



(3343 - 3346)

SPECIAL COURT FOR SIERRA LEONE

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THE PRESIDENT OF THE SPECIAL COURT

Before: Justice George Gelaga King, President

Registrar: Mr. Lovemore Munlo, SC

Date: 19 June 2006

PROSECUTOR

against

Charles Ghankay TAYLOR
Case No. SCSL-03-01-PT

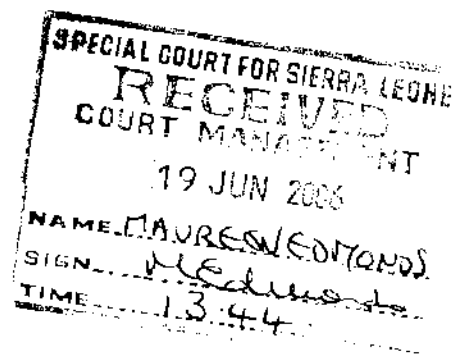
ORDER CHANGING VENUE OF PROCEEDINGS

Office of the Prosecutor

Mr. Desmond de Silva, QC

Defence Counsel for Mr. Taylor:

Mr. Karim A. A. Khan



1. Former Liberian President, Charles Ghankay Taylor, is in detention in Freetown, Sierra Leone, awaiting his trial before the Special Court for Sierra Leone. In light of the security risks created by his detention, my predecessor as President, Justice Raja Fernando, initiated diplomatic steps to ascertain whether Mr. Taylor's trial could be held outside of the West-African region. He identified the International Criminal Court facility in The Hague, the Netherlands as a possible alternative venue for the proceedings. The Netherlands accepted to host the trial but asked for a Security Council resolution supporting the change of venue, for the prior agreement by a third state to accept Mr. Taylor immediately after a final judgement, and for one of the international courts in the Netherlands to provide facilities for the trial and detention. President Fernando was still waiting for these conditions to be fulfilled when his term of office expired on 26 May 2006.

2. When the United Nations Security Council adopted Resolution 1688 on 16 June 2006, which created a Chapter VII legal basis for the Special Court to detain and conduct the trial of Mr. Taylor in the Netherlands, the last of these conditions was met. The International Criminal Court had already agreed to host the Special Court proceedings and the United Kingdom had also agreed to accept Mr. Taylor after the conclusion of the trial and any appeal. As President, I am now faced with the duty of deciding whether Mr. Taylor should be tried by the Special Court for Sierra Leone in Freetown or in The Hague.

Applicable Law

3. Article 10 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone provides:

Article 10—Seat of the Special Court

The Special Court shall have its seat in Sierra Leone. The Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions, and may be relocated outside Sierra Leone, if circumstances so require, and subject to the conclusion of a Headquarters Agreement between the Secretary-General of the United Nations and the Government of Sierra Leone, on the one hand, and the Government of the alternative seat, on the other.

4. The practicalities of Article 10 are further developed in Rule 4 of the Rules of Procedure and Evidence, which vests the President with the authority to decide whether a Chamber may exercise its functions away from the Seat of the Special Court in Freetown:

Rule 4—Sittings away from the Seat of the Special Court

A Chamber or a Judge may exercise their functions away from the Seat of the Special Court, if so authorized by the President. In so doing, audio or video-link technology, email or other available electronic instruments may be used if authorised by the President or Presiding Judge.

5. Article 10 of the Agreement envisages two possibilities: the Court meeting away from its seat and its relocation outside of Sierra Leone. The decision to move a single trial to a different location falls within the first category; it is a “meeting away from the seat” and not the “relocation” of the whole Court. To meet away from its seat, the only condition is that it is “necessary for the efficient exercise of its functions”. Rule 4 indicates that it is the President who must make this decision.

Deliberations

6. The determination of whether moving the Taylor proceedings to The Hague is necessary for the efficient exercise of the Court’s functions is complex and involves weighing competing factors.

7. On the one hand, the location of the Special Court in Freetown is one of the most remarkable features of this hybrid international criminal tribunal. Unlike the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, which are both located outside of the regions where the crimes took place, the Special Court was established in Freetown. This location allows better access for the public, local media, and victims and witnesses. Although I am confident that all possible measures would be taken by the Outreach and Press and Public Affairs Sections of the Special Court, some of this direct and personal public access would be sacrificed if the trial were to be moved to The Hague. It is certain, for example, that the average Sierra Leonean would not be able to regularly attend the proceedings.

8. On the other hand, the security threat posed by Mr. Taylor’s detention and trial in Sierra Leone cannot be underestimated. On 16 June 2006, the Security Council confirmed this threat and determined that “the continued presence of former President Taylor in the subregion is an impediment to stability and a threat to the peace of Liberia and of Sierra Leone and to international peace and security in the region.”

9. I have also considered the effect of a change of venue on the fairness of the proceedings and have taken into account the rights of the accused. The fairness of the trial can be guaranteed by the Trial Chamber in either location. While it is true that certain witnesses may have to travel to The Hague, this should not present an undue financial or administrative burden. If a proposed witness is unable to travel, it will be up to the Trial Chamber to determine whether his or her evidence could be given by other means such as deposition pursuant to Rule 71 or video-link pursuant to Rule 75. Moreover, the crimes alleged against Mr. Taylor in the amended indictment are crimes of universal jurisdiction and the Accused cannot invoke any right to be tried in a particular location.

10. In light of the totality of the circumstances, I am satisfied that the security situation renders it necessary for the efficient exercise of the Special Court’s functions to move Mr. Taylor’s trial to a location outside of the West-African region. The security threat identified by the Security Council is a serious one and has been accorded significant weight in my analysis. In evaluating the efficiency of the exercise of the Court’s functions, I find that the physical security of the Special Court, including its personnel, witnesses, other detainees, and the public, is of overriding concern and outweighs the other inconveniences and additional efforts occasioned by the transfer.

11. I therefore find that the proceedings against Mr. Taylor should be conducted by the Special Court for Sierra Leone sitting in The Hague, the Netherlands and using facilities provided by the International Criminal Court. Accordingly, I authorise Trial Chamber II, the chamber currently assigned to the case,¹ and the Appeals Chamber to exercise their functions away from the seat of the Special Court in Freetown.

12. Having reached this conclusion, it is also necessary to transfer the accused to The Hague. I therefore request the Registrar to make all necessary arrangements on behalf of the Special Court to facilitate Mr. Taylor's transfer to and subsequent detention in The Hague.

13. Finally, I would also request the Registrar to take all necessary steps to make the Taylor proceedings accessible to the people of Sierra Leone and the region. Additional funding may be required for programmes designed to ensure that the Taylor proceedings are made available to the public, local media, and victims and witnesses.

14. For these reasons, I hereby:

AUTHORISE, pursuant to Rule 4 of the Rules, the relevant Trial Chamber and the Appeals Chamber to exercise their functions away from the Seat of the Special Court for the purposes of conducting the pre-trial proceedings, trial, and any appeal of Charles Ghankay Taylor at the International Criminal Court facilities in The Hague, The Netherlands;

ORDER, pursuant to Rules 54 and 64 of the Rules, that Charles Ghankay Taylor be transferred to and detained in appropriate facilities in The Hague, the Netherlands, in accordance with the conditions set out in the agreements between the Registrar, the International Criminal Court, and the Government of the Netherlands; and

REQUEST the Registrar of the Special Court to take all necessary steps to ensure that the proceedings against Charles Ghankay Taylor in The Hague are made accessible to the people of Sierra Leone and the region.

Done in Freetown, this 19th Day of June 2006.



Justice Gélaga King
President

[Seal of the Special Court]

¹ Order Assigning a Case to a Trial Chamber, 31 March 2006.