

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No: MICT-13-52-ES.1

Date: 27 March 2015

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, Presiding

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

MILAN LUKIĆ

PUBLIC WITH PUBLIC ANNEX

**PROSECUTION REQUEST FOR LEAVE TO FILE
SUPPLEMENTARY AUTHORITY AND SUPPLEMENTARY
AUTHORITY**

The Office of the Prosecutor:

Mr. Hassan B. Jallow, Prosecutor
Mr. Mathias Marcussen, Senior Legal Officer

Counsel for Milan Lukić:

Mr. Jason Alarid
Mr. Dragan Ivetić

1. The Prosecution requests leave to file a decision by the Residual Special Court for Sierra Leone as supplementary authority in relation to its Response to Milan Lukić's Motion for reconsideration and review of the designation of Estonia as the state of enforcement of sentence and transfer to The Hague.¹
2. The decision on Charles Taylor's Motion for termination of enforcement of sentence in the United Kingdom and for transfer to Rwanda became publicly available on 25 March 2015,² two days after the Prosecution filed its Response. The Decision contains findings that are pertinent to issues to be decided in this case and which were raised in the Response, namely whether there is (i) reconsideration or review of the President's decision designating the state of sentence enforcement; (ii) a violation of the right to family life; and (iii) a violation of the prohibition against inhuman or degrading treatment or punishment.

Word Count: 231



Mathias Marcussen
Senior Legal Officer

Dated this 27th day of March, 2015
At The Hague, The Netherlands.

¹ *Prosecutor v. Milan Lukić*, Case No.MICT-13-52-ES.1, Prosecution Response to Milan Lukić's Motion for Reconsideration and Review of Sentence in Estonia and Transfer to The Hague, 23 March 2015 (public with confidential annex) ("Response").

² Annex, *In the matter of Charles Ghankay Taylor*, Case No.RSCSL-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 Transfer to Rwanda, dated 30 January 2015, publicly issued on 25 March 2015 ("Decision").

ANNEX

1436)

RSCSL-03-01-ES
(12387 - 12443)

MICT-13-52-ES-1

12387



RESIDUAL SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER

Before: Justice Teresa Doherty, Presiding
Justice Richard Lussick
Justice Emmanuel Roberts

Registrar: Ms. Binta Mansaray

Date: 30 January 2015

Case No.: SCSL-03-01-ES

In the matter of
CHARLES GHANKAY TAYLOR

PUBLIC

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

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

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

SCSL-03-01-ES

30 January 2015

RESIDUAL SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT THE HAGUE	
25 MAR 2015	
NAME	Frances Nyuboh-Smart
SIGN	
TIME	12:06

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The Trial Chamber of the Residual Special Court for Sierra Leone ("Residual Special Court") composed of Justice Teresa Doherty, Presiding Judge, Justice Richard Lussick and Justice Emmanuel Roberts;

SEIZED of Charles Ghankay Taylor's ("Taylor") Public with Public and Confidential Annexes "Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda", dated 24 June 2014, filed on 25 June 2014 ("Motion");¹

NOTING Public "Prosecutor's Application for Leave to File 'Prosecutor's (Submissions in) Response to Prisoner Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda'", filed on 10 July 2014;²

NOTING President's Public "Order Granting Leave to File Submissions in Response", of 14 July 2014;³

NOTING Public with Public and Confidential Annexes "Prosecutor's (Submissions in) Response to Prisoner Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda", filed on 15 July 2014 ("Response");⁴

NOTING Taylor's Public "Request for Leave to Reply, and Reply, to Prosecution Response to Motion for Termination of Enforcement of Sentence in the United

¹ SCSL-03-01-ES-1396.

² SCSL-03-01-ES-1397.

³ SCSL-03-01-ES-1398.

⁴ SCSL-03-01-ES-1399.

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Kingdom and for Transfer to Rwanda”, filed on 15 July 2014,⁵ and Public “Corrigendum”, filed on 16 July 2014⁶ (“Reply”);

NOTING President’s Public “Order Granting Leave to File Reply”, of 18 July 2014;⁷

RECALLING President’s Public “Order Convening Trial Chamber”, of 21 July 2014, wherein the Trial Chamber was appointed to hear and determine all matters arising from the Motion;⁸

RECALLING Trial Chamber’s Confidential “Direction to Registrar Pursuant to Rule 33 Arising from Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, and Direction to Re-Classify Annex JJ to the Motion as Confidential”, of 20 August 2014 (“Rule 33 Direction”), wherein the Trial Chamber requested from the Registrar clarifications on matters arising from the Motion, pursuant to Rule 33 of the Rules of Procedure and Evidence (“Rules”);⁹

NOTING Taylor’s Confidential “Motion to Set a Deadline for Rule 33 Submissions Pursuant to the Trial Chamber’s Direction of 20 August 2014”, dated 29 September 2014, filed on 30 September 2014;¹⁰

NOTING Taylor’s Public “Motion for a Formal Request or Order Directing the United Kingdom to Permit Family Visits”, dated 29 September 2014, filed on 30 September 2014 (“Motion for a Formal Request”);¹¹

⁵ SCSL-03-01-ES-1400.

⁶ SCSL-03-01-ES-1401.

⁷ SCSL-03-01-ES-1402.

⁸ SCSL-03-01-ES-1403.

⁹ SCSL-03-01-ES-1404.

¹⁰ SCSL-03-01-ES-1405.

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RECALLING President's Public "Decision on Motion for a Formal Request or Order Directing the United Kingdom to Permit Family Visits", of 17 October 2014, wherein the President found that the Motion for a Formal Request is "frivolous and constitutes an abuse of process", and ordered that it be struck out;¹²

RECALLING Trial Chamber's Confidential "Decision on Mr. Taylor's Motion to Set a Deadline for Rule 33 Submissions Pursuant to the Trial Chamber's Direction of 20 August 2014", of 20 October 2014, [REDACTED];¹³

NOTING Confidential "Submission of the Registrar Pursuant to Rule 33 Arising from Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda" ("Confidential Registrar's Rule 33 Submissions")¹⁴ and *Ex-Parte* "Supplementary Submission of the Registrar Pursuant to Rule 33 Arising from Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda",¹⁵ filed on 12 November 2014;

NOTING Taylor's Confidential "Notice of Intention to File Additional Submissions and of Non-Delivery of Submissions to Mr. Taylor", filed on 27 November 2014;¹⁶

NOTING Confidential "Registrar's Rule 33(B) Submission on Notice of Intention to File Additional Submissions and of Non-Delivery of Submissions to Mr. Taylor", filed on 1 December 2014;¹⁷

¹¹ SCSL-03-01-ES-1406.

¹² SCSL-03-01-ES-1407.

¹³ SCSL-03-01-ES-1408.

¹⁴ SCSL-03-01-ES-1409.

¹⁵ SCSL-03-01-ES-1410.

¹⁶ SCSL-03-01-ES-1411.

¹⁷ SCSL-03-01-ES-1412.





NOTING Taylor’s Confidential “Request for Leave to File Submissions in Response to Rule 33(B) Submissions of the Registrar”, filed on 4 December 2014,¹⁸ and Confidential “Corrigendum”, filed on 4 December 2014;¹⁹

RECALLING Trial Chamber’s Public “Decision on Mr. Taylor’s Request for Leave to File Submissions in Response to Rule 33(B) Submissions of the Registrar”, of 15 December 2014, wherein the Trial Chamber granted Taylor and the Prosecutor leave to file submissions in response and reply, respectively, to the Confidential Registrar’s Rule 33 Submissions;²⁰

NOTING Taylor’s Confidential “Response to Registrar’s Rule 33 Submissions”, dated 31 December 2014, filed on 2 January 2015 (“Taylor’s Confidential Response to Registrar’s Rule 33 Submissions”);²¹

NOTING Confidential “The Prosecutor’s Reply to the Applicant’s Response to the Registrar’s Rule 33 (B) Submissions”, filed on 7 January 2015 (“Prosecutor’s Confidential Reply to Registrar’s Rule 33 Submissions”);²²

NOTING Taylor’s Confidential “Motion to Compel the Registrar to File a Public Redacted Version of Its Rule 33 Submissions”, filed on 26 January 2015, re-classified as Public on 28 January 2015;²³

NOTING Trial Chamber’s Public “Direction to Registrar Pursuant to Rule 33 Arising from Mr. Taylor’s Motion to Compel the Registrar to File a Public Redacted Version of Its Rule 33 Submissions”, of 27 January 2015;²⁴

¹⁸ SCSL-03-01-ES-1413.

¹⁹ SCSL-03-01-ES-1414.

²⁰ SCSL-03-01-ES-1415.

²¹ SCSL-03-01-ES-1416.

²² SCSL-03-01-ES-1417.

²³ SCSL-03-01-ES-1418.





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COGNISANT of the Agreement between the Special Court for Sierra Leone and the Government of the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”) on the Enforcement of Sentences of the Special Court for Sierra Leone, of 10 July 2007 (“United Kingdom Agreement”);

COGNISANT further of the 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, of 16 September 2009 (“Rwanda Agreement”);

RECALLING the President’s Confidential “Order Designating State in which Charles Ghankay Taylor is to Serve His Sentence”, of 4 October 2013, re-classified as Public on 10 October 2013 (“Designation Order”), wherein the President of the Special Court for Sierra Leone (“Special Court”) designated the United Kingdom as the State in which Taylor is to serve the remainder of his sentence;²⁵

NOTING that Taylor was transferred to the prison facility HMP Frankland in Durham, United Kingdom on 15 October 2013;²⁶

HEREBY decides as follows:

²⁴ SCSL-03-01-ES-1419.

²⁵ *Prosecutor v. Taylor*, SCSL-03-01-ES-1391, President’s Order Designating the State in which Charles Ghankay Taylor is to Serve His Sentence, 4 October 2013.

²⁶ Motion, para. 44; Confidential Registrar’s Rule 33 Submissions, para. 32.

12393**I. SUBMISSIONS****Motion**

1. Taylor submits that serving his sentence in the United Kingdom violates his human rights, his family's human rights and international standards of detention,²⁷ maintaining that the United Kingdom and the Residual Special Court are jointly and severally responsible for the ongoing violations.²⁸ He contends that the Statute of the Residual Special Court ("Statute") and the United Kingdom Agreement empower the Residual Special Court to supervise and ensure that his conditions of detention conform to international standards,²⁹ and therefore asks that the Residual Special Court cease the violation by terminating the enforcement of his sentence in the United Kingdom and ordering his transfer to Rwanda to serve the remainder of his sentence.³⁰
2. Taylor argues that the Motion is not "a request for mere review or reconsideration" of the Designation Order, since the Residual Special Court is obliged to continuously oversee the conditions of his imprisonment.³¹
3. Taylor advances the following arguments: (i) his incarceration in the United Kingdom violates his and his family's right to family life due to *de facto* and *de jure* obstacles put on his family to visit him;³² (ii) imprisonment in the United Kingdom away from his continent of origin does not accord with "the international human rights principle that prisoners should not be detained under

²⁷ Motion, paras. 1, 3, 58.

²⁸ Motion, paras. 3, 12, 45.

²⁹ Motion, paras. 7-17.

³⁰ Motion, paras. 3, 5, 18, 40, 43, 58.

³¹ Motion, para. 18.

³² Motion, paras. 1-3, 32-33, 36-49.





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conditions that unnecessarily interfere with their ability to stay in contact with family members”, as these could be mitigated by his transfer to Rwanda;³³ (iii) he is being held “effectively in isolation” which is inhumane, in particular where there is a reasonable alternative to transfer him to Rwanda where all other Special Court prisoners safely interact;³⁴ and (iv) the United Kingdom “is unwilling or unable to keep Mr. Taylor in a secure setting that conforms with international standards of detention”,³⁵ thereby “[i]mposing avoidable conditions of detention which also deprive him of his family for the remainder of his life seriously aggravates his suffering beyond that which is incidental to the purpose of incarceration and clearly violates human rights standards”.³⁶

4. Taylor submits that “the international community has adopted many instruments” providing that the right to family life should be ensured by allowing a prisoner to have contact with his family members and receive family visits.³⁷ Taylor relies on jurisprudence of the European Court of Human Rights (“ECtHR”) and on United Kingdom jurisprudence to argue that sending a prisoner unnecessarily far from his family can in itself violate his right to family life, while taking into consideration the duration of the prisoner’s sentence and the duration of the interference with family contact, the period between family visits arising from *de facto* and *de jure* obstacles, the effect of such obstacles on children and the availability of a place of detention closer to the prisoner’s family.³⁸

³³ Motion, paras. 1-2, 33-43.

³⁴ Motion, paras. 4, 50-52, 55-57.

³⁵ Motion, p. 23, V, paras. 51, 53-54.

³⁶ Motion, para. 43.

³⁷ Motion, paras. 19-21, 30-31.

³⁸ Motion, paras. 22-29, 31.





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5. Taylor claims he is the only person convicted by an international criminal tribunal to be sent to serve his sentence outside his continent of origin, against his wishes. He argues that a “consequence of this different treatment [...] is that Mr. Taylor and his family are deprived of the minimally-acceptable conditions of detention”,³⁹ exemplified by the fact that he has not received a single visit from his wife and two daughters since his transfer to the United Kingdom.⁴⁰
6. Taylor submits that he will seldom receive family visits, if at all, given the length of his sentence, his family’s financial circumstances and the extraordinary costs involved in facilitating the travel of his family members who reside in Liberia, which include filing visa applications in Accra, Ghana, traveling from Liberia to the United Kingdom and accommodation in the United Kingdom.⁴¹ He claims that these *de facto* permanent obstacles unnecessarily aggravate his suffering beyond that incidental to the purpose of incarceration, in contravention of international standards of detention, and the Residual Special Court could mitigate this interference by transferring him to Rwanda to where travel costs from Liberia are lower.⁴²
7. Taylor submits that *de jure* obstacles imposed by the United Kingdom authorities for his family visits are indicative of the United Kingdom’s disregard to accommodating his imprisonment in accordance with international standards.⁴³ Taylor refers to three decisions of the “UK Visas & Immigration”, issued on 3 January 2014, refusing his wife and two daughters entry into the United Kingdom “even though the UK was well aware of the purpose of the requested

³⁹ Motion, paras. 34-36.

⁴⁰ Motion, paras. 1, 32.

⁴¹ Motion, paras. 2, 32, 37.

⁴² Motion, paras. 2-3, 38-43.

⁴³ Motion, paras. 45, 49.

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visit".⁴⁴ Taylor cites the refusal of the entry clearance officer in his wife's case where it is stated: "[y]ou have now lost the security that your husband's presence provided and on the basis of very limited information about your living circumstances, I am not satisfied that you are living in settled circumstances in Liberia. Taking all of the above into account, I am not satisfied that you are genuinely seeking entry as a visitor and that you intend to leave the UK at the end of your visit".⁴⁵

8. Taylor contends that the reliance on his incarceration in the United Kingdom as a factor against granting his family an entry visa "can only be described as perverse", emphasising that these obstacles were not made out of his or his wife's volition.⁴⁶ He claims that while he was detained in custody for seven years in The Netherlands, during his trial and appeal, these obstacles were not imposed and he received frequent visits from his wife and children.⁴⁷
9. Moreover, Taylor maintains that the denial of the visa application is partly based on the absence of documentation on Taylor's wife's financial resources, which is unobtainable given her lack of regular income.⁴⁸ Taylor recognises the efforts made by the Residual Special Court Registry to assist his family, but notes that a Registry representative has stated that the re-issuing of an application without the proper documentation would be futile.⁴⁹ Taylor further notes the Registrar's claim that following high level talks with United Kingdom authorities there is no reason to believe that another visa application by Taylor's family would be

⁴⁴ Motion, paras. 2, 44; Motion, Annex II.

⁴⁵ Motion, para. 44; Motion, Annex II.

⁴⁶ Motion, paras. 44-45.

⁴⁷ Motion, para. 45.

⁴⁸ Motion, paras. 46-47.

⁴⁹ Motion, para. 47.

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unsuccessful, but he argues that “the decision already taken already indicates that the UK is not genuinely interested in accommodating the unique circumstances of Mr. Taylor according to international standards of detention”.⁵⁰

10. Taylor contends also that even if the decision is reversed, future visa applications are likely to be burdensome, expensive and time consuming, therefore constituting a significant impediment to his right to family visits.⁵¹
11. Taylor submits that since his arrival at HMP Frankland he has been held in the hospital wing, “effectively in isolation” with little or no contact with other prisoners, due to the prison authorities’ assessment that placing him amongst the “general prison population” will expose him to danger.⁵² Taylor agrees with this assessment and refers to an anonymous letter containing threats to his life that was intercepted by the prison authorities and which “apparently” or “possibly” originated from within the prison itself.⁵³
12. Taylor contends that given the length of his sentence, and as he is “a notorious and vilified figure”, he will “presumably” continue to be segregated for security purposes for the remainder of his natural life.⁵⁴ He argues that his indefinite “relative isolation” from other prisoners is an unacceptable condition of detention and violates basic human rights.⁵⁵ He submits that the Residual Special Court has an available alternative to transfer him to Rwanda where all other Special Court prisoners are held, and which has a “purpose-built facility” to secure the enforcement of his sentence without being separated from other

⁵⁰ Motion, paras. 48-49.

⁵¹ Motion, paras. 3, 49.

⁵² Motion, paras. 4, 50.

⁵³ Motion, paras. 4, 51-52.

⁵⁴ Motion, para. 52.

⁵⁵ Motion, paras. 56-57.



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prisoners and where the prison population and the cultural affinity of prison officials will ensure that he can be kept safely.⁵⁶

13. Taylor submits that his situation is similar to that of Radislav Krstić, a convict of the International Criminal Tribunal for the former Yugoslavia ("ICTY") who was attacked while serving his sentence in a United Kingdom prison, resulting in his transfer by the ICTY to a new enforcement State. Thus, Taylor is concerned about the unwillingness or inability of the United Kingdom to ensure his security as a high-profile inmate who is likely to be targeted based on specific cultural or national factors which British officials may not be aware of or equipped to deal with.⁵⁷

Response

14. The Prosecutor submits that: (i) the Motion be denied as it is without factual or legal basis,⁵⁸ as there has been no denial of any right of the prisoner which would occasion the relief requested;⁵⁹ (ii) the requested transfer gives rise to serious concerns: it would increase the possibilities available to Taylor to undermine peace, security, stability and good order in Liberia and the West African sub-region,⁶⁰ and would have implications on the security and sense of security of witnesses, Court personnel and former and current high level State officials;⁶¹ and (iii) the Motion be denied as either a repetition of earlier arguments or a

⁵⁶ Motion, paras. 52, 55, 57.

⁵⁷ Motion, paras. 53-54.

⁵⁸ Response, paras. 2-16.

⁵⁹ Response, paras. 1-2.

⁶⁰ Response, para. 17.

⁶¹ Response, paras. 18-19.





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wilful piecemeal approach to the issue without explanation of what new material justifies allowing a second application.⁶²

15. The Prosecutor submits that transferring Taylor to Rwanda does not resolve issues raised on imprisonment “abroad”, as Taylor is not a citizen of Rwanda and has not shown that he has social or family ties there. It is noted by the Prosecutor that Taylor has been characterised in his Trial Judgment as a “two headed Janus”, and suggested that if he is transferred to Rwanda he could then use the same arguments as to why he should serve his sentence in Liberia.⁶³
16. The Prosecutor submits that the lack of visits is attributable to the wilful failures on the part of those seeking to visit.⁶⁴ The Prosecutor avers that the location of Taylor’s incarceration is not difficult or impossible to travel to, and suggests that travel from Liberia to Rwanda can be more expensive and cumbersome.⁶⁵ Moreover, the Prosecutor submits that Taylor fails to show that travel and accommodation will be less costly for his family should he be transferred to Rwanda, especially since the costs involved can be borne by Taylor’s supporters or associates, as has been done during his detention in The Netherlands.⁶⁶ The Prosecutor exhibits printouts of comparative airline travel schedules and costs to support her submission.⁶⁷
17. Furthermore, the Prosecutor submits that little merit is to be given to Taylor’s argument that he is the only person sent by an international criminal court to serve his sentence outside his continent of origin against his will, since detained

⁶² Response, paras. 20-21.

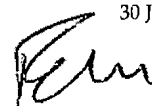
⁶³ Response, para. 16.

⁶⁴ Response, paras. 2, 9.

⁶⁵ Response, para. 3.

⁶⁶ Response, para. 4.

⁶⁷ Response, Annex II and Annex III.



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persons are not guaranteed a right to choose the location of their detention, even if the place of detention is so distant as to result in separation from the family. She argues that only in exceptional circumstances would such detention constitute an actionable interference with family life, and Taylor's is not such a case.⁶⁸ The Prosecutor suggests that the language "outside their continent of origin" was chosen with care, since Special Court prisoners sent to serve their sentence in Rwanda were vehemently opposed to their transfer from Sierra Leone, and thereafter raised many of the same arguments as those raised by Taylor.⁶⁹

18. The Prosecutor argues that the ECtHR has found in the *Selmani* case, referred to by Taylor,⁷⁰ that State authorities had enabled the prisoner's family members to "to visit the prisoner regularly and to communicate with him in writing and by telephone. Here, there is no showing written communications have been prohibited".⁷¹
19. Moreover, the Prosecutor submits that Taylor has not shown that the alleged interference with his family life is not justified, especially since the lack of family visits is the result of wilful failures by his family.⁷² The Prosecutor submits that "in considering whether there is actionable interference, two questions must be answered, the first having to do with whether there was interference with family life. Should such interference be found, which the Prosecutor suggests is not the case here, there must then be a determination of whether the interference was

⁶⁸ Response, paras. 5, 14.

⁶⁹ Response, para. 14.

⁷⁰ Motion, Annex W, ECtHR, *Selmani v. Switzerland*, Decision as to the Admissibility of Application no. 70258/01, 28 June 2001. ("ECtHR, *Selmani v. Switzerland*")

⁷¹ Response, para. 8.

⁷² Response, para. 6; Response, Confidential Annex I, paras. 3-6.





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justified, i.e. 'in accordance with the law and is necessary in a democratic society in the 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.' There has been no showing that the alleged interference was not justified, especially here where the lack of visitation was occasioned by willful (sic) failures on the part of those applying for access".⁷³

20. The Prosecutor submits that the enforcement of Taylor's sentence in the United Kingdom is more consistent with the "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".⁷⁴
21. The Prosecutor submits that "Taylor's sentence is not life imprisonment in isolation as he claims". She submits that Taylor has made sweeping allegations that are simply alarmist and intended to buy him undeserved sympathy against the backdrop of the ICTY *Krstić* case, while he has presented no facts to support his conclusions.⁷⁵ It is contended that any increased segregation imposed on Taylor is justified since it is a response to an alleged threat, and that justifiable segregation conforms to international standards of detention.⁷⁶

⁷³ Response, para. 6, citing ECtHR, *Khodorkovskiy and Lebedev v. Russia*, Applications nos. 11082/06 and 13772/05, Judgment of 25 July 2013, para. 839.

⁷⁴ Response, para. 7.

⁷⁵ Response, para. 11.

⁷⁶ Response, para. 6; Response, Confidential Annex I, para. 7 [marked mistakenly "6"].





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22. The Prosecutor submits that Taylor's arguments regarding solitary confinement do not support his request for relief since the International Criminal Tribunal for Rwanda ("ICTR") decisions he relies on centre around the concern that referral to Rwanda for trial could or would result in life sentences in isolation, "an exceptional measure which, if applied, must be both necessary and proportionate and incorporate certain minimum safeguards".⁷⁷
23. The Prosecutor cites ECtHR case-law indicating that solitary confinement cannot be imposed on a prisoner indefinitely,⁷⁸ but argues that Taylor has not shown that the measures imposed on him amount to solitary confinement or that those measures are intended to be indefinite.⁷⁹ The Prosecutor submits that the Basic Principles for the Treatment of Prisoners⁸⁰ do not set out an absolute prohibition on solitary confinement but rather indicate that efforts should be undertaken which address abolition of it as a *punishment*. Taylor has not shown that he has been placed in solitary confinement as a punishment, or that the conditions imposed for his safety amount to solitary confinement.⁸¹
24. The Prosecutor suggests that "the opportunities the requested transfer would give Prisoner Taylor to sow (sic) discord, interfere with and undermine peace, security and stability and good order in Liberia and the West African sub-region militate against granting the requested relief".⁸²

⁷⁷ Response, para. 10.

⁷⁸ Referring to ECtHR, *Ramirez Sanchez v. France*, Application no. 59450/00, Judgment of 4 July 2006, para. 145. ("ECtHR, *Ramirez Sanchez v. France*")

⁷⁹ Response, para. 12.

⁸⁰ Response, para. 13 refers to UN General Assembly Resolution affirming the Basic Principles for the Treatment of Prisoners.

⁸¹ Response, paras. 12-13. (Emphasis added)

⁸² Response, para. 17.



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25. The Prosecutor submits that transferring Taylor to Rwanda would heighten witnesses' security concerns and sense of insecurity, which will likely lead to increased requests for extraordinary protection measures. The Prosecutor relies on communications made with former Prosecution witnesses who strongly oppose Taylor's transfer to Rwanda, expressing great concern over his ability to threaten their security and to undermine peace and security in Liberia and the sub-region.⁸³
26. The Prosecutor also contends that it is not unreasonable to believe that Taylor's transfer to Rwanda would increase his possibilities to act against those he holds accountable for his transfer to the Court, including former and current (Residual) Special Court personnel and high level officials, thereby increasing their risk and undermining their sense of security.⁸⁴
27. The Prosecutor submits that the Motion should be dismissed as repetitive since the President's Designation Order has already considered preferences submitted by Taylor. The Prosecutor argues that the Motion does not provide new information that was not available beforehand, and therefore allowing the Motion, which is essentially a request for review or reconsideration of the Designation Order, can create endless repetitive submissions.⁸⁵

⁸³ Response, para. 18.

⁸⁴ Response, para. 19.

⁸⁵ Response, paras. 1, 20-22.



12404**Reply**

28. Taylor sought leave to Reply and this was granted by the President. In his Reply, Taylor challenges the Prosecutor's submissions and argues as follows:

- (i) The submissions concerning isolated detention are legally wrong and without any factual foundation;⁸⁶
- (ii) 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 Taylor's family;⁸⁷
- (iii) The Prosecutor offers no basis to believe that enforcing Taylor's sentence in Rwanda will have any security consequences and none were cited by the Special Court President in designating the United Kingdom as the place of detention;⁸⁸
- (iv) The Response ignores the factors that make Rwanda substantially more accessible than the United Kingdom to Taylor's family;⁸⁹ and
- (v) The Motion is not a request for reconsideration and is not repetitive.⁹⁰

Rule 33 Direction

29. Taylor did not file any supporting affidavits or any other evidence informing the Trial Chamber of his prison conditions and the physical and emotional impact of those conditions upon him, if any. Nor did Taylor's wife provide

⁸⁶ Reply, paras. 6-9.

⁸⁷ Heading III, Reply, paras. 10-13.

⁸⁸ Reply, paras. 14-21.

⁸⁹ Reply, para. 22.

⁹⁰ Reply, para. 23.





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any statement about her inability to visit, the reasons for her failure to pursue her and the children's visa applications and the impact, if any, on her and their children of not being able to visit Taylor. In the light of factual issues raised by the Parties and in the absence of any evidence from Taylor, the Trial Chamber considered it necessary to seek further clarification by way of a Direction to the Registrar, pursuant to Rule 33 of the Rules, to provide the following information:

1. Considerations for Taylor's enforcement of sentence in the United Kingdom:

- 1.1. Given the considerations referred to in Security Council Resolution 1688, what considerations, if any, on peace, security and/or stability of Liberia, Sierra Leone and the West-African sub-region, were part of the decision that Taylor serve his sentence in the United Kingdom;
- 1.2. Can the Trial Chamber have sight of the submissions, if any, preceding the President's Designation Order deciding that Taylor serve his sentence in the United Kingdom, and all documents relating to Taylor's previous submissions on his preference for a place of confinement;
- 1.3. Given the Prosecutor's submissions on the safety and security of witnesses, personnel and others, should Taylor return to Africa, has the (then Acting) Registrar received any information relating to such issues of security.

2. Taylor's detention in the United Kingdom:



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- 2.1 Can the Trial Chamber receive the report of the investigation team comprising of the Principal Defender and the Head of Detention who were sent on mission in December 2013 to investigate issues previously brought to the attention of the Residual Special Court, and/or any other report on the Residual Special Court's inspection of the conditions of Taylor's imprisonment;
- 2.2 Is Taylor held in isolation. If so:
- 2.2.1 Is Taylor under conditions of "complete" isolation or is he in contact with other prison-patients in the hospital wing;
- 2.2.2 Are there indications from the prison authorities as to how long this isolation might last, whether it can be permanent, and when and how often is this decision to isolate reviewed;
- 2.3 Is there a Vulnerable Prisoners Unit ("VPU") in the prison, and if so, why is Taylor not held there;
- 2.4 Has the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") acceded to the (then Acting) Registrar's request to inspect Taylor's conditions of confinement, and if so, can the Trial Chamber be furnished with their report.
3. Family contact:
- 3.1 What is the extent, if at all, of the United Kingdom authorities' obligation to "facilitate" visits of a prisoner's family, bearing in mind the "restrictions" inherent in the concept of imprisonment;

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- 3.2 Does the United Kingdom have a legal obligation to ensure that Taylor's family can visit him, and if so, what does it derive from;
- 3.3 Has Taylor's wife availed herself of the offer of assistance from the (then Acting) Registrar to re-apply for a United Kingdom entry visa for herself and/or her children and/or the children's aunt;
- 3.4 Has Taylor's wife followed the appeal procedure indicated in Confidential Annex II to the Motion;
- 3.5 What assistance, if any, has been given by the Residual Special Court to Taylor to maintain contact with his family, and/or what assistance has been given to his wife in that regard;
- 3.6 Can Taylor make phone calls and/or write letters to his family. If so, who bears the costs of the phone calls;
- 3.7 Who pays for family visits to Taylor by his wife and children, in particular: does the Residual Special Court assist financially in payment; do the prison services of the United Kingdom assist financially in payment.

4. Detention in Rwanda:

- 4.1 Does the Government of Rwanda agree to accept Taylor as a prisoner;
- 4.2 What are the entry requirements of Rwanda for citizens of Liberia;
- 4.3 Given the complaints by other Residual Special Court prisoners about the conditions of detention in Rwanda, were any visit(s) made at any time to the Rwandan prison by the International Committee of the Red Cross ("ICRC") or any other designated body by the Residual Special



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Court. If so: (1) is there a report of such visit(s) and any response by the Rwandan government; and (2) what is the content of such a report and of the response by Rwanda.

30. The Rule 33 Direction was originally classified as confidential. However, as the Parties have since been served with the Confidential Registrar's Rule 33 Submissions (with the exception of certain *ex-parte* documents) the classification of the Rule 33 Direction as confidential has now become redundant. To remove any doubt it is **Hereby ordered** that the classification of "Confidential" is revoked and the Rule 33 Direction shall now be treated as public, with the exception of the Direction that the document Annex JJ to the Motion shall remain confidential.
31. The information sought in the Rule 33 Direction was duly supplied in the Confidential Registrar's Rule 33 Submissions, filed on 12 November 2014. The Registrar supplied copious information from diverse sources in her Submissions, all of which were classified as "Confidential". The last document submitted by the Registrar was a confidential report of the CPT, received by the Trial Chamber on 18 December 2014 ("CPT Report").
32. Following the submissions made by the Registrar, the Parties were granted leave to file submissions in Response and Reply. Taylor filed his Confidential Response to Registrar's Rule 33 Submissions on 2 January 2015, and the Prosecutor filed her Confidential Reply to Registrar's Rule 33 Submissions on 7 January 2015.

II. APPLICABLE LAW

33. Rule 72*bis* of the Rules (“General Provisions on Applicable Law”) provides:

The applicable laws of the Residual Special Court include:

- (i) the RSCSL Statute, the RSCSL Agreement, and the Rules;
- (ii) where appropriate, other applicable treaties and the principles and rules of international customary law;
- (iii) general principles of law derived from national laws of legal systems of the world including, as appropriate, the national laws of the Republic of Sierra Leone, provided that those principles are not inconsistent with the RSCSL Statute, the RSCSL Agreement, and with international customary law and internationally recognized norms and standards.

A. Designation of State for Enforcement of Sentence

34. Article 23 of the Statute (“Enforcement of sentences”) provides:

- 1. Imprisonment may be served in Sierra Leone or in any of the States which have concluded with the Residual Special Court or the Special Court an agreement for the enforcement of sentences, and which have indicated to the Registrar their willingness to accept convicted persons.

35. Rule 103 of the Rules (“Place of Imprisonment”) provides:

- (A) Pursuant to Article 23 of the RSCSL Statute, imprisonment may be served in Sierra Leone or another State that has concluded an agreement to that effect with the Special Court or the Residual Special Court. The Residual





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Special Court may conclude agreements with other countries willing to accept and imprison convicted persons.

- (B) The place of imprisonment for each convicted person shall be designated by the President.
- (C) Transfer of the convicted person to the place of imprisonment shall be effected as soon as possible after the time limit for appeal has lapsed.

36. The Practice Direction for Designation of State for Enforcement of Sentence provides:

- 5. 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 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.
- 6. The President shall transmit the decision to the Registrar. The President may decide that the designation of the State shall not be made public.

B. Supervision of Enforcement of Sentences

37. Article 1(1) of the Statute ("Competence") provides:

- 1. The purpose of the Residual Special Court is to carry out the functions of the Special Court for Sierra Leone that must continue after the closure of





the Special Court. To that end, the Residual Special Court shall: maintain, preserve and manage its archives, including the archives of the Special Court; provide for witness and victim protection and support; respond to requests for access to evidence by national prosecution authorities; **supervise enforcement of sentences**; review convictions and acquittals; conduct contempt of court proceedings; provide defence counsel and legal aid for the conduct of proceedings before the Residual Special Court; respond to requests from national authorities with respect to claims for compensation; and prevent double jeopardy. [Emphasis added]

38. Article 23 of the Statute (“Enforcement of sentences”) provides:

2. Conditions of imprisonment, whether in Sierra Leone or in a third State, shall be governed by the law of the State of enforcement subject to the supervision of the Residual Special Court. The State of enforcement shall be bound by the duration of the sentence, subject to Article 24 of the present Statute.
3. The Residual Special Court shall have the power to supervise the enforcement of sentences, including the implementation of the sentence enforcement agreements, and other agreements with international and regional organizations and other appropriate organizations and bodies.

39. Article 3 of the United Kingdom Agreement (“Enforcement”) provides:

1. In enforcing the sentence pronounced by the Special Court, the competent national authorities of the United Kingdom shall be bound by the duration of the sentence.





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2. The conditions of imprisonment shall be governed by the law of the United Kingdom, subject to the supervision of the Special Court, as provided for in Articles 6 to 9 of this Agreement.
3. The conditions of imprisonment shall be equivalent to those applicable to prisoners serving sentences under the law of the United Kingdom and shall be in accordance with relevant human rights standards.

40. Article 6 of the United Kingdom Agreement ("Inspection") 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.
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 detention suggested by the CPT.

41. Article 7 of the United Kingdom Agreement ("Information") provides:



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2. Notwithstanding paragraph 1 of this Article, the Registrar and the United Kingdom shall consult each other on all matters relating to the enforcement of the sentence upon the request of either Party.
 3. The Registrar shall, during the course of enforcement of any sentence under this Agreement, provide the United Kingdom with any report or other information requested by the United Kingdom, which is relevant to the enforcement of such a sentence and within the possession of the Registrar.
42. Article 9 of the United Kingdom Agreement (“Termination of enforcement”) provides:
1. The enforcement of sentence shall cease:
 - (d) following a decision of the Special Court referred to in paragraph 2 of this Article.
 2. The Special Court may at any time decide to request the termination of the enforcement of the sentence in the United Kingdom and transfer the sentenced person to another State or to the Special Court.
 3. The competent authorities of the United Kingdom shall terminate the enforcement of the sentence as soon as they are informed by the Registrar of any decision or measure as a result of which the sentence shall cease to be enforceable.
 4. After the enforcement of the sentence has ceased in accordance with this Agreement, the United Kingdom may transfer or deport the convicted person as appropriate and in accordance with its international obligations.
43. Article 3 of the Rwanda Agreement (“Enforcement”) provides:



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2. The conditions of imprisonment shall be governed by the laws of the Government of Rwanda, exclusive of Article 4.2 of Organic Law No. 31/2007 of 25/07/2007 relating to the Abolition of the Death Penalty, and any other provisions relating to holding convicted persons in isolation.
 3. The conditions of imprisonment shall be subject to the supervision of the Special Court, as provided for in Articles 6 to 8 and paragraphs 2 and 3 of Article 9 below.
 4. The conditions of imprisonment shall be consistent with the widely accepted international standards governing treatment of prisoners.
44. Article 6 of the Rwanda Agreement ("Inspection") 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.
 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



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to him or her any changes in the conditions of detention suggested by the ICRC or the designated body or person.

C. *International Standards of Detention*

45. The Universal Declaration of Human Rights (“UDHR”)⁹¹ provides the following relevant Articles:

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 16(3): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

46. The International Covenant on Civil and Political Rights (“ICCPR”)⁹² provides the following relevant provisions:

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

⁹¹ Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217 (A)(III) of 10 December 1948.

⁹² International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A(XXI) of 16 December 1966, entered into force on 23 March 1976.





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Article 10: (1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 17: (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

Article 23: (1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

47. Article 3(1) of the Convention on the Rights of the Child⁹³ provides:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

48. The European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR")⁹⁴ provides the following relevant articles:

Article 3: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 8: (1) Everyone has the right to respect for his private and family life, his home and his correspondence.

⁹³ Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989, entered into force on 2 September 1990.

⁹⁴ Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 4 November 1950, entered into force on 3 September 1953.



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(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing 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.

49. The African Charter on Human and Peoples' Rights ("Banjul Charter")⁹⁵ provides the following relevant articles:

Article 5: Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 18(1): The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral (sic).

50. The American Convention on Human Rights ("ACHR")⁹⁶ provides the following relevant articles:

Article 5(2): No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of

⁹⁵ Organisation of African Unity, African Charter on Human and Peoples' Rights, adopted on 27 June 1981, entered into force on 21 October 1986.

⁹⁶ Organisation of American States, American Convention on Human Rights, adopted on 22 November 1969, entered into force on 18 July 1978.

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their liberty shall be treated with respect for the inherent dignity of the human person.

Article 11: (2) No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

(3) Everyone has the right to the protection of the law against such interference or attacks.

Article 17(1): The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

51. The preamble to the Rwanda Agreement, the 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, of 15 October 2004 ("Sweden Agreement"), and the 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, of 29 June 2009 ("Finland Agreement"), recall the following United Nation Documents:

- Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977;
- Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988;
- Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990.





The Rwanda Agreement and the Finland Agreement refer to these documents as part of “widely accepted international standards governing the treatment of prisoners”.⁹⁷

52. The Standard Minimum Rules for the Treatment of Prisoners (“Standard Minimum Rules of 1977”)⁹⁸ provides the following relevant rules:

Rule 6(1): The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Rule 27: Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

Rule 37: Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

Rule 57: Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of

⁹⁷ See also ICTR, *Prosecutor v. Ruggiu*, ICTR-97-32-A26, Decision on the Enforcement of Sentence, 13 February 2008, paras. 8, 10: “other instruments also apply to the enforcement of sentences decided by the Tribunal established by the United Nations, namely: the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, and the Basic Principles for the Treatment of Prisoners. Although these instruments are not binding acts, and the rules and principles therein stated are not in effect in all States, they nonetheless constitute what the States have agreed on as being the minimum best practices in imprisonment... Consequently, the United Nations as an international actor, and its agencies, especially International Criminal Tribunals, ought to adhere to these agreed standard minimum rules”.

⁹⁸ Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.





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taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

Rule 79: Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

53. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Body of Principles of 1988")⁹⁹ provides the following relevant principles:

Principle 1: All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 15: Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 19: A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate

⁹⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by General Assembly Resolution 43/173 of 9 December 1988.

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with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 20: If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

54. The Basic Principles for the Treatment of Prisoners ("Basic Principles of 1990")¹⁰⁰ provides the following relevant principles:

Principle 1: All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

Principle 5: 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, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

Principle 7: Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

¹⁰⁰ Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly Resolution 45/111 of 14 December 1990.



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55. Paragraph 3 of the United Nations Human Rights Committee CCPR General Comment No. 21 on Article 10 of the ICCPR (Humane Treatment of Persons Deprived of Their Liberty)¹⁰¹ ("CCPR General Comment No. 21") provides:

3. Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

56. The Finland Agreement also recalls Recommendation Rec(2006)2 of the Council of Europe Committee of Ministers to Member States on the European Prison Rules ("Recommendation Rec(2006)2"),¹⁰² which provides the following relevant rules:

Rule 1: All persons deprived of their liberty shall be treated with respect for their human rights.

¹⁰¹ CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), adopted at the Forty-fourth Session of the Human Rights Committee, on 10 April 1992.

¹⁰² Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, adopted on 11 January 2006.



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- Rule 2: Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
- Rule 3: Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
- Rule 24.1: Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.
- Rule 24.2: Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.
- Rule 24.4: The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.
- Rule 24.5: Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.
- Rule 60.4: Punishment shall not include a total prohibition on family contact.

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Rule 60.5: Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible.

III. DELIBERATIONS

Preliminary Matter

57. In the Trial Chamber's Confidential "Decision on Mr. Taylor's Motion to Set a Deadline for Rule 33 Submissions Pursuant to the Trial Chamber's Direction of 20 August 2014" [REDACTED]. Also, Taylor has filed a "Motion to Compel the Registrar to File a Public Redacted Version of Its Rule 33 Submissions". The Trial Chamber therefore considers that Taylor's request is now redundant.

A. Introduction

58. As recited above, Taylor submits that he is the only person convicted by an international court to be sent, against his wishes, to a place outside of his continent of origin to serve his sentence.

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. Taylor's case is an exceptional one. He was the first sitting Head of State to be indicted and convicted of war crimes, crimes against humanity and other serious violations of international humanitarian law by an international court since the Nuremburg trials. [REDACTED],¹⁰³ but has been found individually criminally responsible for aiding and abetting and planning 11 counts of war crimes, crimes against

¹⁰³ Taylor's Confidential Response to Registrar's Rule 33 Submissions, para. 30.





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humanity and other serious violations of international humanitarian law,¹⁰⁴ and sentenced to 50 years imprisonment.¹⁰⁵ Both his conviction and sentence have been upheld on appeal.¹⁰⁶

60. In deciding on his sentence, the gravity of his offences was described as follows:

The Accused has been found responsible for aiding and abetting as well as planning some of the most heinous and brutal crimes recorded in human history. The Trial Chamber is of the view that the offences for which the Accused has been convicted – acts of terrorism, murder, rape, sexual slavery, cruel treatment, recruitment of child soldiers, enslavement and pillage – are of the utmost gravity in terms of the scale and brutality of the offences, the suffering caused by them on the victims and the families of victims, and the vulnerability and number of victims.¹⁰⁷

61. In the course of Taylor's trial at the Special Court, the Trial Chamber heard evidence of the tremendous suffering and loss of life resulting from the crimes of which Taylor was convicted. Innocent civilians were burned to death in their homes, or tortured or had their limbs amputated. Women and young girls were brutally raped, subjected to sexual slavery and, in many cases, unwanted pregnancy. Pregnant women were cut open to settle bets as to the sex of the unborn child. A young nursing mother was gang raped by seven armed rebels who then pulled out her eyes so that she would not be able to later identify them. A mother was forced to laugh as she carried a bag full of human heads dripping blood. When the bag was later emptied, she saw the heads of her children. A 12-year old boy was turned into a child soldier and used a machete to amputate the hands of those who resisted him. When he refused to rape an old woman, he was punished. For those who survived, the long-term impact on their lives is

¹⁰⁴ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Judgment, 26 April 2012.

¹⁰⁵ *Prosecutor v. Taylor*, SCSL-03-01-T, Sentencing Judgment, 30 May 2012.

¹⁰⁶ *Prosecutor v. Taylor*, SCSL-03-01-A, Appeal Judgment, 26 September 2013.

¹⁰⁷ *Prosecutor v. Taylor*, SCSL-03-01-T, Sentencing Judgment, 30 May 2012, para. 70.





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devastating – amputees without arms who now have to beg for a living because they can no longer work; young girls who have been publicly stigmatised and will never recover from the trauma of rape and sexual slavery; child soldiers who have had identifying scars carved on their bodies by the rebels and who now are enduring the after-effects of years of brutality and alienation from their family and community.¹⁰⁸

62. Taylor's trial was conducted in The Hague pursuant to United Nations Security Council ("Security Council") Resolution 1688, following fears of the Security Council that his presence in the sub-region would be 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. The Security Council stated:

Welcoming the transfer of former President Taylor to the Special Court on 29 March 2006, and noting that at present the trial of former President Taylor cannot be conducted within the subregion due to the security implications if he is held in Freetown at the Special Court,

Noting that it is not feasible for the trial of former President Taylor to be hosted at the premises of the International Criminal Tribunal for Rwanda due to its full engagement on the completion strategy, and that no other international criminal tribunals exist for the trial of former President Taylor in Africa,

...

Noting that former President Taylor has been brought before the Special Court at its seat in Freetown and determining 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.¹⁰⁹

¹⁰⁸ *Prosecutor v. Taylor*, SCSL-03-01-T, Sentencing Judgment, 30 May 2012, paras. 70-73, 75.

¹⁰⁹ United Nations Security Council Resolution 1688, S/RES/1688, adopted by the Security Council at its 5467th meeting, on 1 June 2006.





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63. Following his conviction and sentence, Taylor was sent to serve his sentence in HMP Frankland in the United Kingdom, where he has been classified as a Category A prisoner by the United Kingdom prison authorities. [REDACTED].¹¹⁰

B. Jurisdiction

64. The Statute of the Residual Special Court provides that “[i]mprisonment may be served in Sierra Leone or in any of the States which have concluded with the Residual Special Court or the Special Court an agreement for the enforcement of sentences, and which have indicated to the Registrar their willingness to accept convicted persons”.¹¹¹

65. Pursuant to Rule 103, and in accordance with the procedures articulated in the Practice Direction for Designation of State for Enforcement of Sentence, and following consultation with other States, the President of the Special Court designated the United Kingdom as the State in which Taylor is to serve the remainder of his sentence.¹¹² On 15 October 2013, Taylor was transferred to the United Kingdom.¹¹³

66. Article 1 of the Statute obliges the Residual Special Court to supervise the enforcement of sentences of persons convicted by the Special Court. Article 23(2) of the Statute provides the Court with a supervisory role over the conditions of detention, while Article 23(3) empowers the Court to supervise the enforcement of sentences, including the implementation of the sentence enforcement agreements.

¹¹⁰ Registrar Confidential Annex 5, p. 6 (CMS 11687); Registrar Confidential Annex 11, para. 3 (CMS 11794).

¹¹¹ Statute, Article 23(1).

¹¹² Designation Order.

¹¹³ Motion, para. 44; [REDACTED].





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67. Article 3(2) of the United Kingdom Agreement provides that the conditions of imprisonment shall be governed by the law of the United Kingdom, "subject to the supervision of the Special Court, as provided for in Articles 6 to 9 of this Agreement". According to Article 3(3) of the United Kingdom Agreement, the conditions of imprisonment of the convicted person shall be equivalent to those applicable to prisoners serving sentences under United Kingdom law and shall be in accordance with human rights standards.
68. Accordingly, the Trial Chamber is empowered to supervise the conditions of Taylor's imprisonment in the United Kingdom, and to consider whether those conditions are in compliance with the United Kingdom Agreement and human rights standards.

C. Admissibility

69. As noted earlier, Taylor submits that the Motion is "not a request for mere review or reconsideration" of the Designation Order and must be assessed *de novo* in order to determine the existence of a human rights violation, as the Residual Special Court has an obligation to ensure that his conditions of detention conform to human rights standards.¹¹⁴
70. The Prosecutor submits that before the President of the Special Court decided that Taylor would serve his imprisonment in the United Kingdom, Taylor made submissions through his Counsel regarding his preference for a place of confinement and his opposition to serving his sentence in the United Kingdom. The Prosecutor contends that there is no justification for allowing Taylor to raise this issue once again, and he has not shown what substantial new information is

¹¹⁴ Motion, para. 18.



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contained in this Motion which was not previously available for, what is in effect, a request for review of a matter already decided after consideration of his submissions. The Prosecutor suggests that the Motion is unduly repetitive and "should be denied and that any future Motions on the same subject be summarily denied unless Prisoner Taylor makes a sufficient showing of why review is justified and what new, substantial information is presented which was not available at the time of the prior submissions".¹¹⁵

71. The Trial Chamber agrees with the Prosecutor that there is no justification for allowing Taylor to raise substantially the same issues that have already been considered by the President in making the Designation Order.¹¹⁶ In this regard, the Trial Chamber notes that a letter of (then) Counsel for Taylor, [REDACTED],¹¹⁷ was explicitly referred to in the Designation Order as information considered by the President in making his decision.¹¹⁸
72. [REDACTED].

Conclusion

73. The circumstances considered by the President in making the Designation Order have not changed. Accordingly, the Trial Chamber holds that Taylor's further arguments on the issues already decided by the President are inadmissible.

¹¹⁵ Response, paras. 20-22.

¹¹⁶ Response, paras. 20-21.

¹¹⁷ Registrar Confidential Annex 1.

¹¹⁸ Designation Order: "CONSIDERING the confidential internal memorandum of 3 October 2013, submitted to me by the Registrar within the terms of paragraph four of the Practice Direction and listing the States in which Charles Ghankay Taylor may serve his sentence, and the Annexes A to M thereto, *including the letter of 26 September 2013 from Mr. Morris Anyah, Lead Appeals Counsel for Charles Ghankay Taylor*, and information provided by the relevant authorities of the United Kingdom". (Emphasis added)





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74. What remains to be decided is whether Taylor's conditions of detention have led to a violation of his right to family life, or to any other human rights violation.

D. Alleged violation of the right to family life based on denial of visa

75. The Trial Chamber concurs with the following opinion of the ECtHR:

The Court has also held in its case-law that the Convention does not grant prisoners the right to choose their place of detention, and the fact that prisoners are separated from their families, and at some distance from them, is an inevitable consequence of their imprisonment. Nevertheless, detaining an individual in a prison which is so far away from his or her family that visits are made very difficult or even impossible may in some circumstances amount to interference with family life, as the opportunity for family members to visit the prisoner is vital to maintaining family life (see *Ospina Vargas v. Italy* (dec.), no. 40750/98, 6 April 2000). It is therefore an essential part of prisoners' right to respect for family life that the prison authorities assist them in maintaining contact with their close family (see *Messina v. Italy* (no. 2), cited above, § 61).¹¹⁹

And the Trial Chamber also concurs with the finding of the European Commission of Human Rights that:

[A] prisoner has no right as such under the [ECHR] to choose the place of his confinement and that a separation of a detained person from his family and the hardship resulting from it are the inevitable consequences of detention.¹²⁰

76. Nonetheless, Taylor contends that his right to family life has been infringed as he has not seen his wife and his daughters since his incarceration in the United Kingdom due to the denial of their visa applications.¹²¹

77. [REDACTED].¹²²

¹¹⁹ ECtHR, *Vintman v. Ukraine*, Application no. 28403/05, Judgment of 23 October 2014, para. 78. ("ECtHR, *Vintman v. Ukraine*") See also ECtHR, *Selmani v. Switzerland*.

¹²⁰ European Commission of Human Rights, Decision as to the Admissibility of Application no. 18632/91, *McCotter v. the United Kingdom*, 9 December 1992.

¹²¹ Motion, paras. 2, 44-49.





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78. Taylor's wife, Victoria Taylor, and his two daughters applied for visas to enter the United Kingdom on 29 November 2013.¹²³ In letters dated 3 January 2014, these three members of Taylor's family were notified by the United Kingdom Home Office that their applications were refused.¹²⁴
79. In the case of Taylor's wife, the decision of the Entry Clearance Officer to refuse entry clearance was as follows:

In order to assess your intentions I must consider your circumstances in Liberia based on the information you have provided with your application. All applicants are advised to provide full evidence of their circumstances. We expect applicants to provide this information as it assists us in making an informed assessment as to whether they intend to comply with the terms of visitor entry clearance.

You have provided limited evidence of your circumstances in Liberia. You state that you are a housewife and at question 80 of your visa application form you have neglected to provide details of your total monthly income. At questions 81 and 82 you claim to receive money from other sources, including friends and family. You state that you have savings, properties and other incomes. At question 83 you state that \$2000US (£1,209 at exchange rate of £1:\$1.65US) of your total monthly income is used to support your family members, but as you have failed to declare a monthly income your financial circumstances cannot be assessed. The only documentation provided is what appear to be photocopied property documents which cannot be verified as the originals have not been provided. You have therefore failed to provide any credible evidence of a regular income or any credible evidence to substantiate your claimed circumstances in Liberia.

The purpose of your trip is to visit your husband. I am aware that your husband, Charles Taylor has been sentenced to 50 years imprisonment for aiding and abetting the commission of war crimes and he is currently serving his sentence in the UK. The attraction for you and your family to remain in the UK having gained entry is a risk that needs to be weighed up against your current circumstances. You have now lost the security that your husband's presence provided and on the basis of the very limited information about your circumstances, I am not satisfied that you are living in settled circumstances in Liberia.

¹²² Registrar Confidential Annex 1 (CMS 11655).

¹²³ Registrar Confidential Annex 11, para. 15 (CMS 11796).

¹²⁴ Motion, Annex II.





Taking all of the above into account, I am not satisfied that you are genuinely seeking entry as a visitor and that you intend to leave the UK at the end of your visit. Paragraphs 41(i) & (ii) of the Immigration Rules.

You state that you will be staying in "Newcastle United" which I have taken to mean Newcastle. Your husband is currently serving a long sentence at HMP Frankland which is in Durham. You have failed to provide any evidence of available accommodation or indeed an estimate as to the cost of staying in private rented accommodation for three months. You have provided one photocopied bank statement. As with the other limited documentation submitted with your application, it cannot be verified as the original has not been provided. The statement is dated from 29/04/2013 until 30/09/2013. Taken on face value the only deposit into this account has been made in cash on 27/07/2013 for 29,900 US\$ (£18,088). There is no credible evidence to establish the source of this cash deposit and there is no evidence to suggest that you are in receipt of a regular monthly income. As I am not satisfied as to the source of the funds, I am not satisfied that the funds will be available to you. In view of this, I am not satisfied that you will be adequately maintained and accommodated in the United Kingdom, or that you can meet the cost of your return or onward journey. Paragraphs 41(vi) & (vii) of the Immigration Rules.

I have therefore refused your application because I am not satisfied, on the balance of probabilities, that you meet all of the requirements of the relevant Paragraph(s) of the United Kingdom Immigration Rules.

Your right of appeal is limited to the grounds referred to in section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002 (www.legislation.gov.uk).¹²⁵

80. In relation to the two children (one aged seven and the other aged three), the Entry Clearance Officer refused both of their applications because he was "not satisfied that you are genuinely seeking entry as a child visitor or that you intend to leave the United Kingdom at the end of the visit". In assessing their applications, the Entry Clearance Officer also considered United Kingdom legislation providing that "the Secretary of State must make arrangements for

¹²⁵ Motion, Annex II (CMS 11493); Registrar Confidential Annex 11, para. 15 (CMS 11796).





ensuring that UKBA’s functions ‘are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom’’.¹²⁶

- 81. The refusal letters advise of a limited right to appeal. Counsel for Taylor has stated to the Registrar that Taylor’s wife has filed an appeal in time.¹²⁷ No supporting evidence of this was presented to the Trial Chamber, [REDACTED].¹²⁸
- 82. [REDACTED].¹²⁹ [REDACTED].¹³⁰ [REDACTED].¹³¹
- 83. [REDACTED].¹³² [REDACTED].¹³³
- 84. [REDACTED].¹³⁴ [REDACTED].¹³⁵ [REDACTED].¹³⁶
- 85. As Taylors’ complaint that his right to family life has been violated is based solely on the inability of his wife and children to visit him, it is implausible that he ignores his wife’s failure to make fresh applications for entry visas with the assistance offered by the Registrar and [REDACTED]. The Trial Chamber can only conclude from this that Taylor wishes to maintain the present situation as a

¹²⁶ Motion, Annex II (CMS 11496, 11498). (Emphasis included)

¹²⁷ Confidential Registrar’s Rule 33 Submissions, para. 68; Taylor’s Confidential Response to Registrar’s Rule 33 Submissions, para. 37.

¹²⁸ Taylor’s Confidential Response to Registrar’s Rule 33 Submissions, para. 37, footnote 44. [REDACTED]

¹²⁹ Confidential Registrar’s Rule 33 Submissions, paras. 57-60.

¹³⁰ Confidential Registrar’s Rule 33 Submissions, para. 62; Motion, Confidential Annex JJ (CMS 11482).

¹³¹ Confidential Registrar’s Rule 33 Submissions, para. 62; Motion, Confidential Annex JJ.

¹³² Confidential Registrar’s Rule 33 Submissions, para. 63; Motion, Confidential Annex JJ (CMS 11481).

¹³³ Confidential Registrar’s Rule 33 Submissions, paras. 64-65.

¹³⁴ Registrar Confidential Annex 9, p. 3, para. 5 (CMS 11727); Registrar Confidential Annex 11, para. 16 (CMS 11796-11797).

¹³⁵ Registrar Confidential Annex 11, para. 16 (CMS 11796-11797).

¹³⁶ Registrar Confidential Annex 11, paras. 16, 20 (CMS 11796-11797).





basis for his transfer to Rwanda, which appears to be the underlying objective of his Motion. This is borne out by Taylor’s speculation that even if his wife and daughters were granted visas, “[t]he practical and legal obstacles to such visits are unlikely to be substantially alleviated”,¹³⁷ and that “future visa applications are likely to be so burdensome, expensive and time-consuming that they will, in themselves, continue to constitute a significant *de facto* and/or *de jure* impediment to [his] right to family visitation”.¹³⁸ In other words, nothing short of a transfer to Rwanda will satisfy him.

86. [REDACTED].¹³⁹ [REDACTED].¹⁴⁰

87. Contrary to Taylor’s claims that the United Kingdom has “obstructed” visits by his wife and young daughters¹⁴¹ and has created obstacles to family visits,¹⁴² [REDACTED].¹⁴³

88. [REDACTED].¹⁴⁴ [REDACTED].¹⁴⁵ [REDACTED].¹⁴⁶

89. Taylor maintains that while detained in The Hague, the Government of The Netherlands allowed his wife and other family members numerous visits. [REDACTED].¹⁴⁷ This submission cannot be sustained. [REDACTED]. The Trial

¹³⁷ Motion, para. 32.

¹³⁸ Motion, para. 49.

¹³⁹ Registrar Confidential Annex 11, paras. 14, 16 (CMS 11796-11797).

¹⁴⁰ Registrar Confidential Annex 11, para. 13 (CMS 11796).

¹⁴¹ Motion, para. 2.

¹⁴² Motion, para. 45.

¹⁴³ Registrar Confidential Annex 11, para. 16 (CMS 11797).

¹⁴⁴ Registrar Confidential Annex 5, p. 5 (CMS 11686); Registrar Confidential Annex 9, p. 3, para. 5 (CMS 11727).

¹⁴⁵ Registrar Confidential Annex 9, p. 3, para. 5 (CMS 11727); Registrar Confidential Annex 11, para. 21 (CMS 11797).

¹⁴⁶ Registrar Confidential Annex 10 [REDACTED].

¹⁴⁷ Taylor’s Confidential Response to Registrar’s Rule 33 Submissions, para. 40.





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Chamber therefore rejects his submission that the United Kingdom does not understand its legal obligation to grant “visitation visas”.

Conclusion

90. The Trial Chamber finds that 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 that 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.

E. Alleged violation of human rights due to relative isolation

91. Taylor claims that due to security concerns, he is being held “effectively in isolation” with little or no contact with other prisoners,¹⁴⁸ and that since the security concerns are not likely to change he will continue to be so segregated for the remainder of his natural life.¹⁴⁹ He argues that there is an available alternative which is to transfer him to Rwanda where he will be kept safely and without being separated from other prisoners, given that all other Special Court prisoners are held there and given “the cultural affinity of prison officials”.¹⁵⁰ As “[t]here is a reasonable alternative available, the RSCSL should exercise its authority accordingly”.¹⁵¹
92. The Trial Chamber has received information from United Kingdom prison authorities and from the CPT and from the Registrar on the conditions of Taylor’s imprisonment.

¹⁴⁸ Motion, paras. 4, 50.

¹⁴⁹ Motion, para. 52.

¹⁵⁰ Motion, paras. 52, 55.

¹⁵¹ Motion, para. 57.





- 93. Taylor is held in the Health Care Unit at HMP Frankland, and following consultation with him, the local prison authorities determined that it was appropriate to place him there. [REDACTED].¹⁵² [REDACTED].¹⁵³ [REDACTED].¹⁵⁴ [REDACTED].¹⁵⁵ [REDACTED].¹⁵⁶ [REDACTED].¹⁵⁷
- 94. [REDACTED].¹⁵⁸ [REDACTED].¹⁵⁹
- 95. [REDACTED].¹⁶⁰ [REDACTED].¹⁶¹ [REDACTED].¹⁶²
- 96. [REDACTED].¹⁶³ [REDACTED].¹⁶⁴ [REDACTED].¹⁶⁵ [REDACTED].¹⁶⁶ [REDACTED].¹⁶⁷ [REDACTED].¹⁶⁸
- 97. [REDACTED].¹⁶⁹
- 98. [REDACTED].¹⁷⁰ [REDACTED].¹⁷¹ [REDACTED].¹⁷²

¹⁵² Registrar Confidential Annex 11, para. 4 (CMS 11794).
¹⁵³ Registrar Confidential Annex 11, para. 7 (CMS 11795).
¹⁵⁴ Registrar Confidential Annex 11, para. 21 (CMS 11797).
¹⁵⁵ Registrar Confidential Annex 11, para. 8 (CMS 11795).
¹⁵⁶ Registrar Confidential Annex 9, p. 5, para. 4 (CMS 11729); Registrar Confidential Annex 11, paras. 3, 6, 8 (CMS 11794-11795).
¹⁵⁷ Registrar Confidential Annex 11, para. 8 (CMS 11795).
¹⁵⁸ Registrar Confidential Annex 9, p. 5, para. 3 (CMS 11729); Registrar Confidential Annex 11, para. 4 (CMS 11794).
¹⁵⁹ Taylor's Confidential Response to Registrar's Rule 33 Submissions, para. 21.
¹⁶⁰ Registrar Confidential Annex 9, p. 3, para. 4 (CMS 11727); Registrar Confidential Annex 11, para. 6 (CMS 11795); CPT Report, para. 11.
¹⁶¹ Taylor's Confidential Response to Registrar's Rule 33 Submissions, para. 23.
¹⁶² CPT Report, para. 11.
¹⁶³ Registrar Confidential Annex 10 [REDACTED].
¹⁶⁴ Registrar Confidential Annex 9, p. 3, para. 4 (CMS 11727).
¹⁶⁵ Taylor's Confidential Response to Registrar's Rule 33 Submissions, para. 23; Registrar Confidential Annex 11, para. 6 (CMS 11795); CPT Report, para. 9.
¹⁶⁶ Registrar Confidential Annex 9, p. 3, para. 4 and p. 5, para. 3 (CMS 11727, 11729); Registrar Confidential Annex 11, para. 9 (11795).
¹⁶⁷ Registrar Confidential Annex 5, p. 5 (CMS 11686); CPT Report, para. 10.
¹⁶⁸ Registrar Confidential Annex 5, p. 5 (CMS 11686).
¹⁶⁹ Confidential Registrar's Rule 33 Submissions, para. 48; Confidential Annex 9, p. 4, paras. 7-10 (CMS 11728).





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99. Moreover, Taylor agrees that he [REDACTED] should not be integrated into the general prison population, as managing access to him is necessary for his protection,¹⁷³ more so following the receipt of a letter containing threats to his life that was intercepted by the prison authorities.¹⁷⁴ [REDACTED],¹⁷⁵ [REDACTED].¹⁷⁶
100. Taylor argues that [REDACTED], therefore, he will continue to be isolated.¹⁷⁷
101. [REDACTED].¹⁷⁸ [REDACTED].¹⁷⁹ [REDACTED].¹⁸⁰
102. In the Trial Chamber’s view, Taylor has not established any basis for the Trial Chamber to question his categorisation. Moreover, the Trial Chamber considers that it is the responsibility of the national prison authorities to decide on the security designation of prisoners. As held by the ECtHR, “it is not for the Court to examine the validity of the assessment carried out by the domestic authorities. Having regard to the very serious offences of which the applicant stood accused

¹⁷⁰ Registrar Confidential Annex 9, p. 6, para. 7 and p. 7, para. 1 (CMS 11730-11731); Registrar Confidential Annex 11, para. 8 (CMS 11795).

¹⁷¹ Registrar Confidential Annex 9, p. 7, para. 1 (CMS 11731).

¹⁷² Registrar Confidential Annex 5, p. 5 (CMS 11686); Registrar Confidential Annex 12, para. 3 (CMS 11801); CPT Report, para. 20.

¹⁷³ Motion, para. 52; Taylor’s Confidential Response to Registrar’s Rule 33 Submissions, para. 25.

¹⁷⁴ Motion, paras. 51-52.

¹⁷⁵ Registrar Confidential Annex 9, p. 6, para. 5 (CMS 11730); Registrar Confidential Annex 11, para. 9 (CMS 11795).

¹⁷⁶ Registrar Confidential Annex 11, paras. 6, 9 (CMS 11795); Taylor’s Confidential Response to Registrar’s Rule 33 Submissions, para. 25; CPT Report, paras. 13-14.

¹⁷⁷ Taylor’s Confidential Response to Registrar’s Rule 33 Submissions, para. 25, footnote 30; CPT Report, para. 13.

¹⁷⁸ Taylor’s Confidential Response to Registrar’s Rule 33 Submissions, para. 30.

¹⁷⁹ Registrar Confidential Annex 5, p. 6 (CMS 11687); Registrar Confidential Annex 11, para. 3 (CMS 11794).

¹⁸⁰ National Security Framework, The Review of Security Category – Category A / Restricted Status Prisoners, Ref: NSF 12.2, section 2.6; Registrar Confidential Annex 5, p. 6 (CMS 11687); Registrar Confidential Annex 11, para. 3 (CMS 11794).





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and was subsequently convicted [...], the Court accepts the assessment made by the domestic authorities".¹⁸¹

103. Taylor wishes to remain in the Health Care Unit but at the same time complains that it causes his unnecessary segregation, which is not likely to change. He contends that the only solution for this is his transfer to Rwanda.¹⁸²
104. However, the placement of Taylor's detention in the Health Care Unit [REDACTED], so that in the Trial Chamber's view his argument that he will be held there indefinitely is speculative.
105. Taylor claims that while he is not under "absolute isolation", the limitations on his contact with others amount to "relative isolation" and therefore are a violation of his human rights.¹⁸³ [REDACTED].¹⁸⁴
106. International law provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁸⁵ The ECtHR has held that:

Article 3 of the [ECHR] enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behavior.¹⁸⁶

And

While measures depriving a person of his liberty often involve an element of suffering or humiliation, it cannot be said that detention in a

¹⁸¹ ECtHR, *Van der Ven v. The Netherlands*, Application no. 50901/99, Judgment of 4 February 2003, para. 55. ("ECtHR, *Van der Ven v. The Netherlands*") See also CPT Report, para. 7.

¹⁸² Motion, paras. 50, 55, 57.

¹⁸³ Taylor's Confidential Response to Registrar's Rule 33 Submissions, paras. 17-18.

¹⁸⁴ Registrar Confidential Annex 11, paras. 2, 5 (CMS 11794-11795).

¹⁸⁵ UDHR, Article 5; ICCPR, Article 7; ECHR, Article 3; Banjul Charter, Article 5; ACHR, Article 5(2).

¹⁸⁶ ECtHR, *Van der Ven v. The Netherlands*, para. 46; ECtHR, *Onoufriou v. Cyprus*, Application no. 24407/04, Judgment of 7 January 2010, para. 66. ("ECtHR, *Onoufriou v. Cyprus*")





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high-security prison facility, be it on remand or following a criminal conviction, in itself raises an issue under Article 3 of the Convention.¹⁸⁷

107. Whilst a person lawfully deprived of his liberty may suffer or be humiliated, “the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention”.¹⁸⁸
108. The ECtHR has held that complete sensory isolation coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment that cannot be justified by the requirements of security or any other reason. The prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment.¹⁸⁹ Solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely.¹⁹⁰
109. Moreover, the ECtHR has held that “[i]ll-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 [of the ECHR]”.¹⁹¹
110. In Taylor’s case, he has been placed in the Health Care Unit for his protection. The evidence shows that he was first consulted and that this placement was with his assent and insistence. It is not intended to infringe upon his rights, but rather

¹⁸⁷ ECtHR, *Van der Ven v. The Netherlands*, para. 50.

¹⁸⁸ ECtHR, *Onoufriou v. Cyprus*, para. 68. See also ICCPR, Article 10(1); ACHR, Article 5(2); Standard Minimum Rules of 1977, Rule 57; Body of Principles of 1988, Principle 1; Basic Principles of 1990, Principle 1; Recommendation Rec(2006)2, Rule 1; CCPR General Comment No. 21, para. 3.

¹⁸⁹ ECtHR, *Öcalan v. Turkey*, Application no. 46221/99, Judgment of 12 May 2005, para. 191.

¹⁹⁰ ECtHR, *Ramirez Sanchez v. France*, para. 145; ECtHR, *Piechowicz v. Poland*, Application no. 20071/07, Judgment of 17 April 2012, para. 164. (“ECtHR, *Piechowicz v. Poland*”)

¹⁹¹ ECtHR, *Piechowicz v. Poland*, 17 July 2012, para. 159.





to secure them. [REDACTED]. There is no indication that it will continue indefinitely. [REDACTED].¹⁹²

Conclusion

111. In the circumstances, the Trial Chamber finds that Taylor is not held in conditions of sensory or relative isolation, and that no inhuman or degrading treatment has been established and that the conditions of his imprisonment accord to international standards.

F. [REDACTED]

112. [REDACTED]¹⁹³ [REDACTED]¹⁹⁴ [REDACTED],¹⁹⁵ [REDACTED]. As noted in para. 102 *supra*, it is not for the Trial Chamber to examine the validity of the assessment carried out by the domestic authorities. The rights and restrictions applicable to persons convicted by international courts do not differ from the rights and restrictions applicable to persons convicted in national jurisdictions.

Conclusion

113. The Trial Chamber finds that Taylor has failed to establish any violation of his Article 3 rights.

¹⁹² Registrar Confidential Annex 10 [REDACTED].

¹⁹³ Taylor's Confidential Response to Registrar's Rule 33 Submissions, paras. 29-30.

¹⁹⁴ Registrar Confidential Annex 5 (CMS 11697).

¹⁹⁵ CPT Report, para. 7.





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114. Taylor received an anonymous threatening letter [REDACTED].¹⁹⁶
[REDACTED].¹⁹⁷
115. In his Motion, Taylor contends that the letter was anonymous and had “possibly”¹⁹⁸ or “apparently”¹⁹⁹ originated from within the prison. These submissions conflict with the contents of the letter. [REDACTED].²⁰⁰
[REDACTED].²⁰¹ This information was not disclosed in the original Motion, [REDACTED]. Accordingly, the Trial Chamber finds that Taylor’s submissions on the content of the letter are misleading.
116. Taylor submits that his security situation is similar to that of Radislav Krstić, a convict of the ICTY who was attacked while serving his sentence in a United Kingdom prison. He submits that the United Kingdom is unable to secure him properly, contending he would be safer if he were to be transferred to Rwanda.²⁰²
117. The Trial Chamber observes that the situation of Krstić is distinguishable from that of Taylor. Krstić was attacked by prisoners serving sentences in the same prison, whereas the threatening letter sent to Taylor appears to have originated from outside the prison.

¹⁹⁶ Registrar Confidential Annex 5, p. 7 (CMS 11688); Registrar Confidential Annex 11, para. 7 (CMS 11795).

¹⁹⁷ Registrar Confidential Annex 5, p. 7 (CMS 11688); Registrar Confidential Annex 9, p. 6, para. 9 (CMS 11730); Registrar Confidential Annex 11, para. 7 (CMS 11795).

¹⁹⁸ Motion, para. 4.

¹⁹⁹ Motion, para. 51.

²⁰⁰ Motion, Confidential Annex KK.

²⁰¹ Registrar Confidential Annex 5, p. 7 (CMS 11688). [REDACTED]

²⁰² Motion, paras. 53, 55.



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118. Further, in the Trial Chamber's view, given that the United Kingdom has hosted two other ICTY convicts whose security and safety were ensured,²⁰³ the supposition that Taylor will be attacked if he is transferred to the general prison population is purely speculative.
119. [REDACTED].²⁰⁴ No evidence has been submitted to rebut this.

Conclusion

120. The Trial Chamber finds that all reasonable measures have been taken to ensure Taylor's security.

H. Summary of Conclusions

121. The Trial Chamber finds as follows:
- i. Taylor's further arguments on the issues already decided by the President are inadmissible.
 - 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. 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.

²⁰³ Blagoje Simić and Momčilo Krajišnik have served their sentences in the United Kingdom and have been released, http://www.icty.org/x/cases/simic/cis/en/cis_simic_et_al.pdf, and http://www.icty.org/x/cases/krajisnik/cis/en/cis_krajisnik_en.pdf, respectively. (accessed 15 January 2015)

²⁰⁴ Registrar Confidential Annex 11, para. 7 (CMS 11795).





- 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.
- iv. Taylor has failed to establish any violation of his Article 3 rights.
- v. All reasonable measures have been taken to ensure Taylor’s security.


IV. DISPOSITION

The Motion is denied in its entirety.

Done at The Hague, The Netherlands, this 30th day of January 2015.


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge


Justice Emmanuel Roberts

