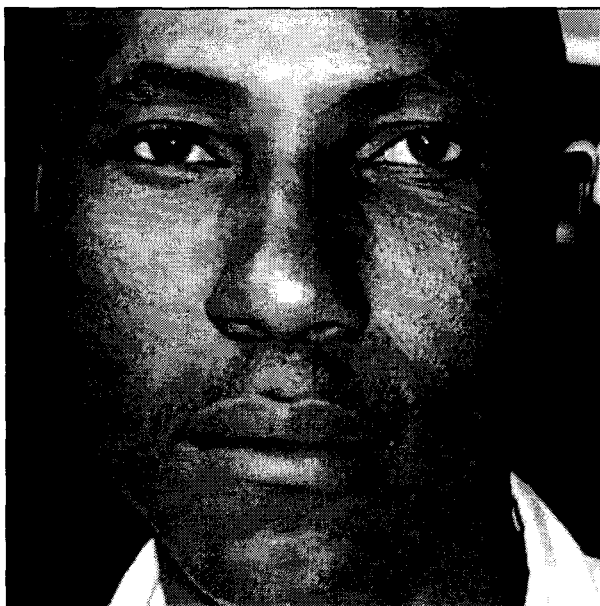
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Annex C

BBC News, Your Views, Charles Taylor's trial

BBC NEWS

Your views: Charles Taylor's trial



**Kerifallah Janneh,
Sierra Leone**

I welcome the news that
Charles Taylor is being
brought to the Special Court.

This is a wonderful moment
for all Sierra Leoneans.

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BBC NEWS**Your views: Charles Taylor's trial****Neneh Jalloh, Sierra Leone**

Charles Taylor's trial should take place in Sierra Leone, because of the deeds committed during the 11-year long war that saw many Sierra Leoneans suffer.

But I fear insecurity, as Charles Taylor still has people loyal to him. So my advice is that security should be beefed up.

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BBC NEWS**Your views: Charles Taylor's trial**

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**Olabisi Garrick, Sierra Leone**

I don't support Charles Taylor being transferred to The Hague. He should face trial in Sierra Leone because it is the country where he committed war crimes and crimes against humanity.

I'm confident that there are not going to be any security worries, so he should stay in Freetown for his trials.

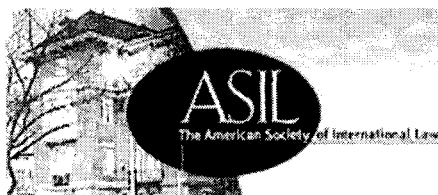
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Annex D

**Charles Jalloh, ASIL Insight: Special Court for Sierra Leone
Dismisses Taylor Motion Against Change of Venue, 15 June 2006**



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Special Court for Sierra Leone Dismisses Taylor Motion Against Change of Venue
By Charles Chernor Jalloh

June 15, 2006
Volume 10, Issue 15

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Addendum By Charles Chernor Jalloh

Introduction

On May 29, 2006, the Appeals Chamber of the Special Court for Sierra Leone ruled that the Urgent Defence Motion Against Change of Venue filed by Karim A.A. Khan, the Provisionally Assigned Counsel representing former Liberian President Charles Ghankay Taylor, was inadmissible. The motion was therefore dismissed.^[1]

Background to the Motion

On April 3, 2006, at his initial appearance before the Special Court in Freetown, Sierra Leone's capital, Mr. Taylor was formally charged with an 11-count Amended Indictment for 1) crimes against humanity, 2) war crimes and 3) other serious violations of international humanitarian law contrary to Articles 2, 3 and 4 respectively of the Statute of the Special Court.^[2] In the Amended Indictment,^[3] the Prosecutor uses theories of command responsibility and joint criminal enterprise to allege that Mr. Taylor is, by his acts or omissions, criminally responsible for planning, ordering and/or instigating numerous unlawful killings, acts of terrorism, sexual and physical violence, conscripting or recruiting children under fifteen years into armed forces or groups, abductions, child labour and looting, during the latter half of the decade-long civil war in the small West African nation (between November 30, 1996 to about January 18, 2002).

On March 29, 2006, a day after Mr. Taylor's transfer to the Court, Justice Raja N. Fernando (Sri Lanka), the President of the Court at the time,^[4] sent a letter to the Government of the Netherlands and the President of the International Criminal Court (ICC) asking them to facilitate the Special Court's trial of Taylor in the Hague. Judge Fernando's letter cited concerns about security of the West Africa sub-region as the main motivation for seeking to hold the Taylor trial in the Netherlands.^[5] The Dutch Government is apparently willing to host the trial, provided a Security Council resolution formalizes the request and a third country is found to take Taylor after his trial, whether or not he is found guilty or not guilty.^[6]

On April 7, 2006, Counsel for Mr. Taylor filed an urgent motion before Trial Chamber II,^[7] which is currently seized of the Taylor case, seeking the following orders: 1) that no change of venue be made without first giving Mr. Taylor an opportunity to be heard on the important issue of venue of his trial; 2) that the President of the Special Court withdraw his requests to the Netherlands and the ICC; and, in the alternative, 3) clarification that the requests and the decision to transfer the Taylor case to the Netherlands had not yet been made.^[8]

On April 24, 2006, the Prosecution filed its Response in which it opposed the Taylor motion principally on the ground that the decision authorizing a judge or Trial Chamber to sit away from the seat of the Special Court is one made by the President of the Court acting in his administrative, rather than judicial, capacity. The Prosecution also argued, *inter alia*, that the defence motion was misconceived because it failed to show that there had been an order changing the venue of Taylor's trial; or that any of Taylor's Article 17 rights had been violated; or that any of the applicable instruments of the Special Court required a hearing of the parties by the President before a decision to change the venue of a particular trial is made.

In an Order issued on May 3, 2006, Trial Chamber II found that the motion filed by Mr. Khan raised fundamental objections relating to jurisdiction because it challenged the President's authority to change the venue of the trial and alleged his abuse of the processes of the Special Court. Thus, Trial Chamber II referred the motion to the Appeals Chamber of the Special Court for determination pursuant to Rule 72(B)(E) and (F) of the Special Court's *Rules of Procedure and Evidence* (RPE).

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RELEVANT DOCUMENTS

[Statute of the Special Court for Sierra Leone \(SCSL\)](#)

[SCSL Rules of Procedure and Evidence](#)

[Agreement on Establishment of the Special Court for Sierra Leone](#)

[Appeals Chamber Decision on Change of Venue Motion](#)
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The Appeals Chamber Decision

Upon the referral of the De fence Motion to the Appeals Chamber, Justice Fernando, the President of the Special Court whose actions were being challenged by the motion, was immediately faced with the preliminary question of the proper composition of the panel of three judges to hear the motion. In a surprising move, instead of seeking the recusal of the two judges of the Appeals Chamber who had already publicly expressed certain views on the Taylor matter, the De fence filed a new motion in which Taylor waived any objections to those judges being assigned to hear his motion against change of venue or, and this is particularly significant, any other aspect of his case.[9] The panel of three judges of the Appeals Chamber appointed by President Fernando to consider the motion did not include himself or Justice Geoffrey Robertson, who Taylor had also indicated could form part of the bench hearing the motion.[10]

In the short four-page decision issued last week, the Appeals Chamber first observed that Trial Chamber II's referral of the de fence motion to it for determination was improper. First, the motion had nothing to do with either jurisdiction or abuse of process. And second, the motion sought relief that the Trial Chamber did not have the power to grant.

While the Appeals Chamber could have exercised discretion not to examine the merits of the motion because of the improper referral by Trial Chamber II, it decided to do so and concluded that the motion was inadmissible because it would amount to judicial interference with the "administrative and diplomatic functions"[11] of the President, which neither the Trial nor the Appeals Chambers are authorized to do under the relevant instruments of the Special Court. The Appeals Chamber then explained that the procedure regarding a change of venue for a trial is to be found in the Agreement between the UN and Sierra Leone establishing the Special Court and under the RPE. In addition, according to the Appeals Chamber, the residual powers of the Trial Chamber to ensure a fair trial for an accused could not avail the De fence in its attempt to secure pre-emptive relief when the President had not taken any formal decisions affecting the fair trial rights of Mr. Taylor. In the final analysis, the Appeals Chamber held, at this stage of the proceedings wherein the President is undertaking diplomatic steps to secure a new venue (as contemplated under the relevant provisions), questions about venue of the Taylor trial are best directed to the President of the Court rather than the Chambers. Consequently, the Appeals Chamber concluded that the motion is inadmissible and must be dismissed.

Conclusion

This decision by the Appeals Chamber is important for at least three reasons. First, it addresses the first de fence motion brought before the Special Court challenging the possible transfer of a trial outside of Sierra Leone, and in the process, clarifies to some extent the relevant rules governing a possible change of venue of a trial before the Special Court (that is, Article 10 of the Agreement and Rule 4 of the RPE[12]).

While the Appeals Chamber did not expound how those rules will apply to the case at bar, it seems that Article 10 of the Agreement would only be determinative if we read the second sentence of the provision, which in relevant part provides that "The Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions," to mean that the Special Court may conduct trials at locations other than its seat – Freetown. As the Prosecution and the De fence briefs disagreed on how to construe this sentence, especially the word "functions" (whether, for instance, "functions" meant hearing an entire trial or a single witness, or both), it would have been helpful to Counsel on both sides, as well as to the judges of Trial Chamber II, for the Appeals Chamber, the final arbiter of the law applicable in the Special Court, to spell out how to properly interpret and apply Article 10. This matter remains unresolved and could therefore again come before Trial Chamber II once the President of the Special Court makes a formal decision on the venue of the Taylor trial.

The second provision cited by the Appeals Chamber, Rule 4 of the RPE, is derived from the equivalent provision in the *Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda* (ICTR RPE). At first blush its applicability is less controversial because of the simplicity of its language which states: "A Chamber or Judge may exercise their functions away from the Seat of the Special Court, if so authorized by the President." [13] Indeed, as the Prosecution argued, Rule 4 seems to be in line with the administrative functions entrusted to the President of the Special Court by Rule 19, in particular 19(A), of the RPE. [14]

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The crux of the interpretative problem between the Prosecution and the Defence in respect of this provision arises from the difference in language of Rule 4 of the ICTR RPE, upon which Rule 4 of the Special Court's RPE is based. ICTR Rule 4 allows the President of that tribunal to authorize a Chamber or a Judge to exercise their functions away from the seat of their tribunal provided that this is found to be "in the interests of justice," a standard that was removed from the iteration of the equivalent rule in the Special Court.[15] Even in its ICTR version, the rule is silent on how the determination is made that something is "in the interests of justice," much as its equivalent at the Special Court does not indicate the basis upon which the President should determine when to authorize a Chamber or judge to sit elsewhere. For example, can the President make that determination *ex parte* or should the views of the Defence (and thus the Prosecution) be taken into account? On this issue, Mr. Khan submitted that the Special Court should adopt the relatively more transparent ICC procedure that would allow Taylor to express views on the proposed change of venue of his trial. By implication, Mr. Khan suggested that with the enhanced transparency arising from the participation of the parties, the President's decision to move a trial to another location would less likely be made for extrajudicial or purely political reasons.[16]

Secondly, the bench was careful not to be seen to have pronounced, in this ruling, on the propriety of the procedure followed by Justice Fernando, the previous President of the Special Court, who merely took what the Appeals Chamber characterized as "preliminary diplomatic steps," as opposed to a final decision.

Whether intended or not, the effect of this approach by the Appeals Chamber is to give considerable latitude to Justice George Gelaga King (Sierra Leone), the new President of the Special Court,[17] to examine the approach of his predecessor, and to agree or disagree with him as to whether a change of venue for the Taylor case is necessary. If he stands by the decision of the previous President, as he most likely would given the stated concerns about the security and stability of the West Africa sub-region, this decision will allow him to continue seeking to put in place the modalities facilitating the trial of Taylor in the Hague without worrying about further judicial challenges to his (administrative) actions until the final order for transfer of the trial is formally made.[18] The language of the decision implies that at such a point, if and when it is reached, Counsel for Mr. Taylor could choose to file a motion invoking the (residual) inherent jurisdiction of Trial Chamber II to ensure that Mr. Taylor has a fair trial by seeking judicial review of the President's (administrative) decision.[19]

Furthermore, when the new President determines whether a change of venue for the Taylor trial is necessary, the decision leaves open the distinct possibility that Justice King could choose to seek the views of the parties (though the Appeals Chamber decision implies that he would not be required to do so under the applicable provisions of the Special Court).

Third, and closely related to the previous point, from the perspective of the accused and many Sierra Leonean victims of the war, the manner in which this matter is disposed of by Justice King, who is a national of the country in which Taylor's alleged crimes took place, will in the end serve as a barometer on which they could measure the extent to which their interests are balanced against each other by the Special Court and the international community, especially given the position adopted by the accused and the victims that the trial should be held in Sierra Leone.[20]

About the author

Charles Chernor Jalloh holds the B.A. (Guelph), LL.B. (McGill), and B.C.L. (McGill). He is a member of the Bar of Ontario, Canada, and is Legal Advisor to the Office of the Principal Defender, Special Court for Sierra Leone. He is concurrently a Chevening Scholar and candidate completing the Master of Studies in International Human Rights Law at the University of Oxford (Kellogg College). The opinions expressed in this article are his own and not necessarily those of the Special Court or any other organizations with which he may be associated. E-mail: jallohc@yahoo.com.

Footnotes

[1] See *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-AR72-104, Decision on Urgent Defence Motion Against Change of Venue, 29 May 2006, online: <<http://www.sc-sl.org/Documents/SCSL-03-01-AR72-104.pdf>> (last accessed: 31 May 2006).

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- [2] See *Statute of the Special Court for Sierra Leone*, online: <<http://www.sc-sl.org/scsl-statute.html>> (last accessed: 31 May 2006).
- [3] See *Prosecutor v. Charles Taylor*, SCSL-03-01-I-75, Amended Indictment; online: <<http://scsl-server/sc-sl/new/Documents/SCSL-03-01-I-75.pdf>> (last accessed: 31 May 2006). The Amended Indictment was sealed and was only disclosed by the Trial Chamber in March 2006. David Crane, the Special Court's first Prosecutor, issued the initial 17-count indictment against Mr. Taylor. For that and other decisions related to the Taylor case, see <<http://scsl-server/sc-sl/new/taylor-decisions.html>>. For a summary of the Appeals Chamber decision following Taylor's unsuccessful challenge of the Special Court's jurisdiction over him while he was still President of Liberia, see C. Jalloh, ASIL Insight: *Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone* (October 2004) <<http://www.asil.org/insights/insigh145.htm>> (last accessed: 31 May 2006).
- [4] Justice King was elected President of the Special Court at the Plenary held between May 12 and 14, 2006 in Freetown. See Special Court for Sierra Leone, Press Release dated 15 May 2006, "New President for the Special Court for Sierra Leone", online: <<http://www.sc-sl.org/Press/pressrelease-051506.pdf>> (last accessed: 31 May 2006).
- [5] For an analysis of the intersection of international law and international politics in the Taylor case, see Charles Jalloh, *The Law and Politics of the Charles Taylor Case*, Canadian Council on International Law Web Exclusive (April 2006), online: <http://www.ccil-ccdi.ca/index.php?option=com_content&task=view&id=165&Itemid=76> (last accessed: May 31, 2006).
- [6] While the Security Council has drafted a resolution that would authorize the transfer of the Taylor trial to the Netherlands, it has become a challenge to find a country willing to receive Mr. Taylor after his trial. The trial has not started; based on the experience with similar high profile cases in other international criminal tribunals, it may be at least a year or two away.
- [7] Trial Chamber II is composed of Justices Richard Lussick (Samoa), Presiding; Julia Sebutinde (Uganda); and Teresa Doherty (Northern Ireland). The Government of Sierra Leone nominated the former while the Secretary-General of the United Nations appointed the latter two.
- [8] See *Prosecutor v. Charles Ghankay Taylor*, SCSL. SCSL-03-01-PT-91, Urgent De fence Motion for an Order that no Change of Venue from the Seat of the Court in Freetown be Ordered without the De fence 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 and (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, especially paras. 2-3.
- [9] See *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-PT, De fence Filing on Composition of Appeals Chamber Pursuant to Trial Chamber's Order Dated 03 May 2006.
- [10] See Taylor waiver, *ibid* at Annex A.
- [11] Appeals Chamber Decision at para. 5.
- [12] See *Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, online: <<http://www.sc-sl.org/scsl-agreement.html>> (last accessed: 31 May 2006).
- [13] Indeed, the rules of procedure and evidence obtaining before the ICTR were to apply *mutatis mutandis* before the Special Court. See Article 14 of the *Statute of the Special Court*.
- [14] See Prosecution Reply to Urgent De fence Motion at para. 7.
- [15] It is hard to discern why this decision was made given that neither the De fence nor the Prosecution, or for that matter the public, have access to the Minutes of the Plenary that adopted the RPE at the Special Court. Otherwise, both sides could have had recourse to the *travaux préparatoires* in an attempt to discern the intent of the judges in adopting a somewhat different rule for the Special Court.
- [16] See De fence Reply to the Prosecution Response to the Urgent De fence Motion filed on 27 April 2006 at para. 16.
- [17] See Press Release, *supra* note 4.
- [18] In this vein, it is important to note that Justice King, the new President of the Special Court, also participated in the bench comprised by the President to dispose of this de fence motion. This could raise important questions about fundamental principles of justice.
- [19] At that point, two arguments could be made by De fence Counsel should Taylor wish to oppose his transfer. First, the same one made in this Urgent De fence Motion, i.e., that the President should not make the decision to transfer the case until Taylor puts forth his views on the matter because of the possible impact of the move on his right to a fair trial. Second, the decision to move the trial itself could be challenged on the basis that it violates fair trial guarantees contained in Article 17 of the Statute of the Special Court.
- [20] For more on this, see *The Law and Politics of the Charles Taylor Case*, *supra* note 5.

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Addendum By Charles Chernor Jalloh
June 21, 2006

On 16 June 2006, the United Nations Security Council unanimously adopted Resolution 1688 (2006) in which it concluded that because of security concerns, the trial of former Liberian President Charles Taylor in Freetown, the seat of the UN-backed nationalized Special Court for Sierra Leone, is not feasible because Mr. Taylor's continued presence in the West Africa sub-region "is an impediment to stability and a threat to the peace of Liberia and of Sierra Leone and to international peace and security in the region." This is the first Security Council resolution providing for the change of venue of a high profile trial before an international criminal court.

Contrary to media reports, the resolution, which was passed pursuant to Chapter VII of the Charter of the United Nations, did not "authorize" the transfer of Mr. Taylor to the Netherlands for trial. Only the President of the Special Court, currently Justice George Gelaga King (Sierra Leone), is empowered under the relevant instruments of the Special Court to order the transfer of an accused and to permit a Trial Chamber to exercise its functions away from Freetown. In fact, in a decision issued on June 19, 2006, two days after the UNSC Resolution, President King ordered that Mr. Taylor be transferred to detention in the Netherlands and authorized the Trial and Appeals Chambers to sit in The Hague for the trial, including any appeals.

As if to anticipate the argument that the trial of a former African leader should be held at another location on the continent, rather than Europe, the Security Council concluded that "it is not feasible for the trial of former President Taylor to be hosted at the premises of the International Criminal Tribunal for Rwanda due to its full engagement on the completion strategy, and that no other international criminal tribunals exist for the trial of former President Taylor in Africa."

For the first time in a matter relating to the Special Court, the Security Council also invoked its Chapter VII powers to "encourage" all states to facilitate the presentation of evidence or witnesses in respect of the Taylor trial. In this regard, aside from permitting Taylor to be transported to and within the Netherlands for detention and trial, the Security Council decided that the Dutch Government shall enable the appearance of all witnesses before the Special Court under the same conditions as those obtaining for the International Criminal Tribunal for the former Yugoslavia.

Paragraph 6 of Resolution 1688 (2006) also addressed the concern expressed by civil society, within and outside Sierra Leone, that the people of the West Africa could be denied the opportunity to follow the Taylor trial should the case be transferred to The Hague, by calling on the United Nations Secretary-General and relevant states to assist the Special Court to make the proceedings accessible to people in the sub-region.

President Taylor, who was under a Security Council travel ban along with almost sixty of his family members and close associates, was exempted from that ban for the purposes of his trial and judgment. Importantly, to ensure a fair trial, the Security Council also exempted any other persons on the travel ban list whose presence as witnesses before the Special Court is required.

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Footnotes

The resolution is available online at the UN Security Council website <<http://daccessdds.un.org/doc/UNDOC/GEN/N06/392/20/PDF/N0639220.pdf?OpenElement>> (last accessed: June 19, 2006).

After the resolution was passed, the Russian Federation registered a disclaimer to the effect that the use of Chapter VII powers to address the Taylor venue issue is not intended to serve as a

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precedent to dispose of "similar issues in the same manner in the future". See Press Release dated June 16, 2006, "Security Council Approves Trial Transfer of Former Liberian President Charles Taylor to the Netherlands" <<http://www.un.org/News/Press/docs/2006/sc8755.doc.htm>> (last accessed: June 19, 2006). While change of venue is well known to municipal legal systems, to this author's knowledge, the issue had not previously arisen in an international criminal court. This may partly be a function of the reality that after the Nuremberg and Tokyo Tribunals, the bulk of modern international criminal trials have been held in countries outside where the crimes were committed. For instance, the ICTR sits in Arusha, Tanzania (not Rwanda) and the ICTY sits in the Hague (not in the former Yugoslavia). Of course, the ICC is based in the Hague, the Netherlands and has jurisdiction over crimes committed throughout the world. The rules of procedure and evidence of the ad hoc tribunals provide, however, that these tribunals can sit elsewhere (in the case of the ICC, anywhere considered desirable pursuant to Article 3 of the Rome Statute). In addition, the locus of a crime is not necessarily material for international crimes attracting universal legal and moral condemnation such as "crimes against humanity". See, for example, "U.N. authorizes Taylor's war crimes trial in Hague" (June 16, 2006) <<http://edition.cnn.com/2006/WORLD/africa/06/16/taylor.hague.reut/index.html>> (last accessed: June 19, 2006).

See Prosecutor v. Charles Taylor, SCSL-03-01-P3, "Order Changing Venue of Proceedings". The President cited the Special Court's Statute and Rules of Procedure and Evidence. Given the theoretical possibility that the Netherlands could assert jurisdiction over Taylor once he is in its territory, the Security Council also decided that, in respect of matters within the Statute of the Special Court, it shall retain exclusive jurisdiction over former President Taylor during his transfer and presence in the Netherlands. While this means that the Dutch Government cannot try Mr. Taylor for the crimes he allegedly committed in Sierra Leone, without the consent of the Special Court, it seems to leave open the option for the host country to assert jurisdiction over President Taylor for acts he may have committed during the war in Liberia. The President's decision conceded that the transfer of Taylor to The Hague would sacrifice the direct and personal access of the average Sierra Leonean to the trial. However, that concern was outweighed by the security concerns. See UNSC Resolution 1521 (2003) adopted 22 December 2003.

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Annex E

**SCSL Press Release, Special Court Registrar
Welcomes United Nations Security Council Resolution, 16 June 2006**



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Special Court for Sierra Leone
Press and Public Affairs Office

PRESS RELEASE

Freetown, Sierra Leone, 16 June 2006

Special Court Registrar Welcomes United Nations Security Council Resolution

The Registrar of the Special Court, Mr Lovemore Munlo SC, has welcomed today's Chapter 7 Security Council Resolution, which clears the way for the trial of Charles Taylor to be held in The Hague.

"Resolution 1688 provides the legal basis for the Government of the Netherlands to conclude a Headquarters Agreement with the Special Court for Sierra Leone," Mr Munlo said. "This was a necessary step before the Special Court could make a determination on whether Charles Taylor should be tried in The Hague".

The Security Council Resolution calls the presence of Mr Taylor in the subregion "an impediment to stability and a threat to the peace", and asks the Secretary-General "as a matter of priority" to assist in making the legal and practical arrangements for the transfer of Mr Taylor to the Netherlands, and for the provision of all necessary facilities for the conduct of his trial.

The Security Council also calls on the Dutch government to facilitate the trial by allowing, among other things, the transport to and the detention of Mr Taylor in the Netherlands, and enabling the appearance of witnesses, experts and other persons required by the Court under the same conditions as are provided for the International Criminal Tribunal for the former Yugoslavia (ICTY).

Mr Munlo emphasised that although the trial will take place in a courtroom of the International Criminal Court (ICC), it will be conducted in accordance with the Statue and Rules of the Court by Judges of the Special Court for Sierra Leone. "The Resolution stresses that the Special Court will retain exclusive jurisdiction over Mr Taylor during his presence in the Netherlands," Mr Munlo said.

The headquarters of the Special Court will remain in Freetown, where three other trials are already underway. Two of these trials have already entered the Defence phase, while the Prosecution is expected to conclude its case in the third trial later this year.

#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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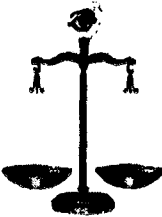
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Annex F

**Sierra Leone Court Monitoring Programme,
The Monitor, Vol. 19, Dec. 2006**

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The Monitor

Official Newsletter of the Sierra Leone Court Monitoring Programme

Volume 19, December 2006

Quoting...!!!

"The good we secure for ourselves is precarious and uncertain until it is secured for all of us and incorporated into our common life." Jane Addams

Director's End of Year Message

Introduction

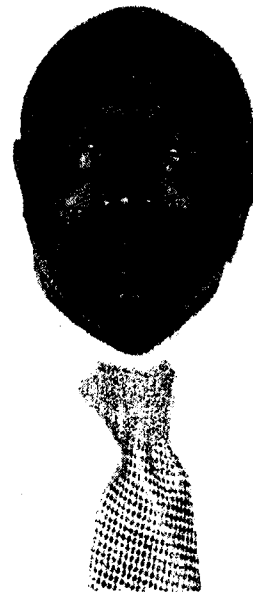
It has been an eventful year for us as an institution. During the course of the year, we established two regional offices; one in Bo covering the South and the East and the other in Makeni for the North. Monitors in these regions were assigned to monitor both general law as well as customary law cases. We also assigned outreach officers to raise awareness on the outcome of issues being monitored. Furthermore, we have continued to monitor cases at different levels of the courts in Freetown, the Special Court and also the Anti Corruption Commission. Recently when President Kabbah inaugurated the Commissioners of the National Human Rights Commission (NHRC), we made a commitment to monitor it once it starts operations which we hope will commence early in 2007. The NHRC is the Government's primary human rights protection body. Given the fact that human rights are primarily claimed against governments, we have decided to monitor how the Commission will maintain equilibrium by being both a government institution on the one hand and a right protection body on the other. We were also engaged in other activities such as the training of monitors in both Freetown and the provinces, conducted regular radio phone-in programmes, held town hall meetings, organized debates/symposia in the constituent colleges of the universities and published our monthly magazine, The Monitor.

Essence of Effective Monitoring

There is no doubt that the two judicial systems (national courts and the Special Court) concurrently being

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Mohamed Suma, Programme Director

practised in Sierra Leone are central to the post-conflict reconstruction efforts in the country. Owing to their indispensability, the SLCMP firmly believes that it is

that, the fact that 55 was in charge of looking after the women during the war in Colonel Eddie Town did not prove any major responsibility. Furthermore, the Defence referred to the testimony of another Prosecution Witness Gibril Massaquoi who stated that 55 was at the State House. The Defence emphasized that the fact that the Prosecution witnesses have given different stories regarding the position 55 held, was indicative of his low ranking in the hierarchy of the AFRC. He pointed out that 55 was number twenty-one (21) on the hierarchy of the AFRC. The Prosecution had earlier submitted to the Trial Chamber that 55 was number three on the hierarchy of the AFRC. Additionally, the Defence also submitted that, the Prosecution allegation of the hierarchy of 55 in the bush should not be given credence, as there was no certainty regarding his actual position.

Furthermore, the Defence claimed that 55 was used as a substitute indictee after the Prosecution had failed to arrest its prime indictees such as Sam Bockarie (a.k.a. Maskita), Johnny Paul Koroma and Charles Taylor, and also after it had discovered that Foday Sankoh was terminally ill. He also pointed out that the initial indictment issued in March 2003 contained 8 persons and did not include 55. The Defence further said that its client was included in the indictment in order to justify their mandate or eligibility, thus the reason why 55's indictment was

issued in September 2003, long after the others' (March 2003). It stated that, the discretion exercised by the Prosecutor was not reasonable as this may lead to hand picking of people without any objective justification.

He also rebutted the charge of joint criminal enterprise towards forming a common plan and purpose, as the Third accused was said to have participated with others in order to seize political power. He said the coup did not form part of and did not affect the indictment anyhow. The Defence further said that, the AFRC was merely a political body that governed Sierra Leone for some time and ceased to exist since February 1998. It never transformed itself into any military organization, as the Sierra Leone Army was the only military organization. He stated that one Prosecution witness mentioned SAJ Musa saying that their aim was to reinstate the Sierra Leone Army and not to seize political power. The Defence closed its case by emphasizing that the Prosecution had failed to prove the guilt beyond reasonable doubt and therefore, the Third accused should be acquitted of the charges.

Following the closing arguments, the Presiding Judge closed the case by virtue of Rule 87(a). In addition, he announced that date of issuance of the verdicts will be announced.

SLCMP Meets with the Registrar of the Special Court for Sierra Leone

On Thursday 7 December 2006, Mohamed Suma and Allieu Vandi Koroma, Programme Director and Monitor in Charge of high profile cases respectively of the Sierra Leone Court Monitoring Programme (SLCMP) caught up with the Registrar of the Special Court for Sierra Leone, Mr. Lovemore G. Munlo, at his Jomo Kenyatta Road office in Freetown. During their conversation, salient issues regarding update on the trial process, the transfer of Charles Taylor to The Hague, increasing Sierra Leonean access to the trial process, the legacy of the Court especially to the people of Sierra Leone, what happens next after the mandate of the Court and challenges encountered so far in the management and administration of the Court were discussed.

The Special Court for Sierra Leone (SCSL) was set up by an Agreement between the Government of Sierra Leone and the United Nations by virtue of Security Council resolution 1315 of 14 August 2000. It was mandated to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

The Registry is responsible for the overall administration and management of the court. It provides support services to the Trial Chambers, the Office of the Prosecutor, and the Defence Office, and serves as the official channel of communication for the Court. This article therefore recounts mainly what the Registrar said to the SLCMP staff.

Update on the Trial Process

Giving an update on the trials, Mr. Munlo said that there were 9 accused persons on trial here in Freetown namely, Issa Hassan Sesay, Morris Kallon and Augustine Gbao of the Revolutionary United Front (RUF); Sam Hinga Norman, Moinina Fofana and Allieu Kondewa of the Civil Defence Forces (CDF); and Alex Tamba Brima, Santigue Borbor Khanu and Ibrahim Bazy Kamara of the Armed Forces Revolutionary Council (AFRC). He said that the CDF and AFRC trials were nearing completion stage; witnesses have been heard, evidences tendered and closing arguments presented by both the Prosecution and Defence Counsel. He said, "We've moved very far; what remains now is judgment". According to him, when the Judges come back in January after the recess, they would be writing the judgments. He also presumed that verdicts would be delivered by mid 2007. He went on to say that he had already gone into an agreement with Senegal for the treatment of the detainees when the need arises.

Transfer of Charles Taylor to The Hague

On the issue of the transfer of Charles Taylor to The Hague, Mr. Munlo said that the circumstances surrounding Charles Taylor's arrest should be carefully looked into considering the capricious situation in the country and the sub region, especially when people have been caught taking pictures of the Court's infrastructure, it was advised by professional security personnel that Taylor should be tried elsewhere. According to the professional security personnel, there is the tendency for supporters of Charles Taylor to try and disrupt the trial process thereby causing instability which might have far reaching effects. Consequently, he added, the United Nations Security Council, made a resolution for the transfer of Charles Taylor to The Hague, a decision which

cannot be reversed. He said that Sierra Leoneans should not bury their heads in the sand and become oblivious of the harsh realities. He therefore implored all Sierra Leoneans to look at the issue of Taylor's transfer in the interest of peace and regional stability rather than in the interest of politics.

Increase Access to the Taylor Trial

On the issue of increased access to the trial process, Mr. Munlo said that prior to Mr. Taylor's transfer to the Special Court, court officials and the Outreach coordinator had visited Liberia in July 2004 and held meetings with members of the Legislature, the transitional Government, civil society and Sierra Leonean refugees. After Mr. Taylor's arrest and transfer to the Special Court, two low profile consultation visits with Liberian civil society officials were made by members of the Outreach section of the SCSL. Liberian civil society groups, as part of an experience sharing meeting between Sierra Leonean Civil Society, officials of the Court and Liberians, also visited the Special Court in October and an outcome document was derived recommending joint outreach strategy for the sub region.

An Outreach Secretariat has been set up in Liberia by 23 civil society groups, including Catholic Justice and Peace Commission, Association of Female Lawyers of Liberia, Liberia NGO Network, Liberia Muslim Council, etc.

Technical and financial support has been provided by the SCSL for implementation of outreach programme, including Radio talk-shows, meetings with civil society, television shows, and screening of trial clips. Equipment has been procured to assist them in their work.

He said that following meetings with the Vice President, the Minister of Justice, and other Liberian Government Ministers who were fully supportive of their work; an official launching was to take place on 7 Dec. 2006 in Monrovia and presided over by an EU representative whilst the Key-note address was to be given by the Minister of Justice of Liberia.

Outreach to the Republic of Guinea, according to the Registrar, is in the offing. A consultation visit to discuss outreach activities in Guinea is being coordinated by the Mano River Women's Peace Network. Other Guinean civil society groups like the West Africa Youth Network and the Civil Society Forum will also be participating in the consultation meeting in Conakry.

Mr. Munlo said that the Court is trying to source funds from the EU to train reporters on the Charles Taylor trial who would be going to The Hague in alternative turns. The Court is also making frantic efforts to ensure visa provisions for some of the Civil Society people who would be going to the Netherlands. Video clips of the Charles Taylor trial, he assured, will be shown to people all over especially in Sierra Leone and Liberia.

Issue of Legacy

The Registrar noted that the Special Court has always recognized, not only the critical importance of leaving a legacy for the people of Sierra Leone, but also the unprecedented opportunity to contribute to the restoration of the rule of law. With this in mind and as part of the Completion Strategy, the SCSL created a Legacy Working Group in 2005 which comprised mainly of Sierra Leoneans. The Working Group's objective is to identify and implement a range of projects, which will contribute to the Court's lasting legacy. These projects focus on the transfer of judicial and administrative knowledge by building on the Court's current activities and complementing initiatives by other organizations to further enhance the administration of justice in Sierra Leone.

The legacy of the SC will be reflected in the sectors of human rights, international humanitarian law, rule of law, civil society and in the legal profession. Examples of current projects, which contribute to each of the aforementioned areas, include various training programmes and capacity building initiatives such as Sierra Leone Police Training in major Case Management and Source/Witness Protection, funded by the Canadian Department of Foreign Affairs and International Trade and Court Interpreters Professionalizing Training Programme,

funded by the European Commission. Also the employment of nationals in the workings of the Court is worth noting for they now know what international justice is all about. The publishing of books about the rules of engagement in war; about human rights; and training of people about investigations; and witness protection etc. are all geared towards imparting knowledge to the people of Sierra Leone. The Court's infrastructure, worth over \$4,000,000 is one of the most important components of the legacy.

Also through the generous support of the European Commission, the Outreach Unit has engaged in a number of legacy-oriented projects including initiating a Grassroots Campaign on the Special Court's mandate and the importance of a fair and independent judiciary. These include establishing forums where various rule-of-law stakeholders from all sectors of Sierra Leonean society gather to discuss the way forward; establishing "Accountability Now Clubs" to educate students about transitional justice, human rights, and transparent management; producing booklets on topics pertaining to international humanitarian law; developing national SC staff who are working with lawyers, administrators, technicians, security personnel, and detention staff through various training programmes; providing national internships; and assisting national judiciary, monitoring programmes.

After the Special Court

The Registrar said that as the mandate of the SCSL nears completion, it seeks to ensure that the site of the Court continues to serve the people of Sierra Leone and carries the legacy and vision of the SC. Mr. Munlo elucidated further that whilst it was the intention to transfer the site of the Court to the Government of Sierra Leone, the Government has indicated to the Registrar that it does not have the resources or the capacity to embark on such an endeavour. For this reason, he went on; the Court is seeking funds for a consultant to conduct a study exploring possible options for the use of the Court site after the completion of the Court's operations and to network close with the Government of Sierra Leone. The Court will also assist, where possible, in

seeking funds for the commencement and maintenance of the selected option.

However, given the number of structures currently on the site, there are quite a few possible uses of the Court site which include a regional court; an academic institution focusing on various aspects of international law and transitional justice; training centers for legal practitioners, civil society members and rule of law stakeholders; and national institution or commission focusing on legal reform and good governance

Each of the abovementioned options can have a regional and/or continental focus. That is to say, the benefit is not limited only to Sierra Leoneans, but citizens in other African countries as well. This would not only give some prestige and visibility to

Sierra Leone, but it would also mark its progress towards post-conflict recovery. There can also be multiple uses for the site with a managerial board overseeing all operations.

Challenges

The Registrar said that one of the major challenges facing the Court is the lack of fixed budget. That is to say, some countries which pledged to voluntarily contribute funds do not fulfill their promise thus making it difficult for the Court to plan. The security of the country is also another challenge as Sierra Leone is the first country in which the Court is sitting where the alleged crimes were committed. Also protecting victims and witnesses in the trial process and getting the Charles Taylor trial underway were also major challenges faced by the Court.

Sierra Leone Law Inaugurates National Human Rights Commissioners

By Allieu Vandi Koroma

President Ahmad Tejan Kabbah, on Monday 11th December, 2006 inaugurated five Commissioners (Jamesina King, Yasmin Jusu-Sheriff, Edward Sam, Rev. Moses Kanu and Joseph Stanley) of the newly established National Human Rights Commission following their approval by Parliament on 4th October 2006. This ceremony marks the end of a long and arduous tasking of establishing the Commission and signifies the beginning of another milestone of protecting and promoting human rights in post-conflict Sierra Leone.

During the ceremony, the Attorney General and Minister of Justice, Hon. Fredrick M. Carew, traced the establishment of the Commission to the Lome Peace Agreement of July 1999, the recommendations of the Truth and Reconciliation Commission and the Human Rights Commission Act of 2004. He further stated that the process of selecting the Commissioners began with the submission of names by members of the public to his office. After which, a selection panel comprising the Inter-Religious Council, Civil Society, Sierra Leone Labour Congress, Council of Chiefs and

Representatives of the Government met and agreed on seven names which were published in the Sierra Leone Gazette. The panel later asked the President to select five from the seven names submitted to be presented to Parliament for approval. The Commissioners were subsequently approved by Parliament.

The role of the Commission includes the following:

- investigate allegations of human rights abuses on its own or reported by any person;
- promote human rights through public education, information, and cooperation with non-governmental bodies;
- advise Government on Sierra Leone's compliance with international obligations including mainstreaming of international law in domestic legislations and production of periodic reports;
- advise Government on Bills that may affect human rights;
- monitor document and document human rights violations in Sierra Leone;

Annex G

**Human Rights Watch, Charles Taylor: Hague Trial Must be Accessible
to West Africans -- Former Liberian President Arrives in the
Netherlands for War Crimes Trial, 21 June 2006**

Charles Taylor: Hague Trial Must Be Accessible to West Africans

Former Liberian President Arrives in the Netherlands for War Crimes Trial

(New York, June 21, 2006) – With the transfer of Charles Taylor to The Hague for trial, the U.N.-backed war crimes court for Sierra Leone and its donors must ensure that the former Liberian president's trial remains accessible to the people of West Africa, Human Rights Watch said today in a briefing paper.

Taylor arrived in The Hague on Tuesday from Freetown, where the Special Court for Sierra Leone is headquartered. He is charged by the Special Court with war crimes, crimes against humanity, and other serious violations of international humanitarian law during the 11-year civil war in Sierra Leone. The trial in The Hague will be conducted by the Special Court using the facilities of the International Criminal Court.

Human Rights Watch has issued a briefing paper on the relocation of Taylor's trial to The Hague. The 15-page briefing paper provides:

- Background on the Special Court for Sierra Leone and Charles Taylor's alleged crimes;
- Analysis of the implications of moving Taylor's trial outside Sierra Leone; and
- Recommendations to ensure that the trial in The Hague is made accessible to West Africans.

"Now that Taylor is in The Hague, there is a real risk that his trial will feel distant and less meaningful to the people most affected by the crimes," said Richard Dicker, director of Human Rights Watch's International Justice Program. "The court will need to ensure the trial is accessible to people in Sierra Leone and across West Africa."

To make Taylor's trial in The Hague accessible in Sierra Leone, the Special Court should implement robust outreach activities such as video and audio summaries of the trial for dissemination throughout the country. The Special Court should also make live broadcasts of the trial available at the court premises in Freetown. Additionally, the court should ensure that representatives of Sierra Leone's media, nongovernmental organizations, and other sectors of the society, such as paramount chiefs, are able to observe Taylor's trial in The Hague. Human Rights Watch called on the court's donors to provide funding for these critical outreach activities.

"The Special Court has done a tremendous job so far in reaching out to Sierra Leoneans about its work," said Elise Keppler, counsel for Human Rights Watch's International Justice Program. "But for intensified outreach to ensure Taylor's trial in The Hague resonates in West Africa, donors will need to step up and provide the court with more funding."

Donors must also provide funding to cover other costs associated with holding Taylor's trial in The Hague. These include logistical and technical costs. Funding must further be provided to ensure the Special Court

can successfully complete the rest of its work in Freetown.

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Background

The Special Court for Sierra Leone was set up in 2002 to try those “bearing the greatest responsibility” for war crimes and crimes against humanity committed during Sierra Leone’s armed conflict. The crimes include killings, mutilations, rape and other forms of sexual violence, sexual slavery, the recruitment and use of child soldiers, abduction, and the use of forced labor by armed groups.

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. The indictment alleges that Taylor, as president of Liberia, provided training and financing to the main rebel group in Sierra Leone, the Revolutionary United Front (RUF). Taylor was allegedly the rebel group’s main backer, providing logistical and military support to the rebels and benefiting greatly from the diamonds extracted in rebel-held areas.

On March 29, Taylor was surrendered to the Special Court. The court immediately requested to relocate Taylor’s trial from Freetown to The Hague due to security concerns. On June 15, the United Kingdom announced it intends to provide detention facilities for Taylor if convicted. This satisfied the key outstanding condition of the Dutch government to hosting the trial. The next day, the Security Council on June 16 passed a resolution providing a legal basis for the transfer.

Initially forced to rely on voluntary contributions, the Special Court has faced constant financial shortfalls. The United Nations provided some financial assistance to the court, but this does not cover all of the court costs. Donors made additional pledges at a funding conference in late September 2005. However, these are insufficient to cover operations for 2006 and beyond

Related Material

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

Background Briefing, June 20, 2006

From: <http://hrw.org/english/docs/2006/06/20/liberi13590.htm>

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