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RESIDUAL SPECIAL COURT FOR SIERRA LEONE
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LEONE

PUBLIC

Before: The Honourable Justice Jon Kamanda, President

Registrar: Ms. Binta Mansaray

Date: 15th June 2020

In the matter of

PROSECUTOR

Against

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**

Office of the Prosecutor:

Defence Office:

Mr. James C. Johnson

Mr. Ibrahim Yillah

Counsel for Mr. Charles G. Taylor

Mr. Essa M. Faal

RESIDUAL SPECIAL COURT FOR SIERRA LEONE	
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Background

1. On the 3rd of April 2006 Mr. Charles Ghankay Taylor made his initial appearance before the Special Court for Sierra Leone and was formally charged on an 11 count indictment with Planning to Aiding and Abetting of War Crimes and Crimes Against Humanity.
2. On the 10th July 2007, the Special Court for Sierra Leone and the Government of the United Kingdom concluded an agreement¹ (the enforcement of sentence agreement) for the hosting of Mr. Taylor's sentence should he be found guilty by that court. Article 3(2) of that Agreement confers supervisory powers on the Special Court for Sierra Leone over the enforcement of Mr. Taylor's sentence.
3. On the 26th of April 2012 Charles Taylor was convicted of all 11 counts and sentenced to a 50 year term of imprisonment by the Trial Chamber of the Special Court for Sierra Leone sitting in The Hague, The Netherlands. On the 26th of September 2013, both conviction and sentence were upheld by the Appeals Chamber of the Special Court for Sierra Leone.
4. On the 15th of October 2013 Charles Taylor was transferred from The Netherlands to HM Franklands Prison in the United Kingdom to serve the remainder of his prison term.

Introduction

5. On the 11 of March 2020, the Director General of the World Health Organization (WHO) announced to the world that the coronavirus (COVID- 19) disease had reached the threshold of a pandemic due to its rapid contagious global impact. This declaration came at a time when the COVID- 19 had gone out of control in the Chinese city of Wuhan where the outbreak was initially reported and was quickly spreading around the world.

The United Kingdom became one of the many countries that have been hard hit by this pandemic and according to latest figures, the number of persons infected by the disease in the United Kingdom has reached 78,991 with nearly 10,000 deaths². A substantial number

¹ See agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Special Court for Sierra Leone on the Enforcement of Sentences of the Special Court for Sierra Leone, 10th July 2007

² BBC figures as at 11th April 2020: <https://www.bbc.com/news/uk-52256169>

of inmates in prisons and detention centers across the United Kingdom are reported to have contracted the disease. The WHO and other health experts have warned that people in overcrowded areas and the aged are among the highly and most vulnerable categories to the disease.

The Application

6. Mr. Charles Taylor submits this request for an order to transfer him temporarily to a third and safe country outside of the United Kingdom as soon as is practicably possible. Mr. Taylor is extremely concerned about his physical safety and his health in general in light of the current widespread nature of the coronavirus situation in the UK³. His fears about a possible infection by the virus were aggravated after it was confirmed that two of the prison inmates in HM Franklands Prison have been infected with the coronavirus⁴. Also, there have been reports of deaths of prison inmates in prison/detention centers across the United Kingdom.⁵ The aggressive nature and mode of transmission of the coronavirus raises serious concerns as to Mr. Taylor's continued safety in a UK prison. Furthermore, there has been scientific evidence that shows that the coronavirus disease (COVID 19) is more lethal among older people and given Mr. Taylor's age (72 years), there is an urgent need to take appropriate measures to save him from any possible contact with the virus.⁶

7. Mr Taylor is also concerned that the Residual Special Court for Sierra Leone has not specifically developed a covid-19 policy for application at HM Franklands Prisons where Mr. Taylor is currently serving his imprisonment. What the court has done to date is to transmit the guidelines for the United States Center for Disease Control ("CDC") and advising Mr Taylor to follow these guidelines. Whilst Mr Taylor appreciates the steps taken by the Court, it is his submission that those measures do not go far enough. They do not address his concerns for physical safety as the situation is grave in the UK is 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. It is a known fact that HM Franklands Prison being one of UK's maximum security prisons is overcrowded with over 900

³ The coronavirus (COVID 19) was declared a global pandemic by the World Health Organization on the 11th of March 2020.

⁴ Information provided by Mr Taylor to the Defence

⁵ BBC online news: <https://www.bbc.com/news/uk-england-lancashire-52286711>

⁶ See statement of Dr. Hans Henri P. Kluge, WHO Regional Director for Europe, 2 April 2020: <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/statements/statement-older-people-are-at-highest-risk-from-covid-19,-but-all-must-act-to-prevent-community-spread>

inmates and whatever level of care/caution is exercised by Mr. Taylor; he stands every risk of contracting the virus should he continue to stay in the UK. No amount of social distancing would save Mr Taylor from contracting the virus given that most of the facilities existing at HM Franklands are shared by a number of inmates which exposes Mr. Taylor at his advanced age to be at risk to contracting the virus. This existing state of affairs at HM Franklands Prisons portrays a grimmer picture of the dangers that underlie Mr. Taylor's continued incarceration in the United Kingdom and may not be conducive to the proper application and observance of the guidelines set by the CDC.

8. It is against the afore-mentioned background that Mr. Taylor requests this Honourable Court through its President to exercise its inherent powers to order his temporary transfer to a third country that is safer for him and he could be returned back to the UK to continue serving his imprisonment when the UK and its prisons are free from the virus.

Special Court for Sierra Leone and the RSCSL are vested with Powers to Order Mr. Taylor's Transfer

9. Under Article 9(2) of the enforcement of sentence agreement, the Court is vested with sufficient authority to order a transfer of Mr. Charles Taylor from the UK to another state. Also, even though Mr. Charles Taylor's detention in the UK is governed by UK law as provided for in Article 23(2) of the Statute of the RSCSL and also Article 3(2) of the enforcement of sentence agreement, it is clear under those provisions that such enforcement of sentence is subject to the supervision of the Court. Furthermore, Article 1 of the Statute of the RSCSL is instructive as to the purpose of the RSCSL which includes the carrying out of the functions of the Special Court for Sierra Leone and the supervision of enforcement of sentences. As such, and given the prevailing circumstances in the UK regarding the rampant coronavirus infections and deaths against which background this request is made, the court is well placed to exercise its expressed and inherent powers to order a transfer of Mr. Charles Taylor to somewhere safe pending steps to be taken by the UK Government to adequately deal with the corona virus pandemic in the UK and its prisons.

An order for Mr. Taylor's transfer will be consistent with international best practices for the protection and safety of prisoners

10. An order by this Honourable Court to transfer Mr. Taylor to another country to continue his prison term for reasons of his safety as highlighted above will not in any way infringe on international best practices for safeguarding the safety of prisoners, neither is this request intended to circumvent your Lordships' "*Decision On Public With Public And Confidential Annexes Charles Ghankay Taylor's Motion For Termination Of Enforcement Of Sentence In The United Kingdom And For Transfer To Rwanda*" of 30th January 2015. A number of precedents on transfer of prisoners both at the national and international levels indicate that the practice is not new. In 2015, the International Criminal Court (ICC) transferred Thomas Lubanga and Germain Katanga to the Democratic Republic of Congo to serve their remaining prison terms. Though the transfer by the ICC in those cases was not for reasons similar to those contained in the present application; nonetheless the power exists in an international court to order a transfer.

11. A number of countries that are currently affected by the coronavirus scourge have expressed a desire to release some of their prisoners (particularly those in overcrowded prisons) to prevent them from contracting the disease. These include but not limited to the United Kingdom⁷, Spain and the United States of America. Indeed, this reinforces the principle that the state having custody of prisoners and the authorities responsible for the supervision of such custody have an obligation to ensure the good health safety of prisoners. This obligation also extends to the duty to move prisoners from harms- way where it is clear that without such movement, the prisoner will be exposed to undue risk.

The Application is consistent with Mr. Taylor's Right to Life

11. Although Mr. Taylor is currently serving a prison term, his basic and fundamental human rights remain unaffected including his right to life and personal dignity. It is submitted that Mr. Taylor's continued detention in a country that is being ravaged by a dangerous and life threatening disease poses a substantial risk to his right to life. The United Nations Standard Minimum Rules for the Treatment of Prisoners provide, inter alia, that prison environments should be safe for all who live there⁸, which presupposes that no one in a prison should fear for his or her physical safety. The

⁷Web link to a BBC article on the release of prisoners in the UK due to COVID 19: <https://www.bbc.com/news/uk-52165919>

⁸ See Rule 58 of the Standard Minimum Rules, otherwise known as the Mandela Rules.

prevailing conditions relating to COVID 19 infections and deaths in the United Kingdom do not guarantee sufficient safeguards for Mr. Taylor's right to a safe environment.

12. Article 2 of the European Convention on Human Rights is instructive on the inalienable right to life which must be accorded to every person without discrimination. The jurisprudence of the European Court of Human Rights is replete with cases on the protection of the right to life. In the case of **Keller v. Russia**⁹, the ECtHR held that “*the obligation to protect the health and well-being of persons in detention clearly encompassed an obligation to protect the life of arrested and detained persons from a foreseeable danger*”. The COVID 19 virus is clearly a foreseeable danger to Mr. Taylor's life if he is allowed to continue his prison term in the UK and therefore a failure to transfer him to a third and safe country would constitute a grave violation of his right to life. In **Turluyeva v. Russia**¹⁰, the court held that the failure by the Russian authorities to take appropriate measures to protect the life of the applicant's missing son once the authorities have learned of the disappearance amounted to a violation of the victim's right to life.

13. In **Tirean v. Romania**¹¹, the court concluded that “*the physical conditions of the applicant's detention caused him suffering that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment prescribed by Article 3 of the Convention*”. The judicial reasoning behind these cases creates a solid foundation for the protection of fundamental human rights of detained persons. They posit that where fundamental human rights are at stake, the competent authorities must act appropriately to avert a violation which might occasion an irreparable injustice.

14. Similarly, the Inter-American Court of Human Rights criticized a prison facility in Brazil for overcrowding because it among other things affected the physical health of inmates and ordered the Authorities to take necessary steps or adopt an emergency plan to reduce overcrowding at Brazil's Anibal Bruno (Curado) Prison Complex in Recife, Pernambuco.¹² At the regional African

⁹Keller v. Russia: ECHR 17 OCT 2013, Application no. 26824/04

¹⁰Application no. 63638/09

¹¹28 October 2014, Application no. 47603/10

¹² <https://hrp.law.harvard.edu/criminal-justice/inter-american-court-of-human-rights-critiques-over-incarceration-and-prison-building-in-brazil/>

level, the African Commission on Human and People's Rights works through Special Rapporteur and Working Groups on African prison conditions. The African Commission has adopted several resolutions on the standards of prisons in Africa, including the Resolution on the Adoption of the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa. Both of these instruments contain recommendations on reducing overcrowding, making prisons in Africa more self-sufficient, promoting rehabilitation and reintegration programs, making prison administrations more accountable for their actions, encouraging best practices, promoting the African Charter on Human and Peoples' Rights, and supporting the development of a Charter on the Basic Rights of Prisoners from the United Nations.

15. In addition, a number of international and regional human rights support Mr Taylor's request namely; UN Standard Minimum Rules for the Treatment of Prisoners, the International Covenant on Civil and Political Rights, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the African Charter on the Rights and Welfare of the Child, and the Protocol on the Rights of Women. Collectively, these instruments require authorities to act to protect the physical and mental health of detainees/inmates/convicts in times of crisis such as covid-19.

16. It is further submitted that the argument that Mr. Taylor's detention is subject to the rules of detention of the United Kingdom cannot trump this court's inherent powers and therefore must not be used as a reason not to exercise its powers of supervision over the enforcement of Mr. Taylor's sentence. Mr. Taylor's right to life does not give way in the face of such a misplaced argument. It cannot be gainsaid that Mr. Taylor's right to life trumps procedural consideration as to whether or not this court has jurisdiction to entertain this request. What is clear is that Mr. Taylor is serving a sentence imposed not by a UK court but by the Special Court for Sierra Leone. As is recognized in the Statute of the RSCSL, one of the functions of the residual entity, the RSCSL is to supervise the enforcement of sentences imposed by the then SCSL in national jurisdictions. This supervisory jurisdiction will as a matter of practicality and necessity be exercised through collaboration with national authorities but this collaboration in no way means that national authorities can usurp the functions of the RSCSL especially as the RSCSL has a functioning registry and has judges in its roster of judges to address matters relating to the enforcement of sentences of RSCSL convicts.

To hold the contrary will amount to a serious abdication of the most fundamental of responsibilities entrusted to the RSCSL.

17. Overall it is the defence's assessment that the decision by national authorities to release prisoners in light of the advent of covid-19 is informed in part by the fact that many prisons (with HM Franklands being no exception) lack adequate information technology and clinical information sharing between the different facilities as well as inmates. It is further submitted that a high prevalence of viral illness such as covid-19 amongst inmates would complicate the appropriate management of such contagious diseases by the prison authorities at HM Franklands Prisons who while well trained in the management of prison facilities are not sufficiently trained in the field of medicine to handle an outbreak of the magnitude of covid-19.

18. Mr. Taylor has not been provided with adequate personal protective equipment (PPE) and masks and has no statistics on whether that prison facility has sufficient hand washing areas and isolation rooms to cater for all its 900 inmates.

19. Mr. Taylor's classification as a category A prisoner presents further complications. If he were to be infected by the disease, it will present the UK Prison authorities at HM Franklands significant challenges, as it would require him being moved to a hospital outside the prison facilities where intensive care equipment and respirators are available. It has to be noted that according to the rules of the prison, any trip by Mr. Taylor outside the prison facilities require such heavy security that may be next to impossible to be provided during the situation of the pandemic. Mr. Taylor has informed Counsel that once he had to go to a hospital out of the prison facilities. He was escorted by close to a score of heavily armed security personnel with armoured vehicles and overhead helicopter surveillance. After his operation, he was chained to the hospital bed pending his recovery. If Mr. Taylor contracts the Covid 19 disease or needs medical attention outside the prison facilities at this time, it will undoubtedly provide a big challenge for the prison authorities which leaves Mr. Taylor in fear that in such circumstances, his medical and health needs would likely to be subordinated to other considerations.

Conclusion

20. Mr. Charles Taylor's advanced age (72) renders him highly susceptible to the coronavirus disease. His vulnerability to the coronavirus is compounded by the fact that he resides in a prison that is overly populated with fellow inmates which contradicts WHO COVID 19 preventive/mitigating measures such as social distancing, isolation and wearing protective equipment and masks. In any case, Mr Taylor will not be in a position to properly or adequately observe the guidelines of WHO or CDC because of the lack of provision of PPEs amongst other things. Every indication suggests that coronavirus infections and deaths in the United Kingdom continue unabated and that the disease is having a devastating impact on every community more so in the UK including prison facilities. The coronavirus is a foreseeable and imminent danger to Mr. Taylor's life. That danger can be averted by the exercise of your Lordships' powers by ordering Mr. Taylor's temporary transfer to a third and safe country.

21. The Defence would also like to reiterate that this request is not in any way intended to circumvent this court's Decision on Charles Ghankay Taylor's Motion for Termination of Enforcement of Sentence of 30th January 2015. It is purely borne out of the need to avert a looming disaster on Mr. Taylor's life if he were to contract the coronavirus due to his continued presence at HM Franklands Prison in the United Kingdom. The circumstances surrounding the instant application are different from the earlier request for transfer as this application is informed by a real and imminent threat to Mr. Taylor's life in the face of covid-19 outbreak in the UK. Mr. Taylor is not requesting a permanent transfer but a temporary measure to ensure that his physical safety is assured because of the uncontrolled nature of the outbreak of covid-19 in the UK especially as no proven vaccine has been developed to contain covid-19.

For the forgoing reasons, Mr. Taylor requests the court to exercise its inherent powers to order his temporary transfer from HM Franklands Prisons in the United Kingdom to a third and safe country pending the handling and termination of the corona virus in the UK by the UK Authorities.

Dated at Freetown this 15th day of June 2020.

Essa M. Faal



Counsel for Mr. Charles G. Taylor.