1437

RSCSL-03-01-ES
(12444-12457)

RESIDUAL SPECIAL COURT FOR SIERRA LEONE

Before: Justice Philip N. Waki,
President

Registrar: Ms. Binta Mansaray

Date: 21 May 2015

In the matter of

CHARLES GHANKAY TAYLOR

Case No. RSCSL-03-01-ES

Public

Decision on Charles Ghankay Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom and for the Transfer to Rwanda

AND ON

Defence Application for Leave to Appeal Decision on Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda

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Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Mohamed A. Bangura

Defence Counsel for Charles Ghankay Taylor
Mr. Christopher Gosnell
Mr. John Jones

RESIDUAL SPECIAL COURT FOR SIERRA LEONE
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1. The President of the Residual Special Court for Sierra Leone ("Residual Special Court"), is seized of the Motion for Termination of Enforcement of Sentence in the United Kingdom and for the Transfer to Rwanda ("Motion for Transfer") dated 30 January 2015, and Defence Application for Leave to Appeal Decision on Motion for Termination of Enforcement of Sentence in the United Kingdom and the Transfer to Rwanda ("Application for Leave"), dated 6 February 2015, both filed by Defence Counsel on behalf of Charles Ghankay Taylor ("Defence").[1]

2. On 21 July 2014, upon close of submissions in the Motion for Transfer, the President acting pursuant to Article 23(3) of the Statute of the Residual Special Court for Sierra Leone ("Statute"), issued an Order convening a Trial Chamber pursuant to Article 13(1) of the Statute to hear and determine all matters arising from the Motion for Transfer.

3. In its Decision on Charles Ghankay Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom and for the Transfer to Rwanda of 30 January 2015,[2] the Trial Chamber in rejecting the motion found that: (i) the circumstances considered by the President in making the Designation Order which designated the United Kingdom as the State in which Taylor is to serve the remainder of his sentence have not changed,[3] and that accordingly, Taylor's further arguments on the issues already decided by the President are inadmissible;[4] (ii) Taylor's inability to receive visits from his wife and two daughters is not due to any interference with his Article 8 right to family life by the United Kingdom authorities or by the Residual Special Court, but such inability is due purely to his wife's failure to comply with United Kingdom visa requirements and to her ignoring the assistance offered to her to re-apply;[5] (iii) Taylor is not being held in conditions of sensory or relative isolation and no inhuman or degrading treatment has been established and the conditions of his imprisonment accord to international standards;[6] (iv) Taylor has failed to establish any violation of his Article 3 rights [prohibition of torture and inhuman and degrading treatment or

[1] *In the matter of Charles Ghankay Taylor*, RSCSL-03-01-ES-1425, (Confidential) Defence Application for Leave to Appeal Decision on Motion for Termination of Enforcement of Sentence in the United Kingdom and for the Transfer to Rwanda ("Application for Leave"), 6 February 2015.
[2] *In the matter of Charles Ghankay Taylor*, RSCSL-03-01-ES-1421, (Confidential) 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, ("Decision") 30 January 2015.
[3] Decision, para. 73.
[4] Decision, para. 121(i).
[5] Decision, para. 121(ii).
[6] Decision, para. 121(iii).

punishment] in regards to strip searches;[7] (v) all reasonable measures have been taken to ensure Taylor's security.[8]

A. Submissions of the Parties

4. The Defence seeks leave to appeal the Trial Chamber's decision pursuant to Rule 73(B) of the Rules[9] and submits that "[l]eave is to be sought, according to Rule [73(B)], from 'the President or an Appellate Judge designated by the president."[10] The Defence further submits "[t]he 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."[11] The Defence submits that the standards of 'exceptional circumstances and irreparable prejudice' to grant leave under Rule 73(B) are met because the (i) the impugned decision concerns two fundamental rights, *i.e.*, the right to family life and the right to humane conditions of detention;[12] (ii) a third fundamental right is engaged by the impugned decision: the right to equal treatment as compared with other convicts;[13] (iii) the issues are novel and are of general importance to international law;[14] and (iv) the granting of leave will not delay any proceedings, is justified by the significance, novelty and importance of these exceptional issues and is the only available remedy.[15]

5. The Prosecution responded on 16 February 2015.[16] It submits that the Application for Leave should be dismissed as lacking any basis in law. The Prosecution submits that the Motion mischaracterizes both the administrative nature of the matter and the character of the relief requested contrary to Rule 103(B) of the Rules and the practice of the SCSL and other international criminal courts which "make clear that the designation of the place of confinement is an administrative matter within the core mandate of the President of the Court."[17] The Prosecution submits that "[t]his Presidential administrative mandate is also clearly reflected in the SCSL Practice Direction of Designation of State Enforcement of Sentence and Sentence Enforcement Agreements which necessarily follow the Rules."[18] According to the Prosecution, an attempt to

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[7] Decision, para. 121(iv).
[8] Decision, para. 121(v).
[9] Decision.
[10] Application for Leave, para. 2.
[11] Application for Leave, para. 2.
[12] Application for Leave, para. 7.
[13] Application for Leave, para. 11.
[14] Application for Leave, para. 14.
[15] Application for Leave, para. 17.
[16] *In the matter of Charles Ghankay Taylor*, RSCSL-03-01-ES-1428, (Confidential) Prosecutor's Submissions in Response to Charles Taylor's Application for Leave to Appeal Decision on Motion for Termination of Enforcement of Sentence in the United Kingdom and for the Transfer to Rwanda ("Response"), 16 February 2015.
[17] Response, para. 4.
[18] Response, para. 4.

delegate this administrative matter by according it the benefits of the judicial process would be *inter alia* "contrary to the spirit of the Statute, the practice of the SCSL and the clear language of the Rules, SCSL Practice Direction and Sentence Enforcement Agreements..."[19]

6. The Prosecution contends that there is therefore no "decision" from which to "appeal"; that the President is yet to pronounce on the original Defence Motion for Transfer submitted to him; that the decision to convene a Trial Chamber to assist the President does not change the administrative character of the matter; and that the Trial Chamber's decision contains conclusions for the President to consider "so that he may properly discharge his duty in this matter."[20]

7. The Prosecution further contends that Rule 73(B) is inapplicable to the present case. It submits that it is clear from the language of Rule 73(B) that "it is directed at Motions that arise in the course of the judicial proceedings in a case, not in the post appeal administrative designation of place of confinement, a duty within the mandate of the President of the Court."[21] However, the Prosecution submits, that even if Mr. Taylor's motion is to be treated as falling under Rule 73(B), the Application for Leave should be denied as it fails to meet the high threshold of the Rules by demonstrating "exceptional circumstances" and "irreparable prejudice".[22]

B. Applicable Legal Provisions

8. Pursuant to Article 23(3) of the Statute:

> The Residual Special Court shall have the power to supervise the enforcement of sentences, including the implementation of the sentence enforcement agreements...

9. Rule 103(B) provides as follows:

> The place of imprisonment for each convicted person shall be designated by the President.

10. Paragraph 5 of the SCSL Practice Direction for Designation of State of Enforcement[23] provides as follows:

> After the sentencing of a convicted person has become final, the President of the Special Court will on the basis of the submitted information and on any other inquiries he/she chooses to make, designate the State in which imprisonment shall

[19] Response, para. 6.
[20] Response, para. 7.
[21] Response, fn. 3.
[22] Response, para. 9.
[23] SCSL Practice Direction for Designation of State Enforcement, 10 July 2009.

be served. In his/her designation, the President will take into account the desirability of serving sentences in States that are within close proximity or accessibility of the relatives of the convicted person. Before making the designation, the President may consult with the Sentencing Chamber or its Presiding Judge and/or the Registrar and shall notify the Government of Sierra Leone. The President may also request the submissions of the convicted person and/or the Office of the Prosecutor.

11. Article 2(1) of the SCSL Sentence Enforcement Agreements[24] provides:

A request to the Requested State to enforce a sentence shall be made by the Registrar of the Special Court (hereinafter "Registrar"), with the approval of the President of the Special Court.[25]

12. Article 6 of the Sentence Enforcement Agreement with the United Kingdom[26] provides:

1. The competent authorities of the United Kingdom shall allow the inspection of the conditions of detention and treatment of the prisoners, detained under this Agreement, by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter "the CPT") at any time and on a periodic basis, the frequency of visits to be determined by the CPT. The CPT will submit a confidential report based on the findings of those inspections to the Foreign and Commonwealth Office and to the President of the Special Court. The confidential report shall not be released, by the President of the Special Court to any person or body outside the Special Court, without the consent of the Government of the United Kingdom.[27]

2. The United Kingdom and the President shall consult each other on the findings of the reports referred to in paragraph 1 of this Article. The President may thereafter request the United Kingdom to report to him or her any changes in the conditions of detentions suggested by the CPT [European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment].

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[24] Agreement between the Special Court for Sierra Leone and the Government of Finland on the Enforcement of Sentences of the Special Court for Sierra Leone, 29 June 2009; Amended Agreement between the Special Court for Sierra Leone and the Government of the Republic of Rwanda on the Enforcement of Sentences of the Special Court for Sierra Leone, 16 September 2009; Agreement between the Special Court for Sierra Leone and The Government of Sweden on the Enforcement of Sentences of the Special Court for Sierra Leone, 15 October 2004; Agreement between the Special Court for Sierra Leone 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, 10 July 2007.

[25] Agreement between the Special Court for Sierra Leone and the Government of Finland on the Enforcement of Sentences of the Special Court for Sierra Leone, 29 June 2009. Article 2 in the four Sentence Enforcement Agreements has almost identical wording. The "Requested State" in the respective agreements is Finland, Rwanda, Sweden and United Kingdom.

[26] Agreement between the Special Court for Sierra Leone 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, 10 July 2007.

[27] Agreement between the Special Court for Sierra Leone 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, 10 July 2007. This clause has similar wording in the Sentencing Enforcement Agreements with Finland (Article 7(1)), Rwanda (Article 6(1)), and Sweden (Article 6(1)). The ICRC rather than the CPT, in the case of Finland, Rwanda and Sweden.

13. Article 6 of the Sentencing Enforcement Agreement with the Rwanda[28] provides:

> 1. The competent authorities of the Government of Rwanda shall allow the inspection of the conditions of detention and the treatment of the prisoner(s) at any time and on a periodic basis by the International Committee of the Red Cross (hereinafter the ICRC) or such other body or person as the Special Court may designate for that purpose. The frequency of visits will be determined by the ICRC or the designated body or person. The Special Court may furthermore request the ICRC or the designated body or person to carry out such an inspection. The ICRC or the designated body or person will submit a confidential report based on the findings of these inspections to the Government of Rwanda and to the President and the Registrar of the Special Court.
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> 2. Representatives of the Government of Rwanda, the President and the Registrar of the Special Court shall consult each other on the findings of the reports referred to in the previous paragraph. The President of the Special Court may thereafter request the Government of Rwanda to report to him or her any changes in the conditions of detention suggested by the ICRC or the designated body or person.

14. Article 8(2) of the Sentence Enforcement Agreement with the United Kingdom[29] provides:

> The President of the Special Court shall determine, in consultation with the Judges of the Special Court, whether any early release, pardon or commutation of the sentence is appropriate. The Registrar shall inform the United Kingdom of the President's determination. If the President determines that an early release, pardon or commutation of the sentence is not appropriate, the United Kingdom shall act accordingly.

15. Article 8(2) of the Sentence Enforcement Agreement with Rwanda[30] provides:

> The President of the Special Court shall determine, in consultation with the Judges of the Special Court, whether any early release, pardon or commutation of the sentence is appropriate in the interest of justice and the general principles of law. The Registrar of the Special Court shall inform the Government of Rwanda of the President's decision. If the President determines that early release, pardon or commutation of the sentence is not appropriate, the Government of Rwanda shall act accordingly.

16. Article 8(2) of the Sentence Enforcement Agreement with Sweden[31] provides:

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[28] Amended Agreement between the Special Court for Sierra Leone and the Government of the Republic of Rwanda on the Enforcement of Sentences of the Special Court for Sierra Leone, 16 September 2009. This clause with similar wording is also in the Sentencing Enforcement Agreements with Finland (Article 7(2)) and Sweden (Article 6(2)).

[29] Agreement between the Special Court for Sierra Leone 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, 10 July 2007. This clause is with similar wording in the Sentencing Enforcement Agreement with Finland (Article 9(2)).

[30] Amended Agreement between the Special Court for Sierra Leone and the Government of the Republic of Rwanda on the Enforcement of Sentences of the Special Court for Sierra Leone, 16 September 2009.

The Special Court will give its view as to whether early release, pardon or commutation of sentence is appropriate. The requested State will take these views into consideration and respond to the Special Court prior to taking any decision in the matter.

17. Rule 19(D) provides as follows:

The President shall, in addition to the discharge of his or her judicial functions, be responsible for the proper administration of justice. In particular, in coordination with the Registrar, the Prosecutor and RSCSL defence staff, the President shall take all appropriate measure aimed at furthering the conduct of fair, impartial and expeditious trials and appeals.

18. Rule 73 (A) and (B) provide as follows:

(A) Subject to Rule 72, either party may move before the President, Designated Judge or a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused.[32] The President, Designated Judge or the Trial Chamber, or a Judge designated by the Trial Chamber from among its members, shall rule on such motions based solely on the written submissions of the parties, unless it is decided to hear the parties in open Court.

(B) Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the President or an Appellate Judge designated by the President may give leave to appeal. Such leave should be sought within 7 days of the decision and shall not operate as a stay of proceedings unless the President, Designated Judge or Trial Chamber so orders.

C. Discussion

19. The issues arising for deliberation in the Motion for Transfer and the Application for Leave are, in my view, intertwined. I will, therefore, deal with them concurrently in this decision. Two main issues arise for consideration:

(i) Whether the designation of place of imprisonment and supervision of enforcement of sentences, including implementation of enforcement agreements are purely administrative or judicial matters.

(ii) Whether the Defence application for leave is admissible pursuant to Rule 73(B).

[31] Agreement between the Special Court for Sierra Leone and The Government of Sweden on the Enforcement of Sentences of the Special Court for Sierra Leone, 15 October 2004.
[32] Rule 72 deals with preliminary motions.

1. Administrative or judicial matter

20. As stated earlier, the Defence seeks leave to appeal the Trial Chamber's decision pursuant to Rule 73(B) of the Rules. In support of its application for leave to appeal, the Defence submits that "[l]eave is to be sought, according to Rule [73(B)], from 'the President or an Appellate Judge designated by the President,'"[33] and that "[t]he 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."[34]

21. On the other hand, the Prosecution, relying on Rule 103(B) and the practice of the SCSL and other international criminal courts, submits that designation of the place of confinement is an administrative matter within the core mandate of the President of the Court, and that according it the benefits of the judicial process would be *inter alia* "contrary to the spirit of the Statute, the practice of the SCSL and the clear language of the Rules, SCSL Practice Direction and Sentence Enforcement Agreements. [35]

22. Drawing from the applicable law reproduced above, the relevant provisions to be considered are as follows:

(i) Rule 103(B) which provides that "[t]he place of imprisonment for each convicted person shall be designated by the President."

(ii) Paragraph 5 of the SCSL Practice Direction which provides that the President "on the basis of the submitted information and on any other inquiries he/she chooses to make, designate[s] the State in which imprisonment shall be served."

(iii) Article 2(1) of the Sentence Enforcement Agreements which provides that the President approves the Registrar's decision on which State will enforce a sentence.

(iv) Article 6 of the same agreements which provides that monitoring bodies will submit confidential reports based on the findings of their inspections of conditions of detention and treatment of prisoners, and the President may request the government enforcing the sentence to report to him or her any changes in the

[33] Application for Leave, para. 2.
[34] Application for Leave, para. 2.

conditions of the detention suggested by the monitoring body or designated body or person.

(v) Article 8(2) of the Enforcement Agreement with the United Kingdom and Rwanda which provides that the President, in consultation with the Judges of the Special Court, shall determine if there is any early release, pardon or commutation of the sentence.

23. The interpretation of the unambiguous language of the above relevant Rules, SCSL Practice Direction, Sentence Enforcement Agreements and the Statute, accords with the submission that the designation of the place of confinement and the supervision of enforcement of sentences are administrative matters that form the core mandate of the President.

24. I find support for this finding in the jurisprudence of SCSL Appeals Chamber. In the RUF case, the SCSL Appeals Chamber addressed a Motion that arose post Appeal Judgment when the Issa Sesay Defence filed an application for judicial review of the Acting Registrar's decision in relation to the enforcement of sentences, *i.e.* to transfer Issa Sesay, along with the seven other convicted persons to an enforcement state outside of Sierra Leone within seven days.[36] The Defence challenged the decision on the basis that seven days' notice to be removed from the convicted persons' country of birth and place of residence was a breach of international human rights law and amounted to cruel and inhumane treatment.[37] The Defence sought a temporary stay of the transfer of Issa Sesay to the State of enforcement for a period of one month.[38] The Appeals Chamber dismissed the Motion, holding that the Motion was not properly before it, and that it should be directed to the President of the Court pursuant to Rule 19(C).[39]

25. There is also support from jurisprudence in other jurisdictions. English law, for example, provides that courts defer to a large extent on prison authorities in administrative matters including substantive prison conditions, transfer of prisoners and parole boards releasing prisoners.[40] The

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[35] Response, para. 4.

[36] *Prosecutor v. Sesay, et al.*, SCSL-04-15-T-1325, Urgent Application to Judicially Review the Decision of the Acting Registrar in Relation to the Enforcement of Sentences and to Temporarily Stay the Transfer of Detainees to a Designated Enforcement State ("Sesay Urgent Application"), 28 October 2009; *Prosecutor v. Sesay, et al.*, SCSL-04-15-ES-1327, Decision on Urgent Application for Judicial Review of Registrar's Decision ("Decision on Sesay's Urgent Application"), 30 October 2009.

[37] Sesay Urgent Application, para. 1.

[38] Sesay Urgent Application, para. 2.

[39] Decision on Sesay's Urgent Application, p. 1.

[40] *See e.g., Regina v Secretary of State for the Home Department and another, Ex Parte Hargreaves and others* [1997] 1 WLR 906; *Regina v. Deputy Governor of Parkhurst Prison and Others, Ex parte Hague, Weldon Respondent v. Home Office Respondent* [1991] 3 W.L.R. 340, [1992] 1 A.C. 58; *R. (on the application of King) v. Parole Board*, Queen's Bench Division (Administrative Court) [2014] A.C.D. 103.

United States of America case law has similarly held that transfer of prisoners is an administrative matter,[41] and further that[42] "... [transfers of prisoners] should be left to the sound discretion of prison authorities[43] as long as they exercise their discretion within statutory limits."[44]

26. Relying on the above, in particular the SCSL and RSCL applicable law and jurisprudence, it is clear that decisions on designation of state of enforcement and the supervision of enforcement of sentences at the RSCSL is administrative and lies with the President. It is the President who, on the basis of information submitted and "any other inquiries he may choose to make," designates the state where imprisonment should be served. By parity of reasoning, it is the prerogative of the President to determine through similar consultative process, whether a transfer from that State to any other state is merited.

27. *A fortiori*, the mere appointment of a "Trial Chamber" pursuant to Article 13(1) of the Statute to hear and determine all matters arising from the Defence Motion does not convert or change the administrative character of the issue of designation of place of imprisonment or supervision of enforcement thereof into a judicial process. In particular, in accordance with Paragraph 5 of the SCSL Practice Direction for Designation of State of Enforcement, the President is not limited in the sources of information upon which his decision would be based.

28. The first issue is answered accordingly.

2. Is Rule 73(B) applicable?

29. The Defence submits that because, according to Rule 73(B), "[l]eave is to be sought from 'the President or an Appellate Judge designated by the president,'"[45] this "implies that Rule 73(B)

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[41] For example, in *Meacham v. Fano*, a case where state prisoners who alleged that their transfers to a less favourable institution without adequate fact-finding hearing deprived them of liberty without due process of law, the majority of the U.S. Supreme Court held: "Our cases hold that the convicted felon does not forfeit all constitutional protections by reason of his conviction and confinement in prison. He retains a variety of important rights that the courts must be alert to protect....But none of these cases reaches this one; and to hold as we are urged to do that any substantial deprivation imposed by prison authorities triggers the procedural protections of the Due Process Clause would subject to judicial review a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts." *Meachum et al., v. Fano*, 427 U.S. 215, 225 (1976).

[42] 3 Rights of Prisoners § 11:12 Intrastate prison transfers that do not implicate liberty interests (4th ed.), 2014 (Westlaw).

[43] Transfer to another prison is within the sound discretion of prison officials. *Lyon v. Farrier*, 469 U.S. 839, 105 S. Ct. 140, 83 L. Ed. 2d 79 (1984). Illinois courts are not to intervene in matters within the discretion of the Illinois Department of Corrections, including the location where inmates are assigned and housed. *People v. Lego*, 212 Ill. App. 3d 6, 155 Ill. Dec. 889, 570 N.E.2d 402 (3d Dist. 1991); *see* also *Cowan v. Warden*, 2005 WL 1088906 (Conn. Super. Ct. 2005) (denied plaintiff's petition for writ of habeas corpus where plaintiff was transferred from a state facility to the Federal Bureau of Prisons and lost good time credits following disciplinary actions).

[44] *Brown-Bey v. U.S.*, 720 F.2d 467 (7th Cir. 1983).

[45] Application for Leave, para. 2.

applies to decisions rendered by special Trial Chambers empanelled by the President."[46] The Defence further submits that it has met the conjunctive tests of "exceptional circumstances and irreparable prejudice" prescribed by the Rule. The Prosecution challenges the Defence submission arguing that it is clear from the language of Rule 73(B) that "it is directed at Motions that arise in the course of the judicial proceedings in a case, not in the post appeal administrative designation of place of confinement, a duty within the mandate of the President of the Court."[47] It submits, that even if the motion is to be treated as falling under Rule 73(B), the Application for Leave should be denied as it fails to meet the high threshold under the Rule by demonstrating "exceptional circumstances" and "irreparable prejudice".[48]

30. The Defence concedes the novelty of the procedure it proposes and therefore offers no precedent in support of its interpretation of Rule 73(B). It instead relies on first principles and on decided cases where leave was granted under Rule 73(B) despite its high threshold,[49] but cases which are distinguishable from the case at hand because they were predicated on Motions that arose in the course of the judicial proceedings.[50]

31. It is clear to me that Rule 73(B) deals with interlocutory appeals. "Interlocutory appeal" is defined as "an appeal that occurs before the trial court's final ruling on the entire case."[51] It is also subject to the matters enumerated under Rule 72 dealing with preliminary motions. The jurisprudence of SCSL consistently supports the Prosecution's argument in this regard. I derive guidance from the persuasive twin seminal decisions on the subject of interlocutory appeals in the *RUF* and *AFRC* cases in which the Prosecution sought leave to appeal against the Trial Chamber's joinder decisions in the aforementioned cases, where the Trial Chamber articulated the principles governing applications of this nature.[52] Emphasising that Rule 73(B) of the Rules generally does not

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[46] Application for Leave, para. 2.
[47] Response, fn. 3.
[48] Response, para. 9.
[49] Response, paras 3-5.
[50] Response, paras 3-5; *See e.g.*, *Prosecutor v. Sesay et al.*, SCSL-2004-15-T-0227, Decision on Application for Leave to Appeal Gbao –Decision on Application to Withdraw Counsel, 4 August 2004, para. 54; *Prosecutor v. Taylor*, SCSL-03-1-T-0783, 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; *Prosecutor v. Taylor*, SCSL-03-1-T-1202, Decision on Defence Motion Seeking Leave to Appeal the Decision on Late Filing of Defence Final Trial Brief, 11 February 2011, p. 5; *Prosecutor v. Taylor*, SCSL-03-1-T-1130, 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.
[51] Black's Law Dictionary, 7th ed. 1999.
[52] *Prosecutor v. Sesay, et al.* SCSL-04-15-PT-014 and *Prosecutor v. Brima, et al.* SCSL-04-16-0017, Decision on Prosecution Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motions for Joinder ("Decisions of 13 February 2004"), 13 February 2004.

confer a right of interlocutory appeal but only grants leave to appeal in exceptional cases, the SCSL Trial Chamber opined as follows:

> As a general rule, interlocutory decisions are not appealable and consistent with a clear and unambiguous legislative intent, this rule involves a high threshold that must be met before this Chamber can exercise its discretion to grant leave to appeal. The two limbs of the test are clearly conjunctive, not disjunctive; in other words, they must *both* be satisfied.[53]

32. Explaining the rationale behind this Rule, the Court stated:

> This interpretation is unavoidable, given the fact that the second limb of Rule 73(B) was added by way of an amendment adopted at the August 2003 Plenary. This is underscored by the fact that prior to that amendment no possibility of an interlocutory appeal existed and the amendment was carefully couched in such terms so as only to allow appeals to proceed in very limited and exceptional situations. In effect, it is a restrictive provision.[54]

33. In its Decision on Prosecution Application for Leave to File an Interlocutory Appeal Against Decision on Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT, the Trial Chamber opined that:

> In essence, the purport of our Decisions of 13 February 2004 can be put this way: that the overriding legal consideration in respect of an application for leave to file an interlocutory appeal is that the applicant's case must reach a level of exceptional circumstances and irreparable prejudice. Nothing short of that will suffice having regard to the restrictive nature of Rule 73(B) of the Rules and the rationale that criminal trials must not be heavily encumbered and consequently unduly delayed by interlocutory appeals.[55]

34. Consistent with SCSL jurisprudence on the ambit of Rule 73(B) above, I hold that Rule 73(B) is inapplicable and cannot be invoked in the present case. Even if it was permissible to seek leave to appeal against the decision of the special Trial Chamber in this case, which it is not, I am not satisfied that the Defence has demonstrated the existence of "exceptional circumstances" or "irreparable prejudice" which are the standards upon which the application for leave would be considered.

D. Disposition

35. I am aware that the rights of prisoners are human rights. As correctly held by the ICTY in the case of *Prosecutor v. Erdemović*:

[53] Decisions of 13 February 2004, para. 13 and para. 10.
[54] Decisions of 13 February 2004, para. 14 and para. 11.
[55] *Prosecutor v. Sesay, et al.*, SCSL-04-15-PT-014, 1 June 2004, para. 21.

> ...the penalty imposed as well as the enforcement of such penalty must always conform to the minimum principles of humanity and dignity which constitute the inspiration for the international standards governing the protection of the rights of convicted persons.[56]

That court examined a number of international instruments on human rights generally, and the rights of prisoners and concluded that:

> [t]he significance of these principles resides in the fact that a person who has been convicted of a criminal act is not automatically stripped of all his rights. The Basic Principles for the Treatment of Prisoners state that 'except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights'... [T]he Trial Chamber considers that the penalty imposed on persons declared guilty of serious violations of humanitarian law must not be aggravated by the conditions of its enforcement.[57]

36. I have carefully examined the record compiled by the Honorable Judges who sat in the special "Trial Chamber" which I set up on the Motion for Transfer, and I am satisfied that they dispassionately gathered and evaluated the information placed before them. I have further considered the reasoning of the Honourable Judges on the material placed before them and I concur with, and adopt, the final decision made by the Trial Chamber.[58]

37. Accordingly, pursuant to Rule 19(D), I formally make the decision that the Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda filed by Charles Ghankay Taylor on 30th January, 2015, be and is **HEREBY DISMISSED**.

38. The Leave sought in the Application to Appeal Decision on Motion for Termination of Enforcement of Sentence in the United Kingdom and the Transfer to Rwanda, dated 6 February 2015, is **HEREBY DENIED**.

[56] *Prosecutor v. Erdemović*, IT-96-22-T, Trial Chamber, Sentencing Judgment, 29 November 1996, para. 74.
[57] *Prosecutor v. Erdemović*, IT-96-22-T, Trial Chamber, Sentencing Judgment, 29 November 1996, para. 74.
[58] *In the matter of Charles Ghankay Taylor*, RSCSL-03-01-ES-1421, (Confidential) 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 ("Decision"), 30 January 2015.

Done at The Hague, The Netherlands

This 21 day of May 2015.

Justice Philip N. Waki

President

[Seal of the Residual Special Court for Sierra Leone]