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RSCSL-03-01-ES
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RESIDUAL SPECIAL COURT FOR SIERRA LEONE
CHURCHILLPLEIN 1, 2517 JW • THE HAGUE • THE NETHERLANDS
P. O BOX 19536, 2500CM • THE HAGUE • THE NETHERLANDS
(BRANCH OFFICE) JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

Before: Justice Teresa Doherty, Designated Duty Judge
Registrar: Ms. Binta Mansaray
Dated filed: 01 July 2020
Case No: RSCSL- 03-01-ES

In the matter of

PROSECUTOR Against CHARLES GHANKAY TAYLOR

PUBLIC WITH CONFIDENTIAL ANNEX

SUBMISSION OF THE REGISTRAR PURSUANT TO RULE 33(B)
THE APPLICATION OF CHARLES GHANKAY TAYLOR FOR TEMPORARY
TRANSFER TO A SAFE THIRD COUNTRY TO CONTINUE HIS IMPRISONMENT DUE
TO MASSIVE OUTBREAK OF COVID-19 IN THE UK.

Office of the Prosecutor:
Mr. James C. Johnson

Defence Office:
Mr. Ibrahim Yillah

Counsel for Mr. Charles G. Taylor
Mr. Essa M. Faal

Refiled

RESIDUAL SPECIAL COURT FOR SIERRA LEONE	
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I. INTRODUCTION

1. Pursuant to the directive of the designated duty Judge of 1 July 2020, the Registrar refiles her submission as public, with confidential annex. In accordance with rule 33(A&B) of the Rules of Procedure and Evidence ('RPE') the Registrar provides additional information contained in **Confidential Annex 2**, to assist in the consideration of the application before the designated Judge.

2. In his 15 June 2020 Request for Temporary Transfer to a Safe Third Country ("Request for Transfer"). Mr. Charles Ghankay Taylor ("Mr Taylor"), by his Counsel, requested the President of the Residual Special Court for Sierra Leone ("RSCSL") for an order temporarily transferring him to a third and safe country to continue his imprisonment due to "massive outbreak of COVID-19 in the UK". The Request for Transfer is also based on Mr Taylor's personal concern "about his physical safety and his health in general in light of the current widespread nature of the Coronavirus situation in the UK".

3. The RSCSL is committed to upholding international standards for the treatment of prisoners, especially during this period of the Coronavirus pandemic. As outlined below, in line with the Special Court for Sierra Leone's ("SCSL") applicable legal instruments; the RSCSL has provided and continues to provide support and facilitation as needed, to ensure that the rights of prisoners continue to be upheld during this worldwide Coronavirus pandemic.

4. In the following submissions, the Registrar, pursuant to Rule 33(B) of the Rules of Procedure and Evidence, addresses some of the issues raised in the Request and provides relevant contextual information in relation to the following:

- a. Mr. Taylor's detention and enforcement of sentence in the UK during the Coronavirus pandemic and the role of the RSCSL;
- b. Consideration of Mr. Taylor's request for a temporary transfer to continue his detention and enforcement of sentence in a "third and safe country".

II. APPLICABLE LAW

5. The following instruments are applicable in this matter:

- a. The Statute of the RSCSL ("Statute"), specifically Article 23 on Enforcement of Sentences;

- b. The SCSL and RSCSL Rules of Procedure and Evidence, and specifically Rule 33(B) and Rule 103(B);
- c. The Practice Direction on the Designation of State(s) of Enforcement of Sentence for the SCSL ("EOS Practice Direction");
- d. The Agreement between the Special Court for Sierra Leone ("SCSL") 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 ("UK Agreement").

III. SUBMISSIONS

- a. Mr. Taylor's detention and enforcement of sentence in the UK during the Coronavirus pandemic and the role of the RSCSL

6. On 26 September 2013, the Appeals Chamber of the SCSL handed down its judgment confirming the conviction and sentence for Mr. Taylor.

7. On 4 October 2013, the President issued an order designating the United Kingdom, with whom an enforcement of sentences agreement was concluded on 10 July 2007, as the state of enforcement of Mr. Taylor's sentence.¹

8. On 15 October 2013, Mr Taylor was transferred from The Netherlands to HMP Frankland in the United Kingdom to serve the remainder of his sentence under the supervision of the RSCSL, pursuant to Article 23 of the Statute of the RSCSL. Since then, the RSCSL, the UK Government and prison authorities have worked closely together to ensure that Mr. Taylor serves his sentence as provided under the applicable international detention standards. The relevant best practices applicable to Mr Taylor's detention did not change during the COVID-19 pandemic.

9. On 15 June 2020, Mr Essa M. Faal, *pro bono* Counsel to Mr Taylor filed a public Request for Transfer, requesting Mr. Taylor's temporary transfer to a safe third country to continue his imprisonment due to massive outbreak of COVID-19 in the UK.

10. In his Request for Transfer, Mr Taylor through his Counsel made a number of submissions including that "the Residual Special Court for Sierra Leone has not specifically developed a COVID-19 policy for application at HMP Frankland where Mr. Taylor is currently serving his imprisonment. What the court has done to date is to transmit the guidelines issued by the United States Center for Disease Control ("CDC") and advising Mr Taylor to follow those guidelines." He also submitted that "that those measures do not go far enough. They do not address his concerns for physical safety as

¹ The Prosecutor. Taylor, Case No. SCSL-03-01-ES, Order Designating State in which Charles Ghankay Taylor is to serve his Sentence, 4 October 2013 (Reclassified as public on 10 October 2013).

the situation is grave in the UK as a whole and the prison settings within the UK are some of the most suitable settings for the incubation and spread of the virus.” He also submitted that the Request for Transfer is consistent with Mr. Taylor’s right to life.

11. The Registrar submits that COVID-19 is a global pandemic, and as such it affects the whole world and all institutions. Following the World Health Organization’s (“WHO”) declaration of COVID-19 a worldwide pandemic, the Registrar’s office consulted with the prison authorities in Rwanda and the UK where the Court’s convicts are serving sentences, in order to seek feedback on the wellbeing of detainees during the pandemic and to ensure that prisoners are provided with all relevant guidelines issued by public health officials on recommended safety measures. All RSCSL prisoners were advised to follow the guidelines because in a public health crisis, individual adults, including prisoners must also take personal responsibility to comply with public health guidelines to ensure their physical safety and right to life.

12. The Registrar submits that Mr. Taylor is subject to the conditions of imprisonment in the UK pursuant to Article 23(2) of the RSCSL Statute. Therefore, public health policies and guidelines issued by the UK public health institutions are applicable to Mr. Taylor. Public Health England’s policies are very sound,² negating the need for the Residual Special Court to propose additional policies that would be applicable to Mr. Taylor alone.

13. In fulfilment of her mandate, the Registrar submits that she has been briefing the Chair of the RSCSL Oversight Committee, the President of the Court, the Prosecutor and the Principal Defender on the RSCSL response to the Coronavirus. The Registrar has continued to monitor the COVID-19 situation at the Rwanda Correctional Service, HMP Frankland in the UK regarding their response to the Coronavirus with respect to the Court’s prisoners. The Registrar has also been following very closely the COVID-19 situation in Sierra Leone where one prisoner continues to serve the remainder of his sentence on Conditional Early Release. Defence Counsel have also been kept informed through the Principal Defender about the Court’s response.

14. Mr. Taylor has access to a range of complaints procedures within official prison channels. Between March and June 2020, Mr. Taylor did not raise any concerns through those channels in relation to his fears about contracting COVID-19 in HMP Frankland; there are supplies of soap, sanitizers, disinfectants for his own use and additional supplies which he can request from staff, if required.

15. The Registrar submits that as of June 2020, it was the RSCSL prisoners in Rwanda who expressed COVID-19 related concerns through one of their *pro bono* counsel and the Principal Defender’s Office. In order to keep safe and healthy, the prisoners requested additional supplies of hygiene materials – soap, hand sanitizers and disinfectants which were provided following the Registrar’s approval of the request.

² <https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>

16. Upon receipt of Mr Taylor's Request for Transfer, the Registrar consulted with the Acting Governor of HMP Frankland, who on 16 June 2020, provided feedback on pertinent issues raised in paragraphs 6,7,9,11,17,19 & 20 of the Request for Transfer. The Acting Governor's response is attached to this submission as **Confidential Annex 1**.

17. The Acting Governor of HMP Frankland, made no concurring findings on the potential breach of Mr. Taylor's rights as submitted in his Request for Transfer because all issues pertaining to HMP Frankland's detainees' safety arising from the Coronavirus pandemic are being treated with great care and in line with the ongoing COVID-19 safety measures developed by Public Health England.

18. The Acting Governor's responses, including the ones below (a-h), on the COVID-19 situation at HMP Frankland and in the UK would be helpful in the consideration of the grounds upon which Mr Taylor based his Request for Transfer. The full set of responses is contained in the confidential annex.

- a. All custodial establishments have been operating restricted regimes which has reduced the prevalence and transmission rate of COVID-19. The only regime activity which has taken place since the decision to lock down in mid-March are daily showers & access to open air and telephones. The prison also operates specific isolated regimes for new receptions, those who are extremely vulnerable due to acute medical conditions. Furthermore, any prisoner who feels they are vulnerable can also self-isolate. If an individual is assessed as symptomatic by Healthcare staff they will be held in enforced in cell isolation until the symptomatic period ends.
- b. All prisoners have been issued with guidance regarding the benefits of social distancing and hand hygiene.
- c. Following his arrival at HMP Frankland, Mr Taylor has only ever been located in a single cell.
- d. Prisoners have access to disinfectant and cleaning materials for their cell which Mr Taylor has received. Before using the communal phones prisoners have access to disinfectant. Mr Taylor has in the past requested disinfectant from staff if none was present prior to him using the telephone.
- e. HMP Frankland has an operational capacity of 854 and all cellular accommodation is designed for single occupancy. Our current capacity is 840 and there are no plans or necessity to make any prisoner share a single cell.
- f. Mr Taylor has access to in-cell running water and the provision of soap. Showers and telephones are shared communally however there are schedules in place for a regular cleaning programme to take place.
- g. The situation in the UK is one which is improving with reported reductions in the numbers of deaths, identified positive case and hospitalisations.
- h. The UK has an early release policy, however Mr Taylor did not meet the relevant criteria. The prison population has reduced to its lowest levels in 12 years which has allowed us to reduce the operational capacity of prisons where shared accommodation is used. As stated earlier Frankland is not a prison where overcrowding or shared accommodation is a relevant concern.

19. The response of HMP Frankland indicates there are measures in place to control the spread of COVID-19 in prisons such as HMP Frankland. For example, there are also simple measures that prisoners can take in order to stay safe, (See attached **Annex 3**).³ It is therefore evident that the prison and UK government have been taking adequate steps to keep inmates safe and well during the Coronavirus pandemic.

b. Consideration of Mr. Taylor's request for a temporary transfer to continue his detention and enforcement of sentence in a "third and safe country".

20. Noting that in March 2020, the Director General of WHO declared COVID-19 a worldwide pandemic with rapid contagious global impact, the Registrar submits that based on this declaration, there is no "third and safe country" for a temporary transfer of Mr Taylor⁴. The Registrar submits that Mr Taylor's request failed to name a third and safe country where he wishes to be transferred because he fully understands that with the alarming rate at which COVID-19 spreads, there is no such country.

21. The Request for Transfer also failed to state clearly what a safe third country means. The Registrar presumes that a safe third country refers to a country that is free from COVID-19 or that has not had COVID-19. According to some news reports, as of 18 June 2020, the following countries and island nations have not reported COVID-19 cases: Kiribati, Marshall Islands, Micronesia, Nauru, North Korea, Palau, Samoa, Solomon Islands and Tonga, Turkmenistan, Tuvalu and Vanuatu.⁵ If not reporting COVID-19 cases means that any of those countries and island nations are considered safe third countries, the Registrar submits that the Court does not have an enforcement of sentence agreement with any of those countries and island nations.

22. As of 19 June 2020, the WHO has not declared any place in the world safe from COVID-19. Although there are speculations that few countries of the world may be free from COVID-19 because those countries have not confirmed any cases of COVID-19, such self-declared freedom from COVID-19 have certainly raised scepticism around the world because they are not confirmed by the World Health Organisation.⁶ Also, as of June 2020, following the spike arising from easing the lockdown, many countries of the

³ Prisons and prescribed places of detention guidance; <https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>

⁴ Ruth Maclean, "Coronavirus Accelerates Across Africa", June 16, 2020, <https://www.nytimes.com/2020/06/16/world/africa/coronavirus-africa.html>. Ruth Maclean and Simon Marks, "10 African Countries Have No Ventilators. That's Only Part of the Problem", Published April 18, 2020, Updated May 17, 2020; <https://www.nytimes.com/2020/04/18/world/africa/africa-coronavirus-ventilators.html?action=click&module=RelatedLinks&pgtype=Article>.

⁵ Ebrahim Noroozi/AP, Which countries have not reported any Coronavirus cases", 18 June 2020, <https://www.aljazeera.com/news/2020/04/countries-reported-coronavirus-cases-200412093314762.html>

⁶ WHO, Coronavirus disease (COVID-19) pandemic, https://www.who.int/emergencies/diseases/novel-coronavirus2019?gclid=Cj0KCQjw0Mb3BRCaARIsAPSNGpVG1qKh0KLYCoERURZGYlkQ2fnECWbPY8k_7eVoh7XWGxHf4KfAfh8aAjvaEALw_wcB

world still observe travel restrictions; some have continued to place total lockdown on flights while others have placed quarantine orders for a period ranging from fourteen days to two months, thus, the logistics for transferring Mr Taylor plus other connected security concerns would pose many difficulties to the RSCSL.

23. The Registrar further submits that based on the assessment of the prison authorities, Mr Taylor does not meet the relevant criteria for early release. Decisions on the worldwide release or transfer of detainees due to COVID-19 is generally handled on a case-by-case basis; evaluating the opinions of doctors, prison authorities and other relevant considerations including the safety of citizens and the safety of the detainee seeking to be released or transferred. These are very important, considering Mr Taylor's status and notoriety. In the UK in particular, the assessment for eligibility to access early release due to COVID-19 is a joint decision made by HMP Frankland and other partners from Healthcare and Probation.

24. Bringing into perspective what is obtainable at sister Courts and Tribunals like the International Residual Mechanism for Criminal Tribunals ("IRMCT"), the Registrar wishes to make reference to the recent Public Decision of the IRMCT regarding a COVID-19 related request for provisional release made by Laurent Semanza; a convicted person who is serving his sentence in Benin.⁷ *Semanza* had requested the IRMCT President to grant him immediate provisional release or in the alternative, that his pending early release application be granted without further delay due to his concerns about COVID-19. Some of the related grounds for his request are that:

- a. The present Coronavirus pandemic constitutes special circumstances and an actual justification warranting his provisional release related to humane and compassionate considerations.
- b. That at the age of 76, he is at high risk of dying from the Coronavirus, should he contract it.
- c. That while on provisional release, he could self-quarantine whereas in prison, he is unable to control the coming and going of prison staff and he is in close quarters with thousands of other prisoners.
- d. That he would return back to prison, if and whenever required
- e. That Coronavirus pandemic places responsibility on the President to take care of those who are in his charge and who are most vulnerable
- f. That the Coronavirus pandemic is moving at a fast pace since his motion was filed and has reached Benin where the number of cases has subsequently increased 12 fold.

25. The IRMCT President denied the request on the basis of falling outside the legal framework. The President stated that based on their consultations with prison authorities in Benin, he is assured that they are taking appropriate measures in relation to the

⁷ *Prosecutor v. Laurent Semanza*, Decision on Motion for Provisional Release, MICT-13-36-ES.2, 21 April 2020.

management of the Coronavirus pandemic. The President emphasized that the court will continue to pay close attention to the measures taken by Benin in response to the Coronavirus pandemic and the well-being of *Semanza* and other convicted persons serving their sentences in Benin, under the supervision of the IRMCT.⁸

26. The Registrar submits that pursuant to Article 23(2) of the Statute of the RSCSL and also Article 3(2) of the enforcement of sentence agreement, Mr. Taylor's detention in the UK is governed by UK law and only subject to the supervision of the RSCSL, a similar provision applies to the *Semanza* case above. The *Semanza* case is attached as **Annex 4**.

27. The Registrar submits that the facts of the *Lubanga*⁹ case relied on in Mr Taylor's Request are distinguishable with the present Request for Transfer.

28. The Registrar submits that although the cases of *Keller v. Russia*¹⁰, *Turluyeva v. Russia*¹¹ and *Tirean v. Romania*¹² referenced in Mr Taylor's Request may have highlighted the obligation to protect the health and well-being of persons in detention, the facts are distinguishable with the present Request for Transfer and they are not *locus classicus* nor authoritative precedents to be relied on for granting a Request for Mr Taylor's Transfer to a third country during the COVID-19 global pandemic.

29. The Registrar further submits that countries like Italy have released prisoners on house arrest but some of those prisoners met such criteria as their prison sentence was within 18 months of ending.¹³ Unlike HMP Frankland prison in the UK which is not overcrowded, in the U.S. for some Federal prisoners they were considered for release because they were in extremely overcrowded prisons where the spread of the virus could not be controlled. The criteria also included an assessment of gravity of offences, eligible for home confinement - no longer a threat to the public and were particularly vulnerable to the Coronavirus.¹⁴ If the criteria in Italy and the U.S. for house arrest applied to Mr. Taylor, he would not be released.

30. The experience from Italy suggests that there could be a backlash in releasing high profile inmates from maximum security prisons. Mr. Taylor was convicted of planning and aiding and abetting War Crimes, Crimes Against Humanity and other

⁸ *Prosecutor v. Laurent Semanza*, Decision on Motion for Provisional Release, MICT-13-36-ES.2, 21 April 2020.

⁹ ICC-CPI-20151219-PR1181; <https://www.icc-cpi.int/Pages/item.aspx?name=pr1181&ln=en>

¹⁰ *Keller v. Russia*; ECHR 17 OCT 2013, Application no. 26824/04

¹¹ *Turluyeva v. Russia* Application no. 63638/09

¹² *Tirean v. Romania*; 1128 October 2014, Application no. 47603/10

¹³ Povoledo. Elisabetta and Bubola, Emma, "In Italy, Some Fear the Virus Is a Get-Out-of-Jail Card for Mafiosi", New York Times, May 13, 2020.

<https://www.nytimes.com/2020/05/13/world/europe/coronavirus-italy-mafia.html?auth=link-dismiss-google1tap&searchResultPosition=1> However, there was outrage for releasing some mob bosses on house arrest and, furthermore, that the virus should not be used as an excuse to get out of prison.

¹⁴ Benner, Katie, "Barr Expands Early Release of Inmates at Prisons Seeing More Coronavirus Cases", New York Times, April 3, 2020. <https://www.nytimes.com/2020/04/03/us/politics/barr-coronavirus-prisons-release.html?action=click&module=RelatedLinks&pgtype=Article>

serious violations of International Humanitarian Law. He is serving his sentence at HMP Frankland, a maximum-security prison that is not overcrowded relative to its capacity. According to the UK prison authorities, upon his arrival at HMP Frankland, “Mr Taylor has only ever been located in a single cell” and “has access to in-cell running water and the provision of soap”.

31. Most importantly, the Registrar relies on the RSCSL consultation with the UK prison authorities to clarify that there is no imminent danger to Mr Taylor’s detention at HMP Frankland arising from the COVID-19 pandemic.

IV. CONCLUSION

32. The Registrar submits that the UK prison authorities and the RSCSL have upheld their obligations in the UK Enforcement of Sentence Agreement to ensure that Mr. Taylor's detention complies with relevant health and human rights standards during the COVID-19 pandemic. Concerns raised by Mr Taylor in the Request for Transfer are representative of general COVID-19 related concerns commonly arising in prisons, other institutions and communities all over the world.

33. In view of the fact that based on the Registrar’s consultations with the UK prison authorities, “Mr Taylor did not meet the relevant criteria” for an early release, the Registry of the RSCSL stands ready to work with Mr. Taylor and the UK prison authorities to address any specific and genuine concern that may be identified in his Request for Transfer. The Registry will continue to monitor the implementation of the UK Enforcement of Sentence Agreement and the implementation of the COVID-19 health and safety guidelines to ensure that obligations continue to be met during the pendency of Mr. Taylor's detention and the COVID-19 pandemic.

Respectfully submitted,



Binta Mansaray
Registrar
Residual Special Court for Sierra Leone

LIST OF AUTHORITIES

i) Authorities cited and annexed to the present filing in accordance with Article 7 (A) of the RSCSL practice direction on filing of documents adopted on 24 April 2014

Registrar's Confidential Annex I	Confidential Information from the Acting Governor HMP Frankland
Registrar's Confidential Annex 2	Confidential Information from UK National Offender Management Office.
Registrar's Annex 3	UK Prisons and prescribed places of detention guidance
Registrar's Annex 4	<i>Prosecutor v. Laurent Semanza</i> , Decision on Motion for Provisional Release, MICT-13-36-ES.2, 21 April 2020

ii) Authorities cited but not annexed to the present filing in accordance with Article 7(B) (C) of the RSCSL practice direction on filing of documents adopted on 24 April 2014

- a. The Statute of the RSCSL ("Statute"), specifically Article 23 on Enforcement of Sentences;
- b. The SCSL and RSCSL Rules of Procedure and Evidence, and specifically Rule 33(B) and Rule 103(B);
- c. The Practice Direction on the Designation of State(s) of Enforcement of Sentence for the SCSL ("EOS Practice Direction");
- d. The Agreement between the Special Court for Sierra Leone ("SCSL") 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 ("UK Agreement").
- e. The Prosecutor. Taylor, Case No. SCSL-03-01-ES, Order Designating State in which Charles Ghankay Taylor is to serve his Sentence, 4 October 2013 (Reclassified as public on 10 October 2013)
- f. The Prosecutor v. Thomas Lubanga Dyilo, (Cited in Prosecutor v. Charles Ghankay Taylor, Case No. RSCSL- 03-01-ES, ‘Taylor's Request for Temporary Transfer to a Safe Third Country to Continue His Imprisonment due to Massive Outbreak of Covid-19 in the UK’.) (See Transfer of Lubanga: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1181&ln=en>)

- g. Keller v. Russia; ECHR 17 OCT 2013, Application no. 26824/04. (Cited in Prosecutor v. Charles Ghankay Taylor, Case No. RSCSL- 03-01-ES, “Taylor's Request for Temporary Transfer to a Safe Third Country to Continue His Imprisonment due to Massive Outbreak of Covid-19 in the UK’’.)
 - h. Turluyeva v. Russia Application no. 63638/09 (Cited in Prosecutor v. Charles Ghankay Taylor, Case No. RSCSL- 03-01-ES, “Taylor's Request for Temporary Transfer to a Safe Third Country to Continue His Imprisonment due to Massive Outbreak of Covid-19 in the UK’’.)
 - i. Tirean v. Romania; 1128 October 2014, Application no. 47603/10 (Cited in Prosecutor v. Charles Ghankay Taylor, Case No. RSCSL- 03-01-ES, “Taylor's Request for Temporary Transfer to a Safe Third Country to Continue His Imprisonment due to Massive Outbreak of Covid-19 in the UK’’.)
- iii) Other references
- a. UK public health policies and guidelines
<https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>
 - b. Ruth Maclean, “Coronavirus Accelerates Across Africa”, June 16, 2020, <https://www.nytimes.com/2020/06/16/world/africa/coronavirus-africa.html>
 - c. Ruth Maclean and Simon Marks, “10 African Countries Have No Ventilators. That’s Only Part of the Problem”, Published April 18, 2020, Updated May 17, 2020; <https://www.nytimes.com/2020/04/18/world/africa/africa-coronavirus-ventilators.html?action=click&module=RelatedLinks&pgtype=Article>
 - d. Ebrahim Noroozi/AP, Which countries have not reported any Coronavirus cases”, 18 June 2020, <https://www.aljazeera.com/news/2020/04/countries-reported-coronavirus-cases-200412093314762.html>
 - e. WHO, Coronavirus disease (COVID-19) pandemic, https://www.who.int/emergencies/diseases/novel-coronavirus2019?gclid=Cj0KCQjw0Mb3BRCaARIsAPSNGpVGIqKh0KLYCoERURZGYlkQ2fnECWbPY8k_7eVoh7XWGxHf4KfAfh8aAjvaEALw_wcB
 - f. Povoledo. Elisabetta and Bubola, Emma, “In Italy, Some Fear the Virus Is a Get-Out-of-Jail Card for Mafiosi”, New York Times, May 13, 2020. <https://www.nytimes.com/2020/05/13/world/europe/coronavirus-italy-mafia.html?auth=link-dismiss-google1tap&searchResultPosition=1>
 - g. Benner, Katie, “Barr Expands Early Release of Inmates at Prisons Seeing More Coronavirus Cases”, New York Times, April 3, 2020.

<https://www.nytimes.com/2020/04/03/us/politics/barr-coronavirus-prisons-release.html?action=click&module=RelatedLinks&pgtype=Article>



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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the *Confidential* Case File.

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Document Title: **Public with Confidential Annexes**

Submission of the Registrar pursuant to Rule 33(B) the application of Charles Ghankay Taylor for temporary transfer to a safe third country to continue his imprisonment due to massive outbreak of COVID-19 in the UK.

Name of Officer:

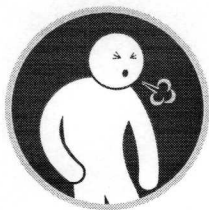
Franness Ngaboh-Smart

Signed:

ANNEX 3



The most important symptoms of coronavirus (COVID-19)



new and
continuous cough

or



high
temperature

or



loss of, or change in,
your normal sense of
taste or smell (anosmia)

If **you have symptoms** of coronavirus you need to **self-isolate for 7 days**

If **you live with someone who has symptoms**, you need to **self-isolate for 14 days** from the day their symptoms started

For most people coronavirus will be a mild illness. However if you have any of the symptoms you should self-isolate at home

Stop the spread of coronavirus



**Wash your hands
more often
and for 20 seconds**

Use soap and water or a hand sanitiser when you:

- Get home or into work
- Blow your nose, sneeze or cough
- Eat or handle food



Cover your mouth and nose with a tissue or your sleeve (not your hands) when you cough or sneeze and throw the tissue away straight away



Any prisoner or detainee with any of the coronavirus symptoms **should be placed in protective isolation for 7 days**

Confirmed cases of coronavirus should be notified by prison or immigration removal centre (IRC) healthcare teams as soon as possible to **local Public Health England Health Protection Teams**

People who are severely unwell may be transferred to appropriate healthcare facilities with usual escorts and following advice on safe transfers

Prisoners or detainees who have a new, continuous cough or a high temperature or a loss of, or change in normal sense of smell or taste but **are clinically well enough** to remain in prescribed places of detention (PPDs) **do not need to be transferred to hospital**

Staff and visitors should be reminded to maintain higher than usual standards of **hand-washing, respiratory hygiene, and cleaning**



If a member of staff or visitor becomes unwell with any of the coronavirus symptoms on site, **they should go home**



Frequently clean and disinfect objects and surfaces that are touched regularly, using your standard cleaning products

Staff should wear specified personal protective equipment (PPE) for activities requiring sustained close contact with possible cases

If facing multiple cases of those displaying symptoms, 'cohorting', or the gathering of potentially infected cases into a designated area, may be necessary

PPD leaders should be assessing their estate for suitable isolation and cohorting provision



1. Home (<https://www.gov.uk/>)
2. Coronavirus (COVID-19) (<https://www.gov.uk/coronavirus-taxon>)
3. COVID-19: prisons and other prescribed places of detention guidance
(<https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>)

1. Ministry
of Justice (<https://www.gov.uk/government/organisations/ministry-of-justice>)
2. Public Health
England (<https://www.gov.uk/government/organisations/public-health-england>)

Guidance

COVID-19: prisons and other prescribed places of detention guidance

Updated 20 May 2020

Contents

Symptoms

What you need to know

Background

What to do if someone develops symptoms of coronavirus (COVID-19) in a prison or PPD

Cohorting

Cleaning and waste

Advice on the use of PPE for healthcare staff and custodial staff with patient-facing roles

Custodial or healthcare staff in close contact with confirmed or suspected cases

Healthcare staff in close contact with confirmed or suspected cases where aerosol generated procedure is being undertaken

Limiting spread of coronavirus (COVID-19) in PPDs



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Please note

This guidance is of a general nature and should be treated as a guide, and in the event of any conflict between any applicable legislation (including the health and safety legislation) and this guidance, the applicable legislation shall prevail.

Symptoms

The most important symptoms of coronavirus (COVID-19) are recent onset of any of the following:

- a new continuous cough
- a high temperature
- a loss of, or change in, your normal sense of taste or smell (anosmia)

For most people, coronavirus (COVID-19) will be a mild illness. However if anyone has any of the symptoms above they should be isolated.

What you need to know

- any prisoner or detainee with symptoms of coronavirus (COVID-19) should be placed in protective isolation for 7 days
- if a member of staff becomes unwell on site with symptoms of coronavirus (COVID-19), they should go home
- staff and prisoners should be reminded to wash their hands for 20 seconds more frequently and catch coughs and sneezes in tissues
- frequently clean and disinfect objects and surfaces that are touched regularly, using your standard cleaning products
- prisoners or detainees who have symptoms of coronavirus (COVID-19) but are clinically well enough to remain in prescribed places of detention (PPDs) do not need to be transferred to hospital
- confirmed cases of coronavirus (COVID-19) should be notified by prison or immigration removal centre (IRC) healthcare teams as soon as possible to local Public Health England (PHE) Health Protection Teams (HPT)
- people who are severely unwell may be transferred to appropriate healthcare facilities with usual escorts and following advice on safe transfers
- staff should wear specified personal protective equipment (PPE) for activities requiring sustained close contact with possible cases (see below for detail)
- if facing multiple cases of those displaying symptoms, 'cohorting', or the gathering of potentially infected cases into a designated area, may be necessary
- PPD leaders should be assessing their estate for suitable isolation and cohorting provision

Background

This guidance will assist healthcare staff and custodial and detention staff in addressing coronavirus (COVID-19) in prescribed places of detention (PPDs).

The following establishments in England are included within the definition of PPDs used in this guidance:

- prisons (both public and privately managed)
- immigration removal centres (IRC)

- children and young people's secure estate (CYPSE) young offender institutions (YOI), secure training centres (STC) and secure children's homes (SCH)

Controlling the spread of infection in PPDs will rely on co-ordinating healthcare and custodial staff working with local PHE Health Protection Teams.

Recommendations made here may also be relevant to Prison Escort and Custodial Services (PECS) staff, particularly environmental cleaning recommendations and advice to staff.

This guidance may be updated in line with the changing situation.

What to do if someone develops symptoms of coronavirus (COVID-19) in a prison or PPD

In PPD settings, suspected cases are likely to be identified by:

- custodial and detention staff
- other prisoners and detainees
- self-referral
- at reception screening or through other means

All staff should be alert to prisoners or detainees who have symptoms of coronavirus (COVID-19) and the prisoner or detainee should be isolated in single occupancy accommodation (for example cell or detention room).

If such accommodation is not available, possible cases should be held alone in higher occupancy accommodation. The prisoner or detainee should wear a surgical face mask while being transferred to an isolation room. Escorting staff do not require PPE but must clean their hands on leaving the prisoner or detainee.

Prisoners or detainees who have symptoms of coronavirus (COVID-19), but who are clinically well enough to remain in prison, do not need to be transferred to hospital. Regular observations are not required unless indicated for other clinical reasons. Where possible, any assessment should be done without entering the room.

Access to a language-line, or similar translation service, must be provided as soon as a possible case enters the establishment. This will ensure an accurate history can be taken.

If a member of staff has helped someone who was taken unwell with symptoms of coronavirus (COVID-19), they do not need to go home unless they develop symptoms themselves. They should wash their hands thoroughly for 20 seconds after any contact with someone who has symptoms consistent with coronavirus infection.

If a member of staff develops symptoms of coronavirus (COVID-19) they should be sent home immediately and advised to follow the stay at home guidance (<https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance>).

All PPDs should have a plan in place identifying an appropriate place to isolate patients with symptoms, preferably with input from an infection control specialist.

HPTs will contact PHE's National Health and Justice Team (<https://www.gov.uk/government/publications/public-health-in-prisons-and-other-secure-settings-contact-phe-specialist-leads/contact-details-for-national-and-local-public-health-england-health-and-justice-specialists>) and Centre Health and Justice leads (<https://www.gov.uk/government/publications/public-health-in-prisons-and-other-secure-settings-contact-phe-specialist-leads/contact-details-for-national-and-local-public-health-england-health-and-justice-specialists>).

leads/contact-details-for-national-and-local-public-health-england-health-and-justice-specialists) in response to cases in prisons and PPDs. The HPT and the National Health and Justice Team will decide whether to declare a formal incident and respond accordingly. This will support efforts across organisations to achieve infection prevention and control following the national contingency plan for outbreaks in PPD.

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585671/multi_agency_prison_outbreak_plan.pdf).

As infection is spread through both personal contact and environmental contamination, it is important to review current infection prevention and control practices to ensure they follow national infection prevention and control guidance (<https://www.gov.uk/government/publications/infection-control-in-prisons-and-places-of-detention>) for PPDs.

Cohorting

Should the numbers of cases in an establishment increase, isolation resources could be under pressure. Cohorting is a strategy which can be effective in the care of large numbers of people who are ill by gathering all those who are suspected or confirmed cases into one area, or a limited number of areas where it is necessary to keep some prisoners or detainees separate.

Cohorting presents many advantages in infection control. However, the area used for cohorting should not be considered the only source of infection. This is because PPDs are at risk of new cases being imported from the community or other establishments. Governors, Directors and IRC Managers must survey their establishments for suitability for cohorting and conduct risk assessments on the co-location of prisoners who would normally be kept separated.

Cleaning and waste

Guidance on cleaning and waste disposal (<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings>) is available.

Advice on the use of PPE for healthcare staff and custodial staff with patient-facing roles

Healthcare staff are most likely to work directly with patients with symptoms of coronavirus (COVID-19). Custodial staff, PECS and transport services may also be engaged especially when symptoms are first presented.

Those who are severely unwell will be transferred to an appropriate NHS facility. The facility that receives the individual must be informed that the patient has symptoms of coronavirus (COVID-19) that will require precautionary isolation.

Infection prevention and control advice (<https://www.gov.uk/government/publications/wuhan-novel-coronavirus-infection-prevention-and-control>) includes wearing the appropriate level of Personal Protective Equipment (PPE).

Custodial or healthcare staff in close contact with confirmed or suspected cases:

Staff should minimise any non-essential contact with suspected coronavirus (COVID-19) cases. For activities requiring close contact with a possible case, for example, interviewing people at less than 2 metres distance, or arrest and restraint, PHE advises that the minimum level of PPE that custodial and escort staff should wear is:

- disposable gloves
- fluid repellent surgical face mask
- if available, a disposable plastic apron and disposable eye protection (such as face visor or goggles) should also be worn

Healthcare staff in close contact with confirmed or suspected cases where aerosol generated procedure is being undertaken

PHE advises that the minimum level of PPE for healthcare staff required where an aerosol generated procedure is being undertaken is:

- FFP3 respirator
- gloves with long tight-fitting cuffs
- disposable fluid-resistant, full-sleeve gowns (single-use)
- disposable eye protection, preferably face visor

For all staff, PPE must be changed regularly, either every 2 to 4 hours or in between patients.

PPE should be removed in a specific order that minimises the potential for cross-contamination. The order of removal of PPE should be:

1. Peel off gloves and dispose of in clinical waste
2. Perform hand hygiene, by handwashing with soap and water, or using alcohol gel
3. Remove apron by folding in on itself and place in a clinical waste bin
4. Remove goggles or visor only by the headband or sides and dispose of in clinical waste
5. Remove fluid repellent surgical face mask from behind and dispose in clinical waste
6. Perform hand hygiene

All used PPE must be disposed of as Clinical Waste. Scrupulous hand hygiene is essential to reduce cross-contamination. Coronaviruses can be killed by alcohol hand gel and most disinfectants.

Information on donning and doffing of PPE (<https://www.gov.uk/government/publications/wuhan-novel-coronavirus-infection-prevention-and-control>) is available.

Limiting spread of coronavirus (COVID-19) in PPDs

Managers of PPDs can help reduce the spread of coronavirus (COVID-19) by reminding everyone of the public health advice.

Staff and prisoners or detainees should be reminded to wash their hands for 20 seconds more frequently than normal.

Frequently clean and disinfect objects and surfaces that are touched regularly, using your standard cleaning products. Bleach-based disinfectant products (such as Titan-Chlor tablets) are recommended in PPDs for disinfection.

ANNEX 4

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-36-ES.2

Date: 21 April 2020

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Olufemi Elias

Decision of: 21 April 2020

PROSECUTOR

v.

LAURENT SEMANZA

PUBLIC

DECISION ON MOTION FOR PROVISIONAL RELEASE

Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Thembile Segoete

Counsel for Mr. Laurent Semanza:

Mr. Peter Robinson

I, CARMEL AGIUS, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

BEING SEISED of a motion filed by Mr. Laurent Semanza (“Semanza”) on 16 March 2020, wherein he requests that I grant him immediate provisional release or, in the alternative, that his pending early release application be granted without further delay;¹

NOTING that Semanza was arrested in the Republic of Cameroon on or about 26 March 1996 pursuant to an international arrest warrant issued by the Republic of Rwanda and, following an order for transfer pursuant to Rule 40*bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (“ICTR”), was transferred to the United Nations Detention Facility on 19 November 1997;²

NOTING that, on 20 May 2005, the Appeals Chamber of the ICTR: (i) affirmed Semanza’s convictions for rape, torture, and murder as crimes against humanity; (ii) reversed, in part, Semanza’s convictions for complicity in genocide and aiding and abetting extermination as a crime against humanity, and affirmed the remainder of these convictions; (iii) entered convictions for genocide, for ordering extermination as a crime against humanity, and for serious violations of Common Article 3 of the Geneva Conventions and Additional Protocol II; and (iv) increased Semanza’s sentence to 35 years of imprisonment, subject to a six-month reduction for violations of his fundamental pre-trial rights;³

NOTING that, after initially serving his sentence in the Republic of Mali, Semanza was transferred to the Republic of Benin (“Benin”) on 21 December 2018 to serve the remainder of his sentence;⁴

NOTING the application for early release filed publicly by Semanza on 26 July 2018;⁵

¹ Motion for Provisional Release, 16 March 2020 (“Motion”), paras. 1, 14.

² *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003, paras. 16, 20, 22.

³ *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, pp. 129-130.

⁴ Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 20. *See* Order Designating State in Which Laurent Semanza is to Serve the Remainder of his Sentence, 19 December 2018 (“Order of 19 December 2018”), pp. 1-2.

⁵ Petition for Early Release on 26 March 2019, 26 July 2018 (“Early Release Application”). On 27 February 2019 and 4 August 2019, respectively, Semanza filed two submissions in relation to his Early Release Application. *See* Submission Pursuant to Paragraph Six of the Early Release Practice Direction, 27 February 2019 (confidential and *ex parte*); Supplemental Submission Pursuant to Paragraph Six of the Early Release Practice Direction, 4 August 2019 (confidential and *ex parte*) (“Submission of 4 August 2019”). In his Submission of 4 August 2019, Semanza requested that I grant the Early Release Application without further delay and, *inter alia*, indicated his willingness to abide by any conditions of release imposed by me. *See* Submission of 4 August 2019, paras. 18, 20. *See* Early Release Application, para. 10.

NOTING the supplemental submissions filed by Semanza in relation to the Motion on 24 March and 12 April 2020;⁶

NOTING that, in relation to his request for provisional release, Semanza submits that: (i) Rule 68(I) of the Rules of Procedure and Evidence of the Mechanism (“Rules”) also applies to persons whose convictions have been upheld on appeal and are serving their sentences;⁷ (ii) the present coronavirus pandemic constitutes special circumstances and an acute justification warranting his provisional release related to humane and compassionate considerations;⁸ (iii) at age 76, he is at high risk of dying from the coronavirus should he contract it;⁹ (iv) on provisional release he could self-quarantine whereas in prison he is unable to control the coming and going of prison staff and is in close quarters with thousands of other prisoners;¹⁰ (v) he would return to prison if and when required;¹¹ and (vi) provisional release would enable him to demonstrate that he is capable of integrating into society;¹²

NOTING that, in relation to his alternative request for an expedited decision on his Early Release Application, Semanza submits that: (i) the coronavirus pandemic requires that the Early Release Application be granted without further delay;¹³ (ii) although paragraph 10 of the relevant Practice Direction requires where possible a decision by the President at least 7 days prior to the date of eligibility for early release, which he submits was on 26 March 2019, no decision has yet been issued on his Early Release Application;¹⁴ (iii) his Early Release Application was filed more than 20 months ago;¹⁵ (iv) the coronavirus pandemic places great responsibility on the President to take care of those who are in his charge and who are most vulnerable;¹⁶ and (v) the coronavirus

⁶ Supplemental Submission: Motion for Provisional Release, 24 March 2020 (“Supplemental Submission”); Second Supplemental Submission: Motion for Provisional Release, 12 April 2020 (“Second Supplemental Submission”).

⁷ Motion, para. 6, *referring, inter alia, to Prosecutor v. Zdravko Tolimir*, Case No. MICT-15-95-ES, Public Redacted Version of the “Decision on Motion for Provisional Release” Filed on 28 January 2016, 23 February 2016 (“*Tolimir Decision*”), para. 7. I note that in paragraph 5 of the Motion Semanza erroneously refers to Rule 65(I) of the Rules, but I understand this to be a reference to Rule 68(I) of the Rules. *See* Motion, paras. 1, 5; Supplemental Submission, para. 1; Second Supplemental Submission, para. 1. Semanza also submits that a convicted person may be granted conditional early release and ordered to return to prison when and if the medical conditions improve. *See* Motion, para. 10, *referring to Prosecutor v. Ljubiša Beara*, Case No. MICT-15-85-ES.3, Public Redacted Version of 7 February 2017 Decision of the President on the Early Release of Ljubiša Beara, 16 June 2017, para. 48.

⁸ Motion, paras. 9, 11.

⁹ Motion, para. 11. *See* Second Supplemental Submission, para. 2.

¹⁰ Motion, para. 12.

¹¹ Motion, para. 13.

¹² Motion, para. 13.

¹³ Motion, paras. 1, 14. *See* Second Supplemental Submission, paras. 2, 4-5, 7.

¹⁴ Motion, paras. 3-4, *referring to* Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.2, 20 February 2019 (“Practice Direction”), para. 10.

¹⁵ Supplemental Submission, para. 1. *See* Second Supplemental Submission, para. 1.

¹⁶ Motion, para. 14.

pandemic is moving at a fast pace and, since the Motion was filed, has reached Benin, where the number of cases has subsequently “increased 12-fold”;¹⁷

NOTING the response to the Motion filed by the Office of the Prosecutor (“Prosecution”) on 9 April 2020;¹⁸

NOTING the motion filed on the same day by Semanza, requesting me not to consider the Prosecution Response as the Prosecution failed to respect the 14-day timeline for responses set out in Rule 153(A) of the Rules;¹⁹

NOTING the response to the Motion to Strike filed by the Prosecution on 14 April 2020, wherein the Prosecution: (i) requests me to dismiss the Motion to Strike on the basis that the 14-day response deadline applicable to trial filings does not apply to submissions in relation to requests for early release;²⁰ (ii) requests, in the alternative, an extension of time and that I consider the Prosecution Response as timely filed;²¹ and (iii) submits that “[g]ood cause is shown since no deadline for such responsive submissions has been previously established by law and the Prosecution responded expeditiously” following, *inter alia*, Semanza’s Supplemental Submission;²²

RECALLING, as a preliminary matter, that Rule 153(A) of the Rules applies *mutatis mutandis* to proceedings before the President²³ and provides that, unless ordered otherwise, a response, if any, to a motion shall be filed within 14 days of the filing of the motion;

¹⁷ Supplemental Submission, para. 2; Second Supplemental Submission, para. 6. To support his alternative plea for early release, Semanza also refers to: (i) a press article dated 20 March 2020 reporting on measures taken by the Beninese authorities in light of the coronavirus pandemic (“Press Article”); and (ii) a letter from more than 3000 physicians dated 23 March 2020, recommending the release of certain detainees from immigration detention centres, including persons at higher risk due to advanced age. *See* Supplemental Submission, paras. 2-3. According to Semanza, the Press Article indicates that Beninese prison officials announced “that they would be implementing measures to release national prisoners who were eligible for early release.” *See* Supplemental Submission, para. 2.

¹⁸ Prosecution Response to Laurent Semanza’s Request for Provisional Release in Light of COVID-19 Situation, 9 April 2020 (“Prosecution Response”).

¹⁹ Motion to Strike “Prosecution Response to Semanza’s Motion for Provisional Release in Light of COVID-19 Situation”, 9 April 2020 (“Motion to Strike”), paras. 1-4, *referring to Prosecutor v. Momir Nikolić*, Case No. MICT-14-65-ES, Public Redacted Version of the 27 January 2017 Decision on Ratko Mladić’s Requests for Leave to Reply and Reconsideration or, Alternatively, Certification or Disqualification, 6 June 2018 (“*Nikolić Decision*”), para. 18.

²⁰ Prosecution’s Response to Laurent Semanza’s Motion to Strike “Prosecution Response to Semanza’s Motion for Provisional Release in Light of Covid-19 Situation”, 14 April 2020 (“Response to Motion to Strike”) (public redacted version), paras. 1-2.

²¹ Response to Motion to Strike, para. 3.

²² Response to Motion to Strike, para. 3.

²³ *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Decision on Motions Related to Valentin Ćorić’s Request for Variation of Early Release Conditions, 21 February 2020, fn. 5; *Nikolić Decision*, para. 18.

RECALLING further that Rule 154(A) of the Rules, which also applies *mutatis mutandis* to motions filed before the President,²⁴ permits time limits to be varied upon a showing of good cause;

CONSIDERING that the Prosecution Response was filed 24 days after the Motion;

CONSIDERING further that the Prosecution fails to demonstrate good cause for why I should recognise the Prosecution Response as validly filed;²⁵

CONSIDERING, therefore, that it is appropriate to disregard the Prosecution Response;

RECALLING, on the merits, that pursuant to Article 25 of the Statute of the Mechanism (“Statute”), imprisonment in an enforcement State shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism;²⁶

RECALLING that Article 3(2) of the relevant Enforcement Agreement between the United Nations and the Government of Benin also provides that the conditions of imprisonment shall be governed by the law of Benin and subject to the supervision of the Mechanism;²⁷

RECALLING Rule 68(I) of the Rules, which stipulates that the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period;

CONSIDERING that neither the Statute nor the Rules explicitly provide for the provisional release of a person serving his or her sentence following a final conviction;

CONSIDERING that, in certain limited circumstances, the Appeals Chamber and the President have applied Rule 68(I) of the Rules *mutatis mutandis* to convicted persons who remained in the custody of the Mechanism pending transfer to an enforcement State;²⁸

²⁴ *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, Decision on Hassan Ngeze’s Request for Extension of Time, 14 June 2018, p. 3; *Prosecutor v. Milan Lukić*, Case No. MICT-13-52-ES.1, Decision on Milan Lukić’s Motion Pursuant to Rule 154 to Enlarge the Time Limit for Filing of the Reply Brief, 10 April 2015, p. 1.

²⁵ See Response to Motion to Strike, paras. 2-3. I note that, in arguing that the 14-day timeline for responses does not apply to submissions related to early release, the Prosecution ignores that Semanza’s primary request is for provisional release. In addition, the Prosecution seems to equate the Prosecution Response with the type of submissions that the Prosecution may be invited to make as part of the collection of information relevant to early release proceedings before me. I find these arguments unconvincing. I also find unconvincing the Prosecution’s argument that good cause is shown because the Prosecution responded expeditiously following, *inter alia*, the Supplemental Submission.

²⁶ See also Rule 128 of the Rules.

²⁷ Agreement between the United Nations and the Government of the Republic of Benin on the Enforcement of Sentences Pronounced by the International Criminal Tribunal for Rwanda or the International Residual Mechanism for Criminal Tribunals, dated 12 May 2017 (“Enforcement Agreement”).

²⁸ See *Tolimir* Decision, para. 7 and references cited therein. I note that the President has only in one instance *proprio motu* granted provisional release to a convicted person who was in the custody of the Mechanism pending transfer to an enforcement State. See *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Public Redacted Version of the 20 July 2015 Decision of the President on the Application for Early Release or Other Relief of Drago Nikolić,

CONSIDERING, however, that Semanza is not in the custody of the Mechanism but is serving his sentence in an enforcement State;²⁹

CONSIDERING further that Semanza's argument that Rule 68(I) of the Rules applies to convicted persons serving their sentences in enforcement States disregards the applicable legal framework, which clearly distinguishes between detention under the direct authority of the Mechanism and imprisonment in an enforcement State;³⁰

CONSIDERING, therefore, that there is no basis in law for Semanza's request for provisional release;

RECALLING also Article 26 of the Statute, Rules 150 and 151 of the Rules, and the Practice Direction, which together set out the legal framework and procedure for applications for pardon, commutation of sentence, or early release;

RECALLING that a decision on an application for early release requires, *inter alia*, consultation with other Mechanism Judges pursuant to Rule 150 of the Rules and consideration of a number of factors in accordance with Rule 151 of the Rules;

CONSIDERING that Semanza's pending Early Release Application is currently being considered in accordance with these provisions;

CONSIDERING that, in requesting provisional release, Semanza appears to seek to circumvent the existing proceedings related to his Early Release Application;

CONSIDERING further that, as the Early Release Application has been pending since 26 July 2018, and as I am informed by the Registrar that Semanza reached two-thirds of his sentence on 26 March 2019,³¹ I intend to issue a decision on the Early Release Application as soon as possible, once the relevant information-gathering and consultation processes are concluded;

13 October 2015, paras. 4, 38-39, 42, 44. *See also Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-A Decision on Request for Provisional Release, 13 July 2005, para. 3.

²⁹ Order of 19 December 2018, p. 2.

³⁰ *See* Rules 67-68 of the Rules (detention on remand); Rule 127-128 of the Rules (imprisonment of convicted persons). *See also* Rules 87(I) and 88(C) of the Rules, which state that for the purposes of these Rules, a "person under the authority of the Mechanism" means an accused or convicted person detained on the premises of the detention unit or facility of the relevant branch of the Mechanism". *See further* Articles 3(2) and 8 of the Enforcement Agreement; Rule 2(1) of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism, 5 November 2018 (defining a "detainee" as "[a]ny person detained in the Detention Unit awaiting trial or appeal before the Mechanism or otherwise detained on the authority of the Mechanism").

³¹ Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 24.

CONSIDERING in addition that, being alert to the unfolding situation regarding the coronavirus pandemic, I asked the Registrar on 19 March 2020 to immediately request information from enforcement States, including Benin, on the measures taken thus far in their detention facilities in response to the pandemic;

NOTING that, on 26 March 2020, the Registrar filed confidentially a letter received in response from Benin, and that Semanza has been provided with the letter;³²

CONSIDERING that, in light of the information received to date, I am assured that the Beninese prison authorities are taking appropriate measures in relation to the management of the coronavirus pandemic;³³

CONSIDERING, therefore, that in these circumstances, Semanza fails to demonstrate why a decision on his Early Release Application must be issued immediately;

EMPHASISING, however, that I will continue to pay close attention to the measures taken by Benin in response to the coronavirus pandemic, and to the well-being of Semanza and other convicted persons serving their sentences in Benin under the supervision of the Mechanism;

FOR THE FOREGOING REASONS,

HEREBY GRANT the Motion to Strike;

DISMISS the Motion;

DIRECT the Registrar to continue to closely monitor the situation of Semanza and other convicted persons serving their sentences in Benin under the supervision of the Mechanism, in light of the coronavirus pandemic, and to provide me with updated information as necessary; and

³² Letter from the Director-General of the Ministry of Justice and Legislation of Benin to the Registrar, dated 25 March 2020, filed on 26 March 2020 ("Letter from Benin"). The Letter from Benin was submitted in French and an English translation was filed on the same day. On 27 March 2020, the Registry confirmed by email communication that the Letter from Benin had been conveyed to Semanza in accordance with my instructions. *See* Internal Memorandum from the President to the Registrar, dated 26 March 2020 (strictly confidential), para. 4.

³³ *See* Letter from Benin, p. 2. In this regard, I refer also to the interim guidance issued by the World Health Organization. *See* "Preparedness, prevention and control of COVID-19 in prisons and other places of detention", 15 March 2020, available at: <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-2020>. I further recall Article 3(3) of the Enforcement Agreement, pursuant to which the conditions of detention in Benin shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, and the Basic Principles for the Treatment of Prisoners, while also adhering to best practices in prison management aimed at ensuring, *inter alia*, the security of the detention facility and convicted persons.

DIRECT the Registrar to provide a copy of the present Decision to the authorities of Benin.

Done in English and French, the English version being authoritative.

Done this 21st day of April 2020,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]



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		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>		
		<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :		
Document type/ Type de document :				
<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>	
<input checked="" type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>	
<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>		

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>				
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)				
<input type="checkbox"/> English/ <i>Anglais</i>	<input checked="" type="checkbox"/> French/ <i>Français</i>	<input checked="" type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>				
Original/ Original en	<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Translation/ Traduction en	<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>				
<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :

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