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SCSL-03-01-ES

(11580 – 11591)

RESIDUAL SPECIAL COURT FOR SIERRA LEONE

Before:	**The Honourable Justice Philip Waki, President**
Acting Registrar:	**Binta Mansaray**
Date Filed:	**15 July 2014**
Case No.:	**SCSL-03-01-ES**

In the matter of

CHARLES GHANKAY TAYLOR

PUBLIC

REQUEST FOR LEAVE TO REPLY, AND REPLY, TO PROSECUTION RESPONSE TO MOTION FOR TERMINATION OF ENFORCEMENT OF SENTENCE IN THE UNITED KINGDOM AND FOR TRANSFER TO RWANDA

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REQUEST FOR LEAVE TO REPLY, AND REPLY, TO PROSECUTION RESPONSE TO MOTION FOR TERMINATION OF ENFORCEMENT OF SENTENCE IN THE UNITED KINGDOM AND FOR TRANSFER TO RWANDA

I Introduction

1. Leave is respectfully sought to file this reply to the Prosecution's Response to Charles Taylor's Motion for Termination of Sentence in the United Kingdom.[1] The lack of factual foundation and misstatements of law merit refutation; reception of this reply is accordingly in the interests of justice.

2. The Prosecution Response argues, in substance, that Mr. Taylor's detention in the UK occasions no violation of any fundamental right, but that if there is any such violation, it is justified by security concerns.

3. The Prosecution's submissions concerning solitary confinement[2] are legally erroneous and its factual assertions are devoid of foundation. Indefinite solitary confinement violates international human rights and international standards of detention. That prohibition is not restricted to solitary confinement imposed as a punitive or disciplinary measure. The Prosecution offers no support whatsoever for its assertion that the circumstances necessitating Mr. Taylor's isolation will change in the foreseeable future, and wholly misunderstands the relevance of the Krstic affair.

[1] *In the Matter of Charles Ghankay Taylor*, Case No. SCSL-03-01-ES, Prosecutor's (Submissions In) Response To Prisoner Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom
[2] Response, paras. 10-13.

4. Family life can be violated not only when visits by family members are legally prohibited or made "impossible"[3] but, as with just about any right, can be violated by creating an undue, unjustified or discriminatory burden on the exercise of that right. The Prosecution's attempt to blame Mr. Taylor's family for not being able to satisfy the visa requirements imposed by the UK is unjust, unfair and utterly without factual foundation.[4]

5. The Prosecution's claim that any violation of these rights is justified by security concerns is without a shred of factual basis. The only source for the litany of catastrophic consequences predicted by the Prosecution is telephone interviews with ten former Prosecution witnesses.[5] Those witnesses have no apparent knowledge or expertise of the most relevant issues – in particular, the modalities and conditions of detention available in Rwanda – and the Prosecution's reliance on this source of information only demonstrates that Mr. Taylor's transfer to Rwanda poses no significant security concerns whatsoever.

II. The Submissions Concerning Isolated Detention Are Legally Wrong and Without Any Factual Foundation

(i) The Prosecution's Attempt to Dispute That Solitary Confinement Is Not Prohibited By International Law Is Legally Wrong

6. The Prosecution appears to contest that indefinite solitary confinement violates fundamental human rights,[6] ignoring the clear statement of the European Court of Human Rights that "that solitary confinement, even in cases entailing only relative isolation,

[3] Response, para. 3.
[4] Responses, paras. 2, 9; Response, Confidential Annex I, paras. 2-5.
[5] Response, fn. 22.
[6] Response, para. 12 ("For example, paragraph 10 of that document imposes no prohibitions on solitary confinement.")

cannot be imposed on a prisoner indefinitely."[7] The psychological hard of near-total isolation are too severe to be countenanced in a civilized society and violate the basic dictates of humane treatment.

7. The Prosecution attempts to parse paragraph 7 of the UN's "Basic Principles for the Treatment of Prisoners" as only prohibiting solitary confinement when imposed as a punitive measure, not for other reasons.[8] The Prosecution's interpretation hinges on a narrow reading of the word "punishment" as equivalent to "disciplinary measure" rather than simply as "a form of detention." The latter is a more reasonable and obvious interpretation, as the former would lead to the incongruous consequence that an inmate could be placed in indefinite solitary confinement when they had done nothing wrong, whereas an extremely dangerous inmate could not be placed in isolation for having frequently violated the rules of detention. This perverse logic would imply that a State would be free to place a person in indefinite solitary confinement for their own protection even if there was another prison where they could be safely accommodated without being isolated. That does not accord with common sense, nor the caselaw of the European Court of Human Rights.

(ii) The Prosecution Has No Basis To Suggest That the Circumstances Leading to Mr. Taylor's Isolated Detention Will Change As Long As He Is Detained in a UK Prison

8. The Prosecution offers no basis for its claim that Mr. Taylor's current isolation will only be a "temporary measure."[9] The Prosecution appears to concede that Mr. Taylor, as viewed by the general UK prison population, is a "'notorious and vilified figure.'"[10] No factors are cited by the Prosecution to believe that this situation will not continue indefinitely.

[7] Motion, para. 56, citing Annex MM.
[8] Motion, para. ("Annex P … sets out no absolute prohibition on solitary confinement but rather indicates that efforts should be undertaken and encouraged which address abolition of solitary confinement as a punishment or restriction of its use.")
[9] Response, para. 11.
[10] Response, para. 11.

9. The Prosecution in this regard wholly misapprehends the relevance of the case of General Krstic. His fate is not cited to provoke "undeserved sympathy,"[11] but simply to show the seriousness of the security threat facing prisoners in the unique position of General Krstic and Charles Taylor; the UK's apparent inability to adopt measures that adequately balanced security with minimum standards of detention; and the remedy finally adopted by the ICTY. The Krstic situation demonstrates that the RSCSL should exercise the most anxious supervision and scrutiny over the conditions of detention of Mr. Taylor, particularly in light of the threats he has received.

III. The Right to Family Life Can Be Violated By the Imposition of Burdens Falling Short of "Impossibility", and Its Violation In this Case Is Not Attributable to Any Fault of Mr. Taylor's Family

(i) The Prosecution Asserts An Erroneous Standard For the Violation of the Right of Family Life of Prisoners and Their Families

10. The Prosecution variously argues that a State has *no* obligation to facilitate family visits[12] and that a violation only arises when the State imposes de facto restrictions that make visits to a prisoner "impossible."[13]

11. The Prosecution's submissions are plainly wrong. States do have an obligation under international human rights law to facilitate family visits.[14] *De facto* interference falling short of a prohibition or impossibility may constitute a violation of that right in a given case, as notably illustrated by the *Khodorkovskiy*

[11] Response, para. 11.
[12] Response, paras. 8 ("there was no obligation on the State authorities to ensure that applicants can visit prisoners in prison"); para. 12 (asserting that General Comment No. 21 (Annex O of the Motion) "does not require personal visits").
[13] Response, para. 3.
[14] Motion, paras. 20-26.

case.[15] Whether that is the case depends on whether there are reasonable alternatives available that would facilitate access to the prisoner by his or her family. The designation of place of enforcement that is unnecessarily remote from the prisoner's family, or taken without regard to the residence of the prisoner's family, can violate the right to family life.

(ii) The Prosecution Has No Basis To Blame Mrs. Taylor Or Other Family Members For the UK's Denial of a Visa

12. The Prosecution attempts to blame Mrs. Taylor for having failed to avail herself of offers of assistance from the RSCSL Registry in meeting the requirements imposed by the UK for issuance of a visa.[16] The Prosecution repeatedly characterizes this as a "willful failure[]."[17] The Prosecution conveniently ignores that Mrs. Taylor has attempted to avail herself of the assistance of the RSCSL Registry, which has informed her that her documentation is not likely to satisfy the standards reflected the UK's initial visa decision.[18] The Prosecution has no basis, other than rank speculation,[19] to claim that Mrs. Taylor is hiding financial resources that would establish the threshold of financial resources required by UK immigration authorities to overcome their suspicion that she will overstay her visa.

13. The Prosecution also conveniently ignores the manifestly improper burden arising from the UK's claim that Mr. Taylor's presence in the UK is a factor *against* granting her a visa.[20] The Office of the Prosecutor of this Court, rather than

[15] Motion, para. 26.
[16] Response, paras. 2, 9; Response, Confidential Annex I, paras. 2-5.
[17] Response, para. 2; Confidential Annex I, para. 5.
[18] Motion, paras. 47-49.
[19] Response, Confidential Annex I, para. 6. [Confidential Annex I has two paragraphs numbered "6"; this is a reference to the first of the two.]
[20] Motion, paras. 45-49

downplaying or ignoring such matters, should forthrightly denounce this approach in the interests of the proper administration of justice.

IV. The Prosecution Offers No Basis To Believe That Enforcing Mr. Taylor's Sentence in Rwanda Will Have Any Security Consequences and None Were Cited By the SCSL President In Designating the UK As the Place of Detention

14. The Prosecution claims that Mr. Taylor's detention in the UK is justified on the basis of security concerns, implying that any infringement of human rights is nevertheless justified by that consideration.[21] The security concerns invoked by the Prosecution include: (i) "undermining peace and security in Liberia and the sub-region";[22] (ii) "instigat[ing] disorder and criminal conduct" in Liberia and across the sub-region;[23] (iii) "engineer[ing] an escape" or "mastermind[ing] a jail breakout";[24] (iv) threatening witnesses who testified against him;[25] (v) threatening "current or former high level Africa leaders";[26] (vi) threatening the security of "former high level State officials" and "SCSL officials";[27] and/or (vii) pressuring "Rwandan prison officials – and perhaps other Rwandan officials – to violate or laxly enforce conditions of imprisonment," which would "increase the Prisoner's opportunities for inappropriate, uncontrolled and unmonitored access to outside supporters, agitators and resources."[28]

[21] Response, para. 6 ("enforcement of sentence in the United Kingdom is more consistent with the above stated legitimate 'interests of national security, public safety or economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others' than would be enforcement of sentence in Rwanda.")
[22] Response, para. 18.
[23] Response, para. 1.
[24] Response, para. 1, 18.
[25] Response, paras. 1, 18.
[26] Response, para. 18.
[27] Response, para. 18.
[28] Response, para. 17.

15. These wide-ranging claims are based on conversations with "ten witnesses in the Taylor Trial in Sierra Leone and Liberia."[29] The Prosecution, rather than speaking to them directly, "caused a sampling" – whatever that might mean – of these witnesses. No information is given about who spoke to the witness, how they were chosen, or whether any of these individuals had ever, for example, themselves been the object of any harassment or intimidation by anyone.

16. The opinions of these witnesses are not a proper basis for any of the Prosecution's assertions. There is no indication that any of those witnesses knows anything about the conditions of detention in either the UK or Rwanda; about the monitoring of detainees either in the UK or Rwanda; the responsibility, trustworthiness, strength and stability of Rwanda or its prison officials; the strength of the Rwandese military; the independence and strength of the Rwandan government as a whole; and the existence, or lack, of any network over whom Mr. Taylor still has any influence at all. In short, they know nothing about the criteria upon which the determination about the place of Mr. Taylor's enforcement should be made.

17. The unspoken and yet wholly unsubstantiated assumption underlying the Prosecution's submissions is that Rwandese officials are corrupt, incompetent, weak and amenable to manipulation, whereas those in the UK are responsible, upstanding, honourable and unimpeachable. What is this based on? Was this the opinion of the ten witnesses? If so, what is the basis of their opinions? The Prosecution does nothing more than take an opinion poll amongst a group of individuals who are likely to have strong antipathies towards Mr. Taylor, and malleable to the Prosecution's own opinions. This provides no basis for the factual

[29] Response, fn. 22.

assertions in the Response, much less any showing of their *prima facie* existence, let alone on a balance of probability.

18. The Prosecution offers no basis for its claim that enforcing the sentence in Rwanda "give[s] rise to the same concerns that led to the transfer of the Taylor case from Sierra Leone to Europe."[30] Paradoxically, the Prosecution argues that "travel from Liberia to Rwanda would be of longer duration and more difficult than travel to the United Kingdom."[31] Even assuming that this is approximately correct, why then should Rwanda be equated with Sierra Leone from a security standpoint any more than the UK? And why is "Europe" contrasted with two such ostensibly geographically disparate countries? The Security Council's resolution of eight years ago expressing concerns in respect of holding Mr. Taylor's trial in West Africa[32] have no bearing on the situation in Rwanda in 2014.

19. The Prosecution's alarmism contrasts with the absolute absence of any factual foundation for these claims. There is no evidence to suggest that there is any network of "outside supporters, agitators and resources"[33] waiting for guidance from Mr. Taylor before threatening witnesses, SCSL officials or "heads of State." If any such network existed one would have expected cases of harassment or intimidation of witnesses, SCSL officials and "heads of State." Indeed, that danger would and should have been much greater before the end of the proceedings against Mr. Taylor.

20. This has simply not occurred. No significant claims of witness intimidation were made throughout trial, much less established. None has been in any way connected with Mr. Taylor. None has been reported in respect of SCSL officials

[30] Response, para. 17.
[31] Response, para. 3.
[32] Response, fn. 21.
[33] Response, para. 17.

or heads of State. No instigation of unrest or disorder or undermining of "peace and security in Liberia and the sub-region" ever occurred. The absence of such acts was certainly not prevented by stringent conditions of visitation or communication applicable at the United Nation Detention Unit in The Hague.

21. Finally, the security justification appears to have played no part in the President's designation of the State of enforcement of sentence.[34] The absence of any mention of security concerns in that decision undermines the Prosecution's claim that the continuation of enforcement in the UK is justified by any security concerns.

V. The Response Ignores The Factors That Make Rwanda Substantially More Accessible Than The UK to Mr. Taylor's Family

22. The Response does not address the concrete obstacles that make travel to the UK substantially more onerous than travel to the UK. The Prosecution does not address the cost and difficulty facing Liberians in obtaining a UK visa – even assuming that the UK ever decides to adopt a more flexible approach that would permit the issuance of such a visa to members of Mr. Taylor's family; the additional cost and travel associated with travel to Accra in order to obtain such a visa; the higher cost of travel to the UK by air;[35] and the higher cost of travel within the UK.[36] The Prosecution's attempt to discount the high cost of staying in the UK by saying that Mr. Taylor's family members would have access to free accommodation[37] is nothing but rank speculation. The Prosecution has no basis at all to know how often or for how long Mrs. Taylor was able to visit The Hague;

[34] *The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-ES, Order Designating State In Which Charles Ghankay Taylor Is To Serve His Sentence, 4 October 2013, pp. 2-3.
[35] Response, Annex B overlooks that there are direct flights from Accra to Kigali on Rwandair, at substantially lower prices than are available for flights via Nairobi. *See* http://www.rwandair.com/ (last accessed on 15 July 2014).
[36] Cf. Response, para. 3.
[37] Response, para. 4.

what family members she may have in the region where she could stay; or whether any such possibility exists in the vicinity of Durham. These cost differentials, unaddressed by the Prosecution, are substantial when viewed individually or cumulatively.

VI. The Motion Is Not a Request for Reconsideration And Is Not Repetitive

23. The issues raised in the Motion have never been previously litigated.[38] The concrete conditions of Mr. Taylor's detention in the UK; the manner in which the UK has applied its visa requirements; and the consequences of those conditions for respect for human rights and the minimum international standards of detention have never before been the object of any litigation.

VII. Mr. Taylor Does Not Oppose the Prosecution's Standing

24. The Defence does not believe that the Prosecution has standing and was afforded no opportunity to make submissions on standing before it was recognized.[39] Nevertheless, the Defence has not sought reconsideration of that decision, recognizing that the opposing views may assist the President's deliberations, and in the interests of judicial economy. The Prosecution's submissions, if anything, underscore that there is no factual basis to support any security concerns that could justify any infringement of Mr. Taylor's fundamental human rights or those of his family.

Word count: 2.864.

Respectfully submitted.
The Hague, 15 July 2014

[38] Cf. Response, paras. 20-21.
[39] *In the Matter of Charles Ghankay Taylor*, Case No. SCSL-03-01-ES, Order Granting Leave to File Submissions in Response, 14 July 2014.

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