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RSCSL-03-01-ES
(12287 – 12296)

RESIDUAL SPECIAL COURT FOR SIERRA LEONE

Before: **The Honourable Justice Philip Waki, President**

Registrar: **Ms. Binta Mansaray**

Date Filed: **6 February 2015**

Case No.: **RSCSL-03-01-ES**

In the matter of

CHARLES GHANKAY TAYLOR

CONFIDENTIAL

APPLICATION FOR LEAVE TO APPEAL DECISION ON MOTION FOR TERMINATION OF ENFORCEMENT OF SENTENCE IN THE UNITED KINGDON AND FOR THE TRANSFER TO RWANDA

RECLASSIFIED AS PUBLIC

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Office of the Prosecutor

Ms. Brenda J. Hollis
Mr. [illegible]

I. INTRODUCTION

1. Charles Ghankay Taylor hereby respectfully requests leave to appeal, pursuant to Rule 73(B) of the Rules of Procedure and Evidence ("Rules"), the Trial Chamber's *Decision on Charles Ghankay Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom and For the Transfer to Rwanda*, 31 January 2015.[1]

II. APPLICABLE LAW

2. Rule 73 (B) of the Rules provides that leave to appeal from decisions on motions may be granted "in exceptional circumstances and to avoid irreparable prejudice to a party." Leave is to be sought, according to the Rule, from "the President or an Appellate Judge designated by the president." The indication that the responsibility for leave to appeal rests with the President, or his designee, implies that Rule 73(B) applies to decisions rendered by special Trial Chambers empanelled by the President.

3. Rule 73 (B) sets out an exigent standard for granting leave to appeal. Leave has nevertheless been granted, in particular, where the issues concern the preservation of fundamental rights or have long-lasting consequences. Trial Chambers have, for example, granted leave in respect of decisions concerning a purported exercise by an accused of the "right to self-representation";[2] alleged infringements of the right to adequate time for preparation;[3] alleged violations of the right to be informed promptly and in detail of the nature and

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[1] *In the matter of Charles Ghankay Taylor*, Case No. SCSL-03-01-ES, 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 the Transfer to Rwanda, 30 January 2015 ("Impugned Decision"). See also *In the matter of Charles Ghankay Taylor*, Case No. SCSL-03-01-ES, Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 24 June 2014 (Public with Public and Confidential Annexes).

[2] *Prosecutor v. Sesay et al.*, Case No. 2004-15-T, Decision on Application for Leave to Appeal Gbao – Decision on Application to Withdraw Counsel, 4 August 2004, para. 54.

[3] *Prosecutor v. Taylor*, Case No. SCSL-03-1-T, Decision on Defence Application for Leave to Appeal the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009, 28 May 2009, pp. 4-5.

cause of the charges;[4] denial of reception of a final brief because of non-compliance with the filing deadline, which "raises serious issues of fundamental legal importance involving the interests of justice" and "irreparable prejudice to the accused";[5] allegations of payments to witnesses that the Trial Chamber deemed "may ultimately affect the integrity and/or fairness of these proceedings";[6] and exclusion of evidence of such value that it would have serious consequences for the outcome of proceedings.[7] Even matters of lesser significance have attracted leave where they were perceived as having long-lasting or pervasive consequences.[8]

4. Leave has also been favoured in respect of matters "'of general importance [...] in international law,'"[9] matters of "general principle to be decided the first time", "question[s] of public international law importance", or that raise "serious issues of fundamental legal importance to [...] international criminal law, in general, or some novel and substantial aspect of international criminal law for which no guidance can be derived from national criminal law systems."[10]

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[4] *Prosecutor v. Taylor*, Case No. SCSL-03-1-T, Decision on Defence Application for Leave to Appeal the Decision on Urgent Defence Motion Regarding a Fatal Defence in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE, 19 March 2009, p. 5 ("FINDING that a continuous erroneous reading of the Indictment on the issue of joint criminal enterprise as a form of liability, could result in irreparable prejudice to the Accused who is entitled to know the nature of the case against him as enshrined in Article 17(4)(a) of the Statute and that the complex nature of the case where pleading of a joint criminal enterprise is a central issue, constitute exceptional circumstances.")

[5] *Prosecutor v. Taylor*, Case No. SCSL-03-1-T, Decision on Defence Motion Seeking Leave to Appeal the Decision on Late Filing of Defence Final Trial Brief, 11 February 2011, p. 5.

[6] *Prosecutor v. Taylor*, Case No. SCSL-03-1-T, Decision on Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and Its Investigators, 3 December 2010, p. 5.

[7] *Prosecutor v. Sesay et al.*, Case No. 2004-15-T, Decision on Prosecution's Application for Leave to Appeal Majority Decision Regardnig the Objection to the Admissibility of Portions of the Evidence of Witness TF1-371, 15 October 2007, paras. 11-12, 20.

[8] *Prosecutor v. Taylor*, Case No. SCSL-03-1-T, Decision on Public Prosecution Application for Leave to Appeal Decision Regarding the Tender of Documents, 10 December 2008, p. 4 ("NOTING that subsequent to the filing of the Motion the Prosecution has filed eight (8) formal motions requesting the admission nof documentary evidence through Rule 89(C)"); *Prosecutor v. Taylor*, Case No. SCSL-03-1-T, Decision on Defence Motion Seeking Leave to Appeal, 2 December 2010, p. 7 ("CONSIDERING FURTHER that a continuous erroneous interpretation of Rule 92*bis* on this issue could result in irreparable prejudice to the Accused that cannot be easily remedied on final appeal").

[9] *Prosecutor v. Sesay et al.*, Case No. 2004-15-T, Decision on Application for Leave to Appeal Gbao – Decision on Application to Withdraw Counsel, 4 August 2004, para. 55.

[10] *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Decision on Defence Applications for Leave to Appeal Ruling of the 3rd of February, 2005 on the Exclusion of Statements of Witness TF-141, 28 April 2005, para. 26.

5. Trial Chambers have also underscored that they should "avoid[] the judicial temptation of examining the merits or otherwise of the alleged errors of law in respect" of the decision from which leave is sought.[11]

III. SUBMISSIONS

(i) The Impugned Decision Concerns Fundamental Rights, Whose Violation Causes Irreparable Prejudice

6. Leave should be granted in the exceptional circumstances of the Impugned Decision, which permanently and irreparably prejudices Mr. Taylor's most fundamental human rights.

7. Two fundamental rights are at stake: (i) the right to family life (under, *inter alia*, Article 17 of the ICCPR); and (ii) the right to humane conditions of detention (under, *inter alia*, Article 10 of the ICCPR). These violations arise from two primary factors, for which relief was denied in the Motion: (i) the distance of Mr. Taylor's incarceration from his family; and (ii) the degree and anticipated duration of Mr. Taylor's social isolation from other human beings as a result of the security situation he faces in a UK prison. These are matters of such fundamental importance and permanent effect as to fall within the ambit of "irreparable prejudice" and "exceptional circumstances."

8. Although a request for leave should not primarily concern the nature of the errors committed in the decision from which leave is sought, one error is relevant to the nature of the prejudice at stake. The Trial Chamber twice expressed doubts about the permanence of detention in the hospital ward,

[11] *Prosecutor v. Sesay et al.*, Case No. 2004-15-T, Decision on Prosecution's Application for Leave to Appeal Majority Decision Regardnig the Objection to the Admissibility of Portions of the Evidence of Witness TF1-371, 15 October 2007, para. 19.

asserting that this claim was "speculative", and that "[t]here is no indication that it will continue indefinitely."[12]

9. With the greatest respect, these statements are not correct. Mr. Taylor's detention in the hospital ward arises from the concurrence of two facts, both acknowledged by the UK itself: (i) the impossibility of safely and securely holding Mr. Taylor amongst the general prison population, given its composition and Mr. Taylor's notoriety; and (ii) the absence of any suitable location for Mr. Taylor's detention in the prison other than the hospital ward. This situation, no matter how frequent the periodic review may be, will not change. Mr. Taylor was placed in the hospital on the very day of his arrival at HMP Frankland because it was recognized – correctly – that this was the only place to safeguard his safety and security. [13]

10. The relevance of this error is not its effect on the Trial Chamber's ultimate determination, but rather the fulfillment of the "irreparable prejudice" criterion. Mr. Taylor's current situation is not transitory; on the contrary, the issues dismissed by the Trial Chamber are a permanent state of affairs, with a permanent effect on Mr. Taylor's interests and rights.

(ii) A Third Fundamental Right Is Engaged By the Impugned Decision: Equal Treatment

11. The Impugned Decision implies that Mr. Taylor has no right to equal treatment as compared with other convicts because of, *inter alia*, the gravity of the offences for which he has been convicted.[14]

[12] Impugned Decision, paras. 104, 110.
[13] M. Hughes, *The Independent*, HMP Frankland's Brutal Regime – the inside story, 23 March 2010.
[14] Impugned Decision, para. 59 ("In the Trial Chamber's view, Taylor has no justification for demanding to be treated in the same way as other convicts from Africa."). The Trial Chamber then goes on to describe Mr. Taylor's particular circumstances, with a long discussion of the gravity of his offences.

12. Mr. Taylor, no matter how egregious may have been the crimes which he was found to have aided and abetted, does have a right to equal treatment with other convicts and prisoners.[15] While this by no means compels *identical* treatment with others, treatment that deviates from that of others who are similarly-situated[16] – including former heads of state and those who have received comparable or longer sentences than Mr. Taylor – *prima facie* suggests a violation of the right to equal treatment.

13. The gravity of the crimes for which a person is convicted is reflected in the length of sentence. Human rights law makes clear that the condition and circumstance of detention must not serve a punitive purpose, and yet the Trial Chamber suggests otherwise. The Trial Chamber's reasoning therefore implicates another fundamental right of Mr. Taylor: to equality.[17] This is a matter of such importance, and so directly relates to the protection of fundamental rights, as to deserve appellate resolution.

(iii) The Issues Are Novel and Are of General Importance to International Law

14. No court has ever addressed the issues raised by the Impugned Decision. Indeed, neither the Impugned Decision nor the President's decision designating the UK as the enforcement state addressed these issues: the latter gave no reasons of substance in relation to these matters, whereas the former

[15] *See e.g. Prosecutor v. Kordić*, Case No. MICT-14-68-ES, Public Redacted Version of the 21 May 2014 Decision of the President on the Early Release of Dario Kordić, 6 June 2014, para. 17 ("Although the two-third practice originates from the ICTY, it applies to all prisoners within the jurisdiction of the Mechanism, given the need for equal treatment of all convicted persons supervised by the Mechanism and the need for a uniform eligibility threshold applicable to both of the Mechanism's branches.")

[16] *Id.* (referring to need for equal treatment of "'similarly-situated'" prisoners in enforcement matters).

[17] The International Covenant on Civil and Political Rights, Article 14(1) ("All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law"); European Convention of Human Rights, Preamble of Protocol 12 ("Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law".

declared those issues "inadmissible."[18] The consequence is that the issue is utterly novel, as well as being of general importance in terms of the rights of prisoners being held by international courts.

15. The Impugned Decision's declaration of certain arguments as "inadmissible" was based on its reasoning that those arguments had previously been placed before the President prior to designating the UK as the enforcement State.[19] Leaving aside the merits of that reasoning, the consequence was that the Trial Chamber analyzed some, but not all, arguments presented in the Motion.[20] Accordingly, the Trial Chamber did not comprehensively analyze all arguments relevant to whether Mr. Taylor's rights are being violated.[21] This leaves a legal vacuum that constitutes, in itself, an exceptional circumstance warranting appellate scrutiny.

16. Without analyzing the merits, the failure to address all matters relevant to the potential deprivation of fundamental rights leave a legal vacuum. The approach would be analogous to the European Court of Human Rights declaring certain arguments inadmissible on the basis that they had previously been decided by the national authorities. The fundamental and non-derogable nature of human rights does not permit such an approach, further underscoring the irreparable prejudice arising from the Impugned Decision.

(iv) Granting Leave Will Not Delay Any Proceedings and Is the Only Available Remedy

[18] Impugned Decision, para. 73; *The Prosecutor v. Taylor*, Case No. SCSL-03-01-ES, Order Designating the State In Which Charles Ghankay Taylor Is To Serve His Sentence, 4 October 2013 ("Designation Order").
[19] Impugned Decision, paras. 68, 74 ("What remains to be decided is whether Taylor's conditions of detention have led to a violation of his rights to family life, or to any other human rights violations").
[20] The Trial Chamber listed all the arguments that it believed had been presented to the President before Mr. Taylor's transfer to the UK and deemed all these arguments "inadmissible". *See* Impugned Decision, paras. 71-73. See also Designation Order.
[21] See Impugned Decision, para. 72; Motion, paras. 22-43. The Trial Chamber only addressed the arguments arising from paras. 43 to 49 (in relation to family vists) and 50 to 57 (concerning the extent of his social isolation).

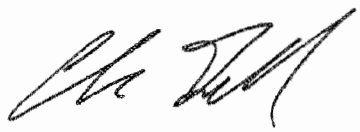
17. As a practical matter, the present request will not delay or interrupt any proceedings. The modest cost of empaneling an appeal bench to adjudicate the present issue is more than justified by the significance, novelty and importance of these exceptional issues. Further, granting leave is the only available remedy.

IV. CONCLUSION

18. Leave to appeal is justified in the exceptional circumstances of the Impugned Decision, which has profound and irremediable consequences for Mr. Taylor's rights and vital interests. The issues are novel and, indeed, have not even been addressed by the Trial Chamber or in the President's Designation Order. Leave is, in these exceptional circumstances, justified and serves the interests of justice.

19. The Defence further requests that the present filing be re-classified as public as and when the Impugned Decision is re-classified as public.

Word count: 2,391
Respectfully submitted.



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List of Authorities

(i) Authorities Cited In the Present Filing in Accordance With Article 7(A) of the RSCSL Practice Direction on Filing of Documents of 24 April 2014 ("Practice Direction"), and Which Are Readily Available on the Internet in Accordance with Article 7(D)(i) of the Practice Direction

Prosecutor v. Kordić, Case No. MICT-14-68-ES, Public Redacted Version of the 21 May 2014 Decision of the President on the Early Release of Dario Kordić, 6 June 2014, http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Decision/NotIndexable/MICT-14-68-ES/MSC8642R0000438914.pdf

International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16th December 1966 and entry into force 23rd March 1976 **(http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx)**

European Convention of Human Rights **(http://www.echr.coe.int/Documents/Convention_ENG.pdf)**

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(ii) Authorities Cited But Not Annexed To the Present Filing In Accordance with Article 7 (C) of the Practice Direction

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